

SWCPP Ref. No.:	PPSSWC-326
DA No.:	Mod23/0058
PROPOSED DEVELOPMENT:	4.55(2) Modification to an Approved Waste Management Facility (Tyre Recycling Facility) to Increase Processing Capacity from 29,000t to 60,000t per year
PROPERTY ADDRESS:	1 - 21 Grady Crescent, ERSKINE PARK NSW 2759
PROPERTY DESCRIPTION:	Lot 9 DP 1261030,
ZONING:	SEPP - (WSEA) 2009 - ZONE IN1
CLASS OF BUILDING:	Class 7b , Class 8
ASSESSING OFFICER	Jacqueline Klincke
APPLICANT:	Tyrecycle Pty Ltd
DATE RECEIVED:	17 March 2023
REPORT BY:	Jacqueline Klincke, Development Assessment Planner, Penrith City Council
RECOMMENDATIONS:	Approve

Assessment Report

Executive Summary

Council is in receipt of a Section 4.55(2) modification application to an existing tyre recycling facility (Tyrecycle) at 1-21 Grady Crescent, Erskine Park which was approved by the Sydney Western City Planning Panel (SWCPP) on 20 December 2020 under development consent DA20/0589. This modification application seeks to increase the processing limit from 29,000 tpa to 60,000 tpa of tyre waste, resulting in an additional four collection and drop-off trucks and an additional two B-double trucks for collection and dispatch per day, and changes in shift times. However, the primary operational activities and methodologies at the site remain unchanged and the increase does not require alterations to any buildings or structures, plant and equipment.

The site is zoned IN1 General Industrial under the *State Environmental Planning Policy (Industry and Employment) 2021* and a Waste or Resource Management Facility is prohibited in the zoning. However, the use is permissible with consent under Clause 2.153 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* as the IN1 zone is a 'prescribed zone'. The proposed modification will not alter the permissibility of the development.

It is noted the proposed processing capacity (if lodged as a new development application) triggers the *designated development* threshold of a waste management facility as the development will handle a capacity of more than 30,000 tonnes per year under Schedule 3, Part 2 Section 45 of the *Environmental Planning and Assessment Regulation 2021*. However, as discussed further below and throughout this report, the requirements pertaining to *designated development* do not apply to modification applications which is the nature of the application being assessed.

The approved Waste or Resource Management Facility under development consent DA20/0589 was classified as integrated development and required an Environmental Protection License (EPL) from the Environmental Protection Authority (EPA) under the *Protection of the Environment Operations Act 1997*. General Terms of

Approval were consequently issued with conditions on 3 December 2020. Subsequently, this modification application was re-referred to the EPA who raised no objections to the modified proposal and increase in production, subject to the submission of a separate application to vary EPL 21464 in addition to recommended conditions of consent.

The approved facility was also identified under DA20/0589 as being traffic generating development under Clause 104 of the *State Environmental Planning Policy (Infrastructure) 2007* (now repealed and consolidated into *State Environmental Planning Policy (Transport and Infrastructure) 2021*) and was referred to Transport for NSW (TfNSW), with no objections raised. Clause 2.122(b) in conjunction with Schedule 3 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* outlines any alteration or addition to the size or capacity of a waste or resource management facility is identified as traffic generating development. Subsequently, the modification application was referred to TfNSW who reviewed the proposed modifications and raised no objections.

The original development approved under development consent DA20/0589 was identified as being Regionally Significant Development as the waste or resource management facility had a capital investment value which exceeded \$5 million. Subsequently, the SWCPP was the determining authority. This subject section 4.55(2) modification application seeks to modify Condition 8 which was imposed by the Panel as stated in the *Determination and Statement of Reasons*. Subsequently, in accordance with Section 275(2) of the *Environmental Planning and Assessment Regulations 2021*, the SWCPP is the determining authority for this modification application. This is further discussed within 'Section 4.15(1)(a)(iv) The provisions of the regulations' section of this report.

The modification application was subsequently briefed to the SWCPP on 29 May 2023 and the following items were noted and raised for further assessment and clarification

- *The chair advised that whilst he is satisfied that the matter is substantially the same he is not yet satisfied that it would have minimal environmental impact.*
- *The chair noted that there is a risk that Council will find this is not a modification which could result in delay and expense for the applicant in achieving approval for the proposed development.*
- *The panel noted that Clause 48 of Schedule 3 of the Regulations does not apply to modifications but to a new development application for alterations and additions.*
- *The panel advised that further information and clarity needs to be provided as to how additional quantities of tyres are proposed to be stored and handled on site.*
- *The chair notes that he is generally satisfied with the merit of the proposal.*

In relation to the first and second point, Council has assessed the proposed modifications to be substantially the same development to that which was originally granted approval under DA20/0589. The modification will result in an additional four (4) collection and drop-off trucks (from 6 to 10 trucks per day), and an additional two B-double trucks (from 2 to 4 per day) for collection and dispatch, as well as changes to shift times, with no amendments or alterations to the existing building or structures, plant, equipment, processing methodology, number of employees, hours of operation or utilities. The overall use of the site will remain as a waste or resource management facility, as approved under DA20/0589. Therefore, Council is satisfied that the proposed modification and resulting development is substantially the same.

Furthermore, the likely impacts in relation to traffic, noise and air quality resulting from the proposed modification are considered to be minimal. Based on Council's assessment of the submitted documentation: the increase in heavy vehicles is likely to have minimal traffic impact on the surrounding road network; the noise generated with the increase in production and associated increase in heavy vehicles will not result in any additional noise associated with the existing operations; and the modification will not result in any additional impact to the existing air quality at any receptor locations. In this regard, Council is satisfied that the environmental impacts resulting from the increased in processing capacity are minimal.

Regarding the third point, the Applicant has provided supplementary legal advice, identifying two alternative planning approval pathways that exclude the development from being classified as *designated development*. The first being the application of Schedule 3 Part 3 Section 48 of the *Environmental Planning and Assessment Regulation 2021* as a potential pathway. This Section outlines '*development involving alterations or additions to development, whether existing or approved, is not designated development if, in the consent authority's opinion, the alterations or additions do not significantly increase the environmental impacts of the existing or approved development.*' However, Council and the Panel raised concerns over the implications of Note 2 which expressly states the Section 48 does not apply to an application for modification of a development consent.

The Applicant has addressed the second planning approval pathway in which a modification application does not trigger the *designated development* requirements. Under this pathway, the Applicant notes Clause 4.12(8) of the *Environmental Planning and Assessment Act 1979* states: '*A development application for State significant development or designated development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.*' Under this pathway, as the subject application is a modification application (and not a development application), the *designated development* requirements do not apply to modification application and therefore the development is not *designated development*.

This issue was considered in the decision of Concrite Quarries Pty Ltd v Winngecarribee Shire Council [2000] NSWLEC 97 which related to a section 4.55(2) modification application for designated development in which Lloyd J stated at [12]:

'In my opinion sub-s 78A(8) [now s 4.12(8)] does not apply in this case. The requirement for an environmental impact statement in the case of designated development applies only in the case of a development application... This is an application for modification of an existing development consent. In my opinion s 78A has no application and neither does Schedule 3 [of the Regulations].'

Council has reviewed this legal advice and is satisfied that this modification application does not trigger the requirements of *designated development* having regard to the conclusions in the above references case law which directly correlate to the subject proposal.

In response to the fourth point, the Applicant has submitted an Operational Plan of Management which appropriately details the operational processing and storage of the tyres.

Other key issues Council identified for the proposed modifications include:

- Fire safety compliance, and
- Water sensitive urban design principles.

The above matters are resolved through the submission of additional information and technical advice, and recommended conditions of consent. Subsequently, the proposed modifications have been assessed as being supportable, having regard to the applicable environmental planning instruments.

In accordance with Appendix F2 of the *Penrith Development Control Plan 2014* and Council's *Community Engagement Strategy and Participation Plan 2022*, the application was notified to neighbouring properties and publicly advertised between 10 April and 9 May 2023. No submissions were received in response.

An assessment under Section 4.55(2) and Section 4.15 of the *Environmental Planning and Assessment Act 1979* has been undertaken and it is recommended that Mod23/0058 to increase the processing limit from 29,000 tpa to 60,000 tpa of tyre waste at an existing waste recycling facility (Tyrecycle) at 1-21 Grady Crescent Erskine Park, be approved, subject to modified conditions of consent.

Site & Surrounds

The subject site contains an existing warehouse with hardstand areas and basement car parking at 1-21 Grady Cre in Erskine Park. On 20 December 2020, approval was granted by the Sydney Western City Planning Panel (SWCP) the use of the site as a waste or resource management facility - tyre recycling facility with 24 hour, seven day operation and a maximum handling capacity of 29,000 tonnes per annum. The site is located within an existing industrial and warehousing estate known as 'Erskine Business Park' and the land is zoned IN1 General Industrial under the *State Environmental Planning Policy (Industry and Employment) 2021*.

The surrounding land uses are general industry, with Tyremax located to the immediate east, and Coates Hire and a wide transmission easement containing vacant land located to the north. A large warehouse and distribution centre located to the west and a distribution facility occupies the southern end of the subject warehouse, which is provided its own vehicular access and manoeuvring areas.

Residential development is located approximately 330m to the north, on the northern side of the nearby transmission easement. Further to the south of the industrial estate is the Oakdale West Estate, the Water NSW Pipelines and recently rezoned industrial land known as the Mamre Road Precinct.

Proposal

The proposed modification seeks to increase the processing limit from 29,000 tpa to 60,000 tpa of tyre waste.

The primary operational activities at the site remain unchanged and include:

- Receiving and temporary storage of tyres.
- Processing and shredding of tyres.
- Dispatch of processed tyre derived fuels (TDFs) and other tyre derived products (TDPs).

The increase in production will not require alterations to the building and structures, plant, equipment, processing methodology, number of employees, hours of operation or utilities.

However, the increase in production will include changes to shifts and an additional four collection and drop-off trucks and two B-double trucks for collection and dispatch of additional pallets. The majority of these truck movements will occur predominately between 8pm and 4am.

Plans that apply

- Development Control Plan 2014
- State Environmental Planning Policy (Industry and Employment) 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 (Transport and Infrastructure) 2021

Planning Assessment

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

The original development approved under development consent DA20/0589 was identified as being Regionally

Significant Development (SWCPP) as the waste or resource management facility had a capital investment value which exceeded \$5 million. Subsequently, the Sydney Western City Planning Panel was the determining authority. This subject section 4.55(2) modification application seeks to modify Condition 8 which was added by the Panel. Subsequently, in accordance with Section 275(2) of the *Environmental Planning and Assessment Regulations 2021*, the SWCPP is the determining authority for this modification application. This is further discussed within 'Section 4.15(1)(a)(iv) The provisions of the regulations' section of this report.

- **Section 4.15 - Evaluation**

The assessment of the proposed modification has taken into account the matters for consideration contained under Section 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979*. Those matters requiring further consideration are discussed throughout this report.

- **Section 4.46 - Integrated development**

The approved Waste or Resource Management Facility under development consent DA20/0589 was classified as integrated development and required an Environmental Protection License (EPL) from the Environmental Protection Authority (EPA) under the *Protection of the Environment Operations Act 1997*. General Terms of Approval were consequently issued with conditions on 3 December 2020. The development will continue to be categorised as integrated development following the proposed modification, as the development will continue to operate under an EPL. Subsequently, this modification application was re-referred to the EPA.

Correspondence was received on 5 May 2023, whereby no objections were raised to the modified proposal and increase in production, subject to the submission of a separate application to vary EPL 21464 in addition to the following recommended conditions of consent:

- All the material on-site must be stored in a covered and bunded area to prevent the escape of material to the environment.
- The roller doors must be closed when not in use and it is recommended that automatic shutting doors be installed if feasible.
- The site must implement a waste tracking system to measure and monitor the material on site in relation to the licenced any one-time authorised amount.
- The proponent must undertake additional air quality monitoring to confirm the air emission performance of the discharge point(s) servicing the cyclone filter. This additional monitoring is required within the first six weeks when the throughput increases to the 35,000 tonnes threshold and again when the throughput of 60,000 tonnes is reached. The monitoring required by this condition should be in accordance and in compliance with the Conditions E4.1 and E4.2 of EPL 21464. The EPA may utilise the information contained in the report submitted to revise or include additional conditions in this EPL.

Should consent be granted, these conditions will be added to the modified consent.

Furthermore, the EPA provided the following recommendations that are required to be addressed:

- The EPA recommends an increase in the maintenance frequency of the onsite stormwater management system must be undertaken.
- The EPA recommends the applicant provide a contingency plan to manage the volume of material onsite in the event that dispatch of outgoing material is hindered due to issues with any third-party transport providers.
- The EPA recommends additional bunding (drive-over fire retardant bunding) to be provided at the roller doors to direct the flow of fire water to the recessed area beneath the loading area as advised in Section

8.3 Water Containment of the Fire Risk Assessment (ARUP, 2022).

The applicant has submitted an updated Operational Plan of Management which has adequately addressed the above recommendations.

• **Section 4.55(2) - Other modifications**

Under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, a consent authority may modify a consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

With regard to the above, the following is noted:

(a) In *Vacik Pty Ltd v. Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Stein J. and in particular the meaning of the word '*substantially*'. In his opinion, '*substantially*' is taken in the context to mean '*essentially or materially or having the same essence*'. In *North Sydney Council v. Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that '*modify*' meant '*to alter without radical transformation*'.

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the modified development as proposed is of the same essence as the proposed modification only seeks to increase processing capacity from 29,000 tonnes per annum to 60,000 tonnes per annum. The modification will result in an additional four (4) collection and drop-off trucks (from 6 to 10 trucks), and an additional two B-double trucks (from 2 to 4 per day) for collection and dispatch, as well as changes to shift times. However, the increase in production does not require alterations to the existing building or structures, plant, equipment, processing methodology, number of employees, hours of operation or utilities. The overall use of the site will remain as a waste or resource management facility, as approved under DA20/0589.

It is also noted that in *Gunlake Quarries Pty Limited v The Minister for Planning and Public spaces* [2021] NSWLEC 1333, it was considered that an increase in the transportation movement from 2,000,000 tonnes to 2,600,000 tonnes was considered substantially the same on the basis it did not change the footprint of the quarry, and '*the change to the average daily number of truck movements, the averaging period and the daily*

limits, while different, will not radically alter the development from that approved'.

In light of the above, Council is satisfied that the proposed modification and resulting development is substantially the same as the originally approved development.

(b) Consultation with the Minister, a public authority or other approval body is not required to be undertaken in respect to a condition imposed as a requirement of a concurrence or in accordance with general terms of an approval.

(c) The modification application was notified to nearby and adjoining properties in accordance with Council's adopted *Community Engagement Strategy and Community Participation Plan 2019* and Appendix F2 of the *Penrith Development Control Plan 2014*.

(d) No public submissions were received in relation to the modification application.

In addition to the above, as per Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, the following is noted:

Section 4.55(3) - In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The modified proposal 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 proposed modification is considered to have minimal environmental impact in relation to traffic, noise and air quality. Based on Council's assessment of the submitted documentation: the increase in heavy vehicles is likely to have minimal traffic impact on the surrounding road network; the noise generated with the increase in production and associated increase in heavy vehicles will not result in any additional noise associated with the existing operations; and the modification will not result in any additional impact to the existing air quality at any receptor locations.

In this regard, Council is satisfied that the proposed modification is substantially the same development and will not cause detrimental impacts.

• **Section 7.12 - Developer Contributions**

Council's Section 7.12 Citywide Development Contributions Plan for Non-residential development came into force in 24 August 2020. The plan applies to any non-residential development with a proposed cost of works of more than \$100,000 that is not otherwise subject to a s7.11 contribution, authorised by a s7.11 contributions plan adopted by Council.

The plan levy rate for the development is 1% of the cost of works. However, the contributions are not found to apply to this development as the applicant provided information to Council indicating that contributions have been previously paid. In this regard, no further development contributions apply to this modification application.

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

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 2 Western Sydney employment area

2.10 Zone objectives and land use table

The subject site is zoned IN1 General Industrial and a waste or resource management facility is not listed under 3 *Permitted with consent* and thus falls under those land uses under 4 *Prohibited - Any development not specific in item 2 or 3*. However, the use is permissible under the Transport and Infrastructure SEPP which is further discussed within this report. The proposed modifications are not considered to affect the permissibility of the existing and approved use of the site.

Furthermore, Subclause (2) states that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the IN1 General Industrial zone include:

- *To facilitate a wide range of employment-generating development including industrial, manufacturing, warehousing, storage and research uses and ancillary office space.*
- *To encourage employment opportunities along motorway corridors, including the M7 and M4.*
- *To minimise any adverse effect of industry on other land uses.*
- *To facilitate road network links to the M7 and M4 Motorways*
- *To encourage a high standard of development that does not prejudice the sustainability of other enterprises or the environment.*
- *To provide for small-scale local services such as commercial, retail and community facilities (including child care facilities) that service or support the needs of employment-generating uses in the zone.*

The proposed modifications are not considered to be contrary to the above objectives and provides for employment opportunities with minimal adverse effects.

2.20 Height of buildings

The proposed modifications do not alter the existing built form of the warehouse.

2.21 Rainwater harvesting

Whilst the information submitted indicates that water reuse requirements can be achieved, the Applicant has not included or factored in the irrigation on the landscaping of the site into their calculations. The information provided does not yet demonstrate compliance with Section 3.1 of Council's Water Sensitive Urban Design Policy (WSUD). However, a condition is recommended to address this deficiency. The condition will require updated information around water reuse prior to the commencement of increased production.

State Environmental Planning Policy (Planning Systems) 2021

The existing waste or resources waste management facility (approved under development consent DA20/0589) was classed as Regionally Significant Development as the capital investment value was greater than \$5 million.

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

Chapter 4 - Western Sydney Aerotropolis

The subject site is not located within the area of land identified as being in the Aerotropolis Boundary map and is not zoned land under SEPP (Aerotropolis) 2020. The site is not impacted by the Noise Exposure Contour map.

4.19 Wildlife hazards

The site is within the 13km Wildlife Buffer zone on the Policy map. Clause 21 Wildlife hazards applies to development within the 13km zone. Clause 21(2) states that '*Development consent must not be granted to **relevant development** on land in the 13 km wildlife buffer zone unless the consent authority—*

- (a) has consulted the relevant Commonwealth body, and*
- (b) has considered a written assessment of the wildlife that is likely to be present on the land and the risk of the wildlife to the operation of the Airport provided by the applicant, which includes—*
 - (i) species, size, quantity, flock behaviour and the particular times of day or year when the wildlife is likely to be present, and*
 - (ii) whether any of the wildlife is a threatened species, and*
 - (iii) a description of how the assessment was carried out, and*
- (c) is satisfied that the development will mitigate the risk of wildlife to the operation of the Airport, including, for example, measures relating to—*
 - (i) waste management, landscaping, grass, fencing, stormwater or water areas, or*
 - (ii) the dispersal of wildlife from the land by the removal of food or the use of spikes, wire or nets.*

...

*In this clause **relevant development** means development for the following purposes-*

...

- (m) waste or resource management facilities that consist of outdoor processing, storage or handling of organic or putrescible waste.*

As the proposed waste or resource management facility is indoors and does not include outdoor processing, storage or handling of organic or putrescible waste, no further assessment is required in relation to wildlife and no referral is required to the relevant Commonwealth body.

4.21 Lighting

The site is not identified as being within the area of land impacted by clauses of the Policy related to lighting intensity and wind shear.

4.22 Airspace operations

The site is within the Outer Horizontal Surface RL 230.5m AHD area on the Obstacle Limitation Surface map, although the works will not penetrate this level, and the warehouse is existing.

The modified development is satisfactory having regard to the Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 - Potentially hazardous or potentially offensive development

Chapter 3 requires the consent authority to consider whether a proposal is a potentially hazardous industry or a potentially offensive industry. It is noted the existing development approved under development consent DA20/0589 was assessed by applying the screening process specified in Applying SEPP 33 – Hazardous and Offensive Development Application Guidelines (NSW Department of Planning, 2011), and found the development was not classified as hazardous or offensive industry under the SEPP.

Given the modification is substantially the same development and is to only increase processing capacity, it is not classified as hazardous or offensive industry and the preparation of a preliminary hazardous analysis (PHA) report is not required. The applicant has confirmed there will be no change to the use of hazardous materials and the modification will not introduce any new hazardous materials to site.

Chapter 4 - Remediation of Land

An assessment of the existing development approved under DA20/0589 was made under the *State Environmental Planning Policy No 55 - Remediation of Land* which confirmed the site was suitable for the proposed development from a land contamination perspective. The proposed modifications only seek consent for an increase in processing capacity and no physical works. Therefore, no further assessment is required and the site remains suitable for the development.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 - Infrastructure

Division 17 Roads and traffic

Division 2.122 Traffic-generating development

Due to the proposed modification seeking to enlarge the existing capacity of a waste or resource management facility which is a listed development type in Schedule 3, this Section applies. Accordingly, the proposed development is classed as traffic-generating development and was referred to TfNSW who reviewed the proposed modifications and raised no objections.

Division 23 Waste or resource management facilities

2.153 Development permitted with consent

Clause 2.153 outlines *development for the purpose of waste or resource management facilities, other than development referred to in subsection (2), may be carried out by any person with consent on land in a prescribed zone.*

Clause 2.152 details the *prescribed zone* includes land zoned IN1 General Industrial. In this regard, the development is permissible under the Transport and Infrastructure SEPP. The proposed modification will not alter the permissibility of the development.

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	N/A
C2 Vegetation Management	N/A
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
D4.1. Key Precincts	Complies
D4.2. Building Height	Complies
D4.3. Building Setbacks and Landscape	Complies
D4.4. Building Design	Complies
D4.5. Storage of Materials and Chemicals	Complies
D4.6. Accessing and Servicing the Site	Complies
D4.7. Fencing	Complies
D4.8 Lighting	Complies

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

There are no planning agreements applying to the subject site or development.

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

Part 15 - Division 1 - Sydney district or regional planning panels and local planning panels

275 Functions exercisable by council on behalf of Sydney district or regional planning panel

(1) *The determination of an application to modify a development consent under the Act, section 4.55 is prescribed*

as a function of a Sydney district or regional planning panel that must be exercised on behalf of the panel by the council of the area, except as provided by subsection

(2) A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW planning portal on 30 June 2020.

This instruction of this document outlines the following:

A council is not to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application:

- proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.

The proposed modification seeks to amend Condition 8 of development consent DA20/0589 which was added by the Panel. Consequently, the SWCPP is the determining authority of this section 4.55(2) modification application.

Schedule 3 - Designated development

45 Waste management facilities or works

Section 45 of Schedule 3 identified certain development types of *Waste management facilities or works* that are classed as *designated development*. In particular:

(2) Development for the purposes of a waste management facility or works is designated development if—

(a) the facility or works sorts, consolidates or temporarily stores waste at a transfer station or material recycling facility for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse, and

(b) the facility or works—

...

...

(iii) have an intended handling capacity of more than 30,000 tonnes per year of waste such as glass, plastic, paper, wood, metal, rubber or building demolition material.

The proposal seeks to increase the handling capacity of the existing facility from 29,000 tonnes per year to 60,000 tonnes per year. If pursued as a new development application, it would trigger the requirements of *designated development*.

However, in supplementary legal advice, the Applicant has outlined that a modification application does not trigger the designated development requirements. Under this pathway, the Applicant notes Clause 4.12(8) of the *Environmental Planning and Assessment Act 1979* states:

'A development application for State significant development or designated development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.'

As the subject application is a modification application (and not a development application), the designated development requirements do not apply to modification application and therefore the development is not designated development.

This issue was considered in the decision of *Concrite Quarries Pty Ltd v Winngecarribbee Shire Council* [2000] NSWLEC 97 which related to a section 4.55(2) modification application for designated development in which Lloyd J stated at [12]:

'In my opinion sub-s 78A(8) [now s 4.12(8)] does not apply in this case. The requirement for an environmental impact statement in the case of designated development applies only in the case of a development application... This is an application for modification of an existing development consent. In my opinion s 78A has no application and neither does Schedule 3 [of the Regulations] The present application does not need to be accompanied by an environmental impact statement. The application is valid.'

Council has reviewed this legal advice and is satisfied that this modification application does not trigger the requirements of *designated development* noting the above case law conclusions.

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

Traffic Generation

As a result of the modified proposal, it is not expected to be a significant in the volume of traffic entering and exiting the site, noting the increase in processing capacity will only result in an additional four collection and drop-off trucks and two B-double trucks per day in which the movements will occur predominately between 8pm and 4am. The modified development will not result in any increased generation in light vehicle movements. The existing road network is assessed to have capacity to accommodate the marginal increased volume of vehicles, noting the TfNSW and Council's Traffic Engineers have not objected to the proposal on this ground.

Operational Noise and Emissions

The application has demonstrated the noise produced in association with the increase in production, including potential road traffic noise generated from the increase in truck movements between 8pm and 4am, will not see any tangible change to the existing noise generated on site. In addition, the traffic generated would not pass any residential land uses surrounding the site and as such, the potential road noise impacts to the nearest residential receivers associated with an increase in truck movements during the night period will not occur.

Technical air quality reports have concluded that the modification will not result in any additional impact to the existing air quality at any receptor locations.

modification application was re-referred to the EPA who raised no objections to the modified proposal and increase in production, subject to the submission of a separate application to vary EPL 21464 in addition to recommended conditions of consent including:

- All the material on-site must be stored in a covered and bunded area to prevent the escape of material to the environment.
- The roller doors must be closed when not in use and it is recommended that automatic shutting doors be installed if feasible.
- The site must implement a waste tracking system to measure and monitor the material on site in relation to the licenced any one-time authorised amount.
- The proponent must undertake additional air quality monitoring to confirm the air emission performance of the discharge point(s) servicing the cyclone filter. This additional monitoring is required within the first six weeks when the throughput increases to the 35,000 tonnes threshold and again when the throughput of 60,000 tonnes is reached. The monitoring required by this condition should be in accordance and in compliance with the Conditions E4.1 and E4.2 of EPL 21464. The EPA may utilise the information contained in the report submitted to revise or include additional conditions in this EPL.

Social & Socio-Economic Impacts

The modified development is unlikely to result in any negative social impacts in the area. The proposal has been assessed against the principles and objectives contained within the DCP and those under Industry and Employment SEPP and has been found to be compliant in this regard.

Fire Safety and Environmental Impacts

The proposed modification does not alter the relevant conditions of consent that have previously been implemented to ensure the facility complies with fire safety guidelines and the EPA GTAs issued.

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

The suitability of the site was assessed as part of the original development consent DA20/0589 and the site remains suitable for the modified development. The site is suitably located to accommodate the increase of production without significant augmentation or alterations to the built form or site and without unreasonable environmental impacts. Furthermore, the local road network is assessed being able to cater for the associated increase of heavy vehicle movements. In addition, residential amenity of the closest residential area is suitably protected.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F2 of the *Penrith Development Control Plan 2014* and Council's *Community Engagement Strategy and Participation Plan 2022*, the application was notified to neighbouring properties and publicly advertised between 10 April and 9 May 2023. No submissions were received in response.

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
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections
Traffic Engineer	No objection

Section 4.15(1)(e)The public interest

The modified development will not generate any significant issues relating to the public interest.

The likely impacts of the increased processing capacity have been assessed as acceptable and have been addressed by way of amended conditions of consent. Furthermore, the development proposal complies with the applicable development standards for the site and the use is permissible in the IN1 General Industrial zone - by way of SEPP (Transport and Infrastructure), with consent. The NSW EPA and TfNSW have raised no objections to the modified proposal. The application was also notified in accordance with the required legislation, no submissions were received.

It is for the above reasoning that the application can be supported and there are no outstanding matters which will be detrimental to the public interest.

Conclusion

The modified proposal has been assessed against the relevant environmental planning instruments and in this regard, the proposal is considered to satisfy the aims, objectives and provisions of these policies. The proposed modification is not considered likely to create any significant impacts on the natural, social or economic environments and in this regard, the application is considered worthy of support and is recommended for approval.

Recommendation

1. It is recommended that Mod23/0058 to increase the processing limit from 29,000 tpa to 60,000 tpa of tyre waste at an existing waste recycling facility (Tyrecycle) at 1-21 Grady Crescent Erskine Park, be approved, subject to modified conditions of consent.

CONDITIONS

General

- 1 The development must be consistent with the drawings stamped approved by Council and the documents listed below:

Document Name	Author	Plan No.	Revision	Date
Statement of Environmental Effects	Element Environmental		1	8 March 2023
Site Plan	SBA Architects	DA-02	Q	01 December 2020
Roof Plan	SBA Architects	DA-03	L	01 December 2020
Proposed Basement and Ground Floor Plans	SBA Architects	DA-04	J	01 December 2020
Proposed Elevations	SBA Architects	DA-05	L	01 December 2020
Proposed Sections	SBA Architects	DA-06	H	01 December 2020
Warehouse External Lighting	SBA Architects	GCE-015	A	15 December 2013
Traffic and Transport Impact Assessment	SCT Consulting		3.0	21 February 2023
BCA Compliance Statement	Blackett Maguire Goldsmith	-	-	08 October 2020
Fire Risk Assessment	ARUP		1	9 September 2022
Noise Assessment	Todoroski Air Sciences			12 November 2022
Air Quality Assessment	Todoroski Air Sciences			22 February 2023
Operational Plan of Management	Element Environmental		2	17 August 2023
Continuity Plan	Tyrecycle			17 August 2023

as well as the application form(s) and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Amended pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- 2 The site operator and beneficiary of the consent is to ensure compliance with the General Terms of Approval as set out in the General Terms of Approval document, Notice No. 1603615 and attached letter dated 03 December 2020 issued by the NSW Environment Protection Authority (EPA) or as may be amended by the EPA through the issue of updated or amended General Terms of Approval.
- 3 The relevant Construction Certificate plans are to include a minimum 99kw roof top solar system to improve the net environmental performance of the facility as a whole. The system is to be operational within 12 months of the issue of any Occupation Certificate.

Once installed and operational, written confirmation that the system has been installed and is operational is to be submitted to the Manager of Development Services at Penrith City Council.

- 4 All activities related to the approved waste or recourse recovery operations including loading, unloading, receipt, storage, processing and transport of tyres and any ancillary used batteries, used oil drums, used oil filters and the like, are to be undertaken within the warehouse building.

No approval is granted for external storage of tyres or other materials or for the placing of storage containers, including shipping containers in the external areas of the site.

- 5 The approved hours of operation are 24 hours, every day.
- 6 The development is to remain compliant with the Fire & Rescue NSW Fire safety guideline: *Fire management in waste facilities 2020*, and the *NSW Rural Fire Service Guidelines for Bulk Storage of Rubber Tyres 2014*.
- 7 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 8 To ensure that the development does not exceed the threshold for designated development the proposed operation of a tyre processing facility (waste management facility) with ancillary storage and transfer of oil filters, oil drums and car batteries, is limited to a maximum handling capacity of no more than 60,000 tonnes per year of waste metal and rubber. Handling capacity includes the sorting, consolidating or temporary storage or material recycling of waste materials.

The approved activities at the site must not exceed the tonnages specified within the approved documentation, and as per the issued General Terms of Approval and related Environmental Protection License issued by the Environmental Protection Authority (EPA). A log book or similar record containing evidence of total material tonnage received and stored per annum, is to be kept at the site and is to be made available for the EPA or Council inspection, upon request.

Amended pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- 9 A separate development application for the erection of a sign or advertising structure, other than signage or advertising structure that are listed as exempt or complying development (under State Environmental Planning Policy (Exempt and Complying Development Codes 2008)), is to be submitted to Penrith City Council.
- 10 No retail sale of goods shall be conducted from the subject premises.
- 11 All materials and goods associated with the use shall be contained within the building at all times.
- 12 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 13 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 14 Prior to the commencement of operations, a copy of the Environment Protection Licence issued by the NSW Environment Protection Authority under the *Protection of the Environment Operations Act 1997* is to be submitted to Penrith City Council.

Activities on the premises must be carried out in accordance with this licence. Should this licence be revoked, suspended or surrendered, an application is to be submitted to Council for consideration of matters contained in the licence.

Demolition

- 15 Prior to the issue of the Construction Certificate the Principal Certifying Authority shall consider the requirements of Clause 143 of the Environmental Planning and Assessment Regulation 2000.

Additionally an updated "Performance Solution" is to be formulated and assessed as per the Building Code of Australia report prepared by;

BLACKETT
MAGUIRE +
GOLDSMITH dated 8th October 2020.

Environmental Matters

- 16 Erosion and sediment control measures shall be installed **prior to the commencement of any works on site** which include disturbance of the soil and include approved vegetation clearing or tree removal or planting. 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 and are to be maintained throughout the construction phase of the development until and soil disturbing works have been completed for the development, and the area that was subject to the works, has been stabilized 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 and that soil and sediment from activities undertaken, does not enter the waterways.

- 17 The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.
- 18 A plan detailing spill prevention, contingency and emergency clean-up procedures for the development shall be submitted for approval prior to construction works commencing. The approved procedures plan shall be implemented in the event of a spill or emergency.
- 19 Above ground fuel storage tanks shall be installed on a concrete surface and protected by a grated drainage system to a dead-end sump or by a bund. The storage capacity of the bund or sump shall be equal to 110% of the volume of the tank.
- 20 All vehicle washing, engine degreasing and steam cleaning shall be conducted in a wash bay approved, installed and connected to the sewer in accordance with Sydney Water's requirements.
- Details of any vehicle wash bay area is to be included in the Section 73 Certificate issued by Sydney Water for the discharge of trade waste from the premises, and shall be submitted to the Principal Certifying Authority before the wash bay/area can be installed.
- 21 Waste oil shall be stored in a covered and bunded area and regularly removed to a waste oil recycle operation.

- 22 All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be graded to a blind sump so as to facilitate emptying and cleaning. Details are to accompany the application for a Construction Certificate.
- 23 Prior to the issue of a Construction Certificate, details of any pre-treatment facilities as required by Sydney Water and, if required a Section 73 Certificate issued by Sydney Water for the said development, are to be submitted to the Certifying Authority.
- 24 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.
- If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.
- The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.
- 25 The stormwater drainage system shall not be altered or new lines directed into the system without the prior approval of Penrith City Council.
- 26 Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

BCA Issues

- 27 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

- 28 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 an Occupation Certificate.

Construction

- 29 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.

30 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.

31 Construction works or subdivision works that are carried out in accordance with approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- 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.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Engineering

- 32 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.
- 33 Prior to the issue of any Construction Certificate the Principal Certifying Authority shall ensure that a Loading Dock Management Plan is in place to ensure that only three (3) trucks are parked in the loading bay and the other three (3) truck spaces are vacant during times when B-Double trucks access the site.

Landscaping

- 34 **Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority is to ensure that a minimum of one Spotted Gum tree having a minimum pot size of 100L or greater is planted within the landscaped front setback of the site and that the tree is well maintained and in good health.
- 35 All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Council's Development Control Plan - Technical Specifications Section.
- 36 Existing landscaping is to be retained and maintained at all times.

Payment of Fees

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

Certification

- 38 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 1979, and accompanying Regulation, and
 - (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority 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 of 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.

- 39 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding. A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Operation of OSSM

- 40 **Prior to the increase in processing capacity of 60,000 tonnes per annum for the Waste Management Facility becoming effective**, a copy of the modified Environment Protection License issued by the NSW Environment Protection Authority under the Protection of the Environment Operations Act 1997 is to be submitted to Penrith City Council.

Activities on the premises must be carried out in accordance with this license. Should this license be revoked, suspended or surrendered, an application is to be submitted to Council for consideration of matters contained in the license.

Added pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- 41 **Prior to the commencement of increased production**, an updated Stormwater Strategy and engineering plans shall be prepared and be submitted to Council's Development Services Manager for approval. The updated information is required to demonstrate compliance with the water conservation measures requirements outlined in Section 3.1 of Council's WSUD Policy. The rainwater tanks shall be sized to meet a minimum of 80% of all non-potable demands.

Added pursuant to Section 4.55(2) of the Environmental Planning Policy 1979.

- 42 All the material on-site must be stored in a covered and bunded area to prevent the escape of material to the environment.

Added pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- 43 The roller doors must be closed when not in use and it is recommended that automatic shutting doors be installed if feasible.

Added pursuant to Section 4.55(2) of the Environmental Planning Policy 1979.

- 44 The site must implement a waste tracking system to measure and monitor the material on site in relation to the license any one-time authorised amount.

Added pursuant under Section 4.55(2) of the Environmental Planning Policy 1979.

- 45 The proponent must undertake additional air quality monitoring to confirm the air emission performance of the discharge point(s) servicing the cyclone filter. This additional monitoring is required within the first six weeks when the throughput increases to the 35,000 tonnes threshold and again when the throughput of 60,000 tonnes is reached.

The monitoring required by this Condition should be in accordance and in compliance with the Conditions E4.1 and E4.2 of EPL 21464 of the EPL 21464. The EPA may utilise the information contained in the report submitted to revise or include additional conditions in this EPL.

Added pursuant to Section 4.55(2) of the Environmental Planning Policy 1979.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C3 - Water Management

The modification application was supported by information to demonstrate compliance with Section 3.1 of Council's WSUD Policy, which requires that a minimum of 80% non-potable water demand is met by harvested rainwater. However, the documentation fails to include and factor in the irrigation on landscaping on the site into the calculations. Therefore, the information currently submitted does not demonstrate full compliance with Section 3.1 of Council's Water Sensitive Urban Design Policy (WSUD). After discussions with the Applicant, it was agreed that a condition could be applied to the approval requiring further information be submitted to Council prior to the commencement of increased production.

In this regard, should consent be granted, the following condition of consent is recommended:

Prior to the commencement of increased production, an updated Stormwater Strategy and engineering plans shall be prepared and be submitted to Council's Development Services Manager for approval. The updated information is required to demonstrate compliance with the water conservation measures requirements outlined in Section 3.1 of Council's WSUD Policy. The rainwater tanks shall be sized to meet a minimum of 80% of all non-potable demands.

C10 - Transport, Access and Parking

The modification application was supported by a Traffic and Transport Impact Assessment, prepared by SCT Consulting, dated 21 February 2023, which outlined that no additional light vehicle movements would be generated, and there would be no change to heavy vehicle volumes during the traffic peak periods.

However, the proposed modification would result in an increase from six (6) to ten (10) collection and drop-off trucks per day between 8pm and 4am which is not within peak times. B-double collections are also proposed to increase from two (2) to four (4) per day.

Council's Traffic Engineer reviewed the application and confirmed the increase in heavy vehicle movements is considered to be minimal and not anticipated to generate substantial impacts to the local road network, noting the increase outside peak times (i.e. 8pm and 4am).

C12 - Noise and Vibration

The modification application was accompanied by a Noise Assessment, prepared by Todoriski Air Sciences, dated 12 November 2022, and supplementary Noise Assessment, dated 7 June 2023, which demonstrated the noise produced in association with the increase in production, including potential road traffic noise generated from the increase in truck movements between 8pm and 4am, will not see any tangible change to the existing noise generated on site. In addition, the traffic generated would not pass any residential land uses surrounding the site and as such, the potential road noise impacts to the nearest residential receivers associated with an increase in truck movements during the night period will not occur.

Council's Environmental Management section reviewed the documentation and raised no objections to the proposed modification and deems the proposed modification suitable with minimal noise and acoustic impacts.