

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-90
DA Number	DA20/0360
LGA	Penrith
Proposed Development	Installation of Electricity Generating Works (Battery Storage) and Facilitating Torrens Title Subdivision x 2 Lots
Street Address	2235-2249 Castlereagh Road PENRITH NSW 2750
Applicant/Owner	Penrith Smart Battery Pty Ltd
Date of DA lodgement	18 June 2020
Total number of Submissions Number of Unique Objections	0
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV >\$5 million (Private Infrastructure)
List of all relevant s4.15(1)(a) matters	• State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 – Remediation of Land • Sydney Regional Environmental Plan No. 20 – Hawkesbury/Nepean • Penrith Local Environmental Plan 2010 • Penrith Development Control Plan 2014
List all documents submitted with this report for the Panel's consideration	• Planning Drawings • Structural Drawings • Civil Drawings • Subdivision Plan • Clause 4.6 request
Clause 4.6 requests	The development standard the Clause 4.6 application relates to is the minimum lot size control under Penrith Local Environmental Plan 2010.
Summary of key submissions	N/A
Report prepared by	Jane Hetherington
Report date	16 April 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

No

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Yes

SWCPP Ref. No.:	PPSSWC-90
DA No.:	DA20/0360
PROPOSED DEVELOPMENT:	Installation of Electricity Generating Works (Battery Storage) and Facilitating Torrens Title Subdivision x 2 Lots - Lot 5 DP 1017480,2235 - 2249 Castlereagh Road, PENRITH NSW 2750
APPLICANT:	Penrith Smart Battery Pty Ltd
REPORT BY:	Jane Hetherington, Principal Planner, Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a development application for the installation of electricity generating works (battery storage) and facilitating torrens title subdivision x 2 lots at 2235-2249 Castlereagh Road, Penrith.

The land is zoned IN1 General Industrial under the provisions of *Penrith Local Environmental Plan 2010*. The proposal is defined as *electricity generating works*. The proposal relies on Clause 34 (1) of the *State Environmental Planning Policy (Infrastructure) 2007* for permissibility, noting that the SEPP prevails over the prohibition contained in Penrith LEP 2010 based on the provisions of Clause 8(1) of the SEPP. Therefore, the proposal is permissible with consent in the IN1 zone.

The Sydney Western City Planning Panel (SWCPP) is the determining authority as the proposal is for private infrastructure (electricity generating works) with a Capital Investment Value of greater than \$5 million.

The development application has been advertised in a local newspaper and notified to all adjoining and adjacent property owners. No submissions were received in response.

The application was referred to Endeavour Energy in accordance with Clause 45 of the *State Environmental Planning Policy (Infrastructure) 2007*. A response was not received however, it is noted that the site is owned by Endeavour Energy who provided owners consent for the lodging of the application.

Key considerations identified for the proposed development include the following:

Minimum Lot Size

A variation to the *Penrith Local Environmental Plan 2010* minimum lot size control is sought. The lot size map identifies that a minimum lot size of 12,500m² (1.25 hectares) is applicable to the site. Proposed Lot 52 does not comply with this control with an area of 3,000m² (0.3 hectares), which represents a variation of 76%. Under Section 6.2 of the *Environmental Planning and Assessment Act 1979* (see Section 7A(3) of the *Conveyancing Act 1919*), a lease with a total term that exceeds 5 years constitutes a subdivision. Therefore, the subdivision component is required to facilitate the long term lease arrangement (20 years) between Penrith Smart Battery P/L and Endeavour Energy. The lot is to remain in the ownership of Endeavour Energy and the variation is not considered to impact on the objectives of the zone or the minimum lot size control. As such, the proposed variation to the minimum lot standard is considered acceptable for the reasons outlined within the applicants Clause 4.6 variation to development standard request.

Flooding and Effective Height

The site is highly impacted by floodwaters. The application has demonstrated that the proposed development will not have an adverse impact on mainstream flooding and local overland flow flooding. While fill was originally proposed to create bench pads for the battery storage units, concerns were raised that this would have an impact on the flood storage on-site as well as on the conveyance of any flood water through the site. To resolve this issue, the development has been amended so that piers will be used to elevate the battery storage units above the 1% AEP flood event affecting the site. The accompanying flood statement details that these piers are to be structurally sized to minimise the impact on flooding and the existing floodplain storage. The heights of the piers will be up to 1.5m resulting in an overall effective height of the battery storage units of 4.5m which still complies with Penrith LEP 2020 height of buildings limitation of 12m.

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

Site & Surrounds

Properties of the site

The subject site is legally described as Lot 5 DP 1017480, otherwise known as 2235 - 2249 Castlereagh Road, Penrith. The site has an area of 3.35 hectares and three street frontages, Castlereagh Road to the west, Thornton Drive to the north and Museum Drive to the south. Access to the site is provided via Thornton Drive and Museum Drive. The site currently contains an Endeavour Energy substation.

The surrounding locality predominantly consists of industrial development. However, directly to the north is a services station, to the west is a McDonalds restaurant and to the east is the Fire Museum. The Nepean River is located approximately 650m to the west of the site.

Site constraints

- The site is highly impacted by floodwaters.
- The site adjoins a heritage item.
- A drainage easement transects the site.
- The land is identified as "Land with Scenic and Landscape Values" on Penrith LEP 2010 Scenic and Landscape Values Map.

History

The applicant attended a pre-lodgement meeting with Council officers on 13 May 2020 (PL20/0034).

Proposal

The proposed development involves:

- Installation of a 20MW Battery Energy Storage System (BESS);
- The BESS would be installed into prefabricated enclosures of steel clad and external fans for ventilation;
- 14 x battery containers approximately 3 metres tall;
- 12 x MV equipment skids approximately 3 metres tall;
- An MV main substation occupying an area of about 12 x 3 metres;
- These structures may be raised up to 1.5 metres above ground level;
- Construction of internal access roads;
- Two on-site parking spaces;
- Torrens title subdivision x 2 lots to facilitate 20 year lease arrangement;
- Proposed lot 51 will have an area of 3.1 hectares; and
- Proposed lot 52 with an area of 0.3 hectares.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

Under Clause 4.5(b) of the *Environmental Planning and Assessment Act 1979*, the consent authority is a regional planning panel for development that is declared by an environmental planning instrument as regionally significant development. Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*, specifies that private infrastructure development (electricity generating works) that has a capital investment value (CIV) of more than \$5 million is regionally significant development.

In accordance with 4.5(b) of the *Environmental Planning and Assessment Act 1979*, the Sydney Western City Planning Panel (SWCPP) is the determining authority as the proposal has a CIV of \$23,500,000.

- **Section 4.15 - Evaluation**

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

- **Section 7.12 - Developer Contributions**

Penrith City Council's *Section 7.12 City Wide Development Contributions Plan for Non-Residential Development* came into force on 24 August 2020, and applies to non-residential development across the City that have a cost of works that exceed \$100,000.

The current proposal is for non-residential development, and has an estimated cost of works greater than \$100,000. As such, Section 7.12 Contribution Plan applies, and a condition of consent has been imposed charging a contribution fee in accordance with the following calculation:

Section 7.12 Fixed Development Consent Levy:

Cost of works = \$23,500,000.00

Contribution Rate = 1% of cost of works

Contribution Payable = \$235,000.00

A condition of consent is recommended requiring payment of Section 7.12 Contributions prior to the issue of a Construction Certificate.

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

State Environmental Planning Policy (Infrastructure) 2007

Division 4 Electricity Generating Works or Solar Energy Systems

Clause 34 Development permitted with consent

Clause 34 specifies that development for the purpose of electricity generating works may be carried out by any person with consent on the following land -

- (a) in the case of electricity generating works comprising a building or place used for the purpose of making or generating electricity using waves, tides or aquatic thermal as the relevant fuel source - on any land,
- (b) in any other case - any land in a prescribed rural, industrial or special use zone.

The subject site is zoned IN1 General Industrial under the provisions of *Penrith Local Environmental Plan 2010*. The IN1 General Industrial zone is a prescribed industrial zone under Clause 33 of the SEPP (Infrastructure). Electricity generating works are defined as:

Electricity generating works means a building or place used for the purpose of-

- (a) making or generating electricity, or*
- (b) electricity storage.*

The proposal includes the installation of a battery energy storage system and as such, falls under the definition of electricity generating works. Therefore, the proposal is a permissible land use in the IN1 zone in accordance with Clause 34.

Division 5 Electricity transmission or distribution

Clause 45 Determination of development applications - other development

In accordance with Clause 45(1)(b)(ii), the application was referred to Endeavour Energy on the 10 July 2020, as the development is immediately adjacent to an electricity substation. A response was not received within 21 days as per Clause 45(2)(b). However, it is noted that the subject site is owned by Endeavour Energy, and the application was accompanied by their owners consent.

Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors - notification and other requirements

The application was not required to be referred to Transport for NSW as it the site is located more than 25m from the Main Western Railway Line.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

A review of aerial photography indicates that fill material was brought onto the site from August 2018. The applicant has advised that this related to the decommissioning of the former switching yard and the re-establishment of the landform to the current arrangement, by the owner of the site Endeavour Energy (formerly Integral Energy). This work was undertaken in accordance with a 2007 approval for the 'Construction of a new substation and demolition of existing' (under DA07/0081). While a construction certificate was not required to be obtained (given it was crown development), works were undertaken in 2009, securing the consent.

In 2018, Endeavour Energy prepared a Review of Environmental Factors (REF) associated with the stormwater management measures at the site. The title of the REF was 'Amendment to DA Approval (DA07/0081); Penrith Transmission Substation; supplementary overland flow stormwater drainage swale system at 2235 Castlereagh Road, Penrith.' The outstanding works approved by DA07/0081 and the stormwater management works approved by the REF, were carried out between mid-2018 and March 2019. The timing of these approvals correlates to the importation of the fill material. Further, the application was accompanied by VENM Certificate prepared by ADE Consulting for soil obtained from Museum Drive and a ENM Validation Certificate prepared by Dirt Doctors for the soil obtained from 1725 Elizabeth Drive. A digital truck lot has also been provided for the soil obtained from Elizabeth Drive.

The proposal has been reviewed by Council's Environmental Management Team who raise no objection to the application including considerations of SEPP 55 requirements, subject to conditions of consent. Specifically a condition of consent has been included requiring that should any "unexpected finds" occur during the earthworks, that works cease immediately and Council be notified. The condition requires that should any contamination be found and remediation be required that further development consent be sought prior to remediation works commencing.

As such, in accordance with Clause 7(a) of the *SEPP No. 55 - Remediation of Land*, the consent authority can be satisfied that the land is suitable for the proposed use.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 -1997) (SREP 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture and urban and rural-residential development. It controls development that has the potential to impact on the river environment. The plan applies to all parts of the catchment in the Sydney region (15 local government areas, including Penrith), except for land covered by *Sydney Regional Environmental Plan No.11 - Penrith Lakes Scheme*. SREP 20 is supported by an Action Plan which includes actions necessary to improve existing conditions.

The application was accompanied by stormwater drainage plans, MUSIC modelling and report (prepared by Premise). These documents indicate that the stormwater system will incorporate a bio-retention swale around the proposed lot boundary, which will pick up and treat stormwater flows from the development, before discharging them into the existing drainage channel. They demonstrate that this system will treat the runoff in accordance with the Council's Water Sensitive Urban Design Policy. In addition, during construction soil and erosion controls measures will be installed to ensure sediment as a result of the development is not deposited to the stormwater system.

Council's Development Engineers and Waterways Officer have reviewed the application and subject to recommended conditions, have no objection to this aspect of the proposal.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 2.6 Subdivision - consent requirements	Complies
Clause 4.1 - Minimum subdivision lot size	Does not comply - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion

Clause 2.3 Permissibility

The subject site is zoned IN1 General Industrial under the provisions of *Penrith Local Environmental Plan (LEP) 2010*. The proposal is best defined as electricity generating works which is defined as:

electricity generating works means a building or place used for the purpose of-

- (a) making or generating electricity, or
- (b) electricity storage.

Electricity generating works is a prohibited land use in the IN1 zone under Penrith LEP 2010. However, as the IN1 General Industrial zone is a 'prescribed zone' under *State Environmental Planning Policy (Infrastructure) 2007*, the use as electricity generating is permissible in the zone with consent under Clause 34 of the Infrastructure SEPP.

Clause 4.1 - Minimum subdivision lot size

Clause 4.1(3) specifies that the size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land. The Lot Size Map indicates that the minimum lot size pertaining to the site is 12,500m² (1.25 hectares). Proposed lot 51 complies with this requirement with an area of 30,000m² (3 hectares). However, proposed lot 52 does not comply with this control with an area of 3,000m² (0.3 hectares) representing a variation of 76%. The applicant has submitted a request under Clause 4.6 to vary this requirement. This is discussed later in the report under Clause 4.6 of the Penrith Local Environmental Plan 2010.

Clause 4.3 Height of buildings

In accordance with Clause 4.3 of Penrith LEP 2010, the maximum height of any building permitted on the subject site is 12 metres. The proposal has a maximum building height of 4.5m relative to natural ground level, complying with the HOB control applying to the site.

Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the LEP specifies that consent may be granted for development even though the development would contravene a development standard imposed by the LEP, or any other environmental planning instrument. However, Clause 4.6(3) states that:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, Clause 4.6(4) states that: Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.1(3) Minimum Subdivision Lot Size specifies that the size of an a subdivision of land to which this clause applies is not be less than the minimum size shown on the Lot Size Map in relation to that land. The Lot Size Map sets out a minimum lot size of 12,500m² (1.25 hectares). Proposed lot 51 complies with this requirement with an area of 30,000m² (3 hectares). However, proposed lot 52 does not comply with this control with an area of 3,000m² (0.3 hectares) representing a variation of 76%.

In accordance with Clause 4.6, the development application was lodged with a written request to vary the minimum lot size control of 12,500m² (1.25 hectares). The Clause 4.6 variation submission has been prepared and responds to the case of *Four2Five Pty v Ashfield Council* [2015] NSWLEC 90 as well as the 'five part test' established in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The applicant's response to the matters listed in Clause 4.6(3) and (4) are discussed below in turn:

The Development Standard is Unreasonable or Unnecessary

The Clause 4.6 submission specifies that the objectives of the minimum lot size development standard are achieved notwithstanding the proposed variation as follows:

- *"The proposed lot is suitable and sufficient to accommodate the proposed purpose, which is an integral part of the overarching application.*
- *The land use proposed and which would be facilitated by the proposed subdivision can be comfortably accommodated on the land without detrimental impacts to the local environment.*
- *The subdivision is only required due to the need to gain a 20 year lease of the property from Endeavour Energy, triggering the definition of subdivision under Section 6.2 of the EP&A Act.*
- *The nature of the land use is consistent with the adjacent and nearby land uses and would not result in unreasonable impacts to the amenity of the surrounding locality.*
- *There are no heritage or valuable environmental features on the land requiring protection. The proposed lot size accommodates the proposed land use and does not lead to any unreasonable impacts to special views, trees or heritage items.*
- *The subdivision facilitates the provision of infrastructure for the benefit of the broader community and does not lead to any increased demand. It will provide for the more efficient and effective delivery of reticulated electrical services."*

Sufficient Environmental Planning Grounds

- *"The nature of the land use is somewhat unique and provides a scenario that assists with the delivery of sustainable energy and an effective and efficient delivery of electrical infrastructure, to the benefit of the local area and broader region;*
- *The project requirement is driven by the need to subdivide the land to provide for the capacity to gain a 20 year lease over the land by reference to the definition of subdivision at Section 6.2 of the EP&A Act. Subdivision from a planning perspective would not otherwise be required;*
- *The nature of the land use means that there is limited likelihood of the development creating an undesirable precedent that could be used as a justification for other developments of this nature within the LGA;*
- *The proposed subdivision facilitates the delivery of the project and is not objectionable in its own right;*
- *The consistency with the adjacent land use (sub-station) means that there is a low likelihood of conflict occurring;*
- *The proposal is capable of meeting the requirements of Council's Development Control Plan; and*
- *Strict compliance with the standard would result in an inflexible and unfair application of the policy. It does not serve any purpose that is outweighed by the positive outcomes of the development"*.

In response to Clause 4.6(4)(b), the NSW Department for Planning and Environments planning circular, *PS20-002 - Variations to development standards*, outlines Secretary's concurrence may be assumed for applications being considered by a regional planning panel.

In accordance with sub-clause (4), the applicant's objection is well founded and is consistent with the aims of the clause. The objection has adequately addressed the matters prescribed in the LEP, and has demonstrated that full compliance with the minimum lot size requirement would be unreasonable and unnecessary in the circumstances of the case. The environmental planning grounds put forward by the applicant are supported in this instance. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Of particular importance, is that under the *Conveyancing Act 1919*, a lease for an extended period of time (five years or greater) triggers the requirement for a subdivision. As such, the proposed 20 year lease between Penrith Smart Battery P/L and Endeavour Energy, is the reason the subdivision is required and proposed. Therefore, the subdivision will facilitate the provision of infrastructure for the benefit of the broader community.

As a result the proposed variation and associated justification is considered to be reasonable and the variation to the minimum lot size control requirement in the LEP is supportable.

Clause 5.10 Heritage conservation

The site is adjacent to a heritage item listed on Penrith Local Environmental Plan 2010, the Penrith Power Station (former) item No. 259. As such, the application was accompanied by a Heritage Impact Statement prepared by Kate Higgins, Heritage Consultant and dated 21 October 2020. This report concludes that the proposed works are acceptable for the following reasons:

- The former power station (now the Museum of Fire Building) will retain its visual prominence when viewed from Museum Road;
- Views to the Museum of Fire Building from the public domain will be unaffected;
- The proposed new facility is compatible with the industrial character of the area that forms the setting of the Museum of Fire;
- The proposed battery storage facility is located well away from the Museum of Fire building and so will not be visual intrusive within the ground of the Museum of Fire.

The report includes the following recommendations:

- a) That the new battery elements should not be painted bright primary or iridescent colours to detract from the setting of the former power station.
- b) A sign fixed to the outside fence should provide an explanation of the facility and its relationship to the provision of power in the Penrith area. It should include some historical information - including reference to the former substation that now houses the Museum of Fire.

The report has been reviewed by Council's Heritage Advisor who supported the proposal, subject to conditions. These recommendations are included as recommended conditions of consent within this report.

Clause 7.2 Flood planning

Clause 7.2 applies to the following land-

- (a) land at or below the flood planning level,
- (b) land identified as "Flood planning land" on the Clause Application Map.

While the site is not identified as 'Flood Planning Land' on the Flood Planning Land Map, the site is located below the flood planning level. The mainstream flood level for the site is 25.7m AHD (Nepean Rover Flood Study, adopted by Council in 2018), and the overland flow flood level is 25.9m AHD (Penrith CBD Detailed Overland Flow Flood Study). Survey plans that indicate that the lowest point on the site is 25.5m AHD and as such, Clause 7.2 is applicable. The application was accompanied by a Flood Statement, prepared by Premise Australia and dated 1 February 2021. While fill was originally proposed to create bench pads for the battery storage units, Council staff raised concerns on the impact this would have on flood storage on-site as well as on the conveyance of any flood water through the site. To address this issue, the application has been amended so that piers will be used to elevate the battery storage units above the 1% AEP flood event affecting the site (maximum of 0.9m). The flood statement details that these piers are to be structurally sized to minimise impact on flooding and the existing floodplain storage. Further, no persons will be residing on-site once the land is subdivided. As such, Council's Development Engineer has deemed that the proposal is supportable from a flooding perspective, subject to conditions.

Clause 7.5 Protection of scenic character and landscape values

The site is identified as 'land with scenic and landscape values' under the Scenic and Landscape Values Map. Clause 7.5 of Penrith Local Environmental Plan (LEP) 2010 specifies that development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.

The application was supported by a Visual Impact Assessment (VIA) prepared by IRIS Visual Planning + Design and dated 21 October 2020. The purpose of the VIA was to describe, analyse and evaluate the visual impacts of the proposed development, and identify measures to minimise the impacts and ensure the development is sympathetic to the scenic and landscape character of the area. Photos of the site were undertaken, to illustrate the potential visibility of the site, and how the proposal would be seen from the vehicle and pedestrian approaches. The VIA identified that the site is dominated by the existing power infrastructure, including the substation, large steel lattice transmission towers and overhead wires which creates a strong industrial character. This forms part of a larger industrial area which stretches north along Castlereagh Road. The VIA found that the site has a limited visual catchment, due to the predominantly flat landform, surrounding industrial development and existing vegetation. As such, the report concludes that no mitigation measures are necessary to address the scenic values of the locality.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	Complies
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	
C11 Subdivision	Complies - see Appendix - Development Control Plan Compliance
C12 Noise and Vibration	Complies
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)(b)The likely impacts of the development

Context and Setting

The locality is characterised by a mix of industrial and commercial developments. The proposed development is consistent with the infrastructure on the site, which consists of the substation, large steel lattice transmission towers and overhead wires, which creates a strong industrial character. As demonstrated by the accompanying Visual Impact Assessment the proposal will not have an adverse visual impact for the surrounding locality.

Environmental Impacts

There is not considered to be any adverse environmental impacts as a result of the proposed development. The nearest residential development is located over 200m to the east, with a range of industrial land uses in the immediate vicinity of the site. While the BESS units would operate 24 hours a day, 7 days a week, given the separation distance to residential land uses and the shielding from surrounding land uses, it is not expected that the nearest residential receivers would experience reduced levels of amenity. Conditions of consent have been recommended to mitigate any noise impacts during the construction phase.

No tree or vegetation removal is required with the site being cleared of any remnant vegetation.

It has been demonstrated that water runoff from the site will be effectively managed. The stormwater system will incorporate a bio-retention swale, which will pick up and treat stormwater from the development, before discharging them into the existing drainage channel located along the southern boundary.

Traffic, Access and Parking

Access to the site is currently provided from the north, via Thornton Drive and from the south, via Museum Drive. Proposed lot 52 will be accessed via the two existing driveways from Museum Drive. A six metre wide right of carriageway is proposed over both driveways, providing legal access points to the proposed lot.

The applicant has advised that the vehicles accessing the site for operational purposes will be limited to light vehicles. Swept paths have been provided demonstrating that site access, parking and internal roads all comply with relevant Australian Standards.

Two parking spaces are provided on-site. This is considered adequate given that only visitors to the site would be maintenance and operational staff, as required.

Social and Economic Impacts

The proposed facility will provide economic benefits during the site establishment and construction phases.

The proposal will have social benefits by supporting the delivery of renewable energy projects through the capacity to store and discharge energy generated from renewable and other electricity generators and release this at peak times.

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

The site is suitable for the following reasons:

- The site contains existing infrastructure that is of a consistent nature and character with the proposal;
- The site contains some vegetation along the western boundary which assists in providing a visual barrier from Castlereagh Road;
- The grade of the site is suitable for the design proposed; and
- The site is able to drain to Council's satisfaction.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents. Council notified four (4) properties in the area and the exhibition period was between 13 July 2020 and 27 July 2020. The application was also advertised in a local newspaper on 9 July 2020. Council received no submissions in response.

Referrals

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

Referral Body	Comments Received
Development Engineer	No objections - subject to conditions
Heritage	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Traffic Engineer	No objection

Section 4.15(1)(e)The public interest

The proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being State Environmental Planning Policy (Infrastructure) 2007, Penrith Local Environmental Plan 2010 and Penrith Development Control 2014, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest, and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

1. That the submitted variation to a development standard under clause 4.6 of the standard instrument be supported.
2. That DA20/0360 for Installation of Electricity Generating Works (Battery Storage) and facilitating Torrens Title Subdivision x 2 lots at 2235-2249 Castlereagh Road, Penrith, be approved subject to the following conditions.

CONDITIONS

General

- 1 The development must be consistent with the following plans stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Drawing Title	Drawing No.	Prepared By.	Dated
Site Plan	220049 01 (Rev. E)	Premise	29/01/2021
BESS Facility Plan	220049 01 (Rev. E)	Premise	29/01/2021
Facility Equipment	220049 01 (Rev. E)	Premise	
Structural Drawings	220049-03 S004 - S007 (Rev. C)	Premise	01/02/2021
Civil Plans	220049 C001 - C950 (Rev. 1 & 3)	Premise	07/10/2020
			27/01/2021
Subdivision Plan	220049.02A.DP01	Warren Raymond Saunders	-

- 2 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 3 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 4 A **Construction Certificate** shall be obtained prior to commencement of any works.
- 5 The new battery elements shall not be painted bright primary or iridescent colours to detract from the setting of the former power station.

Heritage/Archaeological relics

- 6 Prior to the issue of a Construction Certificate, details are to be provided to Penrith City Council for review and approval of an interpretation strategy so as to inform the public of the history of the facility. Details to be submitted to council include a location plan, size of signs, and sign content.

Prior to the issue of an Occupation Certificate, the approved interpretation strategy is to be installed to the satisfaction of Penrith City Council Development Services Manager.

Environmental Matters

- 7 All land that has been disturbed by earthworks, and does not have a specific finish applied, is to be spray grassed or similarly treated to establish a grass cover.

- 8 Dust suppression techniques are to be employed during construction to reduce any potential nuisances to surrounding properties.
- 9 **Prior to the issue of a Construction Certificate**, an Unexpected Finds Protocol shall be developed by an appropriately qualified environmental consultant, and submitted to Council. If Council is not the certifying authority for this development, the report is to be provided to Penrith City Council.

The protocol is to be complied with at all times during the excavation and construction phase of the development.

All remediation works within the Penrith Local Government Area are considered to be Category 1 works under the *State Environmental Planning Policy 55 - Remediation of Land*. Should any contamination be found during the development works, Council is to be notified immediately. Development consent is to be sought from Penrith City Council before the remediation works can commence.

- 10 Mud and soil from vehicular movements to and from the site must not be deposited on the road.
- 11 No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with *Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997)*. No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.
- 12 No fill material shall be imported to the site until such time as a Validation Certificate (with a copy of any report forming the basis for the validation) for the fill material has been submitted to, considered and approved by Council. The Validation Certificate shall:
- state the legal property description of the fill material source site,
 - be prepared by an appropriately qualified person (as defined in Penrith Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
 - clearly indicate the legal property description of the fill material source site,
 - 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 Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
 - (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

{Note: Penrith Development Control Plan defines an appropriately qualified person 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."}.

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.

13 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

14 All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

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

15 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.

16 Prior to any works commencing on site, a waste management plan for the work must be submitted to the principal certifying authority. The waste management plan must:

- (a) identify all waste (including excavation and construction waste materials) that will be generated by the work on the site, and
- (b) identify the quantity of waste material in tonnes and cubic metres to be:
 - i) reused on-site, and
 - ii) recycled on-site and off-site, and
 - iii) disposed of off-site, and
- c) if waste materials are to be reused or recycled on-site - specify how the waste material will be reused or recycled on-site, and
- d) if waste materials are to be disposed of or recycled off-site - specify the contractor who will be transporting the materials and the waste facility or recycling outlet to which the materials will be taken.

BCA Issues

- 17 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.

Construction

- 18 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.

- 19 Construction works or subdivision works that are carried out in accordance with an 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

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

Prior to the issue of any Subdivision Works Certificate, the Certifier shall ensure that engineering plans are consistent with the stamped approved plans prepared by Premise, job number 220049, revision 3, dated 27/01/2021, and that all subdivision works have been designed in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

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

- Private roads
- Stormwater management (quantity and quality)
- Inter-allotment drainage
- Sediment and erosion control measures
- Landscaping and embellishment works

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

Note:

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

- 21 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that the foundations of proposed structures adjoining the existing drainage easement have been designed clear of the zone of influence.
- 22 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that any structure below RL 26.4m AHD (adopted flood level + 0.5m freeboard) have been detailed with flood compatible building components in accordance with the publication 'Reducing the Vulnerability of Buildings to Flood Damage' produced by the Hawkesbury-Nepean Floodplain Management Steering Committee.
- 23 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that the structures can withstand the forces of floodwater, including debris and buoyancy, up to the 1% Annual Exceedance Probability event in accordance with the requirements of the Building Code of Australia (BCA).

- 24 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that all electrical services associated with the proposed battery energy storage system are adequately flood proofed in accordance with Penrith City Council's Development Control Plan relating to flood liable land. Flood sensitive equipment (including electric motors and switches) shall also be located above RL 26.4m AHD.
- 25 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS 2890.2, AS 2890.6 and Penrith City Council's Development Control Plan.
- 26 Prior to commencement of any works associated with the development, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate or Subdivision Works Certificate, ensuring compliance 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.

- 27 Prior to commencement of any works associated with the development, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS1742.3 Traffic Control Devices for Works on Roads and the Roads and Maritime Services' publication Traffic Control at Worksites and certified by an appropriately accredited Roads and Maritime Services Traffic Controller.

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

Note:

- A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.

- 28 Work on the subdivision shall not commence until:

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

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

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

- 30 Prior to the issue of any Occupation Certificate, Works As Executed drawings, final operation and maintenance management plans and any other compliance documentation for the stormwater management system shall be submitted to the Principal Certifier in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, Stormwater Drainage Specification for Building Developments and WSUD Technical Guidelines.

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 Penrith City Council is not the Principal Certifier.

- 31 Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that the stormwater management systems (including water sensitive urban design)
- have been satisfactorily completed in accordance with the approved Construction Certificate or Subdivision Works Certificate and the requirements of this consent;
 - have met the design intent with regard to any construction variations to the approved design, and;
 - Any remedial works required to be undertaken have been satisfactorily completed.

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

- 32 Prior to the issue of any Occupation Certificate, a restriction on the use of land and positive covenant relating to the stormwater management systems (including water sensitive urban design) shall be registered on the title of the property. The restriction on the use of land and positive covenant shall be in the standard wording provided in Penrith City Council's Stormwater Specification for Building Developments - Appendix F.

- 33 Prior to the issue of any Occupation Certificate, an easement for drainage and overland flow 1.5m wide shall be provided over the proposed 150mm diameter stormwater outlet from the bioretention swale to the existing channel on-site, which crosses across the proposed lot boundary. Evidence of registration of the easement with Land Registry Services (LRS) shall be submitted to the Principal Certifier and Penrith City Council, if Penrith City Council is not the Principal Certifier. Easement widths shall be in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments.

The terms of the above required easement could include capability for extinguishment of the easement in the event that the allotments are consolidated as one allotment thereby negating the need for the easement across allotment boundary.

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

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

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

c) The WAE drawings shall be accompanied by plans indicating the depth of cut / fill for the entire development site. The survey information is required to show surface levels and site contours at 0.5m intervals. All levels are to be shown to AHD.

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

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

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

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

Landscaping

36 No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

Subdivision

37 **Prior to the issue of the Subdivision Certificate**, the following is to be submitted:

An original plan of subdivision and two (2) copies of the plan. The plan of subdivision must indicate, where relevant -

- All drainage easements, rights of way, restrictions and covenants.
- All proposed dedications of roads/drainage/public reserve, which are to be undertaken at no cost to Penrith City Council.

The following information is to be shown on one (1) copy of the plan.

- The location of all buildings and/or other permanent improvements shall comply with any statutory boundary clearances or setbacks as defined by the Building Code of Australia and Council's resolutions.
- All existing services are wholly contained within the lot served and/or covered by an appropriate easement.

Prior to lodgement of the Subdivision Certificate Application, street address numbering must be obtained/approved by Penrith City Council's Rates Team. Proposed street addresses can be forwarded to council@penrith.city for approval.

38 A Surveyors Certificate is to be lodged with the application for a Subdivision Certificate that certifies that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.

Development Contributions

39 This condition is imposed in accordance with Penrith City Council's Section 7.12 Contributions Plan for non-residential development. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$235,000.00 is to be paid to Council **prior to the issue of a Construction Certificate** for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 Contributions plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.12 invoice accompanying this consent should accompany the contribution payment. The Section 7.12 Contributions Plan may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Note: The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contribution.

Certification

40 A Subdivision Certificate is to be obtained prior to the release of the linen plan of subdivision. The Subdivision Certificate will not be issued if any of the conditions in this consent are outstanding.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principals

The site is identified as 'land with scenic and landscape values' under the Scenic and Landscape Values Map. In accordance with Section C1, the application was accompanied by a Visual Impact Assessment (VIA), prepared by IRIS Visual Planning and Design and dated 21 October 2020. The findings of the VIA are further discussed under Clause 7.5 Protection of Scenic Character and Landscape Values of this report.

C11 Subdivision

The proposed subdivision is to facilitate the lease arrangement between Penrith Smart Battery and Endeavour Energy. The subdivision pattern within the surrounding area is irregular and as such, the dimensions and shape of the proposed lot, are not inconsistent with the subdivision character of the surrounding area. The width of the proposed lot exceeds the minimum lot width requirement of 20m. The subdivision will have not impact on native vegetation, views or heritage items or conservation areas.