

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA21/0808
Proposed development:	Torrens Title Subdivision Of A Residue Lot into 2 Lots
Property address:	16 Chapman Street, WERRINGTON NSW 2747
Property description:	Lot 1 DP 1226122
Date received:	2 November 2021
Assessing officer	Jake Bentley
Zoning:	C2 Environmental Conservation - LEP 2010 IN2 Light Industrial - LEP 2010 Zone R1 General Residential - LEP 2010 Zone R4 High Density Residential - LEP 2010 RE1 Public Recreation - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for 2 lot Torrens Title subdivision of an unregistered residue lot at 16 Chapman Street, Werrington. The proposed subdivision is permissible with consent under the provisions of Clause 2.6 Subdivision - consent requirement of Penrith Local Environmental Plan 2010 (PLEP).

In accordance with Council's Community Engagement Strategy 2019 the application was notified to surrounding property owners and exhibited between 22 November and 6 December, 2021 and advertised in the local paper issue date 18 November, 2021. No submissions were received in response.

The proposal is identified as integrated development considering a subdivision of land which could lawfully be used for residential purposes is proposed on bush fire prone land. In this regard, a bushfire fire safety authority under the provisions of Rural Fires Act 1997 is triggered. The proposal was referred to the New South Wales Rural Fire Service (NSW RFS) on 9 November, 2021. The RFS responded on 13 January, 2022 issuing general terms of approval and a Bush Fire Safety Authority.

An assessment under Section 4.15 and 4.46 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions of consent.

Site & Surrounds

The subject site is a large parcel of land located in between the Western Railway Line and the Great Western Highway, east of the north Werrington Western Sydney University campus and west of Werrington Road. The subject site is benefited by a large residential/industrial subdivision approval (DA19/0704) which includes residue lot 2259. The proposed subdivision relates to residue lot 2259.

Lot 2259 is an unregistered allotment located in the north-eastern corner of the site in between the central park (west), Road 07 and the eastern park (east) and existing townhouse developments to the north. Lot 2259 (the site) is a rectangular corner allotment with a 171.46m southern frontage to Road 09, 59.05m eastern frontage to Road 07 and a 9,987.86m² lot size. The subdivision approved a gradual 2.5m north-eastern slope and two vehicle access points along the southern frontage.

The overall site is identified as bushfire prone land (including lot 2259) and is impacted by flood related development controls.

The site is zoned R4 High Density Residential under the PLEP whilst the two adjoining parks to the east and west are zoned RE1 Public Recreation and the neighbouring townhouses to the north are zoned R3 Medium Density Residential under the PLEP. South of lot 2259 are residential lots approved via the parent subdivision and a road connection between the approved Road 07 and the existing local street network is located north-east of lot 2259.

The following applications/approvals relate to the subject site (lot 2259):

- DA21/0978 - proposed application for 29 lot subdivision and dwelling houses on proposed lot 1259 (eastern most) via the subject application,
- PL21/0048 - pre-lodgement meeting to discuss future housing applications on both proposed residue lots with dwellings on proposed lot 1258 being park fronting dwellings,
- DA20/0081 - approved central and eastern park works. Application originally included footpath which encroached into western side of residue lot however, conditions of consent required this path to be deleted. It is noted a condition requires a small slither of land within the western side of proposed lot 1258 identified as open space to be dedicated. The applicant provided an updated Subdivision Plan noting this requirement.

Proposal

The proposed development seeks a 2 lot Torrens Title subdivision of an approved but unregistered residue lot (2259) with the following components;

Proposed residue lot 1258 - 1,660m² lot size with a 2.5m wide easement to drain water along the western and northern boundary,

Proposed residue lot 1259 - 8,239m² lot size with a 2.5m wide easement to drain water along the northern boundary.

The purpose of the residue lot creation is to manage future applications for housing on each block noting different building companies are providing for the dwellings on the separate blocks.

An updated subdivision plan was provided with slightly different proposed lot sizes noting the requirement for land dedication under DA20/0081 for a small portion of land along the western boundary of proposed residue lot 1258 for open space purposes.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

A minuscule portion of the site within the western portion is identified as having biodiversity values on the NSW Government Biodiversity Values Map and Threshold Tool. The subject residue lot is free of vegetation and the proposed development involves a paper subdivision. The provisions of the Biodiversity Conservation Regulation 2017 state that development exceeds the biodiversity offset scheme:

- if it involves the clearing of native vegetation, or other action prescribed by clause 6.1, on land included on the Biodiversity Values Map published under clause 7.3.

The proposed paper subdivision does not involve any of the above.

The regulation also states that for proposed subdivision works the subdivision is taken to involve any clearing of native vegetation required for the purposes of which why the land is being subdivided. The proposal is being subdivided into two residue lots with future applications for built forms on-site. In this regard, there is no additional vegetation clearing required.

In light of the above, the proposal is not considered "likely to significantly affect threatened species" and therefore, a biodiversity development assessment report is not required.

- **Section 4.15 - Evaluation**

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

- **Section 4.46 - Integrated development**

The proposal is identified as integrated development considering a subdivision of land which could lawfully be used for residential purposes is proposed on bush fire prone land. In this regard, a bushfire fire safety authority under the provisions of Rural Fires Act 1997 is triggered. The proposal was referred to the New South Wales Rural Fire Service (NSW RFS) on 9 November, 2021.

The RFS responded on 13 January, 2022 issuing general terms of approval and a Bush Fire Safety Authority. The general terms of approval require a 12m wide asset protection zone (APZ) restriction on the use of the land along the western boundary of proposed lot 1258 where it adjoins the central park. This requirement aligns with the APZ requirement under the parent subdivision application.

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

The proposed subdivision will not penetrate the prescribed airspace and is not considered relevant development under Clause 21 Wildlife Hazards. In this regard, the relevant provisions under this policy are not applicable.

State Environmental Planning Policy No 55—Remediation of Land

In accordance with Clause 7 Contamination and remediation to be considered in determining development application 'a consent authority must not consent to the carrying out of any development on land unless:

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.'

The parent subdivision approval found the residue lot to be suitable in relation to land contamination subject to relevant conditions of consent. A review of Council's records and aerial shots of the site since the original approval has not found any land contamination activities occurring on-site. In this regard, and considering the proposal maintains the residue status of the proposed lots, the site is considered suitable in relation to land contamination.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and the proposal is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Zone objectives	Complies
Clause 2.6 Subdivision - consent requirements	Complies
Clause 4.1 - Minimum subdivision lot size	N/A
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

It is noted both the *Draft Environment SEPP* and *Draft Remediation of Land SEPP* apply to the subject site, but while so, do not affect or alter the recommendation of this report.

Section 79C(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
C2 Vegetation Management	N/A
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	Complies
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
E12 Penrith Health and Education Precinct	Complies - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iv) The provisions of the regulations

The proposal relates to the subdivision of a vacant residue lot into 2 residue lots. In this regard and noting the sites location, there are no additional provisions under the regulations to be considered for the proposal.

Section 79C(1)(b)The likely impacts of the development

There are no adverse likely impacts envisioned from the proposed residue lot subdivision considering a drainage easement along the western and northern boundaries has been provided and APZ requirements will be conditioned as required by the RFS. The proposal will allow for the timely development of the proposed residue lots in the future noting different building companies will be providing for dwellings on the separate lots.

Section 79C(1)(c)The suitability of the site for the development

The approved residue lot is suitable for the proposed 2 lot residue subdivision as land contamination, bushfire, drainage and access provisions have been addressed.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Council's Community Engagement Strategy 2019 the application was notified to surrounding property owners and exhibited between 22 November and 6 December, 2021 and advertised in the local paper issue date 18 November, 2021. 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
Development Engineer	No objections - subject to conditions

Section 79C(1)(e)The public interest

There are no significant issues relating to the public interest envisioned as a result of the proposed development.

Section 94 - Developer Contributions Plans

The proposed subdivision creates residue lots not to be immediately used for residential purposes. In this regard and being consistent with the parent subdivision approval (DA19/0704), development contributions are not triggered. A recommended condition of consent will ensure that if any development is to occur on-site outstanding contributions have to be paid.

Conclusion

In assessing the proposed development against relevant environmental planning instruments 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 and is recommended for approval, subject to recommended conditions.

Recommendation

That DA21/0808 for 2 lot Torrens Title subdivision of an unregistered residue lot for residue purposes at 16 Chapman Street, Werrington be approved subject to the attached recommended conditions of consent.

General

1 [A001 - Approved plans table](#)

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

- Plan of Subdivision of Lot 1257 in DP 1272642, prepared by Terry Edward Bartlett dated 29 October, 2021,
- Plan of Proposed Subdivision of Lot 1257 DP 1272642 Spinfex Road, Werrington, prepared by Proust & Gardner and dated 6 December, 2021, and
- New South Wales Rural Fire Service General Terms of Approval, dated 13 January, 2022 and reference number DA20211202005281-Original-1.

2 [A044 - Compliance with NSW Rural Fire Service conditions of consent](#)

The development shall comply with the New South Wales Rural Fire Service General Terms of Approval, dated 13 January, 2022 and reference number DA20211202005281-Original-1 and in the Bush Fire Safety authority for the said development.

3 [A Special \(BLANK\)](#)

Prior to the issue of a Subdivision Certificate, the subject residue site shall be registered with NSW Land Registry Services (LRS). Evidence of registration shall be provided with the subdivision certificate application.

Engineering

4 [K517 - Registration of Easements](#)

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

- a) Easements for drainage.

Subdivision

5 [M008 - Subdivision Certificate requirements](#)

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

An original plan of subdivision and associated administration sheets. 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.

6 [M009 - 88B Instrument](#)

Prior to the issue of a Subdivision Certificate, the linen plan of subdivision is to be supported by an 88B instrument creating a Restriction as to User or easement regarding the following:

Residue Allotment - no development or building shall be allowed or be permitted to remain on the named lot unless satisfactory arrangements have been made with Penrith City Council for services (water, sewer, electricity and telephone), any outstanding contributions or consolidation with adjoining lots.

Council shall be nominated as the only authority permitted to modify, vary or rescind such restriction as to user.

Certification

7 [Q008 - Subdivision Certificate](#)

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

C10 Transport, Access and Parking

Initial concerns were raised regarding site access given the intention is to develop the lots in the future. Concurrently lodged DA21/0978 for the development of proposed residue lot 1259 demonstrates how site access for both proposed residue lots will work in the future. In this regard, Council's Development Engineering Department are now satisfied their site access concerns have been addressed.

E12 Penrith Health and Education Precinct

The two lots are of a size capable of providing for different development typologies in accordance with the provisions of the relevant controls noting the R4 zoning of the site.