

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA14/1244
<b>Proposed development:</b>	Vegetation / Land Clearing and Market Garden
<b>Property address:</b>	96 - 104 Leitch Avenue, LONDONDERRY NSW 2753 106 - 116 Leitch Avenue, LONDONDERRY NSW 2753
<b>Property description:</b>	Lot 227 DP 752037 Lot 226 DP 752037
<b>Date received:</b>	7 October 2014
<b>Assessing officer</b>	Jane Hetherington
<b>Zoning:</b>	RU4 Primary Production Small Lots - LEP 2010
<b>Class of building:</b>	N/A
<b>Recommendations:</b>	Approve

### Executive Summary

Council is in receipt of a development application for vegetation/land clearing and market garden at 96-104 Leitch Avenue, Londonderry. Under Penrith Local Environmental Plan 2010, the proposal is defined as horticulture. The subject site is zoned RU4 Primary Production Small Lots and the proposal is a permissible land use in the zoning with Council consent. An assessment under Section 79C 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 located on the southern side of Leitch Avenue, approximately 370m east of the Sutherland Road intersection. The site consists of two lots (Lot 226 & 227) which have a combined area of 4.04 hectares. The site is currently vegetated with vegetation mapped as Castlereagh Scribbly Gum Woodland. Directly to the east of the subject site is a market garden, to the north and west are rural residential properties and to the south is a property that is currently being used to store old rail carriages.

### Proposal

The proposed development involves:

- Vegetation/ land clearing.
- Proposed earthworks associated with a Market Garden.

### Plans that apply

- Local Environmental Plan 2010 (Stage 1 LEP)
- Development Control Plan 2010
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

### • Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

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

##### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

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

##### **Local Environmental Plan 2010 (Stage 1 LEP)**

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Zone objectives	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.5 Additional permitted uses for particular land	N/A
Clause 2.6 Subdivision - consent requirements	N/A
Clause 2.7 Demolition requires development consent	N/A
Clause 2.8 Are the temporary use of land requirements achieved?	N/A
Clause 4.1 - the minimum lot size	N/A
Clause 4.1AA Minimum subdivision lot size for community title schemes	N/A
Clause 4.2 Rural Subdivision	N/A
Clause 4.3 Height of buildings	N/A
Clause 4.4 Floor Space Ratio	N/A
Clause 4.5 Calculation of floor space ratio and site area	N/A
Clause 4.6 Exceptions to development standards	N/A
Clause 5.1 Relevant acquisition authority	N/A
Clause 5.10 Heritage conservation	N/A
Clause 5.11 Bush fire hazard reduction	N/A
Clause 5.12 Infrastructure development and use of existing buildings of the Crown	N/A
Clause 5.13 Eco-tourist facilities	N/A
Clause 5.2 Classification and reclassification of public land	N/A
Clause 5.3 Development near zone boundaries	N/A

Clause 5.4 Controls relating to miscellaneous permissible uses	N/A
Clause 5.5 Development within the coastal zone	N/A
Clause 5.6 Architectural roof features	N/A
Clause 5.7 Development below mean high water mark	N/A
Clause 5.8 Conversion of fire alarms	N/A
Clause 5.9 Preservation of trees or vegetation	Complies
Clause 5.9AA Trees or vegetation not prescribed by development control plan	N/A
Clause 6.1 Earthworks	N/A
Clause 6.10 Villages of Mulgoa and Wallacia	N/A
Clause 6.11 Orchard Hills	N/A
Clause 6.12 Twin Creeks	N/A
Clause 6.13 Waterside Corporate	N/A
Clause 6.14 Development of land in the flight paths of the site reserved for the proposed Second Sydney Airport	N/A
Clause 6.15 Location of sex services premises and restricted premises	N/A
Clause 6.2 Salinity	N/A
Clause 6.3 Flood Planning	Complies
Clause 6.4 Development on natural resources sensitive land	N/A
Clause 6.5 Protection of scenic character and landscape values	N/A
Clause 6.6 Servicing	N/A
Clause 6.7 Dwelling houses on certain land in Llandilo and Mulgoa	N/A
Clause 6.8 Dual occupancies and secondary dwellings in certain rural and environmental zones	N/A
Clause 6.9 Mulgoa Valley	N/A
Schedule 1 Additional permitted uses	N/A

### *Permissibility*

The subject site is zoned RU4 Primary Production Small Lots under the provisions of Penrith Local Environmental Plan 2010. The proposed market garden is defined as horticulture which means:

*"the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture".*

Horticulture is a type of intensive plant agriculture and inferred as agriculture, a permissible land use in the zone. The land clearing is to facilitate the development of the market garden and is also a permissible land use in the zone.

### *LEP and Zone Objectives*

The proposal is consistent with the LEP and zone objectives.

### *Development Standards*

#### *Clause 5.9 Preservation of trees or vegetation*

The vegetation on site is mapped as Castlereagh Scribbly Gum Woodland, a Vulnerable Ecological Community under the NSW *Threatened Species Conservation Act 1995*. The proposal includes vegetation clearing for the purpose of establishing a market garden. As such a Flora and Fauna Report accompanied the application. This report was reviewed by Council's Senior Biodiversity Officer who raised no objection to the proposal subject to conditions.

#### *Clause 6.3 Flood Planning*

The subject site has been identified as being affected by local overland flows. Council's Development Engineer reviewed the application and raised no objection to this aspect of the proposal.

## Section 79C(1)(a)(iii) The provisions of any development control plan

### Development Control Plan 2010

Provision	Compliance
Part B - DCP Principles	Complies
Part C 1 - Site planning and design principles	N/A
Part C2 - Vegetation management	N/A
Part C3 - Water management	Complies
Part C4 - Land management	Complies
Part C5 - Waste management	Complies
Part C6 - Landscape design	N/A
Part C7 - Culture and heritage	N/A
Part C8 - Public domain	N/A
Part C9 - Advertising and signage	N/A
Part C10 - Transport, access and parking	N/A
Part C11 - Subdivision	N/A
Part C12 - Noise and vibration	N/A
Part C13 - Infrastructure and services	N/A
Part D1, Chapter 1.1 - Rural character	Complies
Part D1, Chapter 1.2 - Rural dwellings and outbuildings	N/A
Part D1, Chapter 1.3 - Farm buildings	N/A
Part D1, Chapter 1.4 - Agricultural development	Complies - see Appendix - Development Control Plan Compliance
Part D1, Chapter 1.5 - Non-agricultural development	N/A

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

This section is not applicable for the subject application.

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

### *Context and Setting*

As stated earlier in the report, developments in the area are mainly rural/residential. The above assessment demonstrates that the proposed land clearing and market garden are sympathetic to the existing built environment and would not impact on the rural characteristics of the locality. In addition, the market garden is of a relatively small scale and a 40m front setback has been provided to the garden beds. As such, the proposal is considered to have minimal impact to the surrounding locality.

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

The site is suitable for the following reasons:

- The site is zoned to permit the proposed use
- The use is compatible with surrounding/adjoining land uses
- The grade of the site is suitable for the design proposed

## Section 79C(1)(d) Any Submissions

### Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2010, the proposed development was notified to nearby owners and occupiers of adjoining properties who were invited to inspect the proposal from 13 October 2014 to 27 October 2014. Council notified 8 residences and received 1 submission in response.

### Submissions

The following issues were raised in the submissions received and have formed part of the assessment.

<b><i>Issue Raised</i></b>	<b><i>Comments</i></b>
<i>Validity of Flora and Fauna Assessment</i>	Council's Senior Biodiversity Officer has completed an independent review of the Flora and Fauna Assessment prepared by T.J Hawkeswood and dated 2 September 2014. After completing a site inspection to review and cross reference the findings within the report it is considered that the proposed land clearing will not result in significant impacts to flora and fauna despite identified deficiencies with some of the report content. The proposed works are therefore satisfactory from a biodiversity perspective. Please also note that mitigation measures are required to be implemented during the vegetation clearing process as well as restricted activities around retained trees.
<i>Environmental Impacts from land clearing - dust, noise, runoff etc.</i>	The proposed market garden is of relatively small scale and the land clearing component of the proposal has been reduced to allow vegetation at the front of the site to be retained. The proposal has been reviewed by Council's Senior Environmental Health Officer, who raised no objection to the proposal. Conditions of consent will ensure that the environmental impacts to neighbouring properties are minimal.
<i>Decrease in value of surrounding properties</i>	There is no empirical evidence to suggest that this type of development will impact on the value of surrounding properties.
<i>Access to site</i>	The amended site plan submitted to Council indicates that an access point to the market garden will be provided from Leitch Avenue. However, the applicant has confirmed that access will continue to be provided through the neighbouring property, which is owned by the same family.
<i>Additional staff reducing the security of surrounding properties</i>	The market garden will continue to operate as a family run business with no additional staff proposed. As such, the proposal will not impact on the security of adjoining properties.
<i>Source of Water</i>	Water will be sourced from the adjoining properties existing dam for use on the market garden. As such, the proposal will not impact on the neighbouring properties water pressure. Dam water as a water source for irrigation is a commonly used in market garden.

### 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
Environmental - Environmental management	No objections - subject to conditions
Environmental - Biodiversity	No objections - subject to conditions

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

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

## Conclusion

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In assessing this application against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2010, 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

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1. That DA14/1244 for land clearing and market garden at 96-104 Leitch Avenue, Londonderry, be approved subject to the attached conditions.
2. That those making submissions are notified of the determination.

## General

1 [A001](#)

The development must be implemented substantially in accordance with 'Site Plan' dated 30/09/2014 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.

2 [A030 - No retail sales](#)

No retail sale of goods shall be conducted from the subject premises.

3 [A special BLANK](#)

The road base materials being stored in the north-east of the property are to be removed, and are to be disposed of to a licenced waste management facility. Receipts are to be retained in order to verify lawful disposal and are to be made available to Penrith City Council on request.

## Environmental Matters

4 [D001 - Implement approved sediment& erosion control measures](#)

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

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

5 [D005 – No filling without prior approval \(may need to add D006\)](#)

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.

6 [D014 - Plant and equipment noise](#)

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.

7 [D023 - Bunding](#)

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.

8 [D - Dust](#)

Dust suppression techniques are to be employed during operations to reduce any potential nuisances to surrounding properties.

9 [D - Mud/Soil](#)

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

10 [D special BLANK](#)

Offensive odours are not to be emitted from the site. Vapours, fumes, gases, particles or any other substance that are considered to be harmful to human health or the environment or impact unreasonably on a person outside of the premises are not to be emitted from the site.

11 [D Special BLANK](#)

The use of machinery or other equipment likely to cause offense to adjoining land owners/occupiers is to be restricted to daylight hours. All reasonable and feasible steps are to be taken to ensure that offensive noise is not emitted from the site.

12 [D Special BLANK](#)

Drainage swales and/or catch drains are to be stabilised and maintained to the satisfaction of Council and in a manner that will not cause erosion, sedimentation or the movement of water over an adjoining property.

13 [D Special BLANK](#)

Stormwater and irrigation water is to be collected, drained and recycled to the satisfaction of Council. The irrigation system (including irrigation rates) is to be designed so that water will not seep, discharge or otherwise exit the market garden site. Market garden activities are to be managed so as not to cause the pollution of any watercourse.



14 [D Special BLANK](#)

Solid waste (including packaging and plant waste) is to be disposed of at a lawful waste facility, or, if suitable recycled. Solid waste is to be stored in a designated area prior to removal for disposal or recycling. Waste materials that are to be disposed of offsite are not to be stored for a period longer than seven days. Where possible, the waste storage area is to be located so that it is not visible to adjoining land owner/occupiers.

The waste storage area is to be provided with a weatherproof cover when it is unattended or not in use. No waste materials are allowed to enter the stormwater system or neighbouring properties.

15 [D Special BLANK](#)

Organic fertilisers are not to be stockpiled on the site for more than 48 hours prior to application. Stockpiles are to be located a minimum of 40 metres from a watercourse or dam and the maximum possible distance from adjoining residences.

16 [D Special BLANK](#)

Fertilisers are not to be applied at rates in excess of the relevant NSW Department of Primary Industry Guidelines and the manufacturer's instructions.

17 [D Special BLANK](#)

Chemicals, including inorganic fertilisers, herbicides, pesticides and fuel, are to be stored in a bunded, weatherproof and lockable area. Chemicals that are not compatible are not to be stored together.

Chemical sprays are not to be used in periods of high wind or other weather conditions likely to cause spray drift onto surrounding properties.

Chemicals are not to be applied at rates in excess of the relevant NSW Department of Primary Industry Guidelines and the manufacturer's instructions.

Empty farm chemical containers are not to be rinsed within 40m of any watercourse or dam.

18 [D Special BLANK](#)

Market gardening activities, including soil preparation works, are not to be carried out within 5 metres of any native tree trunk or within the root zone or drip line of any existing native tree, whichever is the greater.

19 [D Special BLANK](#)

Cultivation plots are to be located a minimum of 3 metres from adjoining property boundaries.

20 [D Special BLANK](#)

The development is to be managed so as not to cause the pollution of any waterways, including the dam on the adjacent property.

21 [D Special BLANK](#)

Should further development on this property be pursued within the next 5 years through a development application, the Flora and Fauna Survey and Assessment Report (Hawkeswood, 2/9/2014) may be submitted, along with a current letter from a suitably qualified ecological consultant. The letter is to confirm that the assessment remains relevant and the proposal will not result in a significant impact.

## Landscaping

22 [L007 - Tree protection measures--no TMP with DA](#)

All trees that are outside of the market garden footprint are required to be retained and are to be protected in accordance with the minimum tree protection standards prescribed in section F4 of Council's Landscape Development Control Plan. No fill, machinery, or materials are to be placed or stored within the drip line of any tree that is to be retained.

23 [L008 - Tree Preservation Order](#)

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2010

### D1 - Rural land uses

#### *1.4.6 Horticulture*

##### *Water Management*

Water for the market garden will be sourced from the dam on the adjoining property which is owned by the same family. The plots will be irrigated with drip type irrigation and the frequency and irrigation will depend on the weather and the crop. This has been reviewed by Council's Environmental Health Officer who raised no objection to the proposal subject to conditions.

##### *Waste Management*

An area has been identified on the site plan for waste storage, away from Leitch Avenue and adjoining residences. As such, it is considered that waste generated from the proposed market garden will have a minimal impact to the surrounding locality. It is recommended that a condition of consent be included requiring that all solid waste is disposed of a lawful waste facility.

##### *Control of pests and vermin*

This has been reviewed by Council's Environmental Health Officer who raised no objection to the proposal subject to conditions.

##### *Pesticides*

The application included a schedule of all the pesticides and other chemicals to be used on the subject site. Council's Environmental Health Officer has reviewed the schedule and raised no objection to this aspect of the proposal.

##### *Dust Control*

A condition of consent will ensure that dust suppression techniques are employed during operations to reduce any potential nuisances to surrounding properties.

##### *Drainage*

The site has a gentle slop to the north (towards Leitch Avenue). The site plan indicates that open channels will be constructed along the garden beds to drain excess water to the grass absorption area located north western corner of the site. This has been reviewed by Council's Development Engineer who raised no objection to the proposal.

##### *Soil Erosion*

It is recommended that a standard condition of consent be included requiring that erosion and sediment control measures be installed prior to the commencement of works on site included the approved clearing of site vegetation.

##### *Landscaping and visual impact*

The proposal does not include the construction of any structures. In addition, a 40m wide strip of vegetation along Leitch Avenue (the northern boundary) is to remain uncleared. This will provide a visual screen to the garden beds for motorists travelling along Leitch Avenue. As such the proposal is considered to have a minimal visual impact to the surrounding area.

##### *Access, traffic and parking*

The site plan indicates that access to the market garden will be provided through two driveways off Leitch Avenue. However, during a meeting with the applicant it was confirmed that an informal arrangement between the adjoining property will be utilised with continued access being provided through their property. Produce will be trucked for sale at Flemington markets as per the current arrangement.

##### *Minimising impacts of chemicals*

This has been reviewed by Council's Environmental Health Officer who raised no objection to the proposal subject to conditions.