

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA14/0027
<b>Proposed development:</b>	Proposed Subdivision to Create 9 x Residential Allotments
<b>Property address:</b>	1439 A Old Castlereagh Road, CASTLEREAGH NSW 2749
<b>Property description:</b>	Lot 1 DP 68289
<b>Date received:</b>	14 January 2014
<b>Assessing officer</b>	Gavin Cherry
<b>Zoning:</b>	RURAL 1(A2) (IDO 93) RURAL (A2) & SPECIAL USES 5(B) ROADS (IDO 93) ZONE NO.5(C)ST RD & ST RD/W LEP1998 (LAKES ENV) ZONE NO 2(B) RES (LOW DENS) LEP 1998 URB L SEE MEMO(S) AND/OR SEPPS CODE FOR ZONING DETAILS
<b>Class of building:</b>	N/A
<b>Recommendations:</b>	Refuse

### Executive Summary

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The Development Application is for the subdivision of part of the Penrith Lakes Scheme into 9 x residential allotments with the remainder of the Penrith Lakes Scheme as per a separate proposed consolidation and resubdivision application (DA14/0151).

The Development Application was the subject of prelodgement discussions where it was outlined to the applicant that the proposal was not considered to be a permissible land use under the provisions of the SEPP (Penrith Lakes) 1989, that the SEPP overrides the provisions of IDO 93 in the event of an inconsistency and that site wide concerns raised with previous proposals remain in place with respect drainage, filling and flood management implications across the entire scheme.

The application was lodged with Council despite this advice and has been assessed having regard to Section 79C of the EP&A Act, 1979 including the provisions of SEPP (Penrith Lakes) 1989, IDO No.93, DCP 2006 and external legal advice. Having regard to these considerations, the proposal is not considered to be a permissible form of development on the site and is not a supportable development outcome as it is considered to pre-empt broader strategic planning works yet to be completed being amendment of the SEPP, preparation, exhibition and adoption of a revised SEPP Structure Plan and identification of suitable land for urban development.

The application was placed on public exhibition and notification for fourteen (14) days. Two (2) individual submissions and a petition was received raising similar issues to those outlined above as well as traffic access and road width constraints.

The application is recommended for refusal.

## Site & Surrounds

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The site is an irregular shaped allotment within the Penrith Lakes Scheme along the eastern periphery of the scheme boundaries.

The site is located on the eastern side of Castlereagh Road and is in close proximity to existing large lot residential properties fronting Church Lane.

## Proposal

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The Development Application is for the subdivision of part of the Penrith Lakes Scheme for future residential development as follows:-

- Lot 1: 3.63ha with a width of 109m
- Lot 2: 2.43ha with a width of 85.41m
- Lot 3: 2.25ha with a width of 73.19m
- Lot 4: 2.17ha with a width of 74.21m
- Lot 5: 2.46ha with a width of 84.04m (Heritage Item)
- Lot 6: 2.09ha with a width of 84.59m
- Lot 7: 2.06ha with a width of 89.62m
- Lot 8: 2.09ha with a width of 55.27m
- Lot 9: 5.17ha with a width of 333.64m

Vehicular access to all lots is proposed to be provided via Church Lane.

## Plans that apply

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- Penrith Interim Development Order No.93
- Development Control Plan 2006
- State Environmental Planning Policy (Penrith Lakes Scheme) 1989
- State Environmental Planning Policy (State and Regional Development) 2011

## Planning Assessment

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### • 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 91- Integrated development

The development has been assessed in accordance with the matters for consideration under Section 79C and Section 91 of the Environmental Planning and Assessment Act 1979.

The application was referred to the NSW Rural Fire Service for comments as per Clause 91 of the Act. Comments and conditions were received from the RFS raising no objection to the proposed development subject to conditions of consent.

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

## State Environmental Planning Policy (Penrith Lakes Scheme) 1989

The permissibility of the subdivision applications is affected by the following environmental planning instruments:

- Penrith Local Environmental Plan 1991;
- Interim Development Order No. 93;
- SEPP (Penrith Lakes Scheme) 1989;
- Draft Penrith Local Environmental Plan (Stage 2).

While IDO93 permits subdivision, the SEPP specifically prohibits works which are not deemed to 'Implement the Penrith Lakes Scheme'.

The proposed subdivisions are not considered to be permissible pursuant to the provisions of SEPP (Penrith Lakes Scheme) 1989. In particular, Clause 7 of the SEPP (Penrith Lakes Scheme) which states that development must not be carried out unless that development is authorised by that policy. Clauses 8-11A identifies the development authorised by the policy which does not include residential subdivision or urban development. Development that is defined and permitted pursuant to clauses 9-11A is also quite specific (and does not include subdivision for residential purposes).

Development that is defined and permitted pursuant to clause 8(1) of the policy is however broader and provides that development for the purposes of "implementing the Penrith Lakes Scheme' is permissible. Further, the relevant consent authority must not grant consent to development unless satisfied of those matters pursuant to clause 8(2) of the policy.

When establishing what constitutes 'Implement the Penrith Lakes Scheme', reference is directed to Schedule 1 of the policy which defines what is meant by the 'Penrith Lakes Scheme', which is:

*"the creation of a regional recreational lake system as shown on the structure plan for the benefit of the public as a result of:*

*(a) the staged optimum extraction of sand and gravel reserves,*

*(b) the staged rehabilitation, reconstruction and landscaping of the land, and*

*(c) the staged formation of a series of interconnected lakes,*

*and includes the identification of land for possible future urban purposes as a result of the work referred to in paragraphs (a) and (b)."*

The definition of the 'Penrith Lakes Scheme' provides only for the 'identification of land for future urban purposes', it does not permit development for urban purposes. The accompanying Structure Plan also indicates the same 'possible' location of land for future urban purposes which does not provide a development entitlement. While there is an identified inconsistency between the permissibility standards within the IDO and the SEPP, the SEPP prevails over the IDO (pursuant to Section 36 of the EPA Act 1979 and Clause 4 of the SEPP (Penrith Lakes Scheme)). As such, the proposed subdivision is not considered to be a permissible form of development under the current environmental planning instrument framework and cannot be supported.

## State Environmental Planning Policy (State and Regional Development) 2011

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (State and Regional Development) 2011 and the application is satisfactory with respect to the SEPP as Schedule 3 - Clause 8 identifies development within Penrith Lakes which is deemed to be 'state significant infrastructure' being extraction, rehabilitation or lake formation. The proposed works do not fall within these categories and as such the SEPP does not apply to the proposal.

## Penrith Interim Development Order No.93

Provision	Compliance
All Clauses	Does not comply - See discussion

### Compliance with the provisions of the IDO No. 93

The subject site is affected by the provisions of IDO No. 93 (being land contained within the boundaries of Schedule B - Map). Under the IDO the site is zoned Rural A2 which permits dwelling houses subject to consent from Council. Clause 5(1) also permits subdivision of land subject to consent of Council provided a minimum lot area of 2.0 hectares is retained. The proposed subdivision ensures the minimum lot size requirements in the IDO are complied with.

Clause 9 of the IDO also provides that no building having frontage to a classified road can be constructed within a setback of 30m to the nearest alignment of that road. The proposed subdivision and topographic and vegetative constraints along the back of the site ensure that future dwellings will comply with this requirement.

Subclause 16 of the IDO requires that Council consider flooding and viewscape impacts of dwelling houses on existing waterbodies as well as traffic and access arrangements. While the proposed development is not considered to compromise existing views or detrimentally affect flood behaviour, management issues around the Lagoon are raised within this assessment under 'Likley Impacts'. Traffic access and increased vehicle movements have been reviewed and are considered to be satisfactory.

As a result the proposal is considered satisfactory with respect to the provisions of IDO No. 93.

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

Draft Stage 2 of the Penrith Local Environmental Plan 2010 as exhibited applies to the site. The site under this instrument was intended to be zoned RU1 Primary Production with minimum lot sizes of 20 hectares. Clause 1.8 of the Draft LEP (as exhibited) however doesn't include IDO No. 93 as a repealed instrument. Following exhibition and in response to received submissions, a report was referred to Council's Policy Review Committee Meeting (11/11/2013) which recommended that the Penrith Lakes Scheme be excluded from the Draft LEP. This recommendation was adopted and as such the Draft LEP no longer applies to the subject site.

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

### Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.2 - Crime prevention through environmental design	N/A
Chapter 2.3 - Engineering works	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.4 - Erosion and sediment control	Complies
Chapter 2.5 - Heritage management	Complies
Chapter 2.6 - Landscape	Complies
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	Complies
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.11 - Car parking	N/A
Chapter 2.12 - On-site sewage management	Complies
Chapter 2.13 - Tree preservation	Complies
Chapter 4.7 - Guidelines for subdivision	Does not comply - see Appendix - Development Control Plan Compliance

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

In accordance with Clause 54 of the EP&A Regulations, the applicant was requested in writing (dated 13 and 14 February 2014) to submit additional information responding to issues raised by Council which required further investigation and reporting to sufficiently consider the suitability of the proposed development. The matters raised include the following:-

### "Permissibility

The site is zoned Rural 1a(2) under the provisions of Interim Development Order No. 93 – Penrith (IDO 93), subdivision with a minimum lot size of 2 hectares is permitted in the zone with consent.

The site is also subject to State Environmental Planning Policy (Penrith Lakes Scheme) 1989 (SEPP). While it is acknowledged that development capability is provided for within the IDO, the SEPP over-rides the IDO in the event of an inconsistency. As such if it is deemed that the SEPP does not permit the proposed residential subdivision, then reliance on the IDO provisions to substantiate permissibility cannot be undertaken. This is outlined within Clause 4 of the SEPP. Clause 7 of the SEPP specifically states that development must be authorised by or under the SEPP for the purposes of implementing the Penrith Lake Scheme, construction or widening of roads, recreation and community facilities (refer Clauses 8, 9, 10 and 11). The SEPP further defines what constitutes the 'Penrith Lakes Scheme' within Schedule 1. This schedule states that:-

*"The Penrith Lakes Scheme is the creation of a regional recreational lake system as shown on the structure plan for the benefit of the public as a result of:*

- (a) the staged optimum extraction of sand and gravel reserves,*
- (b) the staged rehabilitation, reconstruction and landscaping of the land, and*
- (c) the staged formation of a series of interconnected lakes, and includes the identification of land for*

*possible*

*future urban purposes as a result of the work referred to in paragraphs (a) and (b)."*

As detailed above, the 'Penrith Lakes Scheme' only provides for "the identification of land for possible future urban purposes" as a result of items referred to in (a) and (b) above and not the development of land for residential subdivision. As a result the proposal is not considered to comply with Clause 7 of the SEPP, cannot rely on Clauses 8, 9, 10 and 11 of the SEPP and is therefore not a permissible form of development.

1. *Engineering*

- a. Submit a management strategy of the water body at the rear of the site (adjacent to Castlereagh Road) including the management responsibility for each of the proposed lot.
- b. Incorporate the proposed flood free building envelope for each of the proposed lot on the subdivision plan.
- c. Revise the geotechnical report to address slope stability for each of the proposed lot
- d. Incorporate location of the proposed vehicle access for Lot 9 on the subdivision plan to demonstrate vehicular access can be provided

2. *Biodiversity*

- a. Confirm if the grasslands within the site are "Cumberland Plain Derived Native Grasslands", and submit an Assessment of Significance if required.
- b. Assess the biodiversity impact of the proposal using the Biobanking Assessment Methodology and address any offset requirements.
- c. Review the lot configuration with a view to reduce the number of lots. Lots 9 and 8 should be reconsidered as there is little room for a dwelling outside of the Ecological Endangered Community.
- d. The Flora and Fauna Report should consider the impacts of On-site Sewage Management system (OSSM) on the vegetation. The locations of the OSSM can be incorporated into the site plan of the Bushfire report which shows the building envelope and Asset Protection Zone.

3. *Waterways*

- a. The proposal is required to comply with Council's Water Sensitive Urban Design (WSUD) Policy 2013 and Penrith Development Control Plan 2010. Hence a Water Sensitive Urban Design WSUD Strategy including MUSIC Modelling, concept designs for all proposed stormwater treatment measure and a draft operation and maintenance manual is required. The following is the link to Council's WSUD

Policy:

[http://www.penrithcity.nsw.gov.au/uploadedFiles/Content/Website/Your\\_Council/WaterSensitiveUrbanDesignPolicyDec2013.pdf](http://www.penrithcity.nsw.gov.au/uploadedFiles/Content/Website/Your_Council/WaterSensitiveUrbanDesignPolicyDec2013.pdf)

b. *Waterway (Lake) and Riparian Zone*

- Amend the proposed subdivision plan providing a singular lot for the lake to avoid multiple ownerships and allowing appropriate management.
  - Provide justifications for any variations to Council's requirement for a 40m wide riparian area (both sides) (measured from top of bank) be provided for wetlands. Including an assessment undertaken in accordance with the NSW Office of Water Guidelines for riparian corridors on waterfront land.
  - Submit a management strategy for the lake including details on how the lake (including riparian zones) would be managed and details regarding management responsibilities.
- c. The development is within 40 metres of a waterway and hence referral to the NSW Office of Water as an Integrated Development is required.

4. *Noise Impacts*

Submit an acoustic report, prepared by a suitably qualified consultant that addresses each lot. The assessment shall take into consideration the noise generated by Castlereagh Road (future traffic numbers) demonstrating the internal noise level is compliant with AS 2107:2000 'Acoustics - Recommended design sound levels and reverberation times for building interiors'.

5. *Water management*

The implications of the long-term management of the dam which is located across a number of properties.

6. *Wastewater*

- Overlay the location of the proposed effluent management areas on the site plan of the bush fire report and incorporate setbacks to all property boundaries (distances), key buffer distances and

site features (including vegetation).

- Provide justification regarding the difference in calculations used to find the subsurface and surface irrigation areas.
7. Contamination
- Submit the Preliminary Site Contamination Assessment prepared by Coffey Environments dated 2011 to facilitate determination of the contamination status of the site.
  - Submit a Remedial Action Plan, prepared by a suitably qualified consultant, that address the contamination found on site, with consideration of the relevant guideline documents.
  - Amend this Development Application to include the remediation works, or submit a separate Development Application for the remediation works in accordance with the requirements of Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River.

While additional information was submitted addressing permissibility (albeit unsatisfactorily), additional information requested concerning site contamination investigations, biodiversity, flood management, heritage and lagoon management are yet to be sufficiently addressed. The outstanding matters are as follows:-

- The inconsistency between Council's flood modelling and the PLDC flood model (approved by the Department of Planning and Environment) was acknowledged however as the Water Management Plan is approved (again by the Department) the applicant maintains reliance on this approval and the modelling undertaken by PLDC despite the inconsistency and broader flooding implications raised by Council.
- The Lagoon Management Plan is still considered to be insufficient and does not provide adequate management measures given the proposal retains the lagoon across multiple proposed lots rather than single ownership. This is not a satisfactory outcome.
- The additional biodiversity information was reviewed by Council's Biodiversity Officer was still considered to be deficient. The proposed lot configuration is inappropriate having regard to Lots 8 and 9 which should be amended (total lots reduced) to better accommodate useable areas without affectation on the critical vegetation. The information submitted also has insufficient consideration of OSSM and APZ implications on vegetation retention and protection.
- The additional information submitted in response to land contamination matters was still found to be deficient as outlined in detail within the assessment of 'Likely Impacts' below within this report. This includes the ongoing omission of a Site Audit Statement and associated report.
- The applicant reiterated that the submitted acoustic assessment was undertaken against Clause 102 of the SEPP (Infrastructure) 2007 and that the assessment has already considered quarrying activities (over 3km away). It was acknowledged that these activities will cease within 12 months. Despite this advice, information / clarification sought was not addressed and remains outstanding.
- The applicant confirm no works are proposed to the heritage item and reiterated that conservation has been separately addressed as part of preceding applications relating to the Scheme.

As a result of the above requested but outstanding information, the application cannot be supported.

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

Likely impacts of the proposed development as identified throughout the assessment process include:

### *Context and setting*

The proposal is sympathetic to the surrounding residential character of the locality as the subdivision pattern is consistent with the existing subdivision pattern of the area.

### *Access, traffic and transportation impacts*

The traffic generation resulting from the proposed development is considered to be satisfactory and sustainable within the local road network.

### *Environmental Considerations*

## **Wastewater**

The site plans indicating the proposed effluent management areas have not been amended and are still not considered appropriate, as they do not show the location of the effluent management area in relation to the entire Lot (no buffer distances shown, and no comparison to cleared/vegetated areas, watercourses or the historic ruins). The plan provided as a part of the bushfire report is required to be used as a part of the overlay, as this then shows clearly shows the relationship between the APZ (which will be cleared) and the proposed building envelope.

The site plans do indicate that Lots 1 to 7 can facilitate the effluent management area sizes required, which as this application is only for subdivision (rather than a specific dwelling type/size) is appropriate. However, for Lots 8 and 9, the calculations used to establish the size of the proposed subsurface effluent management areas are not satisfactory. Given that these Lots are more restricted, particularly due to watercourses and vegetation coverage, and land may need to be cleared, further consideration needs to be given to this aspect. It has been assumed that the submitted calculations are based on the nutrient uptake of 'managed lawn', however Council cannot guarantee or ensure that these lawns will always be managed (ie. mown with the lawn clippings disposed of separately) and that the level of nutrient uptake as suggested in the calculations will occur. As a result a more appropriate approach would be to use the figures for nutrient uptake for 'unmanaged lawn'. Calculations undertaken using the figures of 120kg/ha/yr indicated that the area provided for Lots 8 and 9 is too small, and that a minimum subsurface effluent management area of approximately 655m<sup>2</sup> needs to be provided. As a result the proposal creating Lot 8 and Lot 9 is not supported. The applicant needs to demonstrate that each lot can facilitate this effluent disposal area of 655m<sup>2</sup>. This will require overlaying an area of this size on the Bushfire Assessment Report plans that demonstrate the Asset Protection Zone, as this area will be cleared. Should the area not fit, or if it is proposed to use a different area, then the Flora and Fauna Assessment will need to consider this additional clearing which is yet to occur.

## **Land Contamination**

The applicant has stated that the documentation provided to date has "clearly demonstrated that suitable measures are in place to remediate the land to comply with all relevant criteria". However, the provisions of SEPP 55 are yet to be adequately addressed as detailed below:-

- The document has not indicated the timeframes that will be met in relation to the further investigation and remediation works. In turn, it is not clear whether the site will be suitable for the proposed residential use prior to subdivision.
- Further to this, it is not clear whether development consent has been obtained in accordance with SREP 20 and SEPP 55 for the remediation works, or whether it has been addressed through a historical development application (such as a part of the rehabilitation works undertaken on the site). Remediation works require development consent in the Penrith Local Government Area, as all works are considered Category 1 remediation works under SEPP 55 due to SREP 20.
- It is acknowledged that Penrith Lakes Development Corporation is intending to follow the Site Auditor Scheme. However, a Site Audit Statement and its associated Report should then be provided to Council prior to the determination of this development application to ensure that the site is suitable for the proposed residential use. Development consent for the remediation works is still required.

The statement prepared by DLA Environmental dated 22 November 2013 outlines the findings of a historical contamination report, identifying that there was lead contamination at one location and asbestos contamination at another, however this report has not been provided to Council for review. It is recommended in the Statement that further investigations are undertaken to delineate the extent of these contaminants. It is also stated that "it is likely that remediation will be required", and that these works will be undertaken by DLA. It is stated that "the strategy to remediate the area is appropriate in accordance with SEPP 55 - Remediation of Land", however no Remedial Action Plan or other documentation has been submitted to Council for review to ensure that this is the case.

State Environmental Planning Policy No 55 – Remediation of Land states that:

- (1) 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.*

In this instance, to address point (a), Council has considered whether the land is contaminated, and the statement provided by the applicant has confirmed that contamination is present on the site, although Council has not yet received or reviewed the report (Coffey, 2011) on which this finding was based.

Under the provisions of the SEPP and DCP, Council needs to be satisfied that the land is suitable, or that it can be made suitable for the development to address point (b). However, Council has not received sufficient information about the contamination status of the site, and a Remedial Action Plan that outlines what remediation works will be carried out on the site has not been prepared, although it is suggested that this will make the site suitable for its intended use. In addition, it is not clear when this remediation work is intended to take place (such as prior to this subdivision). Should the works already have been undertaken, then a Site Audit Statement and the associated Report need to be submitted.

### **Lagoon Management**

The Lagoon Management Plan is considered to be insufficient as it does not provide sufficient details regarding overall management strategies for the entire lagoon. In order to manage the entire lagoon, a management plan under one entity rather than multiple owners is required. The community management statement for the lagoon would then need to be registered to each newly created lot.

### **Flora and Fauna**

The Flora and Fauna report (prepared by Justin Russell of the Penrith Lakes Development Corporation, 14/11/2014) identified that the site contains Cumberland Plain Woodland (Critically Endangered Ecological Community) and River Flat Eucalypt Forest (Endangered Ecological Community).

The report (prepared by Justin Russell of the however is based entirely on a desktop review and there is no reference made to survey dates or methodology. It is also doesn't appear that there has been any on-ground surveying of the site. The Escarpment Grassland Survey (prepared by Justin Russell of the Penrith Lakes Development Corporation, dated 25/3/2014) is an exception to this, outlining methodology and on-ground surveying.

The Flora and Fauna report identified cleared grasslands that contain large quantities of native ground covers. Following a request from Council, the potential for these to be considered 'Derived Native Grasslands' under the TSC Act was investigated. This showed that while there is a diverse cover of native ground species present, there is a greater cover of exotic species. It is therefore not considered to be "Derive Native Grasslands" of the Cumberland Plain. Verbal advice from The NSW Office of Environment and Heritage confirmed that the assessment indicates it is not part of the Endangered Ecological Community.

The site contains the threatened flora species *Grevillea juniperina* as well as 5 threatened birds. The Flora and Fauna report identified the site as containing good quality bushland with good habitat including tree hollows, a wetland, good vegetation structure and a diversity of species. Apart from the central cleared areas, the site is overall in moderate to good condition. The Flora and Fauna report however does still not consider the impacts of OSSM on the vegetation. This information was requested previously and is yet to be addressed.

The wetland is also proposed to be subdivided across the 9 lots. Some lots are highly constrained with very little opportunity for development activity outside of EECs - the impact on Critically Endangered vegetation, particularly in lots 8 and 9 is considered unnecessary. The existing cleared area within these lots is considered insufficient for the proposed residential use and would result in unnecessary loss of vegetation and associated habitat. The lot configuration should be reconsidered to avoid impacts on the vegetation. Despite the provision of a "Lagoon Management Plan", the waterbody should not be included in the lot arrangement. The waterbody should be excluded from the residential areas as a residual lot.

Based on the above comments and review of the proposal, the proposed application is unsatisfactory and for further consideration to be given, the following matters would need to be addressed:-

- The lot configuration is to be reviewed to reduce the number of lots. Lots 9 and 8 in particular should be

reconsidered as there is little room for a dwelling and associated yard areas outside of the endangered vegetation. The waterbody should not be included in the lot arrangement.

- The waterbody should be excluded as a residual lot.
- As requested previously, the applicant is to resubmit the flora and fauna report with consideration of the impacts of OSSM on the vegetation. If the applicant of waste water will have a detrimental impact on the vegetation on site (such as through increase water and nutrients), then Assessment of Significance is to be re-done to consider this. The proposed location of the lots, dwelling envelope, APZ and effluent management area should be indicated to ensure that there is sufficient room within the cleared areas.

*Socioeconomic Impacts*

The proposal is not considered to result in adverse socio - economic impacts to the surrounding community provided the above environmental considerations are sufficiently addressed.

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

The site is not considered to be suitable for the proposed development as the extent of urban development capability under the provisions of the SEPP (Penrith Lakes) and associated Structure Plan are yet to be established.

Until such time as permissibility is established, and all environmental investigations and reporting is undertaken to demonstrate site suitability for intensified residential development, the proposal is not considered to be a supportable form of development.

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

**Community Consultation**

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

**Community consultation**

In accordance with Chapter 2.7 of the Penrith Development Control Plan for the City of Penrith 2006 – Notification and Advertising the application was publicly notified and advertised for fourteen (14) days.

In response two individual submissions were received and a petition was received.

**Submissions**

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

<i>Issue Raised</i>	<i>Comments</i>
<p>The assessment of the application should not be finalised prior to the completion and full consideration of the Master Plan currenting being prepared by the Office of Penrith Lakes.</p> <p>The benefits of the master plan should not be constrained, diluted or compromised by conflicts with a prematurely approved subdivision framework</p>	<p>The issue raised is considered to be a satisfactory reason for refusal as the proposal is not a permissible form of development under the current planning instruments and pre-empts broader stratgic planning work requiring preparation, exhibition and adoption of a revised Structure Plan across the precinct.</p>
<p>Church Lane is narrow and provides a dangerous bend fronting proposed Lot 2. Is there a planned upgrade of Church Lane?</p>	<p>The proposal has been reviewed by Council's Engineers and the existing road carriageway is considered to be suitable for the proposed development noting that the proposal is not supported at this point in time.</p>

Will sewerage services be connected and if so when and at who's cost?	The sites will require the provision of individual on - site sewerage management systems at the cost of the future land owner in conjunction with future dwelling house proposals.
Is there a plan for additional street lighting, improved road drainage and? undergrounding of power lines	The proposal does not propose or require the provision of an additional street lighting, undergrounding of power lines of road drainage upgrades.
As Lot 1 proposes to wrap around existing lots, will fencing be undertaken by the developer?	No fencing is proposed as part of the current application however the provision of boundary fencing is a separate civil matter to be pursued through the Dividing Fences Act noting that the proposal is not supported at this point in time.
What will be done to minimise dust caused by the development of the nine lots?	The proposed subdivision is not supported. In the event that the application was approved, conditions would be imposed to regulate erosion and sedimentation and dust emissions resulting from works.
<p>The proposed Stage 2 Subdivision (DA14/0297) will create negative social and environmental impacts on Penrith, will increase traffic, reduce safety, increase flood risk and deny foreshore public access around the lake foreshore.</p> <p>A reduction in the number of weirs from 4 to 2 and the flooding impacts are unsatisfactory.</p>	<p>The stage 2 subdivision proposal is the subject of a separate development application.</p> <p>Weir reduction is not the subject of this application.</p> <p>The issue raised with respect to increased flood risk is considered to be a satisfactory reason for refusal as the proposal has not sufficiently addressed broader filling, site drainage and flood management implications across the site, throughout the Penrith Lakes Scheme and downstream properties.</p> <p>Issues regarding increased traffic and foreshore access are either not applicable to this application (foreshore access) or are satisfactory, as the proposal is not considered to adversely impact on the capacity of the road to accommodate additional vehicles from the proposed lots.</p>
The application makes references to a Deed of Agreement (9187) which has never been made public. Parties to the agreement should disclose the details of the agreement to the community.	Council is not party to the deed of agreement and cannot arrange disclosure of its contents.
The applications must comply with SEPP 11 - Penrith Lakes.	SEPP 11 relates to 'Traffic Generating Developments' and not Penrith Lakes, is a repealed instrument and is not applicable to the proposal. The applicable instrument is SEPP (Penrith Lakes) 1989.

## Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	Not supported
Heritage	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Environmental - Biodiversity	Not supported
Planning and Sustainability	Not supported

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

The proposed development is not considered to be in the public interest due to the outstanding matters raised concerning contamination and remediation, lagoon management, flood management, protection of critical vegetation and biodiversity preservation.

### **Conclusion**

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In assessing this application against the relevant environmental planning policies, the proposal does not satisfy the aims, objectives and provisions of these policies.

Support for this application would set an undesirable precedent given a structure plan is yet to be prepared, exhibited and adopted for the Penrith Lakes Scheme and a commitment to urban development capability is yet to be resolved through the Department of Planning and Environment and NSW Office of Penrith Lakes.

Therefore, the application is not worthy of support for the attached reasons.

### **Recommendation**

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1. That the Development Application be refused for the reasons outlined within this report.
2. That those making a submission are advised of the determination.

## Refusal

### 1 X Refusal condition - Likely impacts

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act as the application has not sufficiently demonstrated that contamination and remediation, acoustic impacts, site drainage and precinct wide flood management matters have been sufficiently addressed.

### 2 X Refusal condition - SEPP Penrith Lakes Scheme

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act for the following reasons:-

- The proposed development is not a permissible form of development having regard to Clause 4, 7 and 8 of State Environmental Planning Policy (Penrith Lakes Scheme) 1989; and
- Clause 2(2)(c) (Aims / Objectives) of the SEPP seeks to permit the identification of land which may be rezoned for urban purposes but does not itself permit development for urban purposes.

### 3 X Refusal condition - Suitability of the site

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the application has not demonstrated the site is suitable for the proposed development with respect to contamination and remediation investigations, acoustic impacts, site drainage and flood management.

### 4 X Special 10 (Refusal under Section 79C(1)(e) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(e) of the Environmental Planning and Assessment Act as the proposal is not considered to be in the public interest.

### 5 X Special 2 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the application has not sufficiently demonstrated that the land is suitable for the proposed development with regard to State Environmental Planning Policy No. 55 - Remediation of Land

### 6 X Special 4 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the aims, objectives and development standards within Penrith Development Control Plan 2006.

### 7 X Special 7 (Refusal under Section 79C(1)(b) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act in terms of likely impacts resulting from the development with respect to flood management, lagoon management, protection of critical vegetation and threatened biodiversity, contamination testing and potential remediation.

### 8 X Special 8 (Refusal under Section 79C(1)(c) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the site is not considered to be suitable for the proposed development due to likely environmental and social impacts resulting from the proposed works and the need for further strategic investigation (master planning and structure planning) to ascertain appropriate locations for intensified urban development within the Penrith Lakes Scheme.

### 9 X Special 9 (Refusal under Section 79C(1)(d) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(d) of the Environmental Planning and Assessment Act due to matters raised in the received submissions.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2006

### Part 2 - City wide controls

An assessment of the applicable development standards within the DCP is outlined below:-

#### 2.1 Contaminated Land

The applicant is yet to submit sufficient information to adequately key considerations within SEPP 55 or demonstrate that the land is suitable for the proposed residential subdivision and future development of residential development. Contamination and potential remediation is addressed in further detail within the 'Likely Impacts' section of this report and are sufficient reasons to refuse the application.

As a result Clause 2.1 of DCP 2006 is not considered to have been sufficiently addressed or satisfied.

#### 2.3 Engineering Works

The applicant is yet to submit sufficient information to adequately key considerations within DCP concerning the ownership and management of the Lagoon. As a result the applicant has not sufficiently demonstrated that the proposed residential subdivision and future development of residential development on the lots is a suitable outcome. This is addressed in further detail within the 'Likely Impacts' section of this report and are sufficient reasons to refuse the application.

#### 2.4 Erosion and Sediment Control

The provisions of suitable erosion and sedimentation controls can be conditioned in the event that the application is supported.

#### 2.5 Heritage Management

The site contains a listed heritage item however no works are proposed to the item. The application was referred to Council's heritage Advisor who made the following comments:-

- The applicant is to verify if the concrete and the pise ruins are proposed to be preserved.
- The CMP recommends a long term maintenance plan is to be prepared. This should be requested – min 20 years and to be costed by a Quantity Surveyor.
- The ruins would be preferably located on a site that becomes a community open landscape and be funded and maintained by the various subdivision lots in the future.

The existing item is proposed to be preserved and a CMP could be conditioned to be provided prior to the issue of any subdivision certificate if the application was supported. The request for a communal curtilage and funding mechanism is outside the scope of the proposed works and is not considered to be a feasible option for the developer or future occupants of the subdivision (i.e being a community title subdivision scheme with a community association lot containing the heritage item).

#### 2.6 Landscape

The site is affected by trees . The proposed earthworks and APZ requirements across the site will necessitate some tree removal which is considered satisfactory subject to conditions of consent if the application was to be supported.

Street planting can also be conditioned in the event that the application was supported.

#### 2.7 Notification and Advertising

The application was publicly notified and exhibited in accordance with the DCP requirements.

## **2.9 Waste Planning**

The proposed development is considered to be suitable to accommodate waste collection and waste collection vehicles within the existing road reserve.

## **2.10 Flood Liable Land**

While the proposed subdivision is not adversely affected by flooding, broader flooding implications remain outstanding across the entire Penrith Lakes Scheme. These broader issues are addressed in further detail within the 'Likely Impacts' section of this report.

## **2.13 Tree Preservation**

The site is affected by trees . The proposed earthworks and APZ requirements across the site will necessitate some tree removal which is considered satisfactory subject to conditions of consent if the application was to be supported.

## **Part 4 (Chapter 4.7) - Guidelines for subdivision**

## 2 Controls for Subdivision in Residential Zones

Clause	Not Applicable	Complies	Does Not Comply	Comments
2.2 Design Principles	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.3 Allotment Orientation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.4 Site Frontage	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.5 Allotment Dimensions	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.6 Road Network	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.7 Road Design and Construction	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.8 Landscaping and Site Design	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.9 Services	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.10 Drainage	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Refer to comments within 'Likely Impacts' for concerns regarding site drainage
2.11 Public Open Space	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.12 Environmental Site Management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	

In assessing the proposed application the following DCP non compliances were identified which warrant refusal of the Development Application:-

1. Clause 2.2 - Design Principles - The land is not considered to be suitable for subdivision have regard to its relationship to the broader lakes scheme and the pre-emptive nature of the proposal prior to the formalisation if a revised structure plan. The application has also inadequately considered heritage and archeological conservation and management of the existing lagoon.
2. Clause 2.9 - Servicing - Appropriate servicing is yet to be established as the land is not yet permissible for the proposed development and is yet to be designed having regard to an exhibited structure plan as per the SEPP (Penrith Lakes Scheme) 1989.
3. Clause 2.10 - Drainage - The proposal doesnt adequately address how flooding is controlled across the broader precinct.
4. Clause 2.12 - Environmental Site Management - The proposal is not considered to meet the objectives in that the proposed does not improve the environmental amenity of the development or surrounding locality and is yet to demonstrate that key natural features will be preserved and protected including established trees and vegetation.