PENRITH
CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0768
Proposed development:	Colorbond Garage
Property address:	426 - 430 Londonderry Road, LONDONDERRY NSW 2753
Property description:	Lot B DP 399693
Date received:	4 November 2019
Assessing officer	Luke Caruana
Zoning:	RU4 Primary Production Small Lots - LEP 2010
Class of building:	Class 10a
Recommendations:	Refuse

Executive Summary

Council is in receipt of a development application for the subject development on the subject site and the proposal is a permissible land use with Council consent.

Site & Surrounds

The subject site is situated on the west side of Londonderry Road. It is 2.681Ha in area, is relatively flat and is orientated to the east.

An inspection of the site was undertaken on 15/11/2019 and the site is occupied by several large agricultural sheds located toward the rear and a storage shed located toward the front of the lot.

The surrounding area is characterised by rural residential development.

Proposal

The proposed development involves the construction of a steel garage including landscaping and associated drainage works.

Plans that apply

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

- ## Section 4.14 - Bushfire prone land assessment

The development has been assessed in accordance with the matters for consideration under Section 79BA (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following points are made:

- The site is identified as being entirely bushfire prone land
- The subject development is surrounded by managed land in all directions for 100m
- The development is subject to a bushfire attack level of BAL-LOW

- ## 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.

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

State Environmental Planning Policy No 55—Remediation of Land

The proposal is inconsistent with the State Environmental Planning Policy No 55-Remediation of Land (SEPP 55) and the following is noted.

When determining a development application for any development of land, Clause 7 of SEPP 55 requires that Council consider 'if the land is contaminated' and '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'.

A review of aerial photography has revealed that fill material has been imported onto the proposed site. The origin and contamination status of the fill material is unknown, and therefore Council cannot, with certainty, be satisfied that the land is not contaminated. It is noted that fill material has been placed in an area which corresponds with the effluent disposal area.

Accordingly, documentation was requested to be submitted detailing the source, quantity and nature of the fill imported onto the site and the dates/timeframe during which the fill was imported onto the site.

The applicant responded with correspondence stating that no fill was imported and that the material used to fill in the dam was sourced on site.

Council reviewed this correspondence to determine whether it is satisfied that the fill material is suitable for the proposed use. Council determined that the information provided does not demonstrate to Council's satisfaction that the fill material is suitable and accordingly a contamination assessment of the fill material was requested. The assessment was to be carried out by an appropriately qualified person in accordance with State Environmental Planning Policy (SEPP) 55 - Remediation of Land, relevant contaminated land guidelines, and the National Environment Protection (Assessment of Site Contamination) Measure 2013, and to be submitted to Council for consideration.

The report was to provide an assessment of the fill material, which Council believes was imported to the site, and determine whether the fill material is suitable for its use on the site, and/or further actions to be taken to make the site suitable for the proposed development.

Further, the applicant was notified that all remediation works within the Penrith Local Government Area are considered to be Category 1 works under SEPP 55 and SREP 20. Should any contamination be found in the fill material and should remediation be required, development consent is to be sought from Penrith City Council before the remediation works commence.

A Soil Contamination Assessment Report: Dam Fill Material Soil Investigation prepared by National Asbestos Solutions (dated 21 February 2020 REF: 00003654.01 SCA) was submitted for review and the following is noted.

The contamination assessment is incomplete and not in accordance with the National Environmental Protection (Assessment of Site Contamination) Measures 2013 or NSW EPA Guidelines for Consultants Reporting on Contaminated Sites.

The following elements were not included in the report:
- Executive Summary;
- Site History;
- Site Condition;
- Geology and Hydrology;
- Field quality assurance and quality control; and
- Site characterisation

The contamination assessment only addresses asbestos contamination and not other potential contaminants.

The number of samples taken is insufficient with the minimum number required in accordance with Table A of the NSW EPA Sampling Design Guidelines.

Figure 1 - Area of investigation only identifies an area of 40m2, however a significantly larger area on the site has been impacted by fill material.

With the above noted, the applicant was requested to provide a detailed site investigation assessment of the site that and to address the above.

A limited Soil Contamination Assessment Report prepared by National Asbestos Solutions (dated 21 February 2020 REF: 00003654.02 SCA) was submitted for review and the following is noted.

-Several elements required for a detiled site investigation report have not been included, namely:
- Executive Summary;
- Conceptual Site Model;
- Objectives; and
- Results (raw data results and summary is provided but the assessment criteria and table are missing).

-Section 5.5 of the report identifies imported landfill, underlying groundwater, surface water and down gradient residential occupants as sensitive receivers, however Section 3.2 of the report states "this report does not address local hydrology or geology...' The report does not provide an assessment of ground or surface waters or consider EILs, despite those areas being identified as sensitive receptors. Further clarification is required in regards to why receptors identified as sensitive were not included in the assessment. Further, it is unclear how imported landfill could be identified as a sensitive receiver.

-The report again only addresses an area of 40m2. however, an area of 570m2 has been impacted by fill. The report states that 4 samples were taken on 13/2/20, however in accordance with NSW EPA Sampling design Guidelines, an area of 570m2 requires a minimum of 6 samples.

The report states that the samples were taken on 13/2/20. The Certificate of Analysis (for asbestos) states that samples analysed for asbestos were received on 17/2/20. Sectiion 11.3 of the Limited Soil Contamination Assessment states that all samples were collected on the same day in accordance with Section 8 of the Limited Soil Contamination Assessment. The date and time stamped images of the samples shown in Appendix 1 indicates that all samples were taken on 13/2/20. The Analytical Report states that samples were received on 31 March 2020. Section 11 of the report states that 'quality assurance and quality control applied to this project were in accordance with AS4482.12005'. The sample holding times exceed the holding times listed in AS4482.1:2005 for soil analysis for several analytes. In accordance with AS4482.1:2005, the following holding times are required:
- Petroleum hydrocarbons 14 days
- Polycyclic Aromatic Hydrocarbons (PAH) 14 days Phenols 14 days
- Mercury 28 days
- Pesticides 14 days

Section 8 of the report states that samples were collected in 250g bags. The Soil Sample Location and Observations shown in Appendix 1 of the Limited Soil Contamination Assessment clearly shows 4 samples in bags, and 4 samples in jars, all of which are dated 13/2/20. Only 4 samples were analysed. The samples placed in bags and jars were labelled with the same sample code (eg. a sample bag is coded SS1 and a sample jar is coded SS1 etc). It is unclear why these samples have the same sample code. .No commentary has been provided in regards to the samples collected in jars. In addition, as only 4 samples were analysed, it is unclear why the other 4 samples were not analysed.

The report concludes that '...the material used to fill in the dam is suitable for its intended use and does not pose any risk with respect to human or environmental receptors'. It is unclear how this conclusion was made as no commentary has been provided in the report in relation to ecological assessment criteria.

Section 12 of the report states that 'only those chemicals with a documented HIL, HSL and waste classification limit have been summarised in the tables below'. No results, tables or criteria tables are shown in the report.

With the above noted, the applicant was again requested to provide a detailed site investigation assessment of the site that and to address the above.

A Fill Material Investigation Report prepared by National Asbestos Solutions (dated 24/9/20, REF: 00003654.03SCA) was submitted for review and the following is noted.

A Detailed Site Investigation has previously been requested.

he Fill Material Investigation Report includes the required detailed site investigation elements which were not provided in the previous contamination assessments. This information, although brief, contains the necessary information for a detailed site investigation and is considered satisfactory.

The area of investigation now indicates an area of 570m2. This is consistent with previous comments and is considered satisfactory.

The Fill Material Investigation Report includes the findings of previous contamination assessments. As previously stated, the sample holding time required by AS4482.1:2005 was exceeded in the samples collected for the limited Soil Contamination Assessment and therefore considered unsatisfactory. However, a further 8 soil samples and 2 groundwater samples were collected as part of the Fill Material Investigation Report which satisfies the NSW EPA Sampling Design Guidelines and is therefore considered satisfactory in terms of the number of samples taken.

The Fill Material Investigation Report provides inadequate justification for the lack of assessment of ecological investigation levels. Ecological receptors were identified in the conceptual site model and as such, should be included in the assessment.

The Fill Material Investigation Report states that 8 soil samples and 2 groundwater samples were collected as part of the contamination assessment. The results of the groundwater samples have not been included. It is assumed that samples 3654.W1 and 3654. W2 are the groundwater samples given the depth the samples were taken from, however the analytical report makes no mention of water samples. The Fill material Investigation Report states that 'analytical results for groundwater samples did not detect any concentrations for Metals, PAH, TRH, BTEX or VOC'. It is unclear how that conclusion was made when the results of groundwater sampling have not been provided or addressed. Given groundwater was identified as a potential sensitive receptor, this aspect is should have been addressed.

The Fill Material Investigation Report does not provide a clear statement that the site is suitable for the proposed use. Whilst this is implied, a clear statement is required in accordance with the SEPP 55 Planning Guidelines. Therefore, Council does not have sufficient information to determine that the site is suitable for the proposed use.

Based on the above comments and review of the application Council cannot, with certainty, confirm whether the site is not contaminated and as such the proposed development is considered unsatisfactory.

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.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 7.6 Salinity	
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.7 Servicing	Complies

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

There are no draft Environmental Planning Instruments that apply to the proposal.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Does not comply - see Appendix - Development Control Plan Compliance
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D1.1. Rural Character	Complies
D1.2. Rural Dwellings and Outbuildings	Complies - see Appendix - Development Control Plan Compliance
D1.3. Farm buildings	N/A
D1.4 Agricultural Development	N/A
D1.5. Non-Agricultural Development	N/A

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

No planning agreements apply.

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

The proposed development complies with and has been notified in accordance the requirements of the Regulations.

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

Council cannot confirm, with certainty, that the land on which is being developed is not contaminated. Therefore the development may result in undesirable and adverse impacts to the occupants of the site.

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

Council cannot confirm, with certainty, that the land on which is being developed is not contaminated. Therefore the development is not suitable for the site.

Section 4.15(1)(d) Any Submissions

Community Consultation

No submissions were received.

Section 4.15(1)(e)The public interest

The proposed development has been assessed to be unsatisfactory with regard to applicable planning instruments and may result in negative impacts and as such, support of the proposal would not be in the public interest.

Conclusion

The development application has been assessed against the applicable plans and policies including State Environmental Planning Policy No. 55 - Remediation of Land, Penrith LEP 2010 and Penrith DCP 2014 and is not supported. Despite numerous requests and opportunities for additional reports to be prepared, the proposal has not demonstrated compliance with the relevant legislation and is therefore not worthy of support. The development application is therefore recommended for refusal.

Recommendation

1. That DA19/0768 for the construction of a rural shed at Lot B DP 399693 No. 426-430 Londonderry Road, be refused for the following reasons;

CONDITIONS

Refusal

1 X Special 02 (Refusal under Section 4.15(1)(a)(i) of EPA Act 1979)
The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following Environmental Planning Instruments:

- State Environmental Planning Policy No. 55 Remediation of Land:
- When determining a development application for any development of land, Clause 7 of SEPP 55 requires that Council consider 'if the land is contaminated' and '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 the development is proposed'.

2 X Special 04 (Refusal under Section 4.15(1)(a)(iii) of EPA Act 1979)
The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of Penrith Development Control Plan (DCP) 2014:

The application has not satisfied Council with respect to the requirements under Parts C4 'Land Management' and C5 'Waste Management' of the DCP.

3 X Special 07 (Refusal under Section 4.15(1)(b) of EPA Act 1979)
The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act in terms of the likely impacts of the development including those related to:
- Negative impacts related to the occupants use of the site considering the unclear nature and potential contamination of unauthorised fill on site.

4 X Special 08 (Refusal under Section 4.15(1)(c) of EPA Act 1979)
The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the following reasons:
- The application failed to address the nature and potential contamination of the unauthorised fill.

5 X Special 10 (Refusal under Section 4.15(1)(e) of EPA Act 1979)
The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* as the proposal is not in the public interest.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

Refer to discussion in detailed assessment of State Environmental Planning Policy N. 55 - Remediation of Land and 7.7 Servicing.

D1 Rural Land Uses

D1.2	Rural Dwellings and Outbuildings	Complies Y/N	Comments
1.2.1	**Siting and Orientation of Dwellings and Outbuildings** Dwellings and associated buildings should be sited to maximise the natural advantages of the land in terms of: i) Protecting the privacy of proposed and existing buildings; ii) Providing flood-free access to the dwelling and a flood-free location for the dwelling itself; iii) Minimising risk from bush fire by considering slope, orientation and location of likely fire sources; iv) Maximising solar access; v) Retaining as much of the existing vegetation as possible; and vi) Minimising excavation, filling and high foundations by avoiding steep slopes (greater than 1 in 6). b) The design of the development must consider all components including fencing, outbuildings, driveways and landscaping. c) Where practical, all buildings on a site, including dwellings and outbuildings, should be clustered to improve the visual appearance of the development in its landscape setting and reduce the need for additional access roads and services.	Yes Yes Yes	

1.2.1	**Landscape / Scenic Character** a) Buildings on sloping land should be sited (where natural features permit) so they do not intrude into the skyline. b) Buildings should not be placed on the ridgeline or peak of any hill unless there are no alternative locations possible. c) Where practical, buildings should be sited to take advantage of existing vegetation to provide privacy from passing traffic and public places, screening from winds and a pleasant living environment. d) Roads should be designed and located to run with the contours of the land. e) Rooflines and ridgelines should reflect the setting of the dwelling, incorporating simple shapes to step a building down with a sloping site or level change. f) Simple rooflines should be used to minimise the likelihood of twigs and leaves building up in valleys and presenting a bushfire hazard.	NA Yes Yes Yes Yes Yes	Relatively flat development area
1.2.2	**Setbacks and Building Separations** **1) Setbacks from Roads** a) A minimum setback of 15m from public roads is required for all dwellings and outbuildings. Formal parking areas are not permitted within the setback. b) A variety of setbacks will be encouraged to prevent rigidity in the streetscape. c) A minimum setback of 30m is required to all classified roads (except Mulgoa Road), Luddenham Road, Greendale Road and Park Road (except in the villages of Londonderry, Wallacia and Luddenham). Please contact Council to discuss. d) A minimum setback of 100m is required to Mulgoa Road for all dwellings and outbuildings (except in the Mulgoa Village). **2) Setbacks from Watercourses** a) A minimum setback of 100m is required from the Nepean River. This is measured from the top of the bank. The river includes all elements, such	Yes Yes Yes Yes Yes Yes Yes NA	

		as lagoons and backwaters. Council will determine the minimum setback required if the “bank” is difficult to define. b) A minimum setback of 75m is required from South Creek for all dwellings and outbuildings. c) A minimum setback of 40m is required from any other natural watercourses for all dwellings and outbuildings to minimise impacts on the watercourse. **3) Building Separations and Side Boundary Setbacks** a) Dwellings on adjacent properties should be considered when determining the location of a proposed dwelling to ensure that separation distances are maximised as far as is reasonably possible to maintain amenity for each dwelling and minimise noise and privacy intrusions. b) The minimum side setback for dwellings is 10m where the allotment is 2 hectares or larger. c) The minimum side setback for dwellings is 5m where the allotment is less than 2 hectares. d) Dwellings on one allotment should be separated as much as reasonably possible from any farm buildings or other buildings on adjacent allotments where there is potential for noise generation from those farm buildings/other buildings.	NA NA NA		

1.2.3	**Site Coverage, Bulk and Massing**		
	1) Dwellings shall have a maximum ground floor footprint of 500m2 (including any undercover car parking areas).	NA	
	Note: 'Ground floor footprint' is the area measured from the external face of any wall of any dwelling, outbuilding (other than a farm building), dual occupancy dwelling, garage or undercover car parking area, animal house or garden shed.	NA	
	2) Dwellings shall have a maximum overall ground floor dimension of 45m, with a maximum of 18m at any one point.	NA	
	3) The maximum floor space of any second storey is to be 70% of the floor space of the lower storey of the dwelling.	Yes	
	4) No more than three (3) undercover car parking spaces shall face towards a public road or place. Any additional garages shall be setback behind the building line and screened.	Yes	
	5) A maximum ground floor footprint of 600m2 will be permitted on any one allotment, including the dwelling and all associated structures, but excluding 'farm buildings' and any 'agricultural or non-agricultural development' referred to other parts of this chapter.		

1.2.4	**Height, Scale and Design** a) Dwellings shall be no more than two storeys in height, including garage and storage areas. b) If liveable rooms are located in the area immediately below the roof then this level will be counted as a storey. c) The maximum height of the ceiling of the top floor of all buildings should not exceed 8m above natural ground level. d) On sloping sites, split level development is preferred. The floor level of the dwelling at any point should not be greater than 1m above or below the natural ground level immediately below the floor level of that point. Cut and fill should be limited to 1m of cut and 1m of fill as shown in Figure D1.7. **Design and Quality** a) The design of dwellings and associated structures should be sympathetic to the rural character of the area. b) Fencing is to be of an open rural nature consistent in style with that normally found in rural areas. Internal courtyard fencing or entry fencing should be sensitive to the rural environment.	Yes Noted Yes NA Yes NA	Relatively flat development area
1.2.7	**Materials and Colours** 1) Colours of external finishes should be in keeping with the natural surroundings, be non-reflective and utilise earthy tones, unless it can be demonstrated that the proposed colours and finishes will have no visual impact or will complement the rural character. 2) Building materials with reflective surfaces such as large expanses of glass, unpainted corrugated iron, concrete blocks, sheet cladding or similar finishes should be avoided. Where these materials are unavoidable, they should be screened with landscaping to minimise visual impact. 3) Re-sited dwellings may be considered in rural areas, however, the external finishes may be required to be upgraded to Council's satisfaction.	Yes Yes NA	

D1.3	*Farm Buildings (Also relates to Sheds for Non Agricultural Uses)*	Complies Y/N	Comments

1.3.1	**Siting and Orientation** 1) Farm buildings and outbuildings should be clustered in one location on properties. Where possible, this should be close to dwellings, but not where this will result in land use conflict. 2) Farm buildings should have complementary colours and finishes to the dwelling house and surrounding environment. 3) Farm buildings should not be erected on land having a slope in excess of 15%. Cut and fill for farm buildings should be limited to 1m of cut and 1m of fill as shown in Figure D1.11. 4) Farm buildings should be sited on the land so any disturbance to native vegetation is minimal. 5) The narrowest elevation of farm buildings should face the road. 6) Farm buildings shall be set back a minimum of 40m from any watercourse. 7) Farm buildings should be setback behind the building line of the existing dwelling house on the property. 8) Farm buildings should be a minimum distance of 10m from a dwelling located on the same allotment as the farm building. 9) Farm buildings should be a minimum distance of 20m from a dwelling located on an adjacent allotment to the farm building. 10) Landscape buffers should be provided, where possible, between farm buildings and nearby dwellings to minimise the visual impact of the farm building. 11) Farm buildings should be a minimum distance of 5m from the side boundaries.	Yes Yes Yes Yes Yes Yes Yes No Yes Yes Yes	Siting is appropriately clustered and maintain rural amenity
1.3.2	Floor Space, Height and Design 1) For allotments 3 hectares in size or	Yes	

	less, the maximum accumulative building footprint of all farm buildings on an allotment shall not exceed 200m² (see Figure D1.13).	NA		
	2) For allotments between 3 hectares and 10 hectares in size, the maximum accumulative building footprint of all farm buildings on an allotment shall not exceed 400m².	NA		
	Note: 'Accumulative building footprint' means the total sum of the ground floor area of all of the farm buildings on a single property. (The floor area under an awning may also be included as part of the accumulative building footprint, depending on the circumstances).	NA		
		Yes		
	3) For allotments more than 10 hectares in size, the maximum accumulative building footprint of all farm buildings on an allotment shall not exceed 600m².	Yes		
		Yes		
	4) Intensive agricultural uses may require larger accumulated building footprints than those specified above. Variation will be considered but must be justified in the application.	Yes		
	5) A farm building should not be more than 8m high.	Yes		
	6) The maximum external wall height of a farm building shall be 5m. External wall height means the distance from the natural ground level to the underside of the eaves.	Yes		
		Yes	15°	
	7) Where a farm building is higher than the dwelling on the land, the building must be located behind the dwelling and screened from view by vegetation (or similar).			
	8) The design of farm buildings should comprise traditional roof shapes to provide visual relief to the building, reduce the buildings dominance over its setting and to provide interest and character to the locality.			
	9) Farm buildings should have a maximum external wall length of 15m between distinct corners or significant features such			

	as awnings. 10) Farm buildings shall have a minimum roof pitch of 15° and a maximum roof pitch of 25°. 11) All elevations of farm buildings that face the street are to present a suitable level of detailing to minimize their visual bulk. Features which can be used include windows, awnings and verandahs.		
1.3.3	**Materials and Colours** 1) The colour of farm buildings shall complement the colours of the natural vegetation and background of the property, such as grey, brown, beige and green. 2) Farm buildings shall be constructed of non-reflective materials. Where traditional materials, such as unpainted corrugated iron, are used, the building must be screened by landscaping to minimise its visual impact. 3) The construction of farm buildings should utilise a range of materials to aid in the articulation of the building form. 4) Where farm buildings are below the 1:100 ARI flood level, they are to be constructed of materials that can withstand flooding.	Yes Yes Yes NA	