

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0448
Proposed development:	Section 4.55(1A) Modification to DA02/0555 including Modifications to Lot & Road Layout & Subdivision Staging
Property address:	19 - 105 Capitol Hill Drive, MOUNT VERNON NSW 2178
Property description:	Lot 1672 DP 855001
Date received:	28 June 2019
Assessing officer	Wendy Connell
Zoning:	E2 Environmental Conservation - LEP 2010 E4 Environmental Living - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 4.55(1A) modification application for the approved subdivision (previously approved under DA02/0555) at 19 - 105 Capital Hill Drive, Mount Vernon.

The site is part zoned E4 Environmental Living and E2 Environmental Conservation under Penrith Local Environmental Plan (LEP) 2010. The modification involves additional staging, removal of a 10m landscape buffer condition, minor adjustments to the road configuration and lot boundaries to remove battle-axe lots. The application was notified to adjoining properties and placed on public exhibition. Council received one submission was received in response.

The modification application was identified as integrated development in accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979, and concurrent approval from the NSW Rural Fire Service under Section 100b of the Fire Services Act was required due to the site is identified as bushfire prone land. The NSW Rural Fire Service advised in its letter dated 9 September 2019 that the previously issued General Terms of Approval dated 16 July 2013 remain applicable.

An assessment under Section 4.55(1A) and Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act) has been undertaken and the application is recommended for approval.

Site & Surrounds

The subject site is bounded by existing rural- residential development to the east, industrial to the north-west and rural to the north-east, south and west. Ropes Creek traverses along the western boundary through to the to the southern boundary.

The site is approximately 41ha in size and undulating. The site is identified as bushfire prone land and contains threatened fauna species. The property is subject to restrictions as to user and is burdened by an easement for transmission 60.96m wide. The site is also partially affected by 20 - 25 ANEF from Badger's Creek airport site. Flood related controls apply to the site, and the land is identified as environmental sensitive land.

Proposal

The proposed modifications include:

- One addition stage of the subdivision.
- Road layout changes and minor boundary adjustments to remove battle-axe lots.
- Removal of a 10m landscaped buffer condition.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• **Section 4.46 - Integrated development**

The modification application was identified as integrated development in accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979, and concurrent approval from the NSW Rural Fire Service under Section 100b of the Fire Services Act was required due to the land being identified as bushfire prone land.

The NSW Rural Fire Service advised in its letter dated 9 September 2019 that the previously issued General Terms of Approval dated 16 July 2013 remain applicable.

This modification application was not referred to the Natural Resource Access Regulator for concurrent approval as there is no works being modified within 40m of Ropes Creek. The General Terms of Approval previously issued remain applicable.

• **Section 4.55(1A) - Modifications involving minimal environmental impact**

The modified development has been assessed in accordance with the matters for consideration under Section 4.15 and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following assessment has been made:

- The development is substantially the same as in the original approval.
- The proposal will have minimal environmental impacts.

Section 4.15(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 modified proposal against relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and the proposal is satisfactory.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.6 Subdivision - consent requirements	Complies
Clause 7.9 Development of land in the flight paths of the site reserved for the proposed	Complies

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

Planning Proposal

A Planning Proposal seeking an amendment to Penrith Local Environmental Plan 2010 (Annual Update Amendment) applies to the site. The Planning Proposal seeks to correct various minor errors and anomalies which have been identified in the document.

Draft State Environmental Planning Policy (Remediation of Land) 2018

The modification application has been assessed against the applicable provisions of the Draft State Environmental Planning Policy (Remediation of Land) 2018 and associated guideline document, and is considered to be acceptable. The draft amendments were on exhibition from 31 January to 13 April 2018, and are currently under consideration.

Draft State Environmental Planning Policy (Environment) 2017

The Explanation of Intended Effect for State Environmental Planning Policy (Environment) 2017 was on exhibition from 31 October 2017 to 31 January 2018. The intent of the new State Environmental Planning Policy (Environment) 2017 is to combine seven existing State Environmental Planning Policies into a simple, modern and accessible instrument.

The modification application has been assessed against the applicable provisions of the Draft State Environmental Planning Policy (Environment) and is considered to be acceptable. Refer also to discussion under the Sydney Regional Environment Plan No. 20 - Hawkesbury Nepean River (No. 2 - 1997) section of this report.

The Draft State Environmental Planning Policy (Environment) 2017 is currently under consideration.

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

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

There is no planning agreement applying to this development.

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

The modification is minor in nature and predominately relates to the road layout and lot configuration changes, as well one addition stage of the subdivision. Therefore only minimal impacts would be expected.

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

The modifications proposed under this application are considered minor in nature. The lots subject to boundary adjustments still meet minimum lot size requirements under Penrith LEP 2010. The lot yield remains the same, with no additional lots to be created. The modification is therefore considered to be suitable, as it is consistent with the requirements and zone objectives under Penrith LEP 2010 and Penrith DCP 2014.

Section 4.15(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.

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed modification was notified to nearby and adjoining residents and property owners with public exhibition being between 16 and 30 July 2010. The application was later identified as integrated and was re-notified and advertised with public exhibition being between 16 and 30 August 2019. Council has received one (1) submission in response.

The submission raised objection to the removal of the 10m landscaped buffer along the northern boundary.

In response to the submission, the northern boundary adjoins both industrial and rural lands. Between the subject site and the adjoining land is Crown land holdings of approximately 20m in width. The existing industrial development to the north west provides its own landscape buffer of approximately 28m, therefore there is currently a 48m buffer between the industrial development and the subject site. The land to the north east is rural land, and provides a compatible interface with the subject site and therefore the 10m landscape is not warranted.

Referrals

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

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

Section 4.15(1)(e) The public interest

The proposed modified development is consistent with the objectives of the EP&A Act in so far as it promotes the co-ordinated, orderly and economic use of the land. As a result Council may be satisfied that the development will not generate any significant issues of public interest.

Conclusion

Council is able to modify a previously issued development consent involving minimal environmental impacts. The proposed amendments outlined in this report are minor in nature and will have minimal impacts. As such, the Section 4.55(1A) modification application is considered worthy of Council's support.

Recommendation

That DA19/0448 for modifications to approved subdivision under DA02/0555 at 19-105 Capital Hill Drive, Mount Vernon be approved subject to the following condition changes:

Amended Conditions:

Condition 1 - Plan reference updated.

Condition 2 - Updated to reflect current staging.

Condition 39 - The inclusion of minimum cul-de-sac dimensions.

Deleted conditions:

Condition 32 - Condition referred to an incorrect report. Individual Wastewater Reports will be required for each lot as part of a dwelling development approval.

Condition 36 - Assessed to be no longer required.

Added conditions:

Condition 40 and 41 - Dam dewatering and filling conditions

CONDITIONS

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

To ensure the proposed lots 9102, 9103, 9104, 9204, 9205 & 9206 are not constrained in the placement of future dwellings, outbuildings and on-site sewerage management systems, conditions of consent have been recommended for the dewatering and filling of 2 dams located on proposed lots 9102, 9103, 9205 & 9204.

The modification application was supported by a Wastewater Report, and the wastewater calculations based upon 6 people per dwelling outlined in the report are considered satisfactory. Ultimately, individual and lot specific wastewater loads will need to be assessed once the lots are subject to individual dwelling applications in the future. For the purpose of this subdivision modification application, calculating the wastewater load based on a population of 6 persons is considered reasonable and any wastewater load above this will be assessed at future development application stage for lot specific dwellings.