

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0423
Proposed development:	Alterations and Additions to an Existing Dwelling and Change of Use to a Community Facility with Associated Car Parking & On-Site Waste Water Management System
Property address:	682 Castlereagh Road, AGNES BANKS NSW 2753
Property description:	Lot 2 DP 252556
Date received:	13 July 2020
Assessing officer	James Heathcote
Zoning:	RU1 Primary Production - LEP 2010
Class of building:	Class 9b
Recommendations:	Refuse

Executive Summary

Council is in receipt of a development application for the alterations and additions to an existing dwelling and change of use to a community facility with associated car parking and on-site waste water management (OSSM) system at 682 Castlereagh Road, Agnes Banks NSW 2753.

The subject site is zoned RU1 Primary Production under Penrith Local Environmental Plan (LEP) 2010. The proposal has been lodged as a 'Community Facility', which is a permissible land use in the RU1 zone with consent. However, an assessment of the application has found that there may be components of the development that would categorise the development as a 'Place of Public Worship' which is prohibited in the zone.

The operators of the proposed community centre are Vaishnav Sangh (VS) of Sydney, which is a not-for-profit organisation and registered charity, who state their main objective being to serve the cultural, educational and welfare needs of the Indian-Australian community. VS of Sydney state that their organisation celebrates key festivals and events, conduct educational classes and participates in cultural activities; and further state that they are looking to establish a permanent base where they can expand and continue to provide their services to the community

Key issues identified for the proposed development and site include:

- Planning permissibility is unclear, with the use being potentially prohibited in the zone,
- Non-compliance with Penrith LEP zone objectives,
- Non-compliance with built form, character and amenity controls under Penrith Development Control Plan (DCP) 2014,
- Visual and acoustic amenity impacts,
- Traffic generation, congestion and inappropriate on-site parking provision,
- Lack of information provided in the Plan of Management,
- Lack of information provided pertaining to the proposed OSSM system,
- The proposed raingarden and associated infrastructure has not demonstrated compliance with Council's Water Sensitive Urban Design (WSUD) policy.

The application was advertised in the Western Weekender on the 30 July 2020 and further advertised and exhibited locally until the 17 August 2020. The application was also notified to 36 adjoining and nearby properties between 3 August and 17 August 2020, in accordance with the relevant legislation. During this period 29 unique submissions were received in response, 1 of which supported the proposal and 28 of which objected to the proposal. Due to the number of unique submissions made objecting to the development, this application is referred to the Local Planning Panel for determination in accordance with the Local Planning Panels Direction - Development Applications dated 23 February 2018.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal.

Site & Surrounds

Properties of the Site:

The subject site is located on the corner of Castlereagh Road and Koorringal Drive. The site has an area of 2.024 Hectares, with an approximate 30m frontage to Castlereagh Road and an approximately 250m frontage to Koorringal Drive in Agnes Banks. Koorringal Drive is a no through road that runs north-west from the subject site, approximately 1km in length, which connects with Coolamon Road, which is approximately 180m in length.

The site is currently occupied by an existing dwelling, associated outbuildings and structure, a swimming pool, and is surrounded by well established and mature bushes, shrubs and trees. The surrounding area is characterised by rural-residential and agricultural land. The subject site is classified as bushfire prone land, is flood affected, and includes a drainage easement 13m wide (DP 252556) along the southern boundary, fronting Koorringal Drive.

The subject site is not listed as a heritage item, conservation area or archaeological site under Schedule 5 Environmental Heritage of Penrith LEP 2010. However, the subject site is in proximity to the following heritage listed sites:

- Item 261: Castlereagh Road Alignment - 25m south-east of site (adjoining).
- Item 012: Federation farmhouse and trees - 706 Castlereagh Road, Agnes Banks - 240m south-west of site.
- Item 010: Tyreel Dwelling and Barn - 626-652 Castlereagh Road, Agnes Banks - 220m north-east of site.
- Item 008 'Chestnut', dwelling, slab cottage and trees & Item 006 'Osbourne' homestead, barn, outbuildings and plantings - 568-600 Castlereagh Road, Agnes Banks - 730m north-east of site.
- Item 015 Agnes Banks Reserve - Multiple properties including 2 Geebung Close, Agnes Banks, 36-62 Rickards Road, Agnes Banks, Agnes Banks Nature Reserve - 165m south-east of site.

The site is located approximately 815m south-east from the Nepean River. The site is located approximately 14.5km north of Penrith central business district.

Site History:

- DA20/0423 - Subject application.
- PL19/0060 - Indian community facility.
- DC18/0573 - Concerns regarding a large number of car and people gathering at the property and the noise that is caused.
- DA18/0366 - Alterations and additions to existing dwelling and change of use to a community facility with associated car parking, children's play facilities, volley ball court, viewing platform and monument #WITHDRAWN.
- PL17/0053 - Community facility.
- PL12/0153 - Dual occupancy.
- BA950526 - One room addition.
- BA017552 - Garages/carports - attached brick.

Restrictions on the Land (Lot 2 DP 252556):

- Deposited plan on Council records reviewed.
- 13m wide drainage easement noted on the plan.
- No restrictions included with DP.

Proposal

The proposed development includes the following:

- Alterations and additions to an existing dwelling;
- Change of use to a community facility;
- Construction of a 4.16m high unenclosed awning, covering an area of approximately 470sqm.
- On-site waste infrastructure for bin storage;
- Stair lift access into the community facility,
- 2 x car parking areas, and associated driveways, that cover an area of 1800sqm in area.
- Site drainage, rain-garden (for storm water treatment) and on-site waste water management system with effluent disposal areas.
- A 2.1m high colourbond fence for an approximate length of 147m along the northern boundary; and a connecting 1.8m high colourbond fence for an approximate length of 159m along the rest of the northern boundary toward the dam at the rear of the site.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• **Section 4.14 - Bushfire prone land assessment**

In accordance with Section 4.14(1)(a) of the Environmental Planning and Assessment Act 1979, the consent authority, being Council, is to be satisfied that the development conforms to the specifications and requirements of the NSW Rural Fire Service document, *Planning for Bush Fire Protection*.

The application was supported by a Bushfire Assessment Report, prepared by Firefront Bushfire Consulting, dated 27 August 2017, which states that the proposed development and building is located within well-manageable land with all surrounding land in close proximity to the site having a good history of on-going maintenance by adjoining neighbours. It was noted that, with the exception of the small pocket of woodland located 28m from the adjoining boundary to the north, there is no considerable clumps of vegetation located within 140m from the subject building. It was also noted that the development was assessed as reaching no more than a Bush Fire Attack Level rating of BAL 12.5.

Council's own assessment, in assessing the report from the applicant and checking the distance of vegetation from the site and proposed building envelope, agrees with this assessment as it aligns with the applicable parameters.

Whilst the development appears to meet the specifications and requirements of "Planning for Bushfire Protection" December 2006, and to the applicable Bush Fire Attack Level in accordance with AS 3959-2009 "Construction of Buildings in Bushfire-prone areas", and the requirements of Section 4.14 of the Act have been satisfactorily addressed, the recommendation of refusal for the proposed development is made relating to other matters mentioned throughout this report.

The application was not required to be referred to NSW Rural Fire Services as the application is not integrated development under the Rural Fires Act 1997.

• **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the development is considered unsatisfactory as detailed below:

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

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007, Schedule 3 Traffic-generating development to be referred to Roads and Maritime Services, now known as Transport for NSW (TfNSW) specifies development 'for any other purpose' where a site has access to a road (generally), generating 200 or more motor vehicles per hour, or a site with access to a classified road within 90m, generating 50 or more motor vehicles per hour.

The application has indicated less than 200 vehicles per hour being generated, with the Traffic Impact Study, prepared by Henson Consulting dated 9 February 2018, including that traffic generation of the subject site and development was estimated as having a peak of 10 vehicles per hour in the peak direction on a non-event day and 74 vehicles per hour in the peak direction on an event day.

Furthermore, Castlereagh Road (particularly where the subject site intersects) is a regional road and not a state road. This detail has also been confirmed with Council's Traffic Engineering team.

As such, referral to TfNSW is not required in this instance.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55) aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 requires a consent authority to be satisfied that the site is suitable for the proposed development, or can be made suitable prior to the determination of the application.

The site is zoned and purposed for RU1 Zone purposes, which is unchanged as a result of the proposed development. There is no recorded history of any contaminating activities occurring on the site. Review of historical aerial imagery has confirmed the use of the site for rural-residential use, with no agricultural land use activities occurring on the site.

As such, the application has satisfactorily addressed the considerations of SEPP 55.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposed development against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and although the development proposal is not in conflict with the Policy, the development application is recommended for refusal based on other matters.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 5.10 Heritage conservation	N/A
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Does not comply - See discussion
Clause 7.7 Servicing	Does not comply - See discussion

Clause 1.2 Aims of the plan

Clause 1.2(1) states that Penrith LEP 2010 aims to make local environmental planning provisions for land in Penrith in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

Clause 1.2(2) specifies particular aims of Penrith LEP 2010, including the following most applicable aims:

(b) To promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,

(c) To accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity,

(e) To reinforce Penrith's urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith's rural lands and the social well-being of its rural communities,

(f) To protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,

(h) To ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.

As demonstrated throughout this report the development does not satisfy the aims of the plan. The development is not of a scale appropriate for a rural zone and does not safeguard the amenity of adjoining rural-residential sites. Additionally, the application has not demonstrated that the use of the site is permitted in the zone.

In consideration of the above, and as further discussed throughout this report, the proposal does not deliver balanced social, economic and environmental outcomes, and therefore is not consistent with the aims of Penrith LEP 2010.

Clause 2.3 Permissibility

The subject site is zoned RU1 Primary Production under Penrith LEP 2010. The application has been lodged as a 'Community Facility', which is permitted with consent in the zone.

Concerns with categorising the development as a community facility and not as a place of public worship have been raised with VS of Sydney in both pre-lodgement meetings and throughout the assessment of the previous development application on the site. The most recent pre-lodgement advice requested that the application include detailed information that clearly addresses the specific activities the group propose to hold at the subject site. This should include; type of event, expected number of people at each event; frequency of event; operating hours for each event; and nature of activities (for example, outdoor picnics, indoor meetings, dances with music, and the like).

The submitted Statement of Environmental Effects states:

"the proposal is not a place of worship as no religious worship or congregation of a religious group (the two characterising activities identified under the place of public worship Penrith LEP 2010 definition) is proposed. This application is furthermore not considered to be an educational establishment as it does not provide any formal education when an educational establishment means 'a building or place used for education (including teaching), being: (a) a school, or (b) a tertiary institution, including a university or a TAFE establishment that provides formal education and is constituted by or under an Act'".

The definition of a place of public worship is:

'a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training'

The distinguishing features of a place of public worship compared to a community facility is that the

purpose of the facility is for religious worship by a congregation or a religious group.

Inconsistencies within the documentation lodged and proposed annual events indicates there may be activities on the site which involve religious worship and the congregation of a religious group which would categorise the development as a place of public worship.

The Vaishnav Sangh of Sydney is a group of Vaishnava devotees who practise the Pushti Marg faith. Pushti Marg is a sub tradition of Vaishnavism which is a Hindu denomination and the name given to the faith and practices of Hindus who hold Vishnu and other gods and goddesses, such as Krishna, as supreme deities. (Information provided in the development application references the website of Vaishnav Sangh of Sydney and Vaishnav Sangh of NSW which has been used to source some of this information).

The list of annual scheduled events to be held approximately 12 times per year and attracting over 200 patrons are, in part, Indian religious festivals. For example, Holi Festival of Colour and Diwali Festival of Lights are both celebrated religious Hindu events.

The application has not detailed the nature of the activities in order for Council to be satisfied that they are not based on the Hindu faith or other Indian Religious denomination. (See Figures 1 & 2 below, as submitted by the applicant).

	Weekdays (once to twice)	Weekends	Event Days (Approximately 12 times per year)
Number of People	Up to 15	Up to 50	Up to 200
Time	Mostly between 5pm - 7pm	Between 12pm - 7pm	Between 2pm - 7pm / Event time 4pm - 7pm
Purpose	Admin work, maintenance, event preparation	Volunteers meeting, admin work, site preparation, rehearsal	Community attendance, dramas, dance, singing, celebrating community events

Month	Event
January	Kite Flying Festival
February	Festival of Flowers
March	Holi - Festival of Colours
April	Annual Funding Raising Event - Held at another larger external venue
May	Music, Drama and Cultural Presentation
June	Sports Day - venue varies and possibly held externally
July	Cultural Gujrati music and dance performance for children
August	Independence Day celebrations
September	Garba Dance
October	Diwali - Festival of lights
November	Food Festival
December	Annual Picnic day

The scale of the proposed outdoor area appears disproportionate to the activities listed as being undertaken on a weekly basis, which according to the submitted SEE are administration work, volunteer meetings and event preparation/rehearsals. The outdoor area is approximately 470m² in size. The scale of the outdoor area indicates that this space may be used frequently by a large congregation.

The previous application included a room which was to hold up to 84 statues, the use of statues in Indian culture is generally associated with the religious worshipping activities of Hinduism. The current application has removed the statue notation and indicates this room to be used as a 'donatives display area'. The description of the development and activities listed does not detail what a donatives areas is or what activities are to be undertaken within this area of the development. The provision of this space suggests that the facility is designed to be used for regular worship. Further there are three other rooms which have

no known use.

In consideration of the above, the application has not demonstrated that the activities on the site do not involve religious worship by a congregation or a religious group, therefore it cannot be established with certainty that the development is defined as a community facility.

Clause 2.3 Zone objectives

The objectives of the RU1 Primary Production zone include:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To protect and enhance the existing agricultural landscape character of the land.
- To ensure development is compatible with the environmental capabilities of the land and does not unreasonably increase the demand for public services or public facilities.
- To preserve and improve natural resources through appropriate land management practices.

The proposal does not minimise conflict between land uses within the RU1 zone, nor protect or enhance the existing agricultural landscape character of the land, largely due to the proposed traffic and congestion impacts, acoustical impacts and visual impacts imposed by the development. The application has not demonstrated that the proposed use is compatible with the environmental capabilities of the land for events of up to 200 people, in consideration of effluent disposal, water usage (no consultation with Sydney Water) and the like.

Clause 4.3 Height of buildings

There is no set maximum building height for the subject site and area. Please see the Penrith Development Control Plan 2014 Part D section of this report for more information.

Clause 7.2 Flood planning

See discussion under the C3 Water Management section of this report for more information.

Clause 7.5 Protection of scenic character and landscape values

The subject site is identified as "Land with scenic and landscape values" on the Scenic and Landscape Values Map, as per Clause 7.5(2) of Penrith LEP 2010.

Clause 7.5 (3) states that development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.

The proposal includes construction of a 2.1m high colourbond fence along the northern boundary of the site for a length of 147m. This colourbond fence continues for half of the northern boundary to the rear of the site at a height for 1.8m at a length of 159m. The proposal also includes construction of a 4.1m high open-design awning that covers an area of approximately 470sqm of area. The proposal also includes 2 x parking areas that cover approximately 1,800sqm in area, includes removal of grassed areas and includes removal of some mature vegetation. One of these parking areas was advised to be relocated to the rear of the site through previous prelodgement advice from Council.

The subject site and area is zoned RU1 and is characterised by rural-residential and agricultural development, which is in close proximity to the Nepean River.

As such, in accordance with Clause 7.5(3) of Penrith LEP 2010, Council is not satisfied that measures have been taken in relation to the location and design of the development to minimise the visual impact of the development from Castlereagh Road, nor from Koorngal Drive, within Agnes Banks of Penrith LGA.

Clause 7.7 Servicing

See discussion under the C13 Infrastructure and Services section of this report for more information.

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

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property*

It is noted that the proposed changes to State Environmental Planning Policy No 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The proposed new land remediation SEPP will:

- Provide a state-wide planning framework for the remediation of land,
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- Clearly list the remediation works that require development consent, and
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

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

Development Control Plan 2014

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

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

There are no planning agreements applicable to the site or development.

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

The regulations have been considered during assessment of the application. Please see discussion under the Building Surveyor Referral section of this report for more information.

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

Visual Impact and Local Character

The proposal to construct a long 1.8m to 2.1m colourbond fence across the entire northern boundary of the site would negatively impact on the rural and scenic value of the area. Furthermore, the 2 x parking areas (approximately 1,800sqm in area) and construction of a 4.1m high awning covering approximately 470sqm in area would further detract from the rural and scenic values that are characteristic of the RU1 zone and the Agnes Banks area.

Noise and Privacy Impacts

The proposal does not adequately demonstrate measures to mitigate against negative privacy and amenity impacts, nor does it consider the impact of proposed activities to occur on neighbouring dwellings which are in close proximity to the development. See discussion under the C12 Noise and Vibration section of this report for more information.

Traffic Congestion, Hazard and Parking

The proposal has not provided sufficient on-site parking areas, nor sufficient space for overflow parking, which is likely to result in on-street car parking that would lead to potential traffic congestion and increase of hazards to other users of Koorungal Drive and Castlereagh Road. See discussion under the C10 Transport, Access and Parking for more information.

Social and Economic Impacts

The advertising/notification period organised by Council for the application resulted in 28 objection submissions being received raising many concerns to the development, largely surrounding many of the environmental impacts addressed throughout this report. As such, the proposed development has the potential to generate many social and economic impacts in the vicinity of the site and area. See the Submissions section of this report for more information.

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

The site is unsuitable for the proposed development for the following reasons:

- The proposed use has not satisfactorily demonstrated permissibility as a community facility, nor demonstrated that the proposal has achieved the objectives of the RU1 zone.
- The design of the development and its presentation to the street is not considered to be compatible with, nor complementary to, the character of the local area or the future desired character of the area.
- The proposal does not adequately demonstrate that impacts related to local character, streetscape presentation, scale, noise and amenity adequately mitigated against nor addressed through the design of the community facility.

Section 4.15(1)(d) Any Submissions

Community Consultation

The application was advertised in the Western Weekender on the 30 July 2020 and further advertised and exhibited until the 17 August 2020. The application was also notified to 36 adjoining and nearby properties between 3 August and 17 August 2020, in accordance with the relevant legislation. During this period 29 unique submissions were received in response, 1 of which supported the proposal and 28 of which objected to the proposal. Due to the number of unique submissions made objecting to the development, this application is referred for determination by the Local Planning Panel.

The following issues were raised in the submissions received with feedback commentary detailed below (in no particular order):

Issue Raised	Comments
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<p>1. Impact to Wetland and Wildlife</p> <p>The proposal will destroy the natural wetland and associated wildlife, due to run-off from the development into a dam at the rear of the site.</p>	<p>Concern is raised by many objectors that the additional stormwater and OSSM effluent run-off generated by the proposal will contaminate the dam at the rear of the property, which drains through to the Nepean River.</p> <p>As mentioned previously in this report, the proposal includes a raingarden for stormwater treatment, as well as effluent disposal areas positioned toward a portion of the site where the land slopes toward the small dam at the rear of the advice.</p> <p>Advice from Council's Waterways and Environmental Management teams have confirmed that, subject to these measures being designed in accordance with Council's specifications, and subject to compliance with conditions should consent be granted for the proposal, there is no expected contaminants that are likely to occur to the nearby wetland as a result of the proposed development.</p> <p>It is noted that impact to local wildlife has not been considered by Council during assessment of the application due to key matters of concern being raised (as discussed throughout the report).</p>
<p>2. Traffic, Congestion, Parking and Hazard</p> <p>The proposed events with 200 people attending will be a traffic hazard, including added traffic and congestion.</p>	<p>Assessment of the application has considered that the amount of onsite parking is not enough with a maximum of 200 people attending the site, with no overflow parking being provided for the site. Overflow parking does not appear possible on the subject site due to the proposed rain-garden, OSSM disposal areas and topography of the site, amongst other site restrictions. As a result, it is likely that any overflow parking would occur along Kooringal Drive, which is a rural road with no kerb and gutter, which cannot accommodate such parking occurring. Such overflow parking would also introduce congestion and hazards to other users of Kooringal Drive.</p> <p>See discussion under the C10 Transport, Access and Parking section of this report for more information.</p>
<p>3. Misleading application - Place of Public Worship</p> <p>The application is misleading and is actually pursuing a public place of worship.</p>	<p>There is inconsistency between the plans and documentation submitted for the application that raises concern in terms of permissibility and the land use definition of the proposal (as per Penrith LEP 2010). See discussion under the Permissibility section of this report for more information.</p>
<p>4. Suitability of Site</p> <p>The area is for private dwellings and the proposal should be in a more suitable area.</p>	<p>Given the visual impacts, noise impacts and traffic, congestion and parking impacts associated with the proposed development, and how these affect neighbouring properties that mostly include private rural-residential dwellings, there is valid concern regarding the suitability of the proposal on the subject site.</p>
<p>5. Noise Impact</p> <p>The noise impact from the proposed events would be enormous for a quiet residential area.</p>	<p>Amplified music, dancing, singing and the like is not addressed as generating significant noise in the submitted Acoustic Report. Given the proposed cultural activities and events to occur on the site, and the open (non-enclosed) nature of the proposed awning that would accommodate such activities, these aspects are considered to generate significant acoustical impact to adjoining neighbours to the site, and others in the nearby area.</p> <p>See discussion under the C12 Noise and Vibration section of the report for more information.</p>

<p>6. Nuisance to Neighbours, Council and Police</p> <p>The proposal would result in many complaints made by local residents, which would have flow on impacts on local Council and local Police services.</p>	<p>Acoustical impacts and traffic impacts, which are likely to cause nuisance to adjoining neighbours and any resulting complaints made to local authorities, are amongst the main considerations of concern for the proposal.</p>
<p>7. Closure of Castlereagh Road for Events</p> <p>Castlereagh is often closed for different events that occur in the area. How would this work in relation to the operation of the proposed community centre.</p>	<p>Any road closures for events would be considered at the time that requests are made, at the discretion of the relevant authority, whether Council or Transport for NSW.</p>
<p>8. No Need for another Community Centre</p> <p>If a community centre is required, there is already Castlereagh Community Centre.</p>	<p>It is acknowledged that Castlereagh Community Centre is not far from the subject site/area. However, a 'Community Facility' is permitted in the RU1 zone with consent. Assessment under Section 4.15 of the Act determines whether such development is suitable for a particular site, and it is unlikely to be refused based on that fact alone, being the presence of other community centres in the area.</p>
<p>9. Inconsistent with Penrith LEP and Zone Objectives</p> <p>The proposal does not align with many clause of Penrith LEP, nor the objectives of the RU1 zone.</p>	<p>Concern is raised with the proposal not aligning with provisions of the LEP, including zone objectives. See discussion under the LEP section of this report for more information.</p>
<p>10. Visual Impact of Proposal</p> <p>The proposed noise barriers are not in keeping with the rural character of the area.</p>	<p>The approximately 300m long, 1.8-2.1m high colourbond noise barriers are assessed as creating a significant visual impact to the scenic landscape values and character of the area.</p>

<p>11. No Street Lights Along Koorungal Drive</p> <p>There is no street lighting along Koorungal Drive, which may have safety and security issues relating to the community centre.</p>	<p>It is noted that Koorungal Drive is a small rural road with no kerb and gutter infrastructure nor street lighting. Further to this, no lighting is shown on the plans in car park areas or other areas for public use. Given the traffic, congestion and parking concerns for the application, and likelihood of the development's reliance on on-street parking, which is not supported, there are many potential safety and security issues with the proposal in its current state.</p>
<p>12. Impact to Heritage</p> <p>The proposal does not respect the heritage significance of the Agnes Banks area.</p>	<p>There are many heritage listed items located in the vicinity of the subject site, which contributes to the importance of the proposal aligning with rural character through its scale and design. See discussion under the C7 Culture and Heritage section of this report for more information.</p>
<p>13. Relevance of a Volley Ball Court</p> <p>Some documentation makes reference to a volley ball court going on the site. How does this fit into rural character.</p>	<p>The inclusion of a volleyball court is not apparent on the submitted plans. However, this is another detail that causes concern for the consistency of plans and documentation regarding inclusion of matters referenced in the previous development application (that was withdrawn), also raising concerns surrounding permissibility, rural character and the like.</p>
<p>14. Frequency of Meetings/Events - Future Growth Concerns</p> <p>Looking up the organisation online indicates more meetings than stated in the application. Will future growth of the community centre and its associated events grow beyond what is stated by the application.</p>	<p>If consent was given to the proposal, it is likely that conditions of consent would be recommended in limiting the number of attendees to the site, noise generation and management, hours of operation and the like. If compliance with conditions of consent did not occur, Council would intervene with any applicable regulatory action. However, it is also noted that in the meantime, neighbouring properties are likely to be negatively impacted as a result in terms of additional amenity considerations.</p>

<p>15. Example of Other Cultural Community Centres</p> <p>The application refers to similar cultural community centres. However, these are not located in rural zones.</p>	<p>The application gives several examples of similar cultural community facilities in the Sydney Area. These have been reviewed and listed as follows:</p> <ul style="list-style-type: none"> • Croatian Community Centre: This is located in St Johns Park, in a R2/RE2 zone and includes a church. • Dalmacija Sydney Croatian Club: This is located in Terry Hills, in a RU4/RE1 zone and is surrounded by other commercial uses, with minimal sensitive receivers in close proximity to the site. • Greek Orthodox Community: This is located in a B8 Zone in Sydney City CBD. • The Australian Lebanese Christian Federation: This is located in Punchbowl, in a R2 zone, however, its a residential address and the website indicates that events occur at other venues. <p>It is assessed that these examples are not comparable to the subject site and proposal in that they are not based in a rural-residential and agricultural context, present different structural forms from which their activities would take place, and do not appear to have the same impacts to sensitive receivers as the subject application does.</p>
<p>16. Land Value in the Area</p> <p>Many objectors are concerned that the proposal would decrease land values in the area due to the environmental impacts generated by the development.</p>	<p>Land values are not of concern to Council's assessment of the subject application.</p> <p>Assessment of the proposed development is done in accordance with the requirements of relevant planning legislation.</p>

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
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions
Social Planning	No objections

Building Surveyor

The subject application was referred to Council's Building team, who assessed the application, initially noting that a pre-lodgement meeting (PL19/0060) was held and some building issues were raised, which included:

- The requirement of an access report relating to the stair lift.
- Submission of a BCA Section J report.
- The proposed new awning and existing building may require hydrant and hose reel protection. It was advised that a BCA report by a building consultant be provided at the DA submission addressing these requirements and that a "Performance Solution" could be formulated.

In the subject application, the applicant submitted the following:

- An Access report stating that access via ramps would be impracticable due to the levels of the site

- and the proposal as presented would comply with the BCA.
- A Section J report advising the proposal is capable of complying with the BCA.
- That the requirement for hydrants and hose reels be deferred for review to the CC application stage.

The Building team considered that the need or otherwise for hydrants/hose reels will be determined by what the classification of the awning is considered as. If it is considered as a Class 10a then hydrants/hose reels would not be required due to the floor area.

It was noted that at this point a Construction Certificate (CC) has not been applied for and it will be the responsibility of the certifying authority issuing the CC to determine compliance of the above issues and other BCA requirements. In this case a "Performance Solution" may be provided.

As such, no objection was raised by Council's Building team subject to the recommended building conditions being included should consent be granted.

Community Safety Officer

The application was referred to Council's Community Safety Coordinator, who noted that the applicant provided some general comments regarding how the developments design incorporates CPTED principles, and recommended that the following changes occur to further enhance the safety and security of all users and minimise any potential crime risk:

- The internal floor plan within the main building does not provide good access and visual connectivity throughout the facility. The entrances to the building and various internal facilities (administration room, library etc.) must be clearly defined and signposted to ensure they can be seen and identified from the surrounding outdoor public spaces and adjacent buildings.
- That the Management Plan for the facility be revised to include details of security measures being implemented and dispute resolution procedures for the facility.

Development Engineer

The application was referred to Council's Development Engineering team, who identified that the property is impacted by the 1% AEP overland flow flood event based on Council's Overland Flow Flood Overview Study 2006 and the 1% AEP mainstream flood event based on Council's Nepean River Flood Study 2018. The existing building and the proposed development are situated outside and above the flood planning area (1% AEP flood event + 0.5m freeboard) for both the overland flow and mainstream flood events. As such, Council's Development Engineering team are satisfied the flood related development controls within the DCP have been adequately addressed.

However, the following matters of concern were also raised by Council's Engineering team:

1. There is a difference in the finished surface level of carpark area 1 on the architectural, landscape and stormwater concept plans. The plan sets must be consistent with each other.
2. All parking spaces must allow for full opening of vehicle doors in accordance AS2890.1 for User Class 2 with a minimum space width of 2.5m.
3. All parking areas must be sealed and constructed of hard standing material in accordance with Penrith DCP 2014 [although this raises visual impact concern from a Planning perspective].
4. Carpark area 1 is situated approximately 1.0m above the proposed raingarden adjacent to the carpark area. A retaining wall with an approximate height of 1.0m is proposed along the carpark and raingarden interface. Barrier protection is required on the western side of carpark 1 due to the difference in levels between the proposed raingarden and carpark area.
5. The parking aisle width of carpark 2 must be indicated on the plans in accordance with AS2890.1.
6. The proposed 1.8m high colorbond fencing on the northern boundary is located within the extent of the 1% AEP overland flowpath. The colorbond fencing must be replaced with an open style fencing for a distance of 75m from the north-western corner of the property.

As a result of the above, Council's Development Engineering team do not support the subject application. It should be noted that the above was not requested to be resolved by the applicant due to other matters of concern with the development of which this report recommends a refusal determination of the application.

Environmental - Environmental management

See discussion under the C12 Noise and Vibration and C13 Infrastructure and Services section of this report for more information.

Environmental - Waterways

The subject application was referred to Council's Waterways team, who noted that the application includes a raingarden (for stormwater treatment) and rainwater tank. However, assessed that insufficient detail was provided to demonstrate compliance with Council's Water Sensitive Urban Design Policy (WSUD).

Based on a review of the information, for the application to be supportable in this regard, additional information would be required, including:

- Provision of a WSUD Strategy prepared in accordance with Council's WSUD Technical Guidelines,
- Electronic version of the Music modelling,
- Revised concept plans which are prepared in accordance with Council's WSUD Technical guidelines. (e.g. details on vegetation as per Council's technical guidelines), underdrainage pipes not to be installed in a filter sock and are to be a rigid slotted pipes),
- Details of water conservation commitments as outlined Section 3.1 of Council's WSUD Policy.

Note: Reference should be made to Council's WSUD Technical Guidelines, which includes details to inform what is required to be provided in support of an application.

Based on the lack of information be provided as listed above, the application is not supported by Council's Waterways team.

Social Planning

Council's Social Planning team commented that, while community facilities are an important component of social infrastructure by providing meeting places for community groups to address social needs, they also raised concerns relating to the following:

- Inconsistency in the plans submitted that result in the proposed use, whether for a 'community facility' or 'place of public worship' being unclear.
- The Plan of Management submitted not addressing what process will be used to handle complaints from neighbours.
- That the driveway and car-parking areas should consider Council's Cooling the City Strategy 2016, regarding water permeability of paved surfaces and solar reflectivity, and the use of lighter coloured materials for external surfaces (such the roof).

Traffic Engineer

See discussion under the C10 Transport, Access and Parking section of this report for more information.

Section 4.15(1)(e)The public interest

The proposed development is contrary to the aims, and zone objectives, of Penrith LEP 2010. The proposed development does not comply with key clauses of Penrith DCP 2014, including those related to compatibility with local character and development standards related to noise generation and management, onsite parking provision and visual impact.

The proposal does not comply with the provisions of Chapter C City-wide Controls or Chapter D1 Rural Land Uses of Penrith DCP 2014, in particular those requiring the design of the development to be compatible with the context of the site and to have regard to the site analysis. Further, the proposed character and scale of the development is not compliant with the applicable built form controls detailed under the section.

It is for the above reasoning that approval of the development application would not be in the public interest and would also set an undesirable precedent in the locality.

Section 94 - Developer Contributions Plans

Given that the report is recommending a refusal determination, Section 7.11's and Section 7.12's do not apply in this instance.

Conclusion

In assessing this proposal against several state planning policies, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal does not satisfy the various aims, objectives and provisions of these policies. Support for the application would set an undesirable precedent as the proposal has not demonstrated compliance with the relevant provisions. The application is therefore not worthy of support.

Recommendation

That DA20/0423 for the alterations and additions to an existing dwelling and change of use to a community facility with associated car parking & on-site waste water management system at 682 Castlereagh Road, Agnes Banks NSW 2753, be refused subject to the attached reasons for refusal.

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 has not demonstrated that the proposed development is permitted in the zone and that the associated structures contribute to the objectives of the RU1 Primary Production Zone of Penrith Local Environmental Plan 2010.

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 2014:

- B - DCP Principles,
- C1 Site Planning and Design Principles,
- C2 Vegetation Management,
- C3 Water Management,
- C6 Landscape Design,
- C7 Culture and Heritage,
- C10 Transport, Access and Parking,
- C12 Noise and Vibration,
- C13 Infrastructure and Services,
- D1.1 Rural Character,
- D1.2 Rural Dwelling and Outbuildings,
- D1.5 Non-Agricultural Development.

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:

- Visual impact and local character,
- Noise and privacy impacts,
- Traffic congestion, hazard and parking,
- Social and economic impacts.

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 proposed development due to:

- The proposed use has not satisfactorily demonstrated permissibility as a 'Community Facility', nor demonstrated that the proposal has achieved the objectives of the RU1 zone.
- The design of the development and its streetscape presentation is not considered to be compatible with, nor complementary to, the character of the local area or the future desired character of the area.
- The proposal does not adequately demonstrate that impacts related to local character, streetscape presentation, scale, noise and amenity is adequately mitigated against nor addressed through the design of the development.

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 as the proposal is not in the public interest.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposed development is contrary to the principles, commitments and objectives of the DCP. The proposal does not recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems (Principle 6, Part B of Penrith DCP 2014). Clause 1.2(Principle 6)(A) references the provisions that protect the scenic and landscape character of Penrith [LGA] as being fundamental to this principle.

As explored further through the Part C and Part D Chapter sections of this report, the proposal includes both uses and physical structures/works that do not protect the scenic and landscape character of the Agnes Banks area, nor those who occupy the area. As such, the proposal is contrary to Principle 6.

Part C - City-wide Controls

C1 Site Planning and Design Principles

Clause 1.1.2(A) references particular locations in Penrith LGA that are visible from major roads and other public places and have important scenic and landscape values, as identified on the Penrith LEP 2010 Scenic and Landscape Values Map and affects the subject site (See Figure C1.1 of the Chapter for the visual representation). This Clause further states that key considerations for site analysis and the planning process is minimising likely visual impact as a result of new development.

Clause 1.2 includes applicable design principles in minimising visual impact, including:

- (b)(i) Ensuring the development is designed on a 'whole of building' approach by responding to the site's context, desired scale and character of an area, and minimising impacts on key views, scenic values and rural character; and
- (b)(iii) minimising likely bulk and scale impacts of a building/structure.

The proposal has not considered a 'whole of building' approach, as the proposed awning does not relate seamlessly with the existing dwelling i.e. there is not a continued roof-line that makes the awning appear as part of the dwelling, nor is the awning separated from the existing dwelling to appear detached. Rather, the awning reaches the same height of the top ridge-line of the existing dwelling roof, but is positioned directly against the lowest part of the existing dwelling roof. As well as covering a large area (approximately 470sqm), the resulting design and appearance of the proposed awning does not contribute positively to the site's context, desired scale nor character of the area. Also the proposed awning, and proposed colourbond fencing along the northern boundary, is likely to impact on key view and scenic values, with rural land and the Nepean River between the north and western perspectives (both from the site and from Koorringal Drive).

C2 Vegetation Management

Objectives of this Chapter include:

- Clause 2.1(B)(d) protecting and enhancing biodiversity corridors, landscape character and scenic values of the City [and LGA],
- Clause 2.1(B)(f) preserving the amenity of the City [and LGA] through the preservation of trees and other vegetation, and
- Clause 2.1(B)(g) preserving existing trees and other vegetation where possible during the planning, design, development and construction process.

The proposal includes the removal of at least 3 trees (as identified in the 'Landscape Plan'), and provision of a hardstand parking area around several other trees. Review of aerial imagery and a site inspection conducted on the 11 August 2020 identified that there are several trees in the front setback area of the site, where one of the two parking areas are proposed, that appear to be of healthy and mature appearance. No Arboricultural Report has been submitted to support the tree removal. Furthermore, it is noted that prelodgement advice by Council (PL19/0060) given for the proposal and site made reference to concern for the car parking area closest to the front corner of the site (within the front setback) which disturbs an area currently undeveloped and containing landscaping. It was recommended to be relocated as a result, which it has not

and as a result trees are proposed for removal. Whilst it is acknowledged that additional planting and screening is proposed around this parking area, it appears that consideration has not been made as per the objectives of this Chapter, in that the preservation of trees and other vegetation is not proposed during the planning and design process. Furthermore, as no arboricultural assessment has been done for the site and proposal, it is unclear whether appropriate separation distances have been provided for the trees in close proximity to the car park toward the front setback, in accordance with relevant Australian Standards. If hardstand areas are being implemented too close to trees, this has the potential to damage root zones and impact on the health of the tree, which would not be preserving trees and other vegetation through the development and construction process.

As such, the proposal does not satisfy the requirements of Chapter C2.

C3 Water Management

The property is impacted by the 1% Annual Exceedance Probability (AEP) overland flow flood event, based on Council's Overland Flow Flood Overview Study 2006 and the 1% AEP mainstream flood event based on Council's Nepean River Flood Study 2018. The existing building and the proposed development are situated outside and above the flood planning area (1% AEP flood event + 0.5m freeboard) for both the overland flow and mainstream flood events. Council's Development Engineering team reviewed the site and proposal and is satisfied that the flood related development controls within the DCP have been adequately addressed.

Furthermore, a rain-garden and rainwater tank is proposed in the application. However, insufficient detail is provided to demonstrate compliance with Council's WSUD Policy. Based on a review of the information from Council's Waterways team, additional information would be required including:

- WSUD Strategy prepared in accordance with Council's WSUD Technical Guidelines.
- Electronic version of the Music modelling.
- Revised concept plans which are prepared in accordance with Council's WSUD Technical guidelines.
- Details of water conservation commitments as outlined Section 3.1 of Council's WSUD Policy.

As such, in consideration of the above, the requirements of Chapter C3 have not been satisfied.

C6 Landscape Design

Clause 6.1.2(8)(b) states that where existing vegetation is to be retained, that vegetation must be protected from soil compaction, root, trunk and limb damage, soil contamination and changes in surface levels that affect the health of the vegetation. As noted in the C2 section of this report, no arboricultural report supports this application, and the plans indicates some tree removal through a proposed hardstand parking area with other trees nearby being retained. No distance to the trees being retained have been provided and, as such, no certainty is provided as to the proper retention of nearby trees in accordance with the relevant standards.

As such, the requirements of Chapter C6 have not been satisfied.

C7 Culture and Heritage

The subject site is in proximity to several heritage listed items as per Schedule 5 of Penrith LEP 2010, as referenced in the Site and Surrounds section of this report.

Clause 7.1.5(A) of this Chapter states that a development in the vicinity of a heritage item or conservation area must be assessed to determine whether it will have any impact on the significance and visual setting of that item or area. This Chapter also references Heritage Impact Statements being lodged for applications in the vicinity of heritage items.

Whilst the submission of a Heritage Impact Statement is considered onerous for the subject application, the amount of nearby heritage listed items signifies the importance for development to achieve rural character and landscape values through the land use, scale and design proposed. As mentioned throughout the report, the proposal includes fencing, awning additions

and excessive car parking areas that do not align with the scenic landscape values nor rural character of surrounding properties.

As such, the proposal does align with the provisions of Chapter C7.

C10 Transport, Access and Parking

The application was supported by a Traffic Impact Study, prepared by Henson Consulting, dated February 2018, and addendum letter also from Henson Consulting dated 24 June 2020. These documents were assessed by Council's Traffic Engineering team, who had no objection to the proposed parking, access and circulation, and traffic generation as a result of the development, subject to conditions and assuming that the information provided by the Traffic study is correct.

Notwithstanding, it is considered that this amount of onsite parking is not enough with a maximum of 200 people attending the site and no overflow parking being provided for the site. Further to this, the separation of on-site parking areas does not assist in appropriate traffic management during large events.

Overflow parking does not appear possible on the subject site due to the proposed raingarden, OSSM disposal areas and the topography of the site, amongst other site restrictions. As a result, it is likely that any overflow parking would occur along Koorungal Drive, which is a rural road with no kerb and gutter, which cannot accommodate such parking occurring. This overflow parking would also introduce congestion and hazards to other users of Koorungal Drive.

On-street parking has previously occurred along Koorungal Drive as noted through objections received for the application, and also noted through previous Council Compliance team action that occurred on the site.

As such, it is unlikely that an onsite parking provision could be resolved based on the number of attendees expected for the community facility during scheduled events. The proposal does not satisfy the requirements of Chapter C10.

C12 Noise and Vibration

The general objective of this Chapter is to ensure that future development that generates noise or vibration does not adversely affect the amenity of surrounding land uses.

The application was supported by an Acoustic Report, prepared by Acoustic, Vibration & Noise Pty Ltd, reference 2018-508 and dated 12 June 2020. In this report, amplified music, dancing, singing and the like is not addressed as generating significant noise. Given the proposed cultural activities and events to occur on the site, and the open (non-enclosed) nature of the proposed awning that would accommodate such activities, these aspects are considered to generate significant acoustical impact to adjoining neighbours to the site, and others in the nearby area.

The acoustic report recommends a significant amount of sound barrier fencing to reduce noise impact. The sound barrier is not supported due to visual impacts.

Council's Environment Team reviewed the Acoustic Report and noted a technical matter, where the report identifies a noise exceedance of 3dB(A) when patrons are entering and leaving the premises. The report recommends using an usher to mitigate the noise impacts. Council cannot regulate nor enforce such a recommendation and, therefore, this is not a suitable noise mitigation method.

As such, the proposal does not satisfy the requirements of Chapter C12.

C13 Infrastructure and Services

Clause 13.3(B) includes objectives for On-site Sewage and Wastewater Management systems that reflect those for Council's On-Site Sewage Management and Greywater Reuse Policy, in the proper management of such systems that do not negatively impact on occupiers of a site or adjoining properties.

The application was supported by a Wastewater report, prepared by Envirotech, reference REF-17-4422 and dated 18 July 2017, which detailed the proposed installation of a commercial sewage treatment plant designed to treat effluent at a daily rate of 1750L per day, which would dispose of treat effluent into an absorption bed of a suitable size (as assessed).

Note: Many objectors raised concern that the amount of effluent and stormwater run-off from the proposal could potentially contaminate the dam at the rear of the property, which in turn could lead to contaminants reaching the Nepean River and beyond. This matter was discussed with Council's Environment team who stated that it is very unlikely that stormwater and effluent run-off would contaminate the dam at the rear of the site as there is a 100m buffer distance between the disposal areas and the dam. This exceeds Council's minimum requirement of 60m, as per the above mentioned Policy. It was further noted that should the absorption bed fail in the future, the likelihood of the dam becoming contaminated is still very low.

Council's Environment Team reviewed the proposed sewage treatment plant, and whilst the waste water report's recommendations are satisfactory, further information is required to clarify the treatment process, including the system specifications for the proposed tanks.

As such, the proposal has yet to satisfy the requirements of Chapter C13.

D1 Rural Land Uses

1.1 Rural Character

Clause 1.1(B) & (C) refer to objectives and controls that include preserving the rural character of the City of Penrith, and that all development should seek to retain and protect the scenic, landscape and rural character of the Penrith LGA. Where relevant, applicants are required to provide more detail studies including, but not limited to, a Visual Impact Assessment.

First, the proposal includes, in addition to alterations to the existing dwelling, construction of a 306m long colourbond fence, ranging from 1.8m to 2.1m in height (50/50 distribution) along the entire northern boundary of the site. Boundary fencing in the area is characterised by low, open style rural fencing.

Second, the proposal includes construction of a 4.1m high awning, covering an approximate 470sqm area, to be positioned directly against the existing dwelling. Only standard architectural plans (such as site plans, floor plans and elevations) have been provided, with no 3D perspective provided to illustrate the resulting appearance of the development. Based on the standard architectural plans submitted, it is unclear whether the design of the large awning relates to the architectural form, and the awning being of a design, bulk and scale beyond its rural-residential context.

Third, the proposal includes 2 x hardstand parking areas for 65 parking spaces that covers approximately 1,800sqm in area. One of these areas is within the front setback area of the site and requires the removal of some mature vegetation to accommodate the parking area.

The above aspects for the proposal are reflective of development that is suited to Zones where more commercial development is likely to occur and be supported. The design and scale of the development does not preserve the rural character of the Agnes Banks area, nor does it retain/protect the scenic, landscape and rural character of the area.

Therefore, the proposal does not comply with Clause 1.1 of Chapter D1 of Penrith DCP 2014.

1.2 Rural Dwelling and Outbuildings

Clause 1.2(A) states that all development [in rural areas] should take into account the inherent rural character of a locality and be responsive to that character and local landscape qualities. Outbuildings are also an integral part of rural life and activities, and includes carports, gazebos and the like (including awnings). Although the proposal is for the change of use from a dwelling to a 'community facility', the site includes an existing dwelling, and therefore in the interest of maintaining the rural character of the development and site, the controls for rural dwellings and associated development should be considered.

Concern is raised for the proposal with regard to the following controls for this section:

- Clause 1.2.1(B)(2)(e) states that all roof line and ridge lines should reflect the setting of the dwelling, incorporating simple shapes to step a building down with a sloping site or level change. The proposed 4.1m high awning is proposed to be directly against another awning attached to the existing dwelling. Whilst the ridge-line of the top of the awning and dwelling are the same height, the portion of the dwelling roof-line that abuts the awning is approximately 1m lower than the edge of the awning. As such, the awning does not reflect, nor respect, the setting of the dwelling, and rather imposes a structure that towers over the rural dwelling.
- Clause 1.2.4(2)(a) states that the design of dwellings and associated structures should be sympathetic to the rural character of the area. Given the concerns raised under 1.1 Rural Character, the design of the associated structures around the existing dwelling is assessed as not being sympathetic to the rural character of the area.

As such, the proposal does not satisfy the provisions of these controls.

1.5 Non-Agricultural Development

Clause 1.5.1(1)(a) states that non-agricultural development must demonstrate that (i) there will be no significant visual impacts from either the main activity or associated activities on the rural area or adjacent properties and that (ii) the development will achieve noise control standards established by relevant authorities. As mentioned above, the extensive amount of colourbond fencing, awning and car parking areas will have a cumulatively negative impact to the scenic landscape values for the area, which is characterised by rural-residential, agricultural development, with the Nepean River nearby to the north-west and Agnes Banks Nature Reserve nearby to the south.

Clause 1.5.1(2)(a) states that structures associated with any use shall be designed with regard to the rural character of the area and the form and scale of buildings on rural land surrounding the site and that (b) bulky buildings of industrial character are not favourable. Rural land surrounding the site includes neighbouring properties where predominantly rural-residential dwellings and agricultural land uses are scattered across the landscape. Whilst there are some farm sheds that are of a comparable scale to the proposed awning for the subject site, these fit into their context of agricultural activities that occur on these sites. The adjoining properties, and other nearby in the area, do not include any extensive hardstand car parking areas, nor extensively long colourbond boundary fencing, nor large 470sqm awnings attached to dwellings, all of which are of a design and scale more suited to commercial/industrial sites.

As such, the the proposal is not assessed as aligning with the provisions for non-agricultural development.