

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

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| Application number: | DA21/0268 |
| Proposed development: | Shed and Attached Awning |
| Property address: | 259 West Wilchard Road, CASTLEREAGH NSW 2749 |
| Property description: | Lot 1 DP 1181666 |
| Date received: | 22 April 2021 |
| Assessing officer | Luke Caruana |
| Zoning: | SEPP Penrith Lakes Scheme (Residential Zone) RURAL 1(A2) (IDO 93) |
| Class of building: | Class 10a |
| Recommendations: | Refuse |

Executive Summary

Council is in receipt of a development application for the construction of a rural shed used for domestic and agricultural related storage at 259 West Wilchard Road CASTLEREAGH NSW 2749. The subject site is zoned 'residential' under State Environmental Planning Policy (Penrith Lakes Scheme) 1989 and Rural 1(A2) under Interim Development Order 93 and the proposal is not a permissible land use in the zoning with Council Consent.

Key issues identified for the proposed development and site include:

- Agricultural use is prohibited under the relevant Environmental Planning Instruments (EPI's);
- The siting and the design of the proposal is inconsistent with the DCP requirements;
- The built form is not contributory to the character of the area.

The application was notified to adjoining and nearby properties between 7 May 2021 and 21 May 2021 in accordance with Council's adopted Community Engagement Strategy and Community Participation Plan 2019 with 0 submissions received in response. Due to the numerous concerns and non-compliances, the applicant was sent a request to withdraw the application on 12 May 2021. The applicant responded with a justification letter and request to assess the application based on merit.

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

Site & Surrounds

The subject site is situated on the south eastern corner of Castlereagh Road and West Wilchard Road, Castlereagh. It is 6Ha in area and features a steep cross slope from the north east down to the south west of the site.

An inspection of the site was undertaken on 12 May 2021 and the site is currently occupied by a single storey dwelling and detached garage.

The surrounding area is characterised by rural residential development.

Proposal

The proposed development involves the construction of a rural style shed used for domestic and agricultural related storage.

Plans that apply

- Penrith Interim Development Order No.93
- Development Control Plan 2014
- State Environmental Planning Policy (Penrith Lakes Scheme) 1989

Planning Assessment

• Section 4.14 - Bushfire prone land assessment

The development has been assessed in accordance with the matters for consideration under Section 4.14 (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:

- A Bushfire Risk Assessment Report prepared by Control Line Consulting (Reference: 19.09.301) and dated 07.02.20 (revised) was submitted with a recently approved application for the dwelling on site.
 - The report concludes the dwelling as being subject to BAL-12.5 construction.
 - The submitted bushfire report includes recommendations of an Asset Protection Zone (IPA). The site where not built upon is maintained to the requirements of an inner protection area of an asset protection zone and managed to these provisions for the lifetime of the development as follows; from the northern, western and eastern elevations of the proposed dwelling and outbuilding to the adjacent sections of the allotment boundaries; and from the south elevations of the proposed dwelling and outbuilding for a distance of 35 metres.
 - The bushfire consultant confirmed that the existing canopy cover complies with the requirements of an Asset Protection Zone (IPA) and no trees are required to be removed.
 - The proposed shed is separated by not less than 10m from the existing dwelling and outbuilding on site and as such, in accordance with Planning for Bushfire Protection, the proposal is not required to meet BAL construction consistent with the existing dwelling.
- ### • 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 following issues have been identified for further consideration:

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

State Environmental Planning Policy (Penrith Lakes Scheme) 1989

The subject site is zoned 'Residential' under the State Environmental Planning Policy (Penrith Lakes Scheme) 1989. A farm building is prohibited development in accordance with Clause 14 – Zone objectives and Land Use Table.

Penrith Interim Development Order No.93

| Provision | Compliance |
|-------------|----------------------------------|
| All Clauses | Does not comply - See discussion |

It is noted that the plans illustrate hay storage for 70 cattle which indicates a partial agricultural use rendering the proposal a potential partial farm building as well as for domestic storage. It is noted that an existing detached 200m² shed exists on the property as well as a triple car garage attached to the main dwelling.

The subject site is zoned 'Rural A2' under the Penrith Interim Development Order No. 93. A farm building is not listed as development for which interim development may be carried out with the consent of the Council under Clause 3 - General development control.

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 | 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 |
| C4 Land Management | Complies |
| C5 Waste Management | Complies |
| 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 | Complies |
| C11 Subdivision | N/A |
| C12 Noise and Vibration | N/A |
| C13 Infrastructure and Services | Complies |
| 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 | Does not comply - see Appendix - Development Control Plan Compliance |
| D1.4 Agricultural Development | N/A |
| D1.5. Non-Agricultural Development | N/A |

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

The proposal is not considered to be sympathetic to the existing character of the overall area in relation to bulk, scale and built form. The proposal does not adopt a sympathetic or contributory design with regard to rural amenity and therefore will result in negative impacts on the character of the area. Further, the built form has an undesirable visual impact as presented to the street and surrounding lots.

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

The site is unsuitable for the following reasons:

Farm buildings are not permissible in the zone and;

The proposed development design is not cohesive with, contributory to or sympathetic towards the established rural amenity of the immediate area and;

The proposal does not adequately address or justify the impacts related to existing and protected trees, local character, streetscape, bulk, scale, and amenity.

Section 4.15(1)(d) Any Submissions

Community Consultation

The application was notified to adjoining and nearby properties between 7 May 2021 and 21 May 2021 in accordance with Council's adopted Community Engagement Strategy and Community Participation Plan 2019 with 0 submissions received in response.

Section 4.15(1)(e)The public interest

The proposed development has been assessed to be contrary to the primary aims, objectives and controls of the applicable planning instruments and will result in negative and unacceptable impacts in the locality. Furthermore, the proposal has the potential to set an undesirable precedent in the locality 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 (Penrith Lakes Scheme) 1989, Interim Development Order 93 and Development Control Plan 2014 and is not supported. The use is not permissible in the zone and the design of the development is considered to be incompatible and unsympathetic to the character of the rural area particularly having regard to bulk, scale, built form, and the amenity of the surrounding area. Further, 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 DA21/0268 for the construction of a rural shed at Lot 1 DP 1181666 No. 259 West Wilchard Road CASTLEREAGH, be refused for the following reasons;

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, 1979 - the proposed development is prohibited under the relevant Environmental Planning Instrument's (EPI's):

- i. The subject site is zoned 'Residential' under the State Environmental Planning Policy (Penrith Lakes Scheme) 1989. A farm building is prohibited development in accordance with Clause 14 – Zone objectives and Land Use Table and;
- ii. It is noted that the plans illustrate hay storage for 70 cattle. The subject site is zoned 'Rural A2' under the Penrith Interim Development Order No. 93. A farm building is not listed as development for which interim development may be carried out only with the consent of the Council under Clause 3 - General development control.

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:

The application has not satisfied Council with respect to the requirements under section D1 Rural Land Uses, specifically:

- The development does not meet the controls for D1.1 Rural Character; and
- The development does not meet the controls for D1.2.3 Site Coverage, Bulk and Massing; and
- The development does not meet the controls for D1.2.4 Height Scale and Design; and
- The development does not meet the controls for D1.3.1 Siting and Orientation; and
- The development does not meet the controls for D1.3.2 Floor Space, Height and Design.

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 upon the streetscape and local character due to size, height, bulk and scale.

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 proposed development design is not cohesive with, contributory to or sympathetic towards the established rural amenity of the immediate area; and
- The proposal does not adequately address or justify the impacts related to existing vegetation, local character, streetscape, bulk, scale and amenity.

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 - the proposed development may cause significant impact to the amenity of the area and is therefore not in the public interest.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

The proposal is required to take into consideration an analysis of the site and address the features and elements of the site and its immediate surrounding area. The excessive footprint, height and siting of the proposal, being on a high ridge line, is inconsistent with the area and will create a visually undesirable outcome as presented to Castlereagh Road.

C2 Vegetation Management

The proposal is required to preserve existing trees and other vegetation where possible during the planning, design, development and construction process.

The trail shown on the plans noted as 're-use existing trail for access to farm building' including the retaining walls adjacent to the dwelling were not approved under any previous development applications. The trail, including the retaining walls, will adversely impact upon the protected trees adjacent to the west boundary, this matter was not addressed by the applicant.

D1 Rural Land Uses

The proposal is inconsistent with the following objective of D1.1:

- To preserve the rural character of the City of Penrith, including its scenic and landscape qualities.

The proposed development is inconsistent with the following objectives of Penrith Development Control Plan 2014 (D1 - Rural Land Uses):

- (Part 1.3. Farm Buildings) To ensure the siting, size, design, external appearance and uses of farm buildings do not detract significantly from the rural and environmental qualities of the locality;
- (Part 1.3.1. Siting and Orientation) To integrate farm buildings with the landscape so they complement the rural character of an area and are not visually dominant;
- Part 1.3.2. Floor Space, Height and Design) To control the size and height of farm buildings to minimise their visual impact on the landscape and;
- (Part 1.3.2. Floor Space, Height and Design) To ensure that the size of farm buildings is consistent with the intended use and the size of the property.

The proposed development does not comply with the following development controls of Penrith Development Control Plan 2014 (D1- Rural Land Uses) - Part 1.3.2. Floor Space, Height and Design. Please note that unless specifically stated, the controls for farm buildings also apply to all sheds and outbuildings ancillary to any permissible use of rural land (specific to the relevant zone), whether or not that use is considered an agricultural use:

- For allotments between 3 and 10 hectares in size or less, the maximum accumulative building footprint of all farm buildings on an allotment shall not exceed 400m². The proposed accumulative footprint of farm buildings/awnings is approximately 831m².
- A farm building should not be more than 8m high. The proposed farm building height is 10.2m;
- A farm building should have a maximum external wall length of 15m between distinct corners or significant features such as awning. The proposed external wall length is 24m and;
- A farm building shall have a minimum roof pitch of 15° and a maximum roof pitch of 25°. The proposed roof pitch is 13°.

With the above noted, the proposal is not considered to be sympathetic to the existing character of the overall area in relation to bulk, scale and built form. The proposal does not adopt a sympathetic or contributory design with regard to rural amenity and therefore will result in negative impacts on the character of the area. Further, the siting and built form will result in a visually dominant and an undesirable visual impact as presented to the Castlereagh Road.