



## Statement of Environmental Effects

Subdivision of Caddens Hill Stages 2, 3 and 4 creating 257 lots including bulk earthworks, demolition, tree removal, roadworks, utility servicing, detention basins, streetscape landscaping and Hilltop Park landscaping

O'Connell Street, Caddens

November 2016

Legacy Property



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Author	Version	Date
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# 1 Introduction

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## 1.1 Overview

Stimson and Baker Planning has been engaged by Legacy Property to prepare a Statement of Environmental Effects in relation to a proposed subdivision in Caddens on property between Caddens Road and O'Connell Street.

The proposed development includes the creation of 257 residential lots and 3 residue lots including bulk earthworks, demolition, tree removal, roadworks, utility servicing, detention basins, streetscape landscaping and Hilltop Park landscaping.

This application covers stages 2, 3 and 4 in the overall development of the Caddens Estate. Stage 1 has already been approved for subdivision creating 99 lots (refer to DA15/0992). The staging is intended to allow for the staged release of Construction Certificates and Subdivision Certificates, and in detail comprises the following lot delivery:

- Stage 2 – 69 lots
- Stage 3 – 91 lots
- Stage 4 – 97 lots
- 3 residue lots
- 1 open space lot, and
- 1 drainage reserve lot

It is also noted that the land that is the subject of this application, is created as a result of super lot development applications DA16/1154 and DA16/1155 that were recently lodged with, and are currently being assessed by Penrith City Council.

Comprising of multiple lots, the site has two applicable zones, being *R1 General Residential* and *RE1 Public Recreation*. The applicable environmental planning instrument is *Penrith Local Environmental Plan 2010* and the proposal is permissible with consent.

The proposal is defined as *development* in Section 4 of the *Environmental Planning and Assessment Act 1979* (EPA Act). Section 76A of the EPA Act stipulates that the development must not be carried out on the subject site until consent has been obtained.

A small section of the southern portion of the site is mapped as being bushfire prone land, accordingly this application is 'integrated development' and will require General Terms of Approval to be issued by Rural Fire Service NSW prior to its determination.

It is also noted there are three 'headline' matters for consideration in this application.

1. Firstly, the application seeks a road layout that differs slightly from that which is indicated in Councils Development Control Plan. The reasons for this primarily relate to the contours of the site, and the desire to provide the

most efficient subdivision layout possible. After acquiring the consolidated site, Legacy Property undertook a master planning exercise to ensure the optimal outcome and to overcome previous design issues resulting from fragmented ownership. It was identified that the irregular shape of the park and some road geometry created a number of poorly resolved residential areas that would require either cul de sacs or battle-axe blocks. The proposed solution results in minor changes to the structure plan presented in the DCP, namely the reconfiguration of the park to a more regular shape and corresponding changes to the road layout creating a more functional subdivision layout.

2. Secondly, some variations are sought to the minimum lot size mapped in Council's LEP. Again, this is primarily about utilising the topography of the site for the most appropriate built form in the most appropriate locations. A Clause 4.6 variation request is provided later within this report.
3. Thirdly, this application proposes delivery of the 'Hilltop Park'. The shape of this differs slightly to that which is in Council's DCP due to the amended road layout proposed and described above. The shape proposed is also inconsistent with the zoning boundaries in that part of the site and it is our clients intention to submit a planning proposal to the Council in order to reconcile this anomaly.

It is also noted that Legacy Property separately intends to submit a unilateral offer to Council to undertake certain works under a Voluntary Planning Agreement.

This report describes the proposed development and subject site in detail and undertakes an assessment of the proposal against the relevant aims, objectives and development provisions of Council's LEP and DCP, and Section 79C(1) of the EPA Act.

## 1.2 Report Structure

This Statement of Environmental Effects is structured as follows:

- Section 1: Introduction – provides an overview of the proposal, planning history for the site and background to the application.
- Section 2: The Site and Surrounds – provides an analysis of the subject site, development within the locality and a consideration of the local and regional context.
- Section 3: Development Proposal – provides a detailed description of the proposed development and its characteristics.
- Section 4: Statutory Context – provides for consideration of the proposal against the specific planning instruments and policies that are applicable.
- Section 5: Section 79C Assessment – provides an assessment against section 79C of the EPA Act.

- Section 6: Conclusion and Recommendation – summarises the report and presents a recommendation.

### 1.3 History of the Application

The proposal was discussed at a preliminary meeting held with the relevant officers at Penrith Council in early September 2016. A formal pre-lodgement meeting was attended on 29 September where a formal presentation of the scheme was made. Whilst it was considered that the proposal could be supported, this Statement of Environmental Effects and accompanying information addresses the technical and planning compliance issues raised in that meeting. Whilst the minutes of that pre-lodgement meeting are yet to be issued by Council, the broad issues that were raised and are addressed in this report include:

- Amended road layout.
- Minimum lot size and required Clause 4.6 variation.
- Hilltop Park - design, configuration, inclusions, accessibility.
- Creation of residue lot because of the zone boundaries.
- Contamination and how this has been treated in the past across the entire site.
- Details of bulk earthworks.
- Laneway widths.

These matters are considered in this Statement and accompanying consultant's reports.

### 1.4 Supporting Documentation

The proposal is accompanied by the following documentation:

Documentation	Prepared By
Subdivision Plans	Vince Morgan Surveyors
Landscape Masterplan Report	Place Design Group
Building Envelope Plan	DKO Architecture
Civil Plans	J Wyndham Prince
Stormwater Report	J Wyndham Prince
Bushfire Report	Ecological Australia
Acoustic Report	Wilkinson Murray
Environmental Site Assessment Report	JBS & G
Salinity Report	Geotechnique

## 1.5 Legislation, Environmental Planning Instruments and Policies to be considered

- *Rural Fires Act 1997*
- *State Environmental Planning Policy No 55 – Remediation of Land*
- *Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River*
- *Penrith Local Environmental Plan 2010*
- *Penrith Development Control Plan 2014*

## 1.6 Consent Authority

The consent authority for this application is Penrith City Council.

## 1.7 Sequencing of Applications for this Estate

Stage 1 of the estates development has been approved and was subject of an appeal to the NSW Land and Environment Court.

Development applications DA16/1154 and DA16/1155 are currently being considered by Council. These DA's create the super lots on which the overall staging of the development is proposed.

This DA represents works for stages 2, 3 and 4 of the estate.

A future DA will include works for Stages 5 and 6.

## 2 The Site and Surrounds

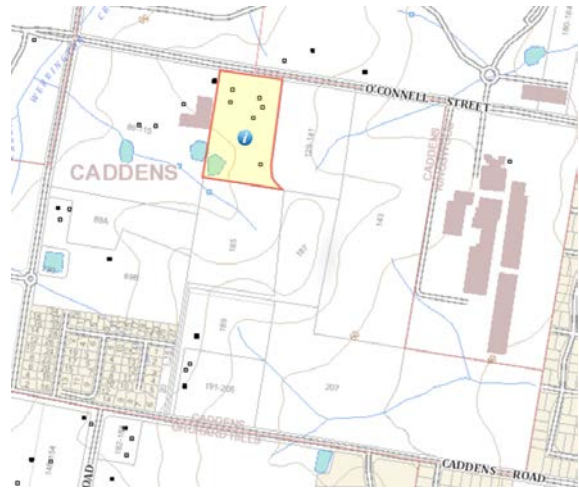
### 2.1 The Subject Site and Surrounds

In its entirety, the subject site is over 30 hectares in area, with frontages to both O'Connell Street and Caddens Road.


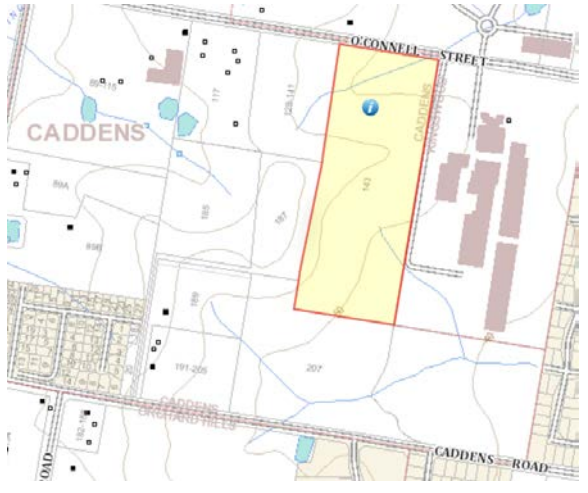
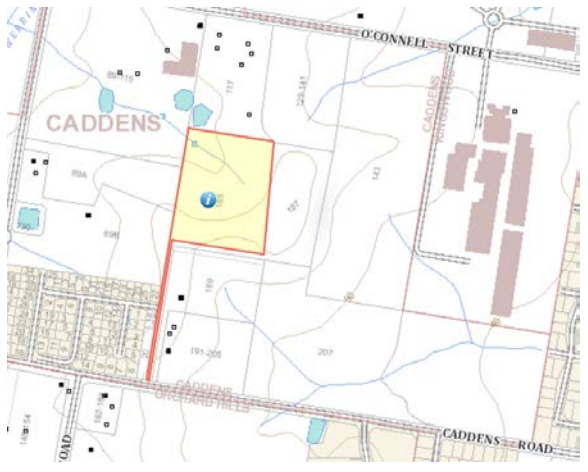


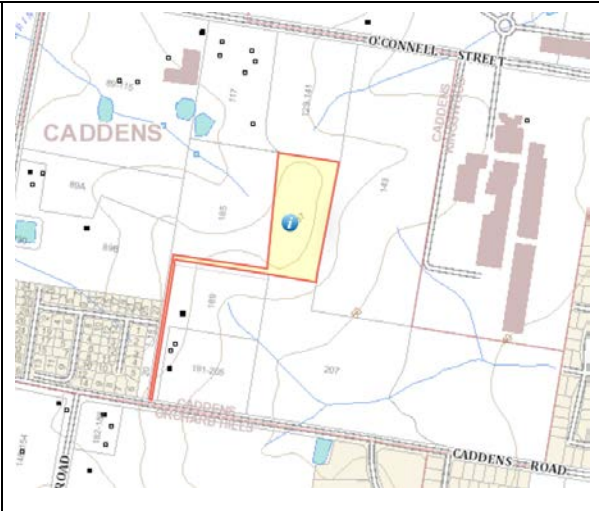
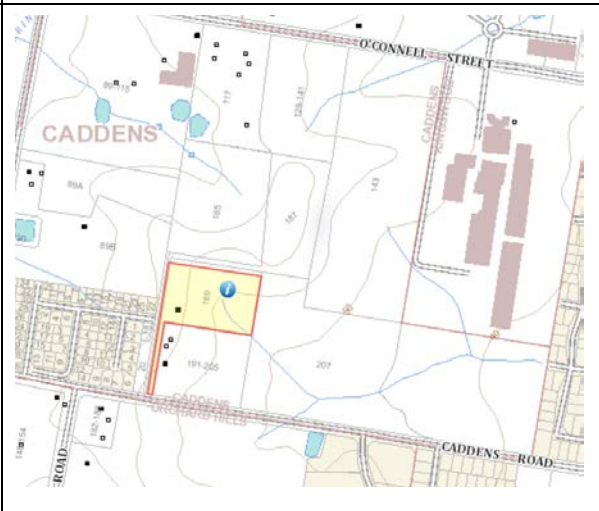
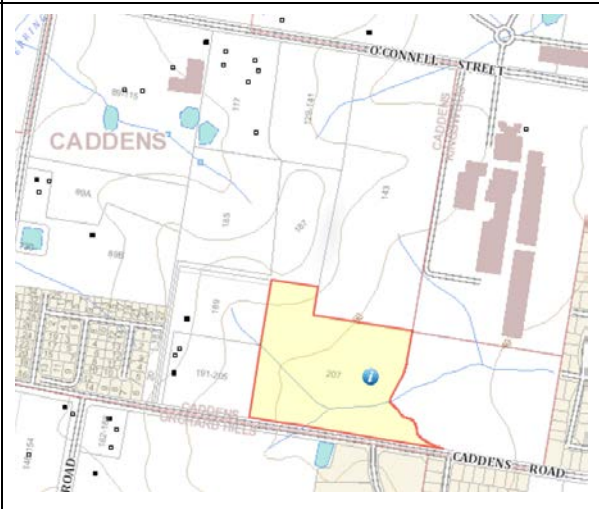
Figure 1 Subject site

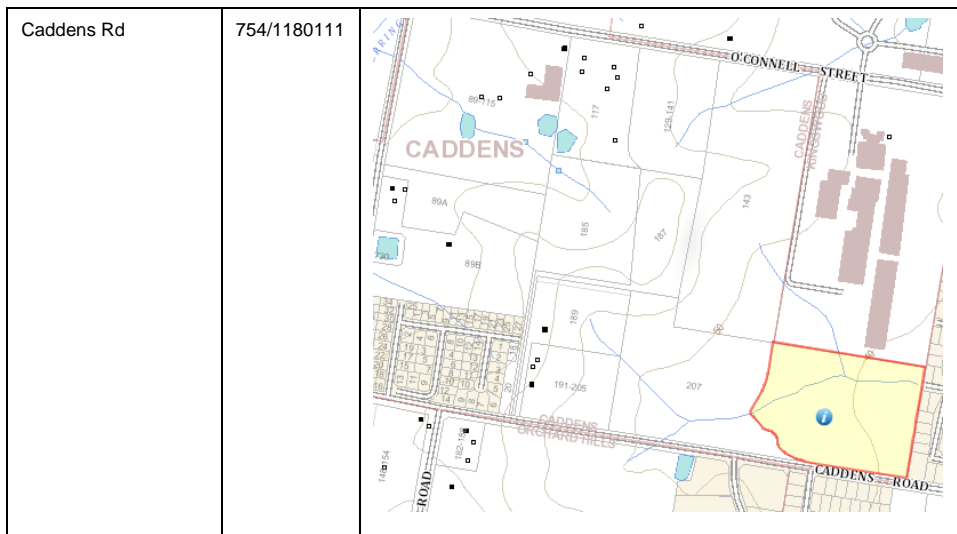
The site however comprises the following multiple lots as indicated on the SIX Maps website.

Address	Lot/DP	
117 O'Connell St	11/522660	



129-141 O'Connell St	12/522660	
143 O'Connell St	51/1189505	
185 Caddens Rd	101/564332	

187 Caddens Rd	1/515678	
189 Caddens Rd	1/502333	
207 Caddens Rd	755/1180111	



As this locality is a residential release area, the surrounds have historically been characterised as rural, however there is increased development activity occurring consistent with what is being proposed as part of this application.

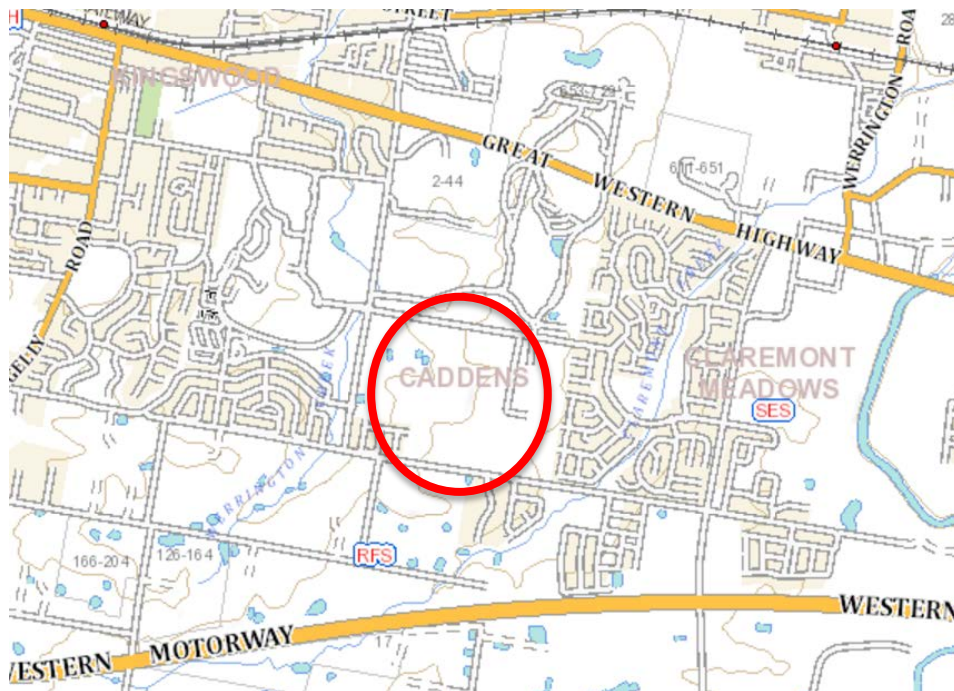


Figure 2 Surrounding cadastre

The site is well connected to the Great Western Highway to the north, Bringelly and The Northern Roads to the west, and in turn the M4 Motorway to the south.

Surrounding land uses include recently developed residential dwellings to the west as part of the development of Caddens, rural residential development to the south, and the State Records Centre immediately to the east. The area to the north of the site across O'Connell Street is identified as a neighbourhood centre to serve the community of Caddens and its surrounds.

***Topography***

The subject site is quite undulating with prominent peaks, particularly in the location of the proposed Hilltop Park. The civil drawings and survey plans detail the various levels around the site.

***Vehicular Access***

Vehicular access is currently available from Caddens Road and O'Connell Street.

***Utilities and Services***

There are existing reticulated sewer, water and electricity services to or near the site.

***Vegetation***

Some vegetation is found on the site however it is not considered to be significant and is proposed to be removed. Vegetation removal has already been approved under previous DA's on the site.

## 2.2 Existing Development

The site is generally vacant, except for one dwelling house which is proposed to be demolished.

## 3 Development Proposal

### 3.1 Objectives of the Proposal

This application seeks consent for the subdivision of Caddens Hill Stages 2, 3 and 4 creating 257 lots including bulk earthworks, demolition, tree removal, roadworks, utility servicing, streetscape landscaping and Hilltop Park landscaping. An additional 3 residue lots will result, along with lots for drainage detention and open space.

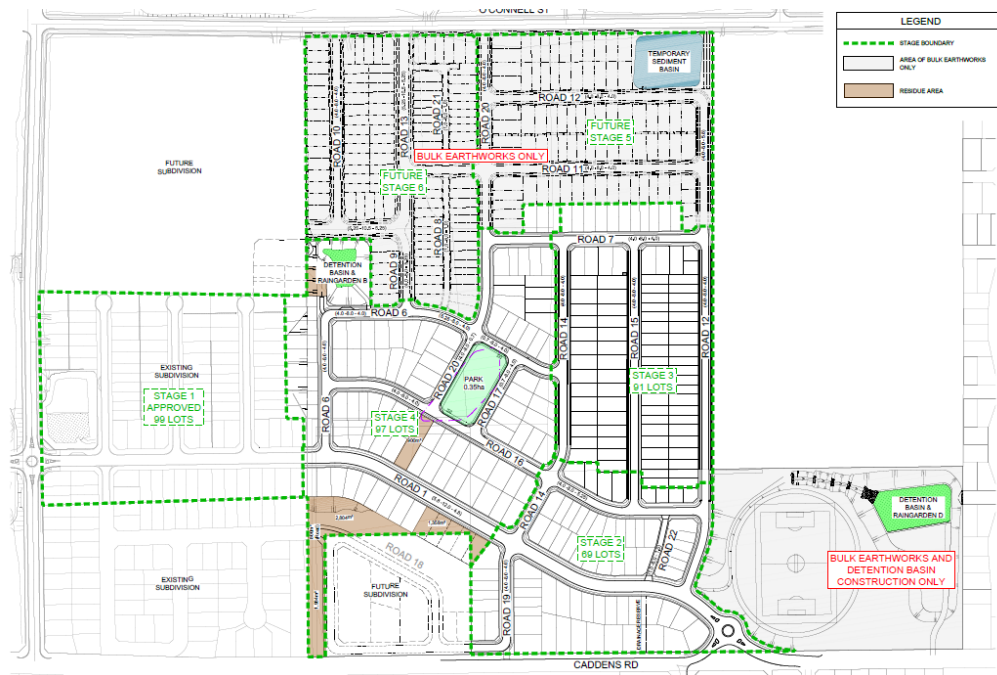


Figure 3: Site Plan

### 3.2 Details of the Proposal

This application includes many elements. In detail the proposal includes:

#### 3.2.1 Demolition

Structures exist on Lot 2, DP 502333 and these are proposed to be demolished. Appropriate conditions of consent can be applied in respect of this aspect of the application.

It is noted that the demolition and tree removal is identified in the plans by J Wyndham Prince.

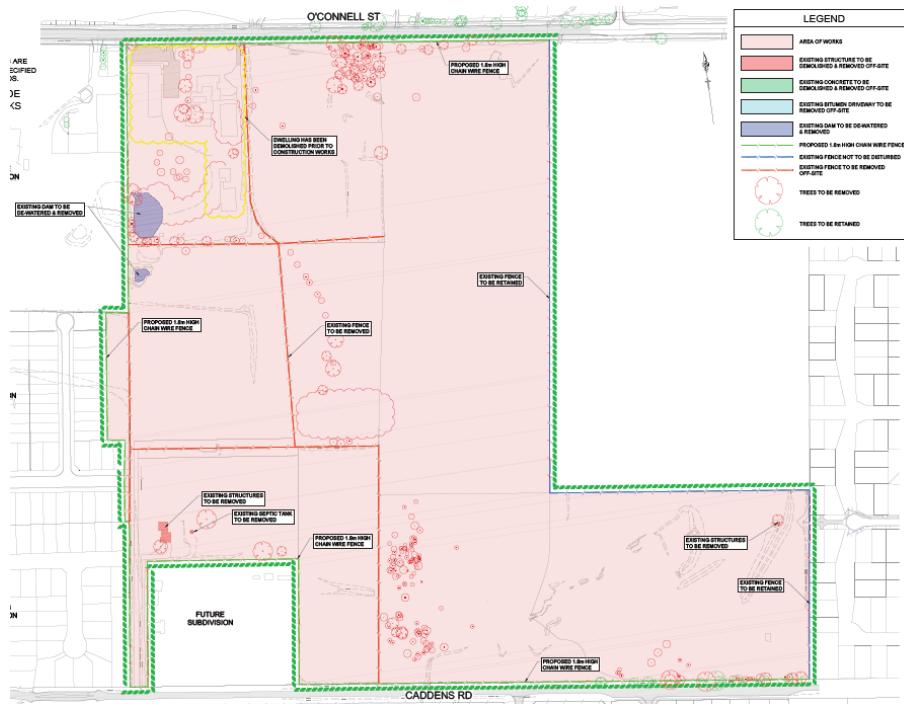


Figure 4 Extract from the Tree Management and Demolition Plan

### 3.2.2 Bulk Earthworks

The proposed development requires a substantial level of earthworks across the site. The grades that need to be achieved for acceptable road construction require cut of up to 8m in certain areas.

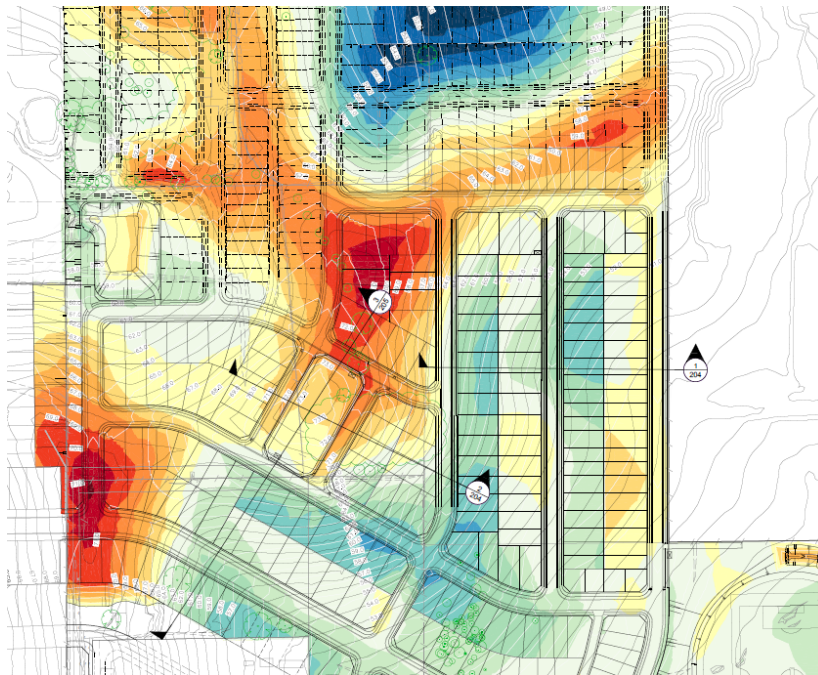


Figure 5 Extract from the Bulk Earthworks Plan - red showing extent of cut, blue showing extent of fill

### 3.2.3 Road Layout

The detailed design of the proposed road layout has resulted in some variations to the layout shown in Council's DCP. These variations are proposed to account for the topography of the site and are required to ensure proposed lots are orientated appropriately. The proposed road layout also results in a revised configuration of the Hilltop Park and this is detailed further in this report.



Figure 6 Road layout proposed in DCP



Figure 7 Road layout proposed showing area of difference

After acquiring the consolidated site, Legacy Property undertook a master planning exercise to ensure the optimal outcome and to overcome previous design issues resulting from fragmented ownership. It was identified that the irregular shape of the park and some road geometry created a number of poorly resolved residential areas that would require either cul de sacs or battle-axe blocks. The proposed solution results in minor changes to the structure plan presented in the DCP, namely the reconfiguration of the park to a more regular shape and corresponding changes to the road layout creating a more functional subdivision layout.

### 3.2.4 Subdivision

The overall development includes approximately 550 lots across a total of six stages. In July 2016, a DA was submitted to Council and approved for 99 lots within Stage 1. This application for stages 2, 3 and 4 includes a further 257 lots, with consideration being given to future arrangements of Stages 5 and 6.

The staging is intended to allow for the staged release of Construction Certificates and Subdivision Certificates, and in detail comprises the following lot delivery:

- Stage 2 – 69 lots
- Stage 3 – 91 lots
- Stage 4 – 97 lots
- 3 residue lots
- 1 open space lot, and
- 1 drainage reserve lot

The application also proposes:

- A reconfigured Hilltop Park, including amended road layout around same. In terms of zoning, the proposed layout of the Park does not match the zone in the LEP. This is proposed to be reconciled through a future planning proposal to be lodged with Council.
- Lot 499 is proposed to be a residue lot given the above zoning anomaly. Whilst roads are a permissible land use in the RE1 zone, residential development is obviously not and so it is proposed to hold back development of lot 499 pending the outcome of a future planning proposal. It is noted that Lot 499 would be proposed to be developed into 2 residential lots consistent with the surrounding lot layout.

### 3.2.5 Stormwater Concept Plan

The application includes a comprehensive approach to the handling of stormwater on the site. The accompanying Stormwater Management Strategy Report contains the following description of these proposed works.

*The proposed development will include a series of co-located raingarden / detention basins to manage stormwater quality and quantity. These include:*

**Basin "B"** - located within Stage 4, the basin will attenuate and treat runoff prior to discharging overland to the adjacent property to the north – west (future subdivision). It is noted that this flowpath naturally occurs under existing catchments.

**Basin "C"** – constructed as part of the future Stage 5 works, the basin will manage those catchments draining to the north prior to discharge to O'Connell Street. A separate DA will be made to Council for this management device in due course.

**Basin "D"** - located in the eastern side of the park being proposed within Stage 2 (in the SP2 land). Flows will be attenuated and treated prior to discharge into the existing 1650 mm dia pipe which connects the subject site, through a drainage easement and along Vivaldi Street to the east.

It is also noted that an additional detention basin is proposed because the proposed regional basin located on adjoining private land is not available. This approach was previously considered and approved under DA11/0796.



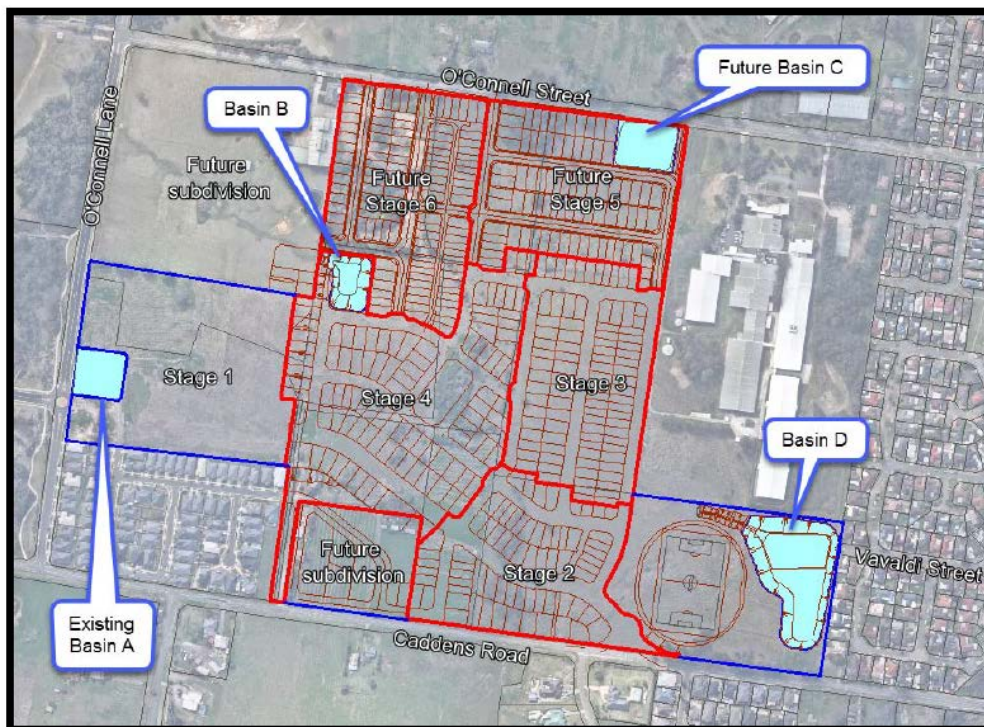


Figure 8 Extract from stormwater strategy

### 3.2.6 Hilltop Park

The Hilltop Park is proposed to be delivered as part of this application and this is detailed in the accompanying Landscape Report.

The park is proposed to be 3,515 sqm in area and is designed to include, amongst other things:

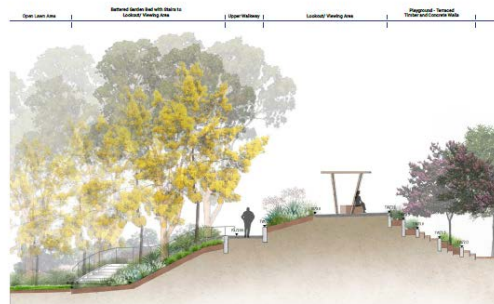
- Active play area taking advantage of the 5m level change within the park.
- Mounded lawn areas with shade trees.
- Shelter and Pergola structure with furniture.
- Revegetated areas.
- Optional signage board with information on the old house (was located in the vicinity) and past land usages of Caddens.

It is noted though, that due to the requirements for road levels in the vicinity, the native woodland and existing trees cannot be retained. To offset this, an area of endemic native vegetation has been proposed within the indentation of creating a new woodland.

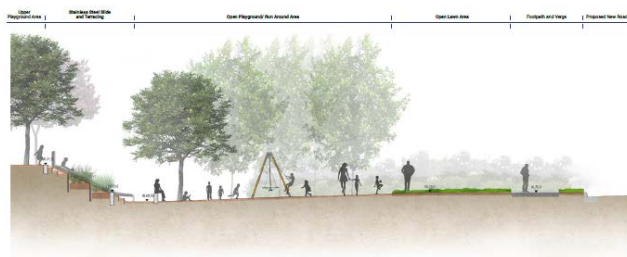
The design is shown in the following Figure.



HILL TOP PARK - SECTION 1



HILL TOP PARK - SECTION 2



### 3.2.7 Landscape Master Plan and Urban Design

The landscaping approach to the entire estate is contained within the accompanying Landscape DA Report. The principles applied to the landscaping of the estate include:

- Continue the principles set out in the WELL Precinct Control Documents and the Penrith City Council DCP.
- Capitalise on the many views and vistas created by the topography of the site.
- Address site drainage and retention issues, and integrate WSUD principles where feasible.
- Provide open space and play areas suitable for a range of users.

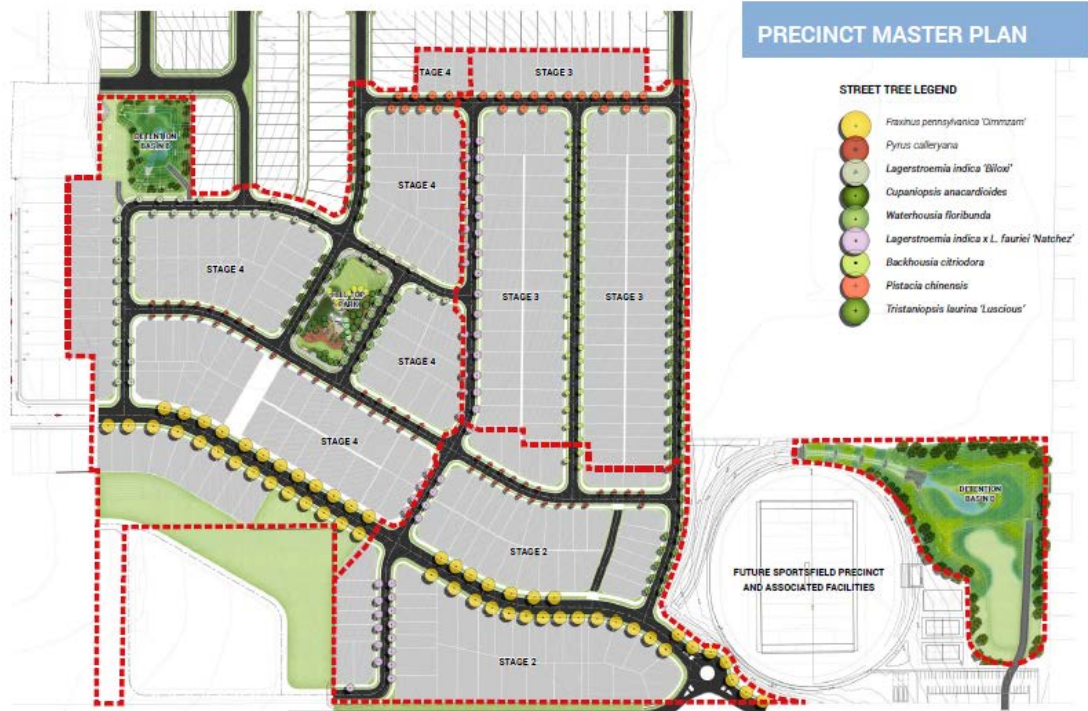


Figure 9 Precinct Master Plan

## 4 Statutory Context

The following section provides an assessment of the proposed development against the relevant planning instruments and policies.

### 4.1 Rural Fires Act 1997

A small section in the southern part of the site is mapped as being bushfire prone land. Accordingly, the proposed development triggers the “integrated” development provisions of the Act and General Terms of Approval will be required from the Rural Fire Service NSW.

A bushfire impact assessment report accompanies the application.



Figure 10 Bushfire Prone Land Map Extract

### 4.2 State Environmental Planning Policy No 55 – Remediation of Land

Under Clause 7(1)(A) the consent authority must not consent to a development application unless consideration has been given to whether the land is contaminated. Over time assessments have been undertaken on the various allotments that are the subject of this application. The following table identifies the status of each lot and its corresponding assessment.

Existing Lot / DP	DCP Potentially Contaminated	Current Status of Contamination Investigations	Conclusion
Lot 11 DP522660	Yes	Geotechnique Phase 2 and RAP Works under RAP currently pending.	Site is suitable for residential uses subject to complete of works in accordance with the RAP

Existing Lot / DP	DCP Potentially Contaminated	Current Status of Contamination Investigations	Conclusion
Lot 12 DP522660	Yes	Site Audit Statement issued 2009 JBS&G completed a walkover to confirm there is no evidence of contamination since SAS issued	Site is suitable for residential uses
Lot 101 DP564332	Yes	Site Audit Statement issued 2009 JBS&G completed a walkover to confirm there is no evidence of contamination since SAS issued	Site is suitable for residential uses
Lot 1 DP515678	Yes	Phase 2 ESA completed October 2016.	Site is suitable for residential uses
Lots 2 & 6 DP50233	Yes	Phase 2 ESA completed October 2016.	Site is suitable for residential uses
Lot 755 DP1180111	Yes	Site Audit Statement issued 2011 JBS&G completed a walkover to confirm there is no evidence of contamination since SAS issued	Site is suitable for residential uses
Lot 51 DP1189505	No	Phase 1 ESA completed.	Site is suitable for residential uses

In summary, the subject site satisfies the provisions of the SEPP and is considered suitable for the proposed development.

#### 4.3 State Environmental Planning Policy (Infrastructure) 2007

The aim of SEPP Infrastructure is to facilitate the effective delivery of infrastructure across the State.

Schedule 3 of the SEPP triggers the need for a referral to Roads and Maritime Services NSW for comment only.

#### 4.4 Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River

The aim of SREP 20 is to protect the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

Appropriate conditions of consent would normally be applied to any approval to ensure the health of the river system is not compromised by way of sediment or erosion from the works or use.

## 4.5 Penrith Local Environmental Plan 2010

The LEP is the primary environmental planning instrument relating to the proposed development. The objectives of the LEP are as follows:

- (a) *to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,*
- (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,*
- (d) *to foster viable employment, transport, education, agricultural production and future investment opportunities and recreational activities that are suitable for the needs and skills of residents, the workforce and visitors, allowing Penrith to fulfil its role as a regional city in the Sydney Metropolitan Region,*
- (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,*
- (g) *to minimise the risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by managing development in sensitive areas,*
- (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.*

It is submitted that the proposed development is not inconsistent with these objectives.

The subject site has two zonings. Most the site is zoned *R1 General Residential*. The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that new development reflects the desired future character and dwelling densities of the area.*

The proposed development is consistent with the objectives in that:

- It will result in additional housing stock in the LGA.
- A variety of housing types will be constructed.
- The infrastructure and recreational needs of the wider area will be provided for.
- A high level of amenity will be provided through the proposed estate landscaping and urban design works.
- The objectives of the DCP as they relate to desired future character and dwelling densities have been achieved.

The objectives of the RE1 zone are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To ensure that development is secondary and complementary to the use of land as public open space, and enhances public use, and access to, the open space.*
- *To provide land for the development of services and facilities by public authorities for the benefit of the community.*

The proposed development is consistent with the objectives in that:

- Recreational and open space is provided for as a result of this application.
- The proposed recreational spaces are complementary to the residential development of the land.
- The wider Penrith community will benefit from the installation of the proposed recreational facilities.

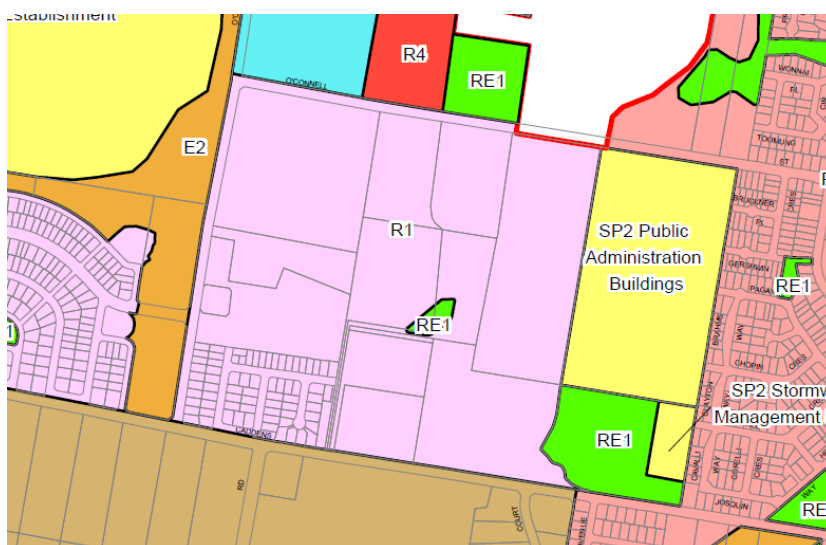


Figure 11 Land zoning

Subdivision of the subject land is permissible under the LEP.

The following relevant clauses have also been considered in respect of this development proposal.

<b>Part 4 Principal Development Standards:</b>				
<b>Standard</b>	<b>Permitted</b>	<b>Proposed</b>	<b>Comment</b>	
<b>4.1 Minimum subdivision lot size:</b>			A range of lot sizes are proposed as part of this application consistent with the objectives of the LEP and the DCP. In reference to Figure 12 below, areas marked 'G' on the LEP overlay are identified as having a minimum lot size of 450sqm. A total of 28 lots out of 257 residential lots, representing 11%, do not comply with the 450sqm minimum lot size since they are located within the area marked 'G' and are below the 450sqm area. Consequently a request to vary the development standard in accordance with Clause 4.6 is included later in this report.	
<b>4.2 Rural Subdivision:</b>	N/A	N/A	-	
<b>4.3 Height of Buildings:</b>	9m	<9m	The site has a 9m height limit. No structures proposed as part of this application exceed this height.	
<b>4.4 Floor Space Ratio</b>	N/A	N/A	-	
<b>4.5 Calculation of Floor Space Ratio and site area</b>	N/A	N/A	-	
<b>4.6 Exceptions to development standards</b>			A request to vary the minimum lot size in accordance with Clause 4.6 is detailed later in this report.	

<b>Part 5 Miscellaneous Provisions</b>	
<b>Provision</b>	<b>Comment</b>
<b>5.1 Relevant acquisition authority</b>	N/A
<b>5.2 Classification and reclassification of public land</b>	N/A
<b>5.3 Development near zone boundaries</b>	N/A
<b>5.4 Controls relating to miscellaneous permissible uses</b>	N/A
<b>5.5 Development within the coastal zone</b>	N/A
<b>5.6 Architectural roof features</b>	N/A
<b>5.7 Development below mean high water mark</b>	N/A
<b>5.8 Conversion of fire alarms</b>	N/A
<b>5.9 Preservation of trees and vegetation</b>	The accompanying plans detail the vegetation that is proposed to be removed. The requirement to remove this vegetation arises from the bulk earthworks that are required on the site.
<b>5.10 Heritage conservation</b>	N/A



5.11	<b>Bush fire hazard reduction</b>	A bushfire assessment report is accompanying this application and is to be considered in its assessment. The application requires General Terms of Approval to be obtained from Rural Fire Service NSW prior to determination.
5.12	<b>Infrastructure development and use of existing buildings of the Crown</b>	N/A
5.13	<b>Eco-tourist facilities</b>	N/A
<b>Part 6 Urban release areas</b>		
<b>Provision</b>		<b>Comment</b>
6.1	<b>Arrangements for designated State public infrastructure</b>	Appropriate contributions will be paid in respect of the development that will reflect all works proposed as part of the estate development.
6.2	<b>Public utility infrastructure</b>	The development can be appropriately serviced by the required infrastructure. Some augmentation may be required that will be confirmed with the relevant authorities prior to construction.
6.3	<b>Development control plan</b>	The proposed development is generally consistent with the provision of the Penrith DCP.
6.4	<b>Relationship between Part and remainder of Plan</b>	Noted
6.5–6.19	<b>(Repealed)</b>	N/A
<b>Part 7 Additional Local Provisions</b>		
<b>Provision</b>		<b>Comment</b>
7.1	<b>Earthworks</b>	Proposed earthworks are detailed in the accompanying plans. Earthworks are required to ensure the site has appropriate grades across the site.
7.2	<b>Flood planning</b>	N/A
7.3	<b>Development on natural resources sensitive land</b>	N/A
7.4	<b>Sustainable Development</b>	N/A
7.5	<b>Protection of scenic character and landscape values</b>	N/A
7.6	<b>Salinity</b>	A salinity report accompanies the application that supports the development proposal.
7.7	<b>Servicing</b>	Refer to 6.2 above
7.8	<b>Active street frontages</b>	N/A
7.9	<b>Development of land in flight path of proposed Second Sydney Airport</b>	N/A
7.10	<b>Dual occupancies and secondary dwellings in certain rural and environmental zones</b>	N/A
7.11	<b>Penrith Health and Education Precinct</b>	N/A
7.12	<b>Maximum gross floor area of commercial premises</b>	N/A
7.13	<b>Exhibition homes limited to 2 years</b>	N/A
7.14	<b>Cherrywood Village</b>	N/A
7.15	<b>Claremont Meadows</b>	N/A
7.16	<b>Glenmore Park Stage 2</b>	N/A

7.17	Dwelling houses on certain land in Castlereagh, Cranebrook, Llandilo, Londonderry, Kemps Creek and Mulgoa	N/A
7.18	Mulgoa Valley	N/A
7.19	Villages of Mulgoa and Wallacia	N/A
7.20	Orchard Hills	N/A
7.21	Twin Creeks	N/A
7.22	Waterside Corporate	N/A
7.23	Location of sex services premises and restricted premises	N/A

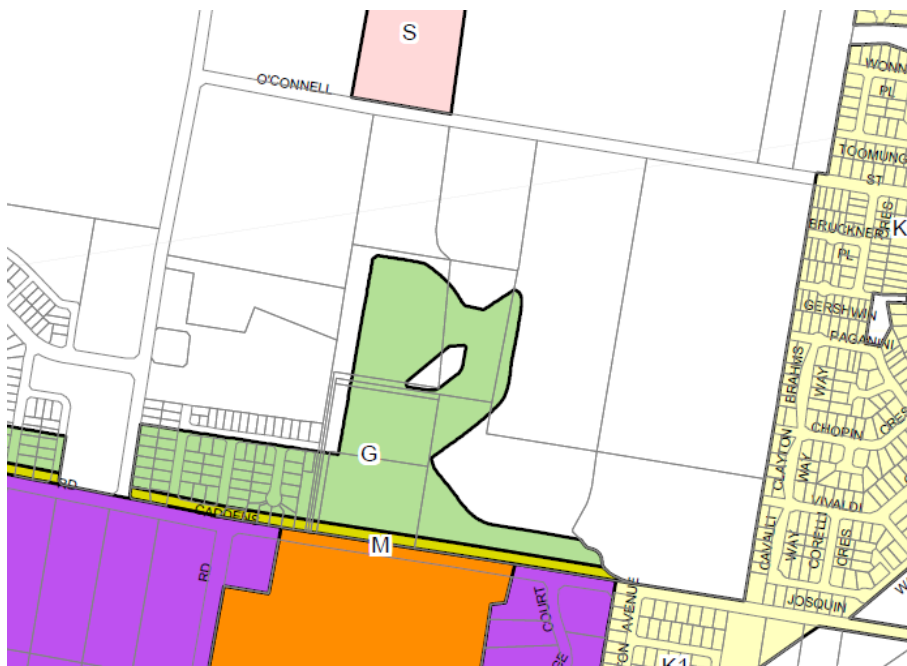


Figure 12 Minimum lot size overlay extract from LEP

### 4.5.1 Clause 4.6 – Exceptions to Development Standards

The proposed development seeks a variation to the minimum lot size control under the LEP. Clause 4.6 allows flexibility in applying development controls in some cases to particular developments. The relevant sub clauses include:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Director-General has been obtained*

This section of the Statement of Environmental Effects can be considered as the formal request to vary the cited development standards and is based on the document “*Varying Development Standards: A Guide (August 2011)*” (*Guide*)

**1. What is the name of the environmental planning instrument that applies to the land?**

Penrith Local Environmental Plan 2010

**2. What is the zoning of that land?**

The subject site is zoned *R1 General Residential*

**3. What are the objectives of the zone?**

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that new development reflects the desired future character and dwelling densities of the area.*

The proposed development is consistent with the objectives in that:

- It will result in additional housing stock in the LGA.
- A variety of housing types will be constructed.
- The infrastructure and recreational needs of the wider area will be provided for.

- A high level of amenity will be provided through the proposed estate landscaping and urban design works.
- The objectives of the DCP as they relate to desired future character and dwelling densities have been achieved.

**4. What is the development standard being varied? e.g. FSR, height, lot size**

Minimum Lot Size – 450sqm

**5. Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.1 Minimum Subdivision Lot Size

**6 What are the objectives of the development standard?**

Clause 4.1 Minimum Subdivision Lot Size objectives include:

**4.1 Minimum subdivision lot size**

(1) *The objectives of this clause are as follows:*

- (a) *to ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided,*
- (b) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) *to ensure that lot sizes and dimensions allow developments to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views,*
- (d) *to regulate the density of development and ensure that there is not an unreasonable increase in the demand for public services or public facilities,*
- (e) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

**7. What is the numeric value of the development standard in the environmental planning instrument?**

The minimum subdivision lot size is 450sqm.

**8. What is the proposed numeric value of the development standard in your development application?**

A total of 28 lots out of 257 residential lots, representing 11%, do not comply with the 450sqm minimum lot size.

**9. What is the percentage variation (between your proposal and the environmental planning instrument)?**

A total of 28 lots out of 257 residential lots, representing 11%, do not comply with the 450sqm minimum lot size.

These are lots 202, 203, 204, 205, 209, 210, 211, 212, 227, 228, 229, 230, 232, 232, 443, 444, 445, 446, 478, 479, 480, 481, 482, 485, 486, 488, 492 and 493.

**10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case**

The proposal meets the general intent of *Clause 4.1 Minimum Subdivision Lot Size* and complies with the objectives of this development standard as follows:

- In analysing the site, the intention is to capitalise on limited opportunities to incorporate smaller lots where the topography is flatter as part of providing an appropriate level of diversity and housing mix. This approach ensures the lot sizes are compatible with the environmental capabilities of those areas of the land.
- The placement of the proposed smaller lots will not result in any unacceptable impacts on the amenity, or potential amenity, of neighbouring properties.
- The location of the proposed smaller lots are such that they will not impact on any potential natural or cultural features of the land. Further, some of the lots will be appropriately located near the proposed Hilltop Park.
- There would be no unreasonable increase in densities on the site as a result of supporting the variation. The proposal will contribute an appropriate dwelling yield to the dwelling yield targets for the precinct.
- The documentation submitted with this application demonstrates that development consistent with the relevant development controls can be accommodated on those sites.

Conversely, it is noted that lots 348 – 380 are outside the minimum lot size and theoretically could incorporate a higher proportion of smaller lots. However, this area of the site is a relatively steep so the approach has been to retain generally larger lots.

In summary, the detailed design process undertaken by Legacy would see the appropriate lot types proposed in the appropriate locations.

**11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.**

Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* provide:

*The objects of this Act are:*

*(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

*(iii) the protection, provision and co-ordination of communication and utility services,*

*(iv) the provision of land for public purposes,*

*(v) the provision and co-ordination of community services and facilities, and*

*(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*

*(vii) ecologically sustainable development, and*

*(viii) the provision and maintenance of affordable housing, and*

*(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

*(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

It is submitted that the variation to the minimum lot size would still achieve an appropriate lot configuration while maintaining the objectives of the relevant clause within the LEP. The objects of the Act are not hindered through the proposed variation being supported.

Complying strictly with the control will not result in any superior outcome, however it will allow more dense lots to be located in areas that are most appropriate.

The resultant lot layout represents the most orderly development of the land.

**12. Is the development standard a performance based control? Give details.**

No it is prescriptive.

**13. Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?**

Strict compliance with the standard in this particular case is unreasonable and unnecessary as dwelling types would need to be constructed on sloping land that would require excessive cutting and retaining. The proposed layout reduces the need for such works and in turn, maximizes the general amenity and visual presentation of dwellings when viewed in the streetscape.

The proposed development meets the objectives of the zone, it meets the relevant development standard clauses and it is considered that the objectives of the Act would not be undermined by supporting the variation.

**14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.**

The following environmental grounds are submitted in support of the variation:

- The resultant built outcome will be more responsive to the topography of the land.
- Excessive cut and retaining will be minimised through the appropriate location of more dense housing lots.

- As a result of the above, potential future conflicts between dwellings ie overshadowing, overlooking, solar access, will be minimised.
- The proposed development will continue to achieve an appropriate response to section 1.2.2 of the Caddens section of the DCP in that it will respond to the topographical constraints of the site, and the amenity (both current and future) will be maintained or enhanced as a result.
- No precedence would be created given this variation relates to the specific site characteristics that are unique to this development proposal.

Specific to the circumstances of this development there is sufficient grounds to support the variations in height for this proposal for the following reasons:

- The breaches in development standards are considered minor in the context of the overall site development and will not result in a negative impact on nearby or adjoining properties.
- The bulk and scale of future dwellings will be minimised and still achieve the anticipated development outcomes in the locality.

#### **15. Conclusion**

It is considered that the proposed variation to support lots that are smaller than the minimum lot size is warranted as the proposed design and development provides a better planning outcome as outlined in this Clause 4.6 variation request. Compliance with the development standard in relation to the minimum lot size is unnecessary and unreasonable in the circumstances of this development and there are sufficient planning grounds to justify the variations.

## 4.6 Penrith Development Control Plan 2014

Development Control Plans contain finer grain planning controls in respect of specific development types. The following Part of Penrith DCP 2014 specifically relates to development at Caddens and is considered in detail below.

Part E1: Caddens	
Control	Comment
<p><b>1.2.1 Urban Structure</b></p> <ol style="list-style-type: none"> <li>1) The principal land use at Caddens will be residential. The residential areas will be located on either side of a linear riparian corridor and around open space areas on hilltops and ridges.</li> <li>2) The location of the Precinct Centre, riparian corridor and active open space will provide focal points for the new community.</li> <li>3) The Precinct Centre will form the hub of the WELL Precinct and serve the residential community, the university and TAFE community, and future employment areas.</li> <li>4) Active and passive open spaces will be distributed throughout Caddens and integrate with the natural features of the Werrington Creek riparian corridor.</li> <li>5) The area will be legible and highly accessible and incorporate a bus route, cycle routes and walking tracks.</li> <li>6) Higher density forms of housing will be located in close proximity to the Precinct Centre and other areas of higher amenity.</li> <li>7) Caddens Road is to function as a rural road segmented by strategic closures.</li> <li>8) Development facing and accessing Caddens Road will contain larger, wider lots that provide a transition between the new urban area and the rural landscape to the south.</li> <li>9) Views to and vistas from the hilltops will be protected by way of lower rise development and revegetated open space.</li> </ol>	<p>The development that is the subject of this application is primarily for residential purposes. It also includes the planning and delivery of the Hilltop Park.</p> <p>Whilst the proposal amends the road layout slightly from that which is indicated in the DCP, important transport links are provided, including a 2.5 m wide shared cycle path, as well as primary vehicle circulation.</p> <p>The development would also see higher densities of housing located on land that has flatter topography, as well as land that is near areas of higher amenity.</p> <p>View corridors to and from the hill tops have been considered in the design and are best illustrated in the Landscape DA Report.</p>
<p><b>1.2.2 Character Area Design Principles</b></p> <p><b>Hilltops</b></p> <p>The hilltops will be characterised by open space and sensitively designed residential development on generally larger lots that respond to the undulating landform while creating an opportunity for visual connections to the ridge line and hilltop parks.</p> <p>Development is to:</p> <ol style="list-style-type: none"> <li>1) Respond to the topographical constraints.</li> <li>2) Provide, where possible, opportunities for views to hilltops and ridges.</li> <li>3) Minimise the height, bulk and scale of dwellings on steep slopes when viewed individually and collectively both from within and outside the locality.</li> <li>4) Provide appropriate residential amenity, particularly with respect to visual privacy and the relationship between dwellings.</li> <li>5) Provide pedestrian and cyclist links to public open space.</li> </ol>	<p>The proposal incorporates the design principles listed in the DCP. The location of various sized lots, and their orientation, has resulted in a minor variation to the lot layout. This is considered to be a preferred outcome that takes into account the actual site characteristics.</p>



### 1.2.3 Dwelling Yield and Diversity

#### Controls

- 1) A minimum of 1,247 dwellings is to be delivered.
- 2) For each precinct the minimum dwelling yield outlined in Table E1.1 is to be achieved.
- 3) As part of a subdivision application, an applicant is to demonstrate to Council how the objective of 15 dwellings per hectare is to be achieved for that development so that the overall precinct minimum dwelling yields will be achieved.
- 4) The creation of a super lot or residue parcel is to specify the minimum dwelling yield which that lot will be required to deliver.

**Table E1.1 – Dwelling yield**

Sub precinct	Minimum dwelling yield
A	377
B	634
C	102
D	134
<b>Total</b>	<b>1247</b>

The minimum dwelling yield for sub precinct B is 634 dwellings. It is expected that once all stages are completed, the contribution by Legacy within this precinct would be approximately 550 lots. With the development of other lands within the precinct it is expected that these targets will be met.

### 1.3.1 Street Network and Design

#### Controls

- 1) The street network is to be provided generally in accordance with Figure E1.6 and must incorporate a new collector road to by-pass Caddens Road.
- 2) Where any variation to the residential street network indicated at Figure E1.6 is proposed, the alternative street network is to be designed to achieve the following principles:
  - a) establish a direct and open network that is based on a modified grid system;
  - b) encourage walking and cycling and reduce travel distances;
  - c) maximise connectivity between residential areas, open space and the Precinct Centre;
  - d) take account of topography and accommodate significant vegetation;
  - e) provide frontage to and maximise surveillance of open space and the riparian corridor;
  - f) provide views and vistas to landscape features; and
  - g) minimise the use of cul-de-sacs. If required, the maximum number of dwellings to be served by the head of a cul-de-sac is six.
- 3) Streets are to be provided in accordance with the cross-sections at Figure E1.7. The dimensions shown on these typical diagrams are minimums only. Alternative street designs may be permitted on a case by case basis if they preserve the functional objectives and requirements of the design standards.
- 4) Except where otherwise provided for in this DCP, all streets and roundabouts are to be designed and constructed in accordance with the minimum requirements set out in the Penrith Council Engineering Design Specifications.
- 5) Where roads are adjacent to public reserves or riparian corridors, the verge widths may be reduced to a minimum of 1m, subject to footpaths, public utilities, bollards and fencing being adequately provided for, and riparian corridors requirements being addressed.
- 6) Where possible and practicable, the verge width is to be increased to 4.8m in front of dwellings where the front setback is less than 4.5m.
- 7) Street trees are required on all streets. Street planting is to:
  - a) minimise risk to utilities and services;
  - b) be durable and suited to the street environment and include endemic species;
  - c) maintain adequate lines of sight for vehicles and pedestrians, especially around driveways and street corners;
  - d) provide appropriate shade;
  - e) provide an attractive and interesting landscape character without blocking the potential for street surveillance; and
  - f) be sited to minimise interference with street lighting.

The street network is provided generally in accordance with the DCP. The proposed variations to the DCP layout achieve the DCP principles by:

- Establishing a direct and open network
- Continuing to encourage cycling and walking
- Continuing to ensure maximum connectivity between all areas within the estate.
- Responding to the topography of the site creating appropriate areas for different forms of housing
- Continuing to provide passive surveillance over open space areas.
- Minimising cul de sacs.

The street layout proposed also reflects Legacy's ability to deliver complete roads (pavements and verges) in the context of their acquisition (settlement of) the various parcels of land.

Street Trees are also proposed throughout the estate creating design outcomes sought in the DCP.

### 1.3.2 Street Furniture and Public Art

#### Controls

- 1) Public art may be freestanding art objects or works integrated into building facades, other built edges, water courses and landscaping adjoining public spaces.
- 2) Street furniture is to enhance pedestrian comfort, convenience and amenity and to form an integral element of the streetscape.
- 3) The provision of street furniture in public spaces must include, as appropriate:
  - a) Seats.
  - b) Litter bins.
  - c) Drinking fountains.
  - d) Lighting.
  - e) Information signs.
  - f) Bicycle racks.
  - g) Planter boxes.
  - h) Other items suitable to the function of each public space.
- 4) Street furniture throughout precincts should be consistent in design and style.
- 5) Street furniture is to be located so as not to impede mobility, in accordance with A51428:1-4.
- 6) Location and detailing of all proposed street furniture and public art is to be indicated on the Landscape Plans submitted with Development Applications.

Appropriate street furniture and installations are proposed on the Hilltop Park. Details are within the Landscape Master Plan Report.

### 1.3.3 Pedestrian and Cycle network

#### Controls

- 1) Key pedestrian and cycleway routes are to be provided generally in accordance with Figure E1.8.
- 2) The design of cycleways located within the road reserve is to be in accordance with Figure E1.7.
- 3) The minimum width of off-street shared cycle and pedestrian pathways is to be 2.5m (as shown in Figure E1.7g).
- 4) The minimum width of pedestrian footpaths is 1.5m.
- 5) All pedestrian and cycleway routes and facilities are to be consistent with the Planning Guidelines for Walking and Cycling (DOP & RTA 2004).
- 6) Pedestrian and cycle routes and facilities in public spaces are to be safe, well lit, clearly defined, functional and accessible to all.
- 7) Pedestrian and cycle pathways, and pedestrian refuge islands are to be designed to be fully accessible by all in terms of access points and gradients, generally in accordance with Australian Standard 1428:1-4.
- 8) Pedestrian and cycle pathways are to be constructed as part of road infrastructure works with detailed designs to be submitted with DAs.

A pedestrian and cycle network consistent with these requirements is provided through the estate.

### 1.3.4 Public Transport

#### Controls:

- 1) Bus routes are to be provided generally in accordance with the requirements of Transport for NSW. Figure E1.9 provides an indicative concept plan of the route and bus stops.
- 2) Roundabouts on bus routes are to be designed to accommodate bus manoeuvrability.
- 3) Bus stops (where known) are to be provided on-street and not within indented bays. Bus shelters are to be provided at key stops and installed at the subdivision construction stage.

Public transport will be able to be accommodated in the estate. Bus stops could be placed when appropriate locations are identified.

### 1.3.5 Open Space, Environmental Conservation and Landscape Network

A Comprehensive response to this part of the DCP is provided within the Landscape Master Plan Report.  
  
The design incorporates the broader objectives sought and generally complies with the controls identified.

### 1.3.6 Biodiversity

#### Controls

- 1) A Flora and Fauna Management Plan (FFMP) is to be prepared by a suitably qualified ecologist for the areas of high conservation significance along the Werrington Creek riparian corridor. The FFMP should include a Vegetation Management Plan and a Riparian Corridor Management Plan.
- 2) The FFMP is to be submitted as part of any subdivision of land adjoining the Werrington Creek riparian corridor and should detail weed removal, revegetation and rehabilitation, rubbish removal, habitat enhancement and ongoing protection and management measures.
- 3) All subdivision design and bulk earthworks are to consider the need to minimise weed dispersion and eradication.
- 4) Existing native vegetation in the riparian corridor is to be conserved and enhanced, and where required revegetated with endemic species as set out in the Vegetation Management Plan.

No significant examples of vegetation exist on the site.

A FFMP is not required.

### 1.3.7 Aboriginal and European Heritage

#### Controls

- 1) Areas of Aboriginal archaeological conservation value are identified at Figure E1.19. No development is to occur in this area without appropriate investigation, consent under Section 90 of the National Parks and Wildlife Act 1974 and consultation with the relevant local Aboriginal groups.
- 2) Any construction work that has the potential to encroach on the conservation area is to be fenced off during construction works.
- 3) Any development that encroaches on the conservation area is to be subject to archaeological salvage excavation following consultation with relevant local Aboriginal groups.
- 4) Archaeological test excavations are to be undertaken in accordance with Section 87 of the National Parks and Wildlife Act 1974 to determine the significance of areas with potential Aboriginal heritage value shown in Figure E1.19.
- 5) An item of European heritage significance (the ruins of a 19th century house located in the area of the proposed eastern hilltop park) is shown at Figure E1.19. Prior to demolition archival recording of the archaeological features is to be undertaken and a permit under Section 139 of the Heritage Act 1977 obtained. Demolition is to be monitored.
- 6) Interpretive signage that provides information on the Aboriginal and European history and heritage significance of the locality is to be provided within public domain areas. Street names should reflect the history of the land.

This clause applies to the subject site and the proponent will comply with any requirements identified by Council.

Whilst the DCP does not identify any Aboriginal heritage on the site, the item of European heritage is located within the subject site within the area identified for the Hilltop Park

Some form of interpretation strategy is proposed for the park in relation to the 'ruins' and the wider Caddens area, and it is considered this can be designed and approved prior to the subdivision being finalised.

### 1.3.8 Bushfire Hazard Management

#### Controls

- 1) Subject to detailed design at subdivision stage, a 20m precautionary bushfire setback is to be provided from the vegetation in the core riparian zone (see Figure E1.17).  
The setback:
  - a) may incorporate roads;
  - b) is to be located wholly outside of a core riparian zone; and
  - c) may be used for open space and recreation subject to appropriate fuel management.
- 2) Vegetation within the area of public open space in the south eastern corner of Caddens is to be managed as a 'fuel reduced area'.

Matters relating to bushfire impacts have been considered in the accompanying Bushfire Impact Assessment.

The application is 'integrated' and General Terms of Approval will be required from Rural Fire Service NSW.

### 1.3.9 Water Cycle Management

#### Controls

- 1) A riparian corridor 20m in width plus a 10m wide buffer zone is to be provided along both sides of Werrington Creek in accordance with Figures E1.16 and E1.17.
- 2) No residential allotment is to be located at a level lower than the 1% AEP flood level plus a freeboard of 500mm. Pedestrian and cycle pathways and open space may extend within the 1% AEP flood level, provided that the safe access criteria contained in the NSW Floodplain Manual are met.
- 3) Stormwater management plans are to be prepared for the catchments covering Caddens and are to demonstrate how the quantity and quality of urban run-off as a result of development will be managed.
- 4) Stormwater detention is to reduce post development flows to pre development levels.
- 5) All development is to incorporate water sensitive urban design (WSUD). A WSUD Strategy is to be submitted as part of any subdivision DA in accordance with Council's Sustainability Blueprint for Urban Release Areas (June 2005).
- 6) Erosion control and bank stabilisation measures are to be incorporated within the waterway where required.

The Stormwater Management Strategy Report by Wyndham Prince addresses water cycle management issues. This includes a response to Council's WSUD requirements.

### 1.3.10 Contamination Management

#### Controls

- 1) DAs for development in areas of potential contamination as identified at Figure E1.20 shall be accompanied by a Phase 2 Environmental Site Assessment in accordance with Council's policies and requirements.
- 2) A hazardous materials assessment is required as part of the demolition of any building.

The subject site has been identified as being suitable for the proposed use. This has been considered earlier in this report.

### 1.3.11 Salinity Management

#### Controls

- 1) DAs for subdivision of land identified in Figure E1.21 as being constrained by salinity are to be accompanied by a salinity report prepared by a suitably qualified consultant. The report is to include comprehensive sampling and cover the conditions of the site, the impact of the proposed subdivision on the saline land and the mitigation measures that will be required during the course of construction. Investigations and sampling for salinity are to be conducted in accordance with the requirements of Site Investigations for Urban Salinity (DNR). All works are to conform to the Western Sydney Salinity Code of Practice, June 2003 (WSROC) and Council's policies.
- 2) Groundwater recharge is to be minimised by:
  - a) directing runoff from paved areas into lined stormwater drains rather than along grassed channels as necessary;
  - b) lining or locating any pondages higher in the landscape to avoid recharge where proximity to the water table is likely to create groundwater mounding;
  - c) encouraging use of low water demanding plants and tree planting especially adjacent to watercourses.
- 3) For road works within areas identified as a salinity hazard:
  - a) disturbance of subsoil should be minimised;
  - b) engineering designs should consider salinity impacts; and
  - c) subsoil drainage is to be installed along both sides of all roads.
- 4) All development must incorporate soil conservation measures to minimise soil erosion and siltation during construction and following completion of development. A Soil and Water Management Plan, prepared in accordance with Council policies is to be submitted with any subdivision DA.
- 5) Land at the base of slopes near creeks may require saline tolerant species

A salinity report responding to site salinity has been prepared and accompanies this application. The only area identified in the DCP is Lot 754 owned by Council, which is proposed for bulk earthworks, detention basin and future open space.

#### 1.4.1 Subdivision and Neighbourhood Design

##### Controls

- 1) Subdivision layout should generally be in accordance with Figure E1.2 and is to create a recognisable, open and networked street hierarchy that responds to natural topography, the location of existing significant trees and solar design principles.
- 2) Pedestrian connectivity is to be provided between residential development and public open space areas, public transport nodes, and community facilities and services.
- 3) Lot orientation and configuration is to be generally consistent with the subdivision principles shown at Figure E1.22. Preferred lot orientation is either on a north-south or east-west axis as per Figure E1.22. Where there are other forms of amenity available, such as views or an outlook over open space, an alternative lot orientation can be considered.
- 4) A diverse range of lot types and frontages should be provided in each street. The repetition of lots with the same frontage along a street is to be avoided. For lots 12.5m wide and above, no more than five lots in a row should have the same frontage.
- 5) The minimum area for corner lots is 450m<sup>2</sup>.
- 6) The minimum lot dimensions for all dwelling types at Caddens are set out in Table E1.2.

**Table E1.2: Minimum lot dimensions**

Dwelling type	Lot area (m <sup>2</sup> )	Lot width (m)
Residential flat buildings	1000	30
Detached – contiguous (sharing a common border) with Caddens Road*	600	18
Detached - hilltops*	450	15
Detached	450	15
Detached	350	12.5
Built to boundary	350	10-15
Semi-detached	225	7.5-10
Attached	195	7.5-9.5

- 7) All applications for subdivision proposing residential allotments with a site area of less than 350m<sup>2</sup> are to be accompanied by development plans for the proposed dwellings on those lots. Council may waive this requirement where an application for subdivision creates no more than 2 lots with a site area less than 350m<sup>2</sup> per dwelling and it is satisfied that the subdivision application demonstrates (through use of restrictions such as building envelopes, preferred locations for garages and open space and the like) that an appropriate built form that complies with the relevant provisions of this DCP can be delivered on the lot. These restrictions will be approved as part of the subdivision application and will be required to be complied with by any future application proposing a dwelling on that lot.
- 8) On lots greater than or equal to 350m<sup>2</sup> in size where a built to boundary (zero lot line) dwelling is permitted, the side of the allotment that may have a zero lot alignment shall be shown on the approved subdivision plan. The Section 88B instrument for the subject lot and the adjoining lot shall include a note identifying the potential for a building to have a zero lot line.

The layout of the proposed subdivision is generally in accordance with the DCP. The variations proposed are primarily in response to the topography of the site and the resultant opportunity to provide a diversity of housing product in more appropriate locations. Those areas identified for more dense forms of housing will also result in better lot orientation, maximising solar access and general amenity.

Some corner lots are proposed to be slightly below the desirable 450sqm area, however the variations sought are only minor and the resultant lots contribute to the diversity of lot types and frontages that make up the development.

In terms of lot dimensions. The proposed lots generally comply. Legacy proposes some smaller lots that they wish to trial a certain type of housing stack new to this locality. Their 'Patio' Style housing product results in high quality visual presentation to street elevations, particularly secondary frontages on corner lots where the need for lengthy solid fencing is minimised. These are a new style of dwelling layout that Legacy would consider in future stages depending on their success.

Consistent with the DA Stage 1, a 'Building Envelope Plan' is included with the application showing specific setback controls for the lots less than 300sqm in area.

#### 1.4.2 Streetscape, Feature Elements and Roof Design

Not relevant for this application.

#### 1.4.3 Dwelling Height, Massing and Siting

##### Controls

- 1) The maximum number of storeys, measured from existing ground level, must be in accordance with those shown in Figure E1.24.
- 2) Single and attached housing is generally to be 2 storeys in height. Council may permit a third storey if it is satisfied that it is located:
  - a) on a prominent street corner; or
  - b) on the lower side of land with a finished ground level slope equal to or more than 15%; and
  - c) is not likely to impact adversely on the existing or future amenity of any adjoining land in terms of overshadowing and visual privacy.
- 3) Buildings should be designed to ensure that 50% of the area of the required Principal Private Open Space of both the proposed development and the adjoining properties receive at least 3 hours of sunlight between 9am and 3pm on the 21 June.
- 4) For lots equal to, or greater than, 450m<sup>2</sup>, the upper (second) level of a dwelling is to be no more than 30% of the lot area.

These elements can be demonstrated in future dwelling applications. However, it is noted that the design of lots will enable compliance with these controls.

#### 1.4.4 Building Setbacks

##### Controls

- 1) Dwellings are to be consistent with the minimum front, side and rear setback controls in Table E1.3 and the front setback principles diagram at Figure E1.25.

**Table E1.3: Building Setbacks**

Dwelling type	Front*	Side	2nd storey side	Rear
Detached contiguous (sharing a common border) with Caddens Rd (min. frontage: 18m)	6m	2m	2m	6m
Detached (frontage: 18m & greater)	4.5m	1.5m	1.5m	6m
Detached (frontage: 15m to less than 18m)	4.5m	0.9m	1.2m	6m
Detached (frontage: 12.5m to less than 15m)	4.5m	0.9m	1.2m	4m
Built to boundary	4.5m	0.9m & zero	2.4m from the adjoining built to boundary side boundary	4m**
Semi-detached	3m	0.9m & zero	1.2m on the unattached side	4m**
Attached	3m	zero	zero	4m**
Corner		See requirements in text below		

\* measured from the front boundary to the building façade line

\*\* excluding garage

- 2) On corner lots the setback for a secondary frontage is to be as follows:
  - a) 2m for all detached and semi detached dwellings on lots less than 18m wide; and
  - b) 3m for dwellings on lots 18m and wider.
- 3) Corner lots are to be splayed with the indent on both the primary and secondary street to be generally 5m. The building setback from the splayed corner boundary is to be a minimum of 2m.
- 4) Any building contiguous (sharing a common border) with Caddens Road is to be set back 6m from the boundary to Caddens Road.
- 5) Dwellings contiguous (sharing a common border) with Caddens Road are to be orientated and accessed in accordance with Figure E1.26.
- 6) Garages are to be set back a minimum of 1m behind the front building facade line as shown in Figure E1.26.
- 7) Garages on secondary streets are to be set back 1m behind the dwelling façade on the secondary street.
- 8) No setback is required for rear lane garages.
- 9) Dwellings are to be consistent with the side and rear setback controls at Table E1.3. Projections permitted into side and rear setback areas include eaves, sun hoods, gutters, down pipes, flues, light fittings and electricity or gas meters, rainwater tanks and hot water units.

These elements can be demonstrated in future dwelling applications.

A Building Envelope Plan is included with the application for lots less than 300sqm in area and details setback requirements.

#### 1.4.5 Development Forms

Not relevant for this application.

#### 1.4.6 Private Open Space

Not relevant for this application.



<b>1.4.7 Site Cover and Landscaped Areas</b>	Not relevant for this application.
<b>1.4.8 Fencing</b>	Not relevant for this application.
<b>1.4.9 Garages and Access</b> <b>Controls</b> <ol style="list-style-type: none"> <li>1) Garages are to be sited as per the preferred siting diagram at Figure E1.33.</li> <li>2) Where a carport or garage entry forms part of the front façade of a dwelling, it is to be set back a minimum of 5.5m from the front boundary and at least 1m behind the building façade.</li> <li>3) Front loaded double garages are only permissible on lots with a frontage width equal to or greater than 12.5m.</li> <li>4) The maximum dimension for garage doors is to be less than 50% of the front façade, 6m in width and 2.4m in height. Triple fronted garages are not permitted.</li> <li>5) Carports and garages are to be treated as an important element of the dwelling façade and are to be integrated with, and complementary to, the dwelling design in terms of design and materials. Garage doors are to be visually recessed through use of materials, colours, and overhangs.</li> <li>6) The maximum number of dwellings to be serviced from a shared driveway is 10.</li> <li>7) Garages are to comply with AS 2890.1 Off Street parking, including:             <ol style="list-style-type: none"> <li>a) minimum internal width between main walls of 3m for a single garage;</li> <li>b) minimum internal width between main walls of 5.5m for a double garage.</li> </ol> </li> <li>8) Driveway access to garages on steep land must comply with AS 2890.1. Stencil-crete on driveways is not permitted.</li> <li>9) Driveways are to be no wider than 4.5m at the front boundary and should be a minimum of 1.5m from street trees.</li> <li>10) Where possible, the garage for a corner lot should be accessed from the secondary street, unless the secondary street is Caddens Road.</li> <li>11) At grade car parking for residential and commercial buildings must be appropriately screened from view.</li> </ol>	<p>Compliance against these provisions will be considered in future dwelling applications.</p> <p>However it is noted that the Building Envelope Plan submitted with this application provides for a mix of single and double garages. In approving this plan, the proponent is seeking to have that plan prevail over the DCP controls for future housing applications.</p>

### 1.5.1 Visual Privacy and Acoustic Amenity

#### Controls

- 1) Direct overlooking of main habitable areas and private open spaces of adjacent dwellings should be minimised through building layout, window and balcony location and design, and the use of screening devices, including landscaping.
- 2) Habitable room windows with a direct sightline to the habitable room windows in an adjacent dwelling within 3m are to:
  - a) be obscured by fencing, screens or appropriate landscaping; or
  - b) be offset from the edge of one window to the edge of the other by a distance sufficient to limit views into the adjacent window; or
  - c) have sill height of 1.7m above floor level; or
  - d) have fixed opaque glazing in any part of the window below 1.7m above floor level.
- 3) The design of dwellings must minimise the opportunity for sound transmission through the building structure, with particular attention given to protecting bedrooms and living areas.
- 4) In attached dwellings, bedrooms of one dwelling are not to share walls with living spaces or garages of adjoining dwellings, unless it is demonstrated that the shared walls and floors meet the noise transmission and insulation requirements of the Building Code of Australia.
- 5) The internal layout of residential buildings, window openings, the location and design of outdoor living areas and elements (i.e. courtyards, balconies and retaining walls), and building plant equipment should be designed to minimise noise impact and transmission and enhance visual amenity.
- 6) Residential subdivision and development must be designed to comply with the NSW Road Noise Policy criteria and must be consistent with the following controls:
  - a) To mitigate the effects of noise on existing residential development to the west of the Caddens Road By-pass, appropriately designed acoustic treatments such as low height walls or other methods/treatments which will achieve NSW Road Noise Policy criteria are to be provided where required along Collector Road 1.  
  
 Note: Mounding along the linear park is not considered appropriate due to resulting safety and practicality issues.
  - b) To mitigate the impacts of traffic noise from the Caddens Road By-pass 1 on new development a combination of the following measures is to be used;
    - i) dwelling setbacks;
    - ii) internal dwelling layouts designed to minimise noise in living and sleeping areas;
    - iii) fencing constructed with a suitably solid mass, and
    - iv) locating courtyards and principal private open space areas away from the noise source in order to comply with the NSW Road Noise Policy.
- 7) For new residential development along the Caddens Road By-pass, where external traffic noise levels cannot be met at the nearest facade of the dwelling to the noise source, dwellings must be designed to meet the following internal noise levels:
  - a) In a naturally ventilated - windows open condition (i.e. windows open up to 5% of the floor area, or attenuated natural ventilation open to 5% of the floor area), or mechanically ventilated windows closed condition:
 

Sleeping areas	LAeq 1 hour, Day 40dB
	LAeq 1 hour, Night 35dB
Living areas	LAeq 1 hour, Day 45dB
	LAeq 1 hour, Night 40dB
  - b) Where a naturally ventilated - windows open condition cannot be achieved, it will be necessary to incorporate mechanical ventilation compliant with AS1668 and the Building Code of Australia. The noise levels above shall be met with mechanical ventilation or air-conditioning systems not operating. The following LAeq noise levels shall not be exceeded when doors and windows are shut and mechanical ventilation or air conditioning is operating:
 

Sleeping areas	LAeq 1 hour, Day 43dB
	LAeq 1 hour, Night 38dB
Living areas	LAeq 1 hour, Day 46dB

An acoustic report accompanies the application confirming that the DCP controls can be met. It is intended that the identified lots on the bypass road will need to comply with measures specified in the acoustic report.

LAeq 1 hour, Night 43dB	
<b>1.5.2 Safety and Surveillance</b>	Not relevant for this application.
<b>1.5.3 Sustainable Building Design</b>	Not relevant for this application.

It is submitted that the proposed generally satisfies the controls within the Penrith DCP and can be supported by Council.

## 5 Section 79C Assessment

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An assessment of the proposal has been undertaken in accordance with the statutory requirements of the EPA Act. The following assessment against Section 79C of the EPA Act has been undertaken.

### 5.1 Section 79C(1)(a)(i) – Any Environmental Planning Instruments

The relevant environmental planning instruments have been considered earlier in this report.

The proposal is permissible with consent and is considered satisfactory when assessed against the relevant requirements.

### 5.2 Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instrument

There are no known draft Environmental Planning Instruments applicable to the subject site.

### 5.3 Section 79C(1)(a)(iii) – Any Development Control Plan

Compliance against the relevant DCP's has been considered earlier in this report.

### 5.4 Section 79C(1)(a)(iiia) – Any Planning Agreement or Draft Planning Agreement entered into under Section 93f

There are no known planning agreements that apply to the site or development. However, it is noted that a Voluntary Housing Agreement is proposed to be negotiated with the Council in respect of the infrastructure and recreation facilities that form part of this application.

### 5.5 Section 79C(1)(a)(iv) – The Regulations

There are no sections of the regulations that are relevant to the proposal at this stage.

## 5.6 Section 79C(1)(b) – The Likely Impacts of the Development

The following impacts have been considered in the preparation of this development proposal.

### 5.6.1 Relationship with Adjoining Site

The proposed subdivision layout has considered the future development of the adjoining private site at 191 Caddens Road and illustrates an indicative subdivision pattern that is consistent with the DCP. This demonstrates that the adjoining site can be developed in an economic and orderly manner that integrates with the subdivision proposed under this application.

### 5.6.2 Flora and Fauna

There are no significant flora or fauna examples on the site. That which is present will need to be removed as a result of the extensive bulk earthworks that is required given the topography.

A comprehensive landscape strategy is proposed for the estate.

### 5.6.3 Stormwater and Flooding

A stormwater concept strategy has been submitted with the development application demonstrating compliance with Council's requirements in this regard and is consistent with the discussions held at the pre-lodgement meeting.

### 5.6.4 Erosion and Sediment Control

It is expected that Council would impose appropriate conditions of consent to ensure that erosion and sediment control measures were installed on the site prior to construction commencing.

### 5.6.5 Traffic Generation and Parking

Resultant traffic generation would be within expectations given the dwelling yield that is being proposed.

The design of roads and geometry of intersections is consistent with Council requirements.

No unacceptable impacts are expected in this regard.

### 5.6.6 Noise Impacts

Whilst there will be some noise associated with the construction of the development, longer term there is not expected to be any noise impacts above and beyond what might normally be associated with a residential environment. An acoustic report has been commissioned and accompanies the application, confirming the DCP requirements can be satisfied.

### 5.6.7 Heritage Issues

Whilst there are no formal heritage matters to be considered for this application, a heritage interpretation strategy is proposed for Hilltop Park in relation to the 'ruins' and historical evolution of the wider Caddens area.

### 5.6.8 Visual Impact

The proposed development is designed with a high level of architectural merit that exceeds that of nearby and adjoining properties. Its visual impact will be imperceptible from the public domain given the setbacks and the central location of the building.

### 5.6.9 Services

The site can be appropriately serviced to allow for the proposed development. Some augmentation may be required and will be confirmed prior to construction.

### 5.6.10 Social and Economic

There are no negative social or economic impacts arising as a result of this application. Increased housing stock, diversity of built form, additional recreational land, and the construction jobs associated with the overall development are considered to be positive impacts of this proposal.

## 5.7 Section 79C(1)(c) – The Suitability of the Site

The proposal is generally consistent with the planning controls that apply in this zone. Moreover, the objectives of the zone have been satisfied, ensuring that the proposed subdivision would not result in any unacceptable impact on any adjoining landowners or buildings.

For the reasons outlined in this report the site is considered suitable for this development proposal.

## 5.8 Section 79C(1)(d) – Any Submission Made

Council will undertake a notification process in accordance with its controls and policies. We welcome the opportunity to provide additional information in response to those.

## 5.9 Section 79C(1)(e) – The Public Interest

Given the type of development, its general compliance with the planning controls, how the objectives are satisfied and the suitability of the site it is considered that the public interest would not be jeopardised as a result of this development.

Indeed the provision of additional housing stock in accordance with Council's Strategic Objectives is considered to serve the public interest well.

## 6 Conclusion and Recommendation

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The proposed development has been assessed against the requirements of the Penrith LEP and DCP and is considered to represent a form of development that is acceptable.

The proposed subdivision and associated works would not result in any unacceptable impact on the locality.

The site is considered quite suitable for a use of this nature and is consistent with the strategic objectives of the Council for this release area.

An assessment against section 79C of the EPA Act has not resulted in any significant issues arising.

Accordingly it is recommended that the application be approved.