

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA13/1410
Proposed development:	Subdivision Only - Seven Residential Lots and One Residue Lot with Associated Road Construction
Property address:	1439 A Old Castlereagh Road, CASTLEREAGH NSW 2749
Property description:	Lot 299 DP 752021
Date received:	29 November 2013
Assessing officer	Gavin Cherry
Class of building:	N/A
Recommendations:	Refuse

Executive Summary

The Development Application is for the subdivision of part of the Penrith Lakes Scheme into 7 x residential allotments, a residue allotment to the south with the remainder of the Penrith Lakes Scheme as per a separate proposed consolidation and resubdivision application (DA14/0151).

The Development Application was the subject of prelodgement discussions where it was outlined to the applicant that the proposal was not considered to be a permissible land use under the provisions of the SEPP (Penrith Lakes) 1989, that the SEPP overrides the provisions of IDO 47 in the event of an inconsistency and that site wide concerns raised with previous proposals remain in place with respect drainage, filling and flood management implications across the entire scheme.

The application was lodged with Council despite this advice and has been assessed having regard to Section 79C of the EP&A Act, 1979 including the provisions of SEPP (Penrith Lakes) 1989, IDO No. 47, DCP 2006 and external legal advice. Having regard to these considerations, the proposal is not considered to be a permissible form of development on the site and is not a supportable development outcome as it is considered to pre-empt broader strategic planning works yet to be completed being amendment of the SEPP, preparation, exhibition and adoption of a revised SEPP Structure Plan and identification of suitable land for urban development.

The application was placed on public exhibition and notification for fourteen (14) days. Two individual submissions and a petition were received raising similar issues to those outlined above.

The application is recommended for refusal.

Site & Surrounds

The site is an irregular shaped allotment within the Penrith Lakes Scheme along the eastern periphery of the scheme boundaries.

The site is located on the eastern side of Castlereagh Road and is in close proximity to existing residential dwellings fronting Farrels Lane and Sardam Avenue.

Proposal

The Development Application is for the subdivision of part of the Penrith Lakes Scheme for future residential development as follows:-

Lot 1: 1388sqm with a width of 15m

Lot 2: 950sqm with a width of 25.8m

Lot 3: 1081sqm with a width of 17.6m

Lot 4: 875sqm with a width of 17.5m

Lot 5: 1512sqm with a width of 21.5m

Lot 6: 585msqm with a width of 16.4m

Lot 7: 1733sqm with a width of 57.5m

Residue Lot Remaining: 3,866sqm

Vehicular access to Lots 1 - 5 will be via a proposed extension to Sardam Avenue (cul der sac) while Lots 6 and 7 gain access from Farrels Lane.

It is also proposed to fill an existing swale running north / south over the subject site (max 1.5m fill). In addition a proposed retaining wall of 0.6m is to be erected on the sites eastern boundary.

The proposal seeks to drain the site and road extension into the Penrith Lakes Scheme via easements through proposed Lot 2 underneath Castlereagh Road with a swale proposed on the eastern boundary to provide emergency overland flow to an existing basin to the south.

Plans that apply

- Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)
- Penrith Interim Development Order No.47
- Development Control Plan 2006
- State Environmental Planning Policy (Penrith Lakes Scheme) 1989
- State Environmental Planning Policy (State and Regional Development) 2011

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Penrith Lakes Scheme) 1989

The permissibility of the subdivision applications is affected by the following environmental planning instruments:

- Penrith Local Environmental Plan 1991;
- Interim Development Order No. 47;
- SEPP (Penrith Lakes Scheme) 1989;
- Draft Penrith Local Environmental Plan (Stage 2).

While IDO43 permits subdivision subject to a minimum lot size of 550sqm with a minimum allotment width of 15.0m, the SEPP specifically prohibits works which are not deemed to 'Implement the Penrith Lakes Scheme'.

The proposed subdivisions are not considered to be permissible pursuant to the provisions of SEPP (Penrith Lakes Scheme) 1989. In particular, Clause 7 of the SEPP (Penrith Lakes Scheme) which states that development must not be carried out unless that development is authorised by that policy. Clauses 8-11A identifies the development authorised by the policy which does not include residential subdivision or urban development. Development that is defined and permitted pursuant to clauses 9-11A is also quite specific (and does not include subdivision for residential purposes).

Development that is defined and permitted pursuant to clause 8(1) of the policy is however broader and provides that development for the purposes of "implementing the Penrith Lakes Scheme' is permissible. Further, the relevant consent authority must not grant consent to development unless satisfied of those matters pursuant to clause 8(2) of the policy.

When establishing what constitutes 'Implement the Penrith Lakes Scheme', reference is directed to Schedule 1 of the policy which defines what is meant by the 'Penrith Lakes Scheme', which is:

"the creation of a regional recreational lake system as shown on the structure plan for the benefit of the public as a result of:

- (a) the staged optimum extraction of sand and gravel reserves,*
 - (b) the staged rehabilitation, reconstruction and landscaping of the land, and*
 - (c) the staged formation of a series of interconnected lakes,*
- and includes the identification of land for possible future urban purposes as a result of the work referred to in paragraphs (a) and (b)."*

The definition of the 'Penrith Lakes Scheme' provides only for the 'identification of land for future urban purposes', it does not permit development for urban purposes. The accompanying Structure Plan also indicates the same 'possible' location of land for future urban purposes which does not provide a development entitlement. While there is an identified inconsistency between the permissibility standards within the IDO and the SEPP, the SEPP prevails over the IDO (pursuant to Section 36 of the EPA Act 1979 and Clause 4 of the SEPP (Penrith Lakes Scheme)). As such, the proposed subdivision is not considered to be a permissible form of development under the current environmental planning instrument framework and cannot be supported.

State Environmental Planning Policy (State and Regional Development) 2011

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (State and Regional Development) 2011 and the application is satisfactory with respect to the SEPP as Schedule 3 - Clause 8 identifies development within Penrith Lakes which is deemed to be 'state significant infrastructure' being extraction, rehabilitation or lake formation. The proposed works do not fall within these categories and as such the SEPP does not apply to the proposal.

Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)

Provision	Compliance
Clause 2 - Heritage aims and objectives	N/A
Clause 8 - Heritage items	N/A
Clause 9 - Development in the vicinity of heritage items	Complies
Clause 10 - Heritage conservation areas	N/A
Clause 11 - Heritage advertisements	N/A
Clause 12 - Conservation incentives relating to heritage items	N/A

Penrith Interim Development Order No.47

Provision	Compliance
All Clauses	Does not comply - See discussion

Compliance with the provisions of the IDO

The subject site is affected by the provisions of Interim Development Order No. 47. Schedule B, Clause 4 of this instrument specifically outlines the following development capability:-

4. (i) Interim development may be carried out with the consent of the Council for the purposes of drainage; dwelling-houses; educational establishments; home industries; open space; places of public worship; road; subdivision; residential flat buildings class A and class B; units of single storey construction for aged persons; utility installations other than gas holders or generating works.

As a result both subdivision and a future dwelling house are permissible forms of development under the provisions of the IDO.

In addition the IDO provides the following subdivision standards:-

"11. (1) The ratio of the total number of dwelling units erected, or to be erected on that part of any parcel of land which is to be developed for residential purposes, to the area of that part, as expressed in hectares shall, subject to the provisions of subclause (2) of this clause, be not greater than 10.5:1."

12.(1) A dwelling-house shall not be erected on any allotment of land the subject of this Order which has an area of less than 550 square metres and a width of less than 15 metres at the front alignment of the building.

The proposed subdivision scheme ensures compliance with these numerical subdivision requirements noting minimum lot sizes of 550sqm, minimum widths of 15m and a dwelling density of 7.69:1.

It is also important to note that Clause 13 also requires consideration of a Development Control Plan (in this instance being DCP 2006).

13. (1) Notwithstanding the provisions of clause 4 of this Order, no development shall be carried out except in accordance with a development control plan approved by the New South Wales Planning and Environment Commission.

While it is acknowledged that DCP 2006 isn't specifically approved by the above authority, the EP&A Act and Regulations makes provisions for DCP's to be adopted by Council with only LEP instruments to be prepared in consultation and agreement with the NSW Department of Planning and Environment (effectively replacing the Commission). In this regard a detailed assessment of the proposal against the provisions of the DCP has been undertaken and is outlined further within this report.

Further to the above requirements, Clause 14 and 15 of the IDO also provides the following:-

"14. Development shall not take place on any land the subject of this Order until such land has been filled to a level satisfactory to the Council."

"15. Development shall not take place on any land, the subject of this Order, unless and until arrangements satisfactory to the Council have been made with the Council for the carrying out of drainage works on all land the subject of this Order."

To date, the spreading of fill and resulting finished ground levels separately approved by the Department of Planning and Environment through the Penrith Lakes Scheme, in addition to the current proposed drainage works and broader flood management planning regime has not sufficiently addressed on going concerns raised by Council. As such the provisions of Clause 14 and 15 are not considered to have been satisfied further reinforcing that the development is not a permissible or supportable proposal. This is also outlined further within this report.

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft Stage 2 of the Penrith Local Environmental Plan 2010 as exhibited applies to the site. The site under this instrument was intended to be zoned RU1 Primary Production with minimum lot sizes of 20 hectares.

Following exhibition and in response to received submissions, a report was referred to Council's Policy Review Committee Meeting (11/11/2013) which recommended that the Penrith Lakes Scheme be excluded from the Draft LEP. This recommendation was adopted and as such the Draft LEP no longer applies to the subject site.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.2 - Crime prevention through environmental design	N/A
Chapter 2.3 - Engineering works	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.4 - Erosion and sediment control	Complies
Chapter 2.5 - Heritage management	Complies
Chapter 2.6 - Landscape	Complies
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	Complies
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.11 - Car parking	N/A
Chapter 2.12 - On-site sewage management	Complies
Chapter 2.13 - Tree preservation	Complies
Chapter 4.7 - Guidelines for subdivision	Does not comply - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iv) The provisions of the regulations

In accordance with Clause 54 of the EP&A Regulations, the applicant was requested in writing (dated 13 February 2014) to submit additional information responding to issues raised by Council which required further investigation and reporting to sufficiently consider the suitability of the proposed development. The matters raised include the following:-

"Permissibility

The site is zoned Rural 1a(2) under the provisions of Interim Development Order No. 93 – Penrith (IDO 93), subdivision with a minimum lot size of 2 hectares is permitted in the zone with consent.

The site is also subject to State Environmental Planning Policy (Penrith Lakes Scheme) 1989 (SEPP). While it is acknowledged that development capability is provided for within the IDO, the SEPP over-rides the IDO in the event of an inconsistency. As such if it is deemed that the SEPP does not permit the proposed residential subdivision, then reliance on the IDO

provisions to substantiate permissibility cannot be undertaken. This is outlined within Clause 4 of the

SEPP.

Clause 7 of the SEPP specifically states that development must be authorised by or under the SEPP for the purposes of implementing the Penrith Lake Scheme, construction or widening of roads, recreation and community facilities (refer Clauses 8, 9, 10 and 11). The SEPP further defines what constitutes the 'Penrith Lakes Scheme' within Schedule 1. This schedule states that:-

"The Penrith Lakes Scheme is the creation of a regional recreational lake system as shown on the structure plan for the benefit of the public as a result of:

*(a) the staged optimum extraction of sand and gravel reserves,
(b) the staged rehabilitation, reconstruction and landscaping of the land, and
(c) the staged formation of a series of interconnected lakes,
and includes the identification of land for possible future urban purposes as a result of the work referred to in paragraphs (a) and (b)."*

As detailed above, the 'Penrith Lakes Scheme' only provides for "the identification of land for possible future urban purposes" as a result of items referred to in (a) and (b) above and not the development of land for residential subdivision. As a result the proposal is not considered to comply with Clause 7 of the SEPP, cannot rely on Clauses 8, 9, 10 and 11 of the SEPP and is therefore not a permissible form of development.

1. Mainstream Flooding

- a. Provide further information and justifications for adopting a flood planning level of 20.69m AHD. This is inconsistent with Council's existing Nepean River Flood Model which estimates the flood level being 23.1m AHD in the vicinity of the development.
- b. Submit an overland flow path study of the development site to Council. The study shall also address the flooding impacts by the proposed filling and retaining wall construction.

2. Contamination

- a. *Provide a copy of the 'Preliminary Site Contamination Assessment Title Transfer of Cranebrook Lake PLDC Scheme Area Castlereagh Road, Castlereagh NSW' prepared by Coffey Environments in 2010 and the 'JBS Assessment' undertaken in 2011 to Council for review to ensure that these documents did address all of the land subject to this development application, and that the investigations were undertaken in line with the relevant guideline documents.*
- b. *Submit a Site Audit Statement and associated reports that confirm all asbestos contamination present on the site has been remediated and the land is suitable for the proposed use or that the land can be made suitable through remediation. The relevant Management Plans and Site Auditor documentation should also be submitted.*

3. Noise Impacts

- a. *Submit an Acoustic Assessment Report based on Department of Planning's Development near Rail Corridors and Busy Roads – Interim Guidelines under the provisions of State Environmental Planning Policy (2007) – Infrastructure. The Acoustic Assessment should consider the noise associated with the quarry operation which will not cease in 2015/16.*
- b. *Provide details that demonstrate the internal noise criteria can be achieved through the design of future dwellings.*

4. Swale

- a. *Incorporate details of the existing floodlight pole on the plans demonstrating the stability of these poles would not be*

compromised by the swale.

b. Provide details of the swale demonstrating the gradient would not restrict stormwater movements causing flooding to the

adjoining properties including the sportsground.

c. Provide details regarding maintenance that would facilitate unrestricted flow through the sportsground to the stormwater basin

further south.

5. Engineering

a. Submit details in relation to the location of existing drainage infrastructure on the property including but not limited to the existing

headwall connecting to the swale on Farrells Lane, and the impact from the proposed subdivision work to these infrastructure.

b. Submit a concept design for the end of road treatment on Farrells Lane and the proposed cul-de-sac of Sardam Avenue

demonstrating it would facilitate manoeuvring of Council's waste collection vehicles.

c. Delete the retaining wall construction on proposed future road reserve area. It is generally not supported by Council.

While additional information was submitted addressing permissibility (albeit unsatisfactorily), additional information requested concerning site contamination investigations, acoustic verification, flood management and drainage measures are yet to be sufficiently addressed. The outstanding matters are as follows:-

- The inconsistency between Council's flood modelling and the PLDC flood model (approved by the Department of Planning and Environment) was acknowledged however as the Water Management Plan is approved (again by the Department) the applicant maintains reliance on this approval and the modelling undertaken by PLDC despite the inconsistency and broader flooding implications raised by Council.
- Supplementary Site Audit Statements were submitted however this information was still found to be deficient as outlined in detail within the assessment of 'Likely Impacts' below within this report.
- The applicant reiterated that the submitted acoustic assessment was undertaken against Clause 102 of the SEPP (Infrastructure) 2007 and that the assessment has already considered quarrying activities (over 3km away). It was acknowledged that these activities will cease within 12 months. Despite this advice, information / clarification sought was not addressed and remains outstanding.
- Additional engineering information was submitted to address issues raised regarding site drainage, the proposed swale and broader flood management implications however this information was still found to be deficient as outlined in detail within the assessment of 'Likely Impacts' below within this report.

As a result of the above requested but outstanding information, the application cannot be supported.

Section 79C(1)(b)The likely impacts of the development

Likely impacts of the proposed development as identified throughout the assessment process include:

Context and setting

The proposal is sympathetic to the surrounding residential character of the locality as the subdivision pattern is consistent with the existing subdivision pattern of the area.

Access, traffic and transportation impacts

The traffic generation resulting from the proposed development is considered to be satisfactory and sustainable within the local road network.

The design of Farrells Lane however requires works to facilitate satisfactory turning arrangements as Lot 5 and 6 will access from Farrells Lane and a cul-de-sac design has not been proposed.

Environmental Considerations

Contamination

The applicant has provided a Site Audit Statement (SAS) to address State Environmental Planning Policy

55 - Remediation of Land. The SAS has stated that the land that is the subject of this development application is suitable for residential land use with accessible soil. However, it is also stated that "due to the potential for the presence of materials containing asbestos in the form of fragments of fibre cement in the soils at the Site, it is recommended that an unexpected finds protocol consistent with the objective of the unexpected finds protocol Appendix 1 of the DLA Environmental (December 2011) Off Specification Mulch Management Plan, Penrith Lakes, 89-151 Old Castlereagh Road, Castlereagh, NSW, Revision 6.0. is maintained in relation to the future management of excavation or earthworks at the Site".

Council has not received an Unexpected Finds Protocol that meets the above requirement. Whilst the applicant has provided the SAS, the supporting Site Audit Report remains outstanding which contains the findings, evaluations and conclusions associated with the Auditor's assessment - "Site Audit Report, Cranebrook West Penrith Lakes Scheme Castlereagh NSW", Report No. 600033_0301-1319-6 dated 18 March 2014. To enable a thorough assessment of the application in accordance with the requirements of the SEPP, and determine the appropriateness of the proposed land use, a review of this document is required so that Council can ascertain the scope of works that has taken place on the site and ensure that all outstanding contamination issues (such as the above-mentioned asbestos) are sufficiently remediated.

As a result the provisions of the SEPP and consideration of site suitability concerning contamination and remediation have not been adequately addressed and the application cannot be supported.

Noise Impacts

Under the provisions of Clause 54 of the EP& A Regulations, the applicant was requested to submit further information concerning recommendations outlined within the submitted Acoustic Report. The applicant is yet to sufficiently address these requirements.

The report recommendations state 'that providing care and attention to noise impact is considered during the design of the building the internal noise criteria is also expected to be met'. Clarification is required regarding what is meant by 'care and attention' as restrictions may need to be imposed by way of 88B Instruments to address and manage noise impacts on the future residential dwellings noting that the sites are backing onto Castlereagh Road.

As a result consideration of site suitability concerning acoustic impacts has not been adequately addressed and the application cannot be supported.

Flood Management

Mainstream Flooding

Discussions regarding the impacts of Flooding and Flood Planning Levels (FPLs) detailed within Penrith Lakes Scheme Water Management Plan 2012 is still going on between the Department of Planning, Council and PLDC.

Based upon Council's Nepean River Flood Model, the adopted 1% AEP mainstream flood level (23.1m AHD) indicates that the proposed development cannot be supported as the proposed allotments will be affected by approximately 2-3m of flood depth during the above flood event.

As a result of this flooding affectation, and outstanding resolution of on going flood management concerns across the Penrith Lakes Scheme, Council is not in a position to accurately assess and accept the proposed 1% AEP flood levels of the development site until such time the impacts of flooding and FPLs to the vicinity of Nepean River (upstream and downstream) by the entire Penrith Lakes Scheme has been determined and accepted by Council. This is a requirement of IDO 47 (Clause 14 and 15) as well as the provisions of DCP 2006 and render the development proposal unsupportable.

Local Overland Flow Path

The issue associated with the local overland flow paths from Farrells Lane on the north and Cranbrook Park on the south has not been sufficiently addressed by the applicant. This issue is required to be addressed separately from the Nepean River (mainstream flooding), given that the time duration of peak flow is different from the mainstream flooding at this development site. This is a requirement of IDO 47 (Clause 14 and 15) as well as the provisions of DCP 2006 and render the development proposal unsupportable.

Farrells Lane

The proposed three point turning area at the end of Farrells Lane is an unsatisfactory outcome. As such

a cul-de-sac arrangement would need to be provided for Farrells Lane in accordance with Council's 'Design Guidelines For Engineering Works and Subdivision' and the concept design of the cul-de-sac shall be submitted to Council for assessment. It should be noted that road widening may be required in order to ensure the cul-de-sac on Farrells Lane can accommodate the turning of Council's waste collection vehicle.

Stormwater Management

The submitted letter from J. Wyndham Prince, reference number 9600 Design Sardam 20140318, dated 18 Mar 2014, indicates that the existing 675mm diameter pipe culvert in Sardam Avenue has sufficient capacity to convey 1% AEP stormwater flow under Castlereagh Road and the swale is intended to be used to convey the emergency overland flow. As such, design details of the swale and calculations supporting the swale and capacity of the 675mm diameter pipe culvert to convey 1% AEP stormwater flow shall be submitted to Council. This is yet to occur due to other identified issues concerning permissibility.

Landscaping

The proposed development does not outline proposed vegetation removal of landscape embellishment works. In the event that the proposal was supported, street tree planting could be conditioned where required.

Socioeconomic impacts

The proposal is not considered to result in adverse socio - economic impacts to the surrounding community provided the above environmental considerations are sufficiently addressed.

Section 79C(1)(c) The suitability of the site for the development

The site is not considered to be suitable for the proposed development as the extent of urban development capability under the provisions of the SEPP (Penrith Lakes) and associated Structure Plan are yet to be established.

Until such time as permissibility is established, and all environmental investigations and reporting is undertaken to demonstrate site suitability for intensified residential development, the proposal is not considered to be a supportable form of development.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

Community consultation

In accordance with Chapter 2.7 of the Penrith Development Control Plan for the City of Penrith 2006 – Notification and Advertising the application was publicly notified and advertised for fourteen (14) days.

In response two individual submissions were received and a petition was received.

Submissions

The following issues were raised in the submissions received and have formed part of the assessment.

<i>Issue Raised</i>	<i>Comments</i>
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<p>The assessment of the application should not be finalised prior to the completion and full consideration of the Master Plan currenting being prepared by the Office of Penrith Lakes.</p> <p>The benefits of the master plan should not be constrained, diluted or compromised by conflicts with a prematurely approved subdivision framework</p>	<p>The issue raised is considered to be a satisfactory reason for refusal as the proposal is not a permissible form of development under the current planning instruments and pre-empts broader stratgic planning work requiring preparation, exhibition and adoption of a revised Structure Plan across the precinct.</p>
<p>The application shows a 600mm retaining wall but it is not clear if this is proposed above or below the existing ground level</p>	<p>The proposal is for fill and a retaining wall to accomodate this fill. This would elevate the finished ground level (max 600mm). This fill however is not yet supported as broader filling, drainage and flood management implications are yet to be resolved.</p>
<p>Concerns are raised with respect to drainage and runoff. This includes increased flooding off Farrels Lane in flood situations. Can Council guarantee that the proposed development will not affect ther existing homes in the area with respect to water run off?</p>	<p>The issue raised is considered to be a satisfactory reason for refusal as the proposal has not sufficiently addressed broader site drainage and flood management implications across the site, throughout the Penrith Lakes Scheme and downstream properties.</p>
<p>Filling of land will elevate the ground levels and result in views invading the privacy of existing homes. What restrictions would be imposed to address this.</p>	<p>The issue raised is considered to be a satisfactory reason for refusal as the proposal has not sufficiently addressed broader filling, site drainage and flood management implications across the site, throughout the Penrith Lakes Scheme and downstream properties.</p>
<p>The proposed Stage 2 Subdivision (DA14/0297) will create negative social and environmental impacts on Penrith, will increase traffic, reduce safety, increase flood risk and deny foreshore public access around the lake foreshore.</p> <p>A reduction in the number of wiers from 4 to 2 and the flooding impacts are unsatisfactory.</p>	<p>The stage 2 subdivision proposal is the subject of a seperate development application.</p> <p>Weir reduction is not the subject of this application.</p> <p>The issue raised with respect to increased flood risk is considered to be a satisfactory reason for refusal as the proposal has not sufficiently addressed broader filling, site drainage and flood management implications across the site, throughout the Penrith Lakes Scheme and downstream properties.</p> <p>Issues regarding increased traffic and foreshore access are either not applicable to this application (foreshore access) or are satisfactory, as the proposal is not considered to adversely impact on the capacity of the road to accomodate additional vehicles from the proposed lots.</p>
<p>The application makes references to a Deed of Agreement (9187) which has never been made public. Parties to the agreement should disclose the details of the agreement to the community.</p>	<p>Council is not party to the deed of agreement and cannot arrange discloure of its contents.</p>

The applications must comply with SEPP 11 - Penrith Lakes.

SEPP 11 relates to 'Traffic Generating Developments' and not Penrith Lakes, is a repealed instrument and is not applicable to the proposal. The applicable instrument is SEPP (Penrith Lakes) 1989.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	Not supported
Environmental - Environmental management	Not supported
Environmental - Biodiversity	No objections - subject to conditions
Waste Services	Not supported
Parks and recreation	No objections
Planning and Sustainability	Not supported

Section 79C(1)(e)The public interest

The proposed development is not considered to be in the public interest due to the outstanding matters raised concerning contamination and remediation, acoustic impacts, site drainage and flood management.

Conclusion

In assessing this application against the relevant environmental planning policies, the proposal does not satisfy the aims, objectives and provisions of these policies.

Support for this application would set an undesirable precedent given a structure plan is yet to be prepared, exhibited and adopted for the Penrith Lakes Scheme and a commitment to urban development capability is yet to be resolved through the Department of Planning and Environment and NSW Office of Penrith Lakes.

Therefore, the application is not worthy of support for the attached reasons.

Recommendation

1. That the Development Application be refused for the reasons outlined within this report.
2. That those making a submission are advised of the determination.

Refusal

1 X Refusal condition - Likely impacts

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act as the application has not sufficiently demonstrated that contamination and remediation, acoustic impacts, site drainage and precinct wide flood management matters have been sufficiently addressed.

2 X Refusal condition - SEPP Penrith Lakes Scheme

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act for the following reasons:-

- The proposed development is not a permissible form of development having regard to Clause 4, 7 and 8 of State Environmental Planning Policy (Penrith Lakes Scheme) 1989; and
- Clause 2(2)(c) (Aims / Objectives) of the SEPP seeks to permit the identification of land which may be rezoned for urban purposes but does not itself permit development for urban purposes.

3 X Refusal condition - Suitability of the site

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the application has not demonstrated the site is suitable for the proposed development with respect to contamination and remediation investigations, acoustic impacts, site drainage and flood management.

4 X Special 10 (Refusal under Section 79C(1)(e) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(e) of the Environmental Planning and Assessment Act as the proposal is not considered to be in the public interest.

5 X Special 2 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal has not sufficiently satisfied the provisions of Clause 14 and 15 of Interim Development Order No. 47.

6 X Special 4 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with aims, objectives and development standards within Penrith Development Control Plan 2006.

7 X Special 7 (Refusal under Section 79C(1)(b) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act in terms of likely impacts resulting from the development with respect to site drainage and flooding, acoustic restriction requirements, contamination testing and required remediation.

8 X Special 8 (Refusal under Section 79C(1)(c) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the site is not considered to be suitable for the proposed development due to likely environmental and social impacts resulting from the proposed works and the need for further strategic investigation (master planning and structure planning) to ascertain appropriate locations for intensified urban development within the Penrith Lakes Scheme.

9 X Special 9 (Refusal under Section 79C(1)(d) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(d) of the Environmental Planning and Assessment Act due to matters raised in the received submissions.

Appendix - Development Control Plan Compliance

Development Control Plan 2006

Part 2 - City wide controls

An assessment of the applicable development standards within the DCP is outlined below:-

2.1 Contaminated Land

The applicant is yet to submit sufficient information to adequately key considerations within SEPP 55 or demonstrate that the land as tested and remediated is suitable for the proposed residential subdivision and future development of residential development. Contamination and remediation addressed in further detail within the 'Likely Impacts' section of this report and are sufficient reasons to refuse the application.

As a result Clause 2.1 of DCP 2006 is not considered to have been sufficiently addressed or satisfied.

2.3 Engineering Works

The applicant is yet to submit sufficient information to adequately key considerations within DCP concerning flooding and flood management. As a result the applicant has not sufficiently demonstrated that the proposed residential subdivision and future development of residential development on the lots is a suitable outcome. Fill and flooding implications are addressed in further detail within the 'Likely Impacts' section of this report and are sufficient reasons to refuse the application.

2.4 Erosion and Sediment Control

The provisions of suitable erosion and sedimentation controls can be conditioned in the event that the application is supported.

2.5 Heritage Management

The site is not affected or immediately adjacent to identified items of heritage significance.

2.6 Landscape

The site is affected by trees however the trees are not considered to be significant enough to warrant their retention. The proposed earthworks across the site to address site drainage requirements will necessitate their removal which is considered satisfactory.

Street planting can be conditioned in the event that the application was supported.

2.7 Notification and Advertising

The application was publicly notified and exhibited in accordance with the DCP requirements.

2.9 Waste Planning

The proposed development is considered to be suitable to accommodate waste collection and turning paths for a waste collection vehicle.

2.10 Flood Liable Land

The applicant is yet to submit sufficient information to adequately key considerations within DCP concerning flooding and flood management. As a result the applicant has not sufficiently demonstrated that the proposed residential subdivision and future development of residential development on the lots is a suitable outcome. Flooding implications are addressed in further detail within the 'Likely Impacts' section of this report and are sufficient reasons to refuse the application.

2.13 Tree Preservation

The site is affected by trees however the trees are not considered to be significant enough to warrant their retention. The proposed earthworks across the site to address site drainage requirements will necessitate their removal which is considered satisfactory.

Part 4 (Chapter 4.7) - Guidelines for subdivision

2 Controls for Subdivision in Residential Zones

Clause	Not Applicable	Complies	Does Not Comply	Comments
2.2 Design Principles	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.3 Allotment Orientation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.4 Site Frontage	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.5 Allotment Dimensions	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.6 Road Network	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.7 Road Design and Construction	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.8 Landscaping and Site Design	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.9 Services	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.10 Drainage	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Refer to comments within 'Likely Impacts' for concerns regarding site drainage
2.11 Public Open Space	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.12 Environmental Site Management	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	