

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA17/0058
Proposed development:	Fishing Platform
Property address:	Great Western Highway, EMU PLAINS NSW 2750
Property description:	Lot 125 DP 751662
Date received:	1 February 2017
Assessing officer	Sufyan Nguyen
Zoning:	RE1 Public Recreation - LEP 2010
Class of building:	Class 10a
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the construction of a fishing platform on the west bank of the Nepean River at Regatta Park, Great Western Highway in Emu Plains. The subject site is zoned RE1 Public Recreation under the *Penrith Local Environmental Plan 2010* and the proposed development which is defined as jetty under the *Penrith Local Environmental Plan 2010*, is permissible with Council consent.

Council's Development Engineer has recommended conditions to provide for the structural integrity of the proposed fishing platform.

The development application has been lodged by Penrith City Council and relates to land in Penrith City Council ownership. Accordingly, a peer review is required prior to determination.

The proposal was notified to nearby and adjoining properties and publicly exhibited for a period of fourteen (14) days. Two (2) submissions were received regarding a number of issues, however the concerns raised are not considered to justify the refusal of the application.

An assessment of the proposal under Section 79C of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The site is known as Regatta Park, Emu Plains and is situated on the west bank of the Nepean River. The site is legally described as Part Lot 125 DP 751662, has a land area of 9,374m² and is rectangular in shape. The subject site is accessed via a pedestrian path along River Road to the west.

The surrounding area is green open space which includes a corridor of trees and vegetation along the west bank of the Nepean River. The site is adjoining by an established residential area. A range of commercial and retail shops are located approximately 400m to the north-west of the site.

The broader road network includes the River Road 62m to the north-west which connects to the Great Western Highway. The T-junction of the M4 Motorway and Russell Street/Leonay Parade is 2.52km to the south-east. The nearest available bus service is 300m to the north.

It is noted that the section of the Nepean River fronting Regatta Park is a locally listed heritage item on Schedule 5 of the *Penrith Local Environment Plan 2010*. The site is owned by Penrith City Council.

Proposal

The applicant seeks approval for the construction of a fishing platform on the west bank of the Nepean River at Regatta Park, Great Western Highway in Emu Plains.

Plans that apply

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

Planning Assessment

• Section 79C - Evaluation

The proposed 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 91- Integrated development

The proposal would generally require a referral to the NSW Department of Primary Industries in accordance with the *Water Management Act* 2000, as the proposed fishing platform is within 40 metres of a mapped watercourse being the Nepean River.

However, as the works are being undertaken by a Council which is a Public Authority, Council is exempt from the requirement to obtain a Controlled Activity Approval Subdivision 4, *Clause 38* of the *Water Management (General) Regulation* 2011.

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) (SREP 20) integrates a number of recommended strategies in order to protect the Hawkesbury-Nepean river system. This requires general planning considerations to assess the relationship of different impacts of future development in a regional context. In regards to the nature of the proposal, the recommended strategies to be considered are in respect to water quality, water quantity, cultural heritage, flora and fauna, riverine scenic quality, agriculture/aquaculture and fishing, recreation and tourism.

The proposal is of a minor scale and is unlikely to result in any adverse impacts on water quality or quantity. A heritage listed item (cottage) adjoins the site, however this is located approximately 200m north-west of the site along York Street. The proposed fishing platform will not be visible from the cottage. The proposal therefore raises no concerns in regard to impacts on heritage values. Furthermore, the proposal does not require the removal of any threatened or protected flora and fauna.

The proposed fishing platform is an incentive of Council's "Our River" project which aims to enhance public recreation areas. The proposed fishing platform will be of a small size (5600mm x 2600mm). In this respect, the scale of the proposal is suitable for the context of the area.

Given that the proposal is unlikely to result in any adverse impacts on the environmental values of the Hawkesbury-Nepean River, the aims of the SREP 20 are therefore satisfied. Conditions of consent are recommended in regard to the erosion and sediment control during construction.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies - See discussion
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies - See discussion
Clause 5.10 Heritage conservation	Complies
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 1.2 Aims of the plan

The proposal aims to revitalise the Hawkesbury-Nepean river corridor and enhance the cultural and natural heritage values of the locality. The proposal is of a minor scale and is unlikely to result in any adverse impacts on the surrounding area. The overland flow path affecting the site does not traverse the area of the proposed subject site. The aims of the plan are therefore satisfied.

Clause 2.3 Zone objectives

The proposal is for a fishing platform which will be of benefit to the community. The site is currently being used as an access point to the river. This access point will be improved in regards to erosion and river bank stability as a result of the proposal which is considered to complement the use of this area. The proposed development therefore satisfies the RE1 Public Recreation zone.

Clause 5.9 Preservation of trees or vegetation

The subject site is situated within a cleared area. The proposal does not require the removal of any significant trees or vegetation.

Clause 7.2 Flood planning

A minor portion of the site is affected by overland flow. However, this area does not impede on safe access to and from the location of the proposed fishing platform in the case of a flood event. In addition, future geotechnical investigations will determine the extent of construction works required.

Clause 7.5 Protection of scenic character and landscape values

The proposal is of a minor scale and unlikely to result in any adverse impacts on the character of the Nepean River and surrounding environment.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies - see Appendix - Development Control Plan Compliance
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	N/A

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to the proposal.

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety regulations, will be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

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

Context and Setting

The site is located on the Nepean River. The proposed fishing platform is therefore compatible with the context of the surrounding area.

Access, Transport and Traffic

The site is in close proximity to two (2) public car parks. It is unlikely that there will be any adverse impacts on traffic flows given the nature and scale of the proposal. Moreover, bus services are available nearby along the Great Western Highway.

Noise and Vibration

To maintain the acoustic privacy and amenity of the surrounding area, a standard condition restricting construction work hours is recommended.

Environmental Impacts

The proposal is of a minor scale and is not situated amongst any valuable land resources. The proposal does not require the removal of any significant biodiversity or threatened species. The amounts of waste to be generated are considered to be manageable.

Socio-Economic Impacts

The proposal aims to provide a recreational activity which promotes an active lifestyle. The proposal will assist Penrith City in developing a more connected community via the benefits of new outdoor activity which is a key element for strengthening the social aspects of the local region. Overall, the proposal will have minimal impacts on the surrounding environments and is unlikely to affect property values in the local area.

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

Due to the nature and scale of the proposal, it is unlikely that there will be any adverse impacts on transport demands or the natural or built environments in the surrounding area. The site is therefore suitable for the proposed development.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of *Penrith Development Control Plan 2014*, the proposed development was notified to nearby and adjoining properties. Council notified twenty-four (24) properties in the immediate and surrounding area. The application was exhibited between 10 February and 24 February 2017. Two (2) submissions were received in response.

Issues Raised in Submissions

Two (2) submissions were received from the nearby property owners. Key concerns raised in relation to the proposed development are as follows:

Issue Raised	Comments
<i>Privacy</i>	<ul style="list-style-type: none">The subject site is located approximately 220m from nearby properties opposite the Nepean River. This large separation distance will ensure there are minimal impacts on the privacy of properties along the east bank of the Nepean River

<i>Anti-social behaviour</i>	<ul style="list-style-type: none"> Although the proposed fishing platform may not have any restrictions regarding the hours of use, in the case where any anti-social behaviour is associated with the proposal, these matters are the responsibilities and duties of the NSW Police. The proposal is of a small scale which will reduce the total number of future users at any one time. It is recommended to make provision for suitable lighting in accordance with Crime Prevention Urban Design.
<i>Impacts on the Nepean River</i> a) <i>Natural flow</i> B) <i>Amenity</i>	<ul style="list-style-type: none"> Proposed geotechnical investigations will determine whether the selected design of the fishing platform will be suitable. Dredging is not required and construction works to be undertaken will not undermine the river bank and affect natural flows. In the case, where the proposed design is incompatible, a Section 96 modification shall be submitted and approved by Council. A condition of consent is recommended in this regard. The site is currently being used as an informal access point into the river which has created compaction and erosion along this area of the river bank. The proposed fishing platform will assist in reducing further destabilisation of the river bank and will minimise erosion and also reduce the loss of vegetation in this area. The proposal is of a minor scale and is considered to enhance the amenity of the Nepean River and revitalise the cultural and will not detract from the natural heritage values of the locality.
<i>Access</i>	<ul style="list-style-type: none"> There will be no formal vehicular access to the proposed fishing platform. The platform it is not intended to be used for as a launching jetty. Access will be via the existing pedestrian pathway along River Road.
<i>Overland Flow</i>	<ul style="list-style-type: none"> Although the site is marginally affected by an overland flow path, the overland flow path does not traverse the area of the subject site.

Written responses were emailed to the submitters on 14 March 2017 advising them of the above consideration given to their concerns.

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	No objections - subject to conditions
Environmental - Waterways	No objections

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

Given the nature and scale of the proposal in addition to the proposal being largely compliant with the applicable development controls, the proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies including the Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies. The proposal does not contravene any development standards and is unlikely to have any significant impacts on the natural, social or economic environments. The site is suitable for the development and the proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval subject to conditions.

Recommendation

That DA17/0058 for the construction of a fishing platform on the west bank of the Nepean River at Regatta Park, Great Western Highway in Emu Plains be approved subject to the attached conditions.

CONDITIONS

General

1 [A001](#)

The development must be implemented substantially in accordance with the following plans stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the approved plans and by the following conditions.

Drawing Title	Prepared By	Reference No.	Dated	Revision
Concept Plan	-	-	-	-
Lookout Plan & Section	Fleetwood	S04	22.07.13	Rev 02
Waste Management Plan	Victoria Patterson	-	-	-

2 [A002 - Approved plans-not for planners use](#)

Use of the new fishing platform must not commence until such time as Council has inspected the fishing platform and has confirmed in writing that it is surfaced to a sufficient standard and to Council's satisfaction.

3 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

The development shall not be used or occupied until an Occupation Certificate has been issued.

4 [A026 - Advertising sign \(not for residential\)](#)

No approval is granted for the erection of any signage, advertising or related structures, other than that which is required by legislation or for safety purposes.

5 [A039 - Graffiti](#)

The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

6 [A046 - Obtain Construction Certificate before commencement of works](#)

A **Construction Certificate** shall be obtained prior to commencement of any building works.

7 [A Special \(BLANK\)](#)

Mud and soil from vehicular movements to and from the site during construction must not be deposited on the road.

8 [A Special \(BLANK\)](#)

Dust suppression techniques are to be employed during installation to reduce any potential nuisances to surrounding properties.

9 [A Special \(BLANK\)](#)

In addition to operating in compliance with these conditions of consent, access, management and use of the site and the fishing platform is to be in accordance with any deed, lease or other formal agreement in place with Penrith City Council.

10 [A Special \(BLANK\)](#)

A Section 96 application shall be submitted to and approved by Council in the case where geotechnical investigations result in the requirement of a substantial amended design.

Environmental Matters

11 [D001 - Implement approved sediment& erosion control measures](#)

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

12 [D009 - Covering of waste storage area](#)

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays/bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

13 **D010 – Appropriate disposal of excavated or other waste**

All wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

14 **D014 - Plant and equipment noise**

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the *Protection of the Environment Operations Act* 1997 apply to the development, in terms of regulating offensive noise.

BCA Issues

15 **E001 - BCA compliance**

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or

(c) a combination of (a) and (b).

Construction

16 **H001 - Stamped plans and erection of site notice**

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details are to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

17 H002 - All forms of construction

Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If the work involved is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

18 H011 - Engineering plans & specifications

Detailed engineering plans and specifications relating to the work shall be submitted to the Principal Certifying Authority for consideration and approval prior to the issue of a Construction Certificate.

19 H041 - Hours of work (other devt)

Construction works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm if inaudible on neighbouring residential premises, otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the *Protection of the Environment Operations Act 1997* in regulating offensive noise also apply to all construction works.

Engineering

20 K Special Condition BLANK

Prior to the issue of a Construction Certificate or the commencement of any works the design of the fishing platform shall address the following requirements:

1. The development shall be designed to withstand hydraulic forces from water levels that reach the underside of the platform and overtop the platform
2. The development shall be designed to withstand debris forces associated with the river under a flood situation. It is advised that the design of the fishing platform incorporates a modified orientation or deflecting rail to manage debris
3. The fishing platform shall be designed by a structural engineer which shall include the anchoring of the abutment and platform structure and shall minimize any future reconstruction due to damage caused by flooding
4. The development shall be designed to reduce and mitigate any scouring caused by the fishing platform

Landscaping

21 L008 - Tree Preservation Order

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

22 **L012 - Existing landscaping (for existing development)**

Existing landscaping is to be retained and maintained at all times.

Certification

23 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

Prior to the commencement of any earthworks or construction works on site, the proponent is to:

- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the *Environmental Planning and Assessment Act 1979*.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the *Environmental Planning and Assessment Act 1979*.

24 **Q05E - Compliance Certificate for earthworks if Construction Certificate not required**

On completion of the earthworks, a Compliance Certificate is to be obtained from the Principal Certifying Authority certifying compliance that all conditions of the development consent required to be met has in fact been met. The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Compliance Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the certifier who issued the Compliance Certificate.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposal aims to facilitate a recreational activity where the public space can be best utilised. The proposal will create opportunities to develop a more connected community which is a key step for Penrith City achieving a sustainable city. Furthermore, the proposal does not involve the removal of any natural ecosystems and is unlikely to result in any erosion or soil degradation of the river bank. The proposed development is therefore considered to be supportive of sustainable development which satisfies the DCP principles.

Part C - City-wide Controls

C3 Water Management

C3.3 Watercourses, Wetlands and Riparian Corridors

The proposal is of a minor scale which will ensure any works carried out do not result in any major disturbance to the river bank or adversely affect the natural stream flow regimes or impact on the riparian corridor. In addition, the proposal does not require a Controller Activity Approval given that Council is the proponent as discussed in the relevant section of this report.

C4 Land Management

C4.3 Erosion and Sedimentation

Geotechnical investigations will confirm the extent of structural works required prior to construction confirming site stability and extent of works. A condition of consent is recommended which will require submission of a Section 96 application should the proposed geotechnical investigations result in a substantial amended design.