

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0194
Proposed development:	Torrens Title Subdivision x 2 lots
Property address:	10 a Retreat Drive, PENRITH NSW 2750
Property description:	Lot 54 DP 1246141
Date received:	15 March 2019
Assessing officer	Wendy Connell
Zoning:	SP3 Tourist - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for a 2 lot Torrens title subdivision at 10a Retreat Drive, Penrith. The legal property description is Lot 54 DP 1246141. The subject site is zoned SP3 Tourist under the *Penrith Local Environmental Plan 2010*. The proposed development is permissible with Council consent.

The site is identified as being partly bushfire prone land and consequently the proposal was referred to NSW Rural Fire Service (RFS) for the issue of a Bushfire Safety Authority. General Terms of Approval (GTA) were issued for the proposal by the RFS in their letter dated 3 May 2019. The proposal was advertised and notified to nearby and adjoining properties and publicly exhibited for a period of fourteen (14) days between 29 March to 12 April 2019. Council received one (1) submission in response.

An assessment of the proposal under Section 4.15 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The subject site is known as 10a Retreat Drive, Penrith and is legally described as Lot 54 DP 1246141. The overall site has a land area of 1.76 ha, is irregular in shape, is situated in the northern portion of the Panthers Penrith Precinct. The site is affected by flooding flows, and the topography varies. There are various easement throughout the site. The site contains an event gazebo and access roads.

Proposal

The applicant seeks approval for a 2 lot Torrens title subdivision at 10a Retreat Drive, Penrith. The subdivision of the site aims to facilitate the staging of a residential/mixed use development proposal within the north sub precinct of the Panthers Penrith Precinct.

Plans that apply

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

• Section 4.15 - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

• Section 4.46 - Integrated development

The proposal is identified as Integrated Development under Section 4.46 of the *Environmental Planning and Assessment Act 1979* given that the site is partially bushfire prone land and the proposal involves subdivision of land for the purpose of future residential development. The subdivision requires the issue of a Section 100B Bushfire Safety Authority from the Rural Fire Service (RFS). The application was accompanied by a Bushfire Protection Assessment Report. Accordingly, the application was referred to the RFS for their comment and the issue of General Terms of Approval (GTAs).

The General Terms of Approval (GTAs) were issued by the New South Wales Rural Fire Service (RFS) for the proposal on 3 May 2019 without any specific conditions.

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against relevant criteria within *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)* and the proposal is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.6 Subdivision - consent requirements	Complies
Clause 4.1 - Minimum subdivision lot size	N/A
Clause 9.1 Objectives of Part	Complies
Clause 9.6 Development control plan for land to which this Part applies	Complies

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

Planning Proposal

In 2012 Council endorsed planning controls for the Penrith Panthers site, located at Mulgoa Road and Retreat Drive, Penrith which provide for the development of an integrated 'entertainment, leisure and lifestyle precinct'. The controls allow outlet centres, general retail, campus style office premises, serviced apartments and high density residential dwellings to be permissible on the site.

Since then the Panthers Group has been working on options for development of the Penrith Panthers site based on market trends. A proposed residential and general retail development scheme has been prepared for the northern portion of the site by the developer, CABE, which intends to replace the current endorsed Outlet Centre, residential and mixed use development scheme in this area. To facilitate the proposed development scheme, an amendment was sought to the Penrith Local Environmental Plan 2010 (LEP 2010) by way of a Planning Proposal and "Gateway" process.

Supporting the proposed changes to planning controls is a proposed development scheme prepared by CABE for the northern portion of the Penrith Panthers site. This scheme proposes a residential, mixed-use

precinct incorporating a range of residential tower buildings. It seeks the development of 16 buildings containing apartments, some of which would sit above commercial podiums containing general retail floor space fronting the lake. Prominent gateway buildings are sought on the corner of Ransley Street and Mulgoa Road as well as at the western end of Ransley Street adjacent to the lake. A Stage 1 Development Application for this scheme, located on the corner of Mulgoa Road and Ransley Street, has been approved and is currently under construction.

The Planning Proposal recommends the following changes to LEP 2010:

- Adjust the maximum building height controls applying to the northern portion of the Penrith Panthers site to permit increased maximum building heights of 15m, 20m, 24m, 38m and 50m and to reduce building heights in some locations.
- Place a cap on the maximum residential development capacity at the northern portion of the Penrith Panthers site, being a maximum of 850 dwellings and 80,400 square metres of residential gross floor area.
- Remove the ability to develop an Outlet Centre at the Penrith Panthers site.
- Property description updates due to changes related to recent subdivisions.

Draft Development Control Plan

An amendment has been sought to DCP 2014 Chapter E13 Riverlink Precinct and Part B - Penrith Panthers Precinct. The DCP amendment seeks the following changes:

- Replacement of the planned Outlet Centre with the CAFE residential and mixed-use development scheme.
- Preparation of a revised concept plan and various other diagrams to reflect the new scheme.
- Changes to development layout and structure, including roads, through-site links and building envelopes.
- Addition of landmark building at end of Ransley Street, with associated development controls.
- Addition of street hierarchy controls to prescribe roadway requirements at the northern portion of the Penrith Panthers site.
- Addition of pedestrian and cycleway connections throughout the northern part of the Panthers site, aligning with the new development structure.
- Changes to objectives and controls for various elements.
- Retainment of existing endorsed view corridors and building setback controls
- Inclusion of additional architectural and urban design controls.
- Capping of retail floor space to a maximum of 3,500sqm at the northern portion of the Penrith Panthers site.
- Addition of bushfire risk management controls
- Deletion of the planned zone sub-station at the north-west corner of the Penrith Panthers site, based on advice provided by Endeavour Energy that the site will not be acquired, as it is prone to flooding.

The Planning Proposal and draft DCP was exhibited in Sep/Oct 2017, and reported to Council for endorsed on 13 Nov 2017. Council's resolution requires an amendment to the Roadworks Planning Agreement (the VPA) for the site to be executed before the Planning Proposal is forwarded to the Department with a request to make the LEP amendment. The negotiation of the VPA amendment is currently being undertaken by relevant parties. Further discussion on the VPA is in another section of this report

The development proposal has been assessed against the Planning Proposal and draft DCP and is found to be largely compliance with the draft documents.

Draft State Environmental Planning Policy (Remediation of Land) 2018

The proposal has been assessed against the applicable provisions of the Draft State Environmental Planning Policy (Remediation of Land) 2018 and associated guideline document, and is considered to be acceptable. Refer also to the discussion under the State Environmental Planning Policy No. 55 - Remediation of Land section of this report.

The draft amendments were on exhibition from 31 January to 13 April 2018. The draft amendment is currently under consideration.

Draft State Environmental Planning Policy (Environment) 2017

The Explanation of Intended Effect for State Environmental Planning Policy (Environment) 2017 was on exhibition from 31 October 2017 to the 31 January 2018.

The intent of the new State Environmental Planning Policy (Environment) 2017 is to combine seven existing State Environmental Planning Policies into a simple, modern and accessible instrument.

The proposal has been assessed against the applicable provisions of the Draft State Environmental Planning Policy (Environment) and is considered to be acceptable. Refer also to discussion under the Sydney Regional Environment Plan No. 20 - Hawkesbury Nepean River (No. 2 - 1997) section of this report.

The Draft State Environmental Planning Policy (Environment) 2017 is currently under consideration.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	N/A
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	Complies
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A
E13 Riverlink Precinct controls	Complies

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

The development site is affected by two Voluntary Planning Agreements (VPAs), being the Panthers Roadworks Voluntary Planning Agreement dated 28 November 2012 and the Outlet Centre Planning Agreement dated 28 November 2012.

The parties to the Outlet Centre VPA are Council and Penrith Rugby League Club. This VPA relates to the monitoring of planning impacts of an outlet centre. The Panthers Group have reviewed the development options for the Panthers site based on market trends and have proposed a residential and general retail development scheme on the northern portion of the site. This development is intended to replace the current endorsed outlet centre, with residential and mixed use development scheme in this area.

The parties to the Panthers Roadworks VPA are Council, Penrith Rugby League Club and the Roads and Maritime Services. This VPA relates to road network upgrades associated with the implementation of the Panthers Precinct Masterplan. The Road Works VPA, which prescribes the improvements to be carried out to the road network to support the development of the Penrith Panthers site, was executed in 2012 by Council, Roads and Maritime Services (RMS) and the Panthers Group.

At present, all parties are in discussions to determine the impacts of the proposed CABA development scheme, and broader precinct current and future land uses, on the surrounding road network compared to the current endorsed traffic modelling which underpins the 2012 Road Works VPA.

The key changes to assumptions employed in the updated modelling are:

- Replacement of the current endorsed Outlet Centre with the proposed CABA residential and mixed-use development scheme.
- Investigation of the changes to travel patterns as a result of the change in land use, particularly the consideration of the morning and afternoon peak periods.
- Deletion of a road connection point from the north of the Panthers site to the Great Western Highway, which is currently included in the endorsed traffic modelling assumptions, resulting in a redistribution of traffic flows to the remaining three access points to the Panthers site. Council previously advised the proponent to remove the north access point from the modelling assumptions due to the unknown timing of delivery of the north-south "Riverlink" connection through the Panthers site to ensure that traffic can be appropriately distributed.

All parties have commenced the negotiation to amend the Road Works VPA. The negotiation will determine required internal road improvements, as well as proposed intersection layouts, timing and triggers for delivery of improvements. The planned Mulgoa Road widening will be considered as part of this negotiation.

The latest updated modelling indicates that overall both the current endorsed scheme and the proposed CABA development scheme generate similar traffic volumes. The modelling has identified options for road improvements as a potential means to address deficiencies in the performance of the road network. Modelling will be finalised and refined as part of the detailed VPA negotiations.

Council at its meeting on the 13 November 2017 endorsed the Planning Proposal and DCP 2014 amendment to proceed, however the endorsement stipulated that the amendments to LEP 2010 are not sent to the Department for gazettal, and the DCP 2014 not brought into force, until an amendment to the Road Works VPA has been executed.

Negotiations between all parties are still ongoing, and the VPA is yet to be executed. The proposed development does not trigger works under either VPA or fetter the obligations in the VPAs.

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

In accordance with *Division 3 Development applications for integrated development of the Environmental Planning and Assessment Regulation 2000*, the proposed development was referred as integrated development to the NSW Rural Fire Service (RFS). GTAs were issued without condition for the proposal by the RFS. The proposed development will comply with the relevant requirements of the Regulations.

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

Context & Setting

The proposed lot configurations will accommodate future development and are not considered likely to result in any adverse impacts and are compatible with the surrounding area.

Environmental Impacts

The proposal was accompanied by a bushfire report . The report provides appropriate measures to address bushfire management issues.

Socio-Economic Impacts

Subject to the recommended conditions of consent, it is not considered likely that the proposal will result in any significant socio-economic impacts.

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

The site is a large allotment which has the capacity to support future high density mixed use development. Given the the proposed subdivision does not require any earthworks or the removal of any flora or fauna, there will be no adverse impacts on the surrounding natural and built environments. Furthermore, the proposal addresses bushfire protection requirements and poses no flooding risks. The site is therefore deemed suitable for the proposed development.

Section 79C(1)(d) Any Submissions

Community Consultation

The proposal was advertised and notified in accordance with Appendix F4 of *Penrith Development Control Plan 2014*. The exhibition was between 29 March and 12 April 2019. One submission was received in response to the exhibition of the application. The submission raised objection to the proposal on the grounds that current pedestrian access arrangements along Retreat Drive will be altered and truck movements in the vicinity of Retreat Drive could result in a safety risk for pedestrians.

The proposal is for subdivision only and no changes to the current access arrangements along Retreat Drive are proposed. The Panthers Precinct is subject to a Voluntary Planning Agreement (VPA) for Road Works between RMS, Council and Panthers. The VPA ensures that road upgrades occur to cater for the increase traffic as a result of development across the Panthers Precinct. This subdivision proposal will not increase traffic numbers and therefore does not trigger any road works under the VPA.

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

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

Section 94 - Developer Contributions Plans

The following S7.11 Contributions Plans apply:

- Cultural Facilities
- District Open Space
- Local Open Space

Conditions of consent have been including to reflect contribution under these S7.11 Plans.

Conclusion

In assessing this proposal against the relevant environmental planning policies, being *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2014*, *State Environmental Planning Policy (Infrastructure) 2007*, and *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)*, 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 DA19/0194 for a Torrens title subdivision x 2 lots at 10a Retreat Drive, Penrith be approved subject to the attached conditions.

General

1 [A001](#)

The approved subdivision must be implemented substantially in accordance with the stamped approved plan of subdivision, prepared by Matthew Freeburn, reference no. 14 443 Stage 2C (Sheets 1-1), dated 27-02-2019, the application form and any supporting information received with the application, except as may be amended in red on the stamped approved plans and by the following conditions.

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

In the event that the approved lots are registered prior to the execution of the amended Road Works VPA for the site, lot references in the amended VPA shall be updated to reflect the newly registered lots.

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

The configuration of the approved lots should be in no way be seen as pre-empting the separate consideration and/or approval for any future development on these lots.

Utility Services

4 [G002 - Section 73 \(not for](#)

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.

5 [G004 - Integral Energy](#)

Prior to the issue of a Subdivision Certificate, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Subdivision Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

6 [G006 -](#)

Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:

- The requirements of the Telecommunications Act 1997:
- For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

Prior to the issue of a Subdivision Certificate, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

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

The provision of water, electricity and gas shall comply with Section 4.1.3 of 'Planning for Bushfire Protection 2006'.

Subdivision

8 M008 - Linen Plan

Prior to the issue of a Subdivision Certificate, the original Linen Plan and six (6) copies shall be submitted. The Linen Plan must indicate:

- (a) All required easements, rights of way, restrictions and covenants.
- (b) Any dedications of roads/drainage are to be undertaken at no cost to Penrith City Council.

The following information is to be shown on one (1) copy of the plan.

- The location of all buildings and/or other permanent improvements shall comply with any statutory boundary clearances or setbacks as defined by the Building Code of Australia and Council's resolutions.
- All existing services are wholly contained within the lot served and/or covered by an appropriate easement.

9 M009 - 88B Instrument

The Subdivision Certificate application is to be supported by an 88B instrument creating the following:

- (a) Easements as nominated on the approved Subdivision Plan.
- (b) Positive covenant and/or restriction in relating to the APZ requirements for proposed Lots 59 & 60.

Council or the relevant servicing authority shall be nominated as the only authority permitted to modify, vary or rescind such encumbrances.

10 M014 - Surveyors certificate

A Surveyor's Certificate is to be lodged with the application for a Subdivision Certificate that certifies that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.

Development Contributions

11 N001 - Section 94 contribution (apply separate condition for each Contribution Plan)

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan(s) for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$1,090.00 is to be paid to Council prior to a Subdivision Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

12 N001 - Section 94 contribution (apply separate condition for each Contribution Plan)

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan(s) for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$11,880.00 is to be paid to Council prior to a Subdivision Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for District Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

13 N001 - Section 94 contribution (apply separate condition for each Contribution Plan)

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan(s) for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$4,296.00 is to be paid to Council prior to a Subdivision Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for Local Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Certification

14 [Q008 - Subdivision Certificate](#)

A Subdivision Certificate is to be obtained prior to the release of the linen plan of subdivision. The Subdivision Certificate will not be issued if any of the conditions in this consent are outstanding.