

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0811
Proposed development:	Construction of a Stand-Alone Car Wash Facility and Associated Signage within an Existing Service Station Development
Property address:	1 - 21 Cranebrook Road, CRANEBROOK NSW 2749
Property description:	Lot 3 DP 215949
Date received:	1 December 2020
Assessing officer	Jane Hetherington
Zoning:	RU4 Primary Production Small Lots - LEP 2010
Class of building:	Class 6
Recommendations:	Refuse

Executive Summary

Council is in receipt of a development application for construction of a stand-alone car wash facility with associated signage at 1-21 Cranebrook Road, Cranebrook. The subject site is zoned RU4 Small Lots Primary Production under the provisions of Penrith Local Environmental Plan 2010. It has not been demonstrated that the proposal benefits from existing use rights and therefore is a permissible land use within the zone.

Key issues identified for the proposed development and site include:

- The application has not demonstrated that the proposal is a permissible land use;
- The proposal is inconsistent with the character of the surrounding locality; and
- It has not been demonstrated that the site is able to accommodate the additional wastewater loads generated by the development or that stormwater can be adequately managed.

In accordance with Penrith Development Control Plan 2014, the application has been notified to adjoining properties owners and occupiers. One submission was received which is further discussed in the 'any submissions' section of the report.

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

Site & Surrounds

Properties of the site

The site is located to the northwest of the intersection of Cranebrook Road and Londonderry Road. Developments in the area are predominately rural/residential in nature.

The site has a total area of 3.63 hectares. The majority of the site is identified to be bushfire prone land. The site currently contains a service station located in the south-eastern corner and attached McDonalds restaurant. Access to the service station is available from Cranebrook Road and Londonderry Road. The site is substantially cleared of vegetation.

Site constraints

- The site is identified as 'land with scenic and landscape values'.
- The site is mapped as bush fire prone land.
- The site has two road frontages.

History

On 7 November 2012 development consent was granted for the Demolition of Existing Structures and Construction of a Service Station (DA10/1209). Since the original approval a total of three Section 4.55 applications have been approved including:

- DA10/1209.01 for the addition of a managers unit within the attic of the approved service station (approved 20 August 2013);
- DA10/1209.02 for increasing the site area for the service station and the building footprint and modification to the internal layout of the service station building (approved 29 April 2014);
- DA10/1209.03 for the provision of a drive-thru facility, increased gross floor area, reconfigured layout and car parking (approved 18 November 2016);
- DA10/1209.04 for the to modify the restaurant component including roof, façade treatment, internal layout and signage (approved 13 November 2018);
- DA10/1209.05 to modify the design of the first floor residential tenancy including extension of outdoor terrace (approved 30 April 2019); and
- DA10/1209.06 to enclose the terrace areas on the first floor to be used as storage areas.

Proposal

The proposed development involves:

- New car wash consisting of:
 - Two (2) Automatic car wash bays,
 - Three (3) Self-serve wash bays,
 - Four (4) vacuum bays,
 - A vending and change area,
 - A plant room with a secure storage room and staff amenities,
 - Oil separator enclosure,
 - One (1) Dog wash and Store rooms,
- Business identification signage;
- Directional/informative signage; and
- New stormwater, sewer and landscaping for the site.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- 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 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The application was accompanied a Draft Detailed Site Investigation prepared by ESP (dated October 2010, ref 14069 Detailed Site Investigation). Upon review of Council's records, it would appear that this document has been superseded throughout various modifications of DA10/1209 (approval for the reconstruction of the service station). There are various contamination assessments which have been stamped approved through the previous application associated with the existing petrol station which involves an assessment of the entire property. Furthermore, upon reviewing aerial imagery of the subject location on the property, it can be seen that the only material identified within the footprint of the proposed development is as a result of material generated from the construction of the existing petrol station. Therefore, in terms of land contamination, there are no further concerns, which could be addressed through conditions if approval was recommended.

State Environmental Planning Policy No 64—Advertising and Signage

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy No 64—Advertising and Signage and the application is satisfactory.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 -1997) (SREP 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture and urban and rural-residential development. It controls development that has the potential to impact on the river environment. The plan applies to all parts of the catchment in the Sydney region (15 local government areas, including Penrith), except for land covered by *Sydney Regional Environmental Plan No.11 - Penrith Lakes Scheme*. SREP 20 is supported by an Action Plan which includes actions necessary to improve existing conditions.

The application has not demonstrated satisfactory drainage arrangements or compliance with Council's Water Sensitive Urban Design Policy. As such it cannot be determined if the development would have an impact upon the Hawkesbury/ Nepean River Catchment.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 7.5 Protection of scenic character and landscape values	Does not comply - See discussion

Clause 2.3 Permissibility

The subject site is zoned RU4 Primary Production Small lots under the provisions of Penrith Local Environmental Plan 2010. A service station is defined as follows:

Service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following—

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,*
- (b) the cleaning of motor vehicles,*
- (c) installation of accessories,*
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),*
- (e) the ancillary retail selling or hiring of general merchandise or services or both.*

A service station is a prohibited land use in the RU4 zone however, Council records show that consent was granted on 1 November 1976 for the redevelopment of an existing service station. Subsequent approvals have been granted for an ancillary convenience store, car repair station and fast food outlet. The service station has been operating from the property since. The Statement of Environmental Effects (SOEE) claims that as the service station benefits from existing use rights, the proposed car wash facility should also benefit from existing use rights, given the current definition for a service station (outlined above). While it is acknowledged that the current definition allows for 'the cleaning of vehicles', Council's records indicate that this service has not historically been provided at the site. Further, the plans show a 'dog wash' which is also considered a new use. The car wash and dog wash do not benefit from existing use rights and are therefore prohibited land uses in the RU4 zone. This is further discussed under the Environmental Regulations section of this report.

Clause 2.3 Zone objectives

The proposal is inconsistent with the objectives of the zone, specifically:

- To enable sustainable primary industry and other compatible land uses.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To ensure land uses are of a scale and nature that is compatible with the environmental capabilities of the land.
- To maintain the rural landscape character of the land.

Clause 7.5 Protection of scenic character and landscape values

The site is identified as 'land with scenic and landscape values' under the Scenic and Landscape Values Map. Clause 7.5 of Penrith Local Environmental Plan (LEP) 2010 specifies that development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.

The proposal do not comply with Clause 7.5. The proposal is located forward of the existing service station and significantly increases the hardstand area visible from Cranebrook Road. While a 4.5m landscaped setback is provided to service station, the proposed car wash is located adjacent to a concrete slab of a subsurface detention pit and only provides a 2.3m landscaped area. Further, the proposed location of the car wash conflicts with an area identified for the planting of *Eucalyptus maculata* (spotted gum) on the stamped approved plans for DA10/1209. The design is modern and includes large sections of unbroken panels. The buildings and associated driveway are raised above natural ground level by up to 1.5m.

Given the above, the proposal will be highly visible from Cranebrook Road which is inconsistent with the requirements of Clause 7.5.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
D1.1. Rural Character	Does not comply - see Appendix - Development Control Plan Compliance
D1.2. Rural Dwellings and Outbuildings	N/A
D1.3. Farm buildings	N/A
D1.4 Agricultural Development	N/A
D1.5. Non-Agricultural Development	Does not comply - see Appendix - Development Control Plan Compliance

Section 4.15(1)(a)(iv) The provisions of the regulations

Part 4 Existing Uses

Under Clause 41(1) an existing use may -

(a) be enlarged, expanded or intensified, or

(b) be altered or extended, or

(c) be rebuilt, or

(d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or

(e) if it is a commercial use - be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or

(f) if it is a light industrial use - be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).

However, Clause 41(2) goes on to specify, an existing use must not be changed under subclause (1)(e) or (f) unless that change -

(a) involves only alterations or additions that are minor in nature, and

(b) does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and

(c) does not involve the rebuilding of the premises associated with the existing use, and

(d) does not involve a significant intensification of that existing use.

Council records show that consent was granted on 1 November 1976 for the redevelopment of a service station. Subsequent approvals have been granted for an ancillary convenience store, car repair station and fast food outlet. The service station has been operating from the property since. On 12 July 1991, Penrith Local Environmental Plan 201 (Rural Lands) was gazetted. According to LEP 201, the site is zoned 1(a) (Rural "A" zone – General) and service stations were permitted with consent in the zone. Penrith Local Environmental Plan 2010 was gazetted on 22 September 2010. The gazettal has resulted in the change of zoning to RU4 Primary Production Small Lots which prohibits service stations.

As such the service station benefits from existing use rights however, Council's records do not indicate that the site has previously operated either a car wash or dog wash facility. While it is acknowledged that Clause 41(1)(e) allows for the commercial use benefiting from existing use rights to be changed to another commercial use, the proposal does not involve a change in use, rather the introduction of new uses. Further, the proposal does not comply with Clause 42(1) in that it is not 'minor in nature'. As such, the development does not benefit from existing use rights and is therefore a prohibited land use in the RU4 zone.

Section 4.15(1)(b)The likely impacts of the development

Context and Setting

While it is acknowledged that the site contains a large service station and McDonalds restaurant (both which benefit from existing use rights), the surrounding area is characterised by rural-residential development. The design and location of the proposal is inconsistent with the surrounding rural character. The car wash building and associated driveways are raised above natural ground level (by up to 1.5m); the design is modern and includes large sections of unbroken concrete walls; the car wash is forward of the service station; increases the hardstand area; and only includes a landscaped setback of approximately 2.3m. As such, the proposal is considered to have an undesirable impact on the context and setting of the surrounding locality.

Noise Impacts

The application was supported by Environmental Noise Assessment prepared by Eco Acoustics and dated 29 November 2020. Council's Environmental Health Officer reviewed the document and identified the following issues:

- It is unclear if an assessment of the mechanical plant within the shed or the oil separator has been undertaken;
- The location of the unattended noise monitoring has not been identified;
- The assessment has identified that both the automated car wash entry/exit and the vacuum bays have an overall dB(A) rating of 92 however recommended mitigation measures have only been provided regarding the automated car wash bays;
- No commentary has been provided regarding road traffic noise generated from the proposed development or its impact on surrounding sensitive receivers; and
- There was been no assessment or commentary provided regarding waste collection for the proposed development. As the proposed development anticipates waste collection beyond Council's weekly collection, additional information is to be provided which demonstrates that waste collection will not impact on surrounding sensitive receivers.

Given the above, the application has not demonstrated that there would not be an adverse noise impact as a result of the proposed development. While it is acknowledged that these issues could potentially be resolved with an amended acoustic assessment, given the other issues (i.e. permissibility), an amended report was not requested.

Water Management

The application was accompanied by a Stormwater Management Plan, prepared by TMC Building Design Group and dated 29 November 2020. This plan shows five stormwater drainage pits across the proposed carwash, which then direct to the existing stormwater drainage system constructed for the development associated with DA10/1209 (service station and take-away restaurant). No bunding has been provided around the designated car washing areas and as such, it cannot be determined whether wastewater will enter the stormwater drainage pits. Further, no bunding has provided for the proposed plant room, oil separator, dog wash and storage shed or the location of the chemical storage associated with the operations have been identified. As such, it hasn't been demonstrated that wastewater or stormwater will be appropriately managed onsite.

The Statement of Environmental Effects states that the existing Onsite Stormwater Detention (OSD) system designed as part of DA10/1209, prepared by Neil Lowry & Associates Pty Ltd is for the overall site. However, upon review of the stormwater design for DA10/1209, the stormwater calculations appear to be limited to a catchment area of 1.44ha, that is the development area associated with DA10/1209. As such, it has not been demonstrated that the existing OSD and drainage system will not be impacted by additional stormwater runoff from the proposed impervious catchment area.

Further, the application has not adequately addressed Council's Water Sensitive Urban Design Policy and as such, it has not been demonstrated that Council's water conservation or water quality targets will be met.

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

The site is unsuitable for the following reasons:

- The surrounding locality is predominately rural residential development.
- The application fails to comply with the requirements of relevant planning provisions, particularly with regard to zone objectives and DCP provisions.
- It has not been demonstrated that the site is able accommodate the additional wastewater loads generated by the development, or that stormwater can be adequately managed.

Section 4.15(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 Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents.

Council notified 58 residences in the area and the exhibition period was between 14 December 2020 and 1 February 2021. Council has received 1 submission in response.

Submissions

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

Issue Raised	Comments
<i>The grass on the property is not being mown which is a safety concern.</i>	<i>While this submission did not object to the proposal however, raised concerns with the current state of the property. This will be forwarded to Council's compliance department for further action.</i>

Referrals

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

Referral Body	Comments Received
Development Engineer	Not supported
Environmental - Environmental management	Not supported
Traffic Engineer	No objection subject to conditions

Section 4.15(1)(e) The public interest

The proposed development has been assessed contrary to the primary aims, objectives and controls of the applicable planning instruments and will result in negative and unacceptable impacts for the development and locality. As such, the proposal is not in the public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014 and is found to be unacceptable. The key issue relating to the proposed development is that it has not been demonstrated that safe and efficient access to the site can be provided. Therefore, the application is not worthy of support for the attached reasons.

Recommendation

1. That DA20/0811 for construction of a stand-alone car wash facility and associated signage within an existing service station development at 1-21 Cranebrook Road, Cranebrook, be refused for the following reasons; and
2. That those making submissions are notified of the determination.

Refusal

1 [X Special 02 \(Refusal under Section 4.15\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the following provisions of:

a) Penrith Local Environmental Plan 2010:

- Clause 2.3 - Permissibility.
- Clause 2.3 - the objectives of the zone, specifically:
 - To ensure land uses are of a scale and nature that is compatible with the environmental capabilities of the land.
 - To maintain the rural landscape character of the land.
- Clause 7.5 Protection of Scenic Character and Landscape Values.

b) Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River- Clause 3

- Aims of Plan.

2 [X Special 04 \(Refusal under Section 4.15\(1\)\(a\)\(iii\) of EPA Act 1979\)](#)

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the following provisions of the Penrith Development Control Plan 2014:

- C1 Site Planning and Design Principles;
- C3 Water Management;
- C6 Landscape Design;
- C12 Noise and Vibration;
- C13 Infrastructure and Services; and
- D1 Rural Land Uses.

3 [X Special 06 \(Refusal under Section 4.15\(1\)\(a\)\(iv\) of EPA Act 1979\)](#)

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979*, in that the proposed use is not considered to comply with the existing use rights provisions within Part 5 of the *Environmental Planning and Assessment Regulation 2000*.

4 [X Special 07 \(Refusal under Section 4.15\(1\)\(b\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as it has not been demonstrated the likely impacts of the development can be satisfactorily mitigated. These impacts relate to local character, noise, wastewater and water management.

5 [X Special 08 \(Refusal under Section 4.15\(1\)\(c\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as it has not been demonstrated through compliance with the relevant provisions that the site is suitable for the proposed development.

6 [X Special 10 \(Refusal under Section 4.15\(1\)\(e\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* as the proposal is not in the public interest.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

The site is identified as land having scenic and landscape values under Penrith Local Environmental Plan (LEP) 2010. As such, in accordance with Chapter C1 Site Planning and Design Principles, a visual impact assessment (VIA), prepared by a professional with a background in design and experience in visual assessment, is required to accompany the application. The application was not accompanied by a VIA and as such, it hasn't been demonstrated that the visual impacts of the proposed development will be sympathetic to the scenic and landscape character of the area.

C3 Water Management

As the proposal includes increasing the impervious area by more than 250m², in accordance with Section C3 Water Management, Council's Water Sensitive Urban Design (WSUD) Policy is applicable. The application has not adequately addressed this policy, simply stating that 'the proposed car wash will be connected into the existing WSUD system that has been designed for the overall site.' The existing system (approved under DA10/1209 as amended) did not take into account the additional loads from the proposal. As such, the application has not demonstrated that it is compliant with Council's WSUD policy or this section of the DCP.

C6 Landscape Design

The application has not been accompanied by a Landscape Plan, prepared by a suitably qualified landscape professional. As such, the proposal has not demonstrated compliance with this section of the DCP.

C13 Infrastructure and Services

The application was accompanied by a "Geotechnical Investigation - Wastewater Management" prepared by Geotechnique Pty Ltd (dated 21 October 2010, ref 12337/1-AB). This Investigation is identified to be an old document which appears to be in relation to the existing petrol station (during the proposal phase) and has since been superseded. Furthermore, the Statement of Environmental Effects states that a separate On-site Sewage Management System will be proposed for the car wash facility, and is in the process of being prepared. This document has not been forwarded to Council within a timely manner and therefore it has not been demonstrated that the wastewater from the proposal will be adequately managed.

D1 Rural Land Uses

D1.1 Rural Character

The proposal has an undesirable visual impact and is not considered to complement the rural character of the surrounding locality. It increases the hardstand area (on a site that already has extensive hardstand) and has minimal landscaped setbacks. Further, the building and associated driveway are raised above natural ground level higher by up to 1.5m. The building is of a modern design and includes large sections of unbroken concrete panels.

D1.5 Non-Agricultural Development

It has not been demonstrated that the proposal will not impact upon the rural and residential environment, particularly with regard to noise or that the existing OSSM system can accommodate the additional loads. As detailed above, the location and design of the proposal had not had regard to the rural character of the area and it is considered that it would be more suited to an industrial area.