

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0811.01
Proposed development:	Review of Determination for the 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:	11 June 2021
Assessing officer	Lucy Goldstein
Zoning:	RU4 Primary Production Small Lots - LEP 2010
Class of building:	Class 6
Recommendations:	Refuse

Executive Summary

On 25 February 2021, Council determined by way of refusal a Development Application DA20/0811 for the Construction of a Stand-Alone Car Wash Facility and Associated Signage Within an Existing Service Station Development at 1-21 Cranebrook Road, Cranebrook.

Subsequently, Council is in receipt of a Review of Determination (DA20/0811.01) pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 (The Act). In accordance with the requirements of Section 8.3 of The Act, the Review was lodged within 12-months of the date of determination of DA20/0811, being lodged to Council on 11 June 2021.

Key assessment issues that were raised under the original application DA20/0811, and which ultimately formed reasons for its refusal, remain unresolved. These key issues include:

- Pursuant to Penrith Local Environmental Plan 2010 (LEP), the subject site is zoned RU4 Primary Production Small Lots. The proposal is for a stand alone car wash facility, which is not a permitted land use in the zone.
- The proposal relies on Existing Use Right provisions under Division 4.11 of The Environmental Planning and Assessment Act (The Act), and Part 5 of the supporting Environmental Planning and Assessment Regulations 2000 (The Regulations). However, the Review application has not adequately demonstrated compliance with these provisions, and therefore has not established that existing use rights apply for a stand-alone car wash facility on the site. As such, the proposal is not permissible on the site, and cannot be determined favourably.

In accordance with Council's Community Engagement Strategy, the application has been notified to nearby properties and exhibited between 21 June 2021 and 5 July 2021. Council received one (1) submission. The matters raised in the submission have formed part of the assessment and are addressed in this 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 development involves the following aspects:

- Construction of a 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) storage shed.
- Proposed operating hours of 24-hour, Monday to Sunday;
- Business identification signage; Directional/informative signage; and
- Associated stormwater, wastewater and landscaping works.

It is noted that the original proposal as lodged under DA20/0811 included a dog wash. However, the proposal has been amended by way of deleting the dog wash component to respond to concerns raised in the original assessment that the dog wash was a new use, which is not permitted on the site.

Plans that apply

- Local Environmental Plan 2010
- 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.

Division 4.11- Existing Uses, Environmental Planning and Assessment Act 1979

The proposal has been lodged pursuant to Division 4.11-Existing Uses of The Act. Accordingly, the proposal has been assessed against relevant criteria of Division 4.11, as summarised below.

Importantly, the proposal as presented in the Review application has not resolved the issues raised by Council in the original development application in regards to demonstrating that the site benefits from an existing use for a stand alone car wash. Whilst there is no doubt that the site benefits from an existing consent (DA10/1209 as modified) for the purpose of a service station and ancillary convenience store, car repair station and fast food outlet, the existing consent does not include a car wash component.

Clause 4.65- Definition of "existing use"

Clause 4.65 provides a definition of an 'existing use' for the purpose of the division, which is stated as the following:

In this Division, existing use means—

(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land—

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

In regard to the above provisions, sub-clause 4.65(a) requires that an existing use must be for a lawful purpose. The application has not demonstrated that development consent was obtained for the use of a car wash on the site. Whilst the Review application was supported by a Survey, prepared by Matthew Freeburn, dated 19 April 2010 (Reference 30361) which identifies a 'car wash sump' on the site at the time of the survey (2010) located to the west of the service station building, it has not been demonstrated that development consent was obtained for this work/use. It is noted that several historic aerial photographs from 1986, 1994 and 2012 were provided with the application, which appear to show the presence of a concreted parking bay in a similar location as the sump, as shown on the Survey. However, the documentation provided does not establish that an 'existing use' for a car wash applies to the site for the purpose of Clause 4.65.

Cause 4.66- "Continuance of and limitations on existing use"

Clause 4.66 states that:

(1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

(2) Nothing in subsection (1) authorises—

(a) any alteration or extension to or rebuilding of a building or work, or

(b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or

(c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or

(d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or

(e) *the continuance of the use therein mentioned where that use is abandoned.*

(3) *Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

(4) *During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months in subsection (3) is taken to be a reference to 3 years.*

Pursuant to sub-clause 4.66(3) and (4) an existing use is presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months, or three years during 25 March 2020 and 25 March 2022. The Review application has not demonstrated that a car wash has been in continuous use on the site without ceasing for the purpose of sub clause 4.66(3) and (4). In this regard, the Review application was supported by a Statutory Declaration from the business owner of the service station development during 1990 to 1998 (dated 3 August 2021). The Statutory Declaration submitted indicates that:

"..during the time [1990 to 1998] a large gurney based coin operated car wash with drainage pit was in full operation during the whole period of tenure. It was a popular truck stop and the car wash facility was used quite regularly."

Whilst the Statutory Declaration indicates that a car wash was present on the site during 1990 to 1998, the documentation does not establish that the car wash has been in continuous operation and not taken to be abandoned for the purpose of the Clause 4.66, such as beyond 1998. Similarly, in respect to the Survey dated 2010 that was submitted in support of the application, whilst it shows a sump on the site, does not establish that the car wash has been in physical and continuous use for the purpose of Clause 4.66. It is noted that in relation to the existing approval DA10/1209, a car wash did not form part of the consent, and a condition of consent (no.63) was imposed that prohibited the washing of vehicles on the site, stating that: "Vehicle washing is not permitted without the appropriate approvals from Penrith City Council being obtained."

Further, and notwithstanding the above concerns, the proposed car wash is located on a new portion of the site beyond where the historic wash sump is shown to be located on the documentation provided, and beyond the extent of the land that benefits from an existing use for the service station development.

With consideration to the above matters, the proposal has not satisfied the Existing Use Right provisions under The Act 1979 and supporting Regulations 2000. As the proposal is otherwise not permitted on the site, the proposal cannot be determined favourably.

• **Section 8.2 - Review of determination**

Pursuant to Section 8.2(1)(a) of the Environmental Planning and Assessment Act, 1979, the determination of the original Development Application is a decision that can be reviewed. In accordance with the requirements of Section 8.3, the Review application was lodged within 12-months of the date of determination of DA20/0811 (being 25 February 2021), noting that the Review application was lodged to Council on 11 June 2021.

In accordance with Section 8.3(3) the proposal as presented in the Review application is considered substantially the same development as the subject of the original Development Application. Although additional information has been submitted in response to issues previously raised, and amendments have been made including the deletion of the dog wash, the nature of the proposed use remains essentially the same as originally sought.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

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.

The application has been reviewed by Council's Environmental Management Officer, and is found to be unsatisfactory in respect to water and wastewater management issues. The proposal has not adequately demonstrated that the development has been designed to avoid negative impacts on the local water system, and more broadly the Hawkesbury/ Nepean River Catchment. As such, the proposal does not satisfy the requirements of SREP 20.

Local Environmental Plan 2010

Provision	Compliance
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 4.3 Height of buildings	N/A

Clause 2.3 Permissibility

Pursuant to Penrith LEP 2010, the subject site is zoned RU4 Primary Production Small Lots.

The Application was supported by a Review of Determination Letter, prepared by Think Planning, dated 10 June 2021. Within the Review of Determination Letter, the application puts forward the argument that the proposed car wash is captured by the definition of a Service Station under Penrith LEP 2010. Under Penrith LEP 2010, a Service Station is defined as the following:

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.*

The application highlights the fact that the definition of a Service Station under Penrith LEP 2010 expressly includes the 'cleaning of motor vehicles' as a component of the use, under sub-clause (b). However, a Service Station is not permissible in the RU4 Primary Production Small Lots zone. The proposal is reliant on Existing Use Right provisions under The Act 1979 and Regulations 2000, and as such must satisfy these provisions. Reliance on the current definition of a service station under Penrith LEP 2010 is not pertinent to the assessment. The proposal has not demonstrated that the site benefits from an existing use for a car wash, and as a result the proposal is not permitted on the site. Refer to discussion in this report under Division 4.11 of The Act and Regulations 2000.

Clause 2.3 Zone objectives

The proposal is not permissible in the zone, the proposal does not satisfy the objectives of the zone, specifically:

- *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.*

The proposed car wash is not compatible with the surrounding rural character, noting that the car wash is visually dominant from the street, being located significantly forward of the building line of the existing service station. The nature and scale of the proposal is not compatible with the environmental capabilities of the land, as the application has not demonstrated that water and wastewater generated by the development will be suitably managed.

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

Development Control Plan 2014

Provision	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

The proposal seeks consent for the intensification and enlargement of an existing use (service station) pursuant to Clause 42 of the Regulations, and alteration or extension of buildings and works pursuant to Clause 43 of The Regulations. However, as discussed earlier in this report under 'Division 4.11-Existing uses', it has not been demonstrated that the site benefits from an 'existing use' for the purpose of a car wash, and therefore is unsatisfactory for the purpose of the Part 5 of the Regulations.

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

Context and Setting

The proposed car wash is visually dominating, being setback 11m from Cranebrook Road which is significantly forward of the existing building on the site. Insufficient landscaping is provided to adequately screen the development from the street, and adjoining and adjacent residential properties to the west and south of the site.

As noted in the initial assessment of DA20/0811, the site is identified as having scenic and landscape values under Penrith LEP 2010. However, the application has not been supported by a Visual Impact Assessment (VIA) to address visual impacts of the development on the scenic and landscape character of the area.

Wastewater Management

The application was supported by a 'Site & Soil Assessment' prepared by Roberts Resources (dated 26 November 2020, ref XRSSSE_0001), which has been reviewed by Council's Environmental Management Officer. The proposal includes a 4-tank commercial Econocycle system to be installed on the site to manage the wastewater generated from the operations of the proposed car wash facility. However, the application has not suitably demonstrated that the proposed system will satisfactorily manage the wastewater in such a manner to prevent risk of impacting both human and environmental health. In this regard, no documentation from the relevant system manufacturer has been provided to confirm that the system is suitable for the development. This is particularly important given the nature of the development and the scale of the wastewater proposed to be treated over a 24-hour period. Should the manufacturer be unable to confirm that the system will effectively treat and manage the anticipated wastewater load, then an alternate system may be required.

The proposed sizing and calculations, and buffer distances for the wastewater effluent disposal area and associated Aerated Wastewater Treatment System are generally satisfactory.

Water Management

The application was supported by a Letter of Review, prepared by Think Planning, dated 10 June 2021 which seeks to address several issues raised by Council under the previous application DA20/0811. In relation to water management issues, the Letter of Review states that:

- *Bunding is proposed along the entry of the automated car wash bay, with justification that the exit of the bay does not require bunding due to the roller door being closed during the wash cycle.*
- *The previously proposed dog wash bay has been deleted.*
- *It is stated that the self serve car wash bays have purposely been proposed as oversized in length and width to ensure that bunding is not required to prevent run-off of wastewater.*
- *The storage shed is identified as not requiring bunding as there will be nothing stored within the shed which is capable of causing spills.*

However, in review of the submitted Concept Stormwater Management Plan, it is unclear whether the proposed stormwater drainage pits located south, south-west and west of the proposed car wash are to be directed into a holding tank for re-use during following a car wash cycle, and not directed to the stormwater drainage system, or off site. Further, whilst it is stated in the Letter of Review that bunding is to be installed around the proposed automated wash bay and separator, the submitted plans do not show bunding is provided in this location.

It is further stated in the Letter of Review that no bunding is to be installed around the proposed plant room as the room is enclosed with a door. Given that the proposed plant room is where chemicals associated with the operations of the car wash facility are to be stored, this is unsatisfactory. The application does not provide sufficient measures to prevent liquids from being dispersed from the plant room in the event of a spill.

Stormwater Management

The application was supported by Concept Stormwater Management Plans prepared by prepared by TMC dated 30 May 2021 (reference number 20026, Revision B). Council's Development Engineer has reviewed the proposal including the Concept Stormwater Plan, and based on this assessment was found to be capable of complying Council's engineering requirements, subject to conditions. Notwithstanding this, the proposal is recommended for refusal on other grounds.

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

The site is considered unsuitable for the development, as the proposal is not permissible on the land, and the application has not demonstrated compliance with relevant existing use right provisions. Further, the proposal is incompatible with the rural character of the surrounding area, and has not been designed to sufficiently mitigate streetscape, amenity and environmental (wastewater) impacts.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Council's Community Engagement Strategy the proposal was notified to nearby and adjoining residences.

Council notified forty-five (45) residences in the area, and the proposal was exhibited between 21 June 2021 and 5 July 2021. Council received one (1) submission. The issues raised in the submission has formed part of the assessment of this application, as summarised below.

Issue raised	Comment
<ul style="list-style-type: none">Adverse amenity impacts on adjoining residences as a result of the proposal (noise, light spill, vehicles movement).	<ul style="list-style-type: none">Concerns noted. However, the application is recommended for refusal as the proposal is not permissible on the site.
<ul style="list-style-type: none">The submission raises concern that the previous approval for the reconstruction of the service station on the site did not include a car-wash.	<ul style="list-style-type: none">Concerns acknowledged. The existing approval does not include a car wash (DA10/1209 as modified). Further, as discussed in this report, it has not been established that an 'existing use' applies for the purpose of a car wash.

Referrals

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

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

Section 4.15(1)(e) The public interest

For the reasons detailed in this report, the original determination of the application remains appropriate, and the proposal is not considered to be within the public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal does not satisfy the aims, objectives and provisions of these policies. Therefore, the application is recommended for refusal for the attached reasons:

Recommendation

1. That Review of Determination (DA20/0811.01) for the 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 01 Refusal under Section 4.15(1)(a)(i)

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 not a permitted land use on the site pursuant to Penrith Local Environmental Plan 2010.

2 X Special 02 Refusal under Division 4.11 of EPA Act 1977, and Part 5 of the Regulations 2000

The application has not demonstrated compliance with relevant existing use right provisions under Division 4.11-'Existing Uses' of the Environmental Planning and Assessment Act, and Part 5-Existing Uses of the Environmental Planning and Assessment Regulation 2000 for the purpose of a car wash on the site.

3 X Special 03 (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: The proposal does not meet the objectives of the RU4 Primary Production Small zone, specifically:

- 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.

(b) Penrith Local Environmental Plan 2010, Clause 7.5- Protection of Scenic Character and Landscape Values: The proposal has not been designed and located to minimise the visual impact of the development.

(c) Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River- Clause 3- Aims of Plan.

4 X Special 04 (Refusal under Section 4.15(1)(a)(iii) of EPA Act 1979)

The 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;
- and D1 Rural Land Uses.

5 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 that the likely impacts of the development can be sufficiently mitigated. These impacts relate to local character, streetscape impacts, and water management.

6 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.

7 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

D1 Rural Land Uses

The proposal does not satisfy the objectives and controls under Chapter D1.1 and D1.5 of Penrith DCP, as detailed in the body of this report.