

# PENRITH CITY COUNCIL

## FAST LIGHT ASSESSMENT REPORT

<b>Application number:</b>	DA18/1140
<b>Proposed development:</b>	Construction of Single Dwelling, Pool, Shed & OSSM
<b>Property address:</b>	880 Londonderry Road, LONDONDERRY NSW 2753
<b>Property description:</b>	Lot 3 DP 539282
<b>Date received:</b>	13 November 2018
<b>Assessing officer</b>	Paul Buttigieg
<b>Zoning:</b>	E2 Environmental Conservation - LEP 2010
<b>Class of building:</b>	Class 1a , Class 10a , Class 10b
<b>Recommendation:</b>	Refuse

### Executive Summary

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Council is in receipt of a development application for the subject development on the subject site and the proposal is a permissible land use with Council consent.

### Site & Surrounds

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The subject site is a battle axe lot situated on the western side of Londonderry Road. It is 3.16Ha in area, is orientated in a eastern direction and has slope falling to the rear of the lot. Rickabys Creek runs along the rear western boundary.

An inspection of the site was undertaken on 21/11/2018 and the site is currently vacant.

The surrounding area is characterised by rural development.

### Proposal

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The proposed development involves:

Construction of a single storey dwelling, swimming pool and a farm shed.

## Plans that apply

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BUSHFIRE PRONE LAND (ENTIRELY)  
1996 CENSUS COLLECTORS DISTRICT  
PENRITH DCP 2014  
PLANNING PROPOSAL - ANNUAL UPDATE AMENDMENT  
GENERAL LIST  
MISC - AGRICULTURAL ACTIVITIES WITHIN RURAL AREAS  
MISC- CUMBERLAND PLAIN PRIORITY CONSERVATION LANDS  
LEP 2010/ DCP 2014 - Scenic and Landscape Values  
DCP 2014 - Tree Preservation Controls  
LEP 2010 - Dual Occupancy and Secondary Dwellings  
DCP 2014 - General Information  
PLAN INST - SREP NO 9 EXT IND (NO 2-1995) AA  
PLAN INST - SREP NO 20 HAW NEP RIV (NO2-1997) AA  
FLOOD RELATED DEVELOPMENT CONTROLS  
Local Environmental Plan 2010  
No Comp Devel under GHC – Env Sens Land  
No Comp Devel under RH Code - Env Sens Land  
No Comp Devel under C & I (NBA) Code - Env Sens Land  
No Comp Devel under LRMDHC – Env Sens Land  
No Comp Devel under H Code - Env Sens Land  
Asbestos Policy  
PRECINCT 2010  
SEC 94 CONTRIB PLAN - CULTURAL FACILITIES  
SEC 94 CONTRIB PLAN - LOCAL OPEN SPACE 2007  
SEC 94 CONTRIB PLAN - DISTRICT OPEN SPACE FACILS  
STATE ENV PLANNING POLICIES - GENERAL LIST  
NORTH WARD  
E2 Environmental Conservation - LEP 2010  
RU4 Primary Production Small Lots - LEP 2010  
LEP 2010 - Clause 7.2 Flood Planning  
LEP 2010 - Clause 4.2 Rural Subdivision  
LEP 2010 - Clause 4.2A Res Devel and Subdn Prohib  
LEP 2010 - Additional Land Use Notes

## Planning Assessment

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- **Section 4.14 - Bushfire prone land assessment**

The development has been assessed in accordance with the matters for consideration under Section 79BA (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following points are made:

The site is identified as being entirely bushfire prone land.

An inspection of the subject site and surrounds was carried out on 21/11/2018.

A BAL assessment carried out by Roger Fenwick was submitted.

The proposed location of the dwelling is not supported therefore a BAL could not be established in this instance.

- **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:**

**Plans that Apply;**

Environmental Planning and Assessment Act 1979;

Environmental Protection and Biodiversity Conservation Act 1999;

Penrith Local Environmental Plan 2010;

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

The proposed development has been assessed with regard to the general planning considerations and the specific planning policies and recommended strategies contained within Penrith Local Environmental Plan 2010.

The proposal does not meet the objectives of the zone.

#### **4.15 (1)(a) (ii) The provisions of any draft environmental planning instrument**

The proposed development is not effected by any draft environmental planning instrument

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

Penrith Development Control Plan 2014 D1 Rural Land Uses and;  
Penrith Development Control Plan 2014 C2 Vegetation Management is applicable to the site.  
The proposal does not comply with DCP controls:

##### -1.2.1 Siting and Orientation of Dwellings and Outbuildings

This section aims to ensure the siting of dwellings and outbuildings takes into account the principles of site planning, landscape/scenic character and the environmental qualities of the area and site. Dwellings and associated buildings should be sited to maximise the natural advantages of the land in terms of protecting the privacy of proposed and existing buildings.

The proposal has not adequately attempted to avoid or mitigate potential impacts upon existing vegetation and threatened species.

#### **4.15 (1)(a) (iii a) Any planning agreement**

There are no planning agreements that affect the proposal to consider.

#### **4.15 (1)(a) (iv) The Regulations**

The proposal satisfies the requirements of the regulations.

#### **4.15 (1)(b) The likely impacts of the development**

Council does not consider that the proposal will only remove poor/marginal foraging habitat. The habitat on the site is consistent in quality and offers a valuable habitat resource with a good vegetation structure on the ground, midstorey and canopy, structure (fallen debris) and is connected to and is a part of a broader stand of native vegetation which forms a valuable corridor. This is essential to the movement of flora and fauna through the Penrith LGA and the greater bioregion.

Given that the application proposed to remove a large area of native vegetation, the above is unsubstantiated.

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

There are a number of ways this development could reduce the impact on vegetation and the identified threatened species, particularly relocating the proposed works to be within the access handle already cleared and suitable for a dwelling. The proposed shed should be minimised in size and located in close proximity to the dwelling in this already cleared area.

#### **4.15 (1)(d) Any submissions made in accordance with the EPA Act and Regs**

In accordance with Appendix F4 of Council's DCP 2014 notification of the application for modification was required. Council notified the owners and occupiers of 8 surrounding properties. Submissions were open from to 20 November 2018 to 4 December 2018.

Council received 2 submission during this period of which the main concerns are summarised as;

1) Roads and Maritime has reviewed the submitted application and raises no objection to the

proposed land use application. Roads and Maritime however requests that conditions are incorporated into any consent issued by Council in order to promote the orderly, safe and efficient operation of Londonderry Road.

2) That the proposed shed be used for private use and not for business purposes.

#### **4.15 (1)(e) The public interest**

The development does not affect any Federal, State or Local Government interests or community interests.

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

Is the development permissible in the zone?

**Complies**

Is the development consistent with any requirements of environmental planning instruments relevant to this proposal (including any applicable SEPP's, SREP's and LEP's)?

**Does not comply - See discussion**

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

Is the development consistent with any draft planning instruments relevant to this proposal

**N/A**

### **Section 79C (1)(a)(iii) Any development control plan**

Is the development consistent with the provisions of any development control plan relevant to this proposal?

**Does not comply - See discussion**

### **Section 79C (1)(a)(iv) Any applicable regulations**

Is the development consistent the provisions of any regulations relevant to this proposal?

**Does not comply - See discussion**

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

### Context and setting

Is the development consistent with the bulk, scale colour and design of other development in the locality?	<b>Complies</b>
Will the development have only a minor impact of the amenity of the area and the streetscape?	<b>Does not comply - See discussion</b>
Is the development compatible with surrounding and adjacent land uses	<b>Complies</b>
Will the development have no or minimal impact on the amenity of the area in terms of:	
Sunlight (overshadowing):	<b>Complies</b>
Visual and acoustic privacy:	<b>Complies</b>
Views or vista:	<b>Complies</b>

### Access and Transport

Will the development have no or minimal impact on the local road system	<b>Complies</b>
Is the existing and any proposed access arrangements and car parking on site adequate for the development?	<b>Complies</b>

### Heritage

The property is not subject to any heritage order or is identified as heritage under a planning instrument.	<b>N/A</b>
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### Soil

The development will have minimal impact on soil erosion and sedimentation	<b>Does not comply - See discussion</b>
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### Natural and Technological Hazards

The development is not subject to flooding, subsidence or slip	<b>Complies</b>
Land is not considered to be contaminated:	<b>Complies</b>
Bushfire requirements provided for the development	<b>Does not comply - See discussion</b>
Acoustic requirements provided for the development	<b>Complies</b>

### Site design

The development is sensitive to environmental conditions and site attributes.	<b>Does not comply - See discussion</b>
Does the development safe guard the health and safety of the occupants	<b>Complies - See discussion</b>

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

Was the site inspected?	<b>Yes</b>
Does the proposal fit locality?	<b>No</b>
Are the site attributes conducive to development?	<b>No</b>
Will the proposal have minimal social and economic impacts on the locality?	<b>Yes</b>
Has any applicable 88b instrument been considered?	<b>Yes</b>
Does the development propose the removal of trees?	<b>Yes</b>
Have the plans been checked by any relevant developer groups?	<b>N/A</b>
Has a BASIX certificate been provided?	<b>Yes</b>

### **Section 79C (1)(d) Any submissions made in accordance with the EPA Act and Regulations?**

Was the application required to be publicly notified?	<b>Yes</b>
Were any submissions received during the public notification period?	<b>Yes</b>

### **Section 79C (1)(e)Public Interest**

The application will have minimal impacts on public interest	<b>Does not comply - See discussion</b>
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## Conclusion/Summary

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In assessing this application against the relevant environmental planning policies, being;  
Environmental Planning and Assessment Act 1979  
Environmental Protection and Biodiversity Conservation Act 1999  
Penrith Local Environmental Plan 2010  
Penrith Development Control Plan 2014 D1 Rural Land Use  
Penrith Development Control Plan 2014- C2 Vegetation Management

Despite the zoning of the property, the proposal does not meet the requirements of Environmental Planning and Assessment Act 1979; Environmental Protection Biodiversity Conservation Act 1999; Penrith Development Control Plan 2014 D1 Rural Land Use and Penrith Development Control Plan 2014- C2 Vegetation Management.

This site is predominantly covered in native vegetation, mapped as the Endangered Ecological Community (EEC) Castlereagh Scribbly Gum Woodland under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) and listed as being Vulnerable under the *Biodiversity Conservation Act 2016* (BC Act).

The site is also situated on Cumberland Plain Priority Conservation Land (CPPCL). The CPPCL data was created to inform the Cumberland Plain Recovery Plan. The CPPCL has identified the larger, preserved, well-connected remnants of vegetation on the Cumberland Plain incorporating a sample of all EECs whilst attempting to incorporate habitat values for threatened species and regionally significant suites of species.

This site is identified as forming part of a corridor in the OEH Biodiversity Values Map. The Biodiversity Values Map identifies priority investment areas, comprising of core areas of bushland and corridors, that are important at a state and regional level for investment in biodiversity outcomes.

The proposal makes no attempt to reduce the impacts on vegetation and is not in line with Best Practice Management of Endangered Ecological Community (EEC) on private land.

The proposed location of the structures is unsuitable for the proposed development and there is likely to be negative impacts arising from the proposed development.

The proposed removal of native vegetation is considered to be excessive and unnecessary in this instance.

In its current form, the proposal will have a negative impact on the surrounding environment.

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

## Recommendation

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That DA18/1140 for the construction of a dwelling, pool and farm shed at property at 880 Londonderry Road Londonderry, be Refused for the following reasons subject to the attached conditions.

## Refusal

1 [X Special 02 \(Refusal under Section 79C\(1\)\(a\)\(i\) 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 as the proposal is inconsistent with the following provisions of Penrith Local Environmental Plan 2010:

- Clause 2.3 (2) Zone Objectives and Land Use Table.

The proposal does not meet the objectives of the zone.

2 [X Special 04 \(Refusal under Section 79C\(1\)\(a\)\(iii\) of EPA Act 1979\) \[Show / Hide\]](#)

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

-Section D1.2.1 - Siting and Orientation of Dwellings and Outbuildings.

The proposal does not retain as much existing vegetation as possible.

3 [X Special 06 \(Refusal under Section 79C\(1\)\(a\)\(iii\) 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 as the proposal is not consistent with the following provisions of Penrith Development Control Plan 2014- C2 Vegetation Management.:

-Section 2.1. - Preservation of Trees and Vegetation.

The proposal does not consider the preservation of existing trees and vegetation.



## Appendix - Development Control Plan Compliance

D1.2	Rural Dwellings and Outbuildings	Complies Y/N	Comments
1.2.1	<p><b>1)Siting and Orientation of Dwellings and Outbuildings</b></p> <p>Dwellings and associated buildings should be sited to maximise the natural advantages of the land in terms of:</p> <ul style="list-style-type: none"> <li>i) Protecting the privacy of proposed and existing buildings;</li> <li>ii) Providing flood-free access to the dwelling and a flood-free location for the dwelling itself;</li> <li>iii) Minimising risk from bush fire by considering slope, orientation and location of likely fire sources;</li> <li>iv) Maximising solar access;</li> <li>v) Retaining as much of the existing vegetation as possible; and</li> <li>vi) Minimising excavation, filling and high foundations by avoiding steep slopes (greater than 1 in 6).</li> </ul> <p>b) The design of the development must consider all components including fencing, outbuildings, driveways and landscaping.</p> <p>c) Where practical, all buildings on a site, including dwellings and outbuildings, should be clustered to improve the visual appearance of the development in its landscape setting and reduce the need for additional access roads and services.</p>	N	<p>The site is a battle axe lot. The access handle portion is approximately 330m in length and 20m wide.</p> <p>Rickabys Creek runs along the rear boundary of the property. The proposed dwelling is located approximately 380m from Londonderry Road.</p> <p>The proposed dwelling and shed is located outside the access handle where the lot widens to approximately 88m.</p> <p>Privacy to adjoining properties is maintained through sufficient separation distances to other dwellings.</p> <p>The proposed location of the dwelling and shed has been assessed by Council's Development Engineers and has been supported in relation to flooding requirements.</p> <p>The proposed location of the dwelling and shed has been assessed by Council's Biodiversity Officer and has not been supported in relation to the proposed clearing of native vegetation. The development proposes the removal of approximately 10,000m<sup>2</sup> of protected vegetation, namely Castlereagh Ironbark</p>

Forest (which is listed as endangered at State level and critically endangered at Commonwealth level) and *Grevillia juniperina* subsp *juniperina* (which is listed as vulnerable under the Biodiversity Conservation Act 2016).

In addition, the site forms part of the Priority Conservation Lands (PCL) identified in the Cumberland Plain Recovery Plan. PCL represents the best remaining vegetation in the region. Protection of this land is very important for maximizing long term biodiversity benefits. This aspect has not been addressed by the application.

The application does not include a driveway and a Landscape Plan was not submitted.

The proposed shed is located 35m to the east of the dwelling.

The separation distance between the proposed dwelling and shed is not conducive to minimising the amount of unnecessary clearing of the site.

There are no changes proposed to existing fencing; existing fencing is proposed to remain.

It is noted:  
Clearing of protected vegetation along the northern and southern boundaries has already taken place without any approvals.

1.2.1	<p><b>2)Landscape / Scenic Character</b></p> <p>a) Buildings on sloping land should be sited (where natural features permit) so they do not intrude into the skyline.</p> <p>b) Buildings should not be placed on the ridgeline or peak of any hill unless there are no alternative locations possible.</p> <p>c) Where practical, buildings should be sited to take advantage of existing vegetation to provide privacy from passing traffic and public places, screening from winds and a pleasant living environment.</p> <p>d) Roads should be designed and located to run with the contours of the land.</p> <p>e) Rooflines and ridgelines should reflect the setting of the dwelling, incorporating simple shapes to step a building down with a sloping site or level change.</p> <p>f) Simple rooflines should be used to minimise the likelihood of twigs and leaves building up in valleys and presenting a bushfire hazard.</p>		<p>The objectives of the LEP and DCP have not been met in this instance. It is considered the dwelling should be located as close as possible to the access handle so as to minimise the removal of protected native vegetation as much as possible.</p>
1.2.2	<p><b>Setbacks and Building Separations</b></p> <p><b>1. Setbacks from Roads</b></p> <p>a) <b>A minimum setback of 15m from public roads is required for all dwellings and outbuildings. Formal parking areas are not permitted within the setback.</b></p> <p>b) <b>A variety of setbacks will be encouraged to prevent rigidity in the streetscape.</b></p> <p>c) <b>A minimum setback of 30m is required to all classified roads (except Mulgoa Road), Luddenham Road, Greendale Road and Park Road (except in the villages of Londonderry, Wallacia and Luddenham). Please contact Council to discuss.</b></p> <p>d) <b>A minimum setback of 100m is required to Mulgoa Road for all dwellings and outbuildings (except in the Mulgoa Village).</b></p> <p><b>2. Setbacks from Watercourses</b></p>	Y	<p>Setbacks-</p> <p>To Londonderry Road:  Dwelling- approximately 380m.  Shed- Approximately 336m.</p> <p>To the rear of the adjoining lot to the East-  Dwelling- 53m  Shed- 6m.</p> <p>Side-  Dwelling;  Northern Boundary- 32m  Southern Boundary- 22.35m</p> <p>Dwelling has a portico/ carport articulation to the north of 4.2m  Shed;  Northern Boundary- 26.115m  Southern Boundary- 22.705m</p>

a) A minimum setback of 100m is required from the Nepean River. This is measured from the top of the bank. The river includes all elements, such as lagoons and backwaters. Council will determine the minimum setback required if the "bank" is difficult to define.

b) A minimum setback of 75m is required from South Creek for all dwellings and outbuildings.

c) A minimum setback of 40m is required from any other natural watercourses for all dwellings and outbuildings to minimise impacts on the watercourse.

### **3. Building Separations and Side Boundary Setbacks**

a) Dwellings on adjacent properties should be considered when determining the location of a proposed dwelling to ensure that separation distances are maximised as far as is reasonably possible to maintain amenity for each dwelling and minimise noise and privacy intrusions.

b) The minimum side setback for dwellings is 10m where the allotment is 2 hectares or larger.

c) The minimum side setback for dwellings is 5m where the allotment is less than 2 hectares.

d) Dwellings on one allotment should be separated as much as reasonably possible from any farm buildings or other buildings on adjacent allotments where there is potential for noise generation from those farm buildings/other buildings.

Y

Rear- approx. 230m to Rickabys Creek.

Y

1.2.3	<p><b>Site Coverage, Bulk and Massing</b></p> <p>1) Dwellings shall have a maximum ground floor footprint of 500m<sup>2</sup> (including any undercover car parking areas).</p> <p><b>Note: 'Ground floor footprint' is the area measured from the external face of any wall of any dwelling, outbuilding (other than a farm building), dual occupancy dwelling, garage or undercover car parking area, animal house or garden shed.</b></p> <p>'Ground floor footprint' is the area measured from the external face of any wall of any dwelling, outbuilding (other than a farm building), dual occupancy dwelling, garage or undercover car parking area, animal house or garden shed.</p> <p>2) Dwellings shall have a maximum overall ground floor dimension of 45m, with a maximum of 18m at any one point.</p> <p>3) The maximum floor space of any second storey is to be 70% of the floor space of the lower storey of the dwelling.</p> <p>4) No more than three (3) undercover car parking spaces shall face towards a public road or place. Any additional garages shall be setback behind the building line and screened.</p> <p>5) A maximum ground floor footprint of 600m<sup>2</sup> will be permitted on any one allotment, including the dwelling and all associated structures, but excluding 'farm buildings' and any 'agricultural or non-agricultural development' referred to other parts of this chapter.</p>	N	<p>Proposed single storey dwelling has a footprint of 738.16m<sup>2</sup>.</p> <p>Proposed shed has a footprint of 432m<sup>2</sup>.</p> <p>The proposal exceeds the maximum allowable site coverage.</p> <p>A request for variation for the size of the shed has been submitted.</p>
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1.2.4	<p><b>Height, Scale and Design</b></p> <p>a) Dwellings shall be no more than two storeys in height, including garage and storage areas.</p> <p>b) If liveable rooms are located in the area immediately below the roof then this level will be counted as a storey.</p> <p>c) The maximum height of the ceiling of the top floor of all buildings should not exceed 8m above natural ground level.</p> <p>d) On sloping sites, split level development is preferred. The floor level of the dwelling at any point should not be greater than 1m above or below the natural ground level immediately below the floor level of that point. Cut and fill should be limited to 1m of cut and 1m of fill as shown in Figure D1.7.</p> <p><b>Design and Quality</b></p> <p>a) The design of dwellings and associated structures should be sympathetic to the rural character of the area.</p> <p>b) Fencing is to be of an open rural nature consistent in style with that normally found in rural areas. Internal courtyard fencing or entry fencing should be sensitive to the rural environment.</p>	<p>Y</p> <p>Y</p>	<p>Single storey dwelling proposed. Overall height of dwelling- 7.27m.</p> <p>The proposed dwelling is considered to be in keeping with the surrounding area.</p> <p>There are no proposed fencing changes, existing fencing to remain.</p>
1.2.7	<p><b>Materials and Colours</b></p> <p>1) Colours of external finishes should be in keeping with the natural surroundings, be non-reflective and utilise earthy tones, unless it can be demonstrated that the proposed colours and finishes will have no visual impact or will complement the rural character.</p> <p>2) Building materials with reflective surfaces such as large expanses of glass, unpainted corrugated iron, concrete blocks, sheet cladding or similar finishes should be avoided. Where these materials are unavoidable, they should be screened with landscaping to minimise visual impact.</p> <p>3) Re-sited dwellings may be considered in rural areas, however, the external finishes may be required to be upgraded to Council's satisfaction.</p>	<p>Y</p> <p>Y</p> <p>N/A</p>	<p>A schedule of external materials and colours has been submitted.</p> <p>The proposed colours are considered to be in keeping with the surrounding area.</p>