

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA20/0650
<b>Proposed development:</b>	Rural Supplies
<b>Property address:</b>	804 - 810 Richmond Road, BERKSHIRE PARK NSW 2765
<b>Property description:</b>	Lot 63 DP 1120465
<b>Date received:</b>	9 October 2020
<b>Assessing officer</b>	James Heathcote
<b>Zoning:</b>	RU4 Primary Production Small Lots - LEP 2010
<b>Class of building:</b>	N/A
<b>Recommendations:</b>	Refuse

### Executive Summary

Council is in receipt of a development application for a rural supplies business at 804-810 Richmond Road, Berkshire Park NSW 2765.

The subject site is zoned RU4 Primary Production Small Lots under Penrith Local Environmental Plan (LEP) 2010. The proposal has been lodged as a 'rural supplies' business, which is a permissible land use in the RU4 zone with consent.

Key issues identified for the proposed development and site include:

- Non-compliance with Penrith LEP zone objectives,
- Non-compliance with Penrith Development Control Plan 2014 controls and objectives,
- Operational Details and Planning Permissibility,
- Building Code of Australia (BCA) Requirements,
- Wastewater and On-site Sewage Management,
- Acoustical Impacts,
- Water Quality Impacts,
- On-site Car Parking and Traffic Impacts,
- Flooding Impacts,
- Unauthorised works on site.

The application was notified to 4 adjoining and nearby properties between 19 October 2020 and 2 November 2020, in accordance with the relevant legislation. Several submissions were received in response from 1 objector.

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

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### Properties of the Site:

The subject site is located on the south-western side of Richmond Road, approximately 85m south from the intersection of Richmond Road and St Marys Road in Berkshire Park NSW 2765. The site has an area of 1.7452 Hectares, with an approximate 80m frontage to Richmond Road and a site dept of approximately 210m to the rear boundary line.

The site is currently occupied by an existing dwelling, several associated outbuildings and structures, and associated driveway and parking areas. The surrounding area is characterised by rural-residential and agricultural land, and nature reserves further to the north (830m) of the site. The site is located approximately 475m north from South Creek. The subject site is classified as bushfire prone land (entirely) and is mapped as having scenic landscape values. The site is mapped as having Biodiversity Values (BV) on the NSW Government Biodiversity Values Map and Threshold Tool, with BV (purple) mapping across the middle of the site.

### Site History:

- DA20/0650 - Subject application.
- AWTS2084 - Current.
- DA00/1882 - Carport - Approved 29/06/2000.
- CC00/1882 - Carport.
- DA986112 - Dwelling - Approved 17/11/1998.
- SU960168 - Boundary adjustments involving 6 lots.
- DA940392 - Church centre jehovahs witnesses - Approved 1/12/1994.
- OSSM1234/04 - AWTS for house and shed, high risk tank is close to dam.

### Restrictions on the Land (Lot 16 DP 975322):

- Deposited plan on Council records reviewed.
- No restrictions noted.

## Proposal

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The proposed development includes the following:

- Conversion of an existing brick shed structure to a Rural Supplies business in offering the sale of goods and materials used in farming. Layout of the structure includes 1 x office and 1 x storage room.
- Undefined on-site parking area.

Operational details for proposed rural supplies business:

- 10:00am to 4:00pm, week days,
- No more than 3 customer to attend site at a time,
- An advertising sign was originally proposed, however the applicant subsequently removed this during the assessment process.
- The Statement of Environmental Effects specified that there is no seeking, growing, irrigation or similar activities proposed as part of the proposed rural supplies business. The business would only supply the tool and products to help farmers and agriculture.
- See below table for proposed goods to be sold:

<u>Products</u>	<u>Quantities Per Product</u>
Pots for plants: <ul style="list-style-type: none"><li>• Plastic pots</li><li>• Fabric pots</li><li>• Mesh pots</li></ul>	30-50 in store

Propagation Equipment: <ul style="list-style-type: none"> <li>• Clone trays</li> <li>• Clone station</li> <li>• Seedling kits</li> <li>• Seedling tray and domes</li> <li>• Seedling mediums</li> <li>• Propagation gels and powders</li> <li>• Misting equipment</li> <li>• Environmental control</li> <li>• Lights for plants</li> </ul>	20-30 in store
Irrigation for plants kits: <ul style="list-style-type: none"> <li>• Flexible tubing</li> <li>• Fittings</li> <li>• Tub outlets</li> <li>• Reducers and joiners</li> <li>• Pot stake</li> <li>• Valves</li> <li>• Timers</li> <li>• Filters</li> <li>• Float valves</li> </ul>	30-50 in store
Some example products listed in the Statement of Environmental Effects prepared by Harry Design Studio, dated Sep 2020: <ul style="list-style-type: none"> <li>• Automatic clone station 24 cell clong system root sprayer.</li> <li>• 12 holes plant site hydroponic grow system bubble tub box cloner kit.</li> <li>• French super cloner water system propagation cloning seeding grow.</li> <li>• Jiffy pellet greenhouse (36 x 36mm pellets).</li> <li>• Jiffy windowsill propagator kit (12 x 36mm pellets).</li> <li>• Automatic self-watering tool plant water bottle water drip irrigation.</li> <li>• 2 piece 3mm x 8mm hopepunch pipe fittings hose tool drip irrigation.</li> <li>• Techline AS 13mm pressure compensating.</li> <li>• 4mm garden irrigation drill punch irrigation hose dripper inserting.</li> <li>• Riser removal tool.</li> <li>• 12 piece automatic watering spikes plant self-watering kits garden tool.</li> <li>• DIY 30m automatic irrigation system micro drip watering garden plant.</li> <li>• 2-vent propagator package 530mm x 270mm tray and lid.</li> <li>• Quality harvemax hydroponic mylar seedling cutting propagation grow.</li> </ul>	

## Plans that apply

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- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

- **Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016**

The subject site is included on the NSW Government Biodiversity Values Map and Threshold Tool, specifically having Biodiversity Values (BV) across the middle of the site, noting the presence of some vegetation on the site. In accordance with the Biodiversity Conservation Act 2016, and relevant regulations, any proposed removal of vegetation with BV require the submission of a Biodiversity Development Assessment Report (BDAR) with any development application.

The proposal states that no vegetation removal is required to accommodate the proposed development. However, as mentioned in the Environment Management referral section of this report, a previous unauthorised driveway has been positioned in a previously identified effluent disposal area. Further, wastewater management has not been addressed by the application, and as such, it is unclear where effluent is currently being disposed, noting that effluent disposal can negatively impact upon vegetation.

Given the above, the proposal does not satisfy the requirements of the Biodiversity Conservation Act 2016.

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

In accordance with Section 4.14(1)(a) of the Environmental Planning and Assessment Act 1979, the consent authority, being Council, is to be satisfied that the development conforms to the specifications and requirements of the NSW Rural Fire Service document, *Planning for Bush Fire Protection*.

The site is classified as bush fire prone land entirely. The application was not supported by bush fire assessment report. However, given the proposal is for a rural supplies business, no special construction requirements are required 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.

- **Section 7.12 - Developer Contributions**

Whilst 7.12 Development Contributions do apply for the proposed development and scale, they are not applicable in this instance given the recommendation is for refusal.

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

## **State Environmental Planning Policy (Infrastructure) 2007**

In accordance with the requirements of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), the application was referred to Transport for New South Wales (TfNSW) for review and comment.

Referral commentary was received from TfNSW on 3 December 2020 (TfNSW reference: SYD20/01237/01, Council reference: CNR-14062-DA20/0650) whose advice included the following:

TfNSW reviewed the submitted information and raises no objections to the proposed development subject to the following:

- All buildings and structures (including signage), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Richmond Road boundary.
- All vehicles are to enter and leave the site in a forward direction.

The following comments were also provided for Council consideration:

- The subject property is within an area under investigation for the proposed Richmond Road upgrade Project. The investigations have not yet advanced to the stage where options have been defined and accordingly it is not possible at this date to identify if any part of the subject property would be required to accommodate this proposal.
- The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

Notwithstanding the above commentary, additional access, parking and maneuvering information was requested by Council's Traffic Management Department (see that section of this report for more information), of which has not been addressed by the applicant. As such, whilst the application satisfies the requirements of the ISEPP, the application is recommended for refusal based on other matters.

## **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 requires a consent authority to be satisfied that the site is suitable for the proposed development, or can be made suitable prior to the determination of the application.

The site is zoned and purposed for RU4 Zone purposes, which is unchanged as a result of the proposed development. The application was referred to Council's Environmental Management Department, who review of the site through Council records and historical aerial imagery did not reveal any potentially contaminating activities.

As such, the considerations of SEPP 55 have been satisfied.

## **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

An assessment has been undertaken of the proposed development against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and although the development proposal is not in conflict with the Policy, the development application is recommended for refusal based on other matters.

## Local Environmental Plan 2010

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.6 Subdivision - consent requirements	N/A
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 5.4 Controls relating to miscellaneous permissible uses	N/A
Clause 5.10 Heritage conservation	N/A
Clause 5.21 Flood planning	Does not comply - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies

### **Clause 1.2 Aims of the plan**

Clause 1.2(1) states that Penrith LEP 2010 aims to make local environmental planning provisions for land in Penrith in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

Clause 1.2(2) specifies particular aims of Penrith LEP 2010, including the following most applicable aims:

- (b) To promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,
- (c) To accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity,
- (e) To reinforce Penrith's urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith's rural lands and the social well-being of its rural communities,
- (f) To protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,
- (h) To ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.

As demonstrated throughout this report the development does not satisfy the aims of the plan. The development is not of a scale appropriate for a rural zone and does not safeguard the amenity of adjoining rural-residential sites.

In consideration of the above, and as further discussed throughout this report, the proposal does not deliver balanced social, economic and environmental outcomes, and therefore is not consistent with the aims of Penrith LEP 2010.

### **Clause 2.3 Permissibility**

The subject site is zoned RU4 Primary Production Small Lots and *Rural Supplies* are a permitted land-use in the zone with Council consent.

### **Clause 2.3 Zone objectives**

The objectives of the RU4 Primary Production Small Lots zone include:

- To enable sustainable primary industry and other compatible land uses.
- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- 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 preserve and improve natural resources through appropriate land management practices.
- To maintain the rural landscape character of the land.
- To ensure that development does not unreasonably increase the demand for public services or facilities.

The proposal does not minimise conflict between land uses within the RU4 zone, nor maintain the rural landscape character of the land, largely due to potential traffic impacts, acoustical impacts, drainage, safety (BCA), and flooding impacts imposed by the development. The application has not demonstrated that the proposed use is compatible with the environmental capabilities of the land, in consideration of effluent disposal, vegetation protection and the like.

### **Clause 5.21 - Flood planning**

See discussion under the *Development Engineer Referral* section of this report for more information.

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

### ***Draft Environment State Environmental Planning Policy***

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury/Nepean River (No. 2 - 1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property*

It is noted that the proposed changes to State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury/Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

### ***Draft Remediation of Land SEPP***

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No. 55—Remediation of Land.

The proposed new land remediation SEPP will:

- Provide a state-wide planning framework for the remediation of land,
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- Clearly list the remediation works that require development consent, and
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

### ***Other Draft NSW Planning Legislation:***

It is noted that the Draft Vegetation SEPP and Draft Design and Place SEPP apply to the subject site. However, these do not affect or alter the recommendation of this report.



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

### Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
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)(iiia) The provisions of any planning agreement

There are no planning agreements applicable to the site or application.

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

The regulations have been considered during assessment of the application. Please see discussion under the Building Surveyor Referral section of this report for more information.

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

### **Noise and Privacy Impacts**

The proposal does not adequately demonstrate measures to mitigate against negative privacy and amenity impacts, nor does it consider the impact of proposed activities to occur on neighbouring dwellings which are in close proximity to the development. See discussion under the C12 Noise and Vibration section of this report for more information.

### **Onsite Sewage Management (OSSM) Impacts**

On-site wastewater management has not been addressed by the application, noting that the previously approved effluent disposal area on Council's records is now accommodated by an unauthorised driveway. As such, demonstration is required for compliance with Council's On-site Sewage Management and Greywater Reuse Policy. Furthermore, a portion of the site is mapped as having Biodiversity Values and OSSM systems and associated effluent disposal areas can negatively impact vegetation. Suitable setbacks are required to such vegetation also in minimising negative impacts, which have not been shown.

### **Flood Impacts**

Previous unauthorised works including a raised driveway and undersized stormwater pipe in an overland flow path is leading to flooding issues in the area, with a recent flood event recorded in early 2021. See discussion in the *C3 Water Management* section of this report for more information.

### **Traffic, Parking and Access**

Limited information has been provided in terms of on-site parking areas, compliance with Australian Standards, and realistic traffic volumes and types entering/exiting the site. Furthermore, the driveway that the proposed business relies on was constructed without Council consent, leading to further environmental issues such as flooding, effluent disposal and so on. As such, it is unclear whether the site is suitable for the proposed business in terms of providing sufficient parking and access in accommodating traffic flows from the area. See discussion under the C10 Transport, Access and Parking section of this report for more information.

### **Socio-Economic and Environmental Impacts**

The advertising/notification period organised by Council for the application resulted in objection submissions being received raising concerns to the development, largely surrounding the environmental impacts relating to flooding addressed in this report. As such, the proposed development has the potential to generate many socio-economic and environmental impacts in the vicinity of the site and area. See the *Submissions* section of this report for more information.

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

The site is unsuitable for the proposed development for the following reasons:

- The proposed use has not demonstrated that the proposal has achieved the objectives of the RU4 zone.
- The proposal does not adequately demonstrate that impacts related to local character, streetscape presentation, scale, noise and amenity adequately mitigated against nor addressed through the design of the development.
- The proposal may negatively impact on threatened vegetation through proximity of services, asset protection zones and the like.
- The site is flood affected and flood safe access cannot be achieved and has not been demonstrated.
- The site and development cannot drain to Council's satisfaction.
- The site is identified as contaminated and is unsafe for recreational use.
- The site and development does not propose a compliant on-site sewage management system suitable for the use.

## **Section 4.15(1)(d) Any Submissions**

### **Community Consultation**

The application was notified to 4 adjoining and nearby properties between 19 October 2020 and 2 November 2020, in accordance with the relevant legislation and Council's Community Engagement Strategy. Several submissions were received in response by a single objector, objecting to the proposal.

The following issues were raised in the submissions received with feedback commentary detailed below (in no particular order):

Issue Raised	Comments
<p><u>Flooding Impacts from Unauthorised Works</u></p> <ul style="list-style-type: none"> <li>Historically, an unauthorised driveway and storm water drainage pipe was formed and installed at 804-810 Richmond Road (the subject site).</li> <li>A storm water channel that spans throughout Berkshire Park goes through the subject site and the flow is significantly restricted in accessing South Creek as a result of the unauthorised driveway and associated drainage works.</li> <li>A recent rain and flood event in Penrith LGA in early 2021 resulted in major flooding at the corner of Richmond Road and St Marys Road, and the adjoining property, with evidence of this being provided to Council.</li> </ul>	<p>Referral to Council's Development Engineering Department reviewed the issues relating to flooding and the unauthorised driveway works that appear to be impeding flow paths in the area. The concerns raised have been assessed as having merit and need to be addressed by the owner of the property. It is recommended that the following be provided in addressing the matter:</p> <ul style="list-style-type: none"> <li>A Survey that considers original contours of the property (prior to the driveway installation), and</li> <li>A Flood Report, prepared by a suitably qualified person, that considers flooding and overland flow for the subject site and area and how the subject site, including all structures and the driveway, impacts on local flooding.</li> <li>If there is a significant impact identified through the above documentation, Council is unlikely to support the retention of the driveway in its current state.</li> </ul>

## Referrals

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

Referral Body	Comments Received
Building Surveyor	Not supported
Development Engineer	Not supported
Environmental - Environmental management	Not supported
Traffic Engineer	Not supported

## Building Surveyor

The application was referred to Council's Building Surveyors, who raised concerns as follows:

1. The proposal is for the change of use of an existing shed (BCA Class 10a) to a rural supplies sales building (Class 6). A check of Council records cannot reveal previous approval for the shed. As such, authorisation or structural adequacy of the shed cannot be determined.

2. Compliance with the BCA relating to floor to ceiling heights, light and ventilation, water closet facilities, disabled access, and the provision of essential services needs to be determined. The original submitted plans do not address these issues.

3. A BCA Report is required to address:

- Evidence that the building has Council approval. If this cannot be provided, the structural certification is required,
- General weatherproofing,
- Light and ventilation,
- Floor to ceiling heights,
- Provision of toilet facilities for staff,
- Access for persons with disabilities, The proposed use of the other portion of the building which will not be used for "Rural Supplies" sales.

Upon request from Council, the applicant submitted a BCA Report to address the above requirements. The report was reviewed with Council's Building Surveyors, who noted the following:

- The report indicated some works will be required to achieve BCA compliance and a Construction Certificate would be required. No structural certificate was submitted.
- As such, Council's Building Surveyors requested a structural engineers design/certification report for the building, and also requested amended plans/details addressing BCA requirements identified in the submitted report.

The above requirements have not been satisfied and, as such, Council's Building Surveyors do not support the application.

### **Development Engineer**

Referral to Council's Development Engineering Department raised concern with the following:

- The site is flood affected in the 1% AEP storm event in accordance with Council's adopted Overland Overview Study 2006, however the location of the shed that is proposed to be converted to a rural supply exhibition is not affected by the flooding and is above the Flood Planning Area.
- However, a recent objection submission received by an objector to the proposal identified that historically an unauthorised driveway and storm water drainage pipe was formed and installed at 804-810 Richmond Road (the subject site).
- A storm water channel that spans throughout Berkshire Park goes through the subject site and the flow is significantly restricted in accessing South Creek as a result of the unauthorised driveway and associated drainage works.
- A recent rain and flood event in Penrith LGA in early 2021 resulted in major flooding at the corner of Richmond Road and St Marys Road, and the adjoining property, with evidence of this being provided to Council.

As such, the issues relating to flooding and the unauthorised driveway works that appear to be impeding flow paths in the area need to be addressed by the owner of the property, and it is recommended that the following be provided in addressing the matter:

- A Survey that considers original contours of the property (prior to the driveway installation), and
- A Flood Report, prepared by a suitably qualified person, that considers flooding and overland flow for the subject site and area and how the subject site, including all structures and the driveway, impacts on local flooding.
- If there is a significant impact identified through the above documentation, Council is unlikely to support the retention of the driveway in its current state.

The applicant was advised of the above, with no response provided. As such, the application is not supported by Council's Development Engineering Department. See discussion under the *C3 Water Management* section of this report for more information.

### **Environmental - Environmental management**

Referral to Council's Environment Management Department raised the following concerns:

- Wastewater and On-Site Sewage Management - Review of the plans for the existing on-site sewage management system, along with historical aerial imagery, revealed that a driveway has been constructed in the area corresponding with the approved effluent management area (spray irrigation). No approval for the driveway was located in Council's records.

The Site Plan prepared by Harry Design Studio Pty Ltd (dated 30/9/20) indicates that the 'existing'

driveway will be retained as part of this development. Therefore, an alternate location for the effluent management area is required through a modification, or this development application be amended to include wastewater aspects. Accordingly, the applicant is required to engage the services of an appropriately qualified wastewater consultant to undertake a wastewater assessment of the proposed site. The Wastewater Assessment and associated report is to be conducted in accordance with AS1547:2012 and Council's On-site Sewage Management and Greywater Reuse Policy and is required to address all wastewater produced on site, including wastewater from the dwelling, shed and proposed rural supplies business.

The Statement of Environmental Effects refers to staff parking arrangements and states that there is *"no need to separate the staff and customer parking based on the small size of the business"*. No toilet facilities appear to be located on the plans provided, however it is anticipated that those staff will require bathroom facilities. Given staff are proposed, the total number of staff on-site are to be included in the Wastewater Assessment requested above.

- **Noise Impacts** - This development proposes hours of operation between 10:00am and 4:00pm, Monday to Friday. The Statement of Environmental Effects states that there are no truck or heavy vehicles required for this development. However, it is anticipated that delivery vehicles may be required to deliver stock. Further, staff and visitor parking is proposed to utilise the existing hard stand area. Given the close proximity to residential receivers, an acoustic assessment of the proposed development prepared by an appropriately qualified person is required to be undertaken to ensure that there will be no adverse noise impacts on nearby sensitive receivers. The acoustic assessment is to be conducted in accordance with the NSW Noise Policy for Industry and is to address all noise impacts associated with the development, including but not limited to:
  - Vehicle movements (staff and customer vehicles entering/exiting the premises, delivery vehicles and waste collection); and
  - Mechanical plant and machinery (e.g air conditioning, exhaust fans, forklifts etc).

If the acoustic assessment finds that acoustic mitigation measures are required, recommendations are to be included in the acoustic assessment to that effect.

- **Water Quality Impacts** - This application was not accompanied by a storm water plan nor a sediment and erosion control plan. As such, these plans are required to be submitted to suitably demonstrate how stormwater produced on the site will be managed, and sediment/erosion mitigated. The plans are to demonstrate that storm water will not be directed toward, nor inundate the on-site sewage management system or associated effluent management area.

The applicant was requested to address the above requirements. However, no plans or documentation have been provided in this regard.

As such, the Environmental Management Department do not support the application based on the information provided.

### **Traffic Engineer**

Referral to Council's Traffic Engineering Department raised the following concerns:

- The application does not include a traffic report, and the Statement of Environmental Effects submitted by the applicant does not satisfactorily assess the traffic and parking impact of the proposal. It does not provide traffic count data or intersection analysis showing the existing traffic conditions on surround road network and how the proposal will impact on traffic in the street. The methods used to estimate traffic and parking generation of the development in the report are also not supported. The report states that no trucks will service the development which is unlikely given the proposal is for a rural supplies business (which supplies bulky goods). It is also unlikely that only 3 customers will park on site at one time. As such, a traffic report from a suitably qualified traffic engineering consultant is required to be provided to conduct a survey of similar sites in the area to determine the rates of parking and traffic generation. The report should address the local conditions including the existing access off the indented turning bay on Richmond Road.
- A clear and dimensioned car park layout plan is to be provided demonstrating compliance with Australian Standards. Swept Path drawings (drawn by a suitably qualified traffic engineering

consultant) shall also be provided demonstrating that the parking layout is suitable and the largest vehicle entering/exiting the site (size of vehicle should also be determined from survey of similar sites selling rural supplies) can safely manoeuvre into and out of the site/loading area in a forward direction, showing the dimensions of the driveway and road width ensuring heavy vehicles do not cross the centre line of the road.

The applicant was requested to address the above requirements. However, no plans or documentation have been provided in this regard.

As such, the Traffic Engineering Department do not support the application based on the information provided.

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

Given the matters raised in this report, the proposal is not in the public interest.

## **Conclusion**

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In assessing this proposal against several state planning policies, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal does not satisfy the various aims, objectives and provisions of these policies. Support for the application would set an undesirable precedent as the proposal has not demonstrated compliance with the relevant provisions. The application is therefore not worthy of support.

## **Recommendation**

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That DA20/0650 for a rural supplies business at 804-810 Richmond Road, Berkshire Park NSW 2765, be refused subject to the attached reasons for refusal.

## Refusal

### 1 X Special 01 (Refusal under Section 78A(9) of EPA Act 1979)

The application does not satisfy the requirements of the Biodiversity Conservation Act 2016; the Biodiversity Assessment Report inadequately addresses the impacts of the development on the critically endangered ecological communities and endangered ecological communities on the site.

### 2 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 as the proposal is inconsistent with the provisions of the Penrith Local Environmental Plan 2010:

(a) Aims of the Plan: The development does not satisfy the aims of the plan. The development is not of a scale appropriate for a rural zone and does not safeguard the amenity of adjoining rural-residential sites.

(b) Clause 2.3 Zone Objectives: The proposal is inconsistent with the following objectives of the RU4 Primary Production Small Lots Zone;

- 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; and
- To maintain the rural landscape character of the land.

(b) Clause 5.21 Flood Planning: The application has not demonstrated the following

- That the site and proposal is compatible with the flood function and behaviour on the land.
- That the site and proposal will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties.
- That the site and proposal will not adversely affect the safe occupation and efficient evacuation of people, or exceed the capacity of existing evacuation routes, for the surrounding area in the event of a flood.
- That the site and proposal incorporates appropriate measures to manage risk to life in the event of a flood, and
- That the site will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

### 3 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 as the proposal is inconsistent with the following Chapters and provisions contained within Penrith Development Control Plan 2014:

- B - DCP Principles,
- C1 Site Planning and Design Principles,
- C2 Vegetation Management,
- C3 Water Management,
- C10 Transport, Access and Parking,
- C12 Noise and Vibration,
- C13 Infrastructure and Services,
- D1.1 Rural Character,
- D1.5 Non-Agricultural Development.

### 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 in terms of the likely impacts of the development including those related to:

- (a) Noise and privacy impacts,
- (b) Onsite sewage management impacts,
- (c) Flooding impacts,
- (d) Traffic, parking and access,
- (e) Vegetation impact,
- (f) Amenity impacts on adjoining properties.

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 as the site is not suitable for the proposed development for the following reasons:

- The proposed use has not satisfactorily demonstrated that the proposal has achieved the objectives of the RU4 zone;
- The design of the development and its presentation is not considered to be compatible with, nor complementary to, the character of the local area or the future desired character of the area;
- The proposal does not adequately demonstrate that impacts related to local character, on-site drainage and effluent disposal, noise and amenity is appropriately mitigated against nor addressed through the design of the development;
- The application has not demonstrated the appropriate preservation of vegetation on site with inadequate detail of services on site.
- The application has not detailed sufficient on-site car parking areas, nor demonstrated through a traffic assessment that the site can accommodate customer flows accessing the site.
- The proposal was unable to demonstrate that a compliant onsite waste water system could be achieved on the site.
- The proposal includes unauthorised works that have impacted on local overland flow and flooding behaviour in the local area.

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)(d) & (e) of the Environmental Planning and Assessment Act as the proposal is not in the public interest due to issues and matters raised in submissions relevant to the proposal in relation to unauthorised works, inadequate storm water drainage and associated flood impacts.



# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part B - DCP Principles

The proposed development is contrary to the principles, commitments and objectives of the DCP. The proposal does not recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems (Principle 6, Part B of Penrith DCP 2014).

As explored further through the Part C and Part D Chapter sections of this report, the proposal includes both uses and physical structures/works that do not appropriately recognise nor build on the distinctive characteristics of the Berkshire Park area, nor those who occupy the area. As such, the proposal is contrary to Principle 6.

### Part C - City-wide Controls

#### C1 Site Planning and Design Principles

Clause 1.2.3(e) includes that buildings should be set back from property boundaries and other buildings maximise visual and acoustic privacy, especially for sensitive land uses.

The proposed rural supplies business is to operate out of an existing brick shed/structure that is setback approximately 3m from the north boundary line. As discussed further in this report, this structure is not on Council's records as having approval, and an appropriate acoustic assessment has not been provided for structure's location, nor the proposed use of this structure with an adjoining car parking area to accommodate customers. The above matters were requested to be addressed by Council, with no documentation submitted to address concerns.

As such, the proposal does not satisfy the objectives and controls for Chapter C1.

#### C2 Vegetation Management

Objectives of this Chapter include:

- Clause 2.1(B)(d) protecting and enhancing biodiversity corridors, landscape character and scenic value of the City [and LGA],
- Clause 2.1(B)(g) preserving existing trees and other vegetation where possible during the planning, development and construction process.

The subject site is included on the NSW Government Biodiversity Values Map and Threshold Tool, specifically having Biodiversity Values (BV) across the middle of the site. In accordance with the Biodiversity Conservation Act 2016, and relevant regulations, any proposed removal of vegetation with BV requires the submission of a Biodiversity Development Assessment Report (BDAR) with any development application.

The proposal indicates no removal of vegetation. However, as discussed further in this report, a lack of documentation has been provided on the proposed effluent disposal areas on site, noting the previous disposal area on record accommodates an unauthorised driveway to the rear of the site (including to the proposed business shed/structure). Effluent disposal can have negative impacts to vegetation and given the location of effluent disposal is currently unknown, it is not known whether there are any potential impacts to threatened vegetation. The applicant was requested to clarify on-site wastewater disposal, however, no evidence or documentation was provided to address concerns.

As such, the proposed development and site do not currently satisfy the objectives and controls of Penrith Development Control Plan 2014, nor other relevant state legislative requirements and, as such, the proposal does not satisfy the requirements of Chapter C2.

#### C3 Water Management

Objectives of this Chapter include:

- To ensure floodplain risk management minimises the potential impact of development and other activity upon the aesthetic, recreational and ecological value of the waterway corridors;
- To maintain the existing flood regime and flow conveyance capacity and avoid significant adverse impacts on flood behaviour;
- To avoid significant adverse effects on the floodplain environment that would cause erosion, siltation, destruction of riparian vegetation or a reduction in the stability of the

- river bank/watercourse;
- To reduce the impact of flooding and flood liability on individual owners and occupiers;
- To limit the potential risk to life and property resulting from flood events;
- To contain the potential for flood losses in all new developed areas by the application of effective planning and development controls;
- To apply a “merit approach” to all development and building decisions, which takes account of social, economic and ecological factors as well as flooding considerations;
- To prevent the introduction of unsuitable land uses on land subject to the flood planning provisions of Penrith Local Environmental Plan 2010; and
- To control flooding and enable access to allotments, stabilise the land form and control erosion.

During assessment of the application, an objection was received which raised the following concerns:

- That, historically, an unauthorised driveway and storm water drainage pipe was formed and installed 810 Richmond Road (the subject site).
- A storm water channel that spans throughout Berkshire Park goes through the subject site and the flow is significantly restricted in accessing South Creek as a result of the unauthorised driveway and associated drainage works.
- A recent rain and flood event in Penrith LGA in early 2021 resulted in major flooding at the corner of F Road and St Marys Road, and the adjoining property, with evidence of this being provided to Council. Photographic evidence was provided to Council of this occurrence.

The application was referred to Council's Development Engineering department, who provided the following commentary regarding flooding:

- Review of the site against Council's mapping and records by Council's Development Engineering Department revealed that the above concerns have merit.
- Given the above, the issues relating to flooding and the unauthorised driveway works that appear to be impeding flow paths in the area need to be addressed by the owner of the property, which is recommended to be addressed via submission of the following:

a. A survey that considers original contours of the property (prior to driveway construction), and

b. A flood report, prepared by a suitably qualified person, that considers flooding and overland flow for the area, and considers how the site, including all structures and driveway, impacts on local flooding and overland paths. If there is significant impact identified through review of the above documentation, Council is unlikely to support the retention of the driveway in its current state.

Further to the above, review of the application and objections received with a senior review panel noted concerns for the flooding and unauthorised driveway works impeding flooding flow paths, necessitating the need for applicant to address these matters as part of proposed development (given the driveway services the proposed rural supplies business).

The applicant was requested to respond to the above requested matters. No response has been given by applicant.

Given the recommendation of this report, the above is unresolved and therefore the proposal does not satisfy requirements of Chapter C3.

## **C10 Transport, Access and Parking**

Objectives of this Chapter include:

- To ensure the provision of an appropriate number of vehicular spaces having regard to the activities proposed and proposed on the land, the nature of the locality and the intensity of the use;
- To require parking areas to be designed and constructed in accordance with the Australian Standard for efficient and safe vehicle circulation and parking;
- To reduce pedestrian and vehicle conflicts on development sites.
- To minimise the visual impact of on-site parking;

The proposal includes an onsite car park for the proposed rural supplies business, comprising of an unknown amount of on-site car parking spaces and an unknown amount of hardstand including driveway and car park.

areas, as this is not specified on the plans.

The application was referred to Council's Traffic Engineering Department, who raised the following concern:

- The application does not include a traffic report, and the application does not satisfactorily assess the traffic and parking impact of the proposal. It does not provide traffic count data or intersection analysis of the existing traffic conditions on surrounding road network and how the proposal will impact on traffic in the area.
- The methods used to estimate traffic and parking generation of the development in the application are not supported. The Statement of Environmental Effects states that no trucks will service the development and only 3 x customers will park on site at one time, which is unlikely given the nature of the proposed business. As such, a Traffic report/assessment from a suitably qualified traffic engineering consultant is required to conduct a survey of similar sites in the area to determine the rates of parking and traffic generation. The assessment should also address the local conditions including the existing access off the indented turning bay on Richmond Road.
- A clear and dimensioned car park layout plan is required demonstrating compliance with Australian Standards. Swept Path drawings (drawn by a suitably qualified traffic engineering consultant) are also required demonstrating that the parking layout is suitable and the largest vehicle entering/exiting the site (size of vehicle should also be determined from survey of similar sites selling rural supplies) can safely manoeuvre out of the site/loading area in a forward direction, showing the dimensions of the driveway and road width, ensuring heavy vehicles do not cross the centre-line of the road.

The above was requested to be addressed by the applicant, however, no documentation or plans were provided.

As such, the proposal does not satisfy the requirements of Chapter C10.

### **C12 Noise and Vibration**

The general objective of this Chapter is to ensure that future development that generates noise or vibration does not adversely affect the amenity of surrounding land uses.

The proposed rural supplies business is to operate out of an existing brick shed/structure that is setback approximately 3m from the north boundary line. This structure is not on Council's records as having approval. Referral to Council's Environmental Management Department raised the following concerns:

- The rural supplies business is to operate between 10:00am and 4:00pm, Monday to Friday. The Statement of Environmental Effects states that no truck or heavy vehicles are required for this development, however, it is anticipated that delivery vehicles will likely be required to deliver stock. Furthermore, staff and visitors will utilise the parking area adjacent to the rural supplies building. Noting the close proximity of these to sensitive residential receivers, an acoustic assessment of the proposal is required to ensure no adverse noise impacts to surrounding sensitive receivers, and recommend any mitigation measures.

Despite Council request, an acoustic assessment has not been provided for this structure's location, nor the proposed use of this structure with an adjoining car parking area.

Given the above, the proposal does not satisfy the requirements of Chapter C12.

### **C13 Infrastructure and Services**

Clause 13.3(B) includes objectives for On-site Sewage and Wastewater Management systems that reflect Council's On-Site Sewage Management and Greywater Reuse Policy, requiring the proper management of these systems to not negatively impact on occupiers of a site or adjoining properties.

Referral to Council's Environmental Management Department noted the following concerns for the proposed site:

- The approved plans for the existing on-site sewage management system were reviewed, and a driveway appears to have been constructed in the area that corresponds with the approved effluent management area (spray irrigation), noting there is no approval for the driveway in Council's records.
- The Site Plan prepared by Harry Design Studio Pty Ltd (dated 30/9/20) indicates that the 'existing' driveway will be retained as part of this development. Therefore, an alternate location for the effluent management area is required.

need to

be sought through this development application. As such, a wastewater assessment is required for the proposal and site. The Wastewater Assessment and associated report is to be conducted in accordance with AS1547:2012 and Council's Onsite Sewage Management and Greywater Reuse Policy, and is required to address all wastewater produced on site, including wastewater from the dwelling, shed and proposed business.

- As staff are proposed, the total number of staff onsite are to be included in the Wastewater Assessment

The above was requested by Council, however, no documentation was provided to address the above matters.

Given the recommendation of this report, the above matters are unresolved and the proposal does not satisfy the requirements of Chapter C13.

## **D1 Rural Land Uses**

### **D1.1 Rural Character**

The section includes objectives and controls for preserving the rural character of the City of Penrith, including its scenic and landscape qualities. There are several environmental concerns raised for the proposed rural business, relating to on-site sewage management, acoustical amenity, water quality, on-site parking and traffic generation, flooding, amongst other matters. Given that insufficient information has been provided regarding the above aspects, it is uncertain whether the proposed development would preserve the rural character of the Penrith Local Government Area, noting also that many objectives of the RU4 zone are not being met.

### **D1.5 Non-Agricultural Development**

#### 1.5.4 Rural Industries

Objectives of this Chapter include:

- To ensure odour and noise do not impact significantly on the amenity of neighbouring properties and uses;
- To ensure adequate management of water on-site to promote sustainable water use and avoid contamination of water or land systems;
- To ensure appropriate management of wastes; and
- To provide adequate access and parking

Subclause (5) states that adequate access and parking arrangements must be made for trucks and employees, and that all vehicles should be able to enter and leave in a forward direction. As mentioned in the C10 section of this report, inadequate information has been provided for on-site parking and the traffic analysis linked with the proposed business. Additional information was requested from Council, with no response to this matter by the applicant.

Subclause (8) states that all runoff from the site shall be managed to not cause a nuisance to adjoining downstream properties or pollution to waterways. As discussed in the C3 section of this report, unauthorised works on site have impeded overland flows and caused flooding in the area in recent times. No response has been provided by the applicant to flooding concerns raised.

As mentioned in the C12 section of this report, inadequate information has been provided regarding acoustic amenity of the development to neighbouring sensitive residential receivers. An acoustic assessment was requested by Council, with no response to this matter being provided.

As further mentioned in the C13 section of this report, the application has provided inadequate information relating to wastewater management. Therefore, it is unclear whether compliant on-site wastewater management is occurring on site, raising concern for unsustainable water use and potential contamination of water or land systems.

Given the above, the proposed development does not satisfy the requirements of this Chapter.