

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA14/0151
<b>Proposed development:</b>	Subdivision - Consolidation of Lots, Subdivision of the Consolidated Lots into 23 Super Lots and Construction of a Car Parking Area

**Property address:**

1275 - 1343 Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749  
1 - 2 Old Castlereagh Road, CASTLEREAGH NSW 2749  
Old Castlereagh Road, PENRITH NSW 2750  
1 - 2 Old Castlereagh Road, CASTLEREAGH NSW 2749  
14 - 278 Old Castlereagh Road, PENRITH NSW 2750  
307 - 321 Cranebrook Road, CRANEBROOK NSW 2749  
1585 - 1673 Castlereagh Road, CASTLEREAGH NSW 2749  
10 Castlereagh Road, CASTLEREAGH NSW 2749  
1340 - 1772 Castlereagh Road, CASTLEREAGH NSW 2749  
68 Castlereagh Road, CASTLEREAGH NSW 2749  
1676 Castlereagh Road, CASTLEREAGH NSW 2749  
63 Castlereagh Road, CASTLEREAGH NSW 2749  
1515 - 1583 Castlereagh Road, CASTLEREAGH NSW 2749  
Farrells Lane, CASTLEREAGH NSW 2749  
0 McCarthys Lane, CASTLEREAGH NSW 2749  
32 McCarthys Lane, CASTLEREAGH NSW 2749  
112 Wrights Lane, CASTLEREAGH NSW 2749  
Wright's Lane, CASTLEREAGH NSW 2749  
108 - 110 Wrights Lane, CASTLEREAGH NSW 2749  
47 - 65 Old Castlereagh Road, CASTLEREAGH NSW 2749  
7 - 37 Old Castlereagh Road, CASTLEREAGH NSW 2749  
153 - 233 Old Castlereagh Road, CASTLEREAGH NSW 2749  
314 - 316 Old Castlereagh Road, CASTLEREAGH NSW 2749  
312 Old Castlereagh Road, CASTLEREAGH NSW 2749  
39 - 45 Old Castlereagh Road, CASTLEREAGH NSW 2749  
Old Castlereagh Road, CASTLEREAGH NSW 2749  
Old Castlereagh Road, CASTLEREAGH NSW 2749  
14 - 278 Old Castlereagh Road, PENRITH NSW 2750  
1643 - 1655 Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749  
1531 Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749  
1404 a Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749  
1230 - 1338 Castlereagh Road, CASTLEREAGH NSW 2749  
1340 - 1772 Castlereagh Road, CASTLEREAGH NSW 2749  
461 Castlereagh Road, CASTLEREAGH NSW 2749  
1185 - 1343 Castlereagh Road, CASTLEREAGH NSW 2749  
36 Farrells Lane, CASTLEREAGH NSW 2749  
485 Cranebrook Road, CASTLEREAGH NSW 2749  
167 - 233 a McCarthys Lane, CASTLEREAGH NSW 2749  
82 McCarthys Lane, CASTLEREAGH NSW 2749  
89 - 151 Old Castlereagh Road, CASTLEREAGH NSW 2749  
297 - 305 Old Castlereagh Road, CASTLEREAGH NSW 2749  
1439 A Old Castlereagh Road, CASTLEREAGH NSW 2749  
1439 a Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749

**Property description:**

Lot 16 DP 1013504  
Lot 17 DP 1013504  
Lot 18 DP 1013504  
Lot 19 DP 1013504  
Lot 10 DP 1107181  
Lot 3 DP 1107181  
Lot 5 DP 1107181  
Lot 461 DP 1130241  
Lot 421 DP 1130185  
Lot 540 DP 1131982  
Lot 541 DP 1131982

Lot 11 DP 1188657  
Lot 12 DP 1188657  
Lot 2 DP 1148035  
Lot 5 DP 1148035  
Lot 7 DP 1148035  
Lot 1 DP 860391  
Lot 1 DP 519892  
Lot 1 DP 129802  
Lot 1 DP 200839  
Lot 2 DP 200839  
Lot 302 DP 752021  
Lot 303 DP 752021  
Lot 325 DP 752021  
Lot 304 DP 752021  
Lot 305 DP 752021  
Lot 306 DP 752021  
Lot 307 DP 752021  
Lot 337 DP 752021  
Lot 338 DP 752021  
Lot 309 DP 752021  
Lot 310 DP 752021  
Lot 481 DP 849952  
Lot 2 DP 882358  
Lot 28 DP 234746  
Lot 27 DP 234746  
Lot 14 DP 1013504  
Lot 15 DP 1013504  
Lot A DP 394967  
Lot 102 DP 1043503  
Lot 62 DP 581860  
Lot 470 DP 558416  
Lot 1 DP 63308  
Lot 43 DP 752021  
Lot 1 DP 73955  
Lot 1 DP 120891  
Lot 1 DP 120872  
Lot 44 DP 1130206  
Lot 300 DP 752021  
Lot 460 DP 1130241  
Lot 1 DP 60859  
Lot 2 DP 87060  
Lot 1 DP 219895  
Lot 21 DP 530256  
Lot 1 DP 87060  
Lot 1 DP 116082  
Lot 2 DP 116082  
Lot 3 DP 116082  
Lot 1 DP 121142  
Lot 1 DP 196573  
Lot 2 DP 196573  
Lot 2 DP 235324  
Lot 34 DP 241197  
Lot B DP 375804  
Lot 1 DP 501273  
Lot 44 DP 545813  
Lot 2 DP 574481  
Lot 1 DP 579006  
Lot 61 DP 581860  
Lot 104 DP 599725  
Lot 16 DP 605777

Lot 2 DP 617921  
Lot 2 DP 630803  
Lot 247 DP 752021  
Lot 299 DP 752021  
Lot 296 DP 752021  
Lot 321 DP 752021  
Lot 308 DP 752021  
Lot 16 DP 793163  
Lot 12 DP 793163  
Lot 14 DP 793163  
Lot 482 DP 849952  
Lot 1 DP 653149  
Lot 2 DP 229462  
Lot 1 DP 194699  
Lot 3 DP 847895  
Lot 1 DP 735602  
Lot 2 DP 735602  
Lot 1 DP 882358  
Lot 2 DP 882360  
Lot 1 DP 882354  
Lot 2 DP 882361  
Lot 1 DP 882353  
Lot 1 DP 1094333  
Lot 1 DP 882352  
Lot 10 DP 1014419  
Lot 100 DP 1043499  
Lot 13 DP 2223  
Lot 420 DP 1130185  
Lot 103 DP 1043498  
Lot 111 DP 589818  
Lot 4 DP 579006  
Lot 2 DP 579006  
Lot 3 DP 579006  
Lot 471 DP 558416  
Lot 9 DP 522490  
Lot 2 DP 519892  
Lot 2981 DP 128099  
Lot 4 DP 1148035  
Lot 1 DP 2223  
Lot 6 DP 1148035  
Lot 2 DP 236125  
Lot 1 DP 236125  
Lot A DP 374807  
Lot B DP 374807  
Lot 1 DP 128036  
Lot 2 DP 128036  
Lot 56 DP 78686  
Lot X DP 421674  
Lot Y DP 421674  
Lot 57 DP 668807  
Lot 2 DP 1042570  
Lot 101 DP 1043500  
Lot 1 DP 229462  
Lot B DP 394967  
Lot 3 DP 235324  
Lot 10 DP 793163  
Lot 8 DP 793163  
Lot 6 DP 793163  
Lot 4 DP 793163  
Lot 11 DP 859890

	Lot 68 DP 1111742 Lot 63 DP 1111742 Lot 2 DP 1107181 Lot 1 DP 1107181 Lot 20 DP 1092147 Lot 21 DP 1092147 Lot 1 DP 1092607 Lot 2 DP 1092607 Lot 105 DP 1143931 Lot 45 DP 545813 Lot 42 DP 546220 Lot 23 DP 530256 Lot 3 DP 219895 Lot 1 DP 436198 Lot 1 DP 1148035 Lot 4 DP 2223 Lot 3 DP 1148035 Lot 2 DP 348979 Lot 82 DP 1129226 Lot 1 DP 47720 Lot 1 DP 45727 Lot 2 DP 1013504 Lot 3 DP 1013504 Lot 4 DP 1013504 Lot 5 DP 1013504 Lot 6 DP 1013504 Lot 7 DP 1013504 Lot 8 DP 1013504 Lot 9 DP 1013504 Lot 1 DP 68289
<b>Date received:</b>	13 February 2014
<b>Assessing officer</b>	Aimee Lee
<b>Zoning:</b>	RURAL 1(A2) (IDO 93) RURAL (A2) & SPECIAL USES 5(B) ROADS (IDO 93) IDO 13 SPECIAL USES B (ROADS) (IDO 93) ZONE NO.5(A) SPEC USES (NOTATION) (LEP 1998 URB L) ZONE NO.5(C)ST RD & ST RD/W LEP1998 (LAKES ENV) ZONE NO 2(B) RES (LOW DENS) LEP 1998 URB L SEE MEMO(S) AND/OR SEPPS CODE FOR ZONING DETAILS W1 Natural Waterways - LEP 2010
<b>Class of building:</b>	N/A
<b>Recommendations:</b>	Approve

## Executive Summary

Extraction of sand and gravel from the Nepean River has taken place since the 1880's as a major source of supply for Sydney's construction industry. With the depletion of the reserve, excavation moved to the Penrith-Castlereagh floodplain in the late 1950's.

Quarrying by various companies has raised concern regarding efficiency of the operations and associated environmental impact. This has resulted in the establishment of the Penrith Lakes Scheme Working Party comprising representatives from State Government Departments, Penrith City Council and the five quarrying companies operating in the locality. The Working Party is responsible for coordinating the extraction and rehabilitation of the Lakes.

In 1976, the Working Party prepared an interim report for the comprehensive rehabilitation of the area and carried out further studies. The Working Party also facilitated the establishment of the Penrith Lakes Development Corporation Ltd (PLDC) in 1980, a mechanism for coordinating the extraction and rehabilitation activities of the five (5) quarrying companies. PLDC entered into a Deed of Agreement with NSW Government in 1987 for the quarrying, standard of rehabilitation and associated works related to quarrying operations.

The intensive quarrying of the Lakes over the last 20 years has seen 200 million tonnes of sand and gravel being extracted. It is estimated that the remaining extraction will complete in 12 – 15 months.

With the extraction nearing completion, the applicant has lodged DA14/0151 for the consolidation of 165 lots within the Penrith Lakes and reconfiguring the allotments creating 23 super lots, construction of a car park and seeking in principal approval for the subdivision of proposed Lot 4 with a minimum lot size of 2 hectares.

The intent of this application is to excise the water bodies created from extraction and rehabilitation and dedicate them to the State Government upon completion of extraction and rehabilitation.

The proposed subdivision will be carried out in two (2) stages and they are outlined below:-

1. Stage 1 is for consolidation and will create 23 super lots primarily seeks to excise water bodies from the remaining land. Stage that reflect the Penrith Lake SEPP, the Structure Plan and lands to be dedicated under the Deed of Agreement between the State Government and the applicant
2. Stage 2 is seeking conceptual approval to subdivide proposed Lot 4 to a minimum of 2 hectares per lot.

Four (4) major issues were identified during assessment of the proposal and they are:

- Permissibility
- Flooding
- Legal rights of access
- Contamination
- Flora and Fauna

In response to Council's request, the applicant has amended the plan of subdivision by amalgamating the private road east of Proposed Lot 2 with the lot.

External legal advice has been sought in relation to permissibility and it is discussed in the body of the report. Recent discussions with the Department of Planning and Environment have confirmed that the boundary between proposed Lot 1 and proposed Lot 4 is a 40m setback from the wave protection installed around the lake's perimeter (also the top of the lake's normal operating level). The Deed of Agreement refers to this area as Foreshore Land and the applicant is obliged to provide this around Lakes A and B for the purpose of public recreation access and maintenance of the lake foreshore. The Department of Planning and Environment also advised that the applicant has to dedicate all the lots to the Department except for proposed Lot 4. Upon final dedication of all the lots, decision will be made regarding internal access rights including access to private properties in conjunction with the future management of the parkland areas. Property owners have been advised to submit a request to the Minister.

The proposal being an Integrated Development under Section 91A of the Environmental Planning and Assessment Act, 1979, was referred externally to Roads and Maritime Services (RMS), NSW Rural Fire Service (RFS) and Heritage Branch. RMS commented that the subject property is affected by a road proposal and the area required by the road should be identified as a separate lot in any proposed plan of subdivision. It should be noted that the lots affected by the proposed road do not form part of this application. RMS raised no objection to the consolidation and subdivision of the consolidated lots into 23 superlots and construction of the carpark however considered Stage 2 of the development inappropriate and cannot be supported.

RFS raised no objection to the proposal and issued a Bush Fire Safety Authority dated 27 March 2014.

The Heritage Branch in their response stated that the former Upper Castlereagh School and Residence is the only item on the State Heritage Register. As this item is excluded from this proposal, a General Terms of Approval is not required for this application.

This application was advertised, exhibited and notified from 3 March to 2 April 2014. Council received three (3) submissions and two (2) petitions. Key issues raised in these submissions and petition are outlined below:-

- (a) The proposal should not be finalised prior to the completion and full consideration of the Master Plan currently being prepared by the Office of Penrith Lakes
- (b) The proposal would have a significant impact on the flow of air through the Sydney International Regatta Centre which would be detrimental to the fairness of any racing conducted on the competition lake
- (c) Creation of easements over the access road and services to Nepean Park
- (d) Security of Nepean Park due to opening up of the private access road

These issues are addressed below in this report.

The application has been assessed with respect to the Environmental Planning and Assessment Act, 1979 (EP&A Act). Having regard to the relevant statutory provisions and considering the submissions received, it is recommended that this application be determined by granting a partial consent under Section 80(4)(b) of the EP&A Act where a development consent is granted for the development except for the Stage 2 subdivision.

7-day letters dated 16 June and 23 June 2014 have been issued to the submitters and petitioners advising them the outcome of the assessment and that the recommendation for this development application to be determined by granting a partial consent under Section 80(4)(b) of the Environmental Planning and Assessment Act, 1979 subject to appropriate conditions.

## **Background**

Various development consents have been granted for the quarrying, extraction and rehabilitation of the Penrith Lakes and they are summarised below:-

### DA350/81

- extraction of approximately 12.5 million tonnes of sand and gravel
- rehabilitation

### DA86-2720

- extraction of approximately 39 million tonnes of sand and gravel and 20 million tonnes of overburden
- rehabilitation
- importation of VENM to assist land reformation in areas where extraction has occurred.

This application was modified in 1989 and 2006 enabling the construction of the Sydney International Regatta Centre and stockpiling, compacting, spreading of topsoil and re-seeding.

### P92/00744/001

- continued mining to the north of the area mined under DA86-2720 for 35 million tonnes of sand and gravel.

### P97/00237 Pt 4

- extraction of the remaining resources west of Castlereagh Road for 57 million tonnes of sand and gravel and 6 million tonnes of fine sand
- rehabilitation
- importation of VENM.

This application has been modified on seven occasions and the last modification was approved for the formalisation of the use of the existing water body known as Lewis Lagoon as a Water Quality Control Pond to treat water before it enters the Wildlife Lake.

The 1986, 1972 and 1997 applications have also been collectively modified for the following aspects:

- extend the timing of the consent to late 2015
- alter the source of the VENM used to rehabilitate the Penrith Lakes site
- minor changes to haulage routes into the Penrith Lakes site
- removal of one access point into the Penrith Lakes site
- updated noise monitoring to assess the works against noise criteria

The applicant attended a pre-lodgement meeting on 7 November 2013 for this proposed subdivision. Issues raised in the pre-lodgement include the following:

- The impact of the proposal on the various heritage items within the Lakes and a Heritage Impact Statement is required to support the development application
- Rationale for the proposed allotment layout
- Demonstrate consistency with the current master plan
- The intended use/dedication of the proposed lots
- Contamination and the application must address SEPP 55
- Flooding and all plans must include levels to AHD.

## Site & Surrounds

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The proposed subdivision is located on the floodplain of the Nepean River bounded by Casltereagh Road to the east and the Nepean River to the south and west. Developments in the area consist of a combination of rural land uses, villages and residential developments. The site has a total area of approximately 1935 hectares excluding 16 lots which had been rehabilitated, consolidated and returned to Government ownership. The site is currently vacant.

## Proposal

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The proposal seeks approval for the following:

1. Consolidation of 165 lots and reconfiguration of allotment boundaries creating 23 super lots. The proposed subdivision reflects the alignment and buffer area surrounding the water bodies and in turn facilitate dedication of dedication of land to Government ownership.
2. Construction of a carpark on vacant land adjacent to MaCarthy's Cementry. The carpark will provide approximately 200m<sup>2</sup> of sealed area for five (5) standard parking spaces and one (1) accessible parking space.
3. Seek in principle support for Stage 2 development which includes:
  - Subdivision of proposed Lot 4 creating land parcels of 2 hectares minimum
  - Design drainage network servicing the subdivided proposed Lot 4
  - Design of road network internal to the site and providing servicing to th eproposed subdivision

This application is supported by the following documents:

Plan of Subdivision	Benjamin Meyer
Carpark Design	Penrith Lakes
Land Use Suitability Review	DLA Environmental
Engineering Statement	J Wyndham Prince
Flood Study	Cardno
Flood Evacuation Plan	Sinclair Knight Mers
Bushfire Hazard Assessment	Cityscape Planning and Projects

## Plans that apply

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- Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)
- Penrith Interim Development Order No.13
- Penrith Interim Development Order No.47
- Penrith Interim Development Order No.93
- Development Control Plan 2006
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Penrith Lakes Scheme) 1989
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy No 55—Remediation of Land



## Planning Assessment

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- **Section 79C - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

- **Section 91- Integrated development**

The development has been assessed in accordance with the matters for consideration under Section 79C and Section 91 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration.

(a) *Rural Fires Act 1997*

According to Section 91 of the EP&A Act, the proposed subdivision is an integrated development as it requires authorisation under section 100B of the Rural Fires Act 1997 in respect of bush fire safety for the subdivision of land that could lawfully be used for residential or rural residential purposes, or development of land for special fire protection purposes.

RFS issued a Bush Fire Safety Authority on 27 March 2014 raising no objection to the proposal subject to condition.

(b) *Heritage Act 1997*

The application was referred to the Heritage Branch in accordance with Section 91A of the EP&A Act. The Heritage Branch stated that the former Upper Castlereagh School and Residence is an item on the State Heritage Register. As this item is excluded from the development proposal, a General Terms of Approval is not required.

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

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

In accordance with Schedule 3 of the SEPP, the matter was referred to the NSW Roads and Maritime Services who noted that the development site is affected by a road proposal (along Castlereagh Road near McCarthy's Lane and Smith Road). The area identified by the RMS as required for the road does not form part of this application and therefore the requirement to create a separate lot is not considered necessary.

No objection is raised to the proposed consolidation and reconfiguration of the consolidated lots into 23 superlots and construction of the carparking area adjacent to the McCarthy Cemetery however the RMS does not support the subdivision of Proposed Lot 4 at this stage.

## **State Environmental Planning Policy (Penrith Lakes Scheme) 1989**

An assessment of the proposal against the relevant provisions of the SEPP noted the following:-

Clause 7 of the SEPP (Penrith Lakes Scheme) which states that development must not be carried out unless that development is authorised by that policy. Clauses 8-11A identifies the development authorised by the policy which does not include residential subdivision or urban development.

Clause 8(1) of the policy states that development for the purposes of 'implementing the Penrith Lakes Scheme' is permissible. The relevant consent authority in determining an application must be satisfied that the development fully and satisfactorily implements the Penrith Lakes Scheme and is generally in accordance with the structure plan. Additionally the consent authority must take into consideration the matters outlined in Clause 8(4).

When establishing what constitutes 'Implement the Penrith Lakes Scheme', reference is directed to Schedule 1 of the policy which defines what is meant by the 'Penrith Lakes Scheme', which is:

*"the creation of a regional recreational lake system as shown on the structure plan for the benefit of the public as a result of:*

*(a) the staged optimum extraction of sand and gravel reserves,*

*(b) the staged rehabilitation, reconstruction and landscaping of the land, and*

*(c) the staged formation of a series of interconnected lakes,*

*and includes the identification of land for possible future urban purposes as a result of the work referred to in paragraphs (a) and (b)."*

In this case, the proposed consolidation and subdivision pattern of the consolidated lots into 23 superlots is consistent with the Structure Plan. The application will also facilitate dedication of Lots 1, 2, 10, 11 and 12 to the Department of Planning and Environment for delivery of the recreation lakes. Therefore requirements of Clause 8(2) and Schedule 1.

The definition of the 'Penrith Lakes Scheme' provides only for the 'identification of land for future urban purposes', it does not permit development for urban purposes. The accompanying Structure Plan also indicates the same 'possible' location of land for future urban purposes which does not provide a development entitlement. Stage 2 of the development is not considered to be a permissible form of development under the SEPP. Furthermore, there is insufficient information in relation to flood control enabling Council to carry out a proper assessment of the proposal. As the requirements under Clause 8(4) are not fully satisfied, Stage 2 of the development cannot be supported.

In this instance, it is recommended that the development application be determined by granting a partial consent under section 80(4)(b) of the Environmental Planning and Assessment Act, 1979 for the consolidation and subdivision of the consolidated lots into 23 superlots and the construction of the carpark..

## **State Environmental Planning Policy (State and Regional Development) 2011**

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (State and Regional Development) 2011 and the application is satisfactory with respect to the SEPP as Schedule 3 - Clause 8 identifies development within Penrith Lakes which is deemed to be 'state significant infrastructure' being extraction, rehabilitation or lake formation. The proposed works do not fall within these categories and as such the SEPP does not apply to the proposal.

## State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of the SEPP requires the consent authority to consider if the land is contaminated and if the land is contaminated, the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

It is further stated that the applicant must provide a report specifying the findings of a preliminary investigation of the land. The report must be prepared in accordance with the Contaminated Land Planning Guidelines for the consideration of the consent authority. A detailed investigation may be required depending on the findings of the preliminary investigation.

In this regard, the applicant has submitted a Land Use Suitability Review. It confirms that the remediation works carried out under the existing development consents are sufficient to facilitate the proposed development.

Council's Environment Department reviewed the proposal and the Land Use Suitability Review and considered the proposal unsatisfactory for the following reasons:

- The applicant has not undertaken investigations in line with the Contaminated Land Planning Guidelines
- The applicant has not submitted any of the documents referred to the Review. Therefore it is unclear to what extent remediation works have been undertaken and there is insufficient information enabling Council to consider if the land is still contaminated, and whether remediation is required.
- It is considered that the proposed lots are configured for future use. Table 1 of the Bushfire Assessment Report has identified 12 lots for urban use, 3 lots for parkland use and 4 lots for the lakes.

While it is noted that additional information was requested, the Stage 1 component is a paper subdivision only and the car park works are not considered to require site audit reporting or further testing as the land use doesn't substantially change being a carpark for an existing cemetery. The information submitted is therefore satisfactory.

To ensure the requirement of Clause 7 is satisfied, additional information is required to be submitted.

### Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)

Provision	Compliance
Clause 2 - Heritage aims and objectives	N/A
Clause 8 - Heritage items	Complies - See discussion
Clause 9 - Development in the vicinity of heritage items	Complies - See discussion
Clause 10 - Heritage conservation areas	N/A
Clause 11 - Heritage advertisements	N/A
Clause 12 - Conservation incentives relating to heritage items	N/A

Council's Heritage Advisor reviewed the proposal and stated that the Heritage Impact Statement needs to be developed further to address issues related to curtilage. Given the nature of Stage 1 of the proposal, it is considered that the proposal would not adversely impact on the curtilage of the heritage items within the Lakes and as such no further information is required.

### Penrith Interim Development Order No.13

Provision	Compliance
All Clauses	Complies - See discussion

While IDO 13 applies to the site. Clauses No. 4 and 5 states that Council shall not grant consent to any developments unless it is satisfied that satisfactory arrangements have been made for water and sewerage. Considering the nature and scale of the consolidation and construction of the carparking, it is considered that these clauses do not apply.

### Penrith Interim Development Order No.47

Provision	Compliance
All Clauses	Complies

A small portion of land to the eastern side of the site falls under IDO 47. There are no provisions for subdivision of land except for the minimum lot size (550m<sup>2</sup>) for the construction of dwelling houses. Therefore this application is compliant.

### Penrith Interim Development Order No.93

Provision	Compliance
All Clauses	Complies

Under IDO 93 the site is zoned 1(a2) Rural A2 and 5(b) Special Uses (Roads). Clause 5 of the IDO stipulates the minimum lot size for subdivision in 1(a) Rural A2 zone shall be 2 hectares. The IDO has not nominated any minimum lot size for 5(b) Special Uses (Roads) zone. In this case, Stage 1 of the proposed subdivision complies.

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

Under the exhibited draft Stage 2 of the Penrith Local Environmental Plan, the majority of the development site will be zoned RU1 Primary Production with the exception of a small portion of land adjoining Castlereagh Road which is proposed to be zoned SP2 Classified Road. However, Council has recently resolved to exclude the Penrith Lakes from the draft Stage 2 of the PLEP as per Council report dated 11 November 2013.

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

### Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.2 - Crime prevention through environmental design	N/A
Chapter 2.3 - Engineering works	Complies
Chapter 2.4 - Erosion and sediment control	Complies
Chapter 2.5 - Heritage management	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.6 - Landscape	N/A
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	N/A
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.11 - Car parking	Complies
Chapter 2.12 - On-site sewage management	N/A
Chapter 2.13 - Tree preservation	N/A

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

PLDC entered into a Deed of Agreement with the NSW Government. The Deed outlines the process in relation to the use of the land for quarrying, standards for rehabilitation and other associated works related to the quarrying operations. The Deed has been varied once to facilitate construction of the Sydney International Regatta Centre. Stage 1 of the proposed consolidation and subdivision is consistent with the Deed.

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

### *Context and Setting*

According to SEPP 1989, the main objective is to permit the implementation of the Penrith Lakes Scheme which clearly outlined in Schedule 1 of the SEPP. In addition, the SEPP also aims at identification and protection of heritage items and identification of land for urban purposes.

The Penrith Lake Scheme is to create a regional recreational lake system as a result

- (a) the staged optimum extraction of sand and gravel reserves,
- (b) the staged rehabilitation, reconstruction and landscaping of the land, and
- (c) the staged formation of a series of interconnected lakes,

and includes the identification of land for possible future urban purposes as a result of the work referred to in paragraphs (a) and (b).

Despite the lack of supporting information to address flooding, contamination and flora and fauna, it is considered that the proposed consolidation and subdivision creating 23 super lots can be supported as the proposal has satisfied the aims of the SEPP and the requirements of the definition as the subdivision seeks to enable dedication of land for implementation of the Lakes system and management of the foreshore land. Stage 2 however, is not supported.

### *Transport and Accessibility*

Council's Development Engineering Services has recommended that Right-of-Carriageways be created within proposed Lot 4 from McCarthy's Lane to access the existing lots, Lot 2 DP 229462 and Lot 82 DP 1129226. It is also recommended that a Right-of-Carriageway be created from the public roads to the proposed carpark adjacent to the cemetery.

### *Noise and Vibration*

The proposed Stage 1 consolidation and subdivision would have minimal impact on acoustic privacy. However, further assessment of the proposal in relation to its environmental impact will be subject to confirmation of the future use of the proposed lots.

### *Natural Hazards*

To ensure any future buildings/structures to be erected on proposed Lot 4 will be above the Flood Planning Levels adopted by Council, Restriction of Use and Positive Covenant shall is recommended to be imposed on proposed Lot 4. In this regard, Stage 2 of the subdivision cannot be supported.

The Bushfire Assessment Report that accompanies the application has carried out individual assessment for Lots 3, 13, 14, 16, 21 and 23. Appropriate Asset Protection Zone is recommended accordingly for Lots 13, 14 and 16. NSW Rural Fire Service reviewed the proposal together with the Bushfire Hazard Assessment and considered the proposal satisfactory and issued a Bush Fire Safety Authority on 27 March 2014 subject to conditions.

### *Heritage*

To ensure the impacts arising from the development on heritage items are addressed, a condition is recommended for the submission of Heritage Impact Assessment for future development applications.

### *Site Design*

The layout of the proposed Stage 1 subdivision is generally in accordance with the Structure Plan and therefore it is considered that the proposal is consistent with the aims of implementing the Penrith Lakes Scheme in relation to the delivery of a series of inter-connected recreational lakes.

### *Social and Economic*

The proposed Stage 1 consolidation and subdivision will facilitate delivery of the recreational lakes. The future use of the lots identified for urban purposes is yet to be established but may contribute to the delivery of residential developments and hence the Metropolitan Strategy. In summary the proposal will provide socio-economic benefits to the locality in the long term.

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

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

- The proposed subdivision is permissible under the applicable environmental planning instruments.
- The proposed Stage 1 consolidation and subdivision is consistent with aims of SEPP 1989 specifically in relation to the implementation of the Penrith Lakes Scheme..
- The proposed Stage 1 consolidation and subdivision is unlikely to result in any adverse impact on flooding, contamination and flora and fauna.

## Section 79C(1)(d) Any Submissions

### Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

### Community consultation

In accordance with Chapter 2.7 of the Penrith Development Control Plan for the City of Penrith 2006 – Notification and Advertising, the proposed development was advertised, exhibited and notified to nearby and adjoining residents. The exhibition period was between 3 March and 2 April 2014. Council has received three (3) submissions and two (2) petition in response.

### Submissions

The key issues raised in these submissions/petition are addressed below: -

Issue	Comment
The proposal should not be finalised prior to the completion and full consideration of the Master Plan currently being prepared by the Office of Penrith Lakes	<p>This application seeks approval for the consolidation of various lots within the development site and subdivision of the consolidation lots creating 23 super lots and construction of a carparking area adjacent to McCarthy's Cemetery (Stage 1) and in principle support for future subdivision of Proposed Lot 4 (Stage 2).</p> <p>Stage 1 of the proposed would facilitate dedication of land particularly the recreation lakes to the State Government and thereby implement the Penrith Lakes Scheme.</p> <p>However, Stage 2 of the proposal is inconsistent with the Structure Plan and therefore does not fully implement the Lakes Scheme.</p> <p>Accordingly, a partial consent is recommended for the development except for Stage 2 of the development</p>

Issue	Comment
<p>The proposal would have a significant impact on the flow of air through the Sydney International Regatta Centre which would be detrimental to the fairness of any racing conducted on the competition lake</p>	<p>Assessment of the proposal has concluded that Stage 1 of the proposal would facilitate dedication of land particularly the recreation lakes to the State Government and thereby implement the Penrith Lakes Scheme.</p> <p>However, Stage 2 of the proposal is inconsistent with State Environmental Planning Policy (Penrith Lakes Scheme) 1989 as it is inconsistent with the Structure Plan and therefore does not fully implement the Penrith Lakes Scheme.</p> <p>The applicant does not seek any approvals for change of use or building works except for the construction of a 200m<sup>2</sup> car parking area which is to provide six (6) car parking spaces adjacent to McCarthy's Cemetery.</p> <p>It is considered that the limited works being the construction of the car park, will not adversely impact on the integrity of the competition lakes, operation of the course or the future competition capability of the Sydney International Regatta Centre</p>
<p>Creation of easements over the access road and services to Nepean Park</p>	<p>The land intended to be dedicated to the State Government is not permitted to be burdened by any encumbrances or restrictions (such as a Right-of-Carriageway_) legal rights of access will need to be separately discussed and negotiated with NSW Department of Planning and Environment as the intended owner.</p> <p>The Department has confirmed that arrangements will be made in this regard.</p>
<p>Security of Nepean Park due to opening up of the private access road</p>	<p>Council is unable to manage a private road including the automatic gate. It is suggested that the submitter liaise with the applicant on the matter.</p>
<p>The applicant does not under the vision of Penrith Lakes being a recreational and water park destination</p>	<p>Stage 1 of the proposed consolidation and subdivision would facilitate dedication of land particularly Lots 1, 2 10, 11 and 12 to the State Government for the delivery of the recreational lakes.</p>
<p>The proposal will create negative social and environmental impacts on nearby residents and the Penrith Community</p>	<p>As stated above, the proposed consolidation and subdivision creating 23 super lots will facilitate dedication of land to the State Government for the implementation of the recreational lakes. This will have a positive impact on the local community.</p> <p>The environmental issues related to Stage 2 of the subdivision of proposed Lot 4 is being addressed by the issue of a partial consent which does not permit further subdivision of the lot.</p>



Issue	Comment
The proposal will increase traffic to and from the site specifically Castlereagh Road and adjoining thoroughfares	<p>Stage 1 of the proposal for the consolidation and subdivision creating 23 super lots is a paper subdivision and would have minimal impact on local traffic conditions.</p> <p>The traffic issues related to Stage 2 of the subdivision of proposed Lot 4 is addressed by the issue of a partial consent which does not permit further subdivision of the lot.</p>
Increase risk to flood events and the impact on nearby residents and properties of Cranebrook, Waterside Estate and Emu Plains	Stage 2 of the subdivision cannot be supported due to a lack of information that address flooding issue. In this regard it is recommended that the development be determined by the granting of a partial consent which does not permit fill or further subdivision of proposed Lot 4.

## 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
Heritage	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	No objections - subject to conditions
Environmental - Biodiversity	Not supported

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

The proposed development is consistent with the objectives of the EP&A Act in so far as it promotes the co-ordinated and orderly, and economic use and development of the land. As a result Council may be satisfied that the development subject to conditions is consistent with the public interest.

## Conclusion

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The application is considered satisfactory having regard to:

1. The above assessment has demonstrated that the proposal has met the relevant provisions of the following legislations:
  - a. *Environmental Planning and Assessment Act 1979*
  - b. *State Environmental Planning Policy (Penrith Lakes Scheme) 1989*
  - c. *Interim Development Order No. 93*
  - d. *Interim Development Order No. 13*
2. The proposed Stage 1 consolidation and subdivision creating 23 super lots is consistent with the desired future character, design and function as identified in SEPP 1989.
3. The site is suitable for the proposal and the development being in the public interest.

In view of the amount of above assessment, it is recommended that this application be determined by granting a partial consent except for Stage 2 of the development under Section 80(4)(b) of the EP&A Act of the Environmental Planning and Assessment Act, 1979.

## Recommendation

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1. That DA14/0151 for the proposed consolidation of 165 lots, subdivision of the consolidated lots creating 23 super lots, construction of a carparking area and indication of a future Stage 2 subdivision at Penrith Lakes, be granted a partial consent except for Stage 2 of the development under Section 80(4)(b) of the EP&A Act of the Environmental Planning and Assessment Act 1979.
2. That the proposed consolidation of 165 lots, subdivision of the consolidated lots creating 23 super lots and construction of a carparking area be approved subject to the attached conditions (Development Assessment Report Part B)
3. That those making submissions are notified of the determination.

# CONDITIONS

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## General

### 1 A001

The development must be implemented substantially in accordance with the following stamped-approved plans/documents, the application form and any supporting information issued by Penrith City Council, except as may be amended in red on the attached plans and by the following conditions.

Drawing Title	Plan No.	Prepared By	Date
Plan of Subdivision of Various Lots	Surveyor's Ref: 068-13	Benjamin Meyer	undated
McCarthy's Cemetery Proposed Carpark Design	PLDC-11728 Revision C	Penrith Lakes	04/02/2014

### 2 A005 - APPROVED BODYS CONSENT (FOR INTEGRATED DAS)

A copy of the Bush Fire Safety Authority (Ref D14/0502 DA 14022791117 MA) dated 27 March 2014 issued by the NSW Rural Fire Service under Section 100B of the Rural Fires Act 1997 shall be submitted to the Principal Certifying Authority, before the Construction Certificate can be issued for the same development. A copy of the approval shall be submitted to Penrith City Council with the copy of the Construction Certificate, if Council is not the Principal Certifying Authority.

### 3 A011 - Engineering Works DCP

All civil engineering construction works shall be carried out substantially in accordance with Section 2.3 Engineering Works of the Penrith Development Control Plan 2006 and accompanying Guidelines for Engineering Works for Subdivisions and Developments Part 2-Construction.

### 4 A014 - LOT CONSOLIDATION

Written evidence that the request to consolidate the lots has been lodged with Land and Property Information division of the Department of Lands is to be submitted to the certifying authority before the Construction Certificate for the development can be issued by the certifier.

A copy of the registered plan of consolidation from Land and Property Information division of the Department of Lands is to be submitted to the Principal Certifying Authority (PCA) and Penrith City Council, if Council is not the PCA, prior to the issue of the Occupation Certificate for the development.

### 5 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

**The development shall not be used or occupied until an Occupation Certificate has been issued.**

### 6 A042 - ASSET PROTECTION ZONES IN BUSHFIRE AREAS

An Asset Protection Zone for protection from bushfire shall be provided and maintained in accordance with the recommendations outlined in the Bush fire Hazard Assessment DA No. 5- Stage 1 prepared by Cityscape Planning + Projects dated February 2014, and in particular are to include the following:

- i. The Inner Protection Area and Outer Protection Area must be provided and maintained for the term of the development.
- ii. The Inner Protection Area (IPA) shall be maintained as follows:
  - minimise fuel levels at ground level that can be set alight by a bushfire,
  - vegetation does not provide a path for the transfer of fire to the development - that is fuels are discontinuous,
  - no trees are to overhang the building,
  - trees should be well spread out and not form a canopy,
  - trees or shrubs that retain dead material or deposit excessive quantities of fuel in a short period of time should not be planted within the IPA,
  - trees and shrubs should be located far enough from the building that the radiant heat they produce or direct flame contact will not ignite the house,
  - wooden sheds, combustible material, large areas or quantities of garden mulch, stacked flammable building materials etc, shall not be sited in the IPA.

To ensure that the Asset Protection Zone is provided and maintained for the term of the development, a 'positive covenant' shall be registered over the land to which the development relates, **prior to the issue of a Subdivision Certificate**.

{Note: The Asset Protection Zone is the sum total of the Inner Protection Area and Outer Protection Area.}

7 [A044 - Compliance with NSW Rural Fire Service conditions of consent](#)

The conditions imposed by the NSW Rural Fire Service in the Integrated Development consent and in the Bush Fire Safety Authority (Ref DA14/0502 DA 14022791117 MA) dated 27 March 2014 for the said development are to be completed prior to the issue of an Occupation Certificate or in the case of subdivision, a Subdivision Certificate.

8 [A046 - Obtain Construction Certificate before commencement of works](#)

A **Construction Certificate** shall be obtained prior to commencement of any works.

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

The applicant shall comply at all times with the Bush Fire Safety Authority (Ref D14/0502 DA 14022791117 MA) issued by the NSW Rural Fire Service dated 27 March 2014 and the following condition:-

### **Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following condition shall apply:

(a) At the issue of subdivision certificate, the land surrounding the proposed building envelopes as outlined on Pages 43 to 46 within Cityscape Planning + Projects Bushfire Hazard Assessment for Proposed Staged Subdivision of Penrith lakes Scheme DA No. 5 - Stage 1 dated February 2014, shall be maintained as an inner protection areas on proposed Lots 3, 13, 14 and 16 as per section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones' until such time each Lot is further developed.

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

This development consent does not approve any fill, does not provide land set above the 1% AEP for urban purposes and does not approve the Stage 2 (Lot 4) concept subdivision plan.

### **Demolition**

11 [B004 - Dust](#)

Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.

12 [B005 - Mud/Soil](#)

Mud and soil from vehicular movements to and from the site must not be deposited on the road.

### **Environmental Matters**

13 [D001 - Implement approved sediment& erosion control measures](#)

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development until driveway and on-site parking areas have been completed for the development**. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

14 [D002 Spraygrass](#)

All land that has been disturbed by earthworks is to be spray grassed or similarly treated to establish a grass cover.

15 [D003 - Fencing protection to part of site or adjoining property](#)

Before any works are commenced in the vicinity of proposed carparking area adequate fencing with star picket and wire fencing shall be installed to ensure that the adjoining McCarthy's Cemetery is not disturbed by the construction/demolition works or earthworks.

16 [D005 – No filling without prior approval \(may need to add D006\)](#)

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

#### 17 D009 - Covering of waste storage area

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

#### 18 D010 – Appropriate disposal of excavated or other waste

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

### Utility Services

#### 19 G001 - Installation of services and Service Clearances (subdivision)

All services (water, sewer, electricity, telephone and gas), including the provision of service conduits and stub mains, are to be installed within the proposed public roads before final inspection of the engineering works.

Prior to the release of the linen plan, the following service authority clearances shall be obtained:

- a Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. This is required prior to the issue of the Subdivision Certificate and
- a letter from Integral Energy stating that satisfactory arrangements have been made for electricity supply to all proposed allotments in the subdivision, including any necessary easements; and
- a letter from an approved telecommunications service provider that satisfactory arrangements have been made for underground telephone services to all proposed allotments in the subdivision, including any necessary easements.

These clearances are to be submitted to the Principal Certifying Authority.

### Construction

#### 20 H001 - Stamped plans and erection of site notice

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

## 21 H002 - All forms of construction

Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

## 22 H006 - Submission of and implement waste management plan

A completed waste management plan shall be submitted to Penrith City Council for consideration and approval. Council must approve the plan before a Construction Certificate can be issued for the approved development.

The waste management plan shall be prepared in accordance with the Waste Planning Development Control Plan (2004), and shall address all waste materials likely to result from the proposed development, with details of the estimated waste volumes, onsite storage and management, proposed re-use of materials, designated waste contractors, recycling outlet and / or landfill site.

The approved waste management plan must be implemented on-site and adhered to throughout all stages of the development including demolition, with supporting documentation / receipts retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

## 23 H041 - Hours of work (other devt)

Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

## Engineering

### 24 [K205 - Construction Certificate for Carpark Construction Works](#)

**Prior to the issue of a Construction Certificate** for the car park construction works adjacent to McCarthy's Cemetery, the Certifying Authority shall ensure that engineering plans are consistent with the stamped approved concept plan/s prepared by Penrith Lakes, drawing number PLDC-11728 , revision C, dated 4 Feb 2014 and that all works have been designed in accordance with conditions of this consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, any Roads Act approval issued, Austroad Guidelines and best engineering practice.

The works may include but are not limited to the following:

- Stormwater management (quantity and quality)
- Private access driveways
- Sediment and erosion control measures
- Earthworks
- Landscaping and embellishment works

The Construction Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.

Note:

1. Contact Penrith City Council's **Engineering Services Department** on (02) 4732 7777 to ascertain applicable fees.

### 25 [K208 - Stormwater Discharge \(Minor Development\)](#)

Stormwater drainage from the proposed carpark site shall be discharged to the existing site drainage system. The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

The proposed method of stormwater discharge shall be detailed in the Construction Certificate issued by the Certifying Authority.

### 26 [K221 - Access, Car Parking and Manoeuvring – General](#)

**Prior to the issue of a Construction Certificate**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith City Council's Development Control Plan.

### 27 [K301 - Sediment & Erosion Control](#)

**Prior to commencement of works**, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

28 **K304 - Matters to be addressed prior to commencement of proposed carpark construction works**

Work on the proposed carpark shall not commence until:

- a Construction Certificate (if required) has been issued,
- a Principal Certifying Authority has been appointed for the project, and
- any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement is to be submitted to Penrith City Council two (2) days prior to commencement of engineering works or clearing associated with the subdivision.

29 **K502 - Works as executed – General and Compliance Documentation**

**Prior to the issue of an Occupation Certificate for the proposed carpark**, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments.

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

30 **K503 - Stormwater Compliance**

**Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority shall ensure that the:

- a) Stormwater management systems
- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works-as-executed drawings.

31 **K601 - Stormwater Management system operation and maintenance**

The stormwater management systems shall continue to be operated and maintained for the life of the development in accordance with the final operation and maintenance management plan.

## Subdivision

32 **M001 - Prior to subdivision work (Applies to subdivision except strata)**

Work on the subdivision is not to commence until:

- a Construction Certificate has been issued,
- a Principal Certifying Authority has been appointed for the project, and
- any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

Penrith City Council is to be notified 48 hours prior to commencement of engineering works or clearing associated with the subdivision.



### 33 M008 - Linen Plan

Submission of the original Linen Plan and five (5) copies.

All drainage easements, rights of way, restrictions and covenants are to be included on the linen plan.

All dedications of roads/drainage are to be undertaken at no cost to Penrith City Council.

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

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

### 34 M009 - 88B Instrument

The linen plan of subdivision is to be supported by an 88B instrument creating a Restriction as to User or easement regarding the following:

a) Provision of Right of Carriageway within the proposed Lot 4 to ensure access to the existing lots Lot 2 DP 229462 and Lot 82 DP 1129226 from McCarthys Lane or Castlereagh Road is maintained.

b) Residue Allotment - no development or building shall be allowed or be permitted to remain on the named lot unless satisfactory arrangements have been made with Penrith City Council for services (water, sewer, electricity and telephone), any outstanding contributions or consolidation with adjoining lots.

Penrith City Council shall be nominated as the only authority permitted to modify, vary or rescind such restriction as to user.

## Payment of Fees

### 35 P001 - Costs

All roadworks, dedications and drainage works are to be carried out at the applicant's cost.

### 36 P002 - Fees associated with Council land (Applies to all works & add K019)

Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

## Certification

### 37 Q001 - Notice of Commencement & Appointment of PCA1

Prior to the commencement of any earthworks, construction or demolition works on site, the proponent is to:

- employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

#### Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

38 Q004 - Occupation Certificate (Staged DA)

An Occupation Certificate shall be sought from the Principal Certifying Authority prior to occupation of or commencement of use of each stage of the development. Before the Occupation Certificate can be issued for each stage of the development, a Compliance Certificate or other documentation suitable to the Principal Certifying Authority shall be sought indicating that all conditions of this development notice, but not those conditions relating to the operations of the development, commensurate with that stage of the development have been satisfied or met prior to the occupation or use of that stage of the development.

A copy of the Compliance Certificate or other documentation shall be submitted to Penrith City Council if obtained from an accredited certifier. A copy of the Occupation Certificate is also to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2006

### Part 2 - City wide controls

#### 1.1 *Contaminated Land*

Council's Environment Department considered the proposal unsatisfactory and the issues have been outlined above in the assessment under SEPP 1989.

The applicant has not provided sufficient information enabling proper assessment of the proposal and it is therefore inconsistent with the DCP objectives of:

- Identify, record and manage known and potentially contaminated land
- Facilitate the gathering and assessment of information in relation to previous land use activities that may have resulted in contamination;
- Enable Council to discharge of its functions and responsibilities in relation to existing and potential land contamination with reasonable care and due diligence to minimise potential risk to both public health and the environment;
- Inform the community, particularly those interested or involved in the planning and development process, of Council's procedures relating to existing or potential land contamination;
- Ensure that all stakeholders are aware of their responsibilities for the ongoing management of contaminated land.

However given the minor nature of works proposed (car park only), and the remediation works being pursued through the Department of Planning, it is considered that the proposal and approved remediation strategies adopted will satisfy the intent of SEPP 55.

#### 2.5 *Heritage Management*

The application is not supported by a Heritage Impact Assessment and it is therefore inconsistent with the objectives of the DCP in relation to:

- Conservation of the environmental heritage of Penrith
- Conservation of the heritage significance of existing significant fabric, settings and views associated with the heritage significance of heritage items.

#### 2.8 *Significant Trees and Gardens*

Council's Senior Biodiversity Office has identified the following issues and considered the proposal unsatisfactory:

- A Flora and Fauna Assessment has not been undertaken
- Threatened and migratory species have been found on the site previously. It is likely that other species will utilise the site including birds, bats, reptiles and amphibian as well as flora and vegetation communities.
- There is no indication of the extent of the buffer/riparian zone included around the lakes
- The applicant has to submit justifications as to referral to the Office of Water is not required
- The Bushfire Assessment Report is inconsistent with the previous Bushfire Reports supporting preceding DAs and does not include the lot layout identified in previous DAs.

It is requested that additional information be submitted to Council including the lakes boundary and buffer areas to be show on the plan of subdivision. In addition, a Flora and Fauna Assessment shall be submitted to Council. The Report shall inform the proposed lot layout, the future use of the site and the potential impact. Having considered that the proposal is a paper subdivision and no works are proposed, it is considered that the development would not adversely impact on the existing flora and fauna. Therefore the additional information is not required at this stage.

Although the boundary between proposed Lot 1 and proposed Lot 4 does not represent the foreshore, the Department of Planning and Environment has advised that the boundary is

setback 40m from the wave protection installed around the lake's perimeter and the top of the lake's normal operating level. The Deed refers this area as Foreshore Land which the applicant is obliged to provide around Lakes A and B for the purposes of public pedestrian access and maintenance of the lake foreshore.

#### *2.10 Flood Liable Land*

Council's Engineering Services Department considers the stage 2 proposal unsatisfactory and cannot be supported for the following reasons:-

- The exact location of the proposed boundaries for each lot is unclear, especially the boundaries adjacent to the water bodies. This uncertainty will have implications on the development of future urban area which has to be above the Flood Planning Levels adopted by Council.
- The proposed Stage 2 subdivision has not provided any information in relation to flooding.

In this case, it is considered that the proposal particularly Stage 2 of the subdivision is inconsistent with the DCP objectives particularly in relation to preventing the introduction of unsuitable land uses onto the land identified by council as being flood liable. This is being addressed however by the issue of a partial consent which does not permit fill or further subdivision of proposed Lot 4.

#### *2.11 Carparking*

Although there are no specific numerical requirements for cemetery, it is considered that the proposed 200m<sup>2</sup> sealed carpark would facilitate access and parking of the cemetery. Therefore the proposal is therefore supported.

#### *4.7 Residential Subdivision*

Council's Waterways Section had reviewed the proposal and provided the following comments in relation to stormwater treatment:-

- The proposal does not include any details on stormwater treatment or water sensitive urban design for integration into the subdivision except for the 200m<sup>2</sup> carpark.
- The proposed Stage 2 subdivision is not supported by a WSUD strategy and no water quality controls have been demonstrated.
- The applicant has not submitted any details regarding the extent or location of the buffers around the lakes.