

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA13/1402.01
Proposed development:	Modifications to Temporary Use of Site as Function Centre
Property address:	1041 - 1117 Mulgoa Road, MULGOA NSW 2745
Property description:	Lot 10 DP 615085 Lot 11 DP 615085 Lot 2 DP 541825
Date received:	14 January 2016
Assessing officer	Wendy Connell
Zoning:	E2 Environmental Conservation - LEP 2010 E3 Environmental Management - LEP 2010 SP2 Infrastructure - Classified Road - LEP 2010
Class of building:	N/A
Recommendations:	Refuse

Executive Summary

Council is in receipt of an application under S96(1A) of the Environmental Planning and Assessment Act 1979 to modify the consent for DA13/1402 *Use of site as Function Centre for no more than 14 days in six month period*. The application seeks an additional 14 days within a six month period and the removal of traffic conditions 48-51. The subject property is known as the Fernhill Estate.

The Fernhill Estate is partly zoned E2 Environmental Conservation (Western Precinct), E3 Environmental Management (Central & Southern Precincts) and SP2 Infrastructure (land along Mulgoa Road) under Penrith Local Environmental Plan (PLEP) 2010. This application applies to the part of the site known as the Central Precinct.

Function Centres are not a permissible land use in the E3 Environmental Management zone. The development consent sought to be modified (DA13/1402) was determined under clause 2.8 of the PLEP 2010. The objective of clause 2.8 is to allow temporary use of land for a prohibited purpose but only for a temporary period. This is to ensure that the ongoing use and impact on the land and community is not compromised in the long term.

The current development consent for the temporary use as a function Centre has been exhausted. Records show that the first event was held on 26 April 2014. This indicates that the six month has lapsed.

Clause 2.8(2) of PLEP 2010 states:

*Despite any other provision of this Plan, **development consent** may be granted for development on land in any zone for a temporary use for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months.*

Section 96 (S96) Modification of Consent under the Environmental Planning and Assessment Act 1979 states: *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, **modify the consent**.*

It is considered that determination of a S96 application is not the granting of 'development consent'. It is the approval to modify an existing development consent. Therefore seeking an additional 14 days in a six month period for use as a Function Centre cannot be determined via a S96 approval. A new development application seeking **development consent** needs to be submitted to Council for consideration.

Notwithstanding this, the proposed removal of traffic conditions 48-51 would not be supported. Any proposed future temporary use for a function event or events would require the same level of Traffic Management Plan and Traffic Control, and any regular or permanent use of the site as a Function Centre would require suitable road works and provision of a channelized intersection treatment.

In response to notification of the application to residents surrounding the development site and public exhibition of the application, a total of 7 submissions were received, which raised the following concerns:

- Land use not permitted within the zone.
- Non compliance with existing consent. Functions on the site have been undertaken outside of approved operating hours and six month period.
- Adverse noise impacts on surrounding neighbours.
- Adverse traffic impacts on the local community.

In view of the matters outlined above, the application is recommended for refusal.

Site & Surrounds

The subject site is situated on the western side of Mulgoa Road, between Mayfair Road to the north and Fairlight Road to the south. It is approximately 700 hectares in area and is characterised by predominantly a rural landscape and comprises creek flats, gently sloping agricultural land, wooded hills and escarpment areas. The Blue Mountains National Park and Nepean River are located to the rear of the site.

The site is partly zoned E2 Environmental Conservation (Western Precinct), E3 Environmental Management (Central & Southern Precincts) and SP2 Infrastructure (land along Mulgoa Road) under Penrith Local Environmental Plan (PLEP) 2010.

The site has been identified as a State Significant Heritage Item, with the main residence (single storey ashlar sandstone house) being completed in 1845. Various structures are located on the site in addition to the main residence including stables and coach house, swimming pool, winery ruin, stone bridges, sheds, dams and rural fencing.

The surrounding area is characterised by modest sized dwellings on large rural allotments, with smaller residential lots and associated dwellings located within the adjoining Mulgoa Village area. The Blue Mountains National Park provides a backdrop for the locality.

The major roads in close proximity to the site include Mulgoa Road and The Northern Road. Mulgoa Road is aligned in a north-south direction and runs adjacent to the eastern boundary of the site, with The Northern Road located further east. Both roads provide major north-south links between Penrith and other Western Sydney suburbs, the M4 Motorway to the north and Campbelltown, Camden and other regional towns and centres south-west of Sydney, including the M5 Motorway/Hume Highway.

Mulgoa Road has a posted speed limit of 80km/h in the vicinity of the site reducing to 60km/h south of the site access in the township of Mulgoa. Mulgoa Road carries approximately 7,100 vehicles per day.

Proposal

The proposed modification seeks to:

- Use the Hayshed as a Function Centre for an additional 14 days within a six month period
- Remove traffic conditions 48-51

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

• Section 96(1A) - Modifications involving minimal environmental impact

The modified development has been assessed in accordance with the matters for consideration under Section 79C and Section 96(1A) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration.

The development consent (DA13/1402) for the use of the site as a Function Centre for no more than 14 days within a six month period was determined under clause 2.8 of the PLEP 2010. The objective of clause 2.8 is to allow temporary use of land for a prohibited purpose but only for a temporary period. This is to ensure that the ongoing use and impact on the land and community is not compromised in the long term.

The current development consent for the temporary use as a function centre has been exhausted.

Clause 2.8(2) of PLEP 2010 states:

*Despite any other provision of this Plan, **development consent** may be granted for development on land in any zone for a temporary use for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months.*

Section 96 (S96) Modification of Consent under the Environmental Planning and Assessment Act 1979 states:

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, **modify the consent**.*

It is considered that a determination of a S96 application is not the granting of 'development consent'. It is the approval to modify an existing development consent. Therefore seeking an additional 14 days in a six month period for use as a Function Centre cannot be determined via a S96 approval. A new development application seeking **development consent** needs to be submitted to Council for consideration.

Records show that the first event was held on 26 April 2014. This indicates that the six month has lapsed. Notwithstanding this, the proposal to removal of traffic conditions 48-51 would not be supported. Any proposed future temporary use for a function event or events would require the same level of Traffic Management Plan and Traffic Control, and any regular or permanent use of the site as a Function Centre would require suitable road works and provision of a channelized intersection treatment.

The proposed modification does not address the requirements of Section 96 (1A)(a) that the proposed modification is of minimal environmental impact. The modified development may impact significantly on the environment with the proposed removal of traffic conditions. Mulgoa Road is a key cross regional transport route with large volumes of traffic. The removal of traffic conditions for this land use may have adverse impacts on local and regional road travel.

The type, scale, size and timing of the proposed events has not been addressed in the application. The Section 96(1A)(b) of the EPA Act, whether the proposed development is substantially the same development as originally approved, has not been satisfied.

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

SREP No. 20 applies to the subject land and stipulates that the consent authority shall not grant consent to a development application unless it is of the opinion that the carrying out of the development is consistent with any relevant, general and specific aim of SREP 20. The general aims and objectives of the plan are directed towards improving the amenity of the river and protecting the lands within the river valley, including scenic quality.

The proposal would have minimal impacts in this regard and is considered unlikely to compromise the water or scenic qualities of the river environment.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.8 Are the temporary use of land requirements achieved?	Does not comply - See discussion

Clause 1.2 Aims of the plan

The proposed development does not comply with the Aims of the Plan as it has not satisfied the provisions of clause 2.8 of PLEP 2010.

Clause 2.3 Permissibility

The part of the Fernhill Estate that this application applies to is zoned E3 Environmental Management under PLEP 2010. Function Centres are not a permissible land use in this zone. The development consent (DA13/1402) for the *Use of the site as Function Centre for no more than 14 days within a six month period* was determined under clause 2.8 of the PLEP 2010 for the temporary use of the land. The objective of clause 2.8 of the PLEP 2010 is to allow temporary use of land for a prohibited purpose but only for a temporary period. This is to ensure that the ongoing use and impact on the land and community is not compromised in the long term.

The development consent for DA13/1402 for the use of the site as a function centre for no more than 14 days within a six month period has been exhausted.

Clause 2.3 Zone objectives

The part of the Fernhill Estate that this application applies to is zoned E3 Environmental Management under the provisions of Penrith Local Environmental Plan 2010.

The zone objectives are:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To ensure development is compatible with the environmental capabilities of the land and does not unreasonably increase the demand for public services or public facilities.
- To preserve and improve natural resources through appropriate land management practices

These zone objectives have not been met.

Clause 2.8 Are the temporary use of land requirements achieved?

The part of the Fernhill Estate that this application applies to is zoned E3 Environmental Management under Penrith Local Environmental Plan (PLEP) 2010. Function Centres are not a permissible land use in this zone. The development consent for the use of the site for a Function Centre for no more than 14 days within a six month period (DA13/1402) was determined under clause 2.8 of the PLEP 2010. The objective of clause 2.8 of the PLEP 2010 is to allow temporary use of land for a prohibited purpose but only for a temporary period. This is to ensure that the ongoing use and impact on the land and community is not compromised long term.

The development consent for DA13/1402 has been exhausted. Records show that the first event was held on 26 April 2014. This indicates that the six month has lapsed.

Clause 2.8(2) of PLEP 2010 states:

*Despite any other provision of this Plan, **development consent** may be granted for development on land in any zone for a temporary use for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months.*

S96 Modification of Consent under the Environmental Planning and Assessment Act 1979 states:

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, **modify the consent**.*

It is considered that determination of a S96 application is not the granting of 'development consent'. It is the approval to modify an existing development consent. Therefore seeking an additional 14 days in a six month period for use as a Function Centre cannot be determined via a S96 approval. A new development application seeking **development consent** needs to be submitted to Council for consideration.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
-----------	------------

Section 79C(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
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	N/A
E9 Mulgoa Valley controls	Does not comply - see Appendix - Development Control Plan Compliance

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the modified development was notified to nearby and adjoining residents.

Council notified 54 residences in the area and the exhibition period occurred between 22 January and 8 February 2016. Council received 7 submissions in response.

Submissions

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

Issue raised	Comment
<i>Validity of application as owner and applicant changed from original application.</i>	Council is satisfied with the owner's consent and applicant details provided for the lodgement of the application.
<i>Land use not permitted within the zone.</i>	Function Centres are not a permissible land use within the E3 Environmental Management zone under the provisions of PLEP. DA13/1402 was determined under clause 2.8 of PLEP 2010, Temporary Use of Land, which permits the above uses for a temporary duration which was stipulated within the consent conditions. The temporary modification is in conflict with the temporary land use provisions of the LEP which renders the proposal a prohibited development.
<i>Non-compliance with existing consent. Functions on the site have been undertaken outside of the approved operating hours and six month period.</i>	It is noted Council has received complaints from surrounding residents in relation to: <ul style="list-style-type: none"> · events held outside of approved hours of operation · noise impacts from events Appropriate action at the time was undertaken by Council's Compliance team.
<i>The Function Centre was approved under clause 2.8 of Penrith LEP which states that council must be satisfied that the temporary use does not have an adverse impact on neighbouring properties. Residents have made Council aware of impacts associated with this temporary land use such as traffic, noise and operating outside of approved times.</i>	It is noted surrounding residents have made Council aware of impacts experienced during event times. Appropriate action at the time was undertaken by Council's Compliance team.
<i>Adverse noise impacts on surrounding neighbours from music associated with events, especially when outside of operating hours.</i>	It is noted complaints have been received from surrounding residents in relation to events held outside of approved hours of operation and noise impacts. Appropriate action at the time was undertaken by Council's Compliance team.
<i>Adverse traffic impacts on the local community. Public safety issues such as access points have poor visibility.</i>	The removal of traffic control measures and management is not supported and the application is recommended for refusal.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	Not supported
Legal	Not supported

Conclusion

In assessing this application against the relevant environmental planning policies, being the Environmental Planning and Assessment Act 1979 and Penrith Local Environmental Plan 2010, the proposal does not satisfy the aims, objectives and provisions of these policies.

Therefore, the application is not worthy of support and is recommended for refusal.

Recommendation

1. That the S96(1A) application seeking to modify the development consent for DA13/1402 for Use of the site as a Function Centre for an additional 14 days within a six month period and the removal of traffic conditions 48-51 be refused based on the recommended reasons for refusal.
2. That those making submissions are notified of the determination.

Refusal

1 X Special 01 (Refusal under Section 96(1A) of EPA Act 1979)

- The application is not satisfactory for the purpose of Section 96(1A) of the Environmental Planning and Assessment Act 1979 as the consent has lapsed and cannot be modified.
- The application has not addressed the requirements of Section 96(1A) of the Environmental Planning and Assessment Act 1979 and whether the proposal is substantially the same development as originally approved rendering the proposal a prohibited land use.

2 X Special 02 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of **Local Environmental Plan 2010**:

- Clause 1.2 aims and objectives - protect the environmental values, rural qualities and social well-being of communities.
- Objectives of the E3 Environmental Management zone - Development should not have an adverse effect on the aesthetic value of the area or conflict with other land uses.
- Objectives of Clause 7.18 Mulgoa Valley - protect and enhance the rural landscape of the valley and ensure traffic generating development does not adversely affect the safety, efficiency and rural character of Mulgoa Road.

3 X Special 04 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of Penrith **Development Control Plan 2014**:

DCP Principles

D1 - Rural Land uses

E9 - Mulgoa Valley

4 X Special 07 (Refusal under Section 79C(1)(b) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act in terms of likely environmental and social impacts on the locality regarding traffic management measures.

5 X Special 08 (Refusal under Section 79C(1)(c) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the proposed modified development due to its inconsistency with the existing and desired future character of the locality.

6 X Special 9 (Refusal under Section 79C(1)(d) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(d) of the Environmental Planning and Assessment Act due to matters raised in submissions *which include*:

- traffic impacts - adversely affect the safe and efficient operation of Mulgoa Road.
- noise impacts - adjoining properties impacted by noise associated with previous events held on the site.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The principles of development control is to ensure that the development of land is sustainable and responsive to the needs of current and future generations. The proposed modification is unable to comply with relevant development controls. The non-compliance items have not been addressed in a satisfactory manner.

D1 Rural Land Uses

The proposed modification would impact on the rural character of the area, including its scenic and landscape qualities. The proposal conflicts with the rural amenity and environmental values of Mulgoa Valley, and places an increased demand on Mulgoa Road. The adjoining properties have been impacted by noise associated with prior events and traffic congestion.

E9 Mulgoa Valley

An important part of Mulgoa Valley, and appreciating its landscape, is the drive along Mulgoa Road. The nature of the events proposed, the volume and projected queues of vehicles needing to gain access to the site, along with current sight distances from the access point, has the potential to adversely affect the safe and efficient operation of Mulgoa. For this reason, the proposed modification could not be supported.