

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA14/0297
Proposed development:	Stage 2 Torrens Title Subdivision for the Creation of 138 Allotments and Associated Road Construction and Drainage Works
Property address:	112 Wrights Lane, CASTLEREAGH NSW 2749 1643 - 1655 Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749 32 McCarthys Lane, CASTLEREAGH NSW 2749 1531 Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749 Wright's Lane, CASTLEREAGH NSW 2749 0 McCarthys Lane, CASTLEREAGH NSW 2749 167 - 233 a McCarthys Lane, CASTLEREAGH NSW 2749 63 Castlereagh Road, CASTLEREAGH NSW 2749 1439 A Old Castlereagh Road, CASTLEREAGH NSW 2749 1439 a Closed Road Off Castlereagh Road, CASTLEREAGH NSW 2749 1340 - 1772 Castlereagh Road, CASTLEREAGH NSW 2749
Property description:	Lot 1 DP 653149 Lot 1 DP 194699 Lot 3 DP 847895 Lot 1 DP 882358 Lot 2 DP 882361 Lot 1 DP 1094333 Lot 2 DP 882358 Lot 1 DP 860391 Lot 14 DP 1013504 Lot 15 DP 1013504 Lot 63 DP 1111742 Lot 299 DP 752021 Lot 3 DP 1107181 Lot 2 DP 116082 Lot 3 DP 116082 Lot 101 DP 1043500 Lot 1 DP 116082 Lot B DP 394967 Lot A DP 394967 Lot 102 DP 1043503 Lot 1 DP 129802 Lot 16 DP 1013504 Lot 17 DP 1013504 Lot 18 DP 1013504 Lot 1 DP 229462
Date received:	19 March 2014
Assessing officer	Gavin Cherry
Class of building:	N/A
Recommendations:	Refuse

Executive Summary

The Development Application is for the subdivision of part of the Penrith Lakes Scheme (proposed Lot 4 under DA14/0151) into 138 x allotments with the remainder of the Penrith Lakes Scheme as per the separate proposed consolidation and resubdivision application (DA14/0151). Each residential allotment is proposed to provide a minimum 2.0ha in site area. The proposal also includes the construction of an internal road network, intersections with Castlereagh Road and construction of a drainage network servicing the proposed subdivision. It is noted that the application specifically references that use of the lots (residential or otherwise) is not proposed as part of the current application.

The Development Application was not the subject of a specific prelodgement however other proposed residential subdivision within the Penrith Lakes Scheme were the subject of prelodgement discussions where it was outlined to the applicant that the proposals were not considered to be a permissible land use under the provisions of the SEPP (Penrith Lakes) 1989, that the SEPP overrides the provisions of IDO 93 in the event of an inconsistency and that site wide concerns raised with previous proposals remain in place with respect drainage, filling and flood management implications across the entire scheme.

The application was lodged with Council despite this previous advice and has been assessed having regard to Section 79C of the EP&A Act, 1979 including the provisions of SEPP (Penrith Lakes) 1989, IDO No.93, DCP 2006 and external legal advice. Having regard to these considerations, the proposal is not considered to be a permissible form of development on the site and is not a supportable development outcome as it is considered to pre-empt broader strategic planning works yet to be completed being amendment of the SEPP, preparation, exhibition and adoption of a revised SEPP Structure Plan and identification of suitable land for urban development.

The application was placed on public exhibition and notification for fourteen (14) days. Nine (9) individual submissions and a petition was received raising similar issues to those outlined above.

The application is recommended for refusal.

Site & Surrounds

The Penrith Lakes site is located on the Castlereagh floodplain of the Nepean River, approximately 3km north of the Penrith Central Business District. The entire Lakes site is approximately 1935ha in area and is approximately 6.5km long and 3.5km wide (at its widest point). The Lakes site is bound by the Nepean River to the south, Cranebrook Village to the east and rural land to the north.

The site has been intensively quarried for sand and gravel over the last 20 years. The works are in accordance with the SEPP (Penrith Lakes Scheme) 1989 with Part of Lake A being formed with the Regatta Centre and Whitewater Stadium established on the Lakes site. As quarrying operations are now generally completed, the site is progressively being rehabilitated to form a series of lakes and open space areas. It is anticipated that operations will be completed by April 2015.

Proposed Lot 4 which is the subject of the current application is bound internally by the lakes to the south, north and west with Castlereagh Road to the east. The proposed lot includes a number of identified heritage items including a Cemetery Site.

Proposal

The Development Application is for the subdivision of part of the Penrith Lakes Scheme (proposed Lot 4 under DA14/0151) into 138 x allotments with the remainder of the Penrith Lakes Scheme as per the separate proposed consolidation and resubdivision application (DA14/0151). Each residential allotment is proposed to provide a minimum 2.0ha in site area. The proposal also includes the construction of an internal road network, intersections with Castlereagh Road and construction of a drainage network servicing the proposed subdivision. It is noted that the application specifically references that use of the lots (residential or otherwise) is not proposed as part of the current application.

Plans that apply

- 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

Planning Assessment

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

State Environmental Planning Policy (Infrastructure) 2007

As assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (Infrastructure) 2007 and the application was referred to the NSW Roads and Maritime Services as 'traffic generating development'. Comments were received to the proposed development raising objection to the proposal (dated 7 July 2014).

State Environmental Planning Policy (Penrith Lakes Scheme) 1989

The permissibility of the subdivision applications is affected by the following environmental planning instruments:

- Penrith Local Environmental Plan 1991;
- Interim Development Order No. 93;
- SEPP (Penrith Lakes Scheme) 1989;
- Draft Penrith Local Environmental Plan (Stage 2).

While IDO93 permits subdivision, the SEPP specifically prohibits works which are not deemed to 'Implement the Penrith Lakes Scheme'.

The proposed subdivisions are not considered to be permissible pursuant to the provisions of SEPP (Penrith Lakes Scheme) 1989. In particular, 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. Development that is defined and permitted pursuant to clauses 9-11A is also quite specific (and does not include subdivision for residential purposes).

Development that is defined and permitted pursuant to clause 8(1) of the policy is however broader and provides that development for the purposes of "implementing the Penrith Lakes Scheme" is permissible. Further, the relevant consent authority must not grant consent to development unless satisfied of those matters pursuant to clause 8(2) of the policy.

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)."

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. While there is an identified inconsistency between the permissibility standards within the IDO and the SEPP, the SEPP prevails over the IDO (pursuant to Section 36 of the EPA Act 1979 and Clause 4 of the SEPP (Penrith Lakes Scheme)). As such, the proposed subdivision is not considered to be a permissible form of development under the current environmental planning instrument framework and cannot be supported.

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.

Penrith Interim Development Order No.93

Provision	Compliance
All Clauses	Does not comply - See discussion

Compliance with the provisions of the IDO No. 93

The subject site is affected by the provisions of IDO No. 93 (being land contained within the boundaries of Schedule B - Map). Under the IDO the site is zoned Rural A2 which permits dwelling houses, open space and roads subject to consent from Council. Clause 5(1) also permits subdivision of land subject to consent of Council provided a minimum lot area of 2.0 hectares is retained. The proposed subdivision ensures the minimum lot size requirements in the IDO are complied with.

Clause 9 of the IDO also provides that no building having frontage to a classified road can be constructed within a setback of 30m to the nearest alignment of that road. The proposed subdivision pattern provides lots backing onto Castlereagh Road however it is acknowledged that if the subdivision was approved, the future dwelling construction could ensure compliance with this 30m setback requirement.

Subclause 16 of the IDO requires that Council consider flooding and viewscape impacts of dwelling houses on existing waterbodies as well as traffic and access arrangements. The proposed development is considered to affect flood behaviour. DA14/0151 separately under assessment does indicate that the subdivision (subject of this application) seeks to provide lots to the flood planning level which necessitates fill which has not been accepted by Council (despite approvals being issued through the Department of Planning and Environment). This issue is addressed in detail within this assessment under 'Likley Impacts'. Traffic access and increased vehicle movements have also been reviewed and are considered to be unsatisfactory, again reflective of a pre-emptive subdivision scheme contrary to the principles and permissibility requirements outlined within SEPP (Penrith Lakes Scheme) 1989. As a result Subclause 16 of the IDO is not considered to have been satisfied.

As a result the proposal is considered unsatisfactory with respect to the provisions of IDO No. 93.

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

Draft Stage 2 of the Penrith Local Environmental Plan 2010 as exhibited applies to the site. The site under this instrument was intended to be zoned RU1 Primary Production with minimum lot sizes of 20 hectares. Clause 1.8 of the Draft LEP (as exhibited) however doesn't include IDO No. 93 as a repealed instrument. Following exhibition and in response to received submissions, a report was referred to Council's Policy Review Committee Meeting (11/11/2013) which recommended that the Penrith Lakes Scheme be excluded from the Draft LEP. This recommendation was adopted and as such the Draft LEP no longer applies to the subject site.

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

Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.2 - Crime prevention through environmental design	N/A
Chapter 2.3 - Engineering works	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.4 - Erosion and sediment control	Complies
Chapter 2.5 - Heritage management	Complies
Chapter 2.6 - Landscape	Complies
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	Complies
Chapter 2.9 - Waste planning	Complies
Chapter 2.10 - Flood liable land	Does not comply - see Appendix - Development Control Plan Compliance
Chapter 2.11 - Car parking	N/A
Chapter 2.12 - On-site sewage management	Complies
Chapter 2.13 - Tree preservation	Complies
Chapter 4.7 - Guidelines for subdivision	Does not comply - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iv) The provisions of the regulations

The proposed development is satisfactory with respect to the applicable requirements within the Regulations.

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

Likely impacts of the proposed development as identified throughout the assessment process include:

Context and setting

The proposal is sympathetic to the surrounding residential character of the locality as the subdivision pattern is consistent with the existing subdivision pattern of the area.

Access, traffic and transportation impacts

The traffic generation resulting from the proposed development is considered to be satisfactory and sustainable within the local road network.

Environmental Considerations

Noise Impacts

The information submitted in support of the application was found to be deficient for the following reasons:

- *Contour mapping of the predicted noise levels associated with the noise impacts of Castlereagh Road needs to be provided.*
- *The NSW Road Noise Policy criteria applied is not considered appropriate. The criteria used was "Existing residences affected by noise from redevelopment of existing freeway/arterial/sub-arterial roads". The proposed development does not include 'existing residences' and does not involve 'the redevelopment of existing ... roads'. The application needs to ensure that the likely future residences within the development can achieve the recommended design sound levels for building interiors as stated in Table 1 of AS/NZS 2107:2000. The tables included in Section 5 need to be amended to reflect this criteria.*
- *Further to the above, the Report has not addressed Section 2.4 of the NSW Road Noise Policy.*

The development is considered to be a traffic generating development and it needs to be ensured that this

development is not having any impact on nearby residences.

· *The Report states that a small percentage of Lots will exceed the sleep disturbance criteria if windows of the dwellings are open. It is not clear which lots will exceed the sleep disturbance criteria and this information needs to be provided. In addition, it is not appropriate for the criteria to be exceeded, as residents should have the ability to open windows if they wish, and recommendations should be made regarding construction methods that may reduce this impact. It is noted that if windows or doors are required to be closed, then certain ventilation requirements also need to be considered so that occupants can leave the windows or doors closed.*

· *It is also not clear whether the noise impacts associated with Castlereagh Road have been considered for both two storey and single storey dwellings, or whether a certain dwelling type should be constructed to ensure further mitigation to other lots. Both dwelling types should be considered at this time, as restrictions may need to be applied to the proposed lots.*

As a result of these identified deficiencies the proposed application is considered unsatisfactory and unsupportable.

Wastewater

The applicant indicates an intention to connect to Sydney Water infrastructure for water and sewer management. It has not been sufficiently demonstrated that this can occur as an onsite sewerage management strategy would need to be formulated if this is the case.

Land Contamination

The applicant has stated that the documentation provided to date has "clearly demonstrated that suitable measures are in place to remediate the land to comply with all relevant criteria". However, the provisions of SEPP 55 are yet to be adequately addressed as detailed below:-

· *The document has not indicated the timeframes that will be met in relation to the further investigation and remediation works. In turn, it is not clear whether the site will be suitable for the proposed residential use prior to subdivision.*

· *Further to this, it is not clear whether development consent has been obtained in accordance with SREP 20 and SEPP 55 for the remediation works, or whether it has been addressed through a historical development application (such as a part of the rehabilitation works undertaken on the site). Remediation works require development consent in the Penrith Local Government Area, as all works are considered Category 1 remediation works under SEPP 55 due to SREP 20.*

· *It is acknowledged that Penrith Lakes Development Corporation is intending to follow the Site Auditor Scheme. However, a Site Audit Statement and its associated Report should then be provided to Council prior to the determination of this development application to ensure that the site is suitable for the proposed residential use. Development consent for the remediation works is still required.*

State Environmental Planning Policy No 55 – Remediation of Land states that:

(1) A consent authority must not consent to the carrying out of any development on land unless:

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that 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, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

While the additional information submitted in support of the development application includes a statement from an appropriately qualified consultant in relation to the site, the information does not include any of the supporting documentation referred to in the statement for Council to confirm their conclusions. The statement acknowledges that a number of areas of environmental concern (AEC) have been identified, and that mechanisms have been put in place to assess and validate these areas in line with the relevant guideline documents. However, it also states the following:

· *All identified AEC's have been and continue to be progressively remediated since that time and have each been subject to validation prior to quarrying activity, landform rehabilitation and/or dedication.*

· *All identified contaminated areas that have been remediated to date have complied with the end land use upon completion of works. In the case of Lot 4, the end land use is shown on the structure plan as a future urban area and DLA is engaged therefore, to ensure that future remedial works will achieve compliance with NEPC, 2013 and SEPP-55.*

· *Some validation reporting is complete for Lot 4 and it is planned to complete all validation reporting by June 2014.*

This confirms that not all of the site is suitable for the proposed development at this point in time. In addition, Council has not received any information regarding what areas have been validated to date, or any documentation that confirms their suitability. Site Audit Statements (SAS) will need to be prepared as each area is validated to confirm the suitability of the site. However, SAS's may also contain conditions, such as a condition requiring the implementation of an environmental management plan. Council needs to receive and review the Site Audit Statements and their associated Reports prior to determination so that any of these conditions can be considered and adequately incorporated into the consent if required. This would also then provide the assurance that all remediation works have been undertaken satisfactorily and that the site is suitable for the proposed use.

Under the provisions of the SEPP and DCP, Council needs to be satisfied that the land is suitable, or that it can be made suitable for the development to address point (b). However, Council has not received sufficient information about the contamination status of the site and as such the proposal is considered to be unsatisfactory and unsupportable.

Flora and Fauna

The information submitted in support of the application was found to be deficient for the following reasons:

- *Page 10 of the Statement of Environmental Effects identifies that there are stands of remnant Cumberland Plain Woodland present. These have not been assessed in the "Urban Flora and Fauna Review" prepared by Justin Russell of Penrith Lakes Development Corporation (dated 24/2/2014) nor are they identified on any mapping or survey plans and no vegetation has been identified for removal.*
- *The "Urban Flora and Fauna Review" prepared by Justin Russell of Penrith Lakes Development Corporation (dated 24/2/2014) has not identified any threatened flora or fauna species or ecological communities, any migratory species within the site or within the immediate vicinity of the site. This contradicts data available on the Atlas of Living Australia which identifies numerous threatened and migratory species being observed within the site or in the immediate vicinity of the site.*
- *The "Urban Flora and Fauna Review" prepared by Justin Russell of Penrith Lakes Development Corporation (dated 24/2/2014) does not meet the requirements of the Threatened Species Assessment Guidelines – The Assessment of Significance for the TSC Act (DECCW (OEH), 2007) or the Significant Impact Guidelines 1.1 - Matters of National Environmental Significance for the EPBC Act (Prepared by the Commonwealth Department of the Environment, Water, Heritage and the Arts 2009). These guidelines specifically state that the assessment is to take into account the broader study area and any impacts on the broader study area and both direct and indirect impacts.*
- *Potential future direct and indirect impacts of development around the lakes on the faunal habitat value of the lakes has not been considered.*
- *The flora and fauna assessment must take into account any future impacts on biodiversity as a result of the proposed subdivision.*
- *The proposed 'Street tree' plan included in the "Urban Flora and Fauna Review" is not suitable. Species are not specified nor is in which circumstances each species are to be used identified. A detailed Street Tree and Landscape plan is to be provided.*

Based on the above comments and review of the proposal, the proposed application is unsatisfactory and the following additional information would need to be provided to enable adequate assessment of the proposal:

1. *The applicant is to provide information on the distance of the lot boundaries from the final height of the lakes.*
2. *The current flora and fauna report is not sufficient. The applicant is to provide a full flora and fauna assessment report in accordance with the Threatened Species Assessment Guidelines – The Assessment of Significance for the TSC Act (DECCW (OEH), 2007) or the Significant Impact Guidelines 1.1 - Matters of National Environmental Significance for the EPBC Act (Prepared by the Commonwealth Department of the Environment, Water, Heritage and the Arts 2009). All known and likely species within the Broader Study Area are to be included. Potential impacts of the development on the habitat value of the lakes have not been considered. The assessment must take into account any future impacts as a result of the proposed subdivision. The applicant is to note that migratory birds are known to utilise the lakes. Other potential fauna species include (but are not limited to) bats, reptiles and amphibians. It is also to include an assessment of the stands of remnant Cumberland Plain Woodland that are noted on page 10 of the*

Statement of Environmental Effects.

3. *A survey plan is to be provided that identifies any native vegetation present and any trees that are proposed to be removed.*
4. *A detailed Street Tree and Landscape plan is to be provided. See the DCP for requirements.*

Water Quality

The Statement of Environmental Effects states that the proposed subdivision provides for the separation of the water bodies and associated buffer area from the land parcels, however no detail on the widths of the buffer areas has been provided. This proposal also seeks to subdivide proposed Lot 4 (DA14/0151) into 138 allotments no less than 2 ha, however the Statement of Environmental Effects states that the subdivision will be staged with the potential to facilitate further subdivision of the lots subject to further consent in the future.

The Stormwater Management Plan prepared by J. Wyndham Prince states that the 2ha rural lots in the subdivision will be used to treat the majority of the stormwater runoff before it enters the lakes scheme. This however is not considered appropriate as the lots are likely to be further subdivided later, therefore not providing the surface area for treatment on which the calculations rely. Furthermore, the lots cannot be considered to be the same as heavily vegetated swales for the purposes of the MUSIC modelling as they will likely be turfed and mown and under individual allotment ownership which could change their characteristics over time.

While the stated stormwater quality targets are broadly consistent with the targets set in Council's WSUD Policy, the methodology and some of the parameters used in the modelling are not considered appropriate. To address identified deficiencies, the following additional information would be required to enable adequate assessment of the proposal:-

- *Electronic copies of the MUSIC model are to be submitted to Council for review. The model must include a report that clearly identifies catchment break up, splitting of surface types and all other assumptions that have been made in the model.*
- *Council has developed a range of parameters to be used in the stormwater modelling, which is available in Council's WSUD Technical guidelines (available at www.penrithcity.nsw.gov.au)*
- *The SEI value used in the model should be no more than 3.5*
- *The Penrith Lakes AWS is a more appropriate rainfall data set given the proximity to the proposed site*
- *The proposed 'swales' have a maximum fall of 0.5%. This is likely to retain water and become waterlogged.*
- *It is considered more appropriate to incorporate additional specific treatment devices such as bio-retention basins into the stormwater treatment train to adequately treat stormwater runoff before it enters the lakes system. These options should be explored.*
- *The information submitted with the development application is to include a WSUD Strategy which includes concept designs of the proposed stormwater treatment measures as well as a draft Operation and Maintenance manual with details of the cleaning/maintenance requirements as well as an estimation of the annual and lifecycle costs associated with the proposed treatment measures and details on how this will be resourced/managed.*

Socioeconomic Impacts

The proposal is not considered to result in adverse socio - economic impacts to the surrounding community provided the above environmental considerations are sufficiently addressed.

Traffic and Transport

Whilst the Traffic Report submitted in support of the application indicates that an upgrade to the intersection of McCarthy's Lane and Castlereagh Road is not warranted, the existing turn treatments were intended to be upgraded to a signalised intersection at some stage of the Lakes Development. It is noted that the Traffic Report also indicates that the highest traffic movements to and from the subdivision is predicted to be at McCarthy's Lane intersection, with vehicles travelling to and from Penrith. The Traffic Report indicates that the Intersections 2 and 3, north of Cranebrook Road, will be standard T intersections due to the low turn volumes and low volumes on Castlereagh Road however insufficient detail is provided for an adequate assessment.

To enable detailed assessment of the proposal, the following additional information would be required to be

submitted:-

- *the proposed intersections - detailed design and analysis and road safety audits in accordance with RMS Guidelines and Austroads Guide to Road Safety -Intersection Design.*
- *details of internal roads with regard to road widths etc given intention as future residential subdivision rather than rural subdivision.*
- *the internal road network is to include an off-road shared-use path as part of the collector road through the subdivision.*

The RMS Guide to Traffic Generating Developments estimates 0.85 vehicle trips per peak hour per dwelling. The Traffic Report has estimated 1 vehicle trip per peak hour per dwelling given the low density nature of the area with no public transport. However, it is noted that the proposed lots are expected to be further subdivided in future applications increasing the expected traffic trips. The highest traffic movements to and from the subdivision is predicted to be at McCarthy's Lane intersection, with vehicles travelling to and from Penrith. Based on the subdivision proposal currently lodged, no adverse traffic conditions are expected from this low density increase.

Mainstream Flooding

Discussions regarding the impacts of Flooding and Flood Planning Levels (FPLs) detailed within Penrith Lakes Scheme Water Management Plan 2012 is still going on between the Department of Planning, Council and PLDC.

Based upon Council's Nepean River Flood Model, the adopted 1% AEP mainstream flood level (23.1m AHD) indicates that the proposed development cannot be supported as the proposed allotments will be affected by approximately 2-3m of flood depth during the above flood event.

As a result of this flooding affectation, and outstanding resolution of ongoing flood management concerns across the Penrith Lakes Scheme, Council is not in a position to accurately assess and accept the resulting 1% AEP flood levels of the development site until such time the impacts of flooding and FPLs to the vicinity of Nepean River (upstream and downstream) by the entire Penrith Lakes Scheme has been determined and accepted by Council. As a result the development is considered unsatisfactory and unsupportable.

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

The site is not considered to be suitable for the proposed development as the extent of urban development capability under the provisions of the SEPP (Penrith Lakes) and associated Structure Plan are yet to be established.

Until such time as permissibility is established, and all environmental investigations and reporting is undertaken to demonstrate site suitability for intensified residential development, the proposal is not considered to be a supportable form of development.

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 application was publicly notified and advertised for fourteen (14) days.

In response two individual submissions were received and a petition was received.

Submissions

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

Issue Raised	Comments
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<p>The assessment of the application should not be finalised prior to the completion and full consideration of the Master Plan currenting being prepared by the Office of Penrith Lakes.</p> <p>The benefits of the master plan should not be constrained, diluted or compromised by conflicts with a prematurely approved subdivision framework</p>	<p>The issue raised is considered to be a satisfactory reason for refusal as the proposal is not a permissible form of development under the current planning instruments and pre-empts broader stratgic planning work requiring preparation, exhibition and adoption of a revised Structure Plan across the precinct.</p>
<p>The proposal will deny public access to the lake frontage which is morally wrong.</p>	<p>The proposed subdivision is not supported as the proposal is not yet a permissible form of development and requires a structure plan be prepared to identiy appropriate locations for residential development and open space provision.</p>
<p>Castlereagh Road is a bottleneck and the additional traffic generated would be a burden on an extremelly busy road (noting additional traffic from Thornton).</p>	<p>The proposed traffic generation and resulting impacts on Castlereagh Road were reviewed and Council's Traffic Section raise no objection ti the proposal in terms of traffic generation. Intersection design requirements remain unresolved and the proposal is not supported.</p>
<p>I received a flyer outlining that 3 million tonnes of fill is proposed to be trucked in from Kemps Creek. This is unacceptable and should be clarified.</p>	<p>The proposal does not propose any fill. The flyer was circulated privately and is affiliated with Council or the assessment of the application.</p>
<p>What will be done to minise dust caused by the development of the nine lots?</p>	<p>The proposed subdivision is not supported. In the event that the application was approved, conditions would be imposed to regulate erosion and sedimenation and dust emissions resulting from works.</p>
<p>The proposed Stage 2 Subdivision (DA14/0297) will create negative social and environmental impacts on Penrith, will increase traffic, reduce safety, increase flood risk and deny foreshore public access around the lake foreshore.</p> <p>A reduction in the number of wiers from 4 to 2 and the flooding impacts are unsatisfactory.</p>	<p>The stage 2 subdivision proposal is the subject of a seperate development application.</p> <p>Weir reduction is not the subject of this application.</p> <p>The issue raised with respect to increased flood risk is considered to be a satisfactory reason for refusal as the proposal has not sufficiently addressed broader filling, site drainage and flood management implications across the site, throughout the Penrith Lakes Scheme and downstream properties.</p> <p>Issues regarding increased traffic and foreshore access are either not applicable to this application (foreshore access) or are satisfactory, as the proposal is not considered to adversely impact on the capacity of the road to accomodate additional vehicles from the proposed lots.</p>
<p>The application makes references to a Deed of Agreement (9187) which has never been made public. Parties to the agreement should disclose the details of the agreement to the community.</p>	<p>Council is not party to the deed of agreement and cannot arrange discloure of its contents.</p>

The applications must comply with SEPP 11 - Penrith Lakes.	SEPP 11 relates to 'Traffic Generating Developmnrnts' and not Penrith Lakes, is a repealed instrument and is not applicable to the proposal. The applicable instrument is SEPP (Penrith Lakes) 1989.
Reliance on a construction specification used for tendering processes is inadequate. A specific Construction Management Plan should be implimented.	The proposed subdivision and management measures are not supported.

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	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Environmental - Biodiversity	Not supported
Traffic Engineer	Awaiting additional information

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

The proposed development is not considered to be in the public interest due to the outstanding matters raised concerning permissibility, strategic master planning requirements, contamination and remediation, flood management, protection of critical vegetation and biodiversity preservation and water sensitive urban design considerations.

Conclusion

In assessing this application against the relevant environmental planning policies, the proposal does not satisfy the aims, objectives and provisions of these policies.

Support for this application would set an undesirable precedent given a structure plan is yet to be prepared, exhibited and adopted for the Penrith Lakes Scheme and a commitment to urban development capability is yet to be resolved through the Department of Planning and Environment and NSW Office of Penrith Lakes.

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

Recommendation

1. That the Development Application be refused for the reasons outlined within this report.
2. That those making a submission are advised of the determination.

Refusal

1 X Refusal condition - Likely impacts

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act as the application has not sufficiently demonstrated that contamination and remediation, acoustic impacts, site drainage and precinct wide flood management matters have been sufficiently addressed.

2 X Refusal condition - SEPP Penrith Lakes Scheme

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act for the following reasons:-

- The proposed development is not a permissible form of development having regard to Clause 4, 7 and 8 of State Environmental Planning Policy (Penrith Lakes Scheme) 1989; and
- Clause 2(2)(c) (Aims / Objectives) of the SEPP seeks to permit the identification of land which may be rezoned for urban purposes but does not itself permit development for urban purposes.

3 X Refusal condition - Suitability of the site

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the application has not demonstrated the site is suitable for the proposed development with respect to contamination and remediation investigations, acoustic impacts, biodiversity conservation, site drainage and flood management.

4 X Special 10 (Refusal under Section 79C(1)(e) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 79C(1)(e) of the Environmental Planning and Assessment Act as the proposal is not considered to be in the public interest.

5 X Special 2 (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 application has not sufficiently demonstrated that the land is suitable for the proposed development with regard to State Environmental Planning Policy No. 55 - Remediation of Land

6 X Special 4 (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 aims, objectives and development standards within Penrith Development Control Plan 2006.

7 X Special 7 (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 impacts resulting from the development with respect to flood management, heritage conservation, biodiversity conservation, water sensitive urban design, contamination testing and potential remediation.

8 X Special 8 (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 considered to be suitable for the proposed development due to likely environmental and social impacts resulting from the proposed works and the need for further strategic investigation (master planning and structure planning) to ascertain appropriate locations for intensified urban development within the Penrith Lakes Scheme.

9 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 the received submissions.

Appendix - Development Control Plan Compliance

Development Control Plan 2006

Part 2 - City wide controls

An assessment of the applicable development standards within the DCP is outlined below:-

2.1 Contaminated Land

The applicant is yet to submit sufficient information to adequately key considerations within SEPP 55 or demonstrate that the land is suitable for the proposed subdivision and future development which while not specifically proposed, is intended to be residential in nature. Contamination and potential remediation is addressed in further detail within the 'Likely Impacts' section of this report and are sufficient reasons to refuse the application.

As a result Clause 2.1 of DCP 2006 is not considered to have been sufficiently addressed or satisfied.

2.3 Engineering Works

The applicant is yet to submit sufficient information to adequately key considerations within DCP concerning water quality and is yet to sufficient demonstrate separation if water bodies and associated buffer areas from the land parcels (despite indicates from the Department of Planning and Environment that the buffer setbacks include a foreshore periphery). The application also doesnt include sufficient modelling information with inadequate parametres utilised to build the model. It is also considered that specific treatment devices such as bioretention basins into the stormwater treatment train are required to adequately treat stormwater runoff before it enters the lakes system and that a comprehensive WSUD Strategy should be prepared addressing concept designs of the proposed stormwater treatment measures as well as a draft operation and maintenance manual.

As a result Clause 2.3 of DCP 2006 (and the referenced Guidelines for Engineering Works for Subdivisions and Developments Part 1 and Part 2) are not considered to have been sufficiently addressed or satisfied.

2.4 Erosion and Sediment Control

The provisions of suitable erosion and sedimentation controls can be conditioned in the event that the application is supported.

2.5 Heritage Management

The site contains listed heritage items however no works are proposed to the items. he applicant has submitted insufficient information to adequately assess the proposed subdivision pattern on these identified items which includes establishment of sufficient curtilledge around the items as well as ownership and maintenance.

2.6 Landscape

The site is affected by trees . The proposed earthworks and APZ requirements across the site will necessitate some tree removal which is considered satisfactory subject to conditions of consent if the application was to be supported.

Street planting can also be conditioned in the event that the application was supported.

2.7 Notification and Advertising

The application was publicly notified and exhibited in accordance with the DCP requirements.

2.9 Waste Planning

The proposed development is considered to be suitable to accommodate waste collection and waste collection vehicles within the existing road reserve.

2.10 Flood Liable Land

The site is the subject of ongoing dispute concerning proposed / approved finished ground levels and resulting flooding impacts downstream. This is detailed further within this report under ' Likely Impacts'.

2.13 Tree Preservation

The site is affected by trees . The proposed earthworks and APZ requirements across the site will necessitate some tree removal which is considered satisfactory subject to conditions of consent if the application was to be supported.

Part 4 (Chapter 4.7) - Guidelines for subdivision

2 Controls for Subdivision in Residential Zones

Clause	Not Applicable	Complies	Does Not Comply	Comments
2.2 Design Principles	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.3 Allotment Orientation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.4 Site Frontage	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.5 Allotment Dimensions	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.6 Road Network	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.7 Road Design and Construction	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.8 Landscaping and Site Design	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
2.9 Services	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.10 Drainage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.11 Public Open Space	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
2.12 Environmental Site Management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	

In assessing the proposed application the following DCP non compliances were identified which warrant refusal of the Development Application:-

1. Clause 2.2 - Design Principles - The land is not considered to be suitable for subdivision have regard to its relationship to the broader lakes scheme and the pre-emptive nature of the proposal prior to the formalisation of a revised structure plan. The application has also inadequately considered heritage and archeological conservation, open space suitability, adequacy of site drainage, servicing and suitability of future subdivision capability as foreshadowed within the application.

2. Clause 2.6 - Road Network - The proposed road layout is pre-emptive of broader precinct wide structure planning ensuring appropriate access and circulation is provided.

3. Clause 2.7 - Road Design and Construction - Accommodation of public utility services and drainage systems having regard to suitable hierarchy and function within the broader road network.

4. Clause 2.9 - Servicing - Appropriate servicing is yet to be established as the land is not yet permissible for the proposed development and is yet to be designed having regard to an exhibited structure plan as per the SEPP (Penrith Lakes Scheme) 1989.

5. Clause 2.10 - Drainage - The proposal doesn't adequately address how flooding is controlled and flood free access is provided. The proposal also doesn't sufficiently demonstrate how urban run off pollutants are managed.

6. Clause 2.11 - Public Open Space - Insufficient structure planning has been undertaken to ascertain the requirement for open space including the retention of significant existing vegetation within planned open space areas.

7. Clause 2.12 - Environmental Site Management - The proposal is not considered to meet the objectives in that the proposed does not improve the environmental amenity of the development or surrounding locality and is yet to demonstrate that key natural features will be preserved and protected including established trees and vegetation.