

JRPP Ref. No.:	2010SYW072
DA No.:	DA10/0990
PROPOSED DEVELOPMENT:	Additions to an existing animal welfare establishment
PROPERTY ADDRESS	1605-1667 Elizabeth Drive Kemps Creek Lot 1 DP 255566
DEVELOPMENT CATEGORY	Integrated Development
APPLICANT:	Stimson Consultant Services Pty Ltd
REPORT BY:	Gurvinder Singh -Senior Environmental Planner
RECOMMENDATION	Refusal

Assessment Report

Executive Summary

Council is in receipt of a Development Application for additions to an existing animal welfare establishment.

The land is partly zoned E2- Environmental Conservation and RU2 – Rural Landscape under the Penrith Local Environmental Plan 2010. The part of the site on which the development is proposed is zoned RU2. An existing biodiversity corridor along South Creek to the north of the site is zoned E2. The proposed development is permissible in the RU2 zone under the definition of 'Animal Boarding or Training Establishments' and 'Crematorium'.

The proposed development has a 'capital investment value' (CIV) of \$11.3 million. Given that the CIV is in excess of \$10 million and the development application was lodged on 24 September 2010, the development application is to be determined by the Joint Regional Planning Panel – Sydney West in accordance with Part 3 - Regional Development of the State Environmental Planning Policy (Major Development) 2005.

The proposed development was advertised in the local newspapers and notified to the owners and occupiers of the adjoining and nearby properties. No submissions were received in response to that notification.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the following issues - discussed in detail in this report - have emerged as a result of this assessment process:

- Site design and flooding
- Air quality
- Accessibility

- Access, parking and traffic
- Waste management
- Safety, security and crime prevention
- Social and economic impacts and
- Stormwater management.

The proposed development is in accordance with some provisions of the Environmental Planning Instruments and Development Control Plan applicable to the subject site; however some controls are not achieved. The proposed development is likely to have a negative impact on the surrounding environment. The site is unsuitable for the proposed development and the proposal is not in the public interest. This report recommends that the application be refused.

There are 7 appendices to this report, as detailed below:

- Appendix No. 1 – Location Plan
- Appendix No. 2 – Aerial View of Site
- Appendix No. 3 – Site Plan and Elevations
- Appendix No. 4 – Zoning Plan
- Appendix No. 5 – Landscape Plan
- Appendix No.6 – General Terms of Approval and Roads and Traffic Authority's Requirements
- Appendix No. 7 – Development Control Table

Background

Various development consents granted over the site are as follows:

- DA03 /0742 for Kennels, Cattery and Administration buildings
- DA03/0742.01 for staging of the approved development
- DA03/0742.03 for use of the surrender facility as veterinary clinic.

The proposed development is on the South Creek floodplain.

Previous approvals have been granted on the site based on the known flooding characteristics at that time. The existing development on the site is predominately clear of Council's current floodway definition.

For the current proposal the applicant initially attended a pre-lodgement meeting at Council during March 2010. The applicant was advised during this meeting that the development was within the floodplain although it was unknown at the time that majority of the site was within a floodway. The applicant was advised that any application for the further development of this land would need to be accompanied by a flood study to demonstrate that the proposal was in accordance with Council's planning controls in relation to flooding.

The current development application was lodged in September 2010. A flood study did not accompany the application. The applicant was again requested to provide the flood study in correspondence from Council in November 2010. The applicant

continued to correspond with Council with a view to removing the requirement for a flood study. Council continued to iterate the need for a full flood study to assess the application.

Following subsequent discussions the applicant was granted access to Council's flood model for use as a 'differences' model. Unfortunately Council's model was not finalised, and they sought to use our model to strengthen their case for development. It was clearly stipulated, that we would not be obligated to receive unconditionally any modelling undertaken by the applicant's consultant. There was always a known risk to the applicant that the modelling may be inconsistent with our overall flood model, even though it was the same consultant.

The applicant submitted a flood study in September 2011. It was reviewed and found to be inconsistent with the latest modelling prepared for Council by the same consultant. From Council's perspective the assumptions and results upstream of Elizabeth Drive (determined through this DA) were inconsistent with our knowledge of the flooding regime for this immediate area. In fact some flood modelling provided by Liverpool Council supports this. This modelling (undertaken by Liverpool Council in 2004) has been provided as reference to the consultant. Through this process the consultant has found themselves in a compromised situation. Over the ensuing months Council's Engineering Services Department has sought clarification from the consultant regarding the discrepancies between the two models. The differences to date have not been satisfactorily explained.

The South Creek flood study is now reaching finalisation and the floodway has been set. The majority of the proposed development is located within this floodway. Based on this current definition of the floodway the proposed development cannot be supported. No additional information too date has been provided by the applicant to support the proposal.

Floodway areas are those areas of the floodplain where a significant discharge of water occurs during floods. They are often aligned with naturally occurring channels. Floodways are areas that even if only partially blocked, would cause a significant redistribution of flood flow, or a significant increase in flood levels.

Site and Surrounds

The site is located on the northern side of Elizabeth Drive around 4km east of its intersection with Luddenham Road, Kemps Creek. The site is irregular in shape and it has a frontage of around 630m to Elizabeth Drive. The area of the site is 10 hectares.

South Creek is located on to the north and west of the site. The surrounding development is predominantly characterised by rural land uses comprising market gardens and rural residential development. To the immediate west of the site a rural residential property is located. An industrial building is located to the south of the site across Elizabeth Drive. A waste and recycling facility is located further to the west of the site

The site is occupied by buildings that accommodate cats and dogs, a surrender facility, a veterinary clinic, an office and storage areas. The following buildings exist on the site:

- Two pre cast concrete and timber framed buildings that accommodate both dogs and cats – referred to as Rows 1 and 2.
- A brick building with a tiled roof (former residence) that accommodates the site offices of AWL.
- A brick building with a metal roof that operates as the surrender facility, although a recent modification has reassigned the use of this building to a veterinary clinic.
- A number of small sheds and storage buildings.

The part of the site on which development is proposed is relatively free of vegetation. A significant amount of vegetation exists along the banks of South Creek. A large portion of the site is flood prone and a floodway. The site is partly bushfire prone.

Proposed Development

The key elements of the proposed development are summarised below:

Component	Description
Proposed Development	Additions to an existing animal welfare establishment
Buildings	<p><i>Rows 3 and 4 (Cat and Dog accommodation)</i> These buildings will accommodate cats and dogs and provide run areas for those animals. The design of these buildings is similar to those existing on site. Row 3 will house up to 100 cats and kittens whereas Row 4 will house 50 cats and 24 dogs.</p> <hr/> <p><i>Store, Stockyard, Stables and Duck Pond</i> This building is proposed to house goats, birds and horses and storage area for feed and other animal products. A duck pond is proposed to be built next to this building.</p> <hr/> <p><i>Education Centre</i> Training of animal handlers and vets will be undertaken in this building. This building will incorporate rainwater harvesting in tanks and solar voltaic collectors on the roof.</p> <hr/> <p><i>Crematorium</i> This facility will provide crematorium service for pets for the community. The building will house 2 medium pathological crematoriums, 1 large pathological crematorium, 2 freezers, toilet and shower facilities, store room and an office.</p> <hr/> <p><i>Veterinary Clinic and Administration Building</i> This building is proposed to contain preparation and recovery rooms, operating theatres and offices. Staff amenities will include kitchen facilities, lunch and locker rooms.</p>
Number of animals to be	The maximum number of dogs to be accommodated on site will be 180 and cats 280. Larger animals will be

accommodated accommodated as required.

Access and Car Parking Access and egress is proposed from Elizabeth Drive. Parking for 24 cars and 2 coaches is proposed along with grassed areas should this car parking be insufficient on special event days.

Landscaping Landscaping is proposed along the setbacks ensuring the screening of all proposed car parking and a portion of the proposed building at ground level when viewed from Elizabeth Drive.

The following reports have accompanied the subject development application and used throughout the planning assessment:

- Statement of Environmental Effects prepared by Stimson Consultant Services dated September 2010
- Noise Impact Statement prepared by *Architects of Arcadia* dated 5 September 2011
- Waste Management Plan prepared by Stimson Consultant Services
- Hydraulics Systems Design Report prepared by *Architects of Arcadia* in consultation with *Niven Donnelly and Partners*
- Traffic and Parking Statement prepared by Traffic Solutions Pty Ltd dated 8 September 2010
- Access consultant's report prepared by Access Design Solutions and dated 1 September 2010
- Flood impact assessment prepared by Worley Parsons and
- Bushfire Compliance Report prepared by Bushfire Safety Solutions dated 20 February 2011.

Planning Assessment

The proposed development has been assessed against the relevant heads of consideration contained in Section 23G, Section 79C and Section 91 of the *Environmental Planning and Assessment Act 1979*, and based on this assessment, the following issues have been identified for further consideration:

Section 23G – Joint Regional Planning Panels

Under Clause 13B of *State Environmental Planning Policy (Major Development) 2005*, a regional panel has the function of determining Development Applications. The Sydney West Region Joint Planning Panel therefore has the function of determining the subject Development Application in accordance with Section 23G of the *Environmental Planning and Assessment Act 1979*.

The development has been assessed in accordance with the matters for consideration under Sections 91 and 79C of the *Environmental Planning and Assessment Act 1979* as follows:

Section 91 – Integrated Development

The proposed development is an Integrated Development under Section 91 of the *Environmental Planning and Assessment Act 1979*. In this regard approval was sought from the following state government authority in accordance with relevant legislation:

- NSW Office of Water – Section 91 of the *Water Management Act 2000* (Controlled Activity Approval to undertake works within 40m of a watercourse)

The NSW Office of Water has assessed the proposed development under the *Water Management Act 2000* and raised no objections to the proposal subject to General Terms of Approval (GTAs) (refer to Appendix No. 6 for a copy of the GTAs).

Section 79C(1)(a)(i) – Any Environmental Planning Instrument

Sydney Regional Environmental Plan (SREP) No.20 – Hawkesbury/Nepean River

Sydney Regional Environmental Plan No.20 – Hawkesbury/Nepean River (SREP) applies to the subject land. The relevant planning strategies under this SREP have been considered and discussed below:

Cultural Heritage

The subject site has not been identified to contain any items of heritage. No heritage buildings are located in the vicinity of the site. The proposal will not have an adverse impact on cultural heritage.

Water quality

SREP No.20 requires that future development must not prejudice the achievement of the goals of use of the river for primary contact recreation (being recreational activities involving direct water contact, such as swimming) and aquatic ecosystem protection in the river system. If the quality of the receiving waters does not currently allow these uses, the current water quality must be maintained, or improved, so as not to jeopardise the achievement of the goals in the future.

It is considered that by providing sedimentation and erosion controls prior to the commencement of any site works will ensure that quality of water from the site has no adverse impact on the existing environment of the Hawkesbury-Nepean River system. This aspect can be suitably conditioned.

Riverine scenic quality

SREP No. 20 requires that the scenic quality of the riverine corridor must be protected by employing strategies as follows:

- (a) Maintain areas of extensive, prominent or significant vegetation to protect the character of the river.
- (b) Ensure proposed development is consistent with the landscape character.

(c) Consider the siting, setback, orientation, size, bulk and scale of and the use of unobtrusive, non-reflective material on any proposed building or work, the need to retain existing vegetation, especially along river banks, slopes visible from the river and its banks and along the skyline, and the need to carry out new planting of trees, and shrubs, particularly locally indigenous plants.

The existing vegetation on the banks of South Creek will be maintained. The proposed buildings fit in the existing landscape, however the siting of the proposed buildings in the floodway will impact on the environmental capabilities of the land. This however is not considered to have an adverse impact on the riverine scenic quality of the land.

State Environmental Planning Policy No. 55 (SEPP55) - Remediation of Land

The objectives of SEPP 55 are as follows:

- *to provide for a state wide planning approach to the remediation of contaminated land and*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Pursuant to SEPP 55, Council must consider the following matters:

- whether the land is contaminated
- 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 proposed use.

Council has no records of any activities carried out on-site that may have resulted in land contamination. The part of the site where development is proposed is mainly vacant and no activities that may contaminate the site are being carried out on site. Based on this information it is concluded that a preliminary site investigation is not required. The objectives of SEPP 55 are therefore considered to be satisfied.

Penrith Local Environmental Plan (LEP) 2010

Penrith Local Environmental Plan 2010 applies to the site. The land is zoned E2 - Environmental Conservation and RU2 – Rural Landscape. The part of the site on which development is proposed is zoned RU2. The proposal is permissible in the RU2 zone under the definitions of *Animal Boarding or Training Establishments and Crematorium*.

Animal boarding or training establishment means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses) and includes any associated riding school or ancillary veterinary hospital.

Crematorium means a building in which deceased persons or pets are cremated, whether or not it contains an associated building for conducting memorial services.

Objectives of Zone RU2 Rural Landscape

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base*

- *To maintain the rural landscape character of the land*
- *To provide for a range of compatible land uses, including extensive agriculture*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones*
- *To preserve and improve natural resources through appropriate land management practices*
- *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.*

The proposed development does not encourage primary industry production. It seeks to provide shelter, training and veterinary clinic for animals which is a permissible use in the zone. The current use of the site including the proposed development contributes to the wide range of rural land uses and industry that is already situated along Elizabeth Drive. The proposed use is compatible in the rural area. The rural character of the zone will be maintained as design of the buildings including materials and finishes are sympathetic to the rural environment and complement those existing. However, the proposed development is incompatible with the environmental capabilities of land in that the proposed development is located in a floodway. This matter is addressed in detail in a further section of this report.

Clause 4.3 – Height of buildings – No maximum building height is stipulated under this clause. However the height of the buildings is compatible with those existing.

Clause 5.9 – Preservation of trees or vegetation – the proposal complies – discussed further in the Flora and Fauna Section of this report.

Clause 6.1 – Earthworks – the development does not comply – detrimental environmental impact on the floodway will result.

Clause 6.2 – Salinity – the development complies - no detrimental environmental impact will result.

Clause 6.3 – Flood planning – The proposed development is wholly within the flood plain and a significant proportion is within a floodway. The proposed development is not compatible with the floodway conveyance function of the site. The objectives in Clause 6.3(1)(a)(b)(c)(d)(e)(f) and controls in Clause 6.3(4)(a)(b)(c)(d)(e)(f)(g) of LEP 2010 are not achieved. The corresponding objectives and controls in DCP 2010 Section 3.5 are not achieved by the proposed development.

Clause 6.3 (4) Development consent must not be granted for development on land that is flood planning area or other land at or below the flood planning level unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and

Comment:

The proposed development is not compatible with the flood hazard of the land. The site is classified as medium to high hazard. Locating people and

animals in a medium to high hazard increases the risk to life as well as increasing the risk of economic loss.

- (b) if located in a floodway, is compatible with the flow conveyance function of the floodway and the flood hazard within the floodway, and

Comment:

The proposed development is located within a floodway and will in the opinion of Council's officers have a detrimental effect on the redistribution of flood flow and increase in flood levels particularly when considered on a cumulative basis. The flow conveyance function will be severely impacted by the proposed buildings and associated fill pads. The development as stated above is not compatible with the hazard category of the site.

- (c) is not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and

Comment:

The proposed development when considered on a cumulative basis will have detrimental impact on other development and properties based on blockage of the floodway thereby leading to increases in flood levels, redistribution of flows and increased velocities.

- (d) is not likely to significantly alter flow distributions and velocities to the detriment of other properties or the environment, and

Comment:

The proposed development will have detrimental impact on the environment by increasing velocities and altering flow distributions. This impact would be exacerbated if considered on a cumulative basis.

- (e) is not likely to adversely affect the safe and effective evacuation of the land and the surrounding area, and

Comment:

The proposal will adversely impact on the safe and effective evacuation of the land and surrounding area. The development proposal adds 10 additional employees, 30 visitors and additional capacity for animals. Whilst an evacuation strategy has been devised for the site the proposed development is not ideally sited with respect to the high risk of the floodway. The proposed development will also put additional pressure and strain on the surrounding road network when flooding requires evacuation of a wider region.

- (f) is not likely to significantly detrimentally affect the environment or cause avoidable erosion, destruction of riparian vegetation or a reduction in the stability of river banks or waterways, and

Comment:

The encroachment of the proposed development within the floodway is likely to impact adversely on the environment and South Creek by increasing velocities and redistribution of flows. These impacts would be increased if considered on a cumulative basis.

- (g) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and

Comment:

Locating the proposed development in the floodway is likely result in greater economic costs as a result of damage to infrastructure.

- (h) is consistent with any relevant floodplain risk management plan.

Comment:

A floodplain risk management plan has not been prepared.

Clause 6.5 – Protection of scenic character and landscape values – the development complies. The design of the buildings with large setbacks to Elizabeth Drive will minimise the visual impact of the development from Elizabeth Drive. Buildings of similar form exist on site and these buildings were previously approved by Council. The architecture of the proposed buildings remain consistent with that already constructed on site. It is therefore considered that this clause of the LEP is satisfied.

Clause 6.6 – Servicing – the development does not comply in relation to on site sewage management. This matter is addressed in a further section of this report.

Clause 6.14 - Development of land in the flight paths of the site reserved for the proposed Second Sydney Airport - the development does not comply. No commentary is provided in the Statement of Environmental Effects on compliance with the above clause.

Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instruments

No draft environmental planning instruments apply to the site.

Section 79C(1)(a)(iii) – Any Development Control Plan

Penrith Development Control Plan 2010

The proposed development is generally in accordance with the relevant provisions of *Penrith Development Control Plan 2010* as set out in the Development Control Table in Appendix 7. However the following controls in DCP 2010 Section 3.5. are not achieved by the proposed development:

2. Flood Hazard Classifications

- a) Council will consider development on flood liable land but will not grant consent to development in floodways or in high hazard areas.

Comment:

A significant component of the proposed development is located within a floodway and in line with this control Council cannot support the proposed development for reasons outlined under the assessment of the LEP controls.

6. Industrial/Commercial - New Development

b) Flood safe access and emergency egress shall be provided to all new developments.

Comment:

Flood safe access has not been provided for the development. The development relies upon a strategy to evacuate the site prior to inundation by flooding. Internal roads will be cut by the 100 year event increasing the hazard for the site.

15. Filling of Land Below the Flood Planning Level

Council will not grant consent to filling of floodways or high hazard areas. The filling of other land below the flood planning level will generally not be supported; however, Council will adopt a merits based approach. In particular, an application to fill land shall also describe the purpose for which the filling is to be undertaken.

Comment:

As described above a significant portion of the development is within a floodway and in accordance with this control Council will not consent to filling within the floodway for reasons outlined under the assessment of the LEP controls.

Section 79C(1)(a)(iv) – The Regulations

Penrith City Council's Building Surveyor has raised no objection to the proposed development regarding fire safety considerations, subject to provision of a deemed to satisfy or a performance based fire safety solution as part of the detailed design for the proposal.

Section 79C(1)(b) – The Likely Impacts of the Development

Site Design, Context and Setting

The proposed development has been designed to be compatible with the existing development on site in terms of built form and external building materials and finishes. The proposed development maintains sufficient buffer distances to adjoining properties and will not pose a major adverse impact on existing or future surrounding land uses. The proposal is responsive to the existing development on site and has been designed in the context of other development along this streetscape.

However the site design includes the proposed buildings in a floodway which will be detrimental to the occupants of those buildings and surrounding properties in times of flood. The siting of these buildings in a floodway is inappropriate.

Noise Generation and Odour

The applicant has submitted the acoustic reports prepared for a previous Development Application No 03/0742 for Kennels, Cattery and Administration buildings to be considered for the current development application. The applicant has cited that these reports deal with noise and noise attenuation measures required for Kennel Rows 1 & 2 (now in operation) and Row 3 (included in this application). The primary concern was the affect of noise on East side neighbouring property. A noise attenuation fence was constructed along the Eastern boundary to deal with this concern. Because of the changing pattern of animal surrenders and adoptions, the proposed development allows for 6 fewer dogs in Rows 1-3 than the previous application that provided for 50 per Row and for 24 dogs in Row 4. However, dogs in the proposed Row 4 are sufficiently distant from neighbouring properties for there to be sufficient natural attenuation of any noise to compensate for the small increase in overall numbers.

There is no perceptible odour emitted by AWL operations on this site.

Council's Senior Environment Officer has reviewed the Noise Impact Report and advised that the noise impacts associated with the *dog kennel component* of this application were assessed as a part of a previous application/consent, and an acoustic barrier was constructed to mitigate this noise. This did not address noise associated with *the education facility or crematorium*. The previous report did establish background noise levels and it is possible to condition that a Compliance Report be submitted (within a certain timeframe of operation) to ensure that the facility still complies with the criteria previously determined. However, the details of the plant for the crematorium were not available.

Insufficient details have been submitted regarding noise impacts from the premises.

Air Quality

Council's Environment Team is not satisfied with the information provided regarding the crematorium component of the development. The information that is still outstanding is as follows:

- An Air Quality Impact Assessment prepared by a suitably qualified environmental consultant. This Assessment should consider the air quality impacts associated with the crematorium to be established on the site. This Assessment would need to (but is not limited to):
 - Identify the furnaces to be installed on the site and provide specifications and maintenance manuals;
 - Model the air quality impacts associated with the use of the furnaces to be installed;
 - Address the relevant environmental guidelines and criteria, including the *Protection of the Environment Operations (Clean Air) Regulation*, the EPA's *Approved Methods for the Modelling and Assessment of Air Pollutants*, and the EPA's *Approved Methods for the Sampling and Analysis of Air Pollutants*.
 - Show that the relevant assessment criteria can be met, and recommend mitigation measures as required.

- Recommend a monitoring frequency to determine compliance with assessment criteria.

On Site Sewage Management (OSSM)

Council's Environment Team is not satisfied with the information provided regarding the OSSM component of the development. The team has advised that depending on the outcome of the flooding matters, further assessment of the on-site sewage management system will be required to ensure that the system still operates effectively. An amended Operational Management Plan (in line with the 'Supporting Documentation for Application for Approval to Operate the On-Site Sewage Management System Under Section 68 of the Local Government Act 1993' prepared by Rolfe Chrystal dated May 2009) for the on-site sewage management system for the site would also need to be prepared by a suitably qualified environmental consultant. Amendments to the Plan are to:

- incorporate information regarding the changes made to the system to address the flooding issues on the site, and
- detail management measures that would need to be implemented during rain events and times of possible flood.

Access, Parking and Traffic

Vehicular access to the site is from Elizabeth Drive. In relation to car parking, the proposed development includes construction of a new car parking areas incorporating a total of 24 on-site car spaces for staff and visitors.

The application has been accompanied by a Traffic Report prepared by Traffic Solutions Pty Ltd which concludes that the proposed vehicle access and car parking arrangements are satisfactory and that the additional traffic flows which will be associated with the proposed development can be accommodated by the surrounding road network. This report concludes that:

- Parking for 24 cars and 2 coaches is provided which is considered to be adequate given the use, however, ample grassed areas are available should this car parking be insufficient on special event days.
- The proposed development is considered acceptable in terms of vehicle access, traffic generation, car parking provision and car space dimensions. However, it is recommended that the headroom in the loading areas be increased to 3.5m and the one way roadways be widened to 4.5m minimum on the bends to cater for buses.

Penrith City Council's Senior Traffic Engineer has reviewed the proposed development with regard to access, parking and traffic considerations and has concluded that no major traffic generation impacts are expected from the development as it is anticipated that the local road network have adequate spare capacity to cater for this increase.

Concurrence was sought from NSW Roads and Traffic Authority under Section 138(2) of the Roads Act. The RTA was satisfied with the proposed access, parking and traffic related aspects of the proposal subject to suitable conditions and granted its concurrence.

Safety and Security

A perimeter fence is existing including fencing to street frontages. Conditions relating to installation of security cameras, appropriate lighting and regular security patrols can be imposed for safety and security purposes.

Accessibility

The application has been accompanied by an Accessibility Report prepared by Access Design Solutions which provides a review of the proposed works with regard to access considerations. The key access issues considered in the Accessibility Report include:

- Ingress and egress.
- Paths of travel.
- Amenities and facilities including accessible car parking.
- Lighting and signage.

The Accessibility Report concludes that The Shelter meets all of the DA design requirements for DDA compliance in accordance with the Disability Standards, AS1428 Suite of Standards and current building code of Australia.

The proposal was reported to Council's Access Committee who requested the following matters be considered in Council's assessment of the proposal:

- Accessible toilets.
- Main entry to Education Centre
- Tactile ground surface indicators.
- Accessible path of travel.
- Parking space dimensions.

These matters are achievable and can be suitably conditioned.

Waste Management

A Waste Management Plan has been prepared to address both construction and operational activities proposed at the site. Appropriate arrangements can be conditioned for construction waste to be disposed of at authorised waste management facility.

Bushfire Risk

The land is identified as partly bushfire prone land. The development application is accompanied by a Bushfire Compliance Report prepared by Bushfire Safety Solutions. This report was forwarded to NSW Rural Fire Service who has advised that the entire property up to the boundary of the riparian corridor shall be managed as an inner protection area (IPA). Other matters relating to the design of the buildings can be suitably conditioned to provide bushfire safety.

Section 79C(1)(c) – The Suitability of the Site for the Development

The site is considered to be unsuitable for the proposal having regard to its location within a floodway.

Section 79C(1)(d) – Any Submissions made in relation to the Development

The public exhibition period for the proposal was from 11 October to 9 November 2010 in accordance with Part 2.7-Notification and Advertising of DCP 2006. There were no public submissions received in relation to the proposal.

External Referral Comments

The table below summarises the results of external referrals in relation to the proposal.

<i>Referrals</i>	<i>Comments</i>
NSW Rural Fire Service	No objection, subject to conditions
NSW Office of Water	No objection, subject to general terms of approval.
NSW Roads and Traffic Authority	No objection, subject to general terms of approval

Internal Referral Comments

The table below summarises the results of internal Penrith City Council referrals in relation to the proposal.

<i>Referrals</i>	<i>Comments</i>
Development Engineer	The application be refused on flooding grounds
Environment Team	Deficient information has been submitted relating to Air quality, Noise and OSSM
Traffic Engineer	No objection.
Building Surveyor	No objection, subject to conditions.

Section 79C(1)(e) – The Public Interest

The proposed development would significantly impede the flood waters during times of flood and severely impact the safety of surrounding properties. The proposal is not in the public interest.

Conclusion

The proposed development has been assessed against the relevant heads of consideration contained in Section 79C and Section 91 of the *Environmental Planning and Assessment Act 1979* and has been found to be unsatisfactory. The

proposed development is not in accordance with some provisions of the Environmental Planning Instrument and Development Control Plan pertaining to the land. the proposed development is wholly within the flood plain and a significant proportion is within a floodway. The proposed development is likely to have a negative impact on the surrounding environment in times of flood. The site is not suitable for the proposed development and the proposal is not in the public interest. The proposal is therefore not worthy of support.

Recommendations

That the report for DA10/0990 which proposes additions to an existing animal welfare establishment at Nos. 1605-1667 Elizabeth Drive Kemps Creek be received; and the proposed development be refused on the following grounds: -

- A) The proposed development is inconsistent with the following provisions of the Penrith Local Environmental Plan 2010:

Clause 6.3 (4) Development consent must not be granted for development on land that is flood planning area or other land at or below the flood planning level unless the consent authority is satisfied that the development:

- (h) is compatible with the flood hazard of the land, and
- (i) if located in a floodway, is compatible with the flow conveyance function of the floodway and the flood hazard within the floodway, and
- (j) is not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (k) is not likely to significantly alter flow distributions and velocities to the detriment of other properties or the environment, and
- (l) is not likely to adversely affect the safe and effective evacuation of the land and the surrounding area, and
- (m) is not likely to significantly detrimentally affect the environment or cause avoidable erosion, destruction of riparian vegetation or a reduction in the stability of river banks or waterways, and
- (n) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and
- (h) is consistent with any relevant floodplain risk management plan.

(Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*).

- B) The proposed development is inconsistent with the following provisions of the Penrith Development Plan 2010:

Section 3.5. Flood Liable Lands

2. Flood Hazard Classifications

- a) Council will consider development on flood liable land but will not grant consent to development in floodways or in high hazard areas.

6. Industrial/Commercial - New Development

- b) Flood safe access and emergency egress shall be provided to all new developments.

15. Filling of Land Below the Flood Planning Level

Council will not grant consent to filling of floodways or high hazard areas.

(Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*).

- C) The subject Development Application has not been accompanied with sufficient information which would enable a detailed and accurate assessment of the proposed development in regards to air quality, noise and on site sewage management.

(Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*).

- D) The site is unsuitable for the proposed development having regard to flooding characteristics of the site.

(Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979*).
