

DETERMINATION AND STATEMENT OF REASONS SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	17 December 2019
PANEL MEMBERS	Bruce McDonald (Acting Chair), Nicole Gurran, Mark Grayson and Ross Fowler
APOLOGIES	Justin Doyle and Glenn McCarthy
DECLARATIONS OF INTEREST	Nil

Public meeting held at Penrith City Council on Tuesday, 17 December 2019, opened 3.40pm and closed at 4.50pm.

MATTER DETERMINED

2018WCI007 - Penrith – DA18/1135 AT Lot 1 DP 500175, Lot 2 DP 500175, Lot 192 DP 750021
497 a Castlereagh Road, Agnes Banks, 521 a Castlereagh Road, Agnes Banks, 237-265 Wilshire Road, Agnes Banks (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

1. The proposed development will rehabilitate land occupied by an approved quarry such that the site will be restored to a condition reflecting the surrounding rural landscape and on completion capable of accommodating uses with uses permitted in the currently prevailing RU4 – Primary Production Small Lot zoning.
2. The proposed development subject to the conditions imposed adequately satisfies the relevant State Environmental Planning Policies including SEPP 55 (Remediation of Land), SEPP (Infrastructure) 2007 and State Regional Environmental Plan No. 20 – Hawkesbury Nepean River.
3. The development comprises Integrated Development requiring preparation of an Environmental Impact Statement. The submitted EIS was referred to then NSW Department of Planning and Environment and the Environmental Protection Authority which have raised no objection to the proposal subject to conditions which have been included in the terms of consent.
4. The Panel notes that while the proposed development is not a permitted use within the applicable RU4 – Small Primary Production Small Lots zoning under Penrith LEP 2010 (Amendment 4) the Panel accepts that the development may be permitted under C7 (3) of SEPP (Mining, Petroleum Production and Extractive Industries) 2007. Further, it is considered the proposal otherwise adequately satisfies the objectives and provisions of Penrith LEP 2010 (Amendment 4).

5. The proposal adequately satisfies the objectives and provisions of Penrith Development Control Plan 2014.
6. The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built environments including the amenity of existing nearby premises, the operation of the local road system or the local ecology or riparian systems.
7. The proposed development will integrate the current quarry site to a form reflecting the surrounding rural landscape and to a standard of restoration facilitating future rural uses including rural residential housing.
8. In consideration of conclusions 1-7 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments –

Condition 20 is amended to read as follows:

“A Fill Importation Protocol is to be developed by an appropriately qualified person and endorsed by a NSW EPA Accredited Site Auditor.

Prior to commencement of works, the Protocol, and a copy of the Site Auditor's endorsement of the document, is to be submitted to Council for approval.

The Protocol is to detail the procedures that will be followed throughout all filling works, to ensure that only suitable fill material is imported onto the development site. At minimum, an appropriately qualified person/s shall:

- Supervise all filling works.
- On completion of **filling of each Cell**, carry out an independent review of all documentation relating to the filling of the site, and submit a review findings report to Council and any Principal Certifying Authority. All fill material documentation is to (at minimum):
 - be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
 - clearly state the legal property description of the fill material source site and the total amount of fill tested,
 - provide details of the volume of fill material to be used in the filling operations,
 - provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and
 - (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.
- On completion of filling works of each Cell, submission of an endorsement of the Review Finding Report prepared by the Site Auditor that fill materials have been placed on the site will not pose an unacceptable risk to human health or the environment.

The approved Fill Importation Protocol is to be adhered to throughout all stages of the development. If Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested.

Note: An appropriately qualified person(s) is defined as “a person who, in the opinion of the Council, has a demonstrated experience or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies”. In addition, the person(s) or company will be required to have appropriate professional indemnity and public liability insurance.”

Condition 24 is deleted and replaced as follows:

“A detailed Vegetation Management Plan for the short and long term management of the Native Vegetation is to be submitted to Penrith City Council for approval. The Vegetation Management Plan is to be prepared by an Ecological Consultant or Bush Regenerator with theoretical and practical experience in bushland restoration and management on the Cumberland Plain. A Certificate IV in Conservation and Land Management is required as a minimum. The plan is to include the following:

- Is consistent with relevant environmental legislation and policies, including, but not limited to, the NSW Biodiversity Conservation Act 2016, the Biosecurity Act 2015 the Water Management Act 2002, the Rural Fires Act 1997 as well as the federal Environment Protection and Biodiversity Conservation Act 1999, and guidelines such as the Rural Fire Services Planning for Bushfire Protection 2006 and Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland (DEC, 2005).
- A detailed plan that clearly outlines how vegetation should be protected and managed during construction of proposed future development and the ongoing future management of the vegetation and any identified threatened species over the next 3 years, as well as in the longer term. The focus is to be on best practice bush regeneration methods and habitat improvement.
- The VMP is to identify potential future impacts on the vegetation from the development and road, including access, weed encroachment, pest animals, stormwater etc, and is to outline how these impacts will be managed in the long term.
- Project tasks should be defined and described, including a schedule detailing the sequence and duration of works necessary for the implementation of the VMP.
- Processes for monitoring and review, including a method of performance evaluation should be identified. This should include replacing plant losses, addressing deficiencies, problems, climatic conditions and successful completion of works.
- An amended Flora and Fauna shall be prepared to capture a broader range of potential fauna species and their safe relocation to adjoining bush land and submitted to Council for consideration and approval.”

Condition 44 is amended to read as:





“**Prior to commencement of works**, a maintenance bond is to be lodged with Penrith City Council for the rectification of any damage to Council's local road network that is attributable to the use of the local roads as a haulage route.

The value of the bond shall be \$3,000,000 and will be held by Council for the duration of the works, **unless otherwise agreed to in writing by Penrith City Council**.

Note: Contact Council’s Engineering Services Department on 4732 7777 for further information relating to bond requirements.”

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered the written submissions made during public exhibition to adjoining and nearby properties. The Panel notes that submissions received were all in support of the proposed development.

PANEL MEMBERS	
	
Bruce McDonald (Acting Chair)	Nicole Gurran
	
Mark Grayson	Ross Fowler

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018WCI007 - Penrith – DA18/1135
2	PROPOSED DEVELOPMENT	Partial rehabilitation of a quarry and associated infrastructure works and earthworks including drainage, weighbridge, office and amenities building
3	STREET ADDRESS	Lot 1 DP 500175, Lot 2 DP 500175, Lot 192 DP 750021 497 a Castlereagh Road, Agnes Banks 521 a Castlereagh Road, Agnes Banks 237-265 Wilshire Road, Agnes Banks
4	APPLICANT/OWNER	Dixon Sand Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No. 55 – Remediation of Land Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River State Environmental Planning Policy (Infrastructure) 2007 Penrith Local Environmental Plan 2010 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Penrith Local Environmental Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in

		<p>the locality</p> <ul style="list-style-type: none"> • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: December 2019 • Written submissions during public exhibition: 8 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Nil ○ In objection – Nil ○ Council assessment officer – Pukar Pradhan ○ On behalf of the applicant – Mark Dickson
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and briefing: 29 January 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran and Glenn McCarthy ○ <u>Council assessment staff</u>: Pukar Pradhan, Gavin Cherry, Wendy Connell and Paul Anzellotti • Site inspection and briefing: 17 December 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Mark Grayson ○ <u>Council assessment staff</u>: Pukar Pradhan • Final briefing to discuss council's recommendation, 17 December 2019, time 2.45pm • Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Bruce McDonald (Acting Chair), Nicole Gurran, Mark Grayson and Ross Fowler ○ <u>Council assessment staff</u>: Pukar Pradhan
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached with council assessment report