

MEMORANDUM

Reference: PPSSWC-29
Application No.: DA19/0704
Copy to: SWCPP Secretariat
From: Kate Smith/Kathryn Sprang
Date: 17 December 2020
Subject: Development Application
Integrated Development Application for; Staged Subdivision of Land to Create 227 Residential Lots, 17 Industrial Lots, Open Space Lots, 14 Residue Lots and Road Dedication. Works include Site Preparation, Vegetation Removal, Bulk Earthworks, Civil Works, Construction of Roads, Including the East-West Collector Road and Round-a-bout on Werrington Road, Stormwater Infrastructure and Basins

This memorandum has been prepared in response to ongoing discussions between the applicant and Council in relation to the above development application and further review and refinement of recommended conditions relating to vegetation management and biodiversity.

Specifically, the applicant requested Council re-consider conditions relating to the road widths of Road 08 & 09 as well as the timing around the delivery of the roundabout on Werrington Road.

Council has also reflected on conditions pertaining to vegetation management and biodiversity matters. While the requirements remain the same, amendments are sought in relation to the structure of the conditions proposed.

The amendments, re-worded conditions and relevant discussions are provided below.

a) Road 08 & 09

Council conditioned Road 09 to have a greater pavement width than that proposed in the application. Road 09 meets the performance measures of a local road. Penrith Development Control Plan 2014 requires a local road to have a 10.5m pavement width. The proposal only provided for a 9m pavement width.

In a compromise, Council has agreed to a reduced verge along both sides of the road to maintain the increased pavement width without impacting as greatly on the proposed subdivision arrangement.

Due to the reduced verge widths the amended condition requires consultation with Council on the offset of the footpath within the verge to ensure the development is still able to provide a reasonable depth for street tree planting and infrastructure (such as streetlights).

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Current Condition No. 37 -

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the proposed roads have been designed in accordance with Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works and the following criteria:

| Road Type | Road No. | Road Reserve Width | Carriageway Width | Verge Width | Footpath (1.5m wide) Min. | ESA |
|-----------------|----------------------------|--------------------|-------------------|-----------------------------------|---|---------------------|
| Minor Local | 01, 02, 03, 04, 05, 06, 10 | 16.6m | 9.0m | 3.8m | 1.5m both sides | 5 x 10 ⁴ |
| Local | 09 | 18.1m | 10.5m | 3.8m | 1.5m both sides | 5 x 10 ⁵ |
| Local | 08 | 18.1m | 11.0m | 3.8m | 1.5m both sides | 5 x 10 ⁵ |
| Local | 13 (Ch 0 - Ch 50) | Variable | 10.5m | 3.8m (west) Variable (east) | 1.5m both sides | 5 x 10 ⁵ |
| Local | 13 (Ch 50 - Ch 81.818) | Variable | 10.5m | Variable | 1.5m (east) | 5 x 10 ⁵ |
| Minor Collector | 07 | 20.6m | 12.0m | 4.8m (east); 3.8m (west) | 2.5m shared path (east); 1.5m (west) | 5 x 10 ⁵ |
| Minor Collector | 12 | 19.6m | 12.0m | 3.8m | 1.5m both sides | 5 x 10 ⁶ |
| Major Collector | 11 (Ch 0 - Ch 540) | 25.0m | 14.0m | 7.0m (north); min 4.0m (south) | 2.5m shared path (north); 1.5m (south) | 5 x 10 ⁶ |
| Major Collector | 11 (Ch 540 - Ch 970.803) | 24.0m | 14.0m | 6.0m (north); Min 4.0m (south) | 2.5m shared path (north); 1.5m (south) | 5 x 10 ⁶ |

A copy of the pavement design prepared and certified by a suitably qualified geotechnical engineer must accompany the application for Construction Certificate.

Proposed Condition No. 37 -

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the proposed roads have been designed in accordance with Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works and the following criteria:

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| Local | 09 | 17.5m | 10.5m | 3.5m | 1.5m both sides | 5 x 10 ⁵ |
| Local | 08 | 18.1m | 11.0m | 3.3 (north) 3.8m (south) | 1.5m both sides | 5 x 10 ⁵ |
| Local | 13 (Ch 0 - Ch 50) | Variable | 10.5m | 3.8m (west) Variable (east) | 1.5m both sides | 5 x 10 ⁵ |
| Local | 13 (Ch 50 - Ch 81.818) | Variable | 10.5m | Variable | 1.5m (east) | 5 x 10 ⁵ |
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A copy of the pavement design prepared and certified by a suitably qualified geotechnical engineer must accompany the application for Construction Certificate.

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If Council is not the Certifying Authority, a cross section of the verges for road 08 and 09 shall be submitted to and approved by Council to ensure that the footpath offset provides sufficient areas within the verge for street tree planting and infrastructure.

b) Roundabout timing and delivery

The existing Rance Rd / Werrington Road intersection experiences unacceptable delays. All previously approved developments within the SWUV precinct have been conditioned to provide a roundabout at this location prior to the issue of Occupation Certificate or Subdivision Certificate as applicable.

Council's assessment of this proposal concluded that the roundabout must be operational by the time the first stage of the development is occupied. Council's recommended conditions reflected this assessment and required the roundabout be operational (for three legs) prior to the issue of a subdivision certificate for the first stage of development as this is the most appropriate way to ensure the infrastructure is delivered before the site is occupied.

The applicant has raised concern with this condition in terms of the construction program for the estate. The application had proposed the ultimate roundabout delivery prior to the issue of a subdivision certificate for Stage 2A of the development. This was based on the conclusion that the first home construction and resident occupation will not occur for c.12 months post-titling of Stage 1, with the roundabout to be delivered by this time.

Council's concern around this approach is that Stage 1 could be completed and occupied and there is no certainty that the development would continue in a timely manner. There could potentially be a period where after the release of stage 1 no further subdivision of the estate continues.

To give greater certainty and incentive around the delivery of the infrastructure the applicant has proposed a revised condition that requires either the works be completed prior to the subdivision certificate for the first stage of development (as per Council's recommended condition) or alternatively a bond is received that can be used after 12 months from the issue of the first subdivision certificate if the developer has not completed the works within this time.

The condition also stipulates that no further subdivision certificates can be released and that the ultimate roundabout must be delivered prior to the issue of the subdivision certificate for stage 2A.

Current Condition No. 61 –

Prior to the issue of a Subdivision Certificate for Stage 1A, the roundabout at Rance Road / Werrington Road shall be constructed and operational for three legs, being the north and south Werrington Road legs and the Rance Road leg. The fourth leg, being the connection to Road No 11, may be delivered as a stub connection to the roundabout. The construction and connection of the internal

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Road No 11 (from Road No 7 to the roundabout) is to be delivered prior to the issue of a Subdivision Certificate for Stage 2A.

Proposed Condition No. 61 –

Prior to the issue of a Subdivision Certificate for the first stage of development, being Stage 1A and/or 1B, the roundabout at Rance Road / Werrington Road shall be:

- a) Constructed and operational for three legs, being the north and south Werrington Road legs and the Rance Road leg (the fourth leg of the roundabout may be delivered as a stub connection to the roundabout); or*
- b) A bond to the equivalent value of 175% of the roundabout works (three operational legs, as per point a) above) be lodged with Penrith City Council. The bond is conditional that the roundabout construction be commenced within 6 months from the issue of the Subdivision Certificate for Stage 1A and/or 1B and constructed within 12 months from the issue of the Subdivision Certificate for Stage 1A and/or 1B. The bond will be released once the roundabout has been completed and is operational.*

No further subdivision certificates for subsequent stages can be issued prior to the construction and operation of the roundabout.

The construction and connection of Road No. 11 (from Road No. 7 to the roundabout), the fourth leg of the roundabout, is to be delivered prior to the issue of a Subdivision Certificate for Stage 2A.

c) Vegetation Management Plan (VMP) & Biodiversity Matters

A review of Council's recommended conditions has highlighted the need to amend Condition No. 16 requiring an amended Vegetation Management Plan.

The condition, as recommended, incorporated a series of reports and requirements that should form separate conditions of consent.

Current Condition No. 16 –

Prior to the issue of a Construction Certificate or Commencement of Works (whichever occurs first), an amended Vegetation Management Plan is to be submitted in its entirety to Penrith City Council's Environmental Health Department for review and approval.

The amended Vegetation Management Plan (VMP) is to incorporate the following:

- *For baseline information, the VMP should specify that photo records, from fixed points, should commence from "time zero" i.e. at commencement of VMP.*

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- *Given the status of the remnant native vegetation, and the duration of the VMP proposed, an adaptive management framework shall be adequately incorporated within the VMP.*
- *The VMP shall indicate that all bushland/native vegetation restoration will be carried out to best practice standards as per “Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland” (DECC, 2005).*
- *The VMP shall clearly incorporate the use of bush regenerators with a minimum qualification of a Certificate IV in Conservation and Land Management.*
- *Monitoring, and subsequent reporting shall be six monthly.*

The amended Vegetation Management Plan shall also detail the following and include the following reports;

a) A Construction Environment Management Plan is to be prepared and implemented in relation to incorporating specific tree protection measures for trees to be retained.

b) A Fauna Management Plan, incorporating actions that mitigate impacts on native fauna. The Fauna Management Plan is to include clear measures that will be implemented by the proponent to facilitate fauna movement, including kangaroos.

c) A Cumberland Plain Woodland Seed Collection Strategy is to be developed and implemented under the guidance of an appropriately qualified ecologist and in compliance with seed collection licence and permit requirements.

d) Prior to the commencement of works, including the removal of any trees, an inspection of all trees scheduled for removal (including inspection of all hollows) for resident fauna is to be undertaken under the supervision of a fauna ecologist. Where possible, these fauna are to be removed and relocated in accordance with relevant guidelines and permits. Following the inspection, trees approved for removal are to be gently agitated and then lowered to the ground slowly when felling to allow any resident fauna time to escape and to ensure they aren't crushed by falling trees and branches. A local Wildlife rescue group are to be contacted in the case of any injured fauna. The inspection and subsequent removal of fauna shall be timed to minimise disturbance during target species breeding cycles.

e) An ecologist is to be engaged to develop a Nest Box Plan to install nest boxes within areas of remnant native vegetation to replace hollow bearing trees that have been removed. The Nest Box Plan must include consideration of type (relevant to the target species of the hollows that have been removed), number (relevant to the number of hollows removed), and location of nest boxes and a plan for installation and monitoring. An ecologist must certify that the nest boxes are designed and built to suit the target species in accordance with the Nest Box Plan.

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f) A Bushfire Management Plan is to developed and implemented for hazard reduction and asset protection. The area to be managed within the Asset Protection Zones (APZs) should be clearly indicated on a detailed plan to facilitate the undertaking of bushfire management actions within the APZ only and to prevent any modification to native vegetation beyond the APZ. A comprehensive risk management plan, incorporating mitigation measures to reduce the likelihood and impact of encroachment beyond the APZ, should be incorporated within the Bushfire Management Plan.

g) A Weed Management Plan is to be prepared for the areas proposed to be preserved and conserved as native vegetation on the site.

h) A Feral Animal Control and Monitoring Plan is to be prepared.

i) A fencing strategy is to be prepared so as to protect native vegetation areas proposed to be preserved and conserved on the site.

In addition, the following matters should also be incorporated into the amended Vegetation Management Plan;

- No fill, machinery, or materials are to be placed or stored within the drip line of any tree that is to be retained.*
- All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards as outlined in Australian Standard AS 4970-2009 'Protection of trees on development sites'.*
- Vehicle/equipment wash-down areas or access tracks will not be located in or immediately adjacent to retained vegetation.*
- For the purpose of providing fauna habitat, all trees that are scheduled for removal with a Diameter at Breast Height (DBH) of 30cm or greater, once felled in accordance with the Consent Conditions, are to be sawn into 2-6m lengths and relocated within remnant vegetation (outside of APZs), under the guidance of an ecologist.*
- No exotic perennial grasses listed on the Final Determination of the NSW Scientific Committee for the key threatening process 'Invasion of native plant communities by exotic perennial grasses', shall be introduced, planted, sown or laid for landscaping or other purpose*
- Temporary signage will be provided along all temporary fencing during the construction phase stating "Environmental Protection Zone – No Unauthorised Entry"*

Once approved by Penrith City Council the recommendations of the Vegetation Management Plan, supporting management plans and strategies are to be implemented throughout the development and in perpetuity.

A Restriction as to User shall be shown on the 88B instrument that details that the areas subject to the Vegetation Management Plan shall be maintained in perpetuity.

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Proposed Condition No. 16 –

Prior to the issue of a Construction Certificate or Commencement of Works (whichever occurs first), an amended Vegetation Management Plan is to be submitted in its entirety to Penrith City Council's Environmental Health Department for review and approval.

The amended Vegetation Management Plan (VMP) is to incorporate the following:

- *For baseline information, the VMP should specify that photo records, from fixed points, should commence from "time zero" i.e. at commencement of VMP.*
- *Given the status of the remnant native vegetation, and the duration of the VMP proposed, an adaptive management framework shall be adequately incorporated within the VMP.*
- *The VMP shall indicate that all bushland/native vegetation restoration will be carried out to best practice standards as per "Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland" (DECC, 2005).*
- *The VMP shall clearly incorporate the use of bush regenerators with a minimum qualification of a Certificate IV in Conservation and Land Management.*
- *Monitoring, and subsequent reporting shall be six monthly for the first year and twelve monthly thereafter.*
- *A nest box plan. An ecologist is to be engaged to develop a Nest Box Plan to install nest boxes within areas of remnant native vegetation to replace hollow bearing trees that have been removed. The Nest Box Plan must include consideration of type (relevant to the target species of the hollows that have been removed), number (relevant to the number of hollows removed), and location of nest boxes and a plan for installation and monitoring. An ecologist must certify that the nest boxes are designed and built to suit the target species in accordance with the Nest Box Plan.*
- *A fencing strategy is to be prepared so as to protect native vegetation areas proposed to be preserved and conserved on the site.*
- *A requirement for all trees that are scheduled for removal with a Diameter at Breast Height (DBH) of 30cm or greater, once felled in accordance with the Consent Conditions, are to be sawn into 2-6m lengths and relocated within remnant vegetation (outside of APZs), under the guidance of an ecologist.*
- *A requirement for all trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards as outlined in Australian Standard AS 4970-2009 'Protection of trees on development sites'.*

The amended Vegetation Management Plan shall also have regard to the following reports submitted and approved by this consent;

a) Construction Environment Management Plan (CEMP)

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b) Fauna Management Plan (FMP)

c) Bushfire Management Plan

d) Weed Management Plan

Once approved by Penrith City Council the recommendations of the Vegetation Management Plan, supporting management plans and strategies are to be implemented throughout the development and in perpetuity.

A Restriction as to User shall be shown on the 88B instrument that details that the areas subject to the Vegetation Management Plan shall be maintained in perpetuity.

Insert Condition No. 91 –

Prior to the issue of a Construction Certificate or Commencement of Works (whichever occurs first), a Fauna Management Plan (FMP) shall be prepared and submitted to Council for approval, incorporating actions that mitigate impacts on native fauna.

The FMP is to include clear measures that will be implemented by the proponent to facilitate fauna movement, including kangaroos. It shall also detail the timing of removal to minimise disturbance during target species breeding cycles.

The FMP shall also include details and procedures around the engagement with a local Wildlife rescue group in the case of any injured fauna.

The recommendations of the Fauna Management Plan are to be implemented for the development.

Insert Condition No. 92 –

Prior to the issue of a Construction Certificate or Commencement of Works (whichever occurs first), a Cumberland Plain Woodland Seed Collection Strategy is to be developed and implemented under the guidance of an appropriately qualified ecologist and in compliance with seed collection licence and permit requirements.

Insert Condition No. 93 –

The recommendations and requirements of the Construction Environmental Management Plan (CEMP) prepared by Niche Environment and Heritage, dated 12 November 2020, shall be implemented for the development.

Insert Condition No. 94 –

No exotic perennial grasses listed on the Final Determination of the NSW Scientific Committee for the key threatening process 'Invasion of native plant

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communities by exotic perennial grasses', shall be introduced, planted, sown or laid for landscaping or other purpose.

Insert Condition No. 95 –

Prior to the issue of a Construction Certificate or Commencement of Works (whichever occurs first), a Weed Management Plan shall be prepared and submitted to Council for approval for the areas proposed to be preserved and conserved as native vegetation on the site.

The recommendations of the Weed Management Plan shall be implemented for the development.

Insert Condition No. 96 –

Prior to the issue of a Construction Certificate or Commencement of Works (whichever occurs first), a Feral Animal Control and Monitoring Plan is to be prepared and submitted to Council for approval.

The recommendations of the Feral Animal Control and Monitoring Plan shall be implemented for the development.

Insert Condition No. 97 –

Prior to the issue of a Construction Certificate or Commencement of Works (whichever occurs first), a Bushfire Management Plan shall be prepared and submitted to Council for approval.

The area to be managed within the Asset Protection Zones (APZs) should be clearly indicated on a detailed plan to facilitate the undertaking of bushfire management actions within the APZ only and to prevent any modification to native vegetation beyond the APZ. A comprehensive risk management plan, incorporating mitigation measures to reduce the likelihood and impact of encroachment beyond the APZ, should be incorporated within the Bushfire Management Plan.

The recommendations of the Bushfire Management Plan shall be implemented for the development.