

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0035
Proposed development:	Boundary Adjustment to 5 Existing Lots (No New Lots will be Created)
Property address:	2 Cranebrook Road, CASTLEREAGH NSW 2749
Property description:	Lot 18 DP 253816 Lot 60 DP 255596 Lot 61 DP 255596 Lot C DP 375804 Lot 2 DP 1180164
Date received:	23 January 2019
Assessing officer	Surreti Bajwa
Zoning:	RURAL 1(A2) (IDO 93) Zone R2 Low Density Residential - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of an Integrated development application for a boundary adjustment between five (5) sites to the east of Catlereagh Road and west of Cranebrook Road. In accordance with Clause 2.6 of Penrith Local Environmental Plan 2010, the proposed development is permissible. Four (4) sites are zoned R2 Low Density Residential and one (1) lot is zoned part R2 Low Density Residential under the provisions of Penrith LEP 2010 and part Residential under the State Environmental Planning Policy (Penrith Lakes Scheme) 1989.

Accordingly, the applicant is proposing to realign the boundaries in a manner that would excise the R2 zoned area of proposed lot 5 (to be added to the remaining lots) and allow lot 5 to be fully zoned under the SEPP (Penrith Lakes Scheme) 1989. In addition, the extent of the proposed boundary adjustment is to remove the current battle-axe handle that exists for Lot 5 and allow Lots 1-4 to resume a portion of this handle and thereby increase in size.

Key Issues:

Integrated Development: The land is identified as 'bushfire prone land' per Council's mapping systems. The development proposes the subdivision of land for residential purposes and therefore required an approval pursuant to Subdivision 2 S100B of the Rural Fires Act 1997. The development is therefore Integrated Development under the Environmental Planning and Assessment Act. Accordingly, the application was referred to the relevant approval body (NSW Rural Fire Service -RFS) for comment; NSW RFS provided no objections to the subdivision, subject to the imposition of recommended conditions of consent. It is noted that applicant also submitted a Bushfire Hazard Assessment accompanying the plan set.

An assessment of the proposal under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to the attached conditions.

Site & Surrounds

The subject site is a large irregular shaped parcel of land located containing 5 separate lots. It is located on the western side of Cranebrook Village, with a frontage to numerous roads including Cranebrook Road, Mary Avenue, Farells Lane and Castlereagh Road.

The site is comprised of several land parcels, with the following property description.

Lot 2 DP 1180164
Lot C DP 375804
Lot 60 DP 255596
Lot 61 DP 255596
Lot 18 DP 253816

The site is a large irregular shaped parcel with a total site area of 4.8413ha. It has a width of 309.25m at its northern boundary and a length of approximately 290m on the north-south alignment. The site is located on the eastern edge of the Penrith lakes Scheme.

The site is largely cleared of vegetation as part of previous development use of the site as residential purposes. In the northern sections of the site, there is significant plantings as part of the rehabilitation strategies implemented as part of the Penrith Lakes Scheme; the vegetation is a mixture of predominantly tall eucalypts and casuarinas. The site currently accommodates four (4) dwelling houses located on respective parcels.

The site is located on the western edge of Cranebrook Village and adjoins single detached dwellings to the east and rural residential development to the north. The site also adjoins regional open spaces associated with the Penrith Lakes Scheme to the north and west.

The presence of grass fuels on the site and adjacent lands creates a bushfire hazard for the site, particularly at the western and northern sections. By inspecting aerial photographs it can be seen that lands to the north, west and south of the site appear as managed lands.

Proposal

The applicant seeks Council consent for the subdivision of the subject site to realign internal boundaries.

The plan of subdivision provides a 2m wide easement to drain water and a right of carriageway across proposed lots 1,2,3 and 4. In short, it appears that the proposed boundary adjustment will remove the battle-axe arrangement of Lot 5 and that lots 1-4 will resume a portion of that battle axe handle.

The vehicular access to the lots is as proposed:

Lot 1: Farrells Lane and Mary Avenue
Lot 2: Mary Avenue and Mary Avenue
Lot 3: Farrells Lane
Lot 4: Mary Avenue
Lot 5: Cranebrook Road

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Penrith Lakes Scheme) 1989
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

- **Section 4.46 - Integrated development**

On Council's Bushfire Prone Land Map, the subject site is identified as Bushfire Prone Land. Given that the proposal seeks development consent for the Torrens Title subdivision of bushfire prone land, the application is Integrated Development, requiring authorisation under Section 100B of the Rural Fires Act 1997 in respect of bush fire safety for the subdivision of land that could lawfully be used for residential purposes.

Accordingly, the Development Application and accompanying documentation was referred to the NSW RFS for consideration. NSW RFS issued General Terms of Approval for the development dated 7 March 2019 (Reference D19/320 DA19013017178 RB), providing recommended conditions relating to the creation of subdivision

A condition of consent has been imposed requiring the developer to comply with the requirements of the General Terms of Approval issued by the NSW RFS.

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

State Environmental Planning Policy (Penrith Lakes Scheme) 1989

Part 1 - clause 2 Aims of the Policy

The SEPP is the primary environmental planning instrument that applies to lot 5. The aims of the plan are as follows:

'2 Aims of Policy

The aims of this Policy are as follows:

- (a) to provide a development control process that ensures that environmental and technical matters are considered in the implementation of the Penrith Lakes Scheme,*
- (b) to identify and protect items of the environmental heritage,*
- (c) to identify certain land that may be rezoned for employment, environmental, parkland, residential, tourism and waterway purposes and land that will be rezoned as unzoned land,*
- (d) to permit interim development that will not detrimentally impact on the implementation of the Penrith Lakes Scheme,*
- (e) to ensure that the implementation of the Penrith Lakes Scheme does not detrimentally impact on the ongoing operation and use of olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.'*

Comment: The proposed boundary readjustment is unlikely to cause inconsistency with the above listed aims.

Part 3 - Clause 14 Zone Objectives and Land Use Table

Residential

1 Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic value.*
- To ensure that residential development does not have an adverse effect on those values.*
- To minimise the potential for conflict between development in residential areas and land uses within adjoining zones.*
- To ensure that land uses are compatible with the available infrastructure, services and facilities and with the environmental capabilities of the land.*

Comment: The development is for the adjustment of lot boundaries, as such the proposal is unlikely to cause any land use conflicts with adjacent existing or future development. The development therefore is consistent with the relevant zone objectives.

Part 3 - Clause 15 - Subdivision - consent requirements

'Land to which this Policy applies may be subdivided, but only with development consent.'

Comment: The subject developmental application seeks to obtain formal Development Consent for the subdivision of the site.

Part 4 - Clause 18 Minimum subdivision of lot size for land zoned Residential

Comment: Clause 18 of the SEPP (Penrith lakes Scheme) 1989 requires a minimum lot size of 2 (two) hectares for any land zoned Residential. The proposed boundary adjustment will result in only proposed lot 5 within the subject Environmental Planning Instrument. The proposed lot has an area of 3.565 hectares and complies with the controls.

Part 5 Additional provisions for zoned land

Comment: The subject application is for boundary adjustment and therefore the provisions are not required to be satisfied.

Part 6 Miscellaneous Provisions - Clause 33 Flood Planning

Comment: The proposed subdivision will not create any new lots or built form on the subject site. The proposal therefore will not adversely affect flood water behaviours or the environment.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the proposal only involves the realignment of the lot boundaries fences and as such no major erosion is expected from this, however, standard condition D001 will be recommended to minimize any pollution to the lagoon and river. The application therefore is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.1 - Minimum subdivision lot size	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion

Clause 2.3 Zone objectives

Proposed Lots 1-4 are zoned R2 Low Density Residential under Penrith Local Environmental Plan 2010:

'1 Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To promote the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses that are surrounded by private gardens.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure a high level of residential amenity is achieved and maintained.'*

The proposed boundary adjustment will not change the prevailing site density or built character of the lots. The proposed lots will retain the existing dwellings and will therefore not cause adverse impacts to existing and adjacent development. Accordingly, the proposed development is considered to be generally consistent with the zone objectives.

Clause 4.1 - Minimum subdivision lot size

Clause 4.1 (3) of Penrith LEP 2010 references the relevant map that defines the minimum lot size for subdivision on the subject land. Under the provisions of the LEP a minimum lot size of 550m² is identified. All four parcels of land identified as R2 Low Density residential under the provisions of Penrith LEP 2010 satisfy the requirements, with the following lot sizes proposed:

Lot 1: 991m²

Lot 2: 775m²

Lot 3: 1.02 hectares

Lot 4: 787m²

Clause 4.1 (4a) requires that subdivision of land in Zone R2 Low Density Residential satisfy the following requirements:

'(a) if it is a standard lot—a minimum width of 15 metres,'

Each of the proposed lots (Lots 1-4) provide a minimum lot width that exceeds the requirement:

Lot 1: 21.4m

Lot 2: 21.4m

Lot 3: 79.35m

Lot 4: 15.89m

Clause 7.2 Flood planning

The subject site is in close proximity to the Nepean River and is identified as 'Flood Planning Land' per the Flood Planning Land Map. Notwithstanding this, the subject development will not result in new or additional lots and will not affect the existing dwellings on the various lots. Accordingly, the development is not considered to cause any inconsistency with the clause objectives.

Clause 7.7 Servicing

The site is part of an existing residential suburban area and has access to power and communication services as well as access to Sydney Water's reticulated water and sewer services.

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

There are no draft Environmental Planning Instruments that apply to the proposal.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	N/A
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	Complies - see Appendix - Development Control Plan Compliance
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

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

Development Applications for Integrated Development

In accordance with Division 3 of the Environmental Planning and Assessment Regulation 2000, the proposal was referred to NSW Rural Fire Service. No objection were provided, subject to the imposition of relevant conditions of consent.

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

- The proposal is mainly for the boundary readjustments of existing five (5) Lots that will result in the entirety of Lot 5 being zoned specifically under the SEPP (Penrith Lakes Scheme) 1989.
- Boundary adjustments will still maintain the lots areas to the minimum required land sizes under the Penrith LEP 2010 (for Lots 1-4) and SEPP (Penrith lakes Scheme) 1989 (lot 5 only).
- Boundary adjustment will not amend the locations of existing structures on each lots.

The site does not accommodate any natural features of natural or ecological significance, but is located on the eastern extent of the of the Penrith lakes Scheme and the Nepean River floodplain and is therefore exposed to flooding hazards. However, as the proposal is for only the realignment of lot boundaries and does not propose any increase in built development or number of lots, the proposal is unlikely to increase risk or flood hazard. As such, the proposal is unlikely to negatively impact upon the natural environment.

The proposed subdivision is unlikely to cause any social impact or economic impacts in the area.

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

The proposed boundary adjustment is compatible with surrounding/adjoining land uses and hence is suitable in the area.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of Penrith DCP 2014, the application was publically notified from 24 January, with submissions open from 1 February 2019 to 15 February 2019. Now written submission were received.

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

The proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being SEPP (Penrith Lakes Scheme) 1989, Penrith LEP 2010 and Penrith DCP 2014, the proposal satisfies the aims, objectives and provisions of these policies.

The proposed boundary adjustments are considered to be reasonable and meet the minimum required lot areas required under Penrith LEP 2010. There is unlikely to be negative impacts arising from the proposed development and each lot retains access from a public road. The public interest is served through the detailed assessment of this development application under the relevant local planning controls.

Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

That Integrated DA19/0035 for boundary adjustment of five allotments (Lot 18 DP 253816, Lot 61 DP 255596, Lot 60, DP 255596, Lot C 375804, Lot 2 DP 1180164) be approved subject to the attached conditions (Development Assessment Report Part B); and that NSW Rural Fire Service be informed of the determination.

General

1 A001

The development must be implemented substantially in accordance with the plans numbered 19963-P6, prepared by Vince Morgan (Surveyors) Pty Ltd dated 08/08/2017 Sheet 1 of 1, and stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

2 A005 - APPROVED BODYS CONSENT (FOR INTEGRATED DAS)

The development is required to comply with the General Terms of Approval issued by the NSW Rural Fire Service, dated 7 January 2019 (Reference D17/3804 DA19013017178 RB).

Asset Protection Zones The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the issue of subdivision certificate and in perpetuity, the property within each of the proposed Lots 1, 2, 3 and 4 shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

2. At the issue of subdivision certificate and in perpetuity, the property within proposed Lot 5 shall be managed as an inner protection area (IPA), except the existing vegetation to be retained, as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

3. Any new provisions of water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

4. The existing dwellings on proposed Lots 1, 2, 3 and 4 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a noncorrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

General Advice–

This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings on the proposed lots as identified by the 'Building Code of Australia' may be subject to separate application under section (79BA) 4.14 of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

3 A Special (BLANK)

All boundary fences to be relocated or constructed shall be consistent with respect to the material, colour and height of the existing boundary fences of the relevant properties. All new fences **shall be completed prior to the issue of a Subdivision Certificate.**

Environmental Matters

4 [D001 - Implement approved sediment& erosion control measures](#)

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

Certification that the erosion and sediment control measures have been installed in accordance with the approved erosion and sediment control plan (s) for the development and "Managing Urban Stormwater: Soils and Construction 2004" shall be obtained and issued a minimum 2 days before any other site works are to commence, including earthworks and clearing of the site.

These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

Construction

5 [H041 - Hours of work \(other devt\)](#)

Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Landscaping

6 [L009 - Tree Preservation Order \(subdivision\)](#)

No trees are to be removed from within the subdivision without the prior consent of Penrith City Council. Any trees to be removed as part of the engineering work are to be shown on engineering plans submitted for Council's consideration and subsequent approval.

7 [L012 - Existing landscaping \(for existing development\)](#)

Existing landscaping is to be retained and maintained at all times.

Subdivision

8 [M008 - Subdivision Certificate requirements](#)

Prior to the issue of the Subdivision Certificate, the following is to be submitted:

An original plan of subdivision and two (2) copies of the plan. The plan of subdivision must indicate, where relevant -

- All drainage easements, rights of way, restrictions and covenants.
- All proposed dedications of roads/drainage/public reserve, which are to be undertaken at no cost to Penrith City Council.

The following information is to be shown on one (1) copy of the plan.

- The location of all buildings and/or other permanent improvements shall comply with any statutory boundary clearances or setbacks as defined by the Building Code of Australia and Council's resolutions.
- All existing services are wholly contained within the lot served and/or covered by an appropriate easement.

Prior to lodgement of the Subdivision Certificate Application, street address numbering must be obtained/approved by Penrith City Council's Rates Team. Proposed street addresses can be forwarded to council@penrith.city for approval.

Certification

9 [Q008 - Subdivision Certificate](#)

A Subdivision Certificate is to be obtained prior to the release of the linen plan of subdivision. The Subdivision Certificate will not be issued if any of the conditions in this consent are outstanding.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C11 Subdivision

11.3.2 Site Frontage

The control seeks to allow development of small sites and requires that site frontage is sufficient to permit vehicular and pedestrian access and discourage deep, narrow lots. The development will result in wider lots than what is existing and will provide a wider lot frontage or maintain existing arrangements and therefore satisfies the requirements of the DCP.

11.3.3 Allotment Dimensions

This section requires:

1) Allotment dimensions shall be capable of containing a rectangle suitable for building purposes measuring 10m x 12m or 8m x 15m behind the building line.

The subject subdivision proposal provides five (5) lots that will adjust the existing boundaries and will increase and therefore will increase each lots ability to accommodate the identified building envelope requirements. The development is therefore considered to satisfy the DCP requirements.

11.3.6 Landscaping

This control seeks to maintain and enhance the existing streetscape and landscape character of areas. In this instance, no new lots, dwellings or vegetation removal is proposed with the development. Accordingly, the development causes no changes or adverse impacts to the landscape character of the site or broader area.