

PENRITH LOCAL PLANNING PANEL

DETERMINATION AND STATEMENT OF REASONS

APPLICATION NUMBER	DA21/0782 – 19 Middlebrook Rise, Lot 2000 Bradley Street, 445 Hereford Avenue, Gunyah Drive & Riverflat Drive, GLENMORE PARK NSW 2745
DATE OF DETERMINATION	23 February 2022
PANEL MEMBERS	Jason Perica (Chair) Christopher Hallam (Expert) Mary-Lynne Taylor (Expert) Stephen Welsh (Community Representative)
DECLARATIONS OF INTEREST	No conflicts of interest were declared.
LISTED SPEAKERS	No listed speaks however the Applicant representatives were available to address the Panel upon request.

Public Meeting held via video conference on Wednesday 23 February 2022, starting at 1:00pm.

Matter Determined pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

Development Application DA20/0782, Lot 2000 DP 1204777, Lot 445 DP 1268480, Lot 701 & Lot 702 DP 1275647, Lot 637 & Lot 638 DP 1266411 & Lot 700 DP 1275647, 19 Middlebrook Rise, Lot 2000 Bradley Street, 445 Hereford Avenue, Gunyah Drive & Riverflat Drive, GLENMORE PARK NSW 2745 – Torrens Title Subdivision into 88 Residential Lots, 1 Public Reserve Lot, 1 Drainage Corridor Lot & 3 Residue Lots including Bulk Earthworks, Construction of New Roads, Landscaping in Street & Riparian Corridor, Retaining Walls, Stormwater Management Works & New Services (Stages 7-8, Precinct H, Glenmore Park Stage 2)

Panel Consideration

The Panel had regard to an assessment report prepared by Council Officers, a supplementary memorandum dated 23 February 2022 and the following plans;

- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No. 55 – Remediation of Land

- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

In terms of considering community views, the Panel noted there were two submissions received from the public notification of the Development Application and no verbal submissions were made to the Panel.

Panel Decision

Development Application DA20/0782, Lot 2000 DP 1204777, Lot 445 DP 1268480, Lot 701 & Lot 702 DP 1275647, Lot 637 & Lot 638 DP 1266411 & Lot 700 DP 1275647, 19 Middlebrook Rise, Lot 2000 Bradley Street, 445 Hereford Avenue, Gunyah Drive & Riverflat Drive, GLENMORE PARK NSW 2745 – Torrens Title Subdivision into 88 Residential Lots, 1 Public Reserve Lot, 1 Drainage Corridor Lot & 3 Residue Lots including Bulk Earthworks, Construction of New Roads, Landscaping in Street & Riparian Corridor, Retaining Walls, Stormwater Management Works & New Services (Stages 7-8, Precinct H, Glenmore Park Stage 2) be approved subject to the recommended conditions of consent outlined within the Council Officer assessment report, as amended as follows:-

Amendment of Condition 1

The first plan in the table is to be updated to reference Revision N of the Subdivision Plan (dated 16/02/2022).

Amendment of Condition 2 to state:

All requirements of any General Terms of Approval (GTA) obtained shall be satisfied prior to the issue of any Subdivision Works Certificate and/or Subdivision Certificate, as relevant. This includes the General Terms of Approval from the Natural Resources Access Regulator, reference CNR-15349 A-17762, dated 18 December 2020, and from the NSW Rural Fire Service, reference DA20201204004546-CL55-2, dated 15 February 2022. The GTA conditions are appended to this consent.

Amendment of Condition 3 to state:

Prior to the issue of any Subdivision Works Certificate, the landscape plan shall be amended to incorporate the southern 20m of the western riparian corridor in accordance with the Glenmore Park Stage 2 Voluntary Planning Agreement (VPA).

Prior to the issue of a Subdivision Certificate for the 225th lot in Precinct H, the biodiversity corridor planting works, as approved, are to be completed in accordance with the Glenmore Park Stage 2 VPA.

Further, 2 years and 3 months after the completion of these works, Surveyors Creek, including the western tributary, within Highland Views is to be dedicated to Council.

Prior to the issue of the relevant Subdivision Certificate, works to the corridor edge park and Pinnacle Park, as approved, are to be completed as per Annexure E of the Second Glenmore Park Stage 2 VPA.

Amendment of Condition 21 to state:

One week prior to any removal of vegetation (including but not limited to native vegetation and the small dam located at the north of the development site), a pre-clearance survey is required to be undertaken by a qualified and experienced Fauna Ecologist (with a licence to remove and handle native wildlife) to:

- Review final areas of native vegetation and individual trees approved for removal;
- Prepare a rescue plan/protocol that no individuals are to be translocated off site;
- All displaced wildlife is to be relocated to adjacent natural areas (i.e. the green corridor), except for injured wildlife that must be treated by an experienced wildlife veterinarian, with costs met by the proponent. Wildlife displaced from the scattered trees are to be relocated to the green corridor (not Pinnacle Park). This is due to the limited carrying capacity of this patch of vegetation;
- Prepare an unexpected finds protocol. Should threatened species be identified during the pre-clearance survey or during clearing activities, a stop work order must be enacted;
- Assess receiving locations with preference given to the green corridor for terrestrial wildlife and the dam within the corridor for aquatic fauna;
- Clearly identify/mark native vegetation for removal;
- Inspect all areas of habitat and provide pre-clearing recommendations to avoid harm or mortality of protected native fauna. This may include removal of identified fauna prior to works commencing or at the time of tree removal;
- Implement pre-clearance survey and rescue plan/protocol; and
- Implement controls to ensure exclusion of displaced fauna from the development site prior to works commencing.

Should there be any concerns, unexpected finds or incidents, Penrith City Council's Biodiversity Officer is to be contacted.

The pre-clearance survey results and actions taken are to be reported to Penrith City Council's Manager Environmental Health & Compliance, prior to clearing works.

Amendment of Condition 22 to state:

Protection fencing must be inspected by Council's Biodiversity Officer prior to works commencing.

Prior to works commencing (including the removal of native vegetation), temporary protection fencing must be installed to Pinnacle Park, the Green Corridor, Basin E and Surveyors Creek West Riparian Corridor and adhere to the following requirements:

- Protection fencing must be maintained for the duration of works.
- Staff inductions shall include reference to NoGo Zones and provide education on the importance of the sensitive natural areas associated with the development.
- Temporary signage is required indicating 'the vegetation within this area is protected'.

Permanent fencing is to be installed prior to the issue of the relevant Subdivision Certificate and adhere to the following requirements:

- Pinnacle Park - Permanent fencing shall consist of low bollard or similar installed no less than 1m from the dripline of the outer edge trees within this patch of vegetation. Signage shall be installed to indicate that this is a 'Conservation Area - Threatened Species Protection Zone'.
- Green Corridor - Permanent fencing shall be installed at the outer edge of this zone. Signage shall be installed to indicate that this is a 'Conservation Area - Surveyors Creek Re-Habitation Area'.
- Basin E - Signage shall be installed to indicate that the area beyond the fence is a 'No-Go Zone - No Stockpiles, No Heavy Machinery to be Stationed'.
- Surveyors Creek West Riparian Corridor - Signage must be installed to indicate 'The vegetation within this area is protected. Activities such as firewood collection, use of vehicles, creation of tracks and trails, bush rock removal, picking of native flowers and dumping of rubbish is prohibited'.

Amendment of Condition 27 to state:

To mitigate and ameliorate the impact of vegetation removal on resident fauna, the following is required to be satisfied:

(a) Tree and Vegetation Removal

During any tree removal, an experienced and qualified Ecologist is to be present to relocate any displaced fauna that may be disturbed during this activity. The following is to be undertaken to mitigate the impacts on resident fauna:

- Prior to clearing habitat trees, all nonhabitat vegetation shall be cleared first to allow appropriate space for the felling of habitat trees and retrieval of any fauna that may be present within the habitat trees.
- Trees with hollows shall be lopped in a way that the risk of injury or mortality to fauna is minimised, such as top-down lopping, with lopped sections gently lowered to the ground, or by lowering whole trees to the ground with the 'grab' attachment of a machine.
- Any injured fauna is to be appropriately treated, cared for and released on site when rehabilitated.

(b) Salvage of Habitat Features

- Hollows must be sectionally dismantled from felled hollow-bearing trees and attached to a retained tree in retained bushland within the green corridor according to best practice and in a manner that will not compromise the health and safety of the host tree. This is to be done by a qualified and experienced climbing Arborist under the direction of the project Ecologist.
- Logs shall be salvaged from the development area and cut into 3m lengths. A minimum of one log per 1,000m² is required to be introduced into the green corridor. Logs are to be relocated into the VMP area under the direction of the project Ecologist. Logs from the largest diameter cohort are to be used where they can be installed without damaging native vegetation, under the direction of the project bush regenerator.
- Suitable upper tree branches are to be salvaged and evenly distributed across the VMP area under the direction of the project bush regenerator.

- The remaining debris from the native vegetation is to be rigorously shaken to remove pollinators, prior to being mulched for use within the natural areas identified within the VMP.
- Exotic vegetation including controlled weed species must not be mulched with native vegetation, to prevent the spread of weeds on site.

Evidence prepared by the project Ecologist certifying that the above measures have been undertaken must be submitted to Penrith City Council's Manager Environmental Health & Compliance, within one (1) month following clearing activities.

Deletion of Condition 62

Amendment of Condition 80 to state:

The Subdivision Certificate application is to be supported by an 88B instrument creating the following encumbrances:

- (a) Easements for support - the provision of an easement for support to cover any retaining walls or embankments that extend into the lots if the batters are steeper than 5:1.
- (b) Residue allotments restriction - no development or building shall be allowed or be permitted to remain on the named lot unless satisfactory arrangements have been made with Penrith City Council for services (water, sewer, electricity and telephone), any outstanding contributions or consolidation with adjoining lots.
- (c) Easements for maintenance and repair 900mm wide benefitting lots with zero lot lines.
- (d) Restriction on the use of land for Lots 708-714 that restricts the driveway location for each lot to the location approved and constructed as part of the subdivision works due to the landscaping within the extended verge area on Road 113 that cannot be altered or disturbed.
- (e) Restriction regarding future housing compliance with the Highland Views Design Guidelines and regarding nomination of lots requiring steep lot designs.
- (f) A positive covenant regarding acoustic construction requirements for certain lots as outlined within Condition 16.
- (g) Easements and/or positive covenants in relation to required permanent and temporary bushfire Asset Protection Zones.
- (h) Right of carriageway benefitting Penrith City Council over the temporary cul-de-sac head at the eastern end of Road 113.
- (i) Easement for drainage over any inter-allotment drainage. Easement widths shall be in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments Policy.
- (j) Restriction on the use of land outlining that the landform, levels and vegetation for the earth mounds adjacent The Northern Road shall not be altered in any way in order to maintain The Northern Road view shed in perpetuity.

Council shall be nominated as the only authority permitted to modify, vary or rescind such encumbrances.

Addition of the Following Condition

Riparian corridor equipment plans and details are to be submitted to, and approved by Council prior to the issue of the relevant Subdivision Works

Certificate.

Prior to the issue of the relevant Subdivision Certificate, compliance documentation, including installation sign-off and warranties, shall be provided to Council.

Further Amendment of Conditions (Relates to Timing of Requirements)

Replace the reference to prior to the issue of “any” Subdivision Works Certificate to prior to the issue of “the relevant” Subdivision Works Certificate for Conditions 3, 42, 43, 44, 52, 53, 54, 55, 56, 57, 58, 65, 66, 68, 69, 70, 71, 72, 77 and 78.

Reasons for the Decision

The Panel agreed with the assessment contained with Council’s Assessment Report and supported the recommendation for approval on the following grounds:-

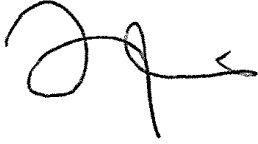

- The proposed development provides opportunities for additional housing within the locality which satisfies the objectives of the R1 – General Residential zone and Penrith Council’s Local Housing Strategy.
- The proposed subdivision arrangement including lot size mix and lot orientation is appropriate and is generally consistent with the subdivision arrangement of previously registered subdivisions immediately north and west of the subject site.
- The proposal provides additional planting works and biodiversity outcomes exceed the initial expectations established within the strategic planning instruments (including endorsed concept plan) for this precinct, which is a positive outcome.
- The environmental impacts of the proposed development will be suitably managed and mitigated by the proposal, and by the recommended conditions of consent, as amended.
- The Panel noted there were two submissions received from the public notification of the Development Application. The matters raised within the submissions are considered to have been suitably addressed in the assessment of the development application, including the submission of amended plans and the conditions of consent, as amended.

The Panel initially expressed concerns regarding the removal of a hollow-bearing tree, however the Panel was satisfied with the response and reasons provided by the applicant with respect to necessary site earthworks to facilitate the proposed subdivision, in addition to compensatory planting included within the application.

The Panel received supplementary material regarding a number of conditions and made various changes to recommended conditions of consent, as deemed appropriate to the Panel.

Votes

The decision was unanimous.

Jason Perica – Chair 	Mary-Lynne Taylor – Expert 
Christopher Hallam (Expert) 	Stephen Welsh (Community Representative) 