

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

| | |
|------------------------------|---|
| Application number: | DA18/0429 |
| Proposed development: | Torrens Title Subdivision x 2 Lots |
| Property address: | 60 - 64 Bonner Road, AGNES BANKS NSW 2753 |
| Property description: | Lot B DP 38896 |
| Date received: | 30 April 2018 |
| Assessing officer | James Heathcote |
| Zoning: | E4 Environmental Living - LEP 2010 |
| Class of building: | N/A |
| Recommendations: | Approve |

Executive Summary

The Development Application is referred to the Local Planning Panel for determination as the application proposes a variation to a development standard.

Council is in receipt of a development application for a torrens title subdivision x 2 Lots at 60 Bonner Road, Agnes Banks NSW 2753.

The proposed subdivision is permitted with consent of Council pursuant to Clause 2.6 of Penrith Local Environmental Plan (LEP) 2010. The subject site is zoned E4 Environmental Living.

The subject site is mapped as bushfire prone land and the application involves torrens title subdivision for residential purposes. Section 91 of the *EP&A Act 1979* specifies that subdivision of bushfire prone land is integrated development and requires concurrence under Section 100B of the *Rural Fires Act 1997* from the relevant bushfire safety authority. The application was referred to the NSW Rural Fire Service (RFS) for concurrence and general terms of approval were issued subject to conditions.

The key issue identified in the assessment of the application is the minimum lot size requirement within the LEP for dual occupancy development in the zone. With the proposed subdivision, proposed lot 2 will not meet the minimum lot size for the existing dual occupancy development as outlined within Clause 7.10 being a minimum of 2.0 hectares. The variation to the lot size requirements has however been sufficiently justified through a Clause 4.6 variation request from the applicant. The proposal satisfies the objectives of Clause 7.10, by providing an On-Site Sewage Management (OSSM) system that protects the amenity of local waterways and adjoining lots, and reflects the character of the area, with similar development in close proximity to the subject site. As such the proposed development and variation to a development standard is considered to be supportable.

The application was notified to adjoining properties and exhibited between 11 May and 25 May 2018. Council received no submissions in response to the application.

An assessment under Section 4.15 (formerly Section 79C) of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval subject to recommended conditions of consent.

Site & Surrounds

The subject site is located on the southern side of Bonner Road, approximately 650m west of its intersection with The Driftway in Agnes Banks. The site is 2.023Ha in area, with a 56m frontage to Bonner Road. The site is currently occupied by an existing dual occupancy and 2 x buildings used as kennels located 55m behind the dwellings and toward the rear of the site.

The surrounding area is characterised by a mix of low density rural-residential development, agricultural and conservation lands.

The site is identified as being bushfire prone land. The site is not affected by any easements but is affected by local overland flow flooding toward the north-west corner of the site.

Proposal

The proposed development involves the torrens title subdivision x 2 Lots, into the following subdivided lots:

- Proposed Lot 1 = 1.011 Ha
- Proposed Lot 2 = 1.012 Ha

The proposed development also includes a proposed building envelope, which requires the removal of some trees. A new OSSM system is proposed that accounts for both existing and future residential development on the site.

The above matters will be expanded upon within the relevant sections of this report.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 79BA - Bushfire prone land assessment**

In accordance with Clause 4.14 (1)(a) of the Environmental Planning and Assessment Act 1979, the consent authority must be satisfied that the development conforms to the specifications and requirements of the NSW RFS document, *Planning for Bush Fire Protection*.

As part of the application a Bush Fire Assessment Report was submitted, which identified specific BAL classifications to each elevation of both proposed and existing dwellings on the site.

The land slopes from the southern rear boundary of the site to the northern frontage, with approximately 5m of cross fall through the site.

The approximate separation distances for the proposed building envelope on proposed Lot 1 from the bushfire hazards is as follows:

North = 71m from forest. A BAL 12.5 is recommended along this elevation.

East = 15m from Grasslands. A BAL 19 is recommended along this elevation.

South = >100m from forest. A BAL Low is recommended along this elevation.

West = 40m from grasslands. A BAL 12.5 is recommended along this elevation.

The existing dual occupancy on proposed Lot 2 is sited in close proximity to a large clump of vegetation at the rear of the site. In accordance with the general terms of approval from the NSW RFS, conditions of consent are recommended to ensure the dual occupancy on proposed lot 2 is upgraded to improve ember protection.

As such, both existing and future development on the site has the capacity to meet the specifications and requirements of "Planning for Bushfire Protection" December 2006, and to the applicable BAL construction (as applicable to each elevation) in accordance with AS 3959-2009 "Construction of Buildings in Bushfire-prone areas".

- **Section 79C - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 (formerly Section 79C) of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration.

- **Section 91- Integrated development**

The subject site is mapped as bushfire prone land and the application involves torrens title subdivision for residential purposes. Section 4.46 (formerly Section 91) of the *EP&A Act 1979* specifies that subdivision of bushfire prone land is integrated development and requires concurrence under Section 100B of the *Rural Fires Act 1997* from the relevant bushfire safety authority. The application was referred to the NSW RFS for concurrence and a 'bushfire safety authority' was issued subject to conditions.

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

State Environmental Planning Policy No 55—Remediation of Land

SEPP 55 aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 requires a consent authority to be satisfied that the site is suitable for the proposed development, or can be made suitable prior to the determination of the application.

The site is currently used for residential purposes, which is unchanged as a result of the proposed development. There is no history of contamination or unauthorised earthworks recorded at the subject site which warrants further investigation.

In consideration of the above, the proposal satisfies the requirements of SEPP 55 and the land is considered to be suitable for the proposed development.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with the Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River (No 2 - 1997) and the application 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 2.6 Subdivision - consent requirements | Complies - See discussion |
| Clause 4.1 - Minimum subdivision lot size | Complies - See discussion |
| Clause 4.6 Exceptions to development standards | Complies - See discussion |
| Clause 7.2 Flood planning | Complies - See discussion |
| Clause 7.7 Servicing | Complies - See discussion |
| Clause 7.10 Dual occupancies and secondary dwellings in certain rural and environmental | Complies - See discussion |

Clause 2.3 Zone objectives

The proposal is consistent with the objectives of the E4 Environmental Living zone, specifically:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To ensure land uses are compatible with the available infrastructure, services and facilities and with the environmental capabilities of the land\
- To preserve and improve natural resources through appropriate land management practices.

The proposal is for a 2 x lot torrens title subdivision of the subject site. Each allotment will have a lot size of at least 1 hectare which meets the minimum lot size requirements and is in keeping with the subdivision pattern of the area.

Clause 2.6 Subdivision - consent requirements

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

Clause 4.1 - Minimum subdivision lot size

Each proposed lot meets the minimum lot size area of 10,000m² (1Ha) as specified by the Lot Size Map in Penrith LEP 2010. The proposed lot sizes are listed below:

- Proposed Lot 1 will be 1.011 hectares in area; and
- Proposed Lot 2 will be 1.012 hectares in area.

Clause 4.6 Exceptions to development standards

The proposal involves torrens title subdivision x 2 lots, where proposed lot 2 will include an existing dual occupancy on a lot that is less than the required 2Ha lot size required for this form of development in the E4 zone. The lot is 1.012Ha representing a variation of 98% to the development standard.

This application was submitted with a request that a '4.6 Exception to Development Standards' variation be considered due to the subject site not meeting the minimum lot size requirement, for a dual occupancy in a rural setting, of 2 hectares. The key consideration in assessing a Clause 4.6 variation is the consideration of the five (5) Land and Environmental Court Principles and demonstrated suitability of the proposal on the site having regard to the broader character of the area. The test for suitability is also dependent on the demonstrated compliance with the controls and objectives of the relevant development standards.

The applicant has outlined the following justification for the proposed variation:

- The capability of the site to have an OSSM system that has the capacity to service both proposed lots and their respective existing and proposed dwellings.
- The proposed OSSM system, and associated irrigation areas, meeting specifications (subject to compliance with conditions of consent) that protect the local waterways and the amenity of adjoining properties.
- The proposal reflects the character of the area, with similar development in close proximity to the subject site.
- Overland flood free building envelopes and vehicle access for both lots is achieved.
- New Asset Protection Zone's are provided to both lots including the existing dwellings.
- Ember protection upgrades and additional water supplies for the dual occupancy located on proposed lot 2.
- Improved OSSM implemented for the existing dual occupancy on proposed lot 2.

Consideration of the application, the proposed variation request and the established court principles has been undertaken as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objective of Clause 7.10 is "to ensure that effluent generated by dual occupancies or secondary dwellings is managed on site to protect waterways and the amenity of adjoining lots".

The assessment of this application has determined that the effluent generated by existing and proposed development of the allotments can be adequately managed on site, and therefore would protect local waterways and the amenity of adjoining lots. As a result, the objectives of the development standard has been met.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Clause 7.10, subclause (3) states that "Development consent must not be granted for a dual occupancy on a lot to which this clause applies unless the lot has an area of at least 2 hectares". Subclause (2) of this clause states that this clause "applies to land in the following zones that is not connected to a sewage reticulation system", including the E4 Environmental Living zone.

The above affirms that both the objective and purpose of Clause 7.10(3) is relevant to the proposed development but its intent has been met as outlined above.

It is however noted that reticulated sewer management is available immediately adjacent to the subject site to the west. This means that the LEP provision does not apply to land immediately adjoining the site with dual occupancy development permissible without a 4.6 variation on this adjoining land.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

As the objective states, effluent generated by dual occupancies is to be managed on site to protect waterways and the amenity of adjoining lots. The Wastewater report demonstrates that the OSSM system for both proposed lot 1 and 2 has the required capacity for all dwellings and the disposal areas satisfy Council's greywater reuse policy subject to compliance with recommended conditions.

As such, compliance with Clause 7.10(3) is not required to ensure the protection of local waterways and the amenity of adjoining lots.

4. The development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Council approved the existing dual occupancy on the subject site under *Development Application No. 140/85 - Erection of a two bedroom unit addition to create a dual occupancy*, noting that at the time the lot size was compliant. The area dedicated for the management of waste water for the dual occupancy is wholly contained within proposed lot 2 (to be 1.012Ha in area). It is further noted that the waste water management area for proposed lot 1 is also contained wholly within its proposed lot and does not interfere with proposed lot 2 or adjoining lots.

Council has supported variations to other sites in the Local Government Area where compliant wastewater management measures were available and specialised site and development conditions warranted support for the variation. The circumstances in this instance are unique as outlined above and as such compliance having regard to adjoining development potential and the LEP objectives is considered to be unreasonable.

5. The compliance with the development standard is unreasonable or inappropriate due to the existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The development does not propose a new dual occupancy development, however Council has already approved the development of a dual occupancy on site with associated OSSM area contained within proposed lot 2.

The subject site is located within a well established rural-residential area in Agnes Banks. The character of the area is a mixture of subdivided parcels of land sited to the east, north and west. As outlined above, the attributes of the site and development potential to the west warrants support for a variation on this lot.

As a result the 4.6 variation request made for this application is sufficient as it satisfies the objective of Clause 7.10.

Clause 7.2 Flood planning

The site is identified as flood affected (FA code) as there is an identified overland flow flood path running through the north-west corner at the front of the site. The overland flow path is located away from the existing dwellings, and proposed building envelope, and does not compromise flood free access to the dwellings. This flow path however has influenced the location of the proposed building envelope necessitating tree removal.

The proposal has been reviewed by Council's Development Engineering Department and no objection was raised subject to recommended conditions of consent.

Clause 7.7 Servicing

Reticulated water, electricity and telephone services are available for connection at the subject land.

The existing dwellings are serviced by existing OSSM systems. Information provided in support of the application identifies that the effluent disposal areas for each dwelling (existing and proposed) are wholly contained within each respective lot. As such, the proposal is considered satisfactory in this regard.

See discussion under *Section C13 Infrastructure and Services* in relation to the assessment of Penrith Development Control Plan 2014 for further information.

Clause 7.10 Dual occupancies and secondary dwellings in certain rural and environmental

There is an existing dual occupancy (approved under application No. 140/85) located toward the rear of the site, or proposed lot 2. Although the minimum lot size is 1 Ha for the site, as specified by Penrith LEP 2010, the result will lead to the existing dual occupancy being positioned on an undersized lot.

Clause 7.10, subclause (3) states that development consent must not be granted for a dual occupancy on a lot to which this clause applies unless the lot has an area of at least 2 hectares.

The subject site is 2.023 Ha in size, with proposed lot 2 being 1.012 Ha in size. As such, the proposal does not comply with this requirement and has necessitated a request to vary the development standard.

However, the objective of Clause 7.10 is to "ensure that effluent generated by dual occupancies or secondary dwellings is managed on site to protect waterways and the amenity of adjoining lots".

The capacity and disposal area calculations of the existing OSSM system (Proposed Lot 2) comply with the requirements of Council's On-site Sewage Management and Greywater Reuse Policy. Assessment of the proposed building envelope and associated OSSM system (Proposed Lot 1) found that, due to the close proximity to sensitive receivers (overland flow areas and native trees), Council requests that the subsurface disposal of wastewater be utilised in future proposed development on this lot. A condition of consent is imposed for an 88B instrument to be registered against proposed lot 1 which stipulates the following:

- Effluent disposal is to be restricted to subsurface, due to close proximity to sensitive receivers.
- At the time of any future development, a new wastewater report is required to be submitted to Council for approval.

As such, the proposal has demonstrated that the existing and proposed effluent to be generated on site will protect waterways and the amenity of adjoining lots in future, achieving the objective of the Clause.

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

Development Control Plan 2014

| Provision | Compliance |
|--|---|
| C1 Site Planning and Design Principles | Complies |
| C2 Vegetation Management | Complies - see Appendix - Development Control Plan Compliance |
| C3 Water Management | Complies - see Appendix - Development Control Plan Compliance |
| C4 Land Management | Complies |
| C5 Waste Management | Complies |
| C6 Landscape Design | Complies |
| C7 Culture and Heritage | N/A |
| C8 Public Domain | N/A |
| C9 Advertising and Signage | N/A |
| C10 Transport, Access and Parking | Complies - see Appendix - Development Control Plan Compliance |
| C11 Subdivision | Complies |
| C12 Noise and Vibration | Complies |
| C13 Infrastructure and Services | Complies |

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

The proposal ensures compliance with the applicable requirements within the Regulations subject to recommended conditions of consent.

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

The likely impacts of the proposed development upon the surrounding area are discussed as follows:

Context and Setting

The surrounding area is rural-residential in character, surrounded by conservation lands, with the majority of development being rural detached dwellings. The proposed subdivision will create 2 lots with site areas all above the minimum of 1 Ha for the area. The proposal is consistent with the existing subdivision pattern for the area, which is appropriately located so as to not negatively impact on the established rural character of the region.

Access, Traffic and Transportation Impacts

The proposal will utilise the existing driveway to access the dwellings on site. Recommended conditions of consent will ensure that the driveway area that services both proposed allotments is covered by a right of carriageway.

The proposal will not generate any significant traffic and will not unreasonably increase traffic on site or in the local road network.

Infrastructure and services

Reticulated water, electricity and telephone services are available for connection at the subject land.

The dwellings are serviced by existing OSSM systems, with the capacity of future system(s) to service the proposed building envelope for proposed lot 1. The effluent disposal areas for each dwelling are wholly contained within each respective allotment.

Noise and vibration

No noise or vibration impacts are anticipated as a result of the proposed development.

Vegetation Management

The proposal involves the removal of existing vegetation for the proposed building envelope associated with proposed lot 1. While the Flora and Fauna report submitted by the applicant detailed that no adverse impact to the ecological community would result from the proposed tree removal, this position was not agreed to by Council. In response the applicant amended the proposal enabling retention of existing vegetation between the driveway and eastern property boundary significantly increasing tree retention and protection opportunities on the site. This retention ensures that the proposed removal can be suitably balanced with replacement planting recommended as conditions of consent to partially offset the resulting loss.

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

The site is suitable for the following reasons:

- The site is zoned E4 Environmental Living and subdivision is permissible with Council consent.
- The proposed lot sizes meet the minimum lot sizes required by the LEP.
- The use is compatible with surrounding/adjoining land uses.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was advertised and notified to nearby and adjoining residents between 11 May 2018 and 25 May 2018. Council notified 7 neighbouring residences and no submissions were received in response.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

| Referral Body | Comments Received |
|--|---------------------------------------|
| Development Engineer | No objections - subject to conditions |
| Environmental - Environmental management | No objections - subject to conditions |
| Environmental - Biodiversity | No objections - subject to conditions |

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

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

Section 94 - Developer Contributions Plans

The following Section 94 plans apply to the site:

- Section 94 - District Open Space Facilities
- Section 94 - Cultural Facilities
- Section 94 - Penrith City Local Open Space

The following Section 94 calculations apply to the proposed development.

| Calculation for Torrens Title Subdivision x 2 lots | | | | | |
|---|---|---|---|--------------------------------|-------------------|
| <i>Open Space</i> | | | | | |
| No. of units | x | Rate | - | Credit for existing dwelling/s | Contribution rate |
| 1 | x | 6.2 | - | 3.1 | 3.1 |
| <i>City wide</i> | | | | | |
| No. of units | x | Rate | - | Credit for existing dwelling/s | Contribution rate |
| 1 | x | 6.0 | - | 3.0 | 3.0 |
| AMOUNT | | | | | |
| S.94 Contribution Plan | | Contribution Rate x Calculation rate | | | Total |
| District Open Space | | 3.1 x \$1,942.00 | | | \$6,020.00 |
| Local Open Space | | 3.1 x \$702.00 | | | \$2,177.00 |
| Cultural facilities | | 3.0 x \$164.00 | | | \$492.00 |
| | | NET TOTAL | | | \$8,689.00 |

Conclusion

In assessing the application against the current relevant instruments being:

- State Environmental Planning Policy No 55 - Remediation of Land;
- Sydney Regional Environmental Plan No.20 Hawkesbury-Nepean River;
- Penrith Local Environmental Plan 2010; and the
- Penrith Development Control Plan 2014; with appropriate conditions the proposal satisfies the requirements.

With the recommended conditions of consent, it is considered unlikely to have a negative impact on the surrounding properties and environment, the site is suitable for the development proposed and will complement the existing surrounding developments.

Recommendation

That DA18/0429 for the torrens title subdivision x 2 Lots at 60 Bonner Road, Agnes Banks NSW 2753, be approved subject to the attached conditions.

CONDITIONS

General

1 [A001](#)

The development must be implemented substantially in accordance with the plans stamped approved by Council below, 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.

| Description | Plan No. | Revision | Prepared By | Date |
|--|--------------|----------|-----------------------|------------|
| Plan of Detail Survey Over Lot B in DP 38896 No.60 Bonner Road, Agnes Banks | Sheet 1 of 1 | 04 | Freeburn Surveying | 04/08/2017 |

2 [A005 - APPROVED BODYS CONSENT \(FOR INTEGRATED DAS\)](#)

Prior to the release of any Subdivision Certificate, compliance with the requirements of the NSW Rural Fire Service as outlined within the Bushfire Safety Authority dated 29 May 2018 is to be demonstrated.

3 [A Special \(Access\)](#)

Prior to the issue of a Subdivision Certificate, the existing access to proposed lot 2 shall be upgraded to comply with the following:

- It shall be a two-wheel drive, all weather access road which is capable of a loading of 15 tonnes.
- A minimum carriageway width of 4 metres.
- A minimum vertical clearance of 4 metres to any overhanging obstruction, including tree branches.
- The access shall be a loop road around the dwelling or incorporate a turning circle with a minimum 12 metre outer radius or a turning bay of at least 6 metres.

4 [A Special \(Asset Protection Zones\)](#)

At the issue of a subdivision certificate and in perpetuity, the entire property 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 RFS's document Standards for asset protection zones.

5 [A Special \(Design and Construction\)](#)

Prior to the issue of a Subdivision Certificate, the existing dwelling and granny flat on proposed Lot 2 is 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 non-corrosive 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.

6 A Special (Water and Utilities)

Water and gas are to comply with the following requirements of section 4.1.3 of Planning for Bush Fire Protection 2006;

- In recognition that an unreliable water supply exists, a 20,000 litre water supply shall be provided for fire fighting purposes.
- If an above ground tank is to be installed it shall be manufactured of concrete or metal and raised tanks are to have their stands protected. Plastic tanks shall not be used.
- If an underground tank is to be installed it shall have an access hole of 200mm to allow tankers to refill direct from the tank.
- A 65mm metal Storz outlet with a gate or ball valve shall be provided.
- The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are metal.
- All associated fittings to the tank shall be non-combustible.
- A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
- An 'SWS' marker shall be obtained from the local NSW RFS and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
 - a) Markers must be fixed in a suitable location so as to be highly visible; and
 - b) Markers should be positioned adjacent to the most appropriate access for the static water supply.
- Reticulated or bottled gas is to be installed and maintained in accordance with Australian Standard AS/NZS 1596:2014: The storage and handling of LP gas and the requirements of relevant authorities. Metal piping is to be used.

Environmental Matters

7 D005 – No filling without prior approval (may need to add D006)

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

8 D Special BLANK

Prior to the issue of a Subdivision Certificate, a tree retention and removal plan is to be submitted, and approved by the Development Services Manager of Penrith City Council. This plan is required to provide for the retention and protection of vegetation to the east of the existing driveway (Proposed Lot 1) and confirm specific trees requiring removal as a direct consequence of the approved works and building envelope. No trees are permitted to be removed, which are not depicted for removal on the approved Tree Retention and Removal Plan.

Utility Services

9 G001 - Installation of services and Service Clearances (subdivision)

Prior to the release of the linen plan, the following service authority clearances shall be obtained:

- A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. This is required prior to the issue of the Subdivision Certificate and
- A letter from Integral Energy stating that satisfactory arrangements have been made for electricity supply to all proposed allotments in the subdivision, including any necessary easements; and
- A letter from an approved telecommunications service provider that satisfactory arrangements have been made for underground telephone services to all proposed allotments in the subdivision, including any necessary easements.

These clearances are to be submitted to the Principal Certifying Authority.

Engineering

10 K101 - Works at no cost to Council

All roadworks, stormwater drainage works, associated civil works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.

11 **K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS**

Prior to the issue of any Subdivision Certificate, a Section 138 Roads Act applications, including payment of application and inspection fees, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waster skips, signs etc. in the road reserve
- f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

12 **K516 - Subdivision Compliance documentation**

Prior to the issue of a Subdivision Certificate, the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Penrith City Council where Penrith City Council is not the Principal Certifying Authority:

- a) Surveyor's Certificate certifying that all services are located wholly within the property or within appropriate easements and that no services encroach boundaries, private or public lands.

13 **K Special Condition BLANK**

Prior to the issue of a Subdivision Certificate the driveway through proposed Lot 1 is to be constructed to the following requirements:

- a) Widened to a minimum of 4m wide in accordance with the requirements of the Rural Fire Service
- b) Provision of a passing bay within the vicinity of the southern side of the proposed building envelope of proposed Lot 1. The passing bay shall be a minimum of 2m wide for a distance of 6m and shall include 2m tapers at each end.
- c) Sealed from Bonner Road through to the boundary of proposed Lot 2.

Landscaping

14 **L009 - Tree Preservation Order (subdivision)**

No trees are to be removed, which are not depicted on the approved Tree Retention and Removal Plan which is required to be submitted to Penrith City Council for approval prior to the release of the Subdivision Certificate.

15 L Special (Replacement of Vegetation)

Prior to the issue of a Subdivision Certificate, a total of 30 trees are to be planted on site to replace the trees that are proposed to be removed to facilitate the development (approximate 2:1 ratio). Trees are to be selected from the following species list, with a minimum of 2 different species used:

- Eucalyptus amplifolia.
- Eucalyptus tereticornis.
- Eucalyptus eugenioides.
- Eucalyptus elata.
- Eucalyptus crebra.
- Melaleuca styphelioides.

All trees must be planted more than 20m from existing dwelling and must be maintained (and replaced where losses occur) for a period of 3 years or until they reach a height of 4 metres, whichever comes last.

Subdivision

16 M009 - 88B Instrument

The linen plan of subdivision is to be supported by an 88B instrument creating a Restriction as to User / Easement / Right of Carriageway regarding the following:

- a) Any future dwelling upon Proposed Lot 1 shall have habitable floor levels at a minimum of RL 20.8m AHD (adopted 1% AEP local flood level + 0.5m freeboard).
- b) Reciprocal Rights of Carriageway minimum of 6m wide over the existing driveway through proposed Lot 1.
- c) Provision of an easement for services over any utility services through proposed Lot 1 required to service proposed Lot 2

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

17 M009 - 88B Instrument

The linen plan of subdivision is to be supported by an 88B instrument creating a Restriction as to User or easement regarding the following:

- a) Effluent disposal is to be restricted to subsurface, due to close proximity to sensitive receiver's.
- b) At the time of any future development, a new wastewater report is required to be submitted to Council for approval.

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

Certification

18 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

C2 Vegetation Management

An objective of this Chapter is to protect and enhance native vegetation and habitats for native fauna and biodiversity. Also to protect native vegetation for its scenic values and retain the unique visual identity of the landscape.

The original survey plan for the proposed subdivision included a battle-axe access handle that ran along the eastern boundary. The result of this proposed handle, including the proposed building envelope for proposed lot 1 meant that 30 trees were identified for removal, as stated in the submitted Flora and Fauna report. In response to the removal, the report proposed 10 trees be planted to replace the loss of vegetation.

The site is mapped as containing River Flat Eucalypt Forest and Cumberland Plain Woodland. Although the site has been cleared in the past, it now supports semi-mature eucalyptus trees. This vegetation is considered valuable and the removal of 30 x trees and re-planting of 10 x trees does not adequately account for the loss of vegetation across the site.

Council raised concern with the applicant regarding the above concerns, and that better retention of vegetation across the site was to be achieved if the proposal is to be supportable.

An amended survey plan was submitted by the applicant that proposed a right of carriageway, instead of an access handle, which is to be placed over the existing driveway that leads to the approved dual occupancy. This amended access way meant that all vegetation along the eastern boundary (15 trees) can now be retained as part of the proposal. An amended flora and fauna report has been further submitted that details a better outcome of the small number of trees being removed for the proposed building envelope and replaced by further planting across the site. Furthermore, as the site is bushfire prone land, impacts of the Bushfire APZs on the existing vegetation has been taken into account.

As such, the proposal has satisfied the requirements of Chapter C2.

C3 Water Management

An objective of this section is to reduce the impact of flooding and flood liability on individual owners and occupiers.

Referral to Council's Development Engineering team found that the subject site is flood affected by local overland flows with a top water / flood level of RL 20.3m AHD. The survey plan submitted by the applicant displays the location of the area affected by the overland flood flows which is clear of the access way and proposed building envelope. As a result, flood free access is available to both new lots and any site drainage from the future building is able to be drained on site through a level spreader type system. Council's engineers raised no objections with respect to flooding and drainage from the site.

As such, the proposal satisfies the requirements of Chapter C3

C10 Transport, Access and Parking

An objective of this chapter is to ensure that satisfactory arrangements are made for access to any development or new allotment created by subdivision.

As mentioned in Section C2, an amended access arrangement was proposed by the applicant, from an access handle to utilising the existing driveway and apply a right of carriageway to it for access to both proposed lots. To ensure the Right-Of-Carriageway (ROC) complies with the requirements of this section, the following provisions have and/or will be applied as follows:

- The road access provides safe entry to and exit from the site. Manoeuvrability across the site allows for vehicles to enter/exit the site in a forward direction.
- Conditions of consent shall also be imposed for driveway widths, grades and passing bays are in accordance with the relevant Australian Standards.

- The access way and parking shall be suitably sealed to prevent erosion and minimise dust and dirt transfer.
- The design of the access way shall be conditioned to ensure that stormwater is not impounded, concentrated or redirected onto adjoining properties.
- Conditioning also includes adequate provision for turning areas and emergency access.

Subject to conditions of consent, the proposal satisfies the requirements of Chapter C10.

C13 Infrastructure and Services

An objective of the section is to guide applicants and landholders towards sustainable on-site management of sewage and wastewater, reflecting Council's On-Site Sewage Management and Greywater Reuse Policy.

The original intent of the application was to connect the entire site to Sydney Water's sewage network. During the assessment of the application referral was made to Sydney Water's Urban Growth team who stated there is no Sydney Water wastewater supply available for the proposed subdivision lots as the site is located outside of the Agnes Banks Priority Sewage Program (PSP) area. The Agnes Banks PSP has no capacity to service any lots outside of its catchment area. As such, the management of wastewater is to occur on site independently.

Accordingly, the applicant was requested to provide a wastewater report that demonstrated that both proposed lots 1 and 2 can be appropriately serviced by their own OSSM systems in accordance with Council's On-Site Sewage Management and Greywater Reuse Policy.

The applicant submitted a wastewater report which identified both existing and proposed OSSM systems for the site. The report was referred to Council's Environmental Management team who reviewed the OSSM systems for both proposed lots. The proposed OSSM systems were assessed as satisfactory subject to conditions, as follows:

- The OSSM system for proposed Lot 1 is in close proximity to sensitive receivers (such as overland flow areas and native trees). A condition of consent is imposed for an 88B instrument to be registered against proposed lot 1 which stipulates that effluent disposal is to be restricted to subsurface irrigation. In addition, at the time of any future development, a new wastewater report is required to be submitted to Council for approval.

As such, the proposal satisfies the requirements of Chapter C13.

D1 Rural Land Uses

Rural Dwellings and Outbuildings

As part of the proposed subdivision, a proposed building envelope has been included for proposed Lot 1. Despite this application not including the construction and approval of a new dwelling at proposed lot 1, an assessment has been made of the proposed building envelope to ensure that the siting, orientation and setbacks are compliant with the requirements of this Chapter.

Siting and Orientation of Dwellings and Outbuildings

This section aims to ensure the siting of dwellings takes into account the principles of site planning, landscape/scenic character and the environmental qualities of the area and site.

The siting of the proposed building envelope achieves these aspects through the following:

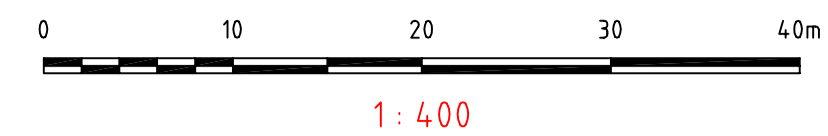
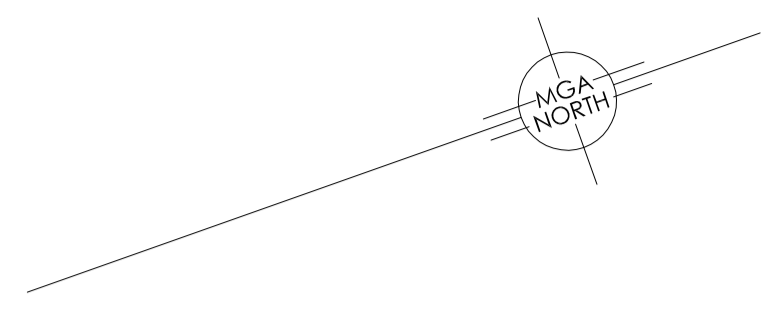
- The siting of the building envelope protects the privacy of the proposed dwelling, and dwellings on adjacent lots, through retaining trees that screen along the eastern and western boundaries of the site.
- Any vegetation proposed for removal is to be suitably replaced.
- The proposed building envelope is sited outside of the portion of the site affected by local overland flow flooding. Referral to Council's development engineering team found that the proposed building pad for any new dwelling to have a habitable floor of RL 20.8 AHD (flood level + 0.5m freeboard). They also found the proposal has satisfactorily address flooding concerns with regard to LEP and DCP requirements and controls.
- The existing driveway is to be utilised for access to both proposed lots 1 and 2. This driveway runs with the contours of the land and, subject to conditions, will comply with the requirements of Penrith DCP 2014.
- The siting of the proposed building envelope, in relation to the existing dual occupancy on proposed lot 2, is reflective of the residential building layout along Bonner Road. A similar layout exists on a previously approved battle axe subdivision at 20 & 26 Bonner Road.





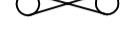

Setbacks and Building Separations

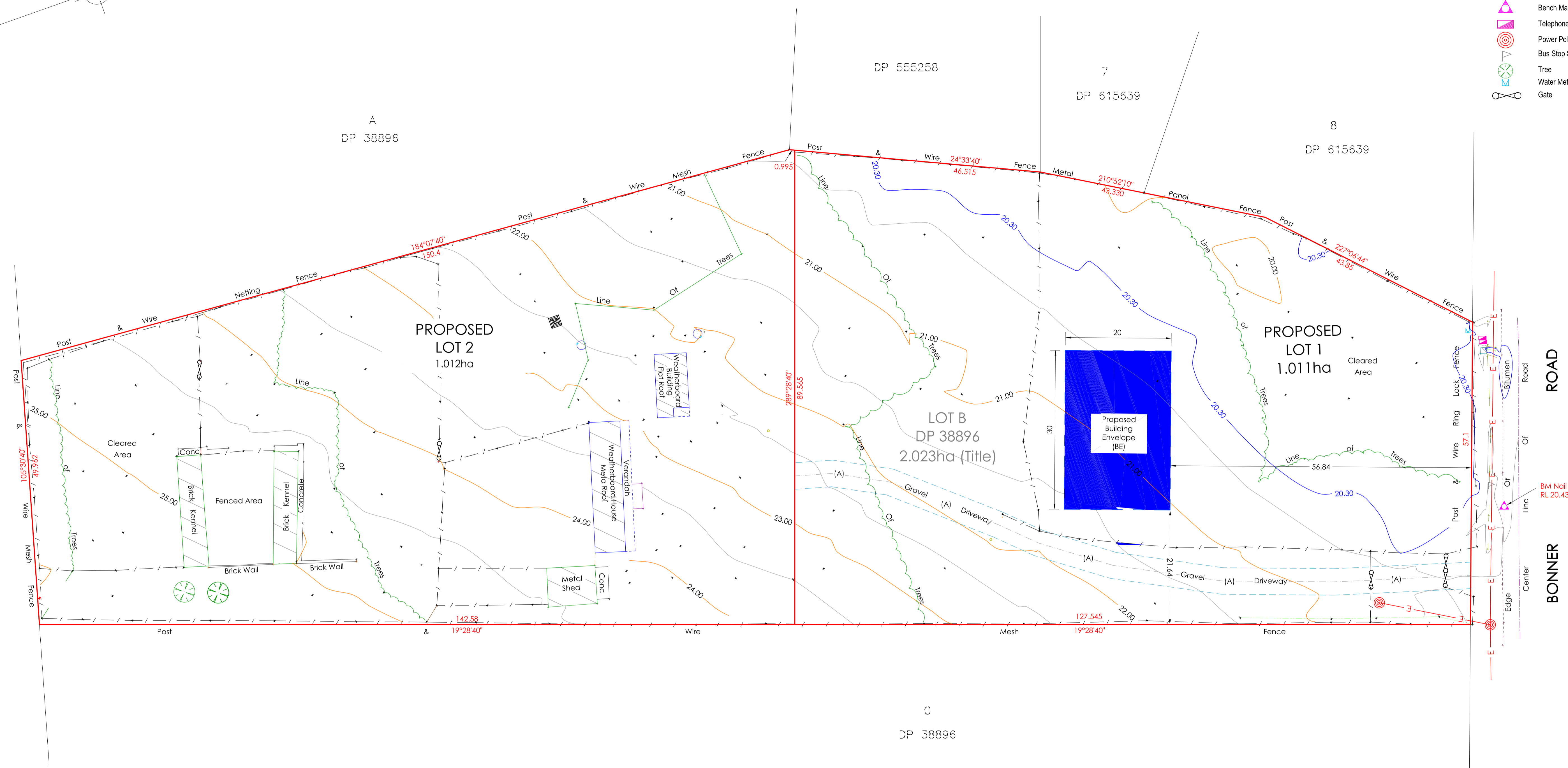
This section aims to maintain visual and acoustic amenity for dwellings by requiring setbacks from public roads and dwellings and other buildings on adjacent allotments. Setbacks are required from watercourses and areas of local overland flow flooding to protect dwellings in the event of a flood. The proposed building envelope for proposed lot 1 achieves the above objectives through the following aspects:

- Providing a 56.84m front setback from the envelope to the frontage of the site. Front setbacks for dwellings along Bonner Road are varied, and the proposed front setback of the building envelope is generally in line with similar development in the area.
- Providing a side setback of 21.64m to the east boundary line and a 28.8m side setback to the west boundary line.
- Providing a 71m separation to the second dwelling and a 82m separation to the principal dwelling already existing on proposed lot 2. Additionally, a 145m separation is achieved from the proposed building envelope and the brick kennel located toward the rear of the site.


Considering the above aspects, the proposal satisfies the requirements of Chapter D1.



- LEGEND**
-  Bench Mark
 -  Telephone Pit Lid (Single)
 -  Power Pole
 -  Bus Stop Sign
 -  Tree
 -  Water Meter
 -  Gate



NOTES:

- * THE POSITION OF FEATURES ARE INDICATIVE ONLY.
- * SERVICES SHOWN HEREON HAVE BEEN LOCATED WHERE POSSIBLE BY FIELD SURVEY. PRIOR TO ANY EXCAVATION OR CONSTRUCTION ON THE SITE, THE RELEVANT AUTHORITY SHOULD BE CONTACTED FOR POSSIBLE LOCATION OF ANY OTHER SERVICES INCLUDING THOSE WHICH MAY BE UNDERGROUND.
- *  INDICATES EXISTING SURFACE LEVEL.
- * CONTOURS SHOWN DEPICT THE GENERAL TOPOGRAPHY. THEY DO NOT REPRESENT EXACT LEVELS OTHER THAN AT SPOT LEVELS SHOWN.
- * RELATIONSHIP OF IMPROVEMENTS TO BOUNDARIES IS DIAGRAMMATIC ONLY. WHERE OFFSETS ARE CRITICAL THEY SHOULD BE CONFIRMED BY FURTHER SURVEY.
- * BEARINGS AND DISTANCES ARE BY TITLE ONLY. NO BOUNDARY INVESTIGATION HAS BEEN CARRIED OUT.
- * THE TREE SIZES ARE APPROXIMATE ONLY. FURTHER FIELD INSPECTION SHOULD BE CARRIED OUT WHERE TREE DETAILS ARE CONSIDERED TO CRITICALLY AFFECT DESIGN. THE TREE SIZES ARE SHOWN AS:- TRUNK DIAMETER/CANOPY SPREAD/HEIGHT
- * ORIGIN OF LEVELS: PM 74705 (SCIMS 18-07-2017)

(A) PROPOSED RIGHT OF CARRIAGE WAY OVER APPROXIMATE POSITION OF EXISTING TRACK IN USE 5 WIDE.

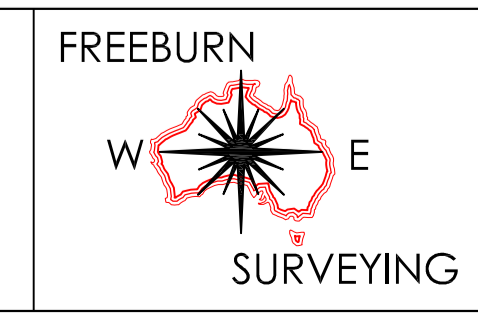
NOTE:
APPROXIMATE POSITION OF CENTRELINE OF TRACK AS RECORDED IN FIELD NOTES.

NOTE:
THESE PLANS SHOULD BE READ IN CONJUNCTION WITH DIGITAL DATA ISSUED TO CLIENT. THE DIGITAL DATA CONTAINS NUMEROUS LAYERS OF INFORMATION WHICH ARE NOT SHOWN ON THESE PLANS FOR THE SAKE OF CLARITY.



Client:
SUSAN KING

Project:
**PLAN OF DETAIL SURVEY OVER
LOT B IN DP 38896
No.60 BONNER ROAD, AGNES BANKS**



MATTHEW FREEBURN
LAND, ENGINEERING & MINING SURVEYOR
SUITE 2, FIRST FLOOR, "SURVEYOR HOUSE"
2 CASTLEREAGH STREET
PENRITH 2750

Telephone 02 4721 2289
Fax 02 4721 5646
email a.dean@freeburnsurveyors.com
or matthew@freeburnsurveyors.com

| | | |
|----------------------------|----------------|----------------|
| Scale 1:400 | Datum: AHD | Contour: 0.5m |
| Surveyor: CR | Drawn By: LJMc | Checked: MF |
| Date of Survey: 04/08/2017 | Sheet 1 of 1 | |
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