

STATEMENT OF ENVIRONMENTAL EFFECTS



SITE: Lot 72 DP 32140
263-269 Mount Vernon Road
Mount Vernon

APPLICANT: Frank Grippaudo

PROPOSAL: Demolition of the existing dwelling and ancillary structures.
Two (2) lot torrens title subdivision with one dwelling proposed
on each allotment.

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INTRODUCTION

This Statement of Environmental Effects outlines the proposed development and its level of compliance with the relevant Environmental Planning Instruments in accordance with Part 4, Division 4.3, Section 4.15 of the *Environmental Planning & Assessment Act 1979*.

The subject allotment is known as Lot 72 DP 32140 – 263-269 Mount Vernon Road, Mount Vernon.

The subject site contains a dwelling and ancillary structures that are to be demolished to allow for the proposed development to occur. Minimal vegetation requires removal to allow for the proposed development to be sited. Mature vegetation throughout the allotment is to be retained ensuring the landscape character of the area is not detrimentally impacted by the development.

The subject site contains a dam to the eastern side of the allotment as shown on the accompanying plans. The eastern edge of the dam would require filling to allow for the site access to be provided to the future development.

The subject Development Application relates to demolition of existing structures on site, construction of two dwellings and torrens title subdivision to create two allotments. Upon completion of the development the allotments created will contain one dwelling each.

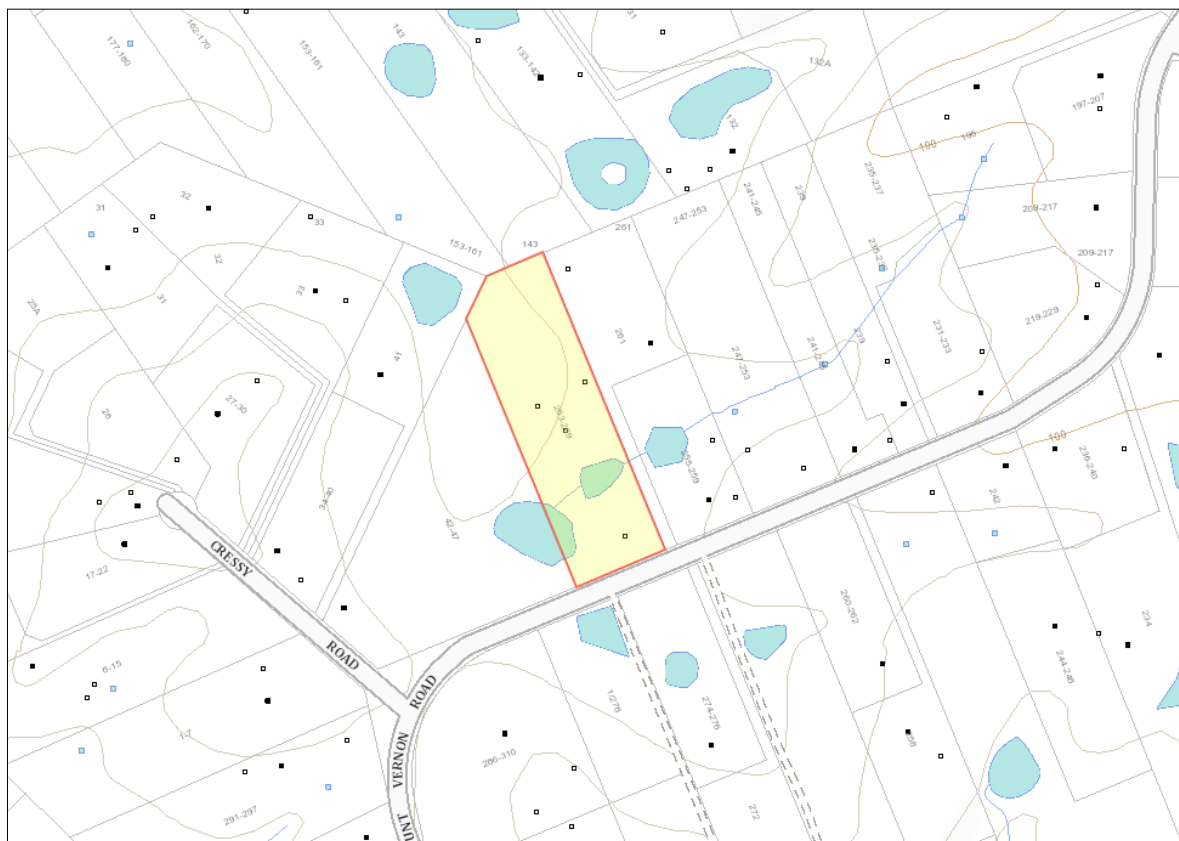
This report demonstrates that the proposed development is able to achieve the objectives of the EPA Act 1979, relevant environmental planning instruments and the E4 Environmental Living Zone. The proposal will complement the existing rural - residential area, recent development trends and the future character of the Mount Vernon area and is considered a suitable form of development for the site.

SITE ANALYSIS

The subject site is located on the northern side of Mount Vernon Road and contains a dwelling that has historically used for rural-residential purposes. The subject allotment has a frontage to Mount Vernon of 78.805m, an average depth of 248m and a total land area of 2.025 hectares.

The subject site has a moderate fall to the western boundary with varied topography around two dams that are located on the property. Minimal vegetation is required to be removed as part of the proposed development. However, additional planting and further landscaping is to occur upon completion of the construction phase. The site is identified as being Bushfire Prone Land on Council's maps. However, the subject site is not known to be flood affected or contain acid sulphate soils.

The subject site is not identified as being a local heritage item or within a heritage conservation area nor is the site within proximity to a local or state heritage item.



Location Plan: Lot 72 DP 32140, 263-269 Mount Vernon Road, Mount Vernon

Source: SIX Maps 2021

DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development incorporates the follow works:

- Demolition of the existing dwelling and ancillary structures
- Torrens title subdivision to create two (2) allotments with one dwelling located on each allotment.
 - o Lot A; fronting Mount Vernon Road, 9361m²,
 - o Lot B; battle-axe allotment, 1 hectare excluding the access handle.
- Removal of vegetation within close proximity to the proposed building footprints.
- Construction of a one dwelling on each proposed allotment
 - o Dwelling A contains three (3) bedrooms, home gym, living and dining rooms along with an outdoor entertaining area, attached garage and subfloor garage and storage areas.
 - o Dwelling B contains seven (7) bedrooms, home office, home cinema, gym, living, entertaining areas, family and dining rooms along with an outdoor entertaining area, attached garage and subfloor garage and storage areas.
- Landscape treatment upon completion of the construction phase.

The proposed works have been designed and sited to appropriately address the site and to best utilise the outlook and amenity to the north.

LEGISLATIVE REQUIREMENTS

The following sections address the matters for consideration as listed in Part 4 Section 4.15 of the Environmental Planning & Assessment Act 1979.

(a)(i) Relevant environmental planning instruments

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 Contamination and remediation to be considered in determining development application

(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site is within an existing area historically utilised for residential purposes. No previous land uses are known to have occurred on the site that would result in potential land contamination. No further assessment is considered necessary in this instance.

State Environmental Planning Policy (Infrastructure) 2007

Division 17 Roads & Traffic

Subdivision 2 – Development in or adjacent to road corridors and road reservations

101 Development with frontage to classified road

- (1) The objectives of this clause are:
- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and
 - (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.
- (2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
 - (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the development, or
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
 - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The subject site is not located within proximity to a classified road, and does not frontage or common boundary with the classified roadway. No further assessment is anticipated in this regard.

State Environmental Planning Policy (Building Sustainability Index) 2004

The proposed development has been designed with a high degree of consideration toward energy efficiency and sustainability. A BASIX Certificate has been prepared with the requirements to be implemented during construction and prior to occupation. The development is considered to achieve the aims and objectives of this policy.

Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River (SREP 20)

SREP 20 aims to protect the environment of the Hawkesbury-Nepean River by ensuring that the impacts of future land uses are considered in a regional context. Of most relevance to the proposal is the requirement to assess the development in

terms of the impact of the development on water quality and the riparian land located within the site.

The proposed development has given consideration to the size of the allotments and the future development of the site ensuring the maximum setback from any waterways while allowing for suitable development throughout the site. Every effort has been made to reduce the impact on the surrounding lands and the Hawkesbury - Nepean River catchment. No trees are proposed to be removed as part of the proposed subdivision works.

The site will not incorporate an additional use resulting in pollutants or potential for contamination of the waterway. Due to the nature of the existing site, this is able to be achieved without any significant impact on the surrounding land.

Land surrounding the subject site is of a rural nature and there is significant separation from the any rivers, therefore minimal stormwater would currently run across the site directly into the waterways. This ensures the proposed development will result in a negligible impact on the existing natural cross flow of water within the site.

The proposed subdivision is considered to result in a development that is suitable for this particular allotment. The proposal maintains a landscaped area in keeping with the rural area and does not have any significant impact on the surrounding lands and waterways. The proposed is considered to be in keeping with surrounding developments, appropriately utilising a site in an existing rural – residential area.

Subject to appropriate conditions, the proposal will be consistent with SREP 20, particularly in relation to total catchment management, water quality, riparian land and the metropolitan strategy. Adequate stormwater drainage measures and appropriate erosion and sediment control devices will be incorporated to ensure minimal impact will result from the development, maintaining water quality and quantity with in the watercourse.

Penrith Local Environmental Plan 2010

The LEP is divided into several Parts and the relevant provisions that apply to the subject development are listed, together with a comment with respect to compliance.

The subject site is zoned E4 Environmental Living pursuant to Clause 2.1 of Penrith Local Environmental Plan 2010.

The proposed development is defined in the Plan as a “dwelling house” which means “a building containing only one dwelling” on each proposed allotment.

The identified zone permits the construction of a ‘dwelling house’ subject to development consent from Council.

Clause 2.3 Zone objectives and land use table

The objectives of the E4 Zone are:

- 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 proposed development is for low-density residential dwellings on rural residential allotments. The proposed development is considered to be compatible with the existing character, style and scale of the locality. Each dwelling is designed to provide a high level of amenity for residents and adjoining residents whilst considering the constraints of the site. The proposed development is considered to meet the relevant objectives of the E4 zone.

Clause 4.1 Minimum subdivision lot size

- (2) This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.

The subject site is identified to be located in an area where the minimum lot size for subdivision is 1 hectare per allotment created. The subject site has an area of 2.025 hectares however the proposed allotments have areas as follows:

Requirement	Provision	Compliance
1 Hectare	Lot A – 9361m ² Lot B – 1 Hectare excluding the access handle	No – See Clause 4.6 Yes

Clause 4.6 Exceptions to development standards

Please refer to Appendix 1.

Clause 5.10 Heritage Conservation

Upon reference to Schedule 5 in relation to local, State or Regional items of heritage significance including conservation areas, it was revealed that the subject property

was not identified as having heritage significance and is not directly in the vicinity of any heritage items.

Clause 5.11 Bush fire hazard reduction

The subject site is identified to be bushfire prone land. The design of the residence has been undertaken to incorporate the provisions of Australian Standard 3959 and the Planning for Bushfire Protection Guidelines. Please refer to attached Bushfire Assessment Report.

Clause 7.1 Earthworks

Minor ground disturbance is required to provide a level platform to site the building footprint. The extent of earthworks is not considered excessive for the site due to the slope of the allotment, deepened edge beams, and retaining walls proposed to reduce site disturbance as much as practical on the allotment. All earthworks can be suitably battered and/or retained to ensure structural adequacy and minimal impact on the adjoining properties.

Clause 7.2 Flood Planning

The subject site is not known to be located within a flood planning area.

Clause 7.5 Protection of scenic character and landscape values

The proposed development is considered to be in keeping with the existing development of Mount Vernon. The proposed development is compatible with the character of the area and has been designed to minimise the impact upon the scenic character and the landscape values of the area. The development addresses the street frontage to the benefit of the streetscape. The proposed dwellings and subdivision will not detrimentally impact the surrounding rural aesthetic and will not be visually prominent when viewed from the any major roads or public places.

Clause 7.7 Servicing

All the listed essential services are capable of being provided to the subject site.

* * *

Conclusion with respect to LEP requirements

The proposal is considered to satisfy all the relevant development standards relating to dwelling houses as contained within PLEP 2010.

(a)(ii) Relevant draft environmental planning instruments

There are no known draft environmental planning instruments that would prevent the subject development from proceeding.

(a)(iii) Relevant development control plans

Penrith Development Control Plan 2014

The objective of this plan is to consolidate all of Council's Development Control Plans into one comprehensive document, detailing the provisions for all types of development within the Penrith area.

Part C – Controls applying to all Land Uses

C1 Site Planning and Design

1.1 Site Planning

Site Analysis Plan attached for Council's consideration.

1.2 Design Principles

Consideration has been given the energy efficiency of the proposed development. A BASIX assessment has determined that each dwelling within the development can achieve the required efficiency rating. Please see attached BASIX Certificates.

The proposed dwellings have a contemporary design, particularly at the street elevation that is characteristic of the housing styles available from the residential home market and current architectural trends. Large proportionate feature windows provide for greater natural light penetration into each residence and assist in defining the character of the detached built forms. The front elevation of Dwelling A is stepped in order to minimise the prominence within the streetscape. A variety of roof forms occur over the dwellings to create interest in the designs.

The site has a moderate fall to the western boundary with cut and fill required to site the building footprints. Refer to the Site Plan for details of the cut/fill proposed on the subject site. Retaining walls also form part of the proposed development and future landscaping of the site.

Consideration has been given to the principles of the CPTED. These are to provide a safe and secure development with adequate lighting, visual access and passive surveillance along street frontages. The site will be clearly delineated as a private space to separate it from the public realm. Appropriate external and internal lighting will be provided to assist in this regard.

1.3 Fencing

Fencing does not form part of the subject application before Council.

C2 Vegetation Management

2.1 Preservation of Trees and Vegetation

No trees are required to be removed as part of the proposed development. Additional planting is to be provided upon the completion of the construction phase.

2.2 Biodiversity Corridors and Areas of Remnant Indigenous Vegetation in Non-Urban Areas

The subject site is not identified as being within a biodiversity corridor or area of remnant indigenous vegetation on the LEP 2010 Natural Resources Sensitivity Land Map.

2.3 Bushfire Management

The land has been identified as being bushfire prone land in accordance to Council's Bush Fire Prone Land Map. Please refer to attached Bushfire Assessment Report.

C3 Water Management

3.1 The Water Cycle / Water Conservation

Consideration has been given to water conservation during the design of the proposed development. A BASIX assessment has determined that each dwelling can achieve the required water conservation rating. Please see attached BASIX Certificate.

3.2 Catchment Management and Water Quality

No pollutants are anticipated to be discharged from the proposed development.

3.3 Watercourses, Wetlands and Riparian Corridors

No watercourses, wetlands or riparian corridors are located on or within proximity to the subject site. The proposed works include modification to the existing dam to allow access to be provided to the rear of the allotment.

3.4 Groundwater

The proposed dwelling is not anticipated to impact upon the groundwater of the subject site.

3.5 Flood Liable Lands

The subject site is located within a flood planning area.

3.6 Stormwater Management and Drainage

Drainage from the proposed development is to be directed to an approved system via rainwater tanks. Please refer to the attached Concept Drainage Plan.

C4 Land Management

Ground disturbance will be limited to minor excavation and filling for construction of a level building platform. All disturbed areas will be provided with sedimentation controls in the form of geofabric fencing and/or staked hay bales as specified on the site plan. Soil erosion control measures can easily be provided in accordance with Council's policy with compliance required as a condition of consent. A stabilised access pad will be provided at the point of entry to the site to eliminate soil leaving the construction zone.

C5 Waste Management

All waste will be deposited within the waste receptacle in accordance with the attached Waste Management Plan.

C6 Landscape Design

A landscape concept plan is submitted with the development application.

C7 Culture and Heritage

The subject site is not known to contain any items of heritage significance or be within a heritage conservation area.

C10 Transport, Access and Parking

10.5 Parking, Access and Driveways

Two (2) carparking spaces per dwelling. The proposed development includes garage areas within each dwelling to easily comply with this requirement.

C11 Subdivision

11.2 Rural Subdivision

1) Land Capability

The subject site has an existing area of 2.025 hectares and is located within an area zoned as E4 Environmental Living. Subdivision of the subject site to create two (2) torrens title allotments is not considered to detrimentally impact the existing rural-residential use of the site as agricultural uses are limited by the existing allotment sizes in the greater area of Mount Vernon.

Providing two (2) allotments within a rural-residential area is considered to be good economic and social use of the land as the availability of large residential allotments in Greater Sydney, and particularly the western Sydney Region, is in high demand. Further the proposed subdivision is located in an area where subdivision of allotments has occurred on the adjoining and surrounding development.

The proposed subdivision is not anticipated to result in environmental impacts beyond that of a dwelling development on the area and is expected development of this area of Mount Vernon.

2) Avoiding Landuse Conflicts

The existing site is located within an area of rural-residential land uses where landuse is characterised by low-density rural residential developments. Dwellings within the surrounding allotments are of grander scale whilst allowing spatial separation as desired in rural-residential areas. The proposed subdivision is not anticipated to result in detrimental impact to the area by way of noise, dust, odour, traffic or light due to the low density development proposed on each allotment.

3) Subdivisions of Dwellings

The proposed development is for a two (2) lot subdivision and construction of a dwelling on each proposed allotment.

The proposed dwellings have been designed to comply with Council's requirements as detailed in the attached architectural plans and below compliance table. The proposed development is considered to be in context with the character of the area and the means to have minimal impact on the adjoining properties

Part D Controls applying to Specific Land uses/ activities

D1 Rural Land Uses

1.2 Rural Dwellings and Outbuildings

1.2.1 Siting and Orientation of Dwellings and Outbuildings

The proposed single storey development will be compatible with surrounding developments, and is considered consistent within a rural-residential area.

The siting of the dwelling will provide generous boundary setbacks. The distances to boundaries are compatible with surrounding development and will contribute to spatial separation and openness between buildings. With respect to external appearance, the design of the proposed dwellings is consistent with other contemporary residential buildings within the locality and will complement the streetscape.

<i>Requirement</i>	<i>Provision</i>	<i>Compliance</i>
<i>1.2.2 Setbacks and Building Separations</i>		
<u>Setbacks from Roads</u> Front setback – 15m	Dwelling A - 32.514m to Mount Vernon Road.	Yes

30m front setback to classified Roads. 10m front setback to Mulgoa Road.	N/A N/A	N/A N/A
<u>Setbacks from watercourses</u> 100m to Nepean River 75m to South Creek 40m to all other natural watercourses.	N/A	N/A
<u>Building separations and side boundary setbacks</u> 1m for an allotment >2ha 5m for an allotment <2ha	N/A Dwelling A – Min. 15m Dwelling B – Min. 15m	N/A Yes Yes
<i>1.2.3 Site Coverage, Bulk and Massing</i> Max. ground floor footprint 500m ² Overall ground floor dimension of 45m, max. 18m at one point. 2 nd storey max. floor space 70% ground floor of the dwelling. Max. 3 car spaces to face public road or place, additional garages to be setback and screened. Max. total footprint of all structures 600m ² on allotment, excluding farm buildings.	 Dwelling A – 493.55m ² Dwelling B – 818.42m ² Max. 45.94m overall dimension. Max. 9.35m wall length N/A Garage doors of each dwelling are orientated to the side boundary of the property. Dwelling A - 674m ² Dwelling B - 985m ²	 Yes No – See below No – See below N/A Yes No – See below No – See below
<i>1.2.4 Height, Scale and Design</i> <u>Height and Scale</u> Max. 2 storey.	 Dwelling A – Single storey	 Yes

Max. ceiling height 8m.	Dwelling B – Single storey	Yes
	Dwelling A – <8m to NGL	Yes
	Dwelling B – <8m to NGL	Yes
Floor level max. 1m above NGL.	>1m to living areas	No – See below
Max. cut and fill 1m.	>1m fill	No – See below
<u>Design and Quality</u> Sympathetic in design to rural character.	Rural residential character is maintained with the appropriate design of the dwellings. Existing streetscape characterised by larger residential dwellings creating a level of prestige for the area.	Yes
Fencing to be of an open rural nature.	Fencing not proposed as part of this application.	N/A

Variations

Maximum footprint areas and maximum dwelling width – Council's DCP permits a maximum building footprint of dwellings per allotment in rural areas to be 500m² and a maximum dimension of 45m. The proposed dwellings have a footprint of greater than 500m² and a width of 45.9m and thus require a variation to this control.

The objectives of the area control are understood to be in place to minimise any impact on the amenity of the adjoining sites by way of overshadowing, overlooking and visual bulk.

The proposed dwellings have been designed and sited appropriately for the orientation and size of this particular allotment. The dwellings, despite their increase in footprint area, are not anticipated to have any detrimental impact on the adjoining properties as the development exceeds the side setback control and is not considered to cast shadows beyond a level anticipated for this allotment. Further the development in the surrounding area of Mount Vernon is of a grander scale to standard residential dwellings which would otherwise be restricted by this control.

The design of the dwellings on this particular site is considered to give a high degree of consideration to the size of the allotment, orientation of the site and the siting of dwellings on the adjoining sites. This results in the sites being able to accommodate the increased building footprint without having any detrimental impact beyond that of a compliant proposal. As the objectives of the control can be achieved it is considered reasonable for the variation to be supported in this instance.

FFL above NGL –As detailed within the 'Earthworks' variation request below, the topography of the site results in a basement area and required significant fill to the north western corner of each dwelling. The increased fill results in the ground floor being >1m above ground however the dwelling incorporates mitigative design measures to ensure the privacy and amenity of the adjoining property is maintained. The side setbacks are increased to allow extensive landscaping, articulated design combined with varied roof forms to ensure that the built form will not appear excessive despite the raised floor level.

The front setback of each dwelling and ability to provide screen planting where required, enables the dwelling to present well within the streetscape, without being a dominating form. The dwelling is considered to be suitably sited and designed on an allotment with difficult topography. As the proposed floor level will not result in any impact beyond that of a compliant proposal, it is requested that the variation be supported in this instance.

Earthworks – Council's controls permit a maximum cut and fill of 1m. The subject site has a moderate slope to the north-west and the dwellings have been provided with a basement area to minimise the extent of site works required to site the proposed dwellings.

The maximum fill will be contained entirely within the building envelope through the use of integrated retaining walls to the basement and deepened edge beams to the proposed dwellings. The area of fill relates to the north-western corner of each dwelling which provides suitable setbacks and mitigative design measures to ensure there is no impact on the adjoining property as a result of the variation. The large setbacks enable additional landscape planting where required, should any future dwelling on the adjoining allotment not be suitably offset.

The dwellings provide suitable articulation to ensure there will be no detrimental impact on the adjoining property in relation to visual bulk of overshadowing. The front setbacks provide adequate area for landscape works to limit visibility of the subfloor area if considered necessary.

Drainage will continue to flow through the site without any detrimental impact on the adjoining properties and all site disturbance will be suitably retained to ensure the site is stable. The extent of site works proposed is to be anticipated on an allotment with a moderate slope and is considered to have been well managed within the proposed design. The variation is not considered to result in any impact beyond that of a compliant proposal.

* * *

Conclusion with respect to DCP requirements

The proposal is considered to satisfy the relevant development standards relating to dwellings as contained within DCP 2014.

(b) Likely impacts of the development, including environmental impacts on both the natural and built environment of the locality.

The following matters are considered relevant when considering onsite impacts:

Siting and Design

The proposed dwellings and subdivision will be compatible in terms of height, bulk and scale with surrounding developments within the area.

The siting of the dwellings provides suitable boundary setbacks in keeping with the surrounding area, contributing to spatial separation and openness between dwellings. The articulated design will limit the impact on the adjacent properties in terms of bulk, privacy and overshadowing and will not dominate any perceived views enjoyed by others.

The front façade is appropriately articulated and contains a variety of roof forms and elements along with a central entry feature. In this way, the proposal provides a clear definition of the entry and provides varied shadow lines due to the different construction elements and finishes.

Sedimentation Control

Due to the topography of the site, minor earthworks will be required for the construction of a level building platform, as shown on the development plans. All disturbed areas will be provided with sedimentation controls in accordance with Council's policy with compliance required as a condition of consent.

Waste Minimisation

All waste will be deposited within the waste receptacle in accordance with the waste management plan attached to this application.

Noise and Vibration

All work will be undertaken during hours specified within the development consent. No vibration damage is envisaged to occur during construction.

(c) The suitability of the site for the development

The subject site is within an established residential precinct and is close to local commercial, retail and transport facilities. The existing road network provides easy access to all locations.

The proposed dwellings and subdivision, the subject of this application, can be constructed with all services necessary and has been designed to suit site constraints and the character of the surrounding locality.

The residential use of the site is permissible with development consent under the provisions of the Penrith Local Environmental Plan 2010, and satisfies the objectives of the Penrith Development Control Plan 2014.

(d) Any submissions made in accordance with this Act or the regulations

Council will consider any submissions received during the relevant notification period for this development application.

(e) Public interest

As the proposal can satisfy the objectives of all relevant planning instruments and development control plan, approval of the subject dwelling is considered to be in the public interest.

CONCLUSION

The residential use of the site is permissible with development consent under the provisions of Penrith Local Environmental Plan 2010 and can satisfy the objectives and design provisions of the Penrith Development Control Plan 2014. Support of the proposed works is based upon the proposals ability to be in context with the character of the area and the means to have minimal impact on the adjoining properties.

It is considered that the construction of a dwellings and subdivision of the site will complement and blend with the existing character of the established area within Mount Vernon. The proposal is not expected to have an adverse impact on the natural or built environment.



Maxine Booth (B.UrbRegPlan & MPIA)

Town Planner

Urban Planning & Building Consultants

March 2021 (updated September 2021)

APPENDIX

Appendix 1 – Clause 4.6 Variation Minimum Subdivision Lot Size

It is requested that Council consider the following request for a variation under the provisions of Clause 4.6 of *Penrith Local Environmental Plan 2010 (PLEP2010)* during assessment of this application:

Penrith Local Environmental Plan 2010

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 of the LEP - Exceptions to development standards provides the opportunity for Council to vary the controls based on the merits of the application. It is considered that the current application satisfies the Clause 4.6 criteria in the LEP, and therefore should be supported, as detailed below.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The minimum subdivision lot size development standard is not expressly excluded from the operation of Clause 4.6.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

As discussed below, it is unreasonable and unnecessary to require compliance with the minimum subdivision lot size control as all key Clause 4.6 requirements are satisfied despite the non-compliance.

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed subdivision lot size is below the permitted minimum lot size by 760m². It is considered that the application, and in particular the proposed allotment sizes, should be supported in this instance.

The subject site is zoned 'E4 Environmental Living' under Clause 2.1 of the PLEP2014.

The objectives of the zone are:

- *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 proposed development is for residential dwellings being compatible with the existing and future character of the Mount Vernon being an area of grander residential developments on rural-residential allotments. The proposed development has been designed to meet the day to day needs of the residents and is provided with appropriate services and facilities. Furthermore, the dwellings are designed to provide a high level of amenity for adjoining residents whilst considering the natural restraints of the site.

The proposal, including the minimum lot size variation, is consistent with the objectives of the E4 Environmental Living zone in that the proposal will continue to provide low-impact residential development, that the proposal improves overall landscaped area and vegetated character of the site, and that solar access continues to be available to the subject site and existing neighbouring developments.

Therefore, the proposal is considered to meet the objectives of the E4 Zone.

The requested variation relates to Clause 4.1 (3) as shown below:

4.1 Minimum subdivision lot size

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.

The subject site is identified to have a minimum lot size requirement of 10000m² or 1 hectare per allotment created.

In this case the existing allotment has an area of 2.025hectares however to undertake a torrens title subdivision of the allotment the area of each allotment once the access handle is removed from the calculations area as shown below:

<i>Lot Number</i>	<i>Proposed area</i>	<i>Extent of non-compliance</i>
Lot A	9361m ²	639m ² or 0.0639%
Lot B	1 hectare (excluding the access handle)	Complies

The proposed allotments are to be created for rural-residential purposes as intended for the area that has historically been used for such purpose.

The extent of deficiency required for Lot A is considered minor in order to sustain the proposed development or satisfy the objectives of the LEP, which makes allowance for such development. The rural-residential development is a reasonable development for the site, in which dwellings are permissible within the zone and it is evident that a suitable land area is available for such purpose, which is an orderly and economic use of the land.

The area of Mount Vernon has historically been an area of rural and residential interface and is noted to contain a combination of allotment sizes that have historically be utilised for rural and residential land uses. Some allotments are well below the required minimum subdivision lot size identified on Council maps with several development similar to the proposed located within direct proximity to the proposed development.

The objectives of Clause 4.1 are:

- (a) to ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided,*
- (b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) to ensure that lot sizes and dimensions allow developments to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views,*
- (d) to regulate the density of development and ensure that there is not an unreasonable increase in the demand for public services or public facilities,*
- (e) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

The objective of this control is understood to be a measure to ensure that allotment sizes created by subdivision are compatible with the surrounding area whilst not unreasonably impacting on the amenity of the adjoining properties or the streetscape. Further the objectives are understood to ensure that the development of the area does not result in an increase demand of public facilities whilst being able to accommodate development that is consistent with the rural-residential development controls.

The 760m² non-compliance is the direct result providing an access handle to Lot B. The proposed access handle has an area of approximately 836m² which when included in Lot A would result in two allotments with a compliant lot size. However, with the preferred option being to provide an access handle rather than a right of carriageway through Lot A, the resulting lot size is slightly below the required area for subdivision. Despite the minor numerical non-compliance, the departure from the minimum lot size would not be visually evident when viewing the development from the street and surrounding sites as the area of the access handle would give the appearance of a compliant allotment size.

The proposed allotments are not considered to result in any detrimental impacts on the adjoining properties as the land area proposed is capable of allowing rural – residential development to occur within each allotment. Moreover, sites within close proximity to the subject site appear to have undertaken similar development including subdivision where allotment sizes are slightly below that of the requirement minimum lot size.

Despite the required variation noted above the proposed development is considered to be in keeping with the objectives of Clause 4.1 as it allows for suitable development to occur within a rural area. Based upon the intended purpose of the land and its history as being subdivided for rural - residential purposes, it is considered that the proposal is suitable within the setting, with the extent of variation sought insignificant in the overall development context. Therefore, the requirement is considered to be unreasonable and unnecessary in this instance as it prevent economic and orderly use of the land.

(4) Development consent must not be granted for development that contravenes a development standard unless—

- (a) the consent authority is satisfied that—*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

The proposal is consistent with the objectives of the zone and also with the objectives of the minimum subdivision lot size control as discussed above.

- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

There is considered to be no public benefit in refusing the application (for the reasons stated above) so as to ensure that full compliance with the minimum lot size control is achieved, as discussed above. The contravention of the standard does not raise any matters of state or regional significance.

- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

The proposed development does not result in 2 allotments that are less than the minimum lot size or an allotment that is less than 90% of the development standard. Therefore, this provision is deemed to be satisfied in this instance and would not prevent development consent being issued for the proposed lot sizes.

Accordingly, Council's agreement is sought to the proposed variation in minimum to size for the proposed subdivision.