

<b>JRPP Number</b>	2009SYW027
<b>Application Number</b>	DA09/1143
<b>Applicant</b>	Innovation Planning Australia Pty Ltd
<b>Proposed Development</b>	Construction of a residential development consisting of 27 dwellings with associated community title subdivision (Glenmore Golf Course)
<b>Property Address</b>	Nos.754-760 Mulgoa Road, MULGOA (Penrith City Council)
<b>Property Description</b>	Lot 1 DP 251423 and Lot 1, 2, 3, 4 and 5 DP 701949
<b>Date Received</b>	5 November 2009
<b>Assessing Officer</b>	Steven Chong - Senior Environmental Planner
<b>Category of Development</b>	Integrated Development
<b>Recommendation</b>	Refusal

### **Assessment Report and Recommendation**

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#### **Executive Summary**

Council is in receipt of a Development Application which involves the construction of a residential development comprising of twenty-seven (27) x two (2) bedroom dwellings and associated community title subdivision at the Glenmore Golf Course.

The proposed development has a 'capital investment value' (CIV) of \$11.5 million. Given that the CIV is in excess of \$10 million, the proposed development is to be determined by the Joint Regional Planning Panel – Sydney West pursuant to Part 3 - Regional Development of the State Environmental Planning Policy (Major Development) 2005.

The site contains the Glenmore Golf Course, a 27 hole golf course with an associated clubhouse and café, pro shop (former barn), amenities building, machinery shed and parking areas. The existing group of buildings and trees are known as 'Glenmore' and are listed under the State Heritage Register (SHI No.2260124) and is identified in the Sydney Regional Environmental Plan No.13 – Mulgoa Valley and the Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation). The item is also listed in the Register of the National Estate and the heritage register of the National Trust of Australia.

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The subject development site is zoned No.1 – ‘Rural Conservation’ under the provisions of the Sydney Regional Environmental Plan No.13 – Mulgoa Valley. The proposed development involves the Community Title subdivision and the erection of dwelling houses which are permissible only with consent. The minimum subdivision requirement for the site is 20 hectares.

The requirements for subdivision and the erection of dwelling houses are proposed for variation by virtue of an objection to the development standard under State Environmental Planning Policy No.1 – Development Standards. The variation to the minimum subdivision requirement is not supported as the objection to the development standard has not been demonstrated by the applicant that strict compliance would be unreasonable or unnecessary in the circumstances of the proposed development.

The subject development site is part zoned E2 Environmental Conservation and E3 Environmental Living under the draft Penrith Local Environmental Plan 2008. The proposed development is to be situated on land that is primarily zoned E3 Environmental Management.

The subject application has been identified as ‘Integrated Development’ pursuant to Section 91 of the Environmental Planning and Assessment Act 1979. Approval is currently being sought from a number of external authorities including: -

- Department of Environment, Climate Change and Water - Water Management Act 2000;
- NSW Heritage Office - Heritage Act 1977; and
- NSW Rural Fire Service – Rural Fires Act 1997.

The above authorities have provided their responses in respect of the proposed development.

The Roads and Traffic Authority (RTA) were consulted in respect to the proposed development for the purposes of works required to Mulgoa Road under the Roads Act 1993. A number of matters were recommended in the event that the proposal is supported.

The subject application was initially placed on public exhibition and notified to adjoining property owners from 18 November 2009 to 17 December 2009. The application was further exhibited from 5 January 2010 to 29 January 2010. A total of five (5) submissions on conclusion of the exhibition periods of which four (4) objections were received and one (1) submission raising no objection to the proposal. The issues raised in the submissions comprised of: -

- Compliance with SREP No.13;
- Impact to existing heritage items;
- Precedent for subdivision;
- Traffic generation;
- Water and Sewer; and
- Amenity.

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The issues raised are discussed throughout this report and provide a platform for the determination of the subject application by way of refusal.

During the preliminary assessment made by the NSW Heritage Council and Council Officers, it was noted that there is a significant amount of uncertainty regarding the long term maintenance of the heritage items on the site and the community benefit outcomes of the proposed development. It is considered that the applicant has not demonstrated that the only alternative in ensuring the long term maintenance of the existing heritage item is for the proposed development to occur.

The proposed development does not include any works to existing heritage items or its curtilage on the subject site. On the advice of the NSW Heritage Council, the applicant recently commenced the preparation of a draft Heritage Agreement. However, the NSW Heritage Council have advised that the draft agreement is insufficient in its current form given the complexity of the proposed development relative to the schedule of works for the items and the funding required to finance these works.

Moreover, other matters which have been raised by the NSW Heritage Council during its preliminary assessment remain unresolved by the applicant, which to this end, the NSW Heritage Council are not willing to provide their General Terms of Approval for the proposed development.

An assessment under Section 23G and Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) has been undertaken. Having regard to the matters discussed in this report, the application is recommended for refusal with reasons discussed throughout this report.

### **Site and Surrounds**

The subject site comprises of a number of approvals which are detailed as follows: -

- Additional nine (9) holes (BA940332) – Approved 20 September 1994;
- Conservation of buildings (BA940484) – Approved 8 March 1995;
- Machinery Shed (BA953067) – Approved 19 February 1996;
- Commercial Building (BA943976) – Approved 10 September 1996;
- Club (BA960351) – Approved 21 February 1996;
- Amenities Block and Pro Shop Fitout (BA971517) – Approved 22 July 1997;
- Refurbishment of Club House (BA980654) – Approved 18 February 1999; and
- Extension of Lounge and Function Room of existing clubhouse and extension to car park area (DA04/0940) – Approved 12 April 2006.

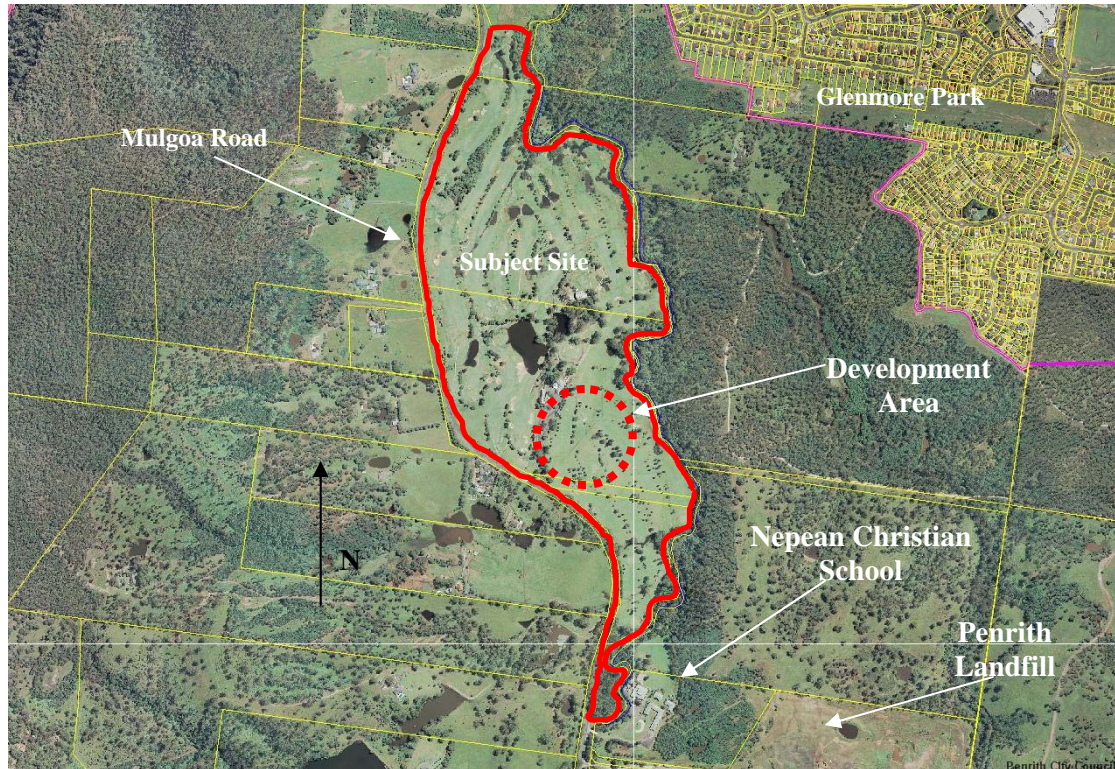
The subject development site is approximately 69 hectares and is located to the west of Mulgoa Road. The site contains the Glenmore Golf Course and comprises of a 27 hole golf course, clubhouse and café, pro shop (former barn), amenities building, machinery shed and parking areas.

The surrounding area is characterised with rural-residential land uses. A nursery is located adjacent to the site along Mulgoa Road. Nepean Christian School and Penrith

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Landfill are located approximately 700 metres and 1.1 kilometres to the south of the site respectively.

The use of the site for the purposes of a golf course characterises the subject site with manicured lawn and scattered trees and some minor watercourses.



Aerial plan. Source: Penrith City Council.

### **Proposed Development**

The subject Development Application involves the construction of 27 community-titled dwellings within the existing Glenmore Golf Course.

The proposed dwellings would be designed with a number of eco-friendly sustainability measures. Solar panels would be installed to harness electricity for use in the proposed dwellings. Wastewater generated by the proposed dwellings would be processed and recycled into the dwellings for toilet flushing or irrigation on surrounding landscaping and sections of the golf course.

The proposed development requires the redesign of the gold course to allow the continuation of the circuit around the proposed development.

Vehicular access would be provided through a proposed ring road which connects to the existing golf course

The applicant states that the development would generate funding from the proceeds of sale from the proposed dwellings towards the repair and conservation works to the heritage items on the site. The application is not accompanied by a Heritage



Agreement and exactly how the conservation of these heritage items will take place is not fully documented or explained.



Ground Floor Plan. Source: Thomson Adsett

The key elements of the proposed development are detailed in the accompanying drawings and are summarised as follows: -

Component	Description
<b>Proposed Development</b>	Construction of a residential development consisting of 27 dwellings with associated community title subdivision (Glenmore Golf Course)
<b>Capital Investment Value</b>	\$11.5 million
<b>Consent Authority</b>	Joint Regional Planning Panel - Sydney West
<b>Dwellings</b>	<ul style="list-style-type: none"> <li>▪ Erection of 26 x two (2) bedroom dwellings and a 1 x four (4) bedroom dwelling. Each dwelling would contain a living room, bathrooms and laundry facility, courtyards and garage</li> <li>▪ The proposed dwellings would be available for purchase and used for permanent residential occupation only.</li> <li>▪ Single storey appearance with a maximum height of approximately 4.5 metres.</li> <li>▪ The proposed dwellings are characterised by varied design elements with colourbond roofing and glazed surfaces as well as rendered brick.</li> <li>▪ Extensive landscape planting would be provided to the south of the proposed dwellings</li> </ul>

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<b><i>Parking and Access</i></b>	<ul style="list-style-type: none"><li>▪ Construction of an access road that would enable access to Mulgoa Road via the existing access road to the golf course.</li><li>▪ Individual driveway servicing each of the proposed dwellings would be provided.</li><li>▪ Each dwelling would be provided with a single garage space. A total of 15 visitor parking spaces are evenly distributed throughout the proposed development.</li></ul>
<b><i>Subdivision</i></b>	<ul style="list-style-type: none"><li>▪ Consolidation of three (3) lots into two (2) lots and subsequent community title subdivision of second lot into 28 community title lots.</li><li>▪ Lots range from 321m<sup>2</sup> – 771m<sup>2</sup> for dwellings and 2.27 hectares residue</li></ul>
<b><i>Landscaping and Water Management</i></b>	<ul style="list-style-type: none"><li>▪ Approximately 37 trees are to be removed as part of the proposal.</li><li>▪ Installation of an effluent management and water harvesting system to service the proposed dwellings.</li></ul>

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The following reports have accompanied the subject Development Application and used throughout the planning assessment: -

- Statement of Environmental Effects prepared by Innovation Planning Australia Pty Ltd, dated October 2009;
- Architectural Plans, prepared Thomson Adsett, dated August 2009;
- Statement of Heritage Impact, prepared Rappoport Pty Ltd, dated July 2009;
- Conservation Management Plan, prepared Rappoport Pty Ltd, dated July 2009;
- Statement of Economic Viability, prepared Thomson Adsett, dated August 2009;
- BASIX Certificate
- Contamination Report, prepared Martens Consulting Engineers, dated August 2009;
- Salinity Report, prepared Martens Consulting Engineers, dated July 2009;
- Water Cycle Report, prepared Martens Consulting Engineers, dated August 2009;
- Landscape Plan, prepared by James Mather Delaney Design dated August 2009
- Community Title Subdivision Plan;
- SEPP 1 Objection; prepared by Innovation Planning Australia Pty Ltd, dated October 2009;
- Waste Management Plan prepared by Innovation Planning Australia Pty Ltd, dated October 2009;
- Flood Assessment prepared J. Wyndham Prince, dated May 2005.



## Site Plan



Source: Thomson Adsett

## Perspectives



Source: Thomson Adsett

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## Statutory Assessment

The following planning instruments have been considered in the planning assessment of the subject Development Application: -

- State Environmental Planning Policy (Major Development) 2005;
- State Environmental Planning Policy No.1 – Development Standards;
- State Environmental Planning Policy No.55 – Remediation of Land
- Sydney Regional Environmental Plan No.13 – Mulgoa Valley;
- Sydney Regional Environmental Plan No.20 –Hawkesbury/Nepean River;
- Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation);
- Draft Penrith Local Environmental Plan 2008;
- Penrith Development Control Plan 2006; and
- Draft Penrith Development Control Plan 2008

Pursuant to Section 23G - Environmental Planning and Assessment Act 1979, a Regional Panel is taken to be the Council whose functions are conferred on a Regional Panel. In this case, the Sydney West Joint Regional Planning Panel is the consent authority.

The development has been assessed in accordance with the matters for consideration under Section 23G and 79C of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000 as follows: -

### **1. Section 79C(1)(a)(i) – Any Environmental Planning Instrument**

#### ***(a) State Environmental Planning Policy (Major Development) 2005***

The aim of this policy is to clarify development assessment processes and approval procedures and to identify development for which regional panels are to exercise their specified consent authority functions.

Part 3 – Regional Panels is applicable to the proposed development with Clause 13B outlined in part as follows: -

#### ***“13B General development to which Part applies***

##### ***(1) This Part applies to the following development:***

- (a) development that has a capital investment value of more than \$10 million..”***

The proposed development has a ‘capital investment value’ (CIV) of \$11.5 million. In accordance with Clause 13F, the following is noted: -

#### ***13F Council consent functions to be exercised by regional panels***

##### ***(1) A regional panel for a part of the State may exercise the following consent authority functions of the council or councils for that part of the State for development to which this Part applies:***

- (a) the determination of development applications, and applications for the modification of development consents previously granted by the panel, in accordance with Part 4 of the Act,***



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Having regard to the CIV of the proposed development in excess of \$10 million, the proposed development is to be determined by the Joint Regional Planning Panel – Sydney West pursuant to Part 3 - Regional Development of the State Environmental Planning Policy (Major Development) 2005 and pursuant to Section 23G of the Environmental Planning and Assessment Act 1979.

***(b) State Environmental Planning Policy No.55 – Remediation of Land***

State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55) provide aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Council must consider Clause 7 of SEPP 55 as follows: -

***“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.”*

Previous history suggests that the subject site was used for agricultural use prior to the current golf course. It is considered that both the agricultural and golf course use of the site would utilise some degree of fertilisers or insecticides on the site.

Section 7(3) of the SEPP states the following: -

*“The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.”*

An examination of Table 1 to the Planning Guidelines for Contaminated Land identifies ‘Agricultural activities’ as a potential contaminating activity.

The applicant has submitted a Site Contamination Assessment prepared by Martens Consulting Engineers dated April 2010 which concluded that: -

*“Site investigations completed included the collection and analysis of soil samples for a focussed range of parameters determined to assess potential contamination from various past uses on the golf course. The field and laboratory investigations revealed that the development site is free of contamination.*

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*Natural materials in the development area are considered virgin excavated natural material (VENM) however fill and disturbed soil around golf course bunkers and greens are to be waste classified if required to be taken off-site.*

*No further investigation is required prior to development construction.”*

Having regard to the above, it is considered that the development site would not pose an adverse impact to humans and the environment in respect of contamination.

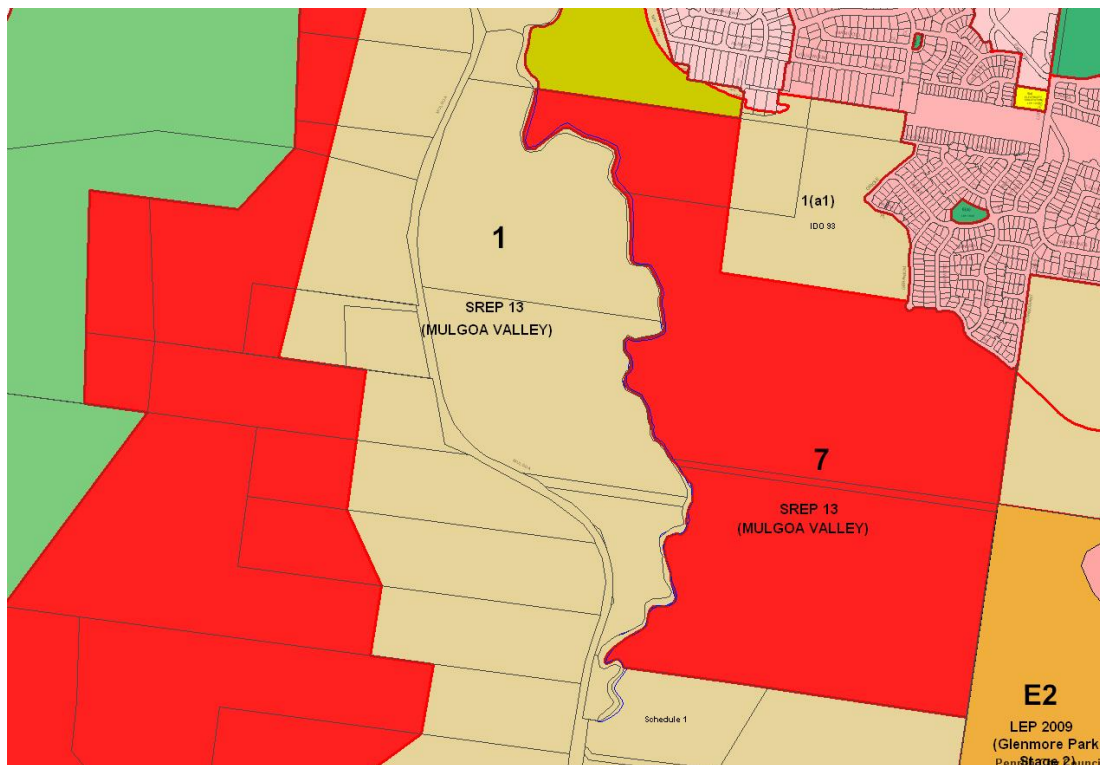
The proposed development therefore has satisfied the requirements of SEPP 55.

**(c) Sydney Regional Environmental Plan No.13 – Mulgoa Valley**

The aim of Sydney Regional Environmental Plan No.13 – Mulgoa (SREP 13) is to ensure that the development of the Mulgoa Valley maximises the benefits and conservation of its rural landscape and environmental heritage. The plan provides a number of provisions which aims to protect the rural and natural landscape of the valley and allows orderly and economic development.

**(i) Permissibility**

The subject development site is zoned No.1 – Rural Conservation under the provisions of the SREP 13.



Zoning Map. Source Penrith City Council.

The proposed development involves subdivision which requires consent pursuant to Clause 13 and subsequent erection of dwelling houses on these community title allotments.

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The subject site is located in Area A and therefore, the minimum subdivision requirement for the site is 20 hectares.

The proposal involves the consolidation of three (3) parcels of land which form part of the subject development site (Lots 3 & 4 DP 701949 and Lot 1 DP 251423) into two (2) lots. Subsequently, the second lot would involve a community title subdivision resulting in twenty-eight (28) lots that would range from 321.8m<sup>2</sup> to 2.276 hectares in area.

The table below details the proposed consolidation and subsequent community title subdivision of the site: -

Current Lots	Stage 1 Consolidated Lots	Stage 2 Proposed Lots	SREP 13 Compliance
Lot 1 DP 251423 Lot 3 DP 701949 Lot 4 DP 701949	Lot 101	Community Title Lots 1 – 28 - Range from 321.8m <sup>2</sup> to 2.276 hectares	NO
	Lot 102	Proposed Lot 102 32.46 hectares	YES

The proposed subdivision and erection of dwelling houses would require an objection to the Development Standard for the purposes of the minimum subdivision requirements by virtue of State Environmental Planning Policy No.1 – Development Standards (SEPP 1).

The proposed lot size at its minimum is 321.8m<sup>2</sup>. This represents a maximum variation to Clause 13(3)(a) of approximately 99.84% to the Development Standard.

A SEPP 1 submission has been submitted by the applicant who has sought to vary the minimum 20 hectare requirements stipulated in Clause 13 of Sydney Regional Environmental Plan No.13 – Mulgoa Valley.

The departure of Clause 13 of the plan is subject to State Environmental Planning Policy No.1 which is considered in Section 1(d) of this report.

#### **(ii) Objectives of the Rural Conservation Zone**

The objectives of No.1 Rural Conservation Zone are outlined as follows: -

*(a) to conserve the rural, heritage and natural landscape of the valley,*

**Comment:** - The proposed development is considered to result in a development that is incompatible with the inherent rural landscape and would undermine the open space character and heritage significance of the site.

*(b) to provide for the development of agricultural, residential, tourist and recreational land uses which are compatible with the rural and natural landscape and heritage of the valley,*

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**Comment:** - The proposed development is not in keeping with the established rural landscape of the area given the urban character of the proposed development including the dense built form and the significant visual impact when viewed from Mulgoa Road.

*(c) to protect the visual amenity of the valley,*

**Comment:** - The proposed development would be sited a minimum 60 metres from Mulgoa Road in which a substantial portion of the proposed dwellings would be exposed when viewed from the road.

It is therefore considered that the proposed development would impact upon the visual amenity of the area given the unsympathetic built form that would be in view from Mulgoa Road.

*(d) to avoid fragmentation and alienation of prime agricultural land,*

**Comment:** - No comment.

*(e) to maintain the low density of rural settlement, and*

**Comment:** - The proposed development is considered to reflect an urban settlement given that the proposed allotments are comparable to a typical general residential subdivision pattern. The minimum lot size of the proposed allotments range from 321m<sup>2</sup>, which varies significantly from the prescribed subdivision requirements for the site.

The proposed subdivision is excessive and would be at odds the established rural subdivision pattern which maintains a low density character which contributes to the rural, heritage and natural landscape qualities of the surrounding area.

*(f) to allow for the development and maintenance of the Warragamba—Prospect water supply facilities*

**Comment:** - The subject site is located within a substantial distance from the Warragamba pipeline and therefore the proposed development is not applicable to this clause

The premise of the proposed development is to generate income that would be used towards the long term maintenance and preservation of the existing items on the site. However, it is considered that the subject application has not demonstrated that the existing heritage items would be maintained in the long term only with the assistance of the proposed development.

In consideration of any development on the site, the long term maintenance of the existing heritage items and the community benefit would be substantially weighted relative to the objectives of the zone.



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In this regard, the subject application has not sufficiently demonstrated that proposed development is the only alternative to guarantee the long term maintenance of the exiting items, and therefore, the proposed development is not supported.

**(iii) Development Provisions**

The following provisions are applicable to the proposed development and are discussed follows: -

***Clause 11 - Lands subject to Conservation Orders***

The subject site contains ‘Glenmore’ being identified as an item listed under the state heritage register. Clause 11 is applicable to the proposed development as outlined in part in as follows: -

*“11 Lands subject to conservation orders*

*(1) Where, in respect of an item of environmental heritage that is subject to one of the following Permanent Conservation Orders or any conservation instrument made after the date this plan takes effect, a person is required to lodge an application under Division 3 of Part 4 of the Heritage Act 1977, clause 9 shall not apply to that development:*

*.....*

*(d) “Glenleigh”—Permanent Conservation Order No 346,”*

Pursuant to Section 91 of the Environmental Planning and Assessment Act 1979, the subject application is identified as ‘Integrated Development’ with approval required under the Heritage Act 1977 by virtue of the NSW Heritage Council. As prescribed in Clause 11 above, the provisions of Clause 9 are not applicable.

The NSW Heritage Council did not provide their General Terms of Approval under Section 57 of the Heritage Act 1977. In respect to the proposed development, the NSW Heritage Council concluded in their assessment that: -

*“The application has failed to adequately identify a nexus between the proposed housing development and a central fund that could support medium-long term conservation, maintenance and interpretation works to the property, i.e. sustain the heritage item. The proposal may be acceptable in another reworked form, with a detailed heritage agreement tying down this nexus, identifying necessary conservation works and a revised heritage impact statement adequately addressing likely adverse impacts.”*

Having regard to the above conclusion and the reasons for not providing approval, the proposed development does not satisfy Clause 11 of SREP 13

***Clause 12 - Development Consent Criteria***

Clause 12 outlines a series of specific matters to be considered in respect of tge proposed development, of which are discussed in the following: -

*“The consent authority shall not grant consent to an application to carry out development for any purpose:*

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*(a) if any proposed building will be located on ridgetops or if it will intrude into the skyline when viewed from road or other public places;*

**Comment:** - The site is characterised with undulating slopes with cleared areas accommodating a number of fairways and complemented with remnant mature trees in a manicured setting.

The siting of the proposed dwellings would be viewed from Mulgoa Road, particularly given the exposed location towards the south of the site nearest Mulgoa Road. The submitted Landscape Plan details a number of plantings to be sited throughout the immediate development site including areas between the proposed development and Mulgoa Road. However, it is considered that the extent of landscaping for the purposes of visual screening is insufficient and does not provide a balance for maintaining the 'parkland,' open space character of the site.

In consideration of the substantial built form of the proposed development and the visual prominence from Mulgoa Road, it is considered that the proposed development would have a significant detriment to the heritage curtilage of the subject site and the surrounding rural context of the surrounding area.

*(b) unless it is satisfied that the proposed development will not adversely affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of any item of environmental heritage in the valley,*

**Comment:** - The NSW Heritage Council had assessed the subject application and noted that the matters prescribed in this subclause have not been satisfactorily addressed.

Given the insufficient information that is provided in support of the proposed development, a detailed and accurate assessment of the potential impacts of the heritage items and the overall significance of the Mulgoa Valley cannot be made, therefore the proposed development does not achieve compliance with this subclause.

*(c) if services, in particular arrangements regarding the provision of water and disposal of effluent satisfactory to the requirements of the Water Board, are not adequate or will not be provided in a reasonable time,*

**Comment:** - Potable water would be sourced from rainwater. Wastewater would be treated for non-potable water supply for the use of landscaping and the like.

*(d) unless it is satisfied that the proposed form and siting of buildings, colours, landscaping and building materials are appropriate for the rural character of the valley and are consistent with the Design and Management Guidelines or their intent,*

**Comment:** - Part 2 of Design and Management Guidelines outline the aims and objectives as well as the design criteria for development. Relevant matters for consideration include siting, vistas, colours, materials, landscaping, access, and services. The Guidelines requires buildings to be sited in harmony with the existing

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landscape to reduce visual impact to ridgelines, sufficient setbacks from Mulgoa Road, screened views from heritage items and minimal site excavation.

The Statement of Environmental Effects documents a number of design options for the proposed development to ensure the protection of views from clubhouse, providing high quality development, environmental sustainability, privacy and maximum dwelling yield.

The proposed dwellings would be in full view from Mulgoa Road and sited a minimum 60 metres from Mulgoa Road (Unit No.21). Having regard to the vicinity of the Mulgoa Road together with the excessive built form, the proposed development would cause a significant visual impact.

The Guidelines requires building form to be consistent with the traditional building style of the Mulgoa Valley. The proposed dwellings utilise skillion roofs which coupled with the close siting of these proposed dwellings, would result in expansive rooflines which is not in keeping with the rural context of the surrounding area. The proposed dwellings are generally identical in their external appearance. Together with the dense nature of the proposal and the prevalent roofline, the proposed development would not be in keeping with the traditional building form of the Mulgoa Valley.

The selected materials and colours for the proposed development are considered to be contemporary, however given the context and setting of the site, the proposed development would be incompatible with the curtilage of the existing items on the site and would not be in keeping with the prevailing scenic and rural landscape of the surrounding area.

The proposal does not intend to provide intensive landscaping however a number of shrubs would be used to assist in visual screening including acacias, melaleucas and callistemon. It is considered however that the extent of landscaping is inadequate to visually screen the proposed dwellings when viewed from Mulgoa Road. Moreover, it is considered that the proposed landscaping does not provide a balance for maintaining the 'parkland' character of the site given the extensive shrubs proposed for addressing visual impact.

It is considered that with further consideration of the siting of the proposed development relative its visual prominence from Mulgoa Road, the extent of landscaping could be balanced given the 'parkland' character of the site.

*(e) if any proposed development will detract from the vistas of an item of environmental heritage as documented in the Design and Management Guidelines,*

**Comment:** - The Guidelines provide that the vistas of Glenmore be protected and that development should only be permitted in these areas are for the purpose of restoring, rehabilitating or preserving elements of the heritage items.

It is considered that the proposed development significantly diminishes the 'parkland' character of the subject site. The dense settlement pattern as proposed would be excessive and would detract from the desired character as outlined in the Guidelines.

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*(f) unless it is satisfied that the development will not be exposed to unacceptable risk from bushfire,*

**Comment: -** The Rural Fire Service have provided their general terms of approval to the proposed development which includes the requirement for:

- a 20 metre inner protection area (IPA) to the south and south-east of the proposed development,
- provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building; and
- buildings are to be designed and constructed to withstand the potential impacts of bush fire attack in accordance with Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone areas'

The proposed development would not be exposed to an unacceptable level of bushfire risk.

*(g) if extensive areas of vegetation will be cleared,*

**Comment: -** The proposed development does not include the removal of any significant vegetation given the open space nature due to the current use for a golf course on the site.

*(h) unless it is satisfied that the agricultural viability of holdings and potential of the land will not be adversely affected,*

**Comment: -** The subject site is part zoned E2 Environmental Conservation and E3 Environmental Management under the draft Penrith Local Environmental Plan 2008. Having regard to the heritage significance of the site and the proposed zoning of the site, the desired character would be for the maintenance and conservation of the rural landscape.

The site is currently used for the purposes of a golf course which maintains the 'parkland' character.

It is considered that the proposed development would impact upon the agricultural and landscape quality of the site given the dense building footprint proposed.

*(i) unless it is satisfied that Aboriginal and European archaeological material on the land will not be adversely affected,*

**Comment: -** The applicant has provided a Heritage Impact Statement and a Conservation Management Plan as part of the Development Application.

These documents have noted that there has been a limited investigation in respect to archaeological significance of the site.



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The NSW Heritage Council has assessed the proposal and has noted the absence of any archaeological investigation.

*(j) unless it is satisfied that the view from Mulgoa Road will not be adversely affected,*

**Comment:** - Photomontages have been submitted in support of the subject application which indicates that the proposed dwellings would be in substantial view from Mulgoa Road.

Moreover, these montages indicate the dense nature of the proposed development, which is inconsistent with the rural setting of the locality and would undermine the curtilage of the existing heritage items on the site.

*(k) unless it is satisfied that the rural setting of Mulgoa village will not be adversely affected,*

**Comment:** - The subject site is located approximately four (4) kilometres from the Mulgoa Village.

The proposed development is considered to be incompatible with the established rural character of the surrounding area and would impact upon the prevailing settlement pattern given the urban character of the development.

*(l) unless it is satisfied that development and its access will not be exposed to unacceptable risk from flooding,*

**Comment:** - The site is subject to Council's Interim Policy for the development of flood liable land.

Council's Development Engineering Coordinator reviewed the proposal and raised no objection in respect the flood liable aspect of the proposal, subject to all finished floor levels are at least 0.5m above the 1% AEP flood level and all electrical services being adequately flood proofed.

*(m) unless it is satisfied that the development will not adversely affect the hydrology of Mulgoa Creek,*

**Comment:** - Mulgoa Creek is to the east of the site and is a major drainage corridor to the Nepean River.

The proposed development would be reliant on stormwater reticulation and subsequent treatment for domestic usage. Facilities are proposed to treat on-site sewerage disposal.

Council's Development Engineering Coordinator reviewed the proposed drainage system and noted that there was insufficient information to conduct a detailed and accurate assessment.

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*(n) unless it has considered any Development Control Code prepared pursuant to clause 17,*

**Comment:** - Consideration has been given to the relevant sections of Penrith Development Control Plan 2006 and these sections are discussed later in this report.

*(o) unless it is satisfied that the proposed development is appropriate for the size and shape of the land to which the development relates,*

**Comment:** - The subject site has a total site area of 69 hectares. While the subject site would be situated within a small section of the subject site, the dense built form of the proposed development coupled with its visual prominence from Mulgoa Road, it is considered that the development is inappropriate for the site.

*(p) unless it is satisfied that the proposed bulk, scale, shape, size, height, density, design and external appearance of that development is appropriate for the rural character of the valley,*

**Comment:** - The subject application was referred to Council's Urban Design Review Panel who made an assessment of the proposed development in respect to its urban design. A number of comments were made by the panel which are outlined in the following points: -

- The proposed dwellings should be sited to take advantage of a range of vistas including views to the existing heritage items and should be more view responsive to golf course.
- The architectural merit of the proposed dwellings branching from the access 'ring' road is not a satisfactory outcome for the development on the site.
- The long, linear architectural forms of the proposed dwellings are unsuitable having regard to the rural context of the area and is considered to be of an excessive built form.
- The proposed dwellings would possess a 'gun barrel' hallways in excess of 30 metres in length which would result in limited building relief or 'breaking up' of the buildings.
- The proposed dwellings would result in a dominant streetscape with prominent garage doors addressing the ring road that would result in poor passive surveillance with regard to Crime Prevention through Environmental Design (CPTED).
- The proposed dwellings aim for environmental sustainability which is acknowledged, however these sustainability measures are not considered to harness the maximum potential for the site.
- The amount of setback between each building would impact upon acoustic and visual privacy.
- The siting of dwellings in a concentrated manner along the mid slope of the site would result in a 'sea' of rooflines, which would cause a significant detriment to the curtilage of the site and to the surrounding rural context.

Council provided an opportunity for the applicant to address the above matters and concluded the following: -

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*“The design and site layout is a direct response to the landscape, location, heritage and SREP 13 considerations and fits squarely with all the aims and aspirations of SREP 13. The design is in line with current thinking associated with the long term preservation of heritage properties such as this. The dwellings are located in the only possible section of the site which would fulfil the aims and aspirations of heritage and SREP 13 requirements.”*

With respect to the response provided by the applicant, it is considered that the matters discussed in Clause 12 of SREP 13 and the issues raised by the Urban Design Review Panel remain relevant and as such, the proposed development is not supported.

Given that the application does not hinge on the design outcomes for approval, it is recognised that aspects of these issues would be negotiated in the fullness of time.

*(q) unless it is satisfied that the proposed development will not adversely affect the amenity of the area,*

**Comment:** - The proposed development was referred to the Roads and Traffic Authority for comment having regard to the scale of the proposed development and the shared vehicular access with the Glenmore Golf Course. The RTA did not raise any objections to the proposed development in respect to traffic subject to compliance with AS2890 and noise measures be implemented in the event of construction of the proposed dwellings.

It is considered however that the proposed development would have a substantial visual impact on the existing heritage curtilage and cause a significant detriment to the prevailing rural and scenic context of the surrounding area.

Moreover, the proposed development would introduce urban characteristics to the site including an increase in residential activity including noise, odour, stormwater drainage and traffic and parking generation including the increase in the environmental capacity of the local street network. Conversely, the current activities of the golf course would include potential conflicts from golf balls, vehicular access and parking. As such, it is considered that the existing rural amenity of the site would change as a result of the proposed development.

*(r) unless it is satisfied that adequate provision has been made for the landscaping of the land to which that development relates and it has considered whether any trees or other vegetation on the land should be preserved*

**Comment:** - The landscape plan accompanying the development application indicates the retention of existing vegetation. Some shrubs are proposed for planting throughout the proposal, however it is noted that substantial mature vegetation is not proposed to ensure the full screen of development from Mulgoa Road.

Given that the proposed development would impinge on the viewshed from Mulgoa Road, it is considered that the amount of landscaping is inadequate to suitably mitigate the significant visual impact of the proposed development.

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Based on the above assessment of Clause 12, the proposed development does not achieve compliance and is therefore considered to be inappropriate.

***Clause 15 - Development affecting Mulgoa Road***

Clause 15 - Development affecting Mulgoa Road is applicable to the proposed development and is outlined as follows: -

***“15 Development affecting Mulgoa Road***

*The consent authority shall not grant consent to an application to carry out development if, in the opinion of the consent authority:*

- (a) the safety and efficiency of Mulgoa Road will be adversely affected by the design and siting of the proposed access and by the nature, volume or frequency of vehicles using Mulgoa Road to gain access to the proposed development, and*
- (b) any upgrading or strengthening of Mulgoa Road required to maintain the safety and efficiency of Mulgoa Road detracts from the present rural character and function of Mulgoa Road.”*

Council’s Senior Traffic Officer reviewed the proposal and concluded the following: -

*“..the proposal does produce a minor consistent increase in local traffic flow, however, no adverse traffic generation impacts are expected from the development and it is anticipated that the local road network has adequate spare capacity to cater for this increase. However, although this proposal does not require referral to the SRDAC as per SEPP (Infrastructure) 2007, a referral to the RTA should be made to satisfy any recommendations in relation to the intersection with Mulgoa Road.”*

It should be noted that there are no works proposed to Mulgoa Road as part of the proposed development.

Having regard to the above commentary, the proposed development would not cause an adverse impact to the safety and efficiency of Mulgoa Road.

***(d) State Environmental Planning Policy No.1 – Development Standards***

SEPP 1 aims to provide flexibility in planning controls in circumstances where strict compliance with those development standards would be considered as unreasonable or unnecessary, or hinder the attainment of the objectives of the Environmental Planning and Assessment Act 1979.

As assessment of the SEPP 1 objection in respect to Clause 13 of SREP 13 is detailed in the following:-

**1. Development Standard that is sought to be varied**

The proposed subdivision is applicable to Clause 13 of SREP 13 which is outlined in part as follow: -



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### ***“13 Subdivision***

- (1) Subdivision of land within Zone No 7 is prohibited (except as provided by State Environmental Planning Policy No 4—Development without consent).*
- (2) Subdivision of land within Zone No 1 may be carried out with development consent, but that consent shall not be given unless:*
  - (a) each allotment proposed to be created is sufficiently large to enable on-site disposal of waste water and sewage without affecting streams and adjacent land to the satisfaction of the Water Board, or*
  - (b) consent for a building could be granted pursuant to clause 12 on each allotment proposed to be created.*
- (3) In order to maintain a low density of rural settlement, to protect the visual and scenic amenity of Mulgoa Valley, and to prevent fragmentation of inherently productive agricultural and environmentally sensitive land, the consent authority shall not grant consent to an application for subdivision of land within Zone No 1:*
  - (a) identified as Area A on sheet 2 of the map, if the allotments created will be less than 20 hectares in area, and*
  - (b) being other land, if the allotments created will be less than 10 hectares in area.”*

Clause 13(3)(a) of SREP 13 is applicable to the proposal as the subject site is identified within Area A and therefore has a minimum subdivision requirement of 20 hectares.

## **2. What is the underlying object or purpose of the standard? Is Compliance with the standard consistent with the aims of the policy and the development standard?**

Clause 13(3) does not outline any specific objectives, however it can be established that the underlying objective of the development standard is detailed in the clause, which makes provisions for the achievement of the minimum subdivision requirement so as to: -

- maintain a low density of rural settlement;
- to protect the visual and scenic amenity of Mulgoa Valley; and
- to prevent fragmentation of inherently productive agricultural and environmentally sensitive land.

The proposed subdivision is inconsistent with the aims of the policy and the development standard as outlined in the following points: -

- Glenmore contains a substantial curtilage which contributes to parklike character which contributes to scenic amenity of the Mulgoa Valley. It is considered that the proposed development would undermine these attributes of the site.
- The objectives provides for the conservation of the rural setting of the surrounding area through the delivery of low density development that is in keeping with the

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prevailing rural settlement pattern and preservation of visual and scenic quality of the Mulgoa Valley. The proposed development is considered to reflect atypical urban subdivision pattern.

- The small lot residential subdivision is inconsistent with the high quality rural amenity of the area and detracts from the prevailing landscape setting characterised in the Mulgoa Valley.
- The proposed development when viewed from Mulgoa Road contributes to the rural amenity and heritage significance of the area. The proposed development in its configuration exhibits a high density design which would be visible from Mulgoa Road and again undermines the character of the Mulgoa Valley.

### **3. Does compliance hinder the objects of the Environmental Planning and Assessment Act 1979?**

The objectives specified in Section 5(a)(i) and (ii) of the Act are: -

*“(a) to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,”*

The basis around which the application is submitted is for the conservation, maintenance and preservation of the existing heritage items on the site. It is agreed that this is a desired outcome and one that would encapsulate the spirit of this aspect of the Environmental Planning and Assessment Act 1979. The problem here, is the application has failed to adequately demonstrate that this will occur. This is supported by the NSW Heritage Council’s inability to offer their general terms of approval.

Therefore, the key objectives of the Environmental Planning and Assessment Act 1979 have not been met.

### **4. Why Compliance with the standard is unreasonable or unnecessary in the circumstances of the case**

With respect to compliance with Clause 13 of SREP 13, the applicant states that the development standard is unnecessary as follows: -

*“Yes. Strict compliance with the development standard is unnecessary because the proposed development meets all the objectives of the zone and the intent of the standard in clause 13(3).*

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*Strict compliance with the development standard is unreasonable because it would inhibit a high quality, environmentally friendly development. In addition the sale of the individual dwellings will generate revenue that will contribute to the upkeep of the State listed heritage item, which is currently falling into disrepair. Strict compliance with the development standard will not allow the achievement of the objectives of the SREP.”*

For a consent authority to be able to form a view that ‘strict compliance with a development standard is unreasonable or unnecessary,’ it must consider a number of things. Firstly, it must be satisfied that the development is not inconsistent with the primary planning objectives and secondly, it must be able to form a view that the development would be in the public interest and represents orderly and economic development. As it has been discussed earlier, the development is not considered in its present form to capture the intent of the zone objectives.

The assessment of the application also suggests that because of the conservation, maintenance and preservation of the heritage item cannot be assured, the proposed development it is not deemed orderly and economic development. Moreover, the lack of potable water supply available to service the development is considered to not be orderly and economic development given that the intention of SREP 13 is to control development in the Mulgoa Valley including residential settlement patterns.

Due to these concerns, the development is not in the public interest and has no community benefit. Therefore, compliance with the development standards is not unreasonable in the circumstance.

**(e) Sydney Regional Environmental Plan No.20 – Hawkesbury/Nepean River**  
Sydney Regional Environmental Plan No.20 – Hawkesbury/Nepean River (SREP 20) applies to the subject land and stipulates that the consent authority shall not grant consent to an application unless it is of the opinion that the carrying out of the development is consistent with any relevant, general and specific aim of SREP No.20.

Consideration of the aims and objectives of the plan, planning strategies and policies have been made and outlined in the following table: -

Clause	Response
<b>3 Aim of this plan</b> <i>The aim of this plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.</i>	The proposed development has been considered in respect to the aims of SREP 20. It is considered that the proposed development is inconsistent with the future urban development as prescribed in the plan.
<b>4 Application of general planning considerations, specific planning policies and recommended strategies</b>	Consideration of the general planning strategies in Clause 5 and the specific planning policies in Clause 6 has been made.
<b>5 General planning considerations</b>	With regard to the general

Clause	Response
<p><i>The general planning considerations relevant for this Part are:</i></p> <p>(a) <i>the aim of this plan, and</i></p> <p>(b) <i>the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, and</i></p> <p>(c) <i>whether there are any feasible alternatives to the development or other proposal concerned, and</i></p> <p>(d) <i>the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored.</i></p>	<p>planning considerations the following is noted: -</p> <ul style="list-style-type: none"> <li>▪ The proposal does not offend the policies, strategies and actions outlined in the Action Plan of the Hawkesbury Nepean Environmental Planning Strategy 1997.</li> <li>▪ The proposed development would have an adverse impact to the heritage significance of the site and the natural and built environment.</li> </ul>
<p><b>6 Specific planning policies and recommended strategies</b></p> <p><i>The specific planning policies and recommended strategies for this plan are as follows:</i></p>	
<p>(1) <i>Total catchment management</i></p> <p><i>Total catchment management is to be integrated with environmental planning for the catchment.</i></p>	<p>This development proposes a water capture system for sewer and stormwater. However, it is considered that the subject application provides inadequate information to enable a detailed assessment of this system.</p> <p>On-site-detention and stormwater treatment are proposed. Matters relating to on-site detention and water quality devices would need to be clarified in the event of approval with particular regard to the discharge of water entering Mulgoa Creek being of suitable quality in respect to pollutants and nutrient loadings.</p>
<p>(2) <i>Cultural heritage</i></p> <p><i>The importance of the river in contributing to the significance of items and places of cultural heritage significance should be recognised, and these items and places should be protected and sensitively managed and, if appropriate, enhanced.</i></p>	<p>The subject site contains an item of state significance under the State Heritage Register.</p> <p>The proposed development would cause a significant detriment to the heritage significance and curtilage of Glenmore and would diminish the prevailing scenic and rural landscape in the Mulgoa Valley.</p>
<p>(3) <i>Rural residential development</i></p> <p><i>Rural residential development should not reduce agricultural sustainability, contribute to urban sprawl, or have adverse</i></p>	<p>The proposed development would have a substantially dense building footprint which would detract from the heritage significance of the site.</p>



Clause	Response
<i>environmental impacts (particularly on the water cycle or on flora or fauna).</i>	Moreover, it is considered that the proposed development is inconsistent with the prevailing rural context of the surrounding area in respect to density of the proposed footprint and would cause visual confusion with the village settlement hierarchy that occurs along Mulgoa Road.
(4) <i>Urban development All potential adverse environmental impacts of urban development must be assessed and controlled.</i>	<p>Consideration of contamination of the site has been made and is considered satisfactory.</p> <p>Rainwater would be reticulated for potable water supply. Sewage would be treated on the site.</p> <p>The proposed development is considered to possess poor urban design which would not result in desirable outcomes for residents.</p>
(5) <i>Metropolitan strategy Development should complement the vision, goal, key principles and action plan of the Metropolitan Strategy.</i>	The proposed development is considered to detract from the village hierarchy along Mulgoa Road and therefore inconsistent with the rural intend as envisioned in the metropolitan strategy.

***(f) State Environmental Planning Policy (Infrastructure) 2007***

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP 2007) provides direction for proposed development which in this instance would enable the identification of matters to be considered in the assessment of development adjacent to particular types of infrastructure development.

***Clause 101 - Development with frontage to classified road***

Clause 101 of the ISEPP 2007 is applicable to the proposed development and is outlined as follows: -

***“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*

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- (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."*

Council's Senior Traffic Officer reviewed the proposal and noted the access and traffic aspect of the proposed development in part as follows: -

*"Access and Circulation*

*Vehicular access to/from the development is proposed via the existing golf club entrance at Mulgoa Road and a new internal loop road. The intersection with Mulgoa Road at this point has slip lanes for left and right turning.*

*Traffic Generation*

*The SEE indicates that the proposed development is estimated to generate a maximum of 162 daily vehicle trips. However, the RTA's Guide to Traffic Generating Developments indicates a rate of 9 daily vehicle trips/day for dwelling houses, equating for 243 daily movements. This includes 23 peak hour vehicle trips."*

The subject application was referred to the RTA for comment given the scale of the proposed development and its siting along Mulgoa Road.

The RTA raised no objection to the proposed development, subject to a number of advisory conditions relating to: -

- Car parking areas including driveway, grades, turn paths, sight distances, aisle widths and parking bays are to comply with AS2890.1-2004. The internal ring road to be designed in accordance with AS2890.2-2004 for the purposes of heavy vehicle servicing.
- The proposed dwellings are to be designed so as to mitigate road traffic noise by durable materials and to comply with Clause 102 – SEPP (Infrastructure) 2007.
- All works/regulatory signposting to be at no cost to the RTA.

It is considered that the proposed development would not adversely impact upon the safety and efficiency of Mulgoa Road.

***Clause 102 - Impact of road noise or vibration on non-road development***

Clause 102 of ISEPP 2007 is applicable to the proposed development and is outlined as follows: -

***"102 Impact of road noise or vibration on non-road development***

- (1) This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a*

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*transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers is likely to be adversely affected by road noise or vibration:*

- (a) a building for residential use,*
  - (b) a place of public worship,*
  - (c) a hospital,*
  - (d) an educational establishment or child care centre.*
- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*
- (3) If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
- (a) in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
  - (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*
- (4) In this clause, freeway, tollway and transitway have the same meanings as they have in the Roads Act 1993.”*

As noted in the RTA advisory conditions, the proposed dwellings would need to be constructed to ensure that the proposed dwellings are designed to mitigate road traffic noise. This would be conditioned in the event of approval.

Accordingly, the proposal generally accords with the provisions of the ISEPP 2007.

***(g) Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)***

The existing heritage items on the site are identified under the Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation) (PLEP 1991).

**Clause 8 - Heritage items**

Clause 8 of PLEP 1991 outlines in part the following: -

***“8 Heritage items***

- (2) An applicant for consent required by this clause must lodge with the Council a statement which includes reference to the following matters:*
- (a) the significance of the item as a heritage item,*
  - (b) the extent to which the proposal would affect the heritage significance of the item and its site,*
  - (c) whether any stylistic, horticultural or archaeological features of the item or its site should be retained,*
  - (d) whether the item constitutes a danger to the users or occupiers of that item or to the public,*

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- (e) *whether the permanent conservation of the building or work is considered necessary,*  
(f) *the probability of the building or work being incapable of reasonable or economic use.”*

A Statement of Heritage Impact (SOHI) prepared by Rappoport Pty Ltd dated July 2009 accompanied the subject Development Application in support of the proposal and is noted to provide consideration of the above matters which concludes in part the following: -

*“...we are of the opinion that the proposed modifications to Glenmore at Mulgoa Road, Mulgoa achieve an appropriate balance that seeks to conserve the cultural significance of the place whilst ensuring that the ongoing conservation of the place is economically viable in the long term. The rural landscape character is an integral component of the cultural significance of Glenmore. It is recommended that this character be encapsulated via a heritage interpretation strategy for the new development. Photographic archival recording of the site in its current form in accordance with the guidelines of the Heritage Council of the NSW Department of Planning is also recommended.”*

*In terms of the conservation works for the Clubhouse, Barn and landscape features....”*

The following comment are offered in response to the SOHI: -

- Glenmore estate is an integral part of a relatively intact rural landscape developed by the pioneering Cox family in the early years of the colony of New South Wales. It is a physical record of the development of farming in Australia in general and the Mulgoa Valley in particular. The estate is associated with significant personalities in state and local 19th century history, notably Henry Cox and James Riley. Glenmore has aesthetic values as a landmark on Mulgoa Road since its construction in 1825. The house, barn, large trees and setting, are located on a ridge and are visible from many places.
- The proposed development is within close vicinity to the existing heritage items in respect to the existing views and vistas as well as the overall contribution to the rural setting that these items currently benefit. It is considered that the proposed development would impinge on the established curtilage of the heritage items.
- The proposed development is considered to reflect a residential type settlement given that the proposed allotments are comparable to a typical general residential subdivision pattern. The small lot residential subdivision is incompatible with the high quality rural amenity of the area and detracts from the prevailing landscape setting characterised in the Mulgoa Valley.
- The proposed development in its configuration provides a concentrated and high density design which would be in full view from Mulgoa Road and would severely diminish the preservation of the heritage significance of the site with

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impact upon its curtilage and the impacts upon the scenic and rural landscape qualities of the valley.

- The NSW Heritage Council refused to provide their concurrence under the Heritage Act 1977. A number of outstanding matters were raised by the Heritage Council which outlined the deficient nature of the subject Development Application package including details of stylistic and archaeological significance of the site. On this basis, the proposed development should not be supported on this basis.
- Conservation works have been identified to the existing item within the submitted CMP. While these works are noted, there is a notable absence of submitted plans which detail the proposed works as well as a sufficient funding mechanism that links the proposed development with the long term maintenance of the existing heritage items.

It is therefore contended that the proposed development does not meet the requirements of the Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation).

## **2. Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instruments**

### ***Draft Penrith Local Environmental Plan 2008***

The subject development site is part zoned E2 Environmental Conservation and E3 Environmental Living under the draft Penrith Local Environmental Plan 2008. The proposed development would be primarily located on land zoned E3 Environmental Living.

#### **(i) Objectives of the zone**

The objectives of the E2 zone is outlined as follows: -

##### ***“E2 Environmental Conservation***

##### ***Objectives of zone***

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To protect and enhance the ecology, hydrology and scenic values of watercourses.*
- *To protect and enhance biodiversity corridors and areas of remnant indigenous vegetation.*
- *To allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.”*

The proposed development is not situated on land zoned E2 Environmental Conservation and would not deviate from these objectives.

The objectives of the E3 zone is outlined as follows: -

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### ***“E3 Environmental Management***

#### ***Objectives of zone***

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect and enhance the open rural landscape of the Mulgoa Valley, including its agricultural qualities and its cultural heritage values.*
- *To ensure development in the Mulgoa Valley protects and utilises the tourism and recreational potential of the Valley, and is consistent with protecting its rural and natural landscape, heritage and agricultural qualities.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To ensure land uses are compatible with the environmental capabilities of the land.*
- *To preserve and improve natural resources through appropriate land management practices.*
- *To ensure traffic generating land uses are suitably located so as not to adversely affect the safety, efficiency and rural character of roads, particularly Mulgoa Road.*
- *To ensure views and vistas from main roads, particularly Mulgoa Road, heritage items and other vantage points are not adversely affected.*
- *To ensure development does not unreasonably increase the demand for public services or public facilities.”*

The above objectives are reflective of the objectives of the zone applicable to the 1 ‘Rural Conservation’ zone that has been discussed previously in this report.

It is considered that the issues raised in consideration of the 1 ‘Rural Conservation’ zone are applicable in this section therefore would not meet the objectives of the E3 zone.

#### **(ii) Permissibility**

The proposed development would require consent for the purposes of subdivision as follows: -

#### ***“2.6 Subdivision—consent requirements [compulsory]***

*(1) Land to which this Plan applies may be subdivided, but only with Consent.”*

The proposed development for the purposes of subdivision is permitted within the E3 zone.

The erection of dwelling houses is permitted within the E3 zone.



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**(iii) Principal Development Standards**

The following development standards are applicable to the proposed development: -

***Clause 4.1 - Minimum subdivision lot size***

Clause 4.1 Minimum subdivision lot size applies to the proposed development having to the subdivision component. Clause 4.1 outlines the following: -

***“4.1 Minimum subdivision lot size [optional]***

- (1) *The objectives of this clause are as follows:*
- (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.*
- (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.*
- (4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.”*

Having regard to Clause 4.1(4) above, the proposal involves a Community Title Subdivision, which therefore is not applicable to the proposed development.

***Clause 5.10 - Heritage Conservation***

Clause 5.10 - Heritage Conservation applies to the proposed development, with the relevant parts of Clause 5.10 being outlined in part and discussed as follows: -

***“5.10 Heritage conservation [compulsory]***

***(2) Requirement for consent***

*Development consent is required for any of the following:*

- (a) *demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area,*
- (b) *altering a heritage item or a building, work, relic, tree or place within a heritage conservation area, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior,*
- (c) *altering a heritage item that is a building by making structural changes to its interior,*

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- 
- (d) *disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
  - (e) *disturbing or excavating a heritage conservation area that is a place of Aboriginal heritage significance,*
  - (f) *erecting a building on land on which a heritage item is located or that is within a heritage conservation area,*
  - (g) *subdividing land on which a heritage item is located or that is within a heritage conservation area*

**(4) *Effect on heritage significance***

*The consent authority must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned. This subclause applies regardless of whether a heritage impact statement is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).*

**(5) *Heritage impact assessment***

*The consent authority may, before granting consent to any development on land:*

- (a) on which a heritage item is situated, or*
- (b) within a heritage conservation area, or*
- (c) within the vicinity of land referred to in paragraph (a) or (b), require a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

**(6) *Heritage conservation management plans***

*The consent authority may require, after considering the significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.*

With respect to the relevant parts of Clause 5.10, it is contended that the points discussed in Section 1(e) of this report is applicable and therefore, the proposed development is not supported.

**Clause 6.1 Sustainable development**

Clause 6.1(1) Sustainable development provides as follows: -

- (1) The objective of this clause is to ensure that sustainability principles are incorporated into the design and construction processes for all development, to provide well designed comfortable homes and workplaces that use resources efficiently throughout their lifecycle and meet the needs of the community.*
- (2) Development consent must not be granted for any development unless the consent authority has considered each of the following principles of sustainable development as they relate to the proposed development, based on a “whole of building approach”:*
  - (a) conserving energy and reducing carbon dioxide emissions,*

- 
- 
- (b) embodied energy in materials and building processes,*
  - (c) building design and orientation,*
  - (d) passive solar design and day lighting,*
  - (e) natural ventilation,*
  - (f) energy efficiency and conservation,*
  - (g) water conservation and water reuse,*
  - (h) waste minimisation and recycling,*
  - (i) reduction of car dependence,*
  - (j) potential for adaptive reuse.*

The subject application was referred to Council's Urban Design Review Panel who made an assessment of the proposed development in respect to its urban design. A number of comments were made by the panel and have been outlined in consideration of Clause 12(p) of SREP 13 made previously in this report.

It is noted that the proposed development has attempted to incorporate a number of sustainability initiatives, however it is considered that 'eco-village' scheme by which the proposed development aims to achieve is not far reaching to accept that the proposed development would be sustainable given the rural context of the surrounding area relative to the dense building footprint of the proposed development.

#### **Clause 6.5 - Protection of scenic character and landscape values**

The subject development site is identified as being located in an area with scenic and landscape values and heritage vistas. Clause 6.5 - Protection of scenic character and landscape values is outlined in part as follows: -

*“(3) Development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the proposed development, to minimise the visual impact of the development from major roads and other public places.”*

With respect to Clause 6.5 relative to the proposed development, it is considered that Clause 12 of SREP 13 is reflective of the scenic character and landscape values of the Mulgoa Valley and as outlined in the consideration of that clause, the proposed development is not supported.

#### **Clause 6.11 Servicing**

Clause 6.11 - Servicing applies to the proposed development and is outlined as follows: -

*(1) The objective of this clause is to ensure that development of land to which this Plan applies reflects the availability of services.*

The proposed development would comprise of reticulated water system collected from stormwater and other means for re-use as potable water. However, this method reflects the lack of potable water supply available to service the subject site.

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In the event that the proposed development is supported, appropriate conditions would be imposed to ensure connection to essential services including telephone and electricity.

**Clause 6.12 - Mulgoa Valley**

Clause 6.12 - Mulgoa Valley applies to the proposed development and is outlined as follows: -

***“6.12 Mulgoa Valley [local]”***

- (1) The objectives of this clause are as follows:*
  - (a) to establish specific planning controls for land in the Mulgoa Valley (the valley),*
  - (b) to conserve the rural landscape of the valley and the setting of the villages of Mulgoa and Wallacia in that rural landscape,*
  - (c) to conserve heritage items and protect natural ecological elements in the valley,*
  - (d) to protect the agricultural capability of prime agricultural land in the valley,*
  - (e) to ensure development in the valley (including rural living opportunities) is consistent with conserving its rural and natural landscape, heritage and agricultural qualities.*
- (2) This clause applies to land shown as “Clause 6.12 land” on the Clause Application Map.*
- (3) Before granting development consent for any purpose on land to which this clause applies, the consent authority must be satisfied of the following:*
  - (a) that any proposed building will not be located on a ridgetop and will not intrude into the skyline when viewed from a road or other public place,*
  - (b) that the proposed development will not adversely affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of any heritage item in the valley,*
  - (c) that the proposed form and siting of buildings, colours, landscaping, and building materials are appropriate for the rural character of the valley,*
  - (d) that the proposed development will not detract from the vistas of a heritage item specified on the Scenic and Landscape Values Map,*
  - (e) that extensive areas of vegetation will not be cleared for the proposed development,*
  - (f) that adequate provision has been made for the landscaping of the land to which the development relates and about whether any trees or other vegetation on the land should be preserved,*
  - (g) that the agricultural viability of holdings and potential of the land will not be adversely affected,*
  - (h) that Aboriginal and non-Aboriginal cultural heritage resources on the land will not be adversely affected,*
  - (i) that the view from Mulgoa Road and the rural setting of the villages of Mulgoa and Wallacia will not be adversely affected,*
  - (j) that the safety and efficiency of Mulgoa Road will not be adversely affected,*

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- (k) *that any upgrading required to maintain safety and efficiency will not detract from the present rural character of Mulgoa Road.*
- (4) *Before granting development consent for the subdivision of land to which this clause applies, the consent authority must be satisfied that consent for a building could be granted in accordance with subclause (3) on each lot proposed to be created.*

The above matters of consideration are considerations outlined in Clause 12 and Clause 15 of the Sydney Regional Environmental Plan No.13 – Mulgoa Valley. With respect to the matters outlined in the above clause and those points discussed previously in this report, the proposed development is not supported.

### **3. Section 79C(1)(a)(iii) – Any Development Control Plan**

#### **Penrith Development Control Plan 2006**

The proposal has been assessed, having regard to the provisions of Section 6.14 of the Penrith Development Control Plan 2006 as follows: -

##### ***(a) Section 2.5 – Heritage Management***

Clause 3.2 of Section 2.5 – Heritage Management of the Penrith Development Control Plan 2006 requires consideration of the following matters: -

- (i) the heritage significance of the item as part of the environmental heritage of Penrith, and*
- (ii) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and*
- (iii) the measures proposed to conserve the heritage significance of the item and its setting, and*
- (iv) whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and*
- (v) the extent to which the carrying out of the proposed development would affect the form of any significant subdivision pattern, and*
- (vi) the issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.*

With respect to the relevant parts of Section 2.5 – Heritage Management, it is contended that the points discussed in Section 1(e) of this report are applicable and therefore, the proposed development is not supported.

The proposed development has been assessed in accordance with other matters outlined in the DCP and are summarised in the following table: -

<b>REQUIREMENT</b>	<b>COMMENT</b>	<b>COMPLIES</b>
<b><i>Section 2.1 - Contaminated Land</i></b>		
Consider any land contamination and the implications it has for any proposed future use	A Site Contamination Assessment has been made pursuant to SEPP 55 and concludes that the subject development site is suitable for the	Yes

REQUIREMENT	COMMENT	COMPLIES
of the land.	proposed development.	
<b><i>Section 2.2 - Crime Prevention</i></b>		
Consider the principles of Crime Prevention through Environmental Design (CPTED)	<p>The proposed development was reviewed by the Urban Design Review Panel in which CPTED was raised as a matter of concern. The location of all living zones to the rear of the proposed dwellings would diminish adequate passive surveillance together with the garage dominance to the street.</p> <p>It is therefore contended that the proposed development is inconsistent with Section 2.2.</p>	No
<b><i>Section 2.3 - Engineering Works</i></b>		
All Engineering Works shall be undertaken in accordance with the provisions of the Penrith City Council's "Guidelines for Engineering Works for Subdivisions and Developments – Part 1 – Design" and "Guidelines for Engineering Works for Subdivisions and Development – Part 2 – Construction."	Engineering Works associated with the proposed development would be required to be carried out in accordance with these documents and any conditions should the proposed development be supported.	Yes
<b><i>Section 2.6 -Landscape</i></b>		
Ensure quality landscaping of a high standard	A Landscape plan for the development has been prepared in support of the proposed development.	Yes
<b><i>Section 2.9 - Waste Planning</i></b>		
To encourage waste avoidance and resource recovery through planning, re-use and recycling	<p>A Waste Management Plan has been submitted that in support of the proposed development.</p> <p>However it is considered that the plan is insufficient as it has not detailed: -</p> <ul style="list-style-type: none"> <li>▪ The types and volumes of wastes and recyclables likely to be generated as a result of the</li> </ul>	No. In the event that the proposed development is supported, this can be conditioned for further clarification.



REQUIREMENT	COMMENT	COMPLIES
	<p>development;</p> <ul style="list-style-type: none"> <li>▪ How waste and recyclables will be stored and treated on site;</li> <li>▪ How waste and recyclables are to be disposed of; and</li> <li>▪ How ongoing waste management will operate once the development is complete.</li> </ul>	
<b><i>Section 2.10 - Flood Liable Land</i></b>		
To reduce the impact of flooding and flood liability on individual owners and occupiers	<p>The site is subject to Council's Interim Policy for the development of flood liable land.</p> <p>Council's Development Engineering Coordinator reviewed the proposal and raised no objection in respect the flood liable aspect of the proposal, subject to compliance with Council's flood policy in respect to the all finished floor levels are at least 0.5m above the 1% AEP flood level and all electrical services being adequately flood proofed.</p>	Yes
<b><i>Section 2.11 - Car Parking</i></b>		
2 spaces (2 or more bedrooms - stack parking acceptable)	A single car garage is provided to each dwelling with a stacked space available.	Yes
<b><i>Section 2.12 - On-site Sewage Management</i></b>		
Development applications for approval will be required for the installation of all new on-site SMS.	Council's Senior Environmental Health Officer reviewed the proposal and raised no objection the OSSM to service the proposed development.	Yes
<b><i>Section 4.8 - Residential Construction Works</i></b>		
Provide additional information to specific construction requirements as provided under the relevant volumes of the Building Code of Australia, without contravening the performance provisions of that Code; and	These matters would be addressed during the design detail phase of the project in the event that the proposed development is supported.	Yes

Having regard to the above, the proposed development is inconsistent with the Penrith Development Control Plan 2006.

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#### **4. Section 79C(1)(a)(iv) – The Regulations**

This section is not applicable for the subject application.

#### **5. Section 79C(1)(b) – The Likely Impacts of the Development**

The proposed development is complex having regard to the magnitude of the issues associated with the subject application. The information supporting the proposed development has been insufficient including the lack of a funding mechanism linking the proposed development to the long term maintenance of Glenmore.

It is considered that the dense building footprint is reflective of a typical urban subdivision which would significantly undermine the prevailing rural settlement pattern and the preservation of landscape quality of the Mulgoa Valley. The small lot residential subdivision is incongruent to the high quality rural amenity of the area and detracts from the prevailing heritage and landscape setting characterised in the Mulgoa Valley.

The proposed development would be in full view from Mulgoa Road and would adversely impact upon the scenic character and the 'parkland' curtilage of the subject site. Moreover, the proposed development exudes poor urban design outcomes in that the prominent rooflines of each of the proposed dwellings would substantially dominate the area and would cause visual confusion given the established village hierarchy along Mulgoa Road.

#### **6. Section 79C(1)(c) – The Suitability of the Site for the Development**

The proposal is considered to be unsuitable for the site having regard to the excessive built form that is not in keeping with the inherent heritage significance of the site and the intrinsic scenic quality that prevails throughout the Mulgoa Valley.

#### **7. Section 79C(1)(d) – Any Submissions made in relation to the Development**

##### **(a) External Referrals**

The subject Development Application is identified as an 'Integrated Development' under Section 91 of Environmental Planning and Assessment Act, 1979 as it requires approval from the following authorities: -

##### ***(i) NSW Heritage Council***

Having regard to the proposed development being sited on land accommodating an item under the State Heritage Register, the proposed development was defined as a '*controlled activity*' and therefore referred to the NSW Heritage Council in accordance with Section 57 of the *Heritage Act 1977*.

An on-site meeting was conducted with the applicant, Council Officers and the NSW Heritage Council Officers on 20 May 2010 to discuss various aspects of the proposal. Subsequently, the NSW Heritage Council resolved as follows: -

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*“As delegate of the NSW Heritage Council, I have considered the above integrated development application and advise Penrith City Council that the Heritage Council does not propose to issue an approval for the application required under section 57 of the NSW Heritage Act, 1977 for the following reasons:*

- 1. The applicant needs to submit a revised application, including a revised Statement of Environmental Effects (SEE), 2009 conservation management plan (CMP) and heritage impact statement (HIS) that adequately address the following matters:*
  - b) further consideration of the late 1920s+ use of the property as a golf course as being a contributing part of its historic, aesthetic and social heritage values, a generator of its landscape character and thus, the heritage significance of its (golf course) landscape character, as one complementary to the rural landscape character of much of the Mulgoa Valley (per SREP13) and of Glenmore estate prior to the late 1920s. Subsequent revision of the heritage impact assessment of placing 27 new houses within a part of this golf course/landscape and how this impact can be further mitigated;*
  - c) revised significance analysis of Glenmore’s rural landscape character and subsequent conservation policies to retain and enhance this significance;*
  - d) revised CMP and HIS to include an assessment of the archaeological potential of the subject site (c.f. the rest of Glenmore estate), an archaeological zoning map, conservation policies such as to provide a detailed archaeological study and works; and landscape works to be carried out in the future to better reflect the heritage values of the site as a cleared pastoral landscape in the 19<sup>th</sup> century and a golf-course leisure landscape in the 20<sup>th</sup> century*
  - e) a revised HIS indicating whether the proposal has likely archaeological impacts or not and if so, how these are to be mitigated;*
  - f) further comparative analysis of colonial farms converted to golf courses comparable to Glenmore, such as Studley Park estate, Narellan; Jarvisfield, Picton and Duntryleague, Orange. This revision should include consideration of the contribution of golf to each of these properties’ history and to the retention of ‘rural’ or semi-rural open-space landscape settings;*
  - g) a whole Glenmore estate map in a revised CMP showing where new development can go (e.g. an eco-village; a future function centre, additional parking, etc). A revised HIS addressing exactly why the subject site is the best possible and why this layout and form of dwellings has the least adverse impact on Glenmore’s heritage values;*
  - h) clarification of specific conservation works outlined in all previous conservation management plans and in section 5 of the HIS proposed to be undertaken to the historic homestead/ barn/ grounds as part of a revised application;*
  - i) clear prioritisation of conservation works outlined in all previous conservation management plans into short, medium, long-term time lines for their implementation and definition of these terms short, medium and long-term;*

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- j) *further justification of how the proposal complies with the full wording of article 22 of the Burra Charter i.e. being 'clearly identifiable as new work on close inspection' as justifying the modernity of the design of dwellings proposed; and*
- k) *(noting that the entire golf course is listed on the SHR) a detailed impact assessment of the impacts on Glenmore's rural landscape character of the proposed 27 dwellings and ancillary roads, landscaping, traffic etc, not just of impacts on the homestead group precinct within that landscape;*
2. *The applicant needs to, in discussion with the Heritage Council, prepare a revised draft heritage agreement that more precisely:*
- a) *specifies how the proposed 8.5% of sale income will be 'quarantined' within the proposed bank account;*
  - b) *specifies whether it is the principal or interest of this account available for expenditure;*
  - c) *demonstrates how this can be dedicated solely to implementing ongoing maintenance and conservation works to the whole property that were previously identified in all conservation management plans;*
  - d) *specifies time lines for implementing these works; and/or*
  - e) *demonstrates what other (e.g. community title management) mechanism(s) will be used to support and ensure medium-long term conservation, maintenance and interpretation works;*
  - f) *specifies which specific works will be implemented within which time frames (short, medium and long-term) and*
  - g) *defining these terms (short, medium and long-term)."*

Having regard to the above comments provided by the NSW Heritage Council, the proposed development cannot be supported in its current form pursuant to Section 91 of the Environmental Planning and Assessment Act 1979.

***(ii) NSW Rural Fire Service***

The proposed development is identified as a '*special fire protection purpose*' pursuant to Section 100B of the *Rural Fires Act 1997*. The subject application was initially referred to the NSW Rural Fire Services (NSW RFS) on 6 November 2009. Council received correspondence from the NSW RFS on 3 December 2009 which requested a Bushfire Assessment Report.

The applicant was requested to prepare a Bushfire Assessment Report which was submitted to Council on 15 February 2010.

Council received 'bush fire safety authority' on 21 May 2010 which contained a number of requirements including: -

- a 20 metre inner protection area (IPA) to the south and south-east of the proposed development,
- provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building;

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- buildings are to be designed and constructed to withstand the potential impacts of bush fire attack in accordance with Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone areas'

These requirements included the requirement for asset protection zones, water management, vehicular access, design and construction of dwellings and landscaping. These measures are to comply with the requirements of Planning for Bush Fire Protection 2006.

***(iii) Department of Environment, Climate Change and Water***

The proposed development is located within 40 metres of a watercourse and therefore defined a 'Controlled Activity' under the *Water Management Act 2000*. The subject application was therefore referred to the NSW Office of Water on November 2009.

The NSW Office of Water provided their General Terms of Approval for a Controlled Activity Approval on 1 December 2009.

***(iv) Roads and Traffic Authority***

The proposed development does not involve any specific works to Mulgoa Road. Notwithstanding, Council Officers referred the subject application to the RTA for comment given the scale of the proposed development.

The RTA reviewed the proposal and raised no objection subject to conditions which provided for: -

1. Car parking areas including driveway, grades, turn paths, sight distances, aisle widths and parking bays are to comply with AS2890.1-2004. The internal ring road to be designed in accordance with AS2890.2-2004 for the purposes of heavy vehicle servicing.
2. The proposed dwellings are to be designed so as to mitigate road traffic noise by durable materials and to comply with Clause 102 – SEPP (Infrastructure) 2007.
3. All works/regulatory signposting to be at no cost to the RTA.

***(b) Internal Referrals***

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

***Building Surveyor***

No objection raised to the proposal.

***Development Engineer***

No objection raised to the proposal.

***Traffic Engineer***

No objection raised to the proposal.

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### ***Environmental Health***

No objection raised to the proposal.

### **(c) Community Consultation**

The subject application was placed on two separate occasions. The application was initially placed on public exhibition and notified to adjoining property owners from 18 November 2009 to 17 December 2009. The application was further exhibited from 5 January 2010 to 29 January 2010. A total of five (5) submissions were received of which four (4) objections were received and one (1) submission raising no objection to the proposal.

The issues raised in the submissions are summarised in the following table: -

- *The minimum subdivision requirement under the Zone 1 Rural Conservation under SREP 13 is 20 hectares and is inconsistent with this plan. The proposal would also be prohibited under the Draft Local Environmental Plan;*
- *The proposal would not be visually attractive for the area;*
- *Over 500 hectares of land has been released in Western Sydney and Badgery's Creek Airport has been removed from the agenda. The development can be located elsewhere in the region;*
- *The proposed development would cause a dangerous precedent for subdivision in the area;*
- *Previous approvals on the site were on the condition that the main house is restored. This has not occurred;*
- *The premise of the proposed development is to produce a profit from the sale of the individual dwellings in order to restore the existing heritage items. If no profit is made from the proposed development, no restoration would occur;*
- *The estimated \$1.65 million that is identified for restoration of the heritage items could better produced from serviced by the operation of a competent conference centre/function at the site;*
- *Proposal would remove nine (9) existing holes from existing golf course;*
- *The proposed development impact upon the surrounding land value;*
- *The proposed development would cause an unacceptable impact for traffic generation along Mulgoa Road;*
- *The proposed development is of high density representing over 10,000m<sup>2</sup> of hard paved areas;*
- *The subject site is not connected to sewer or water supply;*
- *The proposed development would cause an undesirable mix of urban development including increased lights at night lighting and domestic rubbish;*
- *The proposal would result in the loss of valuable rural land;*
- *'Eco' status is incorrect;*
- *The proposed development would utilise the incentive clause under Clause 20 of SREP 13 as this would prohibit the applicant to revisit a similar proposal in the future; and*
- *There is no guarantee is there that 27 houses will continue the ongoing maintenance of the heritage items and its cartilage.*

With respect to the above, it is considered that the issues raised in the submissions are valid and therefore, the proposed development is not supported.

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## **8. Section 79C(1)(e) – The Public Interest**

The proposed development would cause an undesirable precedent for inappropriate development within the Mulgoa Valley. Moreover, the proposed development if supported would create a significant precedent for other sites in the region which accommodate existing items of heritage significance. This precedent would not be in the public interest.

The Draft Penrith Development Control Plan 2008 is applicable to the site, however it is not required to be considered in a statutory assessment. Notwithstanding, the proposed development has been assessed with regard to Chapter E2 – Mulgoa Valley outlined in the draft Penrith Development Control Plan 2008.. Matters relating to Heritage Items and Vistas, Siting, Building Form, Materials and Colours, Planting, Access, Parking and Services, Fences and Entrances, Signage have been considered against the draft Penrith Development Control Plan 2008 and are found to be unsatisfactory.

### **Section 94 Contributions**

The proposed development would be applicable to a number of Section 94 Development Contribution Plans including Cultural Facilities and Local and District Open Space.

The proposed development if supported would attract a total amount of \$119,875.00 payable to Council.

### **Conclusion**

The application has been assessed against the relevant considerations within Section 79C of the Environmental Planning and Assessment Act and as outlined in the above report. The subject application is considered to be inconsistent with the various planning provisions related to the site and its design would not result in the long term maintenance preservation of Glenmore.

The proposed development is complex having regard to the magnitude of the issues associated with the subject application. The information supporting the proposed development has been deficient and ambiguous in its intention which is reflected in the lack of commitment in providing a funding mechanism linking the proposed development to the long term maintenance of Glenmore.

Combined with the dense building footprint which is reflective of a typical residential subdivision and the poor urban design outcomes, the proposed development would significantly undermine the prevailing rural settlement pattern and the unique intrinsic heritage and inherent scenic quality of the Mulgoa Valley.

The proposed development is considered to be excessive and as a consequence, would represent a undesirable precedent for inappropriate subdivision and built form.



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It is for these reasons that the proposed development is not supported and is therefore recommended for refusal on a number of grounds which are outlined below.

### **Recommendations**

- (a) That the report for DA09/1143 which proposes the Construction of a residential development consisting of 27 dwellings with associated community title subdivision (Glenmore Golf Course) at Nos.754-760 Mulgoa Road, MULGOA be received; and
- (b) That the SEPP 1 objection to the minimum subdivision requirements prescribed in Clause 13 of SREP 13 not be supported; and
- (c) The proposed development be refused on the following grounds: -
  - 1. The proposed development is inconsistent with Clause 13 – Subdivision of the Sydney Regional Environmental Planning Policy No.13 – Mulgoa Valley in that the proposed development does not meet the minimum subdivision requirement of 20 hectares and has not demonstrated that the variation to the Development Standard is unreasonable or unnecessary in the circumstances or would result in the long term maintenance and conservation of ‘Glenmore’ with satisfactory outcomes for the social and economic aspects for the community and the environment (Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).
  - 2. The proposed development is inconsistent with the objectives of the 1 Rural Conservation Zone under the Sydney Regional Environmental Planning Policy No.13 – Mulgoa Valley in that the proposed development is not in keeping with the inherent high quality amenity of the area and provides an excessive variation to the prevailing subdivision pattern that would not be in keeping with the low density character of the area and the rural, heritage and natural landscape qualities of the site and surrounds (Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).
  - 3. The proposed development does not meet the requirements of Clause 11 – Land Subject to Conservation orders of the Sydney Regional Environmental Planning Policy No.13 – Mulgoa Valley in that the NSW Heritage Council has refused to grant their General Terms of Approval under Part 4 of the NSW Heritage Act 1977 (Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).
  - 4. The proposed development is inconsistent with Clause 12 – Development Consent Criteria of the Sydney Regional Environmental Planning Policy No.13 – Mulgoa Valley in that the proposed development does not meet the matters of consideration relating to visual impact, heritage significance, servicing, Design and Management Guidelines, colours and material as well as bulk and scale (Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).

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5. The proposed development is inconsistent with the Clause 6 - Specific planning policies and recommended strategies in Sydney Regional Environmental Plan No.20 – Hawkesbury/Nepean River (No.2-1997) with respect to Cultural Heritage, Rural Residential Development, Urban Development and Metropolitan Strategy in that the proposed development would cause a significant detriment to the heritage significance and curtilage of Glenmore and would undermine the prevailing scenic and rural landscape in the Mulgoa Valley (Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).
  6. The proposed development is inconsistent with the provisions of the Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation) in that the proposed development would significantly impinge upon the curtilage of Glenmore and has not sufficiently demonstrated that the proposed development would guarantee the long term maintenance of Glenmore (Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).
  7. The proposed development does not satisfy the provisions outlined in Clause 5.10 – Heritage Conservation, Clause 6.1 – Sustainable Development, Clause 6.5 – Protection of Scenic Character and Landscape Values, Clause 6.11 – Servicing and Clause 6.12 – Mulgoa Valley of the Draft Penrith Local Environmental Plan 2008 (Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*).
  8. The proposed development is inconsistent with Section 2.5 – Heritage Management of the Penrith Development Control Plan 2006 in that the proposed development would significantly impinge upon the curtilage of Glenmore and there has not been sufficient information to demonstrate that the proposed development would guarantee the long term maintenance of Glenmore (Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*).
  9. The proposed development would provide poor passive surveillance to the street which is inconsistent with the Crime Prevention through Environmental Design (CPTED) principles outlined in Section 2.2 of the Penrith Development Control Plan 2006 (Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*).
  10. The subject Development Application has not been accompanied with sufficient information which would enable a detailed and accurate assessment of the social and economic benefits of the proposed development due to the lack of a funding mechanism linking the proposed development to the long term maintenance of Glenmore (Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*).
  11. The proposed development would have a significant detriment to the intrinsic heritage value and parkland character of the subject site and would undermine the inherent scenic quality of the surrounding area as a result of the excessive

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built form, dense building footprint and poor urban design outcomes (Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*).

12. The proposed development is unsuitable for the site having regard to excessive built form which is not in keeping with the heritage significance of the subject site (Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979*).
13. The proposed development would be inappropriate having regard to the submissions received in response to the proposed development (Section 79C(1)(d) of the *Environmental Planning and Assessment Act 1979*).
14. The proposed development would cause an undesirable precedent for inappropriate development within the Mulgoa Valley and other land in the locality which accommodate existing items of heritage significance, which is not in the public interest (Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*).

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Steven Chong  
**Senior Environmental Planner**  
**Penrith City Council**