

APPENDIX 21

Gateway Determination (DP&E, 20 December 2016)

Our ref: PP_2016_PENRI_005_00 (16/14577)
Your ref: 7569050

Alan Stoneham
General Manager
Penrith City Council
PO Box 60
PENRITH NSW 2750

Dear Mr Stoneham

Planning proposal to amend Penrith Local Environmental Plan 2010.

I am writing in response to Council's request for a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979 (the Act)* in respect of the planning proposal to amend *Penrith Local Environmental Plan 2010* to adjust the planning controls for land at Mulgoa Road and Retreat Drive, Penrith (Penrith Panthers Site).

As delegate of the Greater Sydney Commission, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

As you are aware, the NSW Government has identified Hawkesbury-Nepean Valley as having the greatest single flood exposure in NSW, posing a significant danger to life and property in Western Sydney. The Hawkesbury-Nepean Valley Flood Risk Management Taskforce has found that any proposed increase in development in the Hawkesbury-Nepean Valley needs to be considered in a regional context to adequately assess cumulative and interdependent impacts on flood risk. The Taskforce work also highlighted the role of strategic land use planning decisions as those with the greatest potential to reduce existing and future flood risk in the Hawkesbury-Nepean Valley.

In this regard, the attached Gateway determination allows the proposal to proceed on the basis that further work is carried out to the satisfaction of the Taskforce. The matters to be addressed are included in the attached letter. I am also agreeing to the proposal proceeding on the basis that no greater development yield can be achieved that exist under current planning controls.

Council may still need to obtain the agreement of the Department's Secretary to comply with the requirements of S117 Direction 4.3 – Flood Prone Land. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and based on the outstanding planning matters, I have decided not to issue an authorisation for Council in this instance.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Greater Sydney Commission may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr Stephen Gardiner of the Department's regional office to assist you. Mr Gardiner can be contacted on (02) 9860 1536.

Yours sincerely



20/12/16

Catherine Van Laeren
Director, Sydney Region West
Planning Services

Encl(2): Gateway Determination
INSW letter of 5 December 2016

Gateway Determination

Planning proposal (Department Ref: PP 2016 PENRI 005 00): to amend *Penrith Local Environmental Plan 2010* to adjust the planning controls for land at Mulgoa Road and Retreat Drive, Penrith (Penrith Panthers Site).

I, the Director Sydney West Region at the Department of Planning and Environment as delegate of the Greater Sydney Commission, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Penrith Local Environmental Plan (LEP) 2010 should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to amend the proposal:
 - a. to address the draft West District Plan including Sustainability Actions S11 and S16;
 - b. to cap the maximum development capacity potential to:
 - i. a maximum of 850 dwellings on the site, and
 - ii. a maximum gross floor area 80,400sqm on the site, so that no additional yield is generated as a result of the proposal;
 - c. to include a description of the changes required to the map legend for the following Height of Buildings Maps (sheets 5-7, 11-13, 18-20) as follows,
 - i. 6350_COM_HOB_005,
 - ii. 6350_COM_HOB_006,
 - iii. 6350_COM_HOB_007,
 - iv. 6350_COM_HOB_011,
 - v. 6350_COM_HOB_012,
 - vi. 6350_COM_HOB_013,
 - vii. 6350_COM_HOB_018,
 - viii. 6350_COM_HOB_019, and
 - ix. 6350_COM_HOB_020;
2. Prior to exhibition a detailed assessment addressing the issues outlined in the letter from the Hawkesbury-Nepean Valley Flood Management Directorate dated 5 December 2016, is required to be prepared, which includes evacuation plans approved by the NSW State Emergency Service in consultation with Roads & Maritime Services and the Office of Environment & Heritage. The proposal must be amended to address section 117 Direction 4.3 - Flood Prone Land.

A copy of this assessment with the planning proposal must be referred to the Hawkesbury-Nepean Valley Flood Management Directorate for approval. A copy of the proposal and assessment must be provided to the Department's regional team for information.

3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing Local Environmental Plans* (Department of Planning and Environment 2016).
4. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:
 - Infrastructure NSW - Hawkesbury-Nepean Valley Flood Management Directorate;
 - Transport for NSW – Roads and Maritime Services (including advice on the existing planning agreement in place);
 - Office of Environment and Heritage;
 - Sydney Water;
 - Essential Energy; and,
 - Telstra.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

Notwithstanding this condition, advice is required under Condition 2 from the Hawkesbury-Nepean Valley Flood Management Directorate regardless of any time limitation.

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Dated 20th day of December 2016



Catherine Van Laeren
Director, Sydney Region West
Planning Services
Department of Planning and Environment

Delegate of the Greater Sydney
Commission

COPY



5 December 2016

Mr Stephen Gardiner
Senior Planner, Sydney Region West
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Gardiner

Re: Penrith Panthers Planning Proposal

I refer to your email dated 12 October 2016 and subsequent communications consulting with Infrastructure NSW on the proposal to amend planning controls on the Penrith Panthers site off Mulgoa Road, Penrith. Infrastructure NSW has referred this response to NSW State Emergency Service, the Office of Environment & Heritage and Roads & Maritime Services.

The Hawkesbury-Nepean Valley Flood Risk Management Taskforce (the Taskforce), coordinated by Infrastructure NSW, progressed the recommendations of the 2013 Hawkesbury-Nepean Valley Flood Management Review and has developed a Strategy for the reduction of flood risk in the Hawkesbury-Nepean Valley. This Strategy has been accepted by Government and its implementation will be coordinated by the Hawkesbury-Nepean Valley Flood Risk Management Directorate.

The Taskforce found that any proposed increase in development in the Hawkesbury-Nepean Valley needs to be considered in a regional context to adequately assess cumulative and interdependent impacts on flood risk. The Taskforce work also highlighted the role of strategic land use planning decisions as those with the greatest potential to reduce existing and future flood risk in the Hawkesbury-Nepean Valley.

The Taskforce investigations particularly highlighted the flood risk to life posed by development in the Penrith region. Increased development in the Penrith region not only exposes people in Penrith to additional flood risk, but also increases the flood risk to areas north of Penrith that have to evacuate through Penrith. In light of this and other proposed developments in the Penrith area the Directorate seeks ongoing engagement with the Department to assess the cumulative impact of potential development in the Penrith region on the flood risk across the Valley.

The NSW State Emergency Service has advised that shelter in place is not an acceptable flood risk mitigation strategy, and therefore the entire development would need to be

evacuated during flood events. In light of the existing flood risk at the site, the proposed development at Penrith Panthers should be based on sufficient evacuation road capacity being identified to allow for the timely evacuation of the proposed development and ensure there is no net negative effect of the proposed development on the regional evacuation road capacity. As a result, a detailed assessment of the cumulative impact of proposed development, internal road layout and the proposed evacuation route options on current and future evacuation capacity in the Hawkesbury-Nepean Valley is required.

The detail contained in the *Panthers Precinct Master Plan – Flood Assessment Report*, dated 6 September 2016 and prepared by J. Wyndham Prince does not adequately address the flood risk of the proposed development. In particular this report:

Flood Modelling

- does not show in the supporting hydrological modelling any overtopping of the southeast bank of the Nepean River in a 1 in 100 chance per year regional flood event. This contrasts to the flood study by Lyall and Associates in Appendix J, Nepean River Green Bridge Project Review of Environmental Factors (www.rms.nsw.gov.au/projects/sydney-west/nepean-river-bridge/project-documents.html) which modelled significant overtopping of the southeast bank near Memorial Avenue in a 1 in 100 chance per year regional flood event. This inconsistency in flood models in the same area needs to be examined, as there may be a higher hydraulic hazard in this area than presented in the J. Wyndham Prince report.
- did not assess the flood risk from the full range of flood events, for both Nepean River and Peach Tree Creek flooding, up to the probable maximum flood event (PMF) as required under the NSW Floodplain Development Manual.

Flood Evacuation

- did not consider the potential impact on the residents evacuating from the proposed development on residents evacuating from surrounding areas and other areas of the Hawkesbury Nepean Valley that would occur during flood emergency events. There must be no deterioration in evacuation performance in terms of added isolated vehicles and duration of evacuation.
- does not identify the critical timeline(s) for evacuating the proposed development, as part of the SES subsector, during flood events.
 - Timing is critical given that self-evacuation by private vehicle is the proposed flood evacuation method and that floodwaters could rise faster than the assumed 0.5 metres per hour.
 - Combinations of regional and local flood events, including events larger than 1 in 100 chance per year and of different durations, should be assessed in combination with the potential flood evacuation traffic generated as per the Hawkesbury-Nepean Flood Emergency Sub-Plan (www.emergency.nsw.gov.au/publications/plans/sub-plans/hawkesbury-nepean-flood.html) to identify the critical evacuation timeline for the proposed development.

- did not demonstrate an understanding of the approved flood emergency management arrangements in NSW or the Hawkesbury Nepean Valley.
 - In particular Appendix F – Flood Evacuation Strategy of the report does not recognise the existing Hawkesbury Nepean Flood Emergency Sub-Plan.
 - Directing evacuating vehicles contrary to established flood evacuation routes and into areas of higher flood risk as well as directing evacuees to a location not recognised as a potential flood evacuation centre raises the flood risk.
 - Incorrectly claims that the NSW Police are responsible for flood emergency management.
 - There is also no evidence to support the claimed “seven hours as determined by [unidentified] local authorities” for flood emergency evacuation.

Development controls

- identifies that private vehicles at the site are proposed to be garaged in an underground car park that has only 0.3 metres of freeboard above 1 in 100 chance per year flood.
 - Underground or basement car parks (i.e. below ground level) or covered bunded car park facilities are subject to inundation as flood waters rise. It should be recognised that such design measures to prevent early entry of water can cause problems with rapid flooding of the car park if waters continue to rise above the level of the ramp, which acts then like a breeched levee. This can be very dangerous for anyone trapped in the car park and clearly marked, separate pedestrian exits are essential. Where it is possible to do so, it is preferable to have the crest level of all accesses to the basement at or above the PMF.
 - Multi-storey buildings can provide occupants with high-level refuges during short duration floods. In flash floods, this may be preferable to evacuation if vehicles are parked in underground car parks. In such circumstances, an accessible refuge not only needs to be provided but clear signage to the refuge needs to be posted within the public areas of the building including the car park.
 - The hazardous nature of underground car parks emphasises the need for full public awareness to ensure prompt and early evacuation to ensure that the cars could be removed from the car park before the evacuation routes become impassable and before the car park becomes flooded. Any cars remaining under water in a car park could be assumed to be written off. Consideration should also be given to the initial slow flooding of the underground carpark to help act as a warning mechanism to those in the carpark area.
 - Underground car parks for commercial buildings such as shopping centres often house plant and equipment e.g. air conditioning units. Locating these higher within the building would reduce the chances of damage to this equipment.

It is recommended that this proposal should be supported by a detailed assessment addressing the above issues which includes evacuation plans approved by the NSW State Emergency Service in consultation with Roads & Maritime Services and the Office of Environment & Heritage.

If you have any questions please do not hesitate to contact the Directorate at maree.abood@insw.com (phone: 02 8016 0167).

Yours sincerely



Maree Abood
Executive Director, Water Planning, Infrastructure NSW
Hawkesbury-Nepean Valley Flood Management Directorate

Cc

Peter Cinque
Regional Controller – Sydney Western Region
NSW State Emergency Service

David Trewin
Regional Manager Greater Sydney
Office of Environment and Heritage

Colin Langford
Principal Network Manager, West Precinct
Roads and Maritime Services