

Mr Warwick Winn
General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751

Attention: Joel Carlson

Dear Mr Winn

Planning proposal PP_2018_PENRI_006_00 to amend Penrith Local Environmental Plan 2010.

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) and additional information subsequently provided by Council in respect of the planning proposal to rezone the area known as Orchard Hills North for urban purposes.

As delegate of the Minister for Planning, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistency with section 9.1 Directions 1.1 Business and Industrial Zones; 1.2 Rural Zones; and, 6.3 Site Specific Provisions is justified in accordance with the terms of the Directions. No further approval is required in relation to these Directions.

Council may still need to obtain the agreement of the Department's Secretary to comply with the requirements of section 9.1 Directions 4.2 Mine Subsidence and Unstable Land; 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; and, 6.2 Reserving Land for Public Purposes. Council should ensure this occurs prior to the plan being made.

I have considered Council's request to be the local plan-making authority and have determined not to condition the Gateway for Council to be the local plan-making authority. I have taken this decision primarily over the need for the consideration and co-ordination of the interests of state authorities.

In determining the matter, I was pleased to note that the involvement of Department staff with Council's steering committee for the proposal. I would look forward to the further involvement of the Department, particularly in assisting Council with any contribution requirements sought by state agencies.

I have also noted that Council does not wish to apply a minimum allotment size within the proposed amending local environmental plan and will apply this standard by way of a development control plan. While the Department does not hold in-principle objections, I would recommend that Council reconsiders this approach.

I am aware that Council currently is deferred from the Low Rise Medium Density Housing Code under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Should this deferral not continue the housing code may apply and housing density may increase beyond that envisaged by Council. A minimum lot size within the local environmental plan would provide greater certainty on the number of dwellings that would be delivered under the proposal. Council may therefore care to consider amending the proposal to include relevant standards.

In preparing the stage 2 transport assessment, it would be appreciated if Council is guided by advice provided by the Roads and Maritime Service over modelling methodology, assumptions and scope of the work for the study, taking into consideration proposed road widening.

In addition, I have noted that the proposal has not been referred to Penrith's Local Planning Panel. In this regard the circumstances surrounding the proposal are in keeping with the Minister's February 2018 Direction that applied at the time of the submission of the proposal to the Department. That Direction did not require the submission of the proposal to the panel prior to a Gateway determination.

A subsequent Ministerial Direction, however, does require this action to be taken. In keeping with the intent of the later Direction, I would recommend that the proposal be referred to the Panel for its consideration and views, prior to exhibition, and Council take these views into consideration.

I would remind Council that should the planning proposal be significantly altered prior to exhibition, consideration be given to Council seeking an altered Gateway determination. Should this arise, the matter should be discussed with Departmental officers from the regional office in this first instance.

Finally, I have also noted that the preliminary site investigation report did not identify the potential for gross or widespread contamination which may preclude rezoning but did recommend that when detailed proposals are made that individual properties be suitably investigated in accordance with the relevant NSW EPA endorsed guidelines to confirm site suitability.


The investigation report acknowledged certain limitations in its undertaking and I would request that Council ensure and acknowledge it is able to comply with the relevant provisions of State Environmental Planning Policy No. 55 – Remediation of Land, at the plan finalisation stage.

The amending local environmental plan (LEP) is to be finalised within 24 months of 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 eight 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 Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Mr Matthew Black to assist you. Mr Black can be contacted on 9860 1553.

Yours sincerely

 22 February 2019
Stephen Murray
Executive Director Regions,
Planning Services

Encl: Gateway determination

Gateway Determination

Planning proposal (Department Ref: PP_2018_PENRI_006_00): to rezone the area known as Orchard Hills North for urban development.

I, the Executive Director Regions, Planning Services at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Penrith Local Environmental Plan (LEP) 2010 to rezone the area known as Orchard Hills North should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to amend the planning proposal in the following manner:
 - (a) under *Part 1 – Objectives or intended outcomes*, include the intention to introduce a flexibility boundary clause to apply to the subject land and other specified release areas;
 - (b) under *Part 2 – Explanation of provisions* Council is to:
 - remove draft clause 6.20 from the planning proposal and amend the text under the heading: 2 Amendments to Part 6 – Additional clause, to indicate the intent of introducing an additional clause to increase the flexible boundary to land that is subject to Part 6 of the LEP, providing details including advice that the clause will not apply to the following:
 - land in Zone RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone W1 Natural Waterways, or
 - land within the coastal zone, or
 - land proposed to be developed for the purpose of sex services or restricted premises, or
 - land in Zone B4 Mixed Use;
 - include maps of the land release areas subject to the above proposed amendment in the planning proposal; and
 - under the heading: *1.2 minimum lot size*, specify the minimum allotment sizes proposed to be included in the development control plan;
 - (c) under *Part 3 – Justification*, provide the current situation with the release of the Implementation Plan for the Western Sydney City Deal;
 - (d) under *Part 4 – Mapping*, include:
 - the relevant current maps in Attachment F;
 - highlight the subject land on the current and existing maps by thin red outline or other appropriate identification means;
 - identify the existing and proposed maps by an appropriate label denoting 'current' and 'proposed'; and
 - amend the text within that Part to indicate that both current and proposed maps are included in Appendix F;

- (e) Under *Section C – Environmental Social and Economic Impacts*, clarify the inconsistencies between the vegetation clearance rates specified in the planning proposal and in the supporting ecological study;
 - (f) replace the words 'Section 117 Direction(s)' with the words 'Section 9.1 Direction(s)', where appearing in the planning proposal; and
 - (g) address the justifiable inconsistency with section 9.1 Direction 1.1 Business and Industrial Zones in Table 19 of the proposal,
 - (h) amend the supporting agriculture assessment on page 52 to indicate that section 9.1 Direction 1.2 – Rural Zones applies and that direction 1.5 Rural lands, does not apply, and make necessary corresponding amendments to the commentary on that page.
2. As part of the supporting exhibition material, Council is to include a site-specific development control plan; a stage 2 transport assessment to support the rezoning, identifying intersection and network traffic modelling to understand the implications of the development on surrounding networks and critical intersections; and a draft local contributions plan for the proposal.
3. In preparing the development control plan, Council is to include proposed development standards that are not proposed to be included in the LEP.
4. To satisfy section 9.1 Direction 4.2 Mine Subsidence and Unstable Land, Council is to consider detailed geotechnical investigations to identify the geotechnical limitations of different areas of the site and to include specific design and construction guidelines for the development within the development control plan, prior to the finalisation of the LEP.
5. Prior to exhibition consultation is required with the NSW Rural Fire Service under section 3.34(2)(d) of the Act to comply with the requirement of the relevant Section 9.1 Direction. The NSW Rural Service 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.
6. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal 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);
7. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - NSW Rural Fire Service;
 - Roads and Maritime Services;
 - Transport for NSW;
 - Department of Planning and Environment;
 - Office of Environment and Heritage;

- Deerubbin Local Aboriginal Land Council;
- Department of Education;
- Department of Primary Industries – Agriculture;
- NSW Office of Water;
- NSW Environment Protection Authority
- NSW State Emergency Service;
- NSW Police Service;
- Fire and Rescue NSW;
- NSW Health – Western Sydney Local Health District; and
- Sydney Water and other relevant authorities for the supply of electricity, gas, and telecommunications.

Each public authority/organisation 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.

8. In consulting with authorities, Council is to consult with the relevant authorities over the need for state infrastructure contributions to support the proposal.
9. Following agency consultation, should an agency(s) require a state contribution(s), Council is to prepare a state infrastructure schedule detailing requested contributions (costs and apportionment) and provide the schedule to the Department at the earliest opportunity and prior to finalisation of the LEP amendment.
10. A public hearing is not required to be held into the matter by any person or body under section 3.34(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).
11. The time frame for completing the LEP is to be **24 months** following the date of the Gateway determination.

Dated 22nd day of February 2019.



Stephen Murray
Executive Director Regions
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning