

1 March 2024

Our Ref: 11584\_WSPPMeeeting\_Mound

Mr Justin Doyle  
Chair, Sydney Western City Planning Panel  
VIA: Enquiry@planningpanel.nsw.gov.au

Dear Mr Doyle,

**RE: Mound Item & Conditions Response – PPSSWC-243-Penrith-DA22/0318**

Property: 158-164 Old Bathurst Road, Emu Plains

The following has been prepared for 'Acor Consultants on Behalf of Penrith City Council', the **Applicant** for the above Development Application (**DA**). This correspondence has been prepared in response to items raised by the Sydney Western City Planning Panel (**Panel**) in the briefing on Monday 26 February 2024.

At the meeting the Panel requested that the Applicant:

- Reconsider retention of part of the mound and associated vegetation fronting the corner of Old Bathurst Road and David Road, and
- Review and provide comment on the Assessment Manager's response on the proposed amended conditions.

The Panel requested a response by Friday 1 March 2024. The above items are discussed further below.

**Mound Retention**

The Applicant has organised for the project engineers to prepare the attached plan (**Attachment 1**). The plan shows retention of an area of the mound along both the Old Bathurst Road and David Road frontages. The extent to which the mound is being retained (as proposed in the attached plan) on the Site exceeds the minimum landscaped setback requirements as outlined within the Section D4 of the *Penrith City Council Development Control Plan 2014* of 15m for Old Bathurst Road and 9m for David Road. The portion of the mound being retained will vary in height between approximately 1.7m and 2.3m above the adjoining road level. The retained portion of the mound shown in the attached plan will be retained rather than battered, to limit the extent of employment land lost.

The cut of the mound has been located having consideration to retaining the existing vegetation that maintains a visual screen when viewed from Old Bathurst Road and David Road. The attached plan shows the cut being designed to ensure retention of an informal row of trees along both frontages, with the required works largely being contained outside the relevant Tree Protection Zone (**TPZ**) as identified within the previously submitted arborist report. The plan specifies trees marked as green will have no impact on their TPZ. Pink trees have an impact of 10% into the TPZ, which is acceptable in accordance with the relevant Australian Standard and may be able to be

retained subject to further examination from the project arborist at detailed design. Trees marked red will be removed and are generally located on the down slope of the mound into the Site – meaning the trees provide limited screening from Old Bathurst Road and David Road.

Notwithstanding the revised plan, the Applicant is still of the opinion that development as proposed (with the mound being removed) meets and exceeds the relevant tests of Clause 7.5 and 7.30 of the *Penrith Local Environmental Plan 2010 (PLEP)*, which requires the Consent Authority to be satisfied that **measures have been taken/incorporated to:**

- Minimise visual impacts on the area of schedule landscape value (Clause 7.5),
- Reduce the urban heat island effect (Clause 7.30).

The Applicant reiterates that the test under both clauses does not require a comparison between the existing and proposed site condition. The clauses anticipate redevelopment of the land, requiring development of the land to include measures that contribute to achieving the objective. In the circumstances of this proposal the proposed measures incorporated into the design to reduce visual impacts and minimise urban head island effect include:

- retention of over 1.5ha of land that contains existing trees,
- inclusion of water in the landscape environment (wetlands),
- removal of any access of Old Bathurst Road, and
- provision of extensive landscaping that almost double the tree canopy cover

These mitigation measure far exceeds the measures implemented in approved developments to the west of the Site.

Although we believe the application satisfies clause 7.5 and 7.30 of the Penrith LEP 2010, and provide for a superior outcome, we reconfirm that should the Panel not be satisfied that sufficient measures have been incorporated into the proposal – the Applicant would be accepting of a condition that requires **either:**

- Retention of the mound and vegetation in accordance with the plan in **Attachment A, or**
- A condition that requires the planted Eucalyptus Tetricornis proposed on the Old Bathurst Road and David Road frontage of Lots 32-34 (in accordance with the Landscape Plans) to be mature trees of a pot size 75L or greater subject to availability.

The above options give the Panel the opportunity to condition a compromised outcome that retains part of the mound and associated vegetation or requires mature planting.

#### **Comment on conditions**

The Applicant previously provided comment on the draft conditions of consent in correspondence dated Friday 23 February 2023. The Assessment Manager has provided a response to the Applicant's request. The Applicant's request and Assessment Manager's response are included the table in **Attachment B**. The Panel has asked the Applicant to respond to the Assessment Manager's comments. These have been included in attached table.

The Applicant is still of the opinion that an updated arborist report, vegetation management plan (**VMP**) and site audit statement are more appropriately conditioned to be provided prior to Subdivision Works Certificate.

The Applicant also emphasises an objection to the requirement for any VMP to extend to the TPZ +3m of any tree identified as being retained. The specific justification is provided in the attached table.

Yours faithfully

**GLN PLANNING PTY LTD**



**MICHAEL HANISCH  
PRINCIPAL PLANNER**

VIA: [Enquiry@planningpanel.nsw.gov.au](mailto:Enquiry@planningpanel.nsw.gov.au)

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## **ATTACHMENT A – COMPROMISED POSITION, MOUND RETENTION**

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## **ATTACHMENT B - RESPONSE TO ASSESSMENT MANAGERS COMMENTS**