



Joint Regional Planning Panels

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22 March 2012

Our ref: ADV2011SYW002
Your ref: 11/12717

The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW
Level 33 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000

Dear Minister

Subject: Rezoning at 1-4 Old Bathurst Road, Emu Plains

I refer to your request to the Sydney West Joint Regional Planning Panel for advice on the suitability of land at 1-4 Old Bathurst Road, Emu Plains to be rezoned for industrial purposes.

I was nominated as Panel Chair for this item. The other members of the regional panel included Mrs Mary-Lynne Taylor, Mr Lindsay Fletcher and Mr Ross Fowler OAM.

Attached is a copy of the regional panel's report for your consideration. In brief, the regional panel recommends that there is no reason to rezone this site for industrial purposes at this stage and consider there is an adequate supply of employment lands in the locality.

We trust that the report will assist you in your consideration of the rezoning proposal and your future advice to Penrith City Council.

Should you have any further enquiries about this matter, please contact Paulina Hon, Manager, Regional Panel Operations on telephone number 9228 2061.

Yours sincerely

Paul Mitchell OAM
Chair
Sydney West Joint Regional Planning Panel

cc: Mr Sam Haddad
Director General
Department of Planning & Infrastructure



Joint Regional Planning Panels

22 March 2012

Proposal to amend the Penrith Local Environmental Plan 2010 to permit industrial use at 1-4 Old Bathurst Road, Emu Plains

1 Request for advice

On 30 July 2011, the Minister for Planning and Infrastructure wrote to the Sydney West Joint Regional Planning Panel (the Panel) requesting advice on the suitability of certain land at Emu Plains for industrial purposes. The land in question is 1-4 Old Bathurst Road, Emu Plains in the Penrith local government area (refer to **Appendix A** for a copy of the Minister's letter).

The Panel is able to advise the Minister on planning issues in accordance with s.23G of the *Environmental Planning & Assessment Act 1979* (the EP&A Act).

Penrith City Council (Council), in preparing for its Stage 2 draft Principal Local Environmental Plan (LEP), resolved that the subject land be investigated for its suitability for industrial purposes. The draft plan identifies the site as "under investigation". Council is seeking assistance to determine the suitability of the land for the proposed industrial use.

In preparing its advice the Minister requested that the Panel meet with both the proponent and Council.

The Panel constituted for this matter was Paul Mitchell OAM (chair), Mary-Lynne Taylor, Lindsay Fletcher and Ross Fowler OAM.

2 Site location

The site is located at 1-4 Old Bathurst Road, Emu Plains and comprises four lots (Lot 1 - 2 DP 517958 and Lots 3 - 4 DP 574650). It adjoins the Nepean River to the north, the Emu Plains Correctional Facility to the east, industrial development to the south and part residential development and part Public Recreation to the west. Refer to **Figure 1**.

3 Existing zoning

The site is currently zoned:

- part IN2 Light Industrial under the Penrith LEP 2010, approximately 1.1 ha and
- part 1(d) Rural (Future Urban) under the provisions of Interim Development Order No. 93 – Penrith. This portion of the site, with an area of approximately 22.1ha, was deferred for later consideration as part of Penrith LEP 2010 (see **Figure 2**).

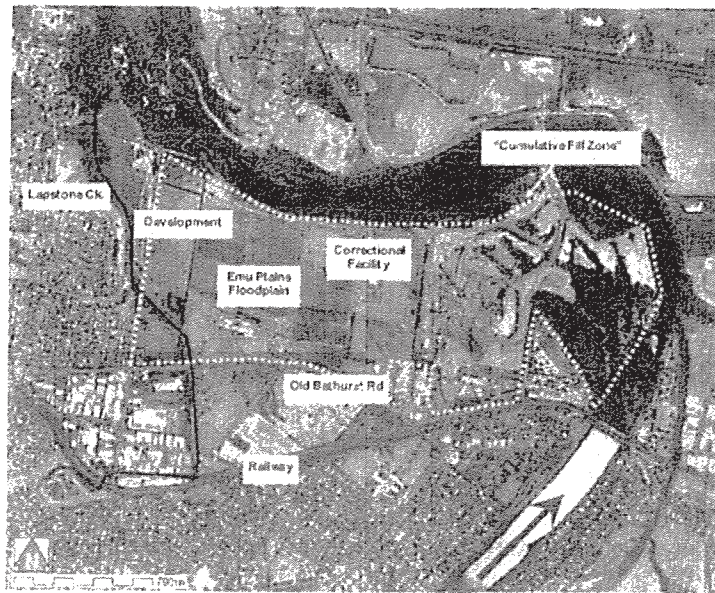


Figure 1 Site Location
(Source: Worley Parsons 2010)

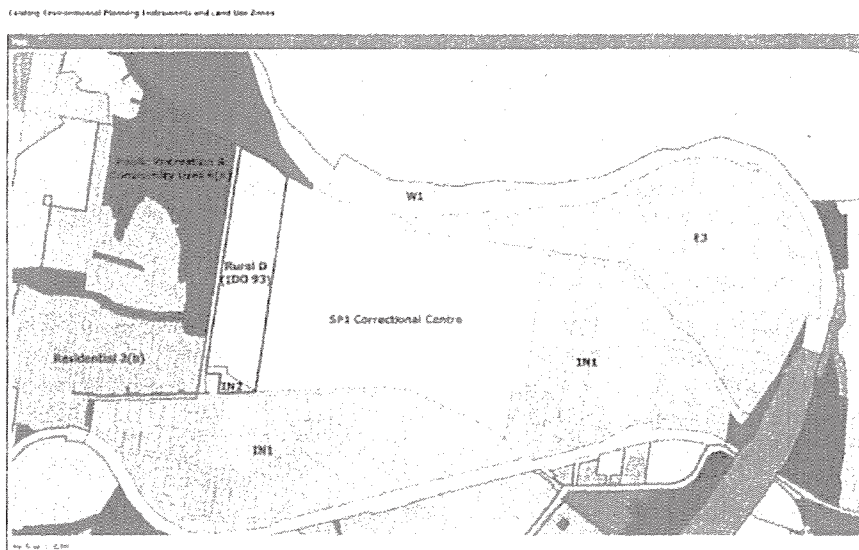


Figure 2 Existing land use zoning
(Source: Department of Planning & Infrastructure 2011)

4 Rezoning proposal

The proposed rezoning, would allow subdivision into small to medium sized industrial lots, with a minimum lot size of 0.2ha. A suggested plan of subdivision indicates that the site would have a capacity to accommodate approximately 40 lots. The Applicant's submission estimates that the proposed rezoning has the capacity to generate employment for approximately 1300 full time workers (Cityscape Planning Projects 2011).

5 Background to rezoning

The following is a chronology of events leading to the current rezoning application:

- Penrith Council received a request from Vitrus Group Pty Ltd on 27 February 2006 (on behalf of land owners Mr and Mrs Le Boursicot) seeking to rezone the subject

land from 1(d) Rural (Future Urban) to 4(A)(General Industrial) under the Penrith LEP 1996 (Industrial Lands).

- Council was provided with a flooding assessment by the Applicant's consulting engineers in February 2007.
- In March 2007, Council resolved that the land should be considered for rezoning to IN1 General Industrial during the preparation of Stage 1 of the Principal LEP.
- The applicant withdrew the application on 28 May 2007.
- During 2008, Council made a submission under s.64 of the EP&A Act to the then Department of Planning (DoP, now known as the Department of Planning and Infrastructure) seeking to place the draft Stage 1 Principal LEP on exhibition. At that stage, Council proposed an IN1 zone on the southern portion of the site, with the remainder of the site proposed as E4 – Environmental Living. Council advised the DoP that this was due to flooding issues and the Council's intention to conduct a review of the area generally including the Correctional Facility on adjoining land.
- A number of submissions were made during 2008/2009 to Council on behalf of the landowners seeking to zone the subject land IN1 General Industrial (instead of E4).
- Penrith LEP 2010 was made on 22 September 2010. The LEP rezoned a small portion of the site to light industrial (IN2) but the balance was 'deferred'.
- The deferred areas are currently being considered as part of Council's preparation of its Stage 2 Principal LEP.

Presently, the Council has not prepared a Planning Proposal for the subject land in accordance with Part 3 of the EP&A Act nor has the Minister made a Gateway determination about any such proposal. Rather, Council is preparing Stage 2 of the Principal LEP and this LEP is being prepared as a Planning Proposal.

At its ordinary meeting on 29 November 2010, Council resolved to forward the Planning Proposal to the Department for a Gateway determination. On 8 August 2011 a Gateway determination was issued allowing the proposal to proceed subject to conditions, one of which was the removal of sites listed as 'under investigation'.

The Planning Proposal identifies the subject land as 'under investigation' and does not specify any proposed zones. Thus, Council is required to resubmit an amended Planning Proposal to the Department and seek the Director General's agreement before the Stage 2 LEP can be placed on public exhibition.

6 Consultation

As part of its investigations, the Panel met with the Applicant on two occasions and Council. In addition, the Panel consulted with the Department of Planning and Infrastructure (DP&I), the Office of Environment and Heritage (OEH) and the NSW Office of Water (NOW). Details of meeting dates and attendees are given in **Appendix B**.

6.1 Penrith City Council

On 18 August 2011 the Panel met with Council officers for a briefing. Key issues discussed included:

- the Panel's intended process for preparing this advice;
- history of the rezoning application;
- strategic context of the proposed rezoning; and
- characteristics of the site and its surrounds, including perceived environmental constraints such as flooding.

Following the meeting, the Panel wrote to Council's General Manager seeking further information on the following matters:

- whether the flood mitigation works (as a result of any rezoning) require soil extraction or cut and fill, and whether the proposal would be more correctly categorised as an 'extractive industry';
- consideration of other land use/environmental constraints (other than flooding);
- consideration of alternate land use zonings and site uses;
- compatibility with SEPPs, s117 Directions & Flood Plain Manual;
- compatibility with Regional and sub-Regional strategies;
- compatibility with Council's Strategic Planning documents, including Flood Management Strategy/Study;
- compatibility with existing and proposed infrastructure requirements;
- compatibility with adjacent uses both existing and planned; and
- any precedent implications of a spot rezoning.

6.2 The Applicant

On 8 September 2011, the Panel met with the Applicant and their representatives for a briefing. The main issues discussed included:

- history of the rezoning application;
- the need for a Planning Proposal;
- Council's officers' concerns generally, including responsibility for future maintenance of the proposed flood mitigation works.

At this meeting, the Applicant requested that the Panel also meet with its consulting engineers about flooding issues. This second meeting occurred on 10 November 2011.

6.3 Office of Environment and Heritage

On 10 January 2012, the Panel met with Mr Gus Pelosi and Ms Wafaa Wasif from the OEH's Waters, Wetlands and Coast unit. The principal issues discussed were:

- role of the OEH in the rezoning process;
- OEH's perspectives on the flood regime at the site and in the locality; and
- the likely effectiveness of the proposed flood mitigation works and their potential impacts on flood behaviour in the locality.

The key points made by Mr Pelosi and Ms Wasif were that:

- the assessment of flood impacts/modelling should be based on 200 year ARI (or 0.5% AEP) which is approximately equal to the Nepean River 'Flood of Record' and acknowledges the sensitivity/risk that between the 1:100 and 1:200 year ARI the whole area becomes an active floodway.
- the Applicant's proposed filling of the site has the potential to cause significant adverse flooding impacts at the 1:200 year ARI scenario which have been minimised through proposed mitigation works, but
- the necessary works of channel widening and extension, scour protection, additional culvert under Old Bathurst Road and a bridge have not been detailed at this stage but are likely to be substantial, require maintenance and may marginally change flood behaviour on adjoining land.

6.4 NSW Office of Water

The Panel met with Mr Greg Brady from the NoW in the Department of Primary Industries on 19 January 2012. The principal issues discussed were:

- role of the NoW in the rezoning process; and
- the likely effectiveness of the proposed flood mitigation works and their potential impacts on flood behaviour in the locality.

The key points made by the NoW were that:

- the Applicant's proposed mitigation works should enable a 'flood-free' building platform to be established on the site; and
- the works would be substantial and would result in much steeper slopes along excavated channels. Such slopes would require substantial scour protection structures that could well require regular maintenance and have other environmental impacts.

6.5 Department of Planning and Infrastructure

The Panel sought advice from the DP&I about the strategic merits of the rezoning proposal in the context of applicable state and regional planning policies. The Department provided advice on 14 September 2011 indicating that:

- identification of further industrial land is generally supported in the Penrith local government area to contribute to meeting job creation targets for the North West sub-region;
- the subject land is generally appropriately located for industrial use but there is also potential for some conflict with land uses to the west which could probably be mitigated through appropriate development controls; and
- flooding and evacuation issues need to be taken into account given their strategic planning implications for the area. This would require technical assessment and resolution which the Department has not undertaken and would need careful consideration before a well informed planning decision could be made. In this regard, the Department noted the requirements of Section 117 Ministerial Direction No. 4.3 in relation to development on Flood Prone Land.

6.6 Additional information from Council

On 29 August 2011 the Panel wrote to the Council requesting the following:

- background documents on the rezoning application;
- relevant assessment reports prepared by Council officers; and
- views of the elected Council on the rezoning including any Council resolutions.

On 1 September 2011 Council provided a response which is given in **Appendix C**.

Following all of the preceding meetings the Panel wrote to Council seeking responses to a number of specific questions. These were:

- Are there any other land use/environmental constraints (other than flooding) that exist on the site which could prevent the site from being rezoned for industrial purposes?
- The site is proposed to be zoned for industrial land uses except for a corridor of land along the river frontage that would be retained for environmental management purposes. How much land in the Penrith local government area is currently zoned for employment/industrial purposes and is vacant?

- What is the current annual demand for industrial land in the LGA? How many years future supply is available?
- Is the proposal consistent with the objectives of Council's Employment Planning Strategies and any estimated future demand?
- Is there an overall strategy for the subject land and that generally to the north (i.e. the correctional centre and the 'Boral land')? If yes, is the proposed rezoning consistent with this strategy? If no, does Council intend to prepare a strategy?
- Is the proposal consistent with Council's Strategic planning documents, including any Flood Management Strategies?
- Is the proposal compatible with s 117 Ministerial Direction No.4.3 Flood Prone Land and the Floodplain Development Manual?
- What are the views of Council on the flood modelling undertaken by the Applicant's consultants to date?
- The proposed flood mitigation works (as a result of any rezoning) would require soil extraction. Are there any particular regulatory or other constraints envisaged in this regard?
- Does Council have an opinion on the cost of earthworks required to develop the land component?
- The proposal includes a portion of the site which would comprise flood corridors which would be zoned for environmental management purposes? What is Council's policy on flood corridors in terms of long term management and maintenance?
- Does Council have any views on the relative ease of evacuating residents versus factory workers (or other workers) during a flood event on the subject land?
- Has Council commissioned an independent review of the proposal? If so, the Regional Panel would like to request these reports from Council.

On 27 January 2012, a response to the Panel's questions was provided. In addition, Council's General Manager wrote to the Panel (1 February 2012) explaining Council's position on the application. On 9 February 2012, Council's General Manager again wrote to the Panel withdrawing the submission of 27 January and replacing it with a modified response (see **Appendix C**). This action was considered necessary by Council's General Manager to ensure Council's submission was confined to technical matters only and did not extend into commentary on the merits.

6.7 Additional information from Applicant

On 14 September 2011, the Applicant provided the Panel with a draft Planning Proposal which sought to address information deficiencies identified at the meeting on 8 September 2011. This document is given in **Appendix C**.

In addition, on 8 February 2012 the Applicant provided a response to the Council's first technical submission made on 1 February 2012 (see **Appendix C**).

7 Documents reviewed

A full list of the documents provided to and considered by the Panel is provided in **Appendix C**. In particular, the Panel considered the proponent's rezoning proposal (including flooding assessments prepared by Worley Parsons and peer reviewed by Cardno), the Council's resolutions on the proposal and Council's final response to the Panel's list of questions.

8 Character of site and surrounds

8.1 Site character

The site is approximately 23.2 ha in area and has frontage to both Old Bathurst Road and the northern end of Russell Street. It is currently used for grazing cattle and horses, and has one existing residence situated on Russell Street.

The Nepean River runs in an east to west direction adjacent to the northern boundary of the site. Lapstone Creek bisects the site via a concrete lined channel, traversing the southern portion. A second watercourse flows through the site from an east to west direction.

8.2 Adjoining land uses

The site adjoins a correctional centre to the east, general industrial uses to the south, the Nepean River to the north and partially adjoins residential and recreation land at Emu Heights to the west.

The site is located on the western edge of the Emu Plains floodplain. Floods of various magnitudes occur regularly along this section of the Nepean River and can cause significant damage. Damages from the largest flood on record in Penrith occurred in June 1867, estimated to be greater than the 200 year ARI event, had an approximate value of \$1.4 billion (Penrith City Council 2012).

Based on flood modelling undertaken by the Applicant, the 100 year ARI flood level at the site is between RL 23.6m to 23.7m AHD (Patterson Britton & Partners 2006; Worley Parsons 2008). During the 100 year ARI flood event, approximately 90-95% of the site is inundated to depths ranging from very shallow up to 2m (Patterson Britton & Partners 2006; Worley Parsons 2008).

During a 200 year ARI flood event, the entire site is inundated with water depths of between 1.2 m to 3.2 m (Patterson Britton & Partners 2006).

The site is located on flood prone land¹ which contains two floodways² and also acts as a flood storage area³. Based on existing flow velocities and depths and in accordance with the definitions in the *Floodplain Development Manual*, the provisional flood hazard⁴ over the site ranges from low to high. The Panel noted that to determine true hazard categories, consideration of other factors would be necessary including: size of the flood; effective warning time; flood readiness; rate of rise of floodwaters; depth and velocity of floodwaters; duration of flooding; evacuation problems; effective flood access; and type of development (DIPNR 2005). This full assessment has not been undertaken by the Panel.

8.3 Flooding impacts and proposed flooding mitigation

Mitigation works would be required to establish a 'flood-free' building platform for industrial buildings on the site. The Applicant's proposal includes such works and they can be summarised as follows:

¹ Flood prone land – defined as land susceptible to flooding by the probable maximum flood (PMF) event

² Floodway – defined as those areas of the floodplain where a significant discharge of water occurs during floods

³ Flood storage area – defined as those parts of the floodplain that store floodwaters during the passage of a flood.

⁴ Flood hazard – source of potential harm or a situation with a potential to cause loss. In accordance with the *Floodplain Development Manual* 2005, flooding is a hazard which has the potential to cause damage to the community. Council's DCP 2010 defines 'high flood hazard' as occurring when there is possible danger to life and limb; evacuation by trucks is difficult; there is potential for structural damage and social disruption; and financial losses could be high.

- cut and fill earthworks to provide a building platform above the 100 year ARI flood level using approximately 210,000 cubic metres of fill. The final building floor level would be a minimum 0.25m above the 100 year ARI flood level;
 - a building platform setback between 220m and 270m from the northern boundary of the site with the balance of the northern area not being used for industrial purposes;
 - a new vegetated channel adjacent to and inside the eastern boundary of the site, connecting Lapstone Creek to the Nepean River;
 - widening of Lapstone Creek so that it could accommodate the 500 year ARI flood flow;
 - additional culvert to be placed under Old Bathurst Road to improve conveyance of floodwaters;
 - a new bridge over Lapstone creek. The internal road network would provide a gradually rising route with the bridge across Lapstone Creek catering for evacuation;
 - building platform would be graded to facilitate evacuation during floods. Evacuation would be consistent with the regional flood evacuation strategy which includes access to the M4 via Russell St; and
 - buildings designed to withstand the loadings in floods up to the 200 year ARI event.
- The proposed flood mitigation works are illustrated in **Figure 3**.

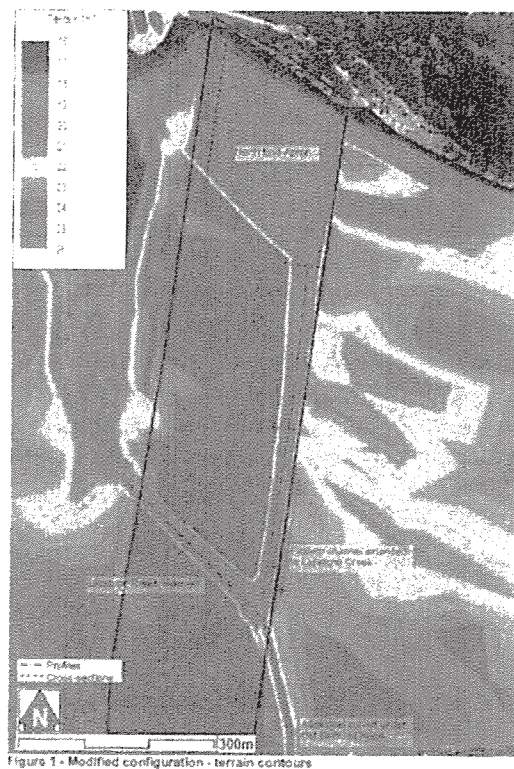


Figure 3 Proposed flood mitigation works
(Source: Worley Parsons 2010)

Comprehensive flood modelling has been undertaken by the Applicant's consultants (Worley Parsons with peer review by Cardno). Three scenarios were modelled: 'no development', on-site filling only and 'cumulative fill', where the site plus certain adjoining lands are filled.

Under the on-site fill only scenario, the flood modelling showed there would be an increase of between 0.05 m and 0.08 m in the 200 year flood levels on the Emu Plains floodplain. Peak water levels would increase by up to 0.1 m along parts of the eastern boundary of the

site. Peak velocities would mostly be unchanged with a very localised increase of 0.9m/s near the proposed eastern drain. The consultants concluded that these increases would be of no consequence as scour protection could be designed for the channel entry to address any potential problems.

In the cumulative fill scenario, there would be increases in peak water level of up to 0.4 m upstream of and across the cumulative fill site (Worley Parsons 2010). Peak velocities in the vicinity of the site would generally be unchanged but there would be a 0.5 m/s increase in velocities along the northern boundary of site. Both Worley Parsons and Cardno consider the increases in the 200 year flood level due to the proposed development to be 'minor'. They conclude that the proposal would not significantly increase flood damages in a 200 year flood event.

The consultants conclude that while the proposed development would impede flows across the Emu Plains floodplain, this reduction in flow capacity could be offset by an increase in conveyance capacity through the northern end of the site and along the eastern boundary. They conclude that any increases in flood levels due to filling the site would be minor and tolerable.

9 Strategic planning and merit considerations

9.1 State and regional planning context

The draft North West Subregional Strategy requires the Penrith local government area to provide a total of 28,000 new jobs by 2031. This requires Council to prepare comprehensive LEPs which provide sufficient zoned and serviced employment land to meet the employment capacity targets.

9.2 Supply and Demand of Employment Lands in Penrith

The Panel has considered the existing supply of and demand for employment lands in the area.

9.2.1 Employment Lands Development Program

The Employment Lands Development Program (ELDP), prepared by the DP&I is the state government's program for managing the supply of employment lands in the Sydney region. The *2010 Employment Lands Development Program Report* gives a comprehensive assessment of the existing and future supply of employment lands in the Sydney region. The report provides a breakdown of zoned employment land stock in each local government area and by precinct in each LGA. The site is located in the Emu Plains precinct as shown in **Figure 4**.

As at January 2010, the Emu Plains precinct contained 131 ha of zoned industrial land, of which 26 ha was undeveloped⁵ (vacant) and 105 ha was developed⁶ (occupied). Therefore, approximately 20% of available zoned land is not developed (DP&I 2010).

In 2010, the Penrith LGA had 782 ha of undeveloped land to support new industrial development. This included significant new lands, 334 ha, delivered as part of the Western Sydney Employment area in 2008 (DP&I 2010). The ELDP also indicates that there is 834 ha of developed employment lands in Penrith.

In 2010, Council also reviewed the status of industrial lands in the LGA. The review indicated that there was approximately 1620 ha of land zoned for industrial purposes (i.e.

⁵ Undeveloped Employment Lands – currently zoned employment lands which were not occupied by an employment lands use, at the time of data collection. It may therefore be vacant or occupied by another use

⁶ Developed Employment Lands – currently zoned employment lands that were occupied by an employment land use, at the time of data collection.

Table 1 Currently available land zoned for industrial purposes in the Penrith LGA

(Source: Penrith City Council, 9 February 2012)

[illegible]

9.2.2 Broader Western Sydney Employment Area

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The *Metropolitan Plan for Sydney 2036* identifies the potential expansion of the Western Sydney Employment Area for future employment lands. Action E5.3 of the Plan requires the preparation of a structure plan for the broader Western Sydney Employment Area, which will include establishing the exact boundaries of the expansion area. This will take into account employment types, infrastructure needs, development staging and appropriate governance and resourcing. The DP&I, who will prepare the structure plan, is currently finalising arrangements to commence the work and proposes to establish a steering committee including relevant Councils (including Penrith City Council), Sydney Water, Transport for NSW, Transgrid, Endeavour Energy and Property Council to oversee this work.

Exact areas of the broader Western Sydney Employment Area have not been established but the Panel estimates the area to be in the order of a few thousand hectares.

9.3 Relevant Council Strategies

9.3.1 Penrith Employment Lands Strategy 2007

The Penrith Employment Planning Strategy, adopted in 2007, sets out the strategic planning direction for employment lands in Penrith and how it is to be managed for the next 10 to 25 years. This included a map outlining land to be allocated or zoned for employment in the future (see **Figure 4**).

The strategy identifies the following four areas as future employment lands:

- Penrith Lakes Employment area, Castlereagh ;
- Dunheved Precinct, St Marys;
- WELL precinct, Kingswood and Werrington; and
- Western Sydney Employment Lands

The Panel notes that neither the subject land nor any adjoining is nominated for employment purposes.

Notwithstanding, the Panel acknowledges Council's resolution on 26 March 2007 when it adopted the *Employment Planning Strategy* (dated December 2006) and provided direction on the Old Bathurst Road site in what was then known as the Penrith LEP 2008 (stage 1):

"Council adopt the Employment Planning Strategy, as attached to this report, with the site at Old Bathurst Road/Russell Street to be included in the Draft LEP as General Industrial, with all other issues to be assessed as part of a future development application".

Further, during the stage 1 Principal Penrith LEP planning process, Council resolved on 9 November 2009:

"That the recommendation in relation to Submission No. 455, contained in chapter 3 of the discussion paper and addendum provided as Attachment 2 be adopted, with the following changes:

1. The land to the south of the flood planning level, adjacent to Old Bathurst Road, be retained in draft Penrith Local Environmental Plan 2008, and zoned IN2 light industrial
2. The land to the north of the flood planning level be deferred to LEP 2010 Stage 2.
3. The flood planning level for the property as a whole be determined with reference to cumulative flood study and modelling currently being undertaken by Hydraulic Engineers, Worley Parsons."

9.3.2 Penrith Planning Strategy 2008

The Panel also notes that Council adopted the Penrith Planning Strategy in 2008. This strategy includes a map of current and planned employment areas in the LGA. The map differs slightly from the map in the earlier Employment Lands Strategy in that it shows current employment lands located to the north west and east of the site (see Figure 5).

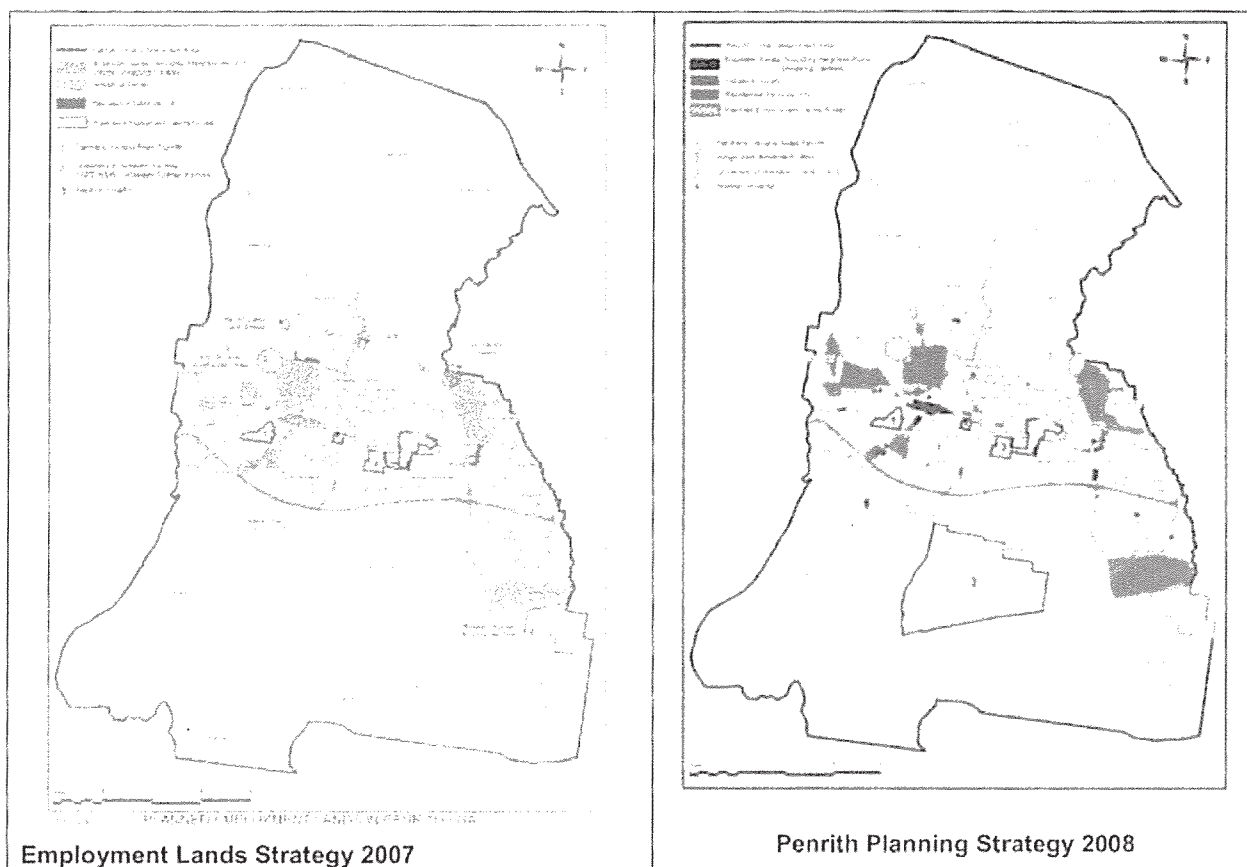


Figure 5 Planned Employment Lands in Penrith

9.3.3 Conclusion

In light of the above the Panel concludes that:

- there is some uncertainty as to whether Penrith Council intends the subject site to be a future employment zone. At best any future inclusion is qualified by the need to resolve flooding issues;
- there is sufficient vacant zoned employment land in Penrith LGA to accommodate likely demand for at least the next 20 years, and therefore to satisfy Council's obligations under current state and regional planning requirements; and
- existing vacant employment lands do not suffer from comparable flooding or other environmental constraints to those on the subject Emu Plains site.

9.4 Flooding

9.4.1 Section 117 Ministerial Direction 4.3 Flood Prone Land

Section 117 Ministerial Direction No. 4.3 Flood Prone Land applies to the rezoning proposal as it located on flood prone land.

The Direction specifies what a relevant planning authority must do and the circumstances in which a planning proposal may be inconsistent with the Direction. The Panel has examined the rezoning proposal against the Direction as outlined below.

What a relevant planning authority must do if direction applies	Panel's consideration
(1) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).	The Applicant's flood reports indicate the development is consistent with the relevant flood policies but no formal Planning Proposal has been received by Council and assessed by Council officers or relevant state agencies.
(2) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.	The site is located in a flood planning area and the proposal involves the rezoning of land from a rural to industrial zone. The subject application is inconsistent with this clause.
(3) A planning proposal must not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.	The rezoning proposal appears to be inconsistent with some of these provisions and no formal assessment has been undertaken by Council officers or relevant state agencies.
(4) A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate	Not applicable as rezoning is for industrial purposes.

	justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).	
(5)	For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).	The Applicant's flooding reports indicate that Council has not established a flood planning level for the subject site in accordance with the Floodplain Development Manual 2005. This is because Council has not undertaken a Flood Risk Management Plan (FRMP) for the area. Nevertheless, the Panel notes the advice of the OEH that the assessment of flood impacts/modelling should be based on 200 year ARI. The Panel notes that Worley Parsons, on behalf of the Applicant, has undertaken a "cumulative fill" (with a widened 500 year local floodway) assessment in lieu of Council completing a FRMP for the area.

The Direction also provides the circumstances in which a planning proposal may be inconsistent with the Direction.

A planning proposal may be inconsistent with this direction only if the following can be satisfied		Panel's consideration
(a)	the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or	The rezoning has not been prepared in accordance with a floodplain risk management plan as Council has not completed one. Nevertheless, Council does have a policy for flood liable lands. The Applicant's flooding reports conclude that the flooding impacts and flood mitigation works are of minor significance. These conclusions have not been tested by formal Council or state agency assessments. The Panel's consultations indicate some material differences of opinion between the Applicant's consultants and Council/state officers.
(b)	the provisions of the planning proposal that are inconsistent are of minor significance.	

9.4.2 Council's flood policy

Council's existing flood prone land policy is addressed in the Penrith Development Control Plan 2010 (DCP), which was adopted in December 2010. C3.5 outlines controls applicable to rezonings and states:

- "a) Council will not support the rezoning of any land located in a floodway or a high hazard area,
- b) Council will generally not support the rezoning of rural land situated below the 1:100 ARI flood where the development of land may require or permit the erection of buildings or works even if the surface of the land can be raised to a level above the 1:100 ARI flood by means of filling."

The site contains two floodways and part of the site is potentially a high hazard area. The hazard categorisation is based on the modelled 200 year ARI event and the resulting depths

of water over the site of between 1.2m to 3.2m (Patterson Britton & Partners 2006). Accordingly, the rezoning proposal is inconsistent with Council's flood policy.

9.4.3 Panel's view on flooding issues

The Panel acknowledges that the Applicant's consultants have undertaken extensive investigations which have been subject to expert peer review. The Panel has no grounds to dispute the Applicant's principal contention that it would be possible to construct a 'flood-free' building platform on the subject site and that effective means of evacuation during major flood events could be provided.

At the same time, it is evident that substantial cut and fill and scour protection works would be necessary. It is probable that these works would require regular and possibly expensive maintenance, and it is not clear how these expenses would be met other than by a public authority.

The Panel notes that a significant part of the proposed works to achieve this outcome (the new eastern boundary channel) would be made redundant by development in accordance with the "cumulative fill scenario" i.e. the scenario that contemplates future rezoning and development of adjoining land to the east. In the Panel's view, the "on-site fill only scenario" would not be consistent with the objects of the Act to encourage promotion and co-ordination of the orderly and economic use and development of land.

It is also evident that the rezoning proposal is inconsistent with some state and local flood prone land management policies.

10 Panel's Findings

After reviewing all relevant documentation and careful consideration of the views of relevant parties the Panel concludes as follows:

- that there is a significant supply of vacant employment land in Penrith LGA. This land has been through all of the assessments associated with rezoning and appears to be largely free of significant constraints, in contrast to the flood affectation of the subject site; and
- that at the present time uncertainties exist in relation to the environmental impacts of proposed flood mitigation works, on-going maintenance responsibilities and costs, and the consistency of the proposed development with floodplain management policies. Thus, the Panel considers that any rezoning now would be premature and inappropriate.

Thus, the Panel sees no reason to give priority to the rezoning of the subject site in the near term.



Paul Mitchell OAM
Chair



Mary-Lynne Taylor
Panel member



Lindsay Fletcher
Panel member



Ross Fowler OAM
Panel member

References

Cityscape Planning Projects 2011, *Lots 1-4 Old Bathurst Road, Emu Plains – Planning Proposal*, Glenbrook.

Hawkesbury-Nepean Floodplain Management Steering Committee (HNFMSC) 2006, *Managing flood risk through planning opportunities*, Hawkesbury-Nepean Floodplain Management Steering Committee, Parramatta.

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Penrith City Council, *Floods in the Nepean District – Penrith City – E-history*, Penrith City Council, viewed 13 February 2012, <http://www.penrithcity.nsw.gov.au/index.asp?id=240>

Worley Parsons 2008, *Letter to Kanjian & Co for Proposed Rezoning 1 to 4 Old Bathurst Road Emu Plains* (dated 2 December 2008, document no. 1807580)

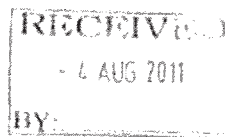
Worley Parsons 2010, *Cumulative Flood Impact Assessment, No 1-4 Old Bathurst Road, Emu Plains*, Worley Parsons, Sydney (dated 4 January 2010, doc no 301015-00757).

APPENDIX A

Letter from the Minister for Planning & Infrastructure



The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW



SCANNED

11/12/17

The Acting Chairperson
Sydney West Joint Regional Planning Panel
GPO Box 3415
SYDNEY NSW 2000

Dear Sir

I refer to a draft proposal submitted to the Department of Planning and Infrastructure by Penrith City Council for the rezoning of land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains.

By way of background, Penrith City Council, in preparing for its Stage 2 draft Principal Local Environmental Plan (LEP), resolved that the subject land be investigated for its suitability for industrial purposes. This draft plan identifies the site as "under investigation". Council is seeking assistance to determine the suitability of the land to be rezoned for industrial purposes. Council staff have raised concerns over the proposed industrial zone, and their advice conflicts with the flood analysis submitted by the proponent.

As an independent view of this matter is being sought, Council has requested the advice of the Sydney West Joint Regional Planning Panel to assist it in determining the suitability of the site for an industrial zoning.

Therefore, I seek your advice on the suitability of the land for industrial purposes. I would also request the JRPP meet with both the proponent and Penrith City Council to assist with your considerations.

The relevant documents are attached to this letter. If you have any questions, please do not hesitate to contact Mr Peter Goth, Regional Director, Sydney West on (02) 9873 8589.

Yours sincerely

HON BRAD HAZZARD MP
Minister

30/7/11

APPENDIX B

Date of Meetings and List of Attendees

18 August 2011 - Meeting with Penrith City Council

Meeting attendees:

- Mr Paul Mitchell, chair
- Mr Bruce McDonald, panel member
- Mr Lindsay Fletcher, panel member
- Cr Ross Fowler, panel member
- Mr Wayne Mitchell, panel member
- Mr Craig Butler, Director – Penrith Council
- Mr Glenn McCarthy, Executive Officer– Penrith Council
- Mr Paul Lemm –JRPP contact – Penrith Council
- Mr Peter Wood – Penrith Council
- Ms Paulina Hon, Panel Secretariat

8 September 2011 – Meeting with Applicant

Meeting attendees:

- Mr Paul Mitchell, chair
- Ms Mary-Lynne Taylor, panel member
- Mr Lindsay Fletcher, panel member
- Cr Ross Fowler, panel member
- Ms Paulina Hon, Panel Secretariat
- Mr Bernard Le Boursicot, landowner
- Mr Olivier Le Boursicot, landowner
- Mr Vince Hardy, Cityscape Planning + Projects
- Mr Joe Parker - Consultant

10 November 2011 – Meeting with Applicant's flooding consultants

Meeting attendees:

- Mr Paul Mitchell, chair
- Ms Mary-Lynne Taylor, panel member
- Mr Lindsay Fletcher, panel member
- Cr Ross Fowler, panel member
- Mr Bernard Le Boursicot, landowner
- Mr Olivier Le Boursicot, landowner
- Mr Joe Parker – consultant
- Mr Michael Mantei – Planning Law Solutions
- Mr Vince Hardy, applicant's planner, Cityscape Planning + Projects
- Mr Mark Tooker, APP - Flood consultant
- Mr Brett Phillips, Cardno – Flood consultant
- Cr John Thain, Penrith City Council

9 January 2012 – Meeting with Office of Environment and Heritage

Meeting attendees:

- Mr Paul Mitchell, chair
- Ms Mary-Lynne Taylor, panel member
- Mr Lindsay Fletcher, panel member
- Cr Ross Fowler, panel member
- Ms Paulina Hon, panel secretariat
- Mr Gus Pelosi, Office of Environment & Heritage
- Ms Wafaa Wasif, Office of Environment & Heritage

19 January 2012 – Meeting with NSW Office of Water

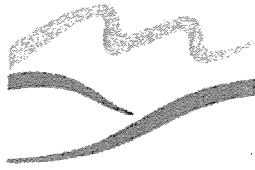
- Mr Paul Mitchell, chair
- Ms Mary-Lynne Taylor, panel member
- Mr Lindsay Fletcher, panel member
- Cr Ross Fowler, panel member
- Ms Paulina Hon, panel secretariat
- Mr Greg Brady, NSW Office of Water

APPENDIX C

List of documents provided to Joint Regional Planning Panel

Documents from Penrith City Council

- Letter to Ms Paula Poon from Mr Glenn McCarthy (dated 1 September 2011) which included the following attachments:
 - Background documents on the rezoning application:
 - Vitrus Projects Services rezoning application, February 2006
 - Patterson Britton & Partners Consulting Engineers Flooding assessment, February 2006
 - Worley Parsons memo to proponents providing further flood assessment to that contained in the 2006 Patterson Britton flooding assessment, 10 March 2008
 - Worley Parsons report to support Kanjian & Company Solicitors and Attorneys submission on Draft Penrith Local Environmental Plan 2008, 2 December 2008
 - Reports prepared by Council officers which discuss the strategic planning context of the proposal:
 - Report to Ordinary Meeting of 26 March 2007 – Draft Employment Strategy
 - Report to Policy Review Committee Meeting of 8 October 2007 – Draft Penrith Local Environmental Plan 2008 – Stage 1 (Industrial Lands)
 - Report to Policy Review Committee Meeting of 21 October 2009 – Amendments to draft Penrith Local Environmental Plan 2008 in response to public exhibition and pages 20-25 of Chapter 3 of Discussion Paper and pages 14-15 of Attachment 2 referenced in part 5 of the recommendation.
 - Council resolutions in relation to the above reports:
 - Pages 11-12 of Confirmed Minutes of the Ordinary Meeting of 26 March 2007 – Minute No. 102
 - Page 4 of the Confirmed Minutes of the Policy Review Committee Meeting of 8 October 2007 – Minute No. PRC 98
 - Pages 10-11 of the Confirmed Minutes of the Policy Review Committee Meeting of 21 October 2009 – Minute No. PRC 94
- Response to the JRPP's 'List of Issues' – Rezoning of Land for Industrial Purposes at 1-4 Old Bathurst Road, Emu Plains (dated January 2012) (Note: Letter formally withdrawn by Council on 9 February 2012)
- Letter to Mr Paul Mitchell from Mr Alan Stoneham (Penrith City Council General Manager), dated 1 February 2012
- Letter to Mr Paul Mitchell from Mr Alan Stoneham, dated 9 February 2012
- Response to JRPP's 'List of Issues' – Rezoning of land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains', dated February 2012



PENRITH CITY COUNCIL

Serving Our Community

Our Ref: GM:LL ECM: 3356940
Contact: Mr Glenn McCarthy
Telephone: 4732.7649

9 February 2012

Mr Paul Mitchell
Acting Chair
Sydney West Joint Regional Planning Panel
GPO Box 3415
SYDNEY NSW 2001


Dear Mr Mitchell

Rezoning of land for industrial purposes at Lots 1-4 Old Bathurst Road, Emu Plains

I refer to my letters dated 27 January 2012 and 1 February 2012 in relation to the consideration by the Sydney West Joint Regional Planning Panel (the Regional Panel) of the draft proposal to rezone land for industrial purposes at Lots 1-4 Old Bathurst Road, Emu Plains.

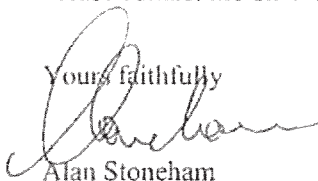
Please be advised that, following a review of the responses to the "list of issues" raised by the Regional Panel, I have decided to formally withdraw the 27 January 2012 letter and replace it with this letter and the enclosed revised responses.

I have taken this decision having regard to the unique circumstances of this matter and the conflict that exists between the advice of Council officers and the analysis submitted by the proponent. The Regional Panel has met with the proponents and, in the case of a development application, would ordinarily also meet with Council's technical officers who would provide advice on the merits of the proposal. In the circumstances I thought it inappropriate for Council officers to meet with the Regional Panel and in lieu of that the Regional Panel has requested responses to the "list of issues". It is critical to the integrity of the process that the Regional Panel make its own assessment on the merits of the proposal. It is for this reason that the revised responses do not offer commentary that would amount to an assessment of the proposal but rather guide the Regional Panel as to the heads of consideration and factual information necessary to complete its own assessment.

The Regional Panel is encouraged to engage either of the two consultants agreed to by both the proponents and Council officers to advise on flooding issues.

I trust this information assists the Regional Panel in their consideration of the draft proposal and preparation of their advice to the Minister for Planning & Infrastructure. Please contact me on 4732 7633 if you wish to discuss this further.

Yours faithfully


Alan Stoneham
General Manager

Response to the JRPP's 'List of Issues'

**Rezoning of Land for Industrial Purposes
at 1-4 Old Bathurst Road, Emu Plains**

Penrith City Council February 2012

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Question 1

Are there any other land use/environmental constraints (other than flooding) that exist on the site which could prevent the site from being rezoned for industrial purposes?

Response

Council has not formally considered an assessment report in relation to the proposal. It is expected that if Council were to formally consider an assessment report on the proposal, then the following heads of consideration would be addressed in that assessment:

1. Residential Amenity;
2. Community Amenity in relation to potential future use of recreation and community land located to the west of the site;
3. Land Use Conflicts;
4. Visual Impact;
5. Traffic Impact;
6. Noise Impact;
7. Biodiversity;
8. Land Contamination;
9. Heritage;
10. Bush Fire Prone Land; and
11. Any other matters that the JRPP considers to be relevant.

These are matters that may not necessarily prevent the site from being rezoned, however they are matters that may be relevant to the consideration of any assessment of the proposal.

It is recommended that the JRPP form its own view as to the consistency of the proposal in relation to land use/environmental constraints (other than flooding) that exist on the site which could prevent the site from being rezoned for industrial purposes.

Question 2

The site is proposed to be zoned for industrial purposes except for a corridor of land along the river frontage that would be retained for environmental management purposes. How much land in the Penrith Local Government Area is currently zoned for employment/industrial purposes and is vacant?

Response

In 2010, a review of industrial zoned land in Penrith revealed that there are approximately 1,620 hectares of land zoned for industrial purposes, 791 hectares of which is zoned, vacant and available for development, including:

Site	Vacant Area (hectares)
Erskine Business Park	212
North Dunheved Industrial Area	30
Werrington Mixed Use Area	8
South Werrington Urban Village	19
Western Sydney Employment Area (2009 Expansion)	360
Undeveloped land in established areas	162
Total	791

The Department of Planning and Infrastructure (the Department) has conducted an investigation in relation to the availability of land to accommodate the potential expansion of the Western Sydney Employment Area (previously known as the Western Sydney Employment Lands Investigation Area). The JRPP may wish to refer to the Department's investigations to determine the land identified in the investigation which is in the Penrith LGA.

Question 3

What is the current annual demand for industrial land in the LGA? How many years future supply is available?

Response

The current annual demand is difficult to determine, however the current annual 'take-up' rate is approximately 33 hectares.

A simplistic calculation of the available future supply of industrial land would involve dividing the current available supply of 791 hectares by the current annual 'take-up' rate of 33 hectares. This calculation produces an outcome that Penrith currently has approximately 24 year supply of zoned and vacant industrial land.

Having said this, an accurate response is not able to be provided in relation to how many years future supply of industrial land is available in the LGA. The future supply of industrial land is subject to many variables that need to be estimated in order to produce an answer. The above simplistic answer makes the following assumptions and each one can be expected to produce some level of error in the final outcome:

1. All landowners will offer their land for such use and/or sale within the timeframes contemplated by the answer,
2. All the zoned land can and will be provided with adequate services,
3. The current take up rate reasonably approximates current demand and also reasonably approximates future demand,
4. There will be no future changes to the amount of land in the LGA zoned industrial
5. That the supply of different types of industrial land (e.g. size of block and access to transport corridors) will be approximately in proportion to the demand, so that the average availability of all industrial land (in total) is a reasonable substitute for the supply of land for each of the sub-types of industrial land required
6. That there will be sufficient numbers of buyers and sellers for the market to operate effectively during this time

The JRPP would therefore need to consider whether a simple answer is sufficiently accurate for its purposes or whether precise economic modelling is required.

Question 4

Is the proposal consistent with the objectives of Council's Employment Planning Strategies and any estimated future demand?

Response

Council's adopted *Employment Planning Strategy* (2007) makes recommendations for the strategic direction of employment planning for Penrith and how it is to be managed in the next 10 to 25 years. The *Employment Planning Strategy* lists a number of objectives to be considered when planning for employment. Those objectives consist of the following:

1. Ensure that residents have access to jobs within the local area that are appropriate for the skill set.
2. Provide opportunities for local, national and international business to locate within the Penrith Local Government Area.
3. Ensure that land zoned for employment is capable for use as such, given locational, physical and environmental constraints.
4. Ensure that there is sufficient zoned employment land to meet the demand for at least the next 15 years.
5. Establish a strong retail hierarchy which will confirm and protect the status of major retail centres in Penrith.
6. Enable the specialist retail/service areas of Penrith to capitalise on their location and market to maximise their potential.
7. Ensure that new commercial, industrial and retail development is designed and carried out in a manner that responds to principles of sustainability.
8. Ensure that new residential development areas make an appropriate contribution in the local area (through home-based work).
9. Consolidate and expand key community infrastructure such as the UWS, TAFE NSW- Western Sydney Institute to provide further employment.

It is recommended that the JRPP form its own view as to the consistency of the proposal in relation to the above objectives.

Question 5

Is there an overall strategy for the subject land and that generally to the north (i.e. the correctional centre and the 'Boral Land')? If yes, is the proposed rezoning consistent with this strategy? If no, does Council intend to prepare a strategy?

Response

The subject land is currently zoned part IN2 in accordance with Penrith Local Environment Plan 2010 and part 1(d) Rural (Future Urban) in accordance with Interim Development Order No. 93.

The Boral Land is currently zoned IN1 in accordance with Penrith Local Environmental Plan 2010.

The Correctional Centre land is currently zoned SP1 in accordance with Penrith Local Environmental Plan 2010.

The land to the west of the subject site is currently zoned Public Recreation and Community Uses 6(a) in accordance with Penrith Local Environmental Plan 1998 (Urban Lands).

An Employment Planning Discussion Paper, commissioned by Council in 2006, contains a map of the Penrith LGA showing the Boral Land and Correctional Centre land as zoned industrial. This was for the purposes of the discussion paper and coincided with enquires being made with the representatives of both Boral and Corrective Services at that time. The outcome of those discussions were that Boral expressed a desire to pursue an industrial zone while Corrective Services did not. The resulting Employment Lands Strategy (see attached Map 1), shows the current and planned employment lands with only the Boral land zoned industrial.

The *Penrith Planning Strategy 2008* contains a diagram which is inconsistent with the current zones of the lands as described above. Steps are being taken to replace the diagram with one that depicts the correct zones.

There is no overall strategy for the subject land, the Boral Land and the correctional centre land.

However, on 26 March 2007 when adopting the *Employment Planning Strategy* Council resolved in relation to the subject land:

"Council adopt the Employment Planning Strategy, as attached to this report, with the site at Old Bathurst Road/Russell Street to be included in the draft LEP as General Industrial, with all other issues to be assessed as part of a future Development Application."

Subsequent to the above resolution the Penrith LEP 2008 (Stage 1) planning process culminated in Council's consideration of this matter at various meetings from July – October 2009, with the following recommendation of the Policy Review Committee meeting held on 21 October 2009 being endorsed at Council's Ordinary Meeting of 9 November 2009:

"That the recommendations in relation to Submission No. 455, contained in Chapter 3 of the Discussion Paper and the Addendum provided as Attachment 2 be adopted, with the following changes:

- 1. The land to the south of the flood planning level, adjacent to Old Bathurst Road, be retained in draft Penrith Local Environmental Plan 2008, and zoned IN2 Light Industrial*
- 2. The land to the north of the flood planning level be deferred to LEP 2010 Stage 2.*
- 3. The flood planning level for the property as a whole be determined with reference to the cumulative flood study and modelling currently being undertaken by Hydraulic Engineers, Worley Parsons."*

Question 6

Are there any other areas in the local government area that council is investigating for future industrial land? If so, where are these located and what is their proximity to the subject site (Old Bathurst Road, Emu Plains)?

Response

The Metropolitan Plan for Sydney 2036 (Action E5.3) identifies the need for a structure plan for the Western Sydney Employment Area. Although Council is not specifically investigating this matter, it has called for the early advancement of that planning work.

The Department of Planning and Infrastructure (the Department) has conducted an investigation in relation to the availability of land to accommodate the potential expansion of the Western Sydney Employment Area (previously known as the Western Sydney Employment Lands Investigation Area). The JRPP may wish to refer to the Department's investigations to determine the land identified in the investigation which is in the Penrith LGA.

The adopted *Employment Planning Strategy* identified planned employment lands or areas (Map 1). The areas identified for future industrial land included:

- Werrington Enterprise Living and Learning (WELL) Precinct, Kingswood and Werrington (approx. 9 km from the Site), and
- Werrington Enterprise Park (approx. 8.5 km from the subject site),

The current status of these industrial lands is set out below:

Site	Status
WELL Precinct – South Werrington UWS Campus	This area is intended to be a business park providing for office premises, light industries and warehousing and logistic developments. The required zoning will be delivered by Stage 2 of Council's City-wide LEP in 2014.
Werrington Enterprise Park	This area is intended to be a business park providing for office premises, light industries and warehousing and logistics developments. The required zoning will be delivered by Stage 2 of Council's City-wide LEP in 2014.

It is understood that the Department of Planning and Infrastructure (the Department) has conducted an investigation in relation to the availability of land to accommodate the potential expansion of the Western Sydney Employment Area (previously known as the Western Sydney Employment Lands Investigation Area). The JRPP may wish to refer to the Departments investigations to determine whether any of the land identified in the investigation relates to land in the Penrith LGA.

Question 7

Is the proposal consistent with Council's strategic planning documents, including any Flood Management Strategies?

Response

Council's 'overall strategy' for the site can be found in the following documents:

1. *Employment Planning Strategy (2007).*
2. *Policy for Flood Liable Land (1991), now embedded in the Penrith Development Control Plan (2006).*

It is recommended that the JRPP form its own view as to the consistency of the proposal in relation to the strategic planning documents listed above.

It is recommended that the JRPP commission its own independent expert advice in relation flooding and whether the proposal is consistent with the Council's flood management strategies. The Council has offered to contribute 50% of the cost of the engagement of a relevant flooding expert in this regard. That offer remains open to the JRPP.

Question 8

Is the proposal compatible with s117 Ministerial Direction No. 4.3 Flood Prone Land and the Floodplain Development Manual?

Response

Again, it is recommended that the JRPP commission its own independent expert advice in relation whether the proposal is compatible with s117 Ministerial Directions and the Floodplain Development Manual. Again, the Council has offered to contribute 50% of the cost of the engagement of a relevant flooding expert in this regard. That offer remains open to the JRPP.

Question 9

What are the views of Council on the flood modelling undertaken by the applicant's consultants to date?

Response

This is a significant issue with this proposal and for that reason it has previously been encouraged that the JRPP seek its own specialist advice. The JRPP is again encouraged to seek its own independent advice in this regard.

Question 10

The proposed flood mitigation works (as a result of any rezoning) would require soil extraction. Are there any particular regulatory or other constraints envisaged in this regard?

Response

In determining whether there are any particular regulatory or other constraints in relation to the proposed flood mitigation works regard may need to be had to the following matters:

1. The provisions of the *Water Management Act 2000*; and
2. *Sydney Regional Environmental Plan No.20 - Hawkesbury-Nepean* (SREP 20)

A question arises as to whether and what extent, if any, the proposed flood mitigation works may be regarded as being characterised as an 'extractive industry' for the purposes of SREP 20 and therefore prohibits the proposed flood mitigation works or part thereof. Alternatively, are the proposed works ancillary to the proposed subdivision works and therefore permissible.

The proponent has furnished Council with legal advice suggesting that the proposed flood mitigation works are ancillary to the proposed subdivision works. Council has received conflicting legal advice in this regard.

It is recommended that the JRPP seek its own independent legal advice as to whether this is a relevant consideration for the purpose of considering the proposal, and if it is, whether the proposed works are permissible regardless of the zoning.

Question 11

Does Council have an opinion on the cost of earthworks required to develop the land component?

Response

It is not considered that the cost of the earthworks is relevant to the consideration of the proposal.

Question 12

The proposal includes a portion of the site which would comprise flood corridors which would be zoned for environmental management purposes. What is Council's policy on flood corridors in terms of long term management and maintenance?

Response

Council has no formal adopted policy and deals with each case on its merits.

Question 13

Does Council have any views on the relative ease of evacuating residents versus factory workers (or other workers) during a flood event on the subject land?

Response

It is recommended that the JRPP obtain advice from the Statement Emergency Service (SES). The SES is considered to be the appropriate agency having the relevant expertise in this regard.

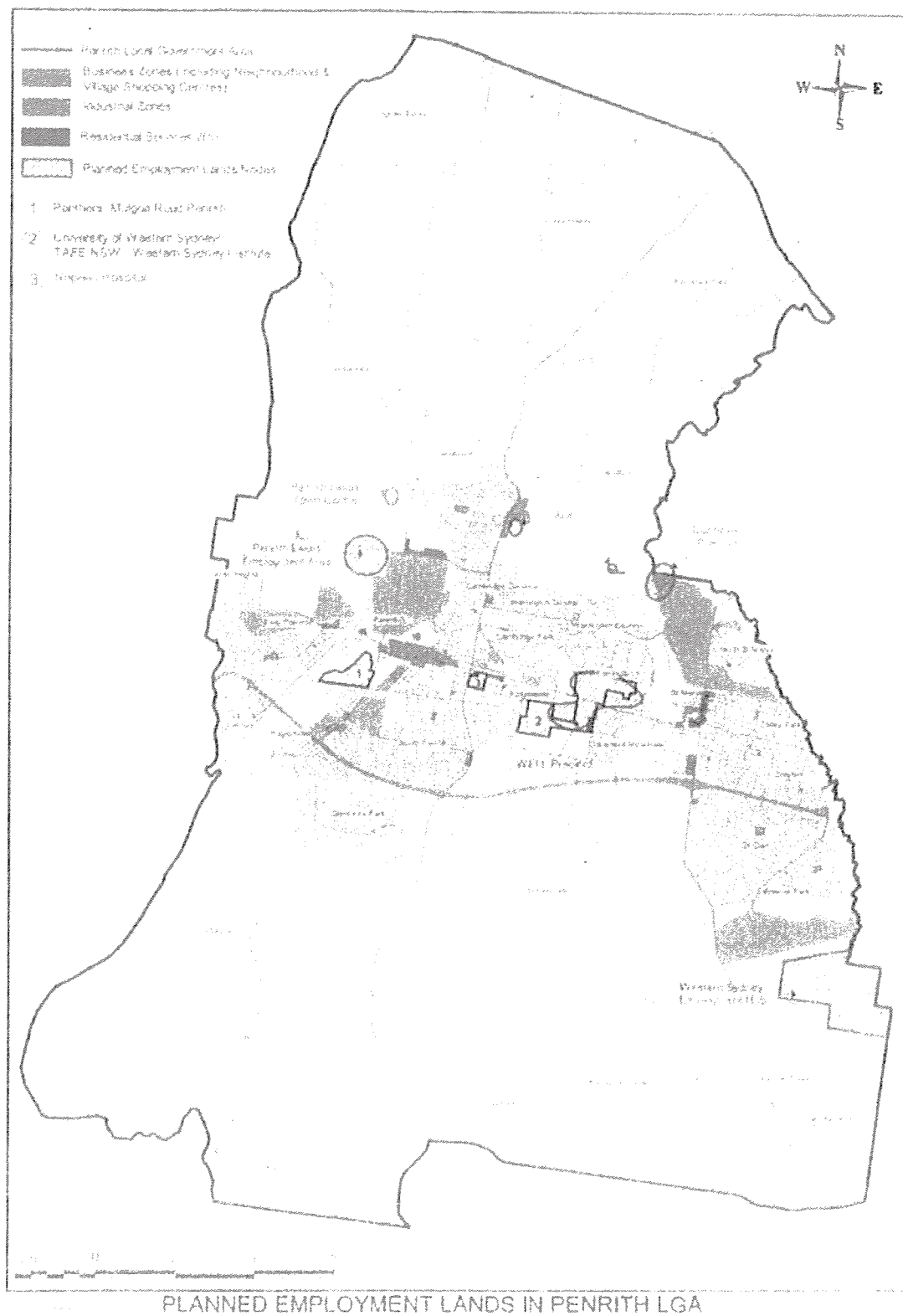
Question 14

Has Council commissioned an independent review of the proposal? If so, the Regional Panel would like to request these reports from Council.

Response

Council sought an Independent review of the planning processes and an assessment of the planning merits of the rezoning proposal. This review has not been presented to Council for its consideration and, as such, Council's officers are not in a position to provide this.

Response to the JRPP's 'List of Issues'



Map 1 Planned Employment Lands in Penrith LGA
(Employment Planning Strategy)



PENRITH CITY COUNCIL

Serving Our Community

Our Ref: GM:LL ECM: 3345670
Contact: Mr Glenn McCarthy
Telephone: 4732.7649

1 February 2012

Mr Paul Mitchell
Acting Chair
Sydney West Joint Regional Planning Panel
GPO Box 3415
SYDNEY NSW 2001

Dear Mr Mitchell

Rezoning of land for industrial purposes at Lots 1-4 Old Bathurst Road, Emu Plains

I refer to my letter dated 27 January 2012 in relation to the consideration by the Sydney West Joint Regional Planning Panel (the Regional Panel) of the draft proposal to rezone land for industrial purposes at Lots 1-4 Old Bathurst Road, Emu Plains.

In addition to the answers to the "list of issues" raised by the Regional Panel, I feel that it is crucial to also provide you with the context of the referral of this matter initially to the Department of Planning and subsequently to the Regional Panel. Copies of the reports and resolutions referred to below were provided to the Regional Panel Secretariat on 1 September 2011.

As you are aware, the history of this matter goes back to February 2006, when the initial application to rezone the site was received. The proponents subsequently made a submission to Council's exhibition of the draft Employment Planning Strategy which, along with the other submissions, was considered by Council on 26 March 2007. At that meeting Council adopted the Employment Planning Strategy, and also provided direction in relation to including the Old Bathurst Road site in what was then known as Penrith LEP 2008 (Stage 1):

"Council adopt the Employment Planning Strategy, as attached to this report, with the site at Old Bathurst Road/Russell Street to be included in the Draft LEP as General Industrial, with all other issues to be assessed as part of a future Development Application."

The proponents subsequently withdrew their application for rezoning as it was understood that the matter would be addressed through Penrith LEP 2008 (Stage 1).

The Penrith LEP 2008 (Stage 1) planning process culminated in Council's consideration of this matter at various meetings from July – October 2009, with the following recommendation of the Policy Review Committee meeting held on 21 October 2009 being endorsed at Council's Ordinary Meeting of 9 November 2009:

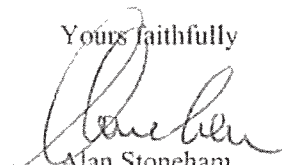
"That the recommendations in relation to Submission No. 455, contained in Chapter 3 of the Discussion Paper and the Addendum provided as Attachment 2 be adopted, with the following changes:

- 1. The land to the south of the flood planning level, adjacent to Old Bathurst Road, be retained in draft Penrith Local Environmental Plan 2008, and zoned IN2 Light Industrial*
- 2. The land to the north of the flood planning level be deferred to LEP 2010 Stage 2.*
- 3. The flood planning level for the property as a whole be determined with reference to the cumulative flood study and modelling currently being undertaken by Hydraulic Engineers, Worley Parsons."*

The significance of these decisions is that they indicate an intention by the Council to support an industrial zone for the site. This intention has not been realised as Council's staff have sought to reconcile the various issues raised by the proposal. Of particular concern to me is that some of my Councillors have expressed a view that Council's staff have not dealt with the matter objectively and have sought to block the advancement of the proposal. Although I believe my staff have acted professionally in their dealings with the proponents and have assessed the proposal on its merits, it is this tension between the elected Council and Council staff that has caused me to seek an independent assessment of the proposal.

I trust this information assists the Regional Panel in their consideration of the draft proposal and preparation of their advice to the Minister for Planning & Infrastructure. Please contact me on 4732 7633 if you wish to discuss this further.

Yours faithfully

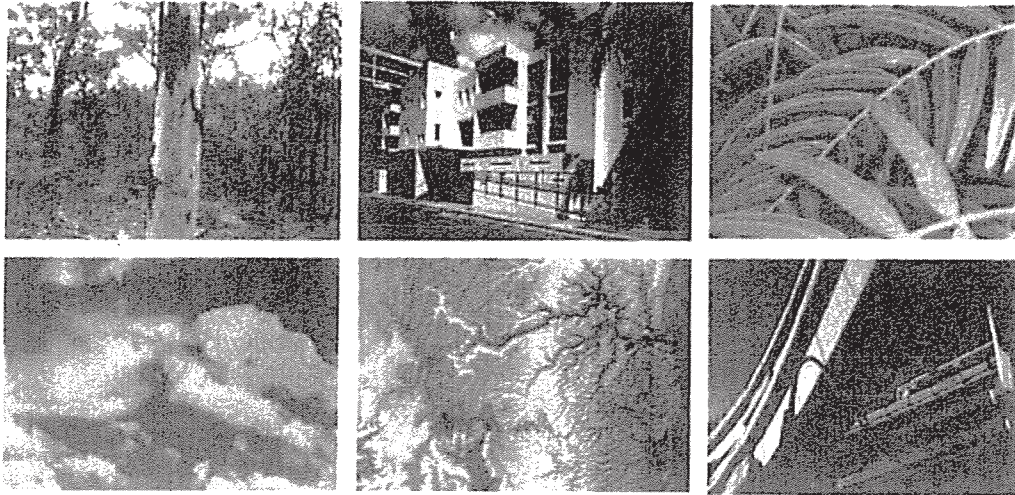


Alan Stoneham
General Manager

Documents from applicant

- Proponent's submission documents to regional panel (received September 2011)
 1. Letter from John Thain to JRPP, dated 12 September 2011
 2. Planning Proposal – Cityscape Planning and Projects (September 2011)
 3. Email from Mark Tooker – 23 December 2010
 4. Email from PCC re gazettal of LEP 2010 – 24 September 2010
 5. Agenda of meeting with PCC – 8 September 2010
 6. Legal advice from Planning Laws Solutions – 5 August 2010
 7. Flood Assessment – Worley Parsons – 3 August 2010
 8. Flood Assessment – Worley Parsons – 9 July 2010
 9. Peer review of Supplementary Flood Report – Cardno – 5 July 2010
 10. Cityscape letter to Penrith City Council – 8 July 2010
 11. Worley Parsons Supplementary Flood Report – 2 July 2010
 12. Legal advice from planning laws solutions – 25 June 2010
 13. Penrith City Council Letter – review of flood study – 11 May 2010
 14. Penrith City Council Letter – use of flood model – 22 January 2010
 15. Penrith City Council Letter – use of flood model – 13 August 2010
 16. Peer review of cumulative flood impact assessment – Cardno – 22 January 2010
 17. Cumulative Flood Impact Assessment – Worley Parsons – 4 January 2010
 18. Confirmed minutes of Penrith City Council Policy Review meeting – 21 October 2009
 19. Penrith City Council Policy and Review Report – 21 October 2009
 20. Greening Australia Advice to Cityscape – 8 May 2009
 21. Email from Mark Tooker to Penrith City Council - 30 April 2009
 22. Email from Cityscape about Greening Australia – 29 April 2009
 23. Email from Greg Brady (NSW Office of Water, former Department of Water and Energy) 24 April 2009
 24. Legal advice from Kells – 6 April 2009
 25. Penrith City Council flood advice letter – 31 March 2009
 26. Penrith City Council letter – 31 March 2009
 27. Letter from Ken Kanjian Lawyer to Penrith City Council – 19 February 2009
 28. Cityscape letter to Penrith City Council regarding draft LEP – 29 January 2009
 29. Penrith City Council letter advice on flood level – 29 January 2009
 30. Advice from LJ Hooker regarding demand for industrial land – 30 January 2009
 31. Email from Penrith City Council 4 December 2008
 32. Letter from Ken Kanjian Lawyer to Penrith City Council - 11 December 2008

33. Extract from floodplain development manual
 34. Email from Joe Parker – 28 October 2008
 35. Penrith LGA employment Land Study – Stage 2 (Leyshon Consulting)
 36. Penrith Press Article – 27 August 2005)
 37. Proponent letter to Department of Planning – Proposer rezoning briefing paper – 4 November 2007
 38. Email from Jeff Egan – undated
 39. Penrith City Council letter regarding rezoning submission - 26 July 2007
 40. Email from Mark Sweeney 27 March 2007
 41. Email from Mark Sweeney 23 March 2007
 42. Penrith City Council Draft Employment Strategy letter – 8 December 2006
 43. Email from Mark Sweeney – 1 December 2006
 44. Email from Mark Sweeney – 30 November 2006
 45. Penrith City Council advice on rezoning submission – 16 November 2006
 46. Penrith City Council letter – receipt of submission on draft Employment Strategy 14 November 2006
 47. Email from Mark Sweeney – 14 September 2006
 48. Letter to Penrith City Council regarding draft Employment Strategy 10 August 2006
 49. Email from Mark Sweeney - 2 August 2006
 50. SMH Article – 24 June 2006
 51. Employment Planning Strategy Discussion Paper – 2006
 52. Penrith City Council letter regarding Employment Planning Strategy 28 June 2006
 53. LJ Hooker letter - 20 June 2005
 54. Planning Circular PS 06-005 –LEP Review
 55. Penrith City Council letter receipt of rezoning submission – 27 February 2006
- Letter from Cardno to Mr Oliver Le Bouriscot titled 'Review of authority comments on the proposed industrial rezoning of 1-4 Old Bathurst Road, Emu Plains', dated 4 November 2011
 - Old Bathurst Road, Emu Plains Planning Proposal Criteria and Flood Assessment – Presentation to JRPP, 10 November 2011
 - Letter from Cityscape Planning + Projects to Mr Paul Mitchell, dated 8 February 2012



cityscapeplanning+projects

LOTS 1-4 OLD BATHURST RD, EMU PLAINS

PLANNING PROPOSAL

PREPARED FOR:

JOINT REGIONAL PLANNING PANEL

SEPTEMBER 2011

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This report dated 16 September 2011 is provided to the Joint Regional Planning Panel (the client), exclusively. No liability is extended for any other use or to any other party. Whilst the report is derived in part from our knowledge and expertise, it is based on the conditions prevailing at the time of the Report and upon the information provided by the client.

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INTRODUCTION

Cityscape Planning + Projects has been engaged by *Juketop Pty Ltd* to prepare a *Planning Proposal* for the subject site.

The proposal has been prepared to assist the Joint Regional Planning Panel (JRPP) with their assessment of their considerations pursuant to the subject site.

The *Planning Proposal* does not represent a new rezoning proposal but rather seeks to merely contemporise an original and outstanding rezoning submission dated 2005 that the JRPP have been requested to consider by the Minister. Accordingly, ~~it does not introduce any new technical studies or information, but simply relies upon those studies that formed part of the original rezoning application and submissions to Council.~~

SUBJECT SITE

The site is a large rectangular shaped parcel of land located on the north eastern corner of the Old Bathurst Rd and Russell St Emu Plains. The site also directly adjoins the Nepean River corridor at its northern boundary. Figure 1-2 identify the location of the site and provide an aerial photo.

The site is comprised of four lots with the following real property description:

Lot 1-2 DP 517958 Lots 3-4 DP 574650

FIGURE 1: LOCATION OF SITE

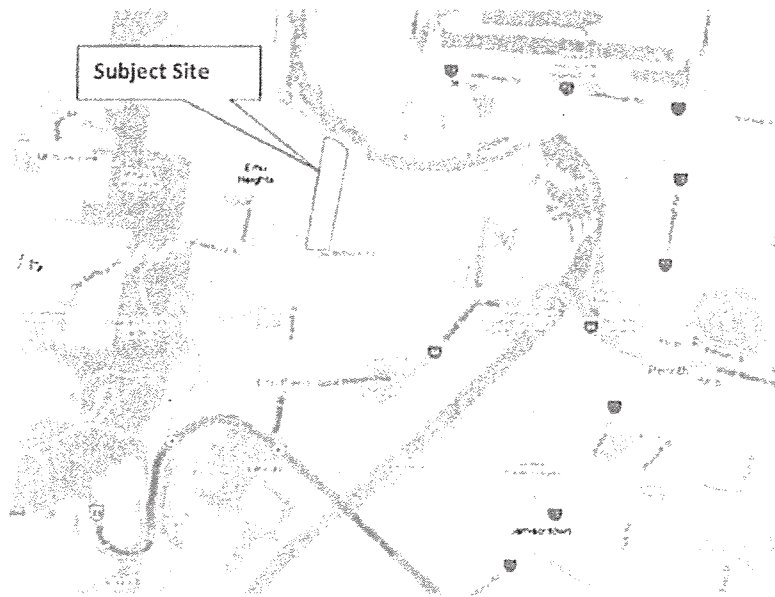


FIGURE 2: AERIAL PHOTO OF SITE



PART 1: OBJECTIVES OR INTENDED OUTCOMES

To enable the site to be developed for industrial land uses except for a corridor of land along the river frontage that will be retained for environmental management purposes.

PART 2: EXPLANATION OF PROVISIONS

1. Amend the Penrith LEP 2010 Land Zoning Map in accordance with the proposed map shown at Figure 3.
2. Amend the Penrith LEP 2010 Lot Size Map in accordance with the proposed map shown at Attachment 4;
3. Amend the Penrith LEP 2010 Height of Buildings Map in accordance with the proposed map shown at Attachment 5;
4. Amend the Penrith LEP 2010 Scenic and Landscape Values Map in accordance with the proposed map shown at Attachment 6;

FIGURE 3: PROPOSED LAND ZONING MAP

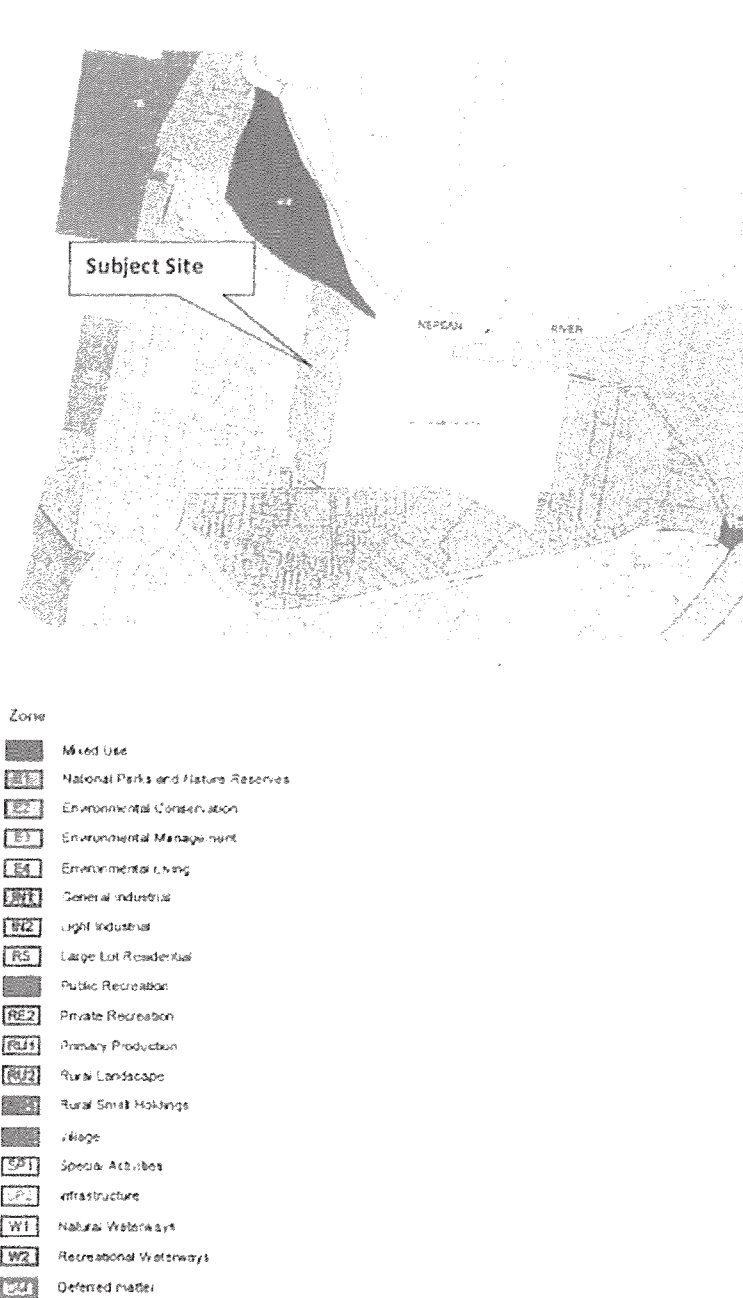
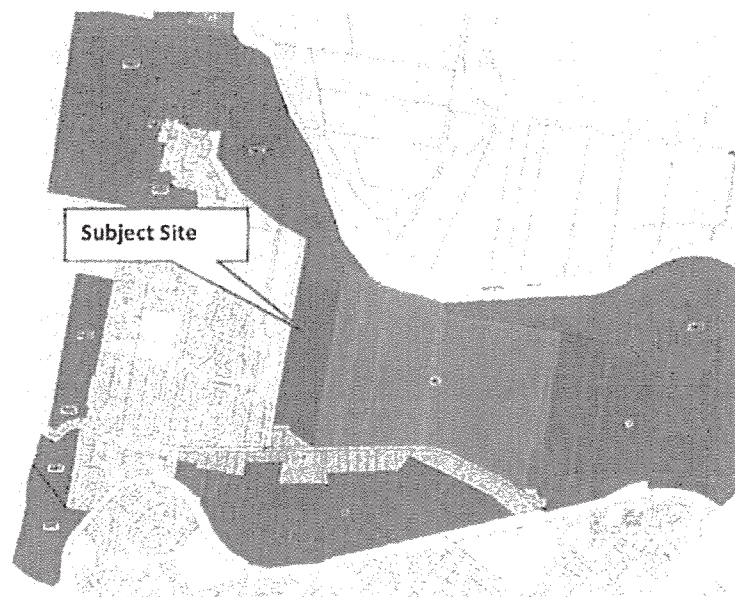


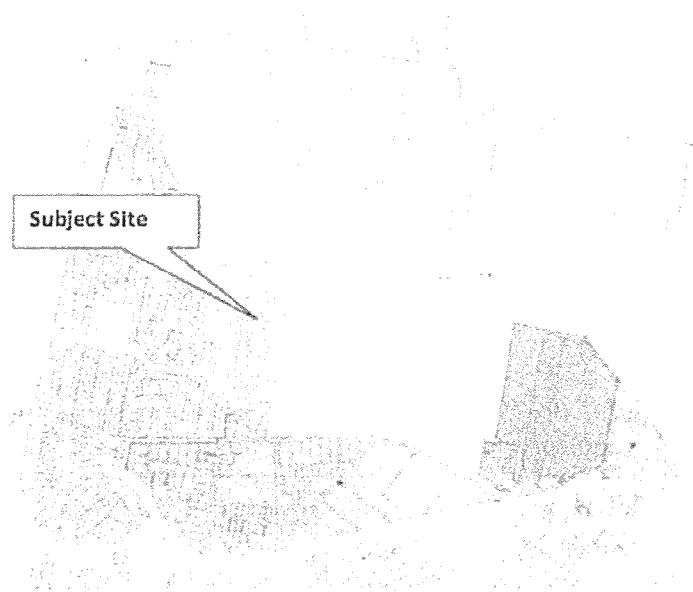
FIGURE 4: PROPOSED LOT SIZE MAP



Minimum Lot size (sq m)

K1	550
K2	560
L1	1000
L2	1200
L3	2600
L4	4000
X	6000
M1	10000 (1 ha)
M2	12500 (1.25 ha)
M3	20000 (2 ha)
M4	100000 (10 ha)
M5	200000 (20 ha)
M6	400000 (40 ha)
M7	1600000+ (1600 ha+)
	Refer to clause 6.13 or 6.15

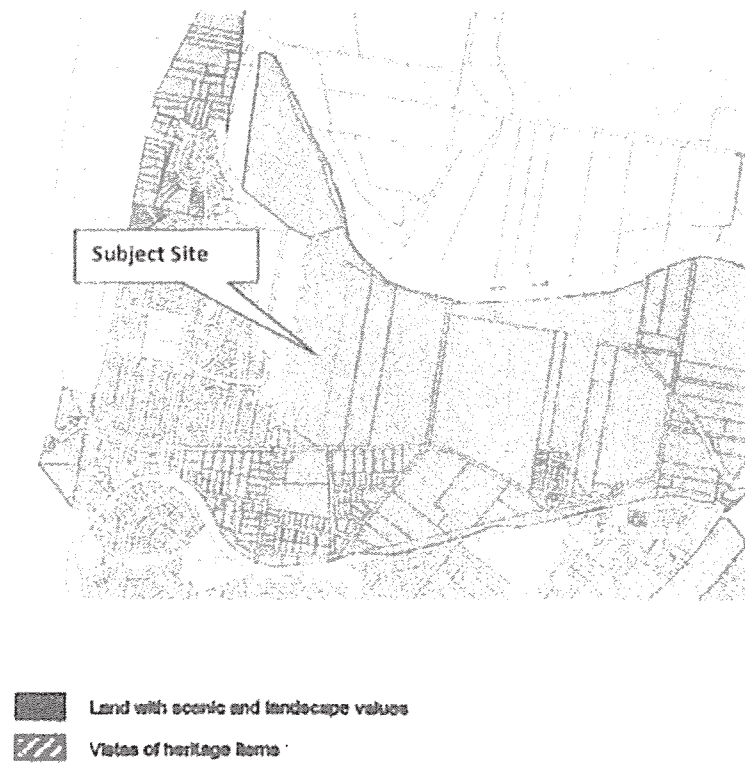
FIGURE 5: PROPOSED HEIGHT OF BUILDINGS MAP



Maximum Building Height (m)

M	12
O	16
Q	19
S	24
SU	32

FIGURE 6: SCENIC LANDSCAPE VALUES MAP



PART 3: JUSTIFICATION

SECTION A: NEED FOR THE PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

CURRENT ZONING

The bulk of the site is currently zoned 1(d) Rural (Future Urban) under IDO 93 (dated 1980). This existing zoning reflects a long held policy and planning position that the lands possess long term capability for conversion to urban land uses..

REZONING APPLICATION AND STUDIES - 2006

A rezoning application with numerous technical studies and reports was prepared and submitted to the Council. The accompanying technical studies included:

- Economic Analysis – Hill PDA
- Flooding – Worley Parsons
- Flora and Fauna Assessment - AES Environmental
- Traffic Analysis – Traffic Solutions
- Contamination – New Environment
- Heritage – Comber Consultants

The rezoning submission concluded that the proposed rezoning does not present any major impacts that cannot be appropriately mitigated through the management of the development and future operations on the subject site.

PENRITH EMPLOYMENT PLANNING STRATEGY – MARCH 2007

The *Penrith Employment Strategy* was adopted by Penrith City Council in 2007. The Strategy makes recommendations for the strategic direction of employment planning for City of Penrith and how it is to be managed in the next 10 to 25 years.

Background studies undertaken to support the study stated the following with regard to the demand for industrial zoned land:

“...Penrith’s industrial land supply would be completely exhausted either by 2020—assuming a low rate of take-up—or by 2013—assuming an average take-up rate....

Planning for the future expansion of industrial land stocks will, of course, need to occur well prior to 2020. It would be totally inappropriate, for instance, that Council allowed the City’s stock of industrial land to become fully exhausted before planning and implementing new industrial land releases. In view of the considerable time-frame required to zone and service industrial land, action to increase supply may need to be initiated at least five to eight years before the land is actually required.

Further, if as a result of the factors discussed previously, average annual industrial land take-up in Penrith accelerates, the ‘window’ for ensuring a satisfactory forward supply of industrial land in Penrith may shrink. For instance, if Council wishes to ensure an adequate supply of traditional industrial land up to 2021 it is advisable to commence the investigative and rezoning process as soon as possible to ensure that new land becomes available in a timely manner. This would also

allow for a potential escalation in the take-up rate which may occur in future years due to transport improvements.

(Penrith LGA Employment Lands Study – Stage 2: Leyshon Consulting 2004).

In response to this analysis the Strategy identified the following Actions:

C. Research, monitoring and review issues relating to Employment Planning

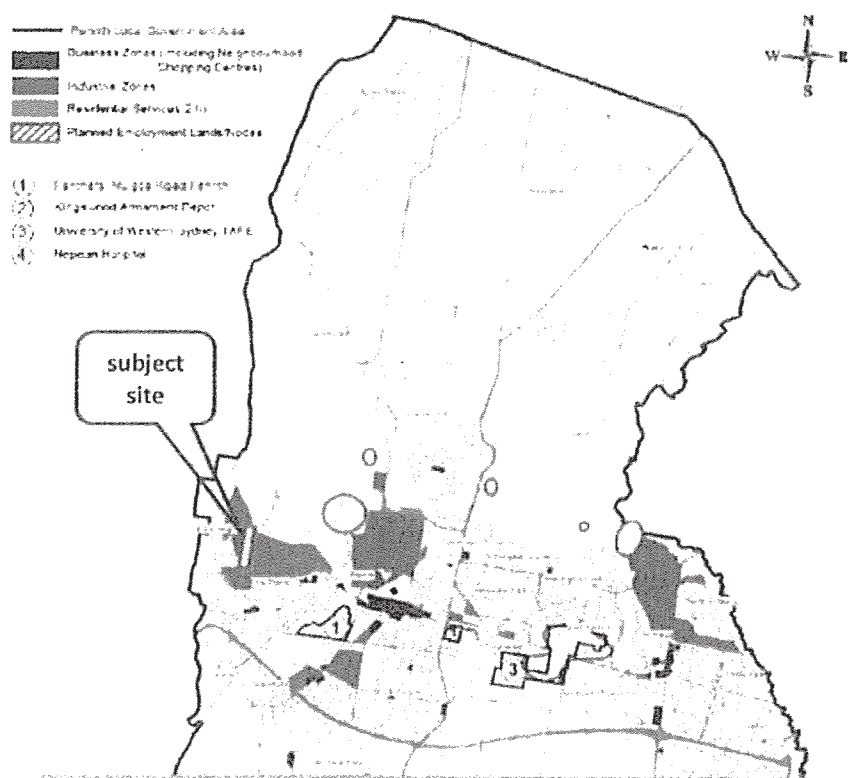
Ensure employment issues and trends are recognised in Council's strategic directions and programs.	Monitor international, national and metropolitan employment issues and trends, and integrate the research in Councils' Strategic and Management planning processes.	LEDPM	ongoing
Ensure that there is sufficient area of different types of employment land to cater for long term employment growth in the City.	Establish regular consultations with major landowners, to monitor the potential for land that may become surplus, or relevant to future planning activities.	LEDPM LPM EPM	ongoing

PENRITH PLANNING STRATEGY – OCTOBER 2008

This strategy represented the primary document associated with the preparation, exhibition and gazettal of *Penrith LEP 2010*.

The strategy encompassed many land use issues however with regards to the planning for employment lands, identified the challenge of providing sufficient lands to meet the continuing demand. As part of this strategy it provides a plan that identified current and planned employment areas in the LGA. An extract of this plan is provided over page at Figure 7.

FIGURE 7: CURRENT + PLANNED EMPLOYMENT LANDS



This plan identifies both the existing Emu Plains industrial precinct together with adjacent lands as providing potential opportunities to meet the demand for new industrial lands. Inexplicably this plan excluded the subject from this precinct despite it possessing no uniquely distinguishing features from all other adjacent lands.

Regardless of the specific merits of the subject site, it is clear from Council own strategic analysis that the subject site sits within an area that is clearly suited to continued and future industrial zoning and development.

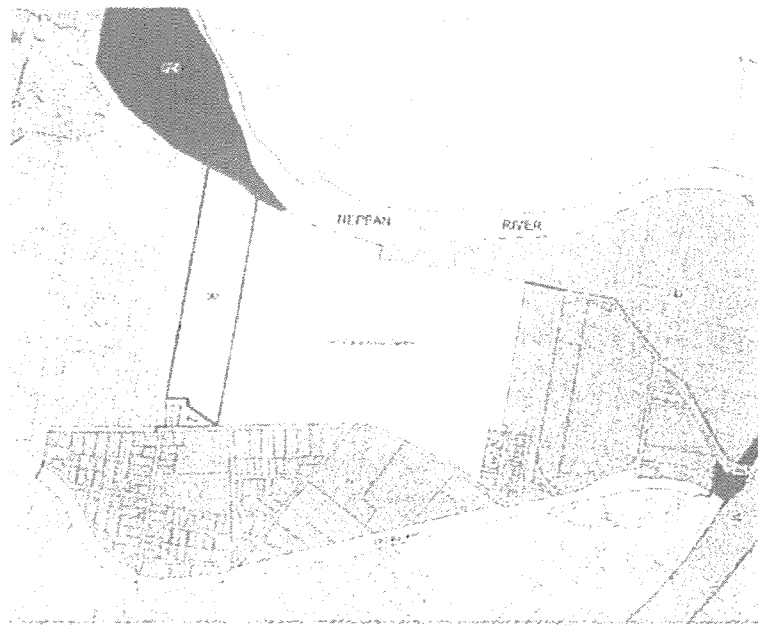
2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The original opportunity to best realise Councils agreed zoning outcome for the site (see Section B) was through the Penrith LEP 2010 – Stage 1 process. However, the gazettal of that Plan left the bulk of the subject land zoning as a deferred matter (see Figure 8).

The expectation has therefore since been that this would be resolved as part of the LEP 2010 – Stage 2 process.

As such it is considered that the Planning Proposal is clearly the best means of achieving the objectives or intended outcomes.

FIGURE 8: EXISTING LEP 2010 ZONE



3. Is there a net community benefit?

The following section undertakes a 'net community benefit test' in accordance with the parameters defined by the NSW Draft Centres Policy.

- *Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800 metres of a transit node)?*

An assessment of the Planning Proposal against all state, regional and local planning strategies and direction is undertaken at subsequent sections of this report and demonstrates consistency with all strategies.

- *Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?*

The subject site is located within the Penrith LGA. Penrith CBD is identified as one of the 6 regional centres under that strategy.

Further, the Emu Plains industrial area is identified as one of the major industrial areas within the North West Sub-Regional Strategy.

- ***Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?***

The proposal has deliberately sought to consider the cumulative impacts of the conversion of other adjacent lands to the east for industrial purposes as this is a logical long term outcome for those lands as contemplated by Councils own planning strategies.

- ***Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?***

Flood modelling analysis and study has deliberately sought to consider the cumulative flood impacts of adjacent lands being developed in a similar manner. This cumulative analysis reveals that all impacts can be adequately managed without adverse impact upon flooding in the broader catchment.

- ***Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?***

The intent of the LEP is to create new industrial lands.

- ***Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?***

No.

- ***Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site?***

The site enjoys access to a full suite of urban services and infrastructure. There are no known infrastructure capacity constraints in the local area.

- ***Is there good pedestrian and cycling access?***

The site enjoys a direct access to a pedestrian pathway at its street frontage that provides excellent pedestrian access to nearby transport nodes and nearby commercial, industrial and residential areas. The adjacent road network also provides generous road shoulder widths that accommodate safe bicycle conveyance.

- ***Is public transport currently available or is there infrastructure capacity to support future public transport?***

The site enjoys close proximity to Emu Plain Rail Station and direct access to local bus services which run past the subject site and provide access to that rail station, local business centres and the surrounding residential environs.

- ***Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?***

The development proposal will provide new local employment opportunities for the community which will reduce the need to travel outside the LGA for employment.

- *Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?*

The Emu Plains rail station has undergone significant capital upgrades. The proposal will only lead to increase patronage of that facility.

No other significant infrastructure works are programed for the local area.

- *Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?*

The land is ~~impacted by flooding~~. Extensive flood modelling and analysis has been undertaken as part of the Planning Proposal and demonstrates that all adverse impacts can be managed.

- *Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community?*

The development proposal simply reflects the prevailing land use pattern of a large industrial development adjoining residential land uses.

Amenity impacts of this outcome were addressed as part of the initial rezoning application and demonstrated that any adverse

impact could be mitigated as part of the development and site operations.

- *Will the public domain improve?*

The development proposal creates an opportunity to undertake ~~environmental restoration works~~ and provide public access to the lands adjacent to the Nepean River corridor. This option will not eventuate under existing planning regimes.

- *Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?*

Not relevant as no new retail or commercial facilities are proposed.

- *If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?*

The development proposal represents a small and logical extension to an adjacent large and established industrial precinct.

- *What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?*

The development will provide new local employment opportunities in the order of 1300 full time workers on site post construction.

SECTION B: RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

SYDNEY METROPOLITAN STRATEGY

The *Metropolitan Strategy* has anticipated that Sydney will need 500,000 jobs by 2031, 107,000 of which will be in industrial lands. The Strategy identifies that the North West sub-region to deliver 130,000 of those jobs by 2031.

To achieve this the strategy identifies the need to zone and develop 4000-7500 hectares of new employment areas across the metropolitan region.

Specific *Actions* in the strategy relevant to the Planning Proposal are identified below:

A1.1

- Use subregional employment capacity targets for subregional planning with local government.

A1.2

PLAN FOR SUFFICIENT ZONED LAND AND INFRASTRUCTURE TO ACHIEVE EMPLOYMENT CAPACITY TARGETS IN EMPLOYMENT LANDS

- Use employment capacity targets for broad industrial precincts in State and local planning.

NORTH WEST SUB REGIONAL PLAN (DRAFT)

Subregional planning is an intermediate step in translating the Metropolitan Strategy. Draft Sub-regional Strategies act as a broad framework for the long term development of the area, guiding Government investment and linking local and state planning issues.

They also provide the detail required to guide the preparation of Principal Local Environment Plans (LEPs), which is the key legislation that links local councils and State Government in land use planning for each Local Government Area (LGA).

As part of the North Western Sydney Sub-Regional Plans, the Department of Planning has estimated that Penrith's population will grow to around 220,000 by 2031, an increase of over 40,000 people during that period.

To accommodate this, the strategy identifies growth targets for the Penrith LGA that include a further 25,000 dwellings in established areas and an additional 28,000 jobs.

The Strategy identifies the Emu Plains industrial Precinct as one of the 43 major industrial precincts in the entire sub-region and gives the following commentary:

"36) Emu Plains Industrial Area (Manufacturing-Light, Manufacturing-Heavy, Urban Services, Business Park) is 125 hectares and is located west of the Nepean River and north of the Main Western Rail Line. The area is characterized by extractive-related activities and larger manufacturing industries such as concrete pipe construction and paper products. There are also important urban support services and some business park style uses."

The strategy also identifies the following additional and region specific action to supplement those provided by the Metro Strategy:

NW
A1.1.2

North West councils to prepare Principal LEPs which provide sufficient zoned and serviced commercial and employment land to meet the employment capacity targets (Hawkesbury 2008, Penrith and Blacktown 2009, Baulkham Hills and Blue Mountains 2011).

The subject lands is located immediately opposite and adjacent to the Emu Plains Industrial Precinct and is therefore ideally suited to assisting meeting the continuing demand for new industrial lands.

Accordingly, it is considered that the proposal is well consistent with strategic planning framework.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The consistency of the Planning Proposal with Councils strategic planning framework was demonstrated at earlier previous sections of this report.

The following Council resolutions also demonstrate the intention of Council to rezone the subject lands:

EMPLOYMENT LANDS STRATEGY

At the completion of the exhibition period Council made the following resolution:

Council adopt the Employment Planning Strategy, as attached to this report, with the site at Old Bathurst Road/Russell Street to

be included in the Draft LEP as ~~general industrial, with all other~~
issues to be assessed as part of a future Development
Application.

(Confirmed Minutes of Ordinary Meeting of PCC, 26/3/07).

DRAFT LEP 2010 – STAGE 1

Council rezoned a southern portion of the site to an industrial zoning as part of Penrith LEP 2010. (See figure 8). As part of this decision Council resolved to ~~defer rezoning of the northern portion of the site~~ pending completion of the cumulative flood study undertaken by the proponent with that study to determine the appropriate flood level.

1. The land to the south of the flood planning level, adjacent to Old Bathurst Road, be retained in draft Penrith Local Environmental Plan 2008, and zoned IN2 Light Industrial
2. The land to the north of the flood planning level be deferred to ~~LEP 2010 Page 2~~
3. The flood planning level for the property as a whole be determined with reference to the cumulative flood study and modelling currently being undertaken by Hydraulic Engineers, Worley Parsons.

(Confirmed Minutes of Policy Review Committee Meeting of
PCC, 21/10/09).

6. Is the planning proposal consistent with applicable state environmental planning policies?

An assessment against these planning instruments is provided over page and demonstrates consistency where relevant with all planning instruments.

SEPP TITLE	CONSENSUS	COMMENTS
SEPP (Urban Renewal) 2010	N/A	
SEPP (Western Sydney Employment Area) 2009	N/A	
SEPP (Affordable Rental Housing) 2009	N/A	
SEPP (Western Sydney Parklands) 2009	N/A	
SEPP (Exempt and Complying Development Codes) 2008	Y	
SEPP (Rural Lands) 2008	N/A	
SEPP (Kosciuszko National Park - Alpine Resorts) 2007	N/A	
SEPP (Infrastructure) 2007	Y	
SEPP (Temporary Structures and Places of Public Entertainment) 2007	Y	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Y	
SEPP (Sydney Region Growth Centres) 2006	N/A	
SEPP (Major Development) 2005	Y	
SEPP (Development on Kurnell Peninsula) 2005 N/A	N/A	
SEPP (Building Sustainability Index: BASIX) 2004	Y	
SEPP (Housing for Seniors or People with a Disability) 2004	N/A	
SEPP No. 71 - Coastal Protection	N/A	
SEPP 70 - Affordable Housing (Revised Schemes)		
SEPP No. 67 - Macquarie Generation Industrial Development Strategy	N/A	
SEPP No. 65 - Design Quality of Residential Flat Development	N/A	
SEPP No. 64 - Advertising and Signage	Y	
SEPP No. 62 - Sustainable Aquaculture	Y	
SEPP No. 60 - Exempt and Complying Development	Y	
SEPP No. 59 - Central Western Sydney Regional Open Space & Residential	N/A	
SEPP No. 55 - Remediation of Land	Y	

SEPP No. 50 - Canal Estates	Y	
SEPP No. 53 - Metropolitan Residential Development	Y	
SEPP No. 47 - Moore Park Showground	N/A	
SEPP No. 44 - Koala Habitat Protection	N/A	
SEPP No. 41 - Casino/Entertainment Complex	N/A	
SEPP No. 39 - Spit Island Bird Habitat	N/A	
SEPP No. 36 - Manufactured Home Estates	N/A	
SEPP No. 33 - Hazardous and Offensive Development	Y	
SEPP No. 32 - Urban Consolidation (Redevelopment of Urban Land)	N/A	
SEPP No. 30 - Intensive Agriculture	N/A	
SEPP No. 29 - Western Sydney Recreation Area	N/A	
SEPP No. 26 - Littoral Rainforests N/A	N/A	
SEPP No. 22 - Shops and Commercial Premises	N/A	
SEPP No. 21 - Caravan Parks	N/A	
SEPP No. 19 - Bushland in Urban Areas	N/A	
SEPP No. 15 - Rural Land-Sharing Communities	N/A	
SEPP No. 14 - Coastal Wetlands	N/A	
SEPP No. 6 - Number of Storeys in a Building	Y	
SEPP No. 4 - Development without Consent and Miscellaneous Complying Development	Y	
SEPP No. 1 - Development Standards	Y	

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

An assessment against these directions is provided below:

DIRECTIONS UNDER s.117(2)		CONSIST- ENCY	JUSTIFICATION (where inconsistent)
1. Employment and Resources			
1.1	Business and Industrial Zones	Y	
1.2	Rural Zones	Y	
1.3	Mining, Petroleum Production and Extractive Industries	N/A	
1.4	Oyster Aquaculture	N/A	
1.5	Rural Land	N/A	
2. Environment Heritage			
2.1	Environment Protection Zones	Y	
2.2	Coastal Protection	N/A	
2.3	Heritage Conservation	Y	
2.4	Recreation Vehicle Areas	Y	
3. Housing, Infrastructure and Urban Development			
3.1	Residential Zones	N/A	
3.2	Caravan Parks and Manufactured Home Estates	N/A	
3.3	Home Occupations	N/A	
3.4	Integrating Land Use and Transport	Y	
3.5	Development Near Licensed Aerodromes	N/A	
3.6	Shooting Ranges	N/A	
4. Hazard and Risk			
4.1	Acid Sulfate Soils	Y	

4.2	Mine Subsidence and Unstable Land	N/A	
4.3	Flood Prone Land	N	The site is within a flood planning area however detailed flood studies that accompany the planning proposal demonstrate that inconsistency is of a minor significance as it does not cause significant impact on flood behaviour and the flood risk can be managed appropriately in terms of personal risk and flood damage risk.
4.4	Planning for Bushfire Protection	Y	
5.	Regional Planning	N/A	
6.	Local Plan Making		
6.1	Approval and Referral Requirements	Y	
6.2	Reserving Land for Public Purposes	Y	
6.3	Site Specific Provisions	Y	

SECTION C: ENVIRONMENTAL SOCIAL AND ECONOMIC IMPACT

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The site is largely cleared of remnant bushland as part of previous agricultural use. Flora and fauna studies prepared as part of the rezoning application demonstrate that no adverse ecological impacts will arise from rezoning and development of the site.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The rezoning submission demonstrated that there is unlikely to be any adverse environmental effects arising from the zoning and development of the site for industrial purposes. This was demonstrated by the following technical studies that accompanied this submission.

- Flooding – Worley Parsons
- Flora and Fauna Assessment - AES Environmental
- Traffic Analysis – Traffic Solutions
- Contamination – New Environment
- Heritage – Comber Consultants

Key matters arising from these studies were that adverse amenity impacts related to traffic can be managed by ensuring that all vehicle access is provided via Old Bathurst Rd.

Additional acoustic impacts on adjacent residential development could also be managed by:

- Provision of IN2 zoning adjacent to Russell St residential development limiting several mitigation measures such as setbacks
- Increased building setbacks
- Acoustical barriers

10. How has the planning proposal adequately addressed any social and economic effects?

The rezoning submission identified positive social and economic benefits arising from the zoning and development of the site for industrial purposes. This includes the potential to generate about 1,300 full time workers on site plus significant additional construction and multiplier jobs.

SECTION D: STATE & COMMONWEALTH INTERESTS

11. Is there adequate public infrastructure for the planning proposal?

The site adjoins existing urban development which enables connection to a full suite of urban services and infrastructure required to support the rezoning and development of the site.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

This section of the Planning Proposal is completed following consultation with the State and Commonwealth Public Authorities identified in the gateway determination and must summarise any issues raised by public authorities not already dealt with in the Planning Proposal, and address those issues as appropriate.

However, some informal consultation has been undertaken with *Office of Hawkesbury Nepean* which has not identified any fundamental objection to the rezoning proposal.

PART 4: COMMUNITY CONSULTATION

It is envisaged that the Planning Proposal will be exhibited as part of the Draft Penrith LEP 2010 – Stage 2.

In accordance with the expected Gateway Determination for the Stage 2 Draft LEP community consultation will be carried out for 28 days. The community consultation will be carried out in accordance with Section 4.5 of *A Guide to Preparing LEPs (Department of Planning 2009)*.

The consultation program will include:

- Newspaper Advertising through local media to inform the community that the exhibition has started, how long it will run, how information can be obtained and how to make a submission.

- Website - Availability of information through the Internet, including copies of the Planning Proposal which can be downloaded.
- Information available at exhibition points highlighting key features of the draft Planning Proposal, closing date for the exhibition and how to make a submission.
- Letters to individual land owners and those in the surrounding area advising of the exhibition of the Planning Proposal and where it can be viewed.

A number of supporting documents will be exhibited with the Planning Proposal to assist in understanding the planning documents. The supporting documents will include:

- A copy of the Standard Instrument Order
- Technical studies and supporting documentation as discussed in this Planning Proposal.

Documents from Department of Planning & Infrastructure

- Letter from Mr Tom Gellibrand, Deputy Director General of the Department of Planning and Infrastructure (dated 14 September 2011)



Planning & Infrastructure

Received 19/09/2011
P. Hon

Ms Paula Poon
Director
Panel Secretariat
GPO Box 3415
SYDNEY NSW 2000

11/16180

Dear Ms Poon

I refer to your letter to the Director General of 31 August 2011, concerning land at 1-4 Old Bathurst Road, Emu Plains seeking the Department's views on the strategic merit of the draft proposal in the context of any state and regional planning policies.

The identification of further industrial land is generally supported in the Penrith local government area. The draft North West Subregional Strategy provides an employment capacity target of 28,000 new jobs in Penrith local government area by 2031. To achieve this target, Action NW A1.1.2 states, *"North West councils to prepare Principal LEPs which provide sufficient zoned and serviced commercial and employment land to meet the employment capacity targets"*.

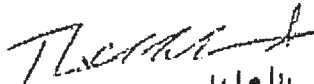
As indicated on the zoning map provided in the package that was forwarded to the Regional Panel, the site is predominately surrounded by SP 1 (correctional Centre), existing industrial land to the south, Nepean River to the north and partially adjoins residential and 6(a) recreation land at Emu Heights to the west. The site therefore presents as a good location to consider expanding the existing industrial area located to the south of the site. While there is potential for minor land use conflict with land uses to the west, this could be mitigated through appropriate local planning and adoption of suitable controls.

Flooding and evacuation issues need to be taken into account given the implications on strategic planning and zoning issues for the area. This issue requires technical assessment and resolution which the Department has not undertaken and hence, has not determined to the extent of the proposal.

While an industrial zoning may be strategically supported in a state and regional context, the Department has not undertaken a technical assessment of the potential flooding and evacuation issues, which need careful consideration before a well informed planning decision can be made.

In this regard, the Regional Panel may wish to review the requirements of section 117
Ministerial Direction No. 4.3 Flood Prone Land.

Yours sincerely



14/9/11

Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal

APPENDIX D

Panel's Letters to Department and Council

- Letter to Department of Planning & Infrastructure from Director, Panel Secretariat, dated 31 August 2011
- Letter to Penrith City Council from Director, Panel Secretariat, dated 29 August 2011
- Letter to Penrith City Council from Panel Chair, dated 9 December 2011



Joint Regional Planning Panels

31 August 2011

Mr Sam Haddad
Director General
Department of Planning
GPO Box 39
Sydney NSW 2001

(Attention: Mr Peter Goth)

Dear Mr Haddad,

Rezoning of land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains

I write to advise that the Minister for Planning and Infrastructure has requested the Sydney West Joint Regional Planning Panel (the Regional Panel) to provide advice on the suitability of a draft proposal to rezone land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains.

The Regional Panel met with staff of Penrith City Council on 18 August 2011 to discuss the Council's views on the draft proposal. The Regional Panel will also be meeting with the proponent to seek their views on the proposal.

In preparing advice for the Minister, the Regional Panel would like to request the Department of Planning & Infrastructure's views on the strategic merit of the draft proposal in the context of any state and regional planning policies. I understand the Department has received a copy of the draft proposal from Council.

The Regional Panel would appreciate this advice to be provided by 9 September 2011.

If you have any questions in relation to this matter, please contact Paulina Hon, Manager, Regional Panel Operations on (02) 9383 2104 or email paulina.hon@planning.nsw.gov.au.

Yours sincerely,

Paula Poon
Director
Panel Secretariat

NSW 15-25-2011
2011-08-31 10:00 AM
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Joint Regional Planning Panels

29 August 2011

Mr Alan Stoneham
General Manager
Penrith City Council
PO Box 60
PENRITH NSW 2751

(Attn: Mr Glenn McCarthy)

Dear Mr Stoneham,

Rezoning of land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains

I refer to the recent meeting held on 18 August 2011 between the Sydney West Joint Regional Planning Panel (the Regional Panel) and representatives from Penrith City Council to discuss the Council's views on the draft proposal to rezone land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains.

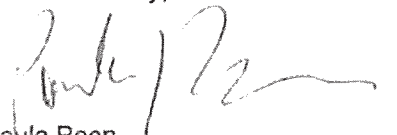
Following from this meeting, the Regional Panel would like to request the following information from Council to assist in their consideration of the proposal and preparation of their advice to the Minister for Planning & Infrastructure:

1. Background documents on the rezoning application for the site (Vitrus Project Services, dated February 2006).
2. Relevant assessment reports prepared by Council officers which discuss Council's views on the merits of the proposal within the strategic planning context and having consideration of environmental site constraints, such as flooding and compatibility of the proposed uses with neighbouring uses both existing and planned.
3. Views of the elected Council on the rezoning proposal including Council resolutions.

The Regional Panel requests that the additional information be provided as soon as possible, but no later than 9 September 2011.

If you have any questions in relation to this matter, please contact Paulina Hon, Manager, Regional Panel Operations on (02) 9383 2104 or email paulina.hon@planning.nsw.gov.au.

Yours sincerely,



Paula Poon
Director
Panel Secretariat

PANEL SECRETARIAT
Level 13, 301 George Street SYDNEY, NSW 2000
GPO Box 3415, SYDNEY NSW 2001
Tel: 02 9383 2121
Fax: 02 9299 9835
Email: jrp.enquiry@jrp.nsw.gov.au



Joint Regional Planning Panels

9 December 2011

Mr Alan Stoneham
General Manager
Penrith City Council
PO Box 60
PENRITH NSW 2751

(Attn: Mr Glenn McCarthy)

Dear Mr Stoneham,

Rezoning of land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains

I refer to the meeting held on 18 August 2011 between the Sydney West Joint Regional Planning Panel (the Regional Panel) and representatives from Penrith City Council to discuss the Council's views on the draft proposal to rezone land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains. I wish to thank you for the supplementary information that Council provided to the Regional Panel (in letter dated 1 September 2011).

Since our meeting with you, the Regional Panel has also met with the proponent and their representatives to discuss their views on the application.

Following a review of all relevant documentation, the Regional Panel would like to request further clarification from Council on proposal on a number of issues. These are outlined in Attachment 1.

I would like to request that Council review these questions and provide advice to the Regional Panel at your earliest convenience but no later than the 20 January 2011.

If you have any questions in relation to this matter, please contact Paulina Hon, Manager, Regional Panel Operations on (02) 9383 2104 or email paulina.hon@planning.nsw.gov.au.

Yours sincerely,

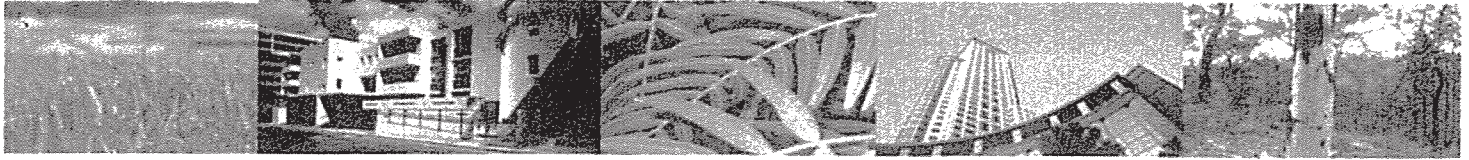
Paul Mitchell
A/Chair
Sydney West
Joint Regional Planning Panel

PANEL SECRETARIAT
Level 13, 301 George Street SYDNEY NSW 2000
GPO Box 3415, SYDNEY NSW 2001
Tel: 02 9383 2121
Fax: 02 9299 9835
Email: pppsecretary@ppp.nsw.gov.au

ATTACHMENT 1 - List of Issues

The Regional Panel requests Council to provide a response to the following questions which have arisen following meetings with Council and the applicant and a review of all relevant documentation.

- Are there any other land use/environmental constraints (other than flooding) that exist on the site which could prevent the site from being rezoned for industrial purposes?
- The site is proposed to be zoned for industrial land uses except for a corridor of land along the river frontage that would be retained for environmental management purposes. How much land in the Penrith local government area is currently zoned for employment/industrial purposes and is vacant?
- What is the current annual demand for industrial land in the LGA? How many years future supply is available?
- Is the proposal consistent with the objectives of Council's Employment Planning Strategies and any estimated future demand?
- Is there an overall strategy for the subject land and that generally to the north (i.e. the correctional centre and the 'Boral land')? If yes, is the proposed rezoning consistent with this strategy? If no, does Council intend to prepare a strategy?
- Is the proposal consistent with Council's Strategic planning documents, including any Flood Management Strategies?
- Is the proposal compatible with s 117 Ministerial Direction No.4.3 Flood Prone Land & the Floodplain Development Manual?
- What are the views of Council on the flood modelling undertaken by the applicant's consultants to date?
- The proposed flood mitigation works (as a result of any rezoning) would require soil extraction. Are there any particular regulatory or other constraints envisaged in this regard?
- Does Council have an opinion on the cost of earthworks required to develop the land component?
- The proposal includes a portion of the site which would comprise flood corridors which would be zoned for environmental management purposes? What is Council's policy on flood corridors in terms of long term management and maintenance?
- Does Council have any views on the relative ease of evacuating residents versus factory workers (or other workers) during a flood event on the subject land?
- Has Council commissioned an independent review of the proposal? If so, the Regional Panel would like to request these reports from Council.



cityscapeplanning+projects

4 May 2012

Mr. Alan Stoneham
General Manager
Penrith City Council
PO Box60
PENRITH NSW 2750

Dear Mr Stoneham

JRPP considerations with regard to the rezoning proposal @ Old Bathurst Rd, Emu Plains

I refer to your recent correspondence with regard to the abovementioned matter and as per that correspondence seek to provide a further submission in response to the Joint Regional Planning Panels (JRPP) report and recommendations.

1. SCOPE OF JRPP'S ASSESSMENT AND RECOMMENDATION

Since the time of the lodgement of the rezoning application with Council in February 2006, the only planning issue identified by Council staff with regard to the rezoning of the site, has concerned the flood prone nature of the subject land and the related earthworks required to manage that hazard.

Therefore, it was in this context that we understood that the JRPP were requested to assist the Minister for Planning. Indeed, reference to the letter dated 30/7/11 from the Minister for Planning to the Chairperson of the JRPP seeking their advice on this matter, confirms that this was in fact the issue on which their input was sought. An extract of that letter is provided over page and a full copy accompanies this advice.

"Council staff have raised concerns over the proposed industrial zone and their advice conflicts with the flood analysis submitted by the proponent.

Therefore I seek your advice on the suitability of the land for industrial purposes."

(Minster for Planning 30/7/11)

From our review of the JRPP report it would appear that they have no primary concern with the flooding hazards associated with the conversion of the site for industrial purposes.

"The panel has no grounds dispute the Applicants principal contention that it would be possible to construct a 'flood-free' building platform' on the subject site and that effective means of evacuation during major flood events could be provided".

(p. 15 JRPP Report 22/03/12)

Yet despite forming this view the JRPP have recommended that rezoning of the land would be premature as they consider there to be a suitable currently supply of vacant employment land within the LGA.

This finding by the JRPP is bewildering, particularly as this issue had never been a concern of Council or even referenced in the Ministers request to them for advice. Nevertheless, given that the matter has arisen we will address it further in the subsequent section of this letter.

2. SUPPLY AND DEMAND OF EMPLOYMENT LANDS IN THE LGA

There can be no doubt that Penrith City Council is seeking to increase the provision of local employment opportunities within the LGA as this represents a fundamental or core element of all their strategic planning for the City. In a joint submission to the NSW Government Western Sydney Job Summit in 2010, Penrith City Council provided a report that stated:

"..the Metropolitan Strategy and the North West and South West Sub-Regional Strategies' targets will continue to undersupply sufficient jobs relative to the population growth (640 000 dwellings vs. 500 000 jobs). Clearly, more employment land is needed now, and in the future..."

(p.4 Submission to Western Sydney Jobs Summit)

A copy of that joint submission is provided as an annexure to this letter.

The first time that Council had ever considered the rezoning of the subject land was in fact within the context of the adoption of the *Penrith Employment Lands Strategy 2007*. This strategy was the result of extensive and detailed analysis of the supply and demand of employment lands within the City. At this time it was the unanimous view of the Council that the subject land should be rezoned to industrial purposes, presumably as it was considered to provide a potentially valuable contribution the supply of industrial lands within the City.

Since that time metropolitan and sub-regional planning undertaken by the Department of Planning & Infrastructure has continued to identify the need to supply significant employment lands with region and LGA. Indeed when consulted in relation to the matter, the Deputy Director General – Plan Making and Urban Renewal of the Department advised the JRPP that:

"The identification of further industrial land is generally supported in the Penrith local government area."

"The site therefore presents a good location to consider expanding the existing industrial area located to the south of the site"

(NSW Planning & Infrastructure 14/9/11)

It would however appear that the JRPP has chosen to disregard both this advice and the informed view of the Council. The conflicting views between the JRPP and those of the Council and the Department of Planning would appear to be a consequence of a relatively simplistic analysis undertaken by the JRPP of the supply and recent take-up of employment within the City.

In reality, the management of demand and supply is more sophisticated and intricate process which should encompass a broader scope of considerations such as:

- Distinctions between broader 'employment' lands and 'industrial' zoned land
- The availability of infrastructure services to employment lands
- Existing tenure and the likely timing of lands to be taken to the market
- Job created per hectare for individual industry types

It would appear that the JRPP's rudimentary supply calculations have included un-serviced land and land designated for hi-tech or business park land uses. These hi-tech or business park lands have to date not proven to deliver any real job supply within the City and may not do so for many

years to come. Conversely, industrial zoned land, such as that proposed on the subject site, provides for manufacturing type development and remains a real driver of continued employment growth within the City.

The intricacies of these issues were well addressed by the technical studies that informed the development of the *Penrith Employment Strategy*. Therefore, and with all due respect to the JRPP, we would have thought that Penrith City Council and the Department of Planning and Infrastructure remain the best placed authorities to plan for the strategic supply of employment land within the City and as such their views and not those of the JRPP should be given more weight in determining this particular matter.

3. Maintenance costs associated with flood mitigation works

It is acknowledged that the JRPP report qualified its lack of concern over site flooding issues with the following comment made with specific reference to the flood channel that would be provided on the eastern boundary of the site:

"At the same time, it is evident that substantial cut and fill and scour protection works would be necessary. It is probable that these works would require regular and possibly extensive maintenance, and it is not clear how these expenses would be met other than by a public authority."

(p.15 JRPP Report 22/3/12)

Unfortunately this comment by the JRPP demonstrates a fundamental misunderstanding of the flood mitigation works proposed as part of the proposal. The eastern flood channel has been designed only to receive flood waters in the 1 in 100 year flood event and as such will not be exposed to regular scouring or therefore likely to require 'extensive maintenance'.

Further, should the Prison Farm and other adjacent quarry lands ever be developed then the need for the eastern channel and any of its implied maintenance costs would be eliminated. This last fact was acknowledged in the JRPP report.

Should there be a continuing concern that there are any unresolved maintenance costs associated with the proposed flood mitigation works then Council has the opportunity to require a Voluntary Planning Agreement (VPA) to be drafted and implemented as part of future planning and development stages.

Clearly this was within the scope of detail that had already been contemplated by Council at its meeting of 26 March 2007 of when it resolved:

"Council adopt the Employment Planning Strategy, as attached to this report, with the site at Old Bathurst Rd/Russell St to be included in the Draft LEP as General Industrial, with all other issues to be assessed as part of a future development application".

(Ordinary Meeting of PCC 26/3/07)

4. Other Agencies views

Perhaps the most valuable outcome of the JRPP process was that the rezoning proposal could be formally submitted to the relevant state agencies who whilst having key roles in determining the merit of such proposals, to this point of time had, not had the opportunity to either review or provide formal comment on the proposal.

These JRPP met with each of the following agencies as part of their deliberations:

- NSW Office of Water
- NSW Office of Environment and Heritage
- NSW Department of Planning and Infrastructure

Council can be comforted by the fact that that although each group expressed qualifications, no fundamental objection was expressed by any of these agencies.

5. Conclusion

There can be no doubt that Penrith City Council is seeking to increase the provision of local employment opportunities within the LGA. The provision of additional employment lands at Old Bathurst Rd in an area adjacent to existing industrial development will only assist in achieving that outcome.

The primary planning concern about rezoning the subject site to achieve this outcome has always related to the ability of the sites development to occur in a way that suitably manages the flood hazard. Indeed, it was in this context that the Minister for Planning sought advice from the JRPP.

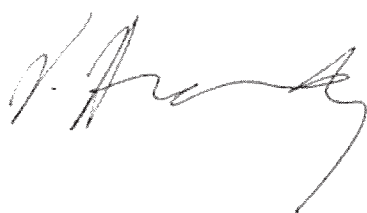
The JRPP were generally accepting of the detailed technical flood study advice provided by the proponent, yet chose to support the rezoning based on a rudimentary analysis of the existing supply of employment lands with the City. In making this recommendation they chose to ignore the formal advice of the Deputy Director General of the Department of Planning and Infrastructure who was of the view that the further industrial land supply is supported in the Penrith LGA.

The intricacies of supply and demand issues were also comprehensively addressed by the technical studies that informed the development of the *Penrith Employment Strategy*. It was as part of the adoption of this strategy that formally resolved to support the rezoning of the subject land.

Therefore, and with all due respect to the JRPP, we would have thought that Penrith City Council and the Department of Planning and Infrastructure remain the best placed authorities to plan for the strategic supply of employment land within the City and as such their views and not those of the JRPP should be given more weight in determining this particular matter.

Thank you once more for the opportunity to provide a submission on this matter. Please do not hesitate to contact me should you wish to discuss any aspect of this matter.

Yours sincerely



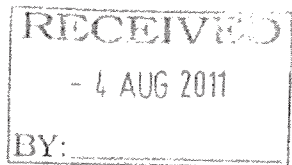
Vince Hardy (BTP, MPiA, CPP)

Urban Planning Consultant





The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW



SCANNED

11/12717

The Acting Chairperson
Sydney West Joint Regional Planning Panel
GPO Box 3415
SYDNEY NSW 2000

Dear Sir

I refer to a draft proposal submitted to the Department of Planning and Infrastructure by Penrith City Council for the rezoning of land for industrial purposes at 1-4 Old Bathurst Road, Emu Plains.

By way of background, Penrith City Council, in preparing for its Stage 2 draft Principal Local Environmental Plan (LEP), resolved that the subject land be investigated for its suitability for industrial purposes. This draft plan identifies the site as "under investigation". Council is seeking assistance to determine the suitability of the land to be rezoned for industrial purposes. Council staff have raised concerns over the proposed industrial zone, and their advice conflicts with the flood analysis submitted by the proponent.

As an independent view of this matter is being sought, Council has requested the advice of the Sydney West Joint Regional Planning Panel to assist it in determining the suitability of the site for an industrial zoning.

Therefore, I seek your advice on the suitability of the land for industrial purposes. I would also request the JRPP meet with both the proponent and Penrith City Council to assist with your considerations.

The relevant documents are attached to this letter. If you have any questions, please do not hesitate to contact Mr Peter Goth, Regional Director, Sydney West on (02) 9873 8589.

Yours sincerely

HON BRAD HAZZARD MP
Minister

30/7/11



Planning & Infrastructure

Received 19/09/2011
P. Hon

Ms Paula Poon
Director
Panel Secretariat
GPO Box 3415
SYDNEY NSW 2000

11/16180

Dear Ms Poon

I refer to your letter to the Director General of 31 August 2011, concerning land at 1-4 Old Bathurst Road, Emu Plains seeking the Department's views on the strategic merit of the draft proposal in the context of any state and regional planning policies.

The identification of further industrial land is generally supported in the Penrith local government area. The draft North West Subregional Strategy provides an employment capacity target of 28,000 new jobs in Penrith local government area by 2031. To achieve this target, Action NW A1.1.2 states, *"North West councils to prepare Principal LEPs which provide sufficient zoned and serviced commercial and employment land to meet the employment capacity targets"*.

As indicated on the zoning map provided in the package that was forwarded to the Regional Panel, the site is predominately surrounded by SP 1 (correctional Centre), existing industrial land to the south, Nepean River to the north and partially adjoins residential and 6(a) recreation land at Emu Heights to the west. The site therefore presents as a good location to consider expanding the existing industrial area located to the south of the site. While there is potential for minor land use conflict with land uses to the west, this could be mitigated through appropriate local planning and adoption of suitable controls.

Flooding and evacuation issues need to be taken into account given the implications on strategic planning and zoning issues for the area. This issue requires technical assessment and resolution which the Department has not undertaken and hence, has not determined to the extent of the proposal.

While an industrial zoning may be strategically supported in a state and regional context, the Department has not undertaken a technical assessment of the potential flooding and evacuation issues, which need careful consideration before a well informed planning decision can be made.

In this regard, the Regional Panel may wish to review the requirements of section 117
Ministerial Direction No. 4.3 Flood Prone Land.

Yours sincerely



14/9/11

Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal

Jobs for Penrith Regional City

**Submission to the NSW Government
Western Sydney Jobs Summit
January 2010**



Executive Summary

Penrith's elevation as a Regional City reflects its historical role in servicing a regional catchment of more than 500,000 people and its growth as a major employment centre providing a diverse range of jobs to local and non-local residents. The City's strong asset base built to service the educational, health, shopping, business and recreational needs of people of Outer Western Sydney and Central Western NSW has transformed the City, creating new challenges to accommodate further urban growth and employment that is in accord with the City's vision to maintain its urban-rural interface and natural assets. This interface gives the City its unique qualities in the region and reinforces its competitive strength and lifestyle attributes.

Penrith has been a strong advocate of job creation, with Penrith City Council adopting the *"Sustainability Blueprint for Urban Release Areas"* in June 2005. The Blueprint requires developers to create a quantum of jobs in the City to match the incoming resident workforce. Council is also conscious of the role of businesses in creating jobs and has established and funded an independent industry led Penrith Business Alliance (PBA) as the instrument to foster economic activity, innovation, business development and job creation.

The PBA was instrumental in facilitating a forum in partnership with Council, business organisations, and senior business leaders to develop this submission to the Western Sydney Jobs Summit.

The submission highlights the challenges and limitations we face as a City and a community in building a Regional City and the jobs that go with it. As a community we are in agreement and focused on a number of economic development strategies that will drive job creation in the City. However, the support of the State Government and its agencies is critical in providing the momentum that is required to move the City and its businesses forward and to create economic growth and sustainable jobs.

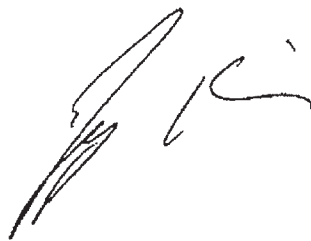
Our submission is focused on seeking State Government support under the following four strategic areas:

1. **Achieving Penrith's Regional City function**
2. **Delivering job targets across Western Sydney**
3. **Supporting Penrith's Economic Corridors, Clusters and SME Sector**
4. **Living and Community Wellbeing in Penrith**

We look forward to a positive response to this submission.



Paul Brennan
Chairman, Penrith Business Alliance

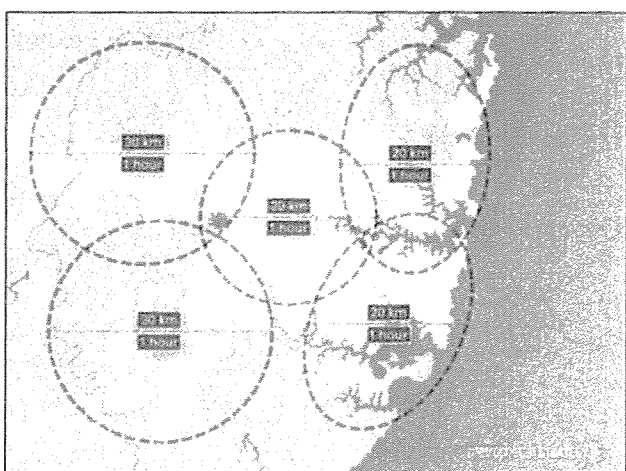


Barry Husking
Acting General Manager, Penrith City Council

Strong basis on which to grow

“Penrith Regional City will eventually serve a population catchment of over 1 million people by 2031”

The Sydney Metropolitan Strategy identifies Penrith as a Regional City in recognition of its strategic position at the western gateway of Sydney and its potential to attract employment and investment to service a regional catchment covering Western and North Western Sydney. Regional Cities are defined as having a full range of business, government, retail, cultural, entertainment and recreational activities, and are the focal point for regional transport and jobs.



Penrith's Regional Catchment

The metropolitan target for jobs growth in Penrith City is 28,000, including 11,000 new jobs to be created in the Penrith CBD.

Sydney's City Centre targets for 2031

Centre	Target jobs growth
Central Sydney CBD	50,000
North Sydney CBD	11,000
Parramatta CBD	28,000
Penrith CBD	11,000
Liverpool CBD	15,000

Penrith Regional City will also generate new opportunities in a number of industry sectors which will help diversify the City's economic base and expand the local choice of jobs in the following sectors:

- Education and Health
- Value Added Manufacturing
- Business and Professional Services

- Agribusiness
- Government (State and Commonwealth) Services
- Tourism, Events and Recreation
- Transport and Logistics
- Environmental & Creative Industries

“Penrith is part of a region that contributed 20% of all jobs growth across Sydney between 2001 & 2006, compared to Sydney CBD that contributed 18% during the same period”

Outside of strategic centres, employment lands are identified in the Penrith LGA to support the economic role of the strategic centres in areas such as high technology, research, industrial businesses, major warehousing, goods production and assembly, management, administration and the provision of urban services.

Penrith is one of the largest LGAs in NSW with a population approaching 180,000. The city recorded moderate growth in employment over the past five years. Investment increased significantly in Penrith in 2007, driven by higher non-residential investment.

Council's strategic planning has identified large tracts of competitively priced premier industrial land with good access to the M7. Key industrial sites include the established 350 hectare Erskine Business Park which is part of the developing 2,200 ha Western Sydney Employment Area.

Strengths

- Regional City status with significant land for future development
- Sizeable population and regional catchment
- Natural amenity and distinct setting with Nepean River and Blue Mountains
- Quality of lifestyle and recreation facilities recognised
- Affordable property
- Good health and education infrastructure
- Skilled workforce supported by local training institutions

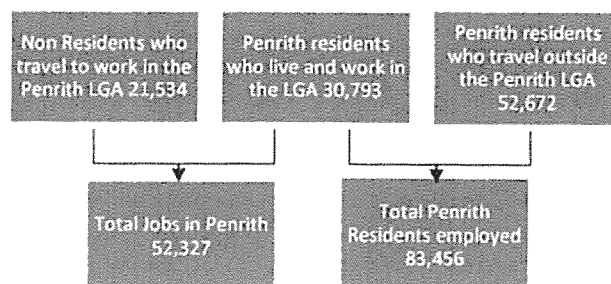
Constraints

- Gaps in road and rail transport connectivity to regional centres, employment lands and new urban areas.
- Fragmented centre with low after-hours activity and poor access to parking
- Lower level of executive housing than competing areas
- Lower level of business services locally than competing areas.

Key Employment Challenges

- More than 63% of Penrith's resident workers leave the City each day for work. Additionally, less than 60% of local businesses source their workforce from Penrith residents. Combined, this **represents low local employment self sufficiency**. Penrith City also provides some 21,500 jobs to non-residents.
- While the number of residents with **post-school qualification** has increased significantly in Penrith over the last decade, the level is still **well below the Sydney average** with less than the rate of residents holding Bachelor degrees or higher. Blue-collar workers dominate the occupational mix in Penrith, with a lower share of 'knowledge' workers.
- Transport bottlenecks remain in Penrith that need to be addressed if development is to occur to meet growth targets and to keep the city competitive. **Infrastructure planning and delivery**, particularly in new Employment areas has **stalled local industrial employment growth** (eg. the Link Road connecting Erskine Business Park with the Westlink M7)
- While Penrith is a Regional City, it has had only **moderate jobs growth** over the last decade. Penrith is yet reach a critical mass of commercial office development in its CBD's for employment growth to match local needs.
- Penrith's economic landscape is dominated by small businesses with **57% listed as non-employing**, and 45% turning over less than \$100,000 per year.
- While Penrith's labour market performs in line with Western Sydney trends, areas within Penrith City are characterised by significant social disadvantage, including high rates of unemployment. Suburbs such as North St Marys, St Marys and Oxley Park recorded **unemployment rates between 9.9% and 11.1% in 2006**. Similarly, these suburbs had some of the **highest SEIFA indexes of social disadvantage** in Western Sydney.

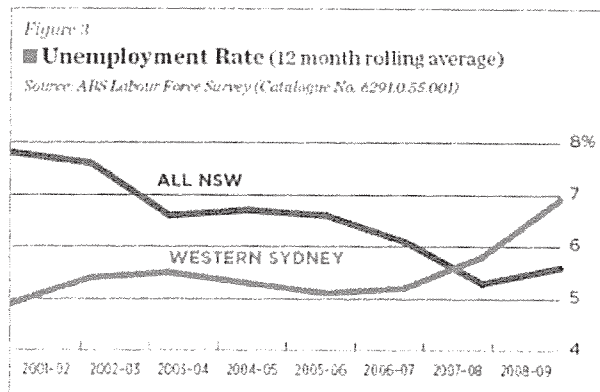
Employment Location of Penrith Workers



ABS Census for 2006

- The table below shows the significant increase in the region's unemployment rates.

Unemployment rise in Western Sydney



- Furthermore, the Metropolitan Strategy and the North West and South West Sub-Regional Strategies' targets will continue to undersupply sufficient jobs relative to the population growth (640 000 dwellings vs. 500 000 jobs). Clearly, more employment land is needed now, and in the future, combined with fully functional CBDs that cater for a wide range of business and Government services.

Penrith Employment and Consultative Forum:

13 January 2010, Penrith City Council

In preparing this submission, Penrith Business Alliance in partnership with Penrith City Council and the Strategic Economics Group held the *Penrith Employment and Consultative Forum* on the 13th of January 2010.

Representatives from the following sectors took part in this consultation.

Penrith City Council	Penrith Business Alliance	Local Industry
Alan Stoneham, <i>General Manager</i>	Paul Brennan, <i>Chairman</i>	Jill Woods, <i>Penrith Valley Chamber of Commerce</i>
Paul Battersby, <i>Senior Environmental Planner</i>	Greg Chapman, <i>Director</i>	Gladys Reed, <i>Penrith City Centre Association</i>
Mark Broderick, <i>Coordinator Advocacy & Sustainability</i>	Judith Field, <i>Director</i>	Greg Moran, <i>J. Wyndham Prince</i>
Ruth Goldsmith, <i>Group Manager, Leadership</i>	Dennis Rice, <i>Director</i>	John Mullane, <i>Mullane Consulting</i>
Paul Grimson, <i>Sustainability & Planning Manager</i>	Bijai Kumar, <i>CEO</i>	Stacey Fishwick, <i>ING Real Estate</i>
Cr Jim Aitken OAM, <i>Penrith City Councillor</i>	Ben Artup, <i>Manager Industry & Investment</i>	Jamie Stewart, <i>Fitzpatrick Property Group</i>
	Graham Larcombe, <i>Facilitator, Strategic Economics Group</i>	Narelle Wheatland, <i>Local Employment Coordinator – DEEWR</i>

The forum successfully engaged the above participants in formulating the following requests to the NSW Government in efforts to improve investment and jobs in Penrith City.

NEWS

Submission for solutions



Local Business Groupings & Penrith City Council

Submission for solutions

It looks like a high-level political meeting discussing a major threat to the world, but it's not. It's a meeting that discusses the future of the city.

However, the future was certainly on the minds of the business leaders of Penrith who gathered together at Wednesday to discuss the future of the city.

Late last year, the local business groupings at Penrith, the Penrith Business Alliance (PBA) and other local business leaders met to discuss the future of the city.

The Council and the PBA met together at the end of last year to discuss what the submission should be about, and CEO of the PBA, Bijai Kumar.

"We discussed the key sectors that will drive employment in the future and what made Penrith as a regional city different to other cities."

Mr Kumar said the future of the city was not just about the future of the city, but also about the future of the region.

"We have such a strong base of talent and innovation, and we also have the support and the resources, we are confident that we will be able to meet the challenges of the future."

He said the future of the city was not just about the future of the city, but also about the future of the region.

"We also believe we should focus on the ability to provide for the future and the future of the city."

Mr Kumar said based upon all the feedback from the business groupings, the PBA and the Council, the submission will be put forward by January 13.

The PBA and Council are currently working together to develop a plan for employment creation in the future.

"We're not sitting here to talk," he said. "We're sitting here to develop a plan for the future of the city."

The PBA and Council are currently working together to develop a plan for employment creation in the future.

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ATTENTION WEEK-END READERS

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1. Achieving Penrith's Regional City function: 11,000 new jobs in the Penrith CBD by 2031



Background

As a Regional City Penrith has an economic catchment that will progressively build up to one million people covering the Blue Mountains, Hawkesbury, Central West NSW and the proposed growth centres and provide exciting new opportunities for existing and new businesses. We have both affordable and executive housing that will meet the needs of the most discerning. While our industry is diverse and our labour force highly skilled we need a range of business services, high quality retail outlets, recreation and cultural activities, high quality events and government services to elevate Penrith as a Regional City and provide greater local job choices for our residents.

Key issue

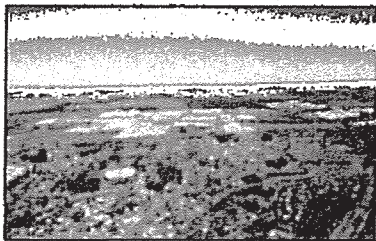
Without NSW Government support Penrith will not achieve the functions required of a Regional City in providing regional employment opportunities in Western Sydney.

Key actions:

NSW Government commit to a proactive approach in developing Penrith's role as a Regional City, specifically:

- Development and implementation of a NSW Government policy that centralises NSW Government Departments/ offices in the Penrith CBD with a focus on the Health and Wellbeing sector including the environment.
- NSW Government to fund the establishment and operation of a free shuttle bus service around the Penrith CBD to improve accessibility to and within the CBD.
- Development of civic space and amenities vital to attracting further retail and commercial investment in Penrith CBD and St Marys Town Centre.

Job Targets



2. Delivering job targets across Western Sydney: 250,000 new jobs across Western Sydney by 2031

Background

Population in Western Sydney will grow to 3 million in the next 25 years making it the third largest metropolitan area in Australia. Employment in the region will need to grow to match this population growth, with 250,000 new jobs needed by 2031. Over the last 5 years 20% of all jobs created in Sydney were created in the North West of Sydney with Penrith as its Regional City- this trend is expected to increase over the next 10 years. The Regional Cities of Parramatta, Penrith and Liverpool - will be the focus of this growth supported by a hierarchy of major and specialised centres and employment lands that are well connected by transport. Much of the proposed employment that will support Regional Cities will occur through delivery of employment lands for manufacturing, industrial and warehousing enterprises in Western Sydney.

Key issue:

Without the timely delivery of serviced and accessible employment land the required jobs growth is unlikely to be achieved across Western Sydney.

Key action:

Timely delivery of serviced and accessible employment lands through development of planning & infrastructure strategies to provide market certainty.

- NSW Government prepare a Structure Plan for Western Sydney to detail the physical and social infrastructure required to meet the Governments urban growth objectives.
- NSW Government prepare an Infrastructure Delivery and Funding Strategy for the Western Sydney Employment Area to ensure the timely and co-ordinated delivery of development within the estate and maintain the efficient and effective operation of both the internal and surrounding external road networks.
- That NSW Government drives the planning and delivery of the Lakes project as an integral contributor to jobs growth within the region.
- Reactivation of the Western Sydney Employment Lands Investigation Area (WSELIA) task force in order to bring forward the orderly planning and release of WSELIA to market.
- Establish an express bus service linking Western Sydney Employment Area with the Main Western Rail line in line with industry requirements.
- Reactivation by the NSW Department of Planning of the Employment Lands Development Program (ELDP) to monitor the supply and delivery of employment lands in Western Sydney.



Business Growth

3. Supporting Penrith's Economic Corridors, Clusters & Small Business Sector: *20,000 new specialised jobs clustered around Penrith's Economic Corridor and existing health assets*

Background

A significant proportion of Penrith's employment targets will be achieved through the growth and development of small and medium enterprises. Penrith has chosen to focus the development of its small business sector around clusters and corridors of specialised economic activity. Over the last 10 years the largest number of jobs created in Penrith occurred in the health industry, followed by transport and Government administration. To leverage this growth, Penrith is developing a range of economic strategies to position Penrith as a centre of excellence for Health and Wellbeing.

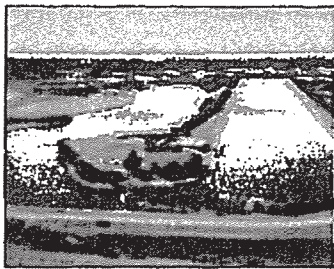
Key issue:

To develop a nationally recognised Health and Wellbeing sector in Penrith requires support from a range of NSW Government agencies.

Key action:

Formal support and recognition of Penrith's role and position as an Emerging Centre of Excellence for the Health and Wellness industry

- Development of a NSW Government industry investment program for the Health & Wellbeing industry in Penrith. This to include an initial \$200,000 for a study that identifies the feasibility of a 'Western Sydney Health & Wellbeing Fund' to attract and grow high value small to medium enterprises (SMEs) in this sector to get started & grow.
- NSW Government support through the NSW Department of Industry & Investment and collaboration with organisations such as the Centre for Health Innovation & Partnership (CHIP) (based at Westmead Hospital) to work with Penrith's emerging Health and Wellness industry by helping to establish networks and program delivery and identify investment prospects in this high growth sector.
- Financial assistance of \$500,000 to establish a Business Improvement District (BID) program for the Dunheved Business Park as a pilot for the rejuvenation of other industrial estates in Penrith and the region.
- Financial assistance of \$200,000 to produce a "Family Food Feud" show – a Penrith reality TV show in partnership with TAFE, UWS and TVS community TV.
- Financial assistance of \$100,000 to explore the feasibility of a Sydney Institute for Information Technology & Health Solutions in partnership with Sydney University & Nepean Hospital.



Wellbeing

4. Living and community wellbeing in Penrith: *Improving the attractiveness of Penrith Regional City as a place for high skilled workers to live*

Background

More than 60% of Penrith residents employed in managerial and professional occupations leave the City each day for work, many travelling as far as Parramatta and Sydney. In preparation of this submission, community and business leaders overwhelmingly identified population diversity, improved housing choice, along with greater cultural and recreational assets as an important way to attract and retain more skilled residents to Penrith. If Penrith is to effectively play its Regional City role, the attractiveness of Penrith as a place to live needs to become increasingly appealing for highly skilled workers.

Key issue:

To function as a Regional City Status Penrith needs to attract and retain highly skilled professionals to the region. This requires a range of housing, recreational and cultural facilities that meet the needs of highly skilled workers and their families.

Key actions:

Support in attracting new cultural and sporting activity events to Penrith, and facilitation of the progression of the Penrith Lakes as a key driver for employment, housing, recreation and tourism.

- That NSW Government nominates a senior facilitator, with the appropriate authority, to drive the planning and delivery of the Lakes project to underpin Penrith's transformation to a Regional City and create Sydney's new "international address" for employment, housing and recreation.
- Active support through the NSW Major Events Board and Tourism NSW to identify and attract 2 new major sporting & cultural events to Penrith over the next 2-3 years, including financial assistance of \$250,000 to attract new events.
- Funding of a feasibility study into the development of a new conference & events facility in Penrith in order to attract new events and exhibitions to Western Sydney (\$150,000).
- Support through Industry and Investment NSW to develop and promote a Transport and Logistics Services Centre in Penrith CBD to service the fast growing transport and logistics industry in the region (Erskine Business Park and along the M7).

Michael Woodland - Employment Lands Team Comments - Proposed rezoning of 1-4 Old Bathurst Road, Emu Plains

From: Roy Laria
To: Michael Woodland
Date: 27/08/2012 5:01 PM
Subject: Employment Lands Team Comments - Proposed rezoning of 1-4 Old Bathurst Road, Emu Plains
CC: Deborah Kempe
Attachments: 20120704 WSEA Structure Plan Aerial & LGAs June 2012.pdf

Hi Michael,

as requested, here are some comments from the Employment Lands team on the JRPP's report on the proposed rezoning of 1-4 Old Bathurst Road, Emu Plains. Please note our comments relate to employment lands data references in the JRPP report and not other issues such as flooding.

The JRPP report refers to 2010 ELDP data (page 9), which was the latest available at the time of publishing their report (22 March 2012). However, since then the ELDP 2011 Update Report has been released (1 June 2012) which provides more recent data.

Based on the 2011 data, there is 1,618 ha of zoned employment lands in the Penrith LGA, 839 ha (52%) of which is developed and 779 ha (48%) is undeveloped. Further, based on the 2011 data, there is 10,702 ha of zoned employment lands in Western Sydney, 7,538 ha (70%) of which is developed and 3,164 ha (30%) is undeveloped (N.B. 'Western Sydney' includes the North West, South West and West Central Subregions). Therefore, 25% of undeveloped zoned land in Western Sydney is located in Penrith LGA.

A key finding of the 2011 ELDP report is that there was adequate strategy identified land (7,880 ha) and undeveloped zoned land (not serviced) (3,651 ha) in the Sydney region to meet supply standard benchmarks (15 years and 8-10 years respectively). However, the amount of undeveloped zoned land which is also serviced (892 ha) falls short of the supply standard benchmark (5-7 years) assuming a high-take up rate of 300 ha pa across the Sydney Region was to occur. This highlights the need to service existing zoned land, or provide more land which can be readily serviced (subject to detailed planning and demonstrated strategic need).

The JRPP report, based on Council information (as specifically requested by the JRPP), uses Penrith LGA take-up and supply data (as supplied by Council) to address the issue of demand and supply of industrial lands, rather than ELDP Sydney-wide data. It is not clear where the 33 ha pa figure for take-up in the LGA came from and whether it is based on trend or a single point in time. Given that property markets do not relate to LGA boundaries, it may be better to consider this issue from a regional perspective, as is done in the ELDP.

In relation to the subject land at Emu Plains, if this was to be readily serviced, due to proximity to existing industrial development to the south, it could contribute to the provision of undeveloped and serviced zoned land within the subregion.

Other comments:

- The 'Emu Heights' employment lands precinct was rezoned from industrial to RE1, resulting in the removal of 36.1 ha from industrial lands stocks within the Penrith LGA. The former 'Emu Heights' precinct adjoined the subject land to the north and further information on the basis of the rezoning, and implications for the subject land to the south could be useful.
- The proposed subdivision structure and minimum lot sizes of 0.2 ha to encourage small to medium sized industrial lots would support modern industrial units which could benefit the local economy and be distinct from large format warehousing development currently occurring in the Western Sydney Employment Area. The assumed 1,300 new jobs (as referred to in the JRPP report) would equate to

a job density of 59 jobs per ha if the subject area was fully developed. This would be a moderate density (average of 43 across Sydney's industrial lands) and contribute to job targets for the subregion.

- The Department is preparing a structure plan for the broader Western Sydney Employment Area (WSEA), which covers an area of over 10,000 ha to the south-west of (and including) the existing WSEA zoned area (see attached map). A significant portion of this is located within the Penrith LGA. A potential outcome of the structure plan process is likely to be recommendations for new employment land zonings, which will contribute significantly to the supply of strategy identified land. Further information on the structure plan should be sought from Bruce Colman in the Department's Land Release Team on ph. 9860 1529.

If you require any additional information regarding the above, please contact Deborah Kempe on ext 6324 or me on ext 6354.

Regards,

Roy

Roy Laria

Manager Employment Lands

NSW Department of Planning & Infrastructure | GPO Box 39 | Sydney NSW 2001

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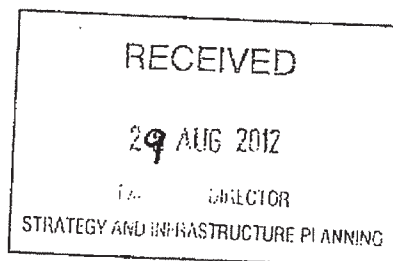


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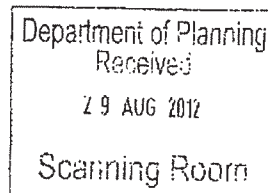
Our ref: L053

Your ref:

29 August 2012



Mr S Haddad
Director-General
Department of Planning & Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000



Dear Sir

Re: 1-4 Old Bathurst Road Emu Plains

We act for Bernard and Linna Le Boursicot who are the owners of this property. We are instructed that by letter dated 25 July 2012, Alan Stoneham, as general manager of Penrith Council, wrote to you confirming your intention to determine our clients' application for their property as if it were a planning proposal submitted by the Council as part of the gateway process set in train to finalise Stage 2 of Penrith Local Environmental Plan 2010.

To assist you and given the protracted history and inherent complexity of the matter, our clients asked us to make a formal submission to you to underscore the merits of their application and to permit your fair evaluation of it. This we do in the remainder of the letter.

1 Background

- 1.1 Our clients first made application to Penrith Council to rezone their land from rural to industrial in February 2006. In the intervening years, their application has taken a sinuous and difficult course. In its present form, it is an application to rezone 22.1 hectares of the land to IN2 light industrial as part of Stage 2 Penrith Local Environmental Plan 2010. The remaining front portion of the land comprising approximately 1.1 hectares was rezoned to permit this use in 2010 on gazettal of Stage 1 Penrith Local Environmental Plan 2010.

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- 1.2 On or about 30 July 2011, the Minister for Planning & Infrastructure wrote to the Sydney West Joint Regional Planning Panel ("Panel") pursuant to s 23G of the Environmental Planning and Assessment Act, 1979 ("EP&A Act") seeking advice on our clients' application.
- 1.3 On 23 March 2012, the Panel responded recommending against a rezoning of the remainder of our clients' land.
- 1.4 The Panel's recommendation was based on:
 - (a) the apprehended flood prone nature of the land; and
 - (b) the perceived absence of a present need for industrial zoned land in the Penrith local government area.
- 1.5 We address the Panel's understanding and treatment of:
 - (a) flood issues in sections 2 and 3 of this letter; and
 - (b) employment land issues in section 4 of this letter.
- 2 **Flood considerations**
 - 2.1 From the outset, we observe that even the Panel conceded at 9.4.3 of its report that it had no grounds to dispute our clients' principal contention that:
 - (a) it would be possible to construct a "flood free" building platform on the land; and
 - (b) effective means of evacuation during major flood events could be provided.
 - 2.2 This is an important concession as it recognises that our clients' hydrologic and hydraulic engineering experts, Worley Parsons, have undertaken extensive investigations and modelling which have been peer reviewed and corroborated by Cardno. Both firms are acknowledged experts in flood assessment.
 - 2.3 Despite these concessions, the Panel discernibly found against our clients' proposal for rezoning on flood related grounds because:
 - (a) it anticipated "substantial" cut and fill and scour protection works to be necessary which would require "regular and possibly expensive

maintenance" in circumstances where these "expenses" might have to be met by a public authority;

- (b) a significant part of proposed cut and fill and scour protection works would be made redundant if development was permitted on the land in accordance with the "cumulative fill scenario" postulated by our clients' experts;
- (c) development of the land in accordance with the "on-site fill only scenario", once again as contemplated by our clients' experts, "would not be consistent with the objects of the [EP&A Act] to encourage promotion and co-ordination of the orderly and economic use and development of [the] land";
- (d) the rezoning proposal was inconsistent with certain state and local flood prone land management policies; specifically clause 4.3 of the s 117 Ministerial Direction dealing with flood prone land ("s 117 direction") and Penrith Council's Development Control Plan, 2010 ("2010 DCP") especially section C3.5 dealing with rezoning of such land.

2.4 In fairness to our clients, the Director-General, when exercising his powers, should revisit each of these grounds.

Protective works

2.5 The Panel purported to summarise flood mitigation works proposed by our client in 8.3 of the report. The summary was essentially correct but erred in two fundamental respects:

- (a) as to the first bullet point, while the fill platform is proposed to be formed to a minimum level of 0.25 m above the 1:100 average recurrence interval ("ARI") flood event, the all critical building floor level is to be a minimum of 0.5 m above this flood level;
- (b) as to the third bullet point, the proposed vegetated eastern channel will only connect Lapstone Creek to the Nepean River in the case of exceptional and severe flooding but not otherwise.

2.6 Having regard to the area of land sought to be rezoned and the scale and purpose of use on rezoning, attenuating works from an engineering perspective are not out of the ordinary and fall well within the bounds of what would ordinarily be required to floodproof land in the nature of our client's land. Once completed, these works would not require ongoing maintenance and upkeep of any significance and there is no objective or factual basis at all for the

Panel to have come to a contrary conclusion and then to opine that the burden of so doing would or could fall on the public purse when the Panel knew full well that ongoing responsibility for maintenance and upkeep can readily be regulated by conditions of development consent and then by positive and restrictive covenants registered with the Department of Lands against title to the land.

- 2.7 Attenuating works proposed on behalf of our clients are effective, have engineering merit and are shown by our clients' hydraulic modelling to be capable of withstanding 1:100 and 1:200 ARI flood events. In the case of Lapstone Creek which traverses the southern end of the land, the conversion from concrete canal to vegetated riparian boundaries will enable it to cope with a 1:500 ARI flood event.

Cumulative fill scenario

- 2.8 With respect to the Panel, its conclusion in relation to this scenario discloses a fundamental lack of understanding of the purpose of hydrological modelling undertaken with this scenario in mind.
- 2.9 In the assessment of flood impacts in the context of protective measures for a particular site, it is important to assess the consequential effect of those measures on adjoining land to ensure that future use and development of that land will not be prejudiced by proposed works on and use of the site.
- 2.10 Our clients' land is located on the western edge of the Penrith flood plain. Our clients' experts examined the possibility of all remaining land in that flood plain similarly one day being rezoned for light industrial use.
- 2.11 They modelled flood events and determined flood protection measures required to permit the flood plain as a whole to be used for the rezoned purpose.
- 2.12 They included as mitigating measures significant cut and fill and scour protection works. They concluded in particular that flood waters could effectively be contained by the construction of a substantial channel to the east of our clients' land as depicted in figure 11 of the Worley Parsons report dated 4 January 2010. They further concluded that works currently proposed for our clients' land as part of their application would not impede future use and development of adjoining land.
- 2.13 True it is that if one day the cumulative fill scenario became a reality, the vegetated channel proposed for the eastern boundary of the site would become "redundant" but that outcome could not possibly detract from the merits of our

clients' application when all the analysis with respect to the "cumulative fill scenario" sought to do was to demonstrate that adjoining properties would not be disadvantaged by our clients' proposal for their land.

On-site fill only scenario

- 2.14 The Panel's conclusion that this scenario is inconsistent with the objects of the EP&A Act by not encouraging promotion and co-ordination of the orderly and economic use of land is self evidently vague, unsubstantiated and, with respect to the Panel, inexplicable if not egregious for its absence of supporting detail or argument. A non sequitur by any other name. It is for this reason that the Director-General should not be influenced by or place weight on this expression of opinion. It simply flies in the face of rigorous analysis carried out by acknowledged experts to demonstrate the availability of perfectly viable and acceptable means of floodproofing our clients' land sufficient to permit a rezoning without disadvantaging or prejudicing adjoining land either as presently used and configured or, at some hypothetical time in the future, when rezoned to industrial use and appropriately floodproofed itself.

Erosion and Ongoing Maintenance Design Features

- 2.15 It should be added that when our clients were considering effective floodproofing of the land, they were particularly mindful of the need to minimise the scouring and erosion of watercourse or drainage line banks and beds caused by anticipated flood flows. Concomitantly, they were concerned to ensure that on an ongoing basis, there would be little need for maintenance and upkeep of watercourses and drainage lines.
- 2.16 To achieve these objectives, our clients adopted a design which ensured that:
- (a) channels traversing the land as well as the northern segment contiguous to the Nepean River would become riparian zones vegetated with a scouring and erosion resistant blend of grass, shrubbery and trees able to withstand flood velocities much higher than the postulated 1:100 ARI flood event of one metre per second for the eastern channel and Lapstone Creek and the postulated 1:100 ARI flood event of two metres per second for the northern extremity of the land;
 - (b) the slope and width of channels would remain stable during episodic flooding and would support the scouring and erosion resistant qualities of chosen ground cover – specifically, channel slopes were calculated on the basis of 1V:4H and 1V:5H gradients and channels were deliberately widened to reduce the volumetric flow rate of flood waters;

- (c) there would, therefore, be no need for regular or expensive maintenance of the channels because of the elimination of meaningful scouring and erosion and the absence of a need to trim shrubs and trees or to cut grass given their natural riparian state.

2.17 These design features are articulated in greater detail in the Worsley Parsons reports submitted both to Council and the Panel. With respect to the Panel, it appears that it either did not take these considerations into account or, if it did, it did not accord sufficient weight or importance to them. As for the Council, the steadfast reluctance and even refusal of superintending Council planning officers to accept the completeness, reliability and integrity of Worley Parsons' hydrological assessments and modelling despite peer review by Cardno is quizzical given that Worley Parsons and Cardno and their respective predecessors have for years been relied on by the Council as principal engineering consultants to model flood affectation in the Penrith local government area.

3 Planning Instruments and Ministerial Directions

- 3.1 The Panel applies the provisions of the s 117 direction and the 2010 DCP prohibiting rezoning of floodprone land for industrial use too strictly and in a manner discounting, if not disregarding altogether, the considerable volume of material marshalled by our clients to underpin their application.
- 3.2 To begin with, we are surprised that the Panel in 9.4.2 of its report refers to the 2010 DCP when clause 3.1 of that instrument by implication excludes the rural zoned part of the land from its coverage. The operative instrument still applying to this portion of the land is Penrith Council's Development Control Plan 2006 ("2006 DCP").
- 3.3 Admittedly, the prohibitory qualifications in clause 3.8 of part B of section 2.10 of the 2006 DCP are similar to the prohibitory qualifications cited by the Panel in clause C3.5 of the 2010 DCP – more specifically, subclause 16 of part C of clause 3.5 of section 3 of the 2010 DCP. However, what the Panel failed to acknowledge was that the qualifications are not cast in concrete unable to be displaced or even diluted. As clause 1 of part A of section 2.10 of the 2006 DCP explicitly recognises, the overarching principle guiding the application of the planning instrument to flood prone land derives from the New South Wales Flood Prone Land Policy which has at its core two abiding principles:
 - (a) firstly, that flood prone land is a valuable resource that should not to be sterilised by unnecessary prohibition on development; and

- (b) secondly, the recognition that if all applications to rezone flood prone land are assessed in accordance with rigid and prescriptive criteria, some worthy applications will unreasonably be disallowed or restricted.
- 3.4 The 2006 DCP calls for a merit based approach to determine whether a proposal to rezone flood prone land:
 - (a) entails sufficient and effective floodproofing and protective works or measures to reduce the impact of flooding and to limit the potential risk to life and property from flooding;
 - (b) will or will not cause other land in the locality to suffer greater flood impact or to be disadvantaged in another way because of flood mitigation works; and
 - (c) will or will not prevent or impede other land in the locality, with suitable flood mitigation works, from similarly being rezoned in the future.
- 3.5 These criteria derive from the aims and the objectives stated in clause 2 of part A of section 2.10 of the 2006 DCP which in turn draw on criteria informing the objectives of the New South Wales Flood Prone Land Policy – see clause 1.1 of the Floodplain Development Manual 2005 (“2005 Manual”).
- 3.6 In 9.4.1 of its report, the Panel reproduces the five limitations in the s 117 direction bearing against rezoning of flood prone land. The Panel makes sparse comment about these limitations but overall seizes on them to justify a negative recommendation. Specifically with reference to these limitations:
 - (a) while the Panel concedes that our clients’ flood analyses “indicate development is consistent with relevant flood policies”, it goes on to say that Penrith Council has not received a formal planning proposal and, therefore, there has been no assessment either by Council officers or relevant state agencies;
 - (b) the Panel observes that the Council has not established a flood planning level for the site in accordance with the 2005 Manual because it has not undertaken a flood risk management plan (“FRMP”) for the area.
- 3.7 These are spurious grounds for applying the qualifying limitations in the s 117 direction as outright prohibitions.
- 3.8 Since early 2006, the Council has required our clients to commission the preparation of inordinately extensive and expensive flood studies for the site and the locality.

- 3.9 Absent the Council being prepared to prepare a FRMP for the area, our client was required to engage Worley Parsons to model site specific and cumulative flood impacts. Before it embarked on the task, Worley Parsons reached agreement with the Council on principles to be adopted for the various assessments – see Worley Parsons letter dated 9 February 2009 and Council's response dated 31 March 2009.
- 3.10 Worley Parsons provided its first report to Council on 4 January 2010. It supported the rezoning of the land for industrial use. The report was favourably peer reviewed by Cardno in a report dated 22 January 2010.
- 3.11 On 11 May 2010, the Council sent a considered and carefully worded letter to our clients' town planner advising that while it had considered the January Worley Parsons' report, more information and details were sought. The letter stated that in undertaking its review, the Council had consulted with the Department of Environment, Climate Change and Water. The letter went on to say that Council was preparing a planning proposal for stage 2 of the 2010 LEP but that our clients' land would not be earmarked with a specific zoning pending further review and consideration of their application.
- 3.12 On 2 July 2010, Worley Parsons provided a second report responding to Council's earlier call for clarification and further information and details. It contained the results of supplementary modelling and provided for a modified configuration of flood protective works for the site. It again concluded that the site was suitable for rezoning for industrial use.
- 3.13 Worley Parsons second report was supported on peer review by Cardno in its report dated 5 July 2010. The report concluded
- "The latest amended configuration of proposed works has further reduced the impacts of the proposed development of part of the site on flood behaviour in a 1% AEP and 0.5% AEP events and that the information provided by Worley Parsons, 2010 addresses Council's latest issues of concern."*
- 3.14 All the while, our clients' flood consultants were liaising and meeting with Council officers on a regular basis to review the flood analyses and to ensure that all of Council's concerns were properly addressed.
- 3.15 It was, therefore, simply incorrect for the Panel to conclude that the Council had not had an opportunity to assess the flood studies and their implications. Not only did it have ample opportunity to do so but in fact it did so. Rhetorically, one may fairly ask what more our clients could have done to satisfy and

properly address Council's concerns from a flood impact standpoint. They engaged the two leading hydrological experts in the field both having good working knowledge of hydrological conditions in the Penrith locality. The reports were subject to ostensibly rigorous assessment by Council and there was no significant or substantive call for further information or documents once Worley Parsons and Cardno presented their second round of reports in July 2010.

- 3.16 It was also a red herring for the Panel to say that no formal planning proposal had been received by the Council. As mentioned in paragraph 3.11 of this letter, even the Council conceded that in the preparation of a new LEP, it was for it to prepare the planning proposal for the site which it had not done.
- 3.17 Nor was it fair for the Panel to say that our clients' application was yet to be assessed by other government agencies. The Panel well knew as a result of submissions made directly to it that our clients approached a number of government agencies to liaise with them about the proposed rezoning. For example, in 2009, the Office of Hawkesbury Nepean gave in principle support to our clients' proposal after conducting a site inspection with Council officers in attendance. That support was subject to agreement being reached between our clients' consulting engineers and Council on the basis on which hydrological assessment and modelling of the site would be carried out on behalf of our clients. Agreement on this score was reached at the end of March 2009. Furthermore, The Office of Environment and Heritage and the State Emergency Service both declined invitations to review and comment on the proposal because, as they advised our clients, they were responsible for general government policy and did not deal with individual developments. They advised that it was the Council's responsibility to deal with specific sites.
- 3.18 What our clients found most disconcerting was that in the days preceding their scheduled presentation to the Panel, they became aware that there was a considerable course of correspondence between the Council and various government agencies concerning flood issues which would or would likely affect the land if it were rezoned. Our clients were belatedly provided with copies of the correspondence. Our clients then asked Cardno to review the correspondence. By report dated 4 November 2011, Cardno concluded that all flood and flood related issues raised by government agencies in their correspondence with Council about the land had been properly and effectively addressed by flood assessment and modelling carried out by Worley Parsons. Relevantly, the Panel had the benefit of this report at the time it was asked to make its recommendation to the Minister. However, no mention is made of it in the main body of its report.

- 3.19 The Panel fastened onto the absence of a flood planning level for the site established by the Council in accordance with the 2005 Manual. Yet this is not at all fatal. Given that the Council was not prepared to undertake a FRMP for the locality in accordance with the 2005 Manual, our clients' consulting engineers reached agreement with the Council in March 2009 on the parameters to apply to their prospective assessment of flood impacts both on-site and cumulative. These were the very same parameters which would have informed a FRMP: As such, they incorporated a flood planning level for the site not inconsistent with the 2005 Manual and that of itself was sufficient to neutralise the fifth limitation in the s 117 direction so markedly relied on by the Panel for its decision.
- 3.20 This then leads us to the two express exceptions in the s 117 direction. They are found in subclause 9 of clause 4.3 and permit rezoning of flood prone land from rural to industrial if one of the following apply:
- (a) if the rezoning proposal accords with a FRMP prepared in accordance with the principles and guidelines of the 2005 Manual; or
 - (b) if those parts of the zoning proposal which are inconsistent with the s 117 direction are of minor significance.
- 3.21 Both exceptions are reproduced in the Panel's report on page 14 but neither is considered by the Panel to have been satisfied.
- 3.22 Turning to the first exception, while our clients accept that Council has not prepared a FRMP for the locality, the rigour, thoroughness and professionalism of the various hydrological assessments presented on our clients' behalf, prepared as they were in accordance with agreed principles, should be accepted as being analogous to a FRMP prepared in accordance with principles and guidelines of the 2005 Manual. This is particularly so bearing in mind the policy objectives of the New South Wales Flood Prone Land Policy as expounded in paragraph 3.3 of this letter and the merits based approach which planning instruments call for.
- 3.23 This then segues into the second exception. The Panel refuses to apply it questioning whether flood mitigation measures proposed by our clients' hydrological engineers reduce flood impacts to minor significance. The Panel harks back to the absence of formal Council or state agency assessments and points to "some material differences of opinion" between our clients' consultants and Council/state officers. Relevantly, those differences are largely unspecified. When set against the weight and calibre of our clients' experts' reports, the Panel's reasoning is unconvincing. If the Director-General is

satisfied that the land on rezoning can be used for industrial purposes with minimal flood impacts both on-site and on adjoining properties, adverse flooding potential is reduced to minor significance qualifying the proposal for exemption from the general prohibition against rezoning which the s 117 direction contains.

- 3.24 In any case, while it was appropriate for the s 117 direction to be canvassed before the Panel as part of its deliberations, the instrument does not impinge on the Director-General's role as decision maker in the gateway process. This is because the s 117 direction is issued by the Director-General himself to councils constraining their conduct in the preparation of planning proposals. Rather, the Director-General must be guided by the objectives of the New South Wales Flood Prone Land Policy and the principles and guidelines of the 2005 Manual which, as we have already submitted, exhort the Director-General to take a merits based approach with clear emphasis on not unnecessarily sterilising valuable land just because it is flood prone if the risk of loss or damage on that account can properly and reasonably be attenuated.

4 Employment Land Considerations

- 4.1 The Panel deliberated on the question of whether there was a present need in the Penrith local government area to rezone the land to permit industrial use. In so doing, it considered relevant parts of:
- (a) draft North West Sub Regional Strategy;
 - (b) 2010 Employment Lands Development Program report;
 - (c) Penrith Council's 2010 review of available industrial land in the local government area;
 - (d) Penrith Employment Lands Strategy 2007; and
 - (e) Penrith Planning Strategy 2008.
- 4.2 The Panel concluded at 9.3.3 of its report that:
- (a) there was uncertainty about whether the Council intended the land to be a future employment zone;
 - (b) there was sufficient vacant zoned employment land in the Penrith local government area to accommodate likely demand for the next 20 years

permitting the Council in turn to satisfy obligations under current state and regional planning requirements; and

- (c) existing vacant employment lands did not suffer from comparable flooding or "other environmental constraints" as affected the land.

- 4.3 These conclusions carried through to 10 of the report where the Panel saw "no reason to give priority to the rezoning of the subject site in the near term".
- 4.4 These findings represented a startling turn for our clients because since 2007, the position, as understood by them and as articulated by various Council resolutions, reports and communications, was that a rezoning of the land to industrial use was compatible with plans and strategies adopted by the Council for employment creation in its local government area.
- 4.5 The operative issue, as they were given to understand, was whether the flood prone nature of their land excluded it from conversion to industrial land. That is why years of work went into preparation of the various hydrological assessments that were concluded, peer reviewed and presented to the Council in 2010.
- 4.6 To bring home to the Director-General the extent to which the Panel's employment land analysis came out of "left field" so to speak, it will repay recounting briefly a history of our clients' efforts with respect to the land:

Date	Event
27 February 2006	Our clients lodge development application with the Council for a spot rezoning of the land to 4(a) general industrial under Penrith Industrial Lands LEP 1996. The application is supported by: (a) economic analysis – Hill PDA; (b) flood analysis – Worley Parsons; (c) flora and fauna assessment – AES Environmental; (d) traffic analysis – Traffic Solutions; (e) contamination assessment – New Environment; (f) heritage assessment – Comber Consultants.

26 March 2007	Council passes the following resolution: <i>"Council adopt the Employment Planning Strategy, as attached to this report, with the site at Old Bathurst Road/Russell Street to move forward for rezoning in Stage 1 of the Local Plan"</i>
23 April 2007	Council pass a resolution confirming the resolution passed on 26 March 2007 but varying its wording so that it read: <i>"Council adopt the Employment Planning Strategy, as attached to this report, with the site at Old Bathurst Road/Russell Street to be included in the Draft LEP as General Industrial, with all other issues to be assessed as part of a future Development Application"</i>
28 May 2007	On the strength of the two Council resolutions and on receipt of assurances from councillors that the rezoning of the land would be dealt with under the new LEP, our clients withdrew their spot rezoning application.
8 October 2007	Draft LEP tabled at a meeting of the Policy Review Committee of the Council. At the same time, Council's town planners provided a report to the Committee about the draft LEP. In so far as it dealt with our clients' land, the report focused on its susceptibility to flooding, referred to the s 117 direction in relation to flood prone land and recommended that only that part of the land above the current flood planning level be rezoned to IN1 general industrial with the remainder of the land being zoned E4 environmental living. The draft LEP reflected this recommendation.
15 October 2007	Council passes a resolution authorising the draft LEP to be submitted to the Minister for Planning pursuant to s 64 of the Environmental Planning and Assessment Act, 1979.

14 October 2008	The Minister releases the draft LEP to the Council pursuant to s 65 of the Environmental Planning and Assessment Act, 1979 and authorises the draft LEP to be placed on exhibition for public comment.
28 October 2008	Stage 1 draft Penrith LEP is placed on exhibition.
21 October 2009	The Policy Review Committee of the Council resolves that: <i>"(a) the land to the south of the flood planning level, adjacent to Old Bathurst Road, be retained in draft Penrith Local Environmental Plan 2008, and zoned IN2 Light Industrial;</i> <i>(b) the land to the north of the flood planning level be deferred to LEP 2010 Stage 2; and</i> <i>(c) the flood planning level for the property as a whole be determined with reference to the cumulative flood study and modelling currently being undertaken by Hydraulic Engineers, Worley Parsons"</i>
22 September 2010	Stage 1 Penrith LEP 2010 is gazetted. The front portion of the land comprising 1.1 hectares is zoned IN2 light industrial. Consideration of zoning for remainder of the land comprising approximately 22.1 hectares left for determination as part of Stage 2 of the LEP.
30 July 2011	The Minister writes to the Panel seeking advice on the suitability of the land for industrial purposes noting that "Council staff have raised concerns over the proposed industrial zone <u>and their advice conflicts with the flood analysis submitted by the proponent</u> " [underlining added]

31 August 2011	The Panel writes to the Director-General seeking advice about the strategic merit of the proposed rezoning for industrial use in the context of state and regional planning policies.
14 September 2011	The Director-General responds essentially in the following terms: (a) there is general support for identification of further industrial land in the Penrith local government area having regard to the employment capacity target of 28,000 new jobs in that geographical area by 2031 as provided for by the draft North West Subregional Strategy; (b) the site presents a good location to consider expanding the existing industrial area lying to its immediate south; (c) to the extent that there is potential conflict with land uses to the west of the site, this can be mitigated through appropriate local planning and adoption of suitable controls; (d) while an industrial zone may strategically be supported in a state and regional context, <u>flooding and evacuation issues must be subject to careful assessment before a sound planning decision can be made.</u> [underlining added]

4.7 Thus it can be seen that foremost in the Director-General's mind were flood issues – it being understood that if they were satisfactorily resolved, rezoning of the land for industrial use could quite comfortably and properly be accommodated in the Council's forward employment lands strategy. This view was also consistent with the view held by councillors when the resolutions on 26 March and 23 April 2007 were passed. In the five years which followed, flood issues occupied centre stage; there was in effect no debate about whether conversion of the land for industrial use would be superfluous to the needs and demands of the community for an additional employment generating site.

4.8 To make good their position on this point, our clients refer to rezoning of the front portion of their land comprising approximately 1.1 hectares to IN2 light

industrial as part of Stage 1 Penrith LEP 2010. If employment land issues were truly operative, this portion of the land would not have been rezoned as it was. However, it was rezoned simply because flood issues unambiguously did not impinge on its future use whereas in October 2008, there were still unresolved flood issues preventing the remainder of the land similarly being rezoned pending hydrological assessments and modelling which our clients undertook at the insistence of Council to address and satisfy its continuing reservations about the suitability of the remainder of the land for industrial purposes.

- 4.9 It was in this context that the Panel's sharp focus on employment land issues came as a surprise to our clients. It is not far fetched to say that the Panel's approach went against "the run of play".
- 4.10 In recommending against the proposal, the Panel at 9.2.1 of its report concluded that:
- (a) as at January 2010, Emu Plains had 131 hectares of zoned industrial land of which 26 hectares was undeveloped in the sense of either being unoccupied or being used for a non industrial purpose. The remaining 105 hectares was developed and used for industrial purposes – see 2010 Employment Lands Development Report;
 - (b) in 2010, Penrith local government area had 782 hectares of undeveloped industrial land and 834 hectares of developed industrial land – see 2010 Employment Lands Development Report;
 - (c) Council's independent assessment disclosed that the local government area had 791 hectares of undeveloped industrial land and 829 hectares of developed industrial land;
 - (d) on the basis of advice received from the Council, the annual take up rate for industrial land in the local government area was approximately 33 hectares which, on figures relied on by the Panel, equated to an existing supply of land already zoned industrial to cover at least the next 24 years.
- 4.11 However, with respect to the Panel, its reasoning and conclusions regarding employment land issues are wanting:
- (a) firstly, the Council by its own admission acknowledges the importance of Emu Plains as part of its employment strategy; witness figure 9 on page 36 of Penrith Planning Strategy 2008 which is reproduced in figure 5 of 9.3.2 of the Panel's report. Except for a carve out of our clients' land, the remainder of the Penrith flood plain lying to the immediate east is

earmarked as industrial land. The carve out of our clients' land be readily be explained. At the time the strategy was promulgated in 2008, Stage 1 of the draft LEP 2010 had only recently been released by the Minister for exhibition. As previously mentioned, the draft plan at that stage proposed to zone the land part IN1 general industrial and part E4 environmental living. This was ostensibly because no flood assessment had yet been undertaken which permitted the E4 portion also to be zoned general industrial. However, the remainder of the Penrith flood plain had similarly not been subject to flood assessment yet the Council was prepared to earmark it as future industrial land despite a better part, if not all, of this area being topographically lower and, therefore, more flood prone than our clients' land;

- (b) secondly, it is not without significance that when in March 2007 the Council adopted the Penrith Employment Lands Strategy 2007, it also resolved to include our clients' land in the new LEP as general industrial. The 2007 strategy was the culmination of careful and detailed analysis which commenced in 2003 and perhaps even earlier and which looked closely at supply of and demand for employment lands within the local government area. The Panel at 9.3.1 of its report acknowledges the importance of the instrument setting out, as it does, the strategic planning directions for employment lands in Penrith over the following 10 to 25 years. Council, therefore, in March 2007 was well aware of the need to make future provision for employment generating uses – hence the unequivocal statement of intention that the land be zoned for industrial use. It was not an issue for the Council then. Why, our clients ask, has it become an issue now?
- (c) thirdly, the Panel's treatment of the issue is blunt and unsophisticated:
 - (i) land that is zoned industrial can be put to many different uses – some more productive in employment generating terms than others;
 - (ii) the zoning sought for the remainder of our clients' land is IN2 light industrial which permits subdivision into small or medium sized lots with a minimum lot size of 0.2 hectares. Conceivably, if rezoned, our clients' land can accommodate approximately 40 separate lots;
 - (iii) development of this type and on this scale is conducive to significant employment generation as it attracts small to medium business operators;

- (iv) proximity to existing industrial areas to the immediate south and further afield to the east beyond the correctional facility and, as well, the availability of infrastructure and utilities which service these industrial areas and Emu Plains as a whole are added assurances of the likely viability of the use of our clients' land for light industrial purposes;
- (v) it is noteworthy that the draft North West Sub Regional Strategy identifies Emu Plains industrial precinct as one of the 43 major industrial precincts in the entire sub region;
- (vi) clearly, it is imprudent to cast all industrial zoned land into one procrustean mould. One must distinguish between the different types of permitted or intended industrial uses acknowledging that, for example, large scale business parks with an emphasis on warehouse, logistics and distribution facilities or educational/research/hi-tech/health campuses will each carry with them different job creating opportunities and potential. If differentiation is not brought to bear on the exercise, one cannot compare like with like and the analysis together with conclusions drawn from it must be impaired and of questionable value;
- (vii) the need to differentiate between different types of industrial use was well understood in technical studies which were predicates of the Penrith Employment Land Strategy 2007 being specifically Penrith LGA Employment Land Strategy – Stage 1 prepared by Leyshon Consulting in July 2003 and Penrith LGA Employment Land Strategy – Stage 2 prepared by the same firm in April 2004;
- (viii) therefore, from an analytical standpoint, it is meaningless to dismiss or even discount the employment generating worth of our clients' land because there are 830 hectares of undeveloped industrial land elsewhere in the local government area;
- (ix) the correct approach is to focus specifically on the immediate job creating potential of our clients' land, if rezoned as sought, in the context of similarly and suitably zoned comparable land in the Emu Plains precinct;
- (x) the newly released 2011 Employment Lands Development Report discloses that in January 2011 Emu Plains had 131 hectares of industrial land of which 107 hectares were developed (82%) and 24

hectares were undeveloped (18%). This precinct is not over endowed with industrial land;

- (xi) if the Director-General were to accede to our clients' proposal, 22 hectares would be added to the total stock of industrial land in the precinct bringing the undeveloped number of hectares to 46 or 30% of industrial land in aggregate;
- (xii) if across the entire local government area, the Council can tolerate approximately 48% of industrial zoned land as either being unoccupied or used for non industrial purposes, a fortiori, it can tolerate 30% of industrial zoned land in Emu Plains as remaining undeveloped for the time being but with reasonable assurance of it being taken up and put to proper productive use over the next ten years which is the minimum time horizon adopted by Penrith Employment Land Strategy 2007.

4.12 We respectfully submit on behalf of our clients that once the Director-General is satisfied that our clients' land can be floodproofed without disadvantaging the present or future use of adjoining properties – and in this respect, we say that our clients' expert engineer peer reviewed flood studies put this proposition beyond reasonable doubt – employment land issues do not at all intrude on or militate against rezoning of the remainder of our clients' land comprising approximately 22 hectares as IN2 light industrial in Stage 2 of Penrith LEP 2010. Quite to the contrary, the rezoning sought for the balance of the land is consistent with the 2008 rezoning of the front portion and the well established industrial zone to the immediate south and a little further away to the east of the land.

These are our clients' submissions for the time being. We hope that they are concordant with the Director-General's approach to the matter and his final determination. Please let us know if the submissions or any part of them require clarification or elaboration or if the Director-General needs further information or documents about the matter. Otherwise, we await the outcome of the Director-General's consideration of our clients' application.

Yours faithfully
KANJIAN & COMPANY



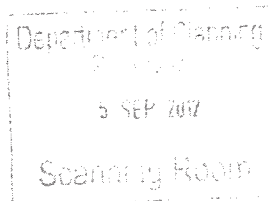
KANJIAN
COMPANY
SOLICITORS AND ATTORNEYS

Our ref: L053



Your ref:

4 September 2012



Mr M Woodland
Project Director, Strategies and Land Release
Department of Planning & Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000

Dear Michael

Re: 1-4 Old Bathurst Road Emu Plains

Thank you for taking the time on 29 August 2012 to meet with Mr Le Boursicot and his advisors in relation to this property. We note that in the course of the meeting, you called for certain further information about our clients' application.

Specifically, you wish to receive advice about the serviceability of the property and also about whether Lapstone Creek is subject to an easement registered against and burdening title to the property.

In relation to your first point of enquiry, our clients' town planner, Mr Vince Hardy, is preparing a short submission to you on the point. It should be received soon. As for title to our clients' land, we note that our clients purchased the property in 2006. It comprises four separate certificates of title being relevantly folio identifiers 1 and 2/517958 and folio identifiers 3 and 4/574650. We enclose copies of searches extracted from our file as carried out in 2006 at the time our clients were acquiring the property. You will see that none of the certificates of title are subject or make reference to an easement relating to Lapstone Creek and its traversal of the property. The searches disclose easements for transmission lines and water supply but no more.

The final matter we wish to raise concerns the import of the meeting with the Director-General on 25 July 2012. Our clear recollection is that Mr Haddad, in light of the protracted history of the matter, invited the Council to submit our clients' application as a discrete planning proposal to the gateway so that its merits could be considered by

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**KANJIAN &
COMPANY**

the Director-General in terms of the inclusion of the remainder of our clients' land as IN2 light industrial in Stage 2 Penrith LEP 2010.

Immediately after the meeting, Mr Stoneham, the general manager of Penrith Council, wrote to Mr Haddad to confirm that the Director-General was to consider the merits of the proposal as part of the gateway.

We merely raise this point as during the meeting with Mr Le Boursicot and his advisors, you suggested perhaps that the purpose of your review was to express an opinion but to return the matter to Council for final determination. That is not the understanding which we gleaned from the meeting with Mr Haddad on 25 July 2012 nor is it coincident with our understanding of Council's letter to Mr Haddad on the same day. To set our clients' mind at ease, could you please liaise with the Director-General and clarify for us the scope and purpose of the review which you are presently undertaking. Please also let us know if anything else arises.

Yours sincerely
KANJIAN & COMPANY



Searches

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 1/517958

SEARCH DATE -----	TIME -----	EDITION NO -----	DATE -----
12/5/2006	10:56 AM	-	-

VOL 10271 FOL 248 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 1 IN DEPOSITED PLAN 517958
AT EMU PLAINS
LOCAL GOVERNMENT AREA: PENRITH
PARISH OF STRATHDON COUNTY OF COOK
TITLE DIAGRAM: DP517958

FIRST SCHEDULE

CARTHONA PROPERTIES PTY LIMITED

SECOND SCHEDULE (3 NOTIFICATIONS)

1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2. R547088 EASEMENT FOR TRANSMISSION LINE AFFECTING THE LAND
SHOWN IN DP452349
- * 3. AB381257 CAVEAT BY BERNARD JEAN-YVES LE BOURSICOT & LINNA LE
BOURSICOT

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

KAN-KEN-L036

PRINTED ON 12/5/2006

12/05/2006

Searches

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 2/517958

SEARCH DATE	TIME	EDITION NO	DATE
12/5/2006	10:56 AM	-	-

VOL 10271 FOL 249 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 2 IN DEPOSITED PLAN 517958
AT EMU PLAINS
LOCAL GOVERNMENT AREA: PENRITH
PARISH OF STRATHDON COUNTY OF COOK
TITLE DIAGRAM: DP517958

FIRST SCHEDULE

CARTHONA PROPERTIES PTY LIMITED

SECOND SCHEDULE (3 NOTIFICATIONS)

1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2. RS47088 EASEMENT FOR TRANSMISSION LINE AFFECTING THE LAND
SHOWN IN DP452349
- * 3. AB381257 CAVEAT BY BERNARD JEAN-YVES LE BOURSICOT & LINNA LE
BOURSICOT

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

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PRINTED ON 12/5/2006

12/05/2006

Searches

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 3/574650

SEARCH DATE	TIME	EDITION NO	DATE
12/5/2006	10:57 AM	-	-

VOL 12726 FOL 183 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 3 IN DEPOSITED PLAN 574650
AT EMU PLAINS
LOCAL GOVERNMENT AREA: PENRITH
PARISH OF STRATHDON COUNTY OF COOK
TITLE DIAGRAM: DP574650

FIRST SCHEDULE

CARTHONA PROPERTIES PTY LIMITED

SECOND SCHEDULE (3 NOTIFICATIONS)

1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2. DP574650 RESTRICTION(S) ON THE USE OF LAND
- * 3. AB381257 CAVEAT BY BERNARD JEAN-YVES LE BOURSICOT & LINNA LE BOURSICOT

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

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PRINTED ON 12/5/2006

12/05/2006

Searches

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 4/574650

SEARCH DATE	TIME	EDITION NO	DATE
12/5/2006	10:58 AM	2	27/4/2006

LAND

LOT 4 IN DEPOSITED PLAN 574650
AT EMU PLAINS
LOCAL GOVERNMENT AREA: PENRITH
PARISH OF STRATHDON COUNTY OF COOK
TITLE DIAGRAM: DP574650

FIRST SCHEDULE

CARTHONA PROPERTIES PTY. LIMITED (T K397115)

SECOND SCHEDULE (6 NOTIFICATIONS)

1. H546863 EASEMENT FOR TRANSMISSION LINE AFFECTING THE PART(S)
SHOWN SO BURDENED IN THE TITLE DIAGRAM
U852556 VESTED IN PROSPECT ELECTRICITY
2. DP574650 RESTRICTION(S) ON THE USE OF LAND
3. R547088 EASEMENT FOR TRANSMISSION LINE AFFECTING THE LAND
SHOWN SO BURDENED IN DP452349
4. W978326 EASEMENT FOR WATER SUPPLY WORKS AFFECTING THAT PART
OF THE LAND WITHIN DESCRIBED SHOWN AS 3.5 WIDE &
VARIABLE WIDTH IN DP635714
- * 5. AB381257 CAVEAT BY BERNARD JEAN-YVES LE BOURSICOT & LINNA LE
BOURSICOT
6. AC246526 THIS EDITION ISSUED PURSUANT TO S.111 REAL PROPERTY
ACT, 1900

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

From: "Vince Hardy" <vhardy@cityscape.net.au>
To: <michael.woodland@planning.nsw.gov.au>
Date: 10/09/2012 5:49 pm
Subject: Old Bathurst Rd - Rezoning
Attachments: PR&P report feb2006 .pdf; SKMBT_C36012091016340.pdf

Michael

As discussed please see attached in this and following email the requested info from our previous meeting.

The services and infrastructure issues were addressed by detail as part of the Patterson Britton & Partners 2006 report (see attached) and demonstrates that all services are available and adequate to service the development.

Since that time the electrical substation was upgraded and Jemena Energy have now run a gas main along Old Bathurst Rd and provided a gas sub station at the south eastern corner of the site.

Also attached is advice from a local real estate agent demonstrating market demand for proposal.

cheers

Vince Hardy

Urban Planning Consultant

cityscapeplanning+projects

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Glenbrook NSW 2773

BERNARD & LINNA LE BOURSICOT

OLD BATHURST ROAD, EMU PLAINS
PROPOSED INDUSTRIAL REZONING

Issue No. 1
FEBRUARY 2006

Patterson Britton
& Partners Pty Ltd
consulting engineers

7

Bernard & Linna Le Boursicot

Old Bathurst Road, Emu Plains Proposed Industrial Rezoning

**Issue No. 1
FEBRUARY 2006**

Document Amendment and Approval Record

Issue	Description of Amendment	Prepared by [date]	Verified by [date]	Approved by [date]
01	First Issue	FMC 7/2/06	[Signature] 9/2/06	[Signature] 9/2/06

Note: This document is preliminary unless it is approved by a principal of Patterson Britton & Partners.

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Date and Date Printed: 9 February 2006 2:21 PM

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**Patterson Britton
& Partners Pty Ltd**

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1 INTRODUCTION

This report has been prepared on behalf of Bernard & Linna Le Boursicot.

It is proposed to rezone Lot 4 of DP574650 in Emu Plains for the purposes of industrial development. The site fronts both Old Bathurst and Russell Street.

The land is situated on the lower reaches of Emu Plains in on the southern bank of the Hawkesbury-Nepean River. A concrete lined channel (*Lapstone Creek*) bisects the site in the south, crossing Russell Street at a causeway.

Patterson Britton & Partners have been engaged to prepare supporting documents to accompany the rezoning application, including assessing the impacts of flooding from the Hawkesbury-Nepean River on the site and adjacent lands, water management issues and servicing feasibility.

2 THE REGIONAL FLOOD MODEL

The flooding assessment has been undertaken with the aid of a two dimensional RMA hydrodynamic computer model, capable of modelling the landscape and the building footprints.

The model is based on a model developed for the NSW Government and the Penrith Lakes Development Corporation for the proposed Penrith Lakes Scheme. This model has been extensively developed to replicate geomorphic features within the main river channel between surveyed cross-sections, to simulate the river to lake weir flows of the Penrith Lakes Scheme, and to calibrate to both the physical model undertaken by Water Research Laboratories and the MIKE-21 model undertaken by Lawson & Treloar.

The model was subsequently upgraded to include Emu Plains and Peach Tree Creek using additional survey in the Emu Plains area, details of the railway line culverts, and details from the 1:4000 orthophoto maps in the Peach Tree Creek area. Further extensive upgrading has been undertaken for Penrith Council utilising a detailed ALS DTM. The model extends from the upstream of the freeway crossing of the Hawkesbury-Nepean River, downstream to Yarramundi.

The model network consists of a mesh of variable sized quadrilaterals and triangles, similar in nature to a triangulated irregular network (*TIN*). Each quadrilateral or triangular element represents a portion of the ground surface defined by elevations at the corner and midside nodes. The elements also represent roughness of the surface defined by Manning's *n* or Chezy *C* values. The flexible nature of the network permits complex changes in topography, built environment and hydraulic conditions to be modelled with appropriate degrees of accuracy or representation. Large buildings or tightly packed blocks of buildings can be eliminated from the network and more sparsely built areas such as residential and commercial estates can be represented with high roughness values.

3 FLOODING ASSESSMENT

The objective of the flooding assessment is to identify flooding behaviour across and in the vicinity of the site and to assess the likely consequences of development of the site for industrial uses.

The assessment has been undertaken by a review of two dimensional modelling for existing conditions using the results from Council's RMA model of the Penrith reaches of the Hawkesbury-Nepean River. Both 100 yr ARI and 200 yr ARI regional flooding was assessed.

3.1 SETTING

The site lies towards the western edge of the Emu Plains floodplain with the north end penetrating into the floodplain on its approach to the river channel. **Figure 1.**



Figure 1 – Site Map

The Emu Plains floodplain abuts the east-west leg of the river as it traverses a large S bend, shifting from a central valley course to a course along the left steep sided edge of the valley. Lapstone Creek passes through the floodplain along its western side bisecting the site through a concrete lined channel. The floodplain is also bisected by the east-west alignment of the Great Western Railway embankment.

The river frontage of the Emu Plains floodplain consists of grassland associated with the correctional facility at the eastern extremity. Old Bathurst Road forms a boundary to the grassland and a strip of industrial development is situated between the road and the railway.

3.2 100 YEAR ARI FLOOD

As levels in the Hawkesbury-Nepean River rise, water initially backs up Lapstone Creek and onto the floodplain. This is joined by water which emanates from a breakout upstream of the S bend where the Hawkesbury-Nepean waters back up and escape from Knapsack Creek flowing overland onto the Emu Plains floodplain, and passing through openings in the railway embankment. A short time later the river breaks its left bank around the S bend and the majority of the Emu Plains floodplain becomes inundated.

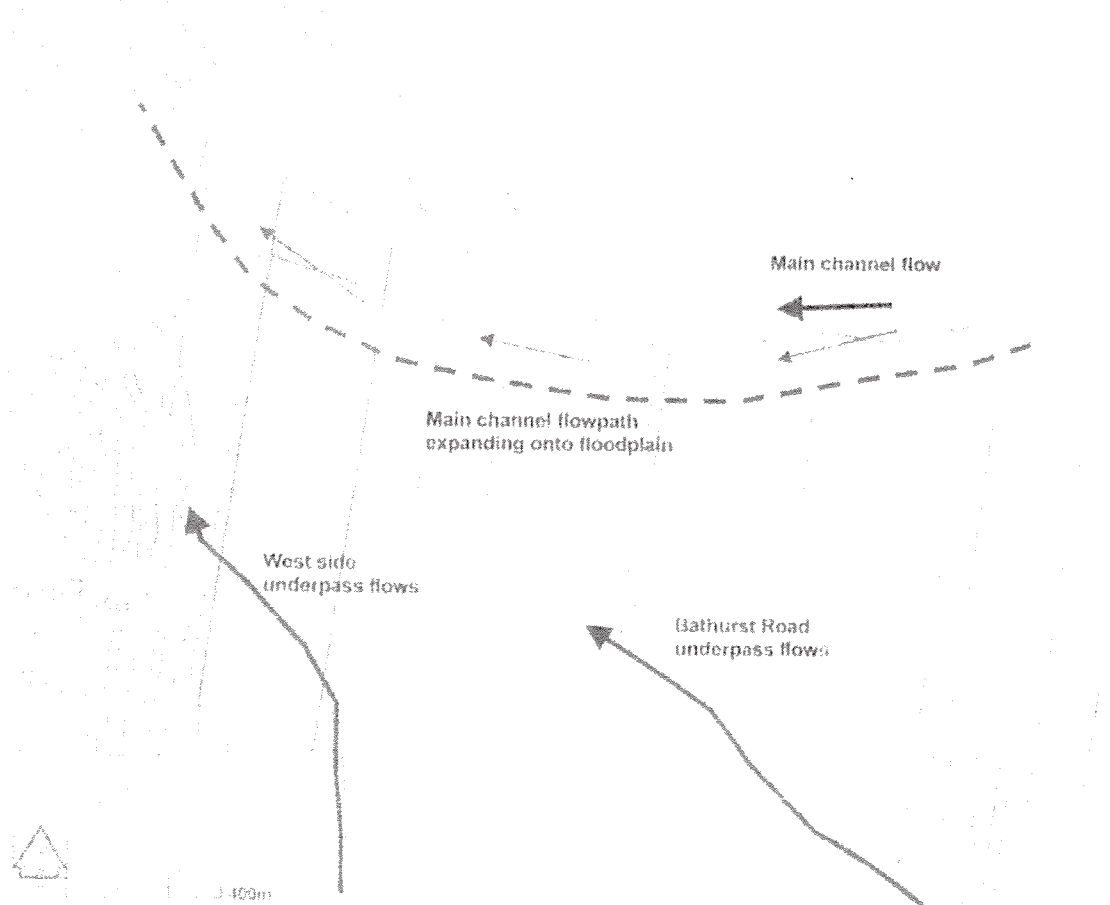


Figure 2 – Schematic representation of floodplain flows

At the peak of the 100 yr ARI flood, the flow leaving the start of the S bend expands around the correctional facility onto the edge of the floodplain. This is joined by flows expanding across the floodplain having passed through the Old Bathurst Road railway underpass. Additional flows cross through railway embankment openings to the west and pass through the Lapstone Creek corridor. A schematic diagram of these flowpaths is shown in **Figure 2** and results of the model depicting peak water level and velocity vectors are shown in **Figure 3**.

Depths across the majority of the existing site range from 0 to 2m and the peak 100 yr ARI water level is 23.6 to 23.7 m AHD along the east side.

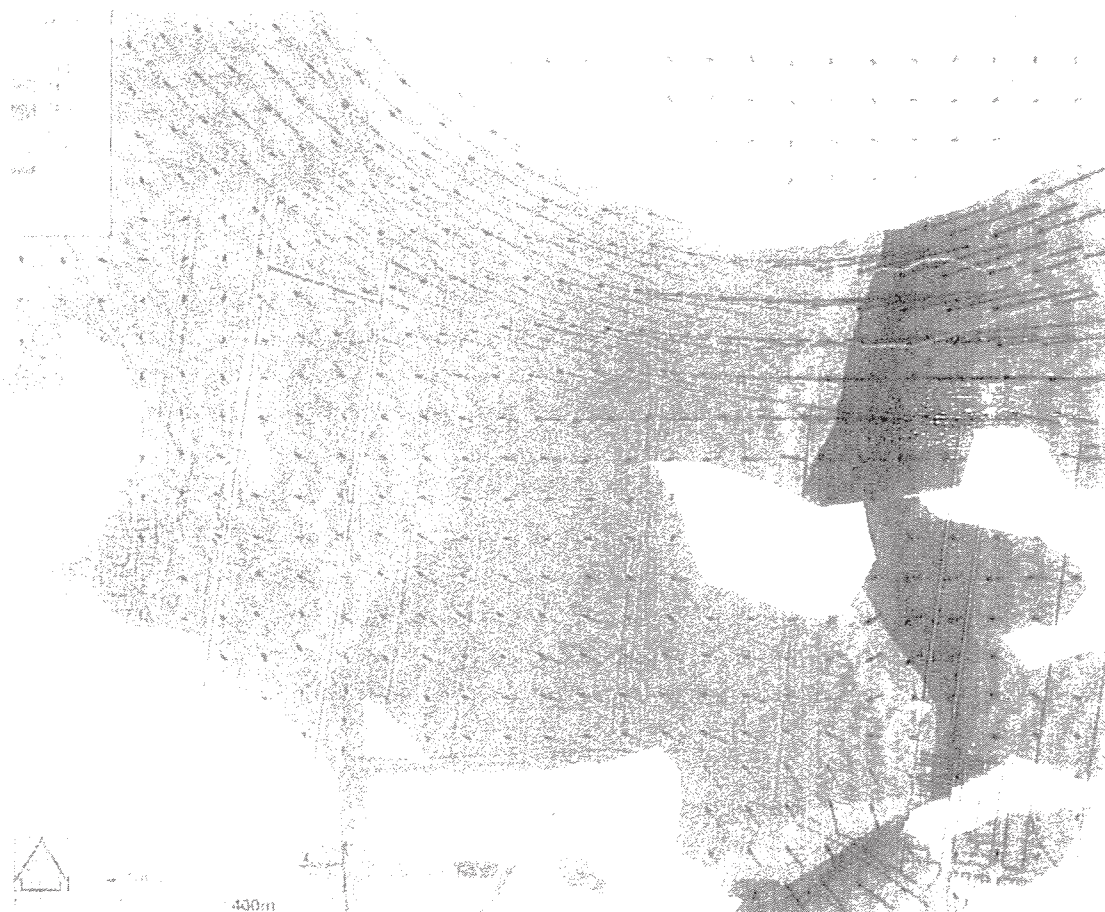


Figure 3 -- 100 yr ARI flood peak water level and velocity vectors

3.3 200 YEAR ARI FLOOD

At the peak of the 200 yr ARI flood, the flow expands around the correctional facility onto the floodplain to a greater extent than the 100 yr flood and is likewise joined by flows from the railway underpasses. There is an additional component across the floodplain from the east where flows turn sharply from the start of the S bend, **Figure 4**.

Depths across the majority of the site range from 1.2 to 3.2m and the peak water level for the 200 yr ARI flood is 24.8 to 24.9m AHD along the east side.

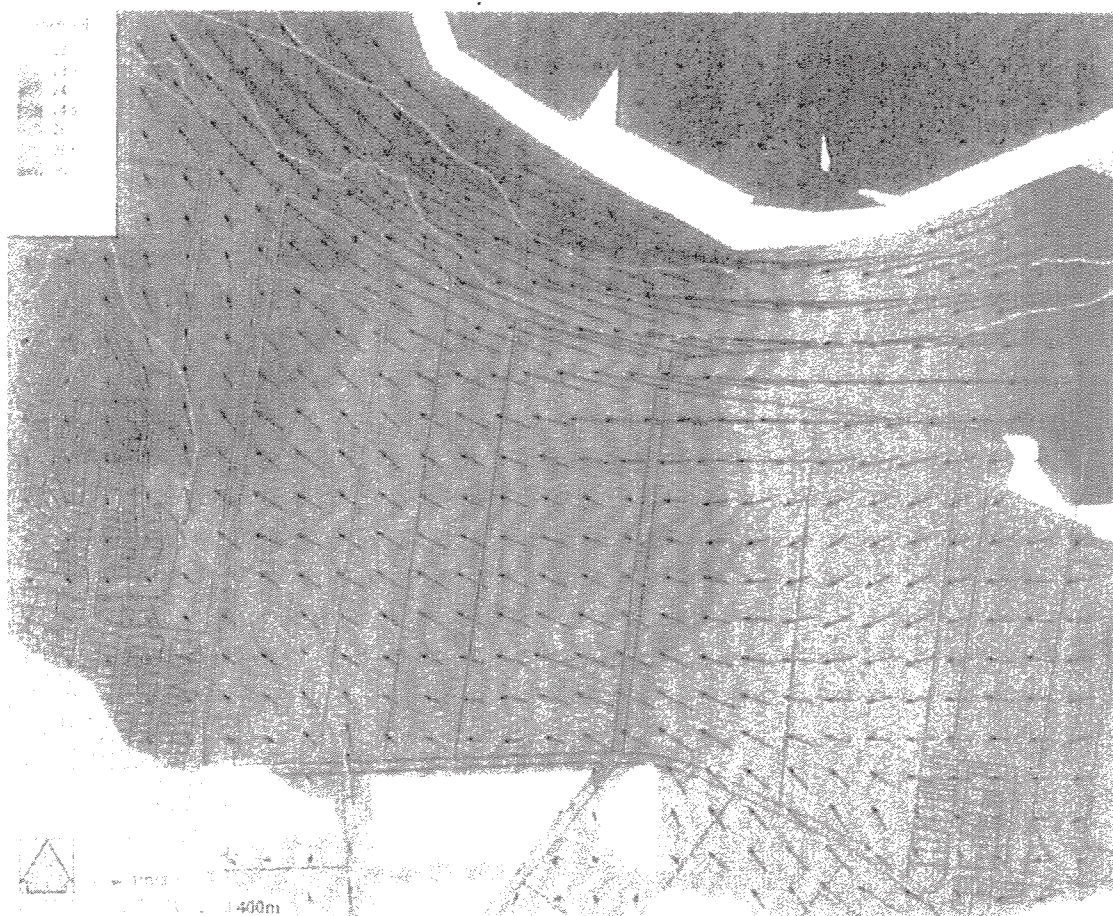


Figure 4 – 200 yr ARI flood peak water level and velocity vectors

3.4 IMPACTS

The flow expanding onto the floodplain from around the correctional facility forms a shear zone or edge with the remaining flow across the area. The maintenance of this corridor as a flowpath will likely be an essential component in minimising impacts of development on the site. This would exclude development on a portion of the lot towards the river.

It is assumed that the building areas for an eventual sub-division would be filled to the 100 year flood level plus a 500 mm freeboard allowance, and that the roads would be constructed to the 100 year level minus 250 mm to meet Council's floodplain development requirements. It is also assumed that some form of open corridor would be maintained for Lapstone Creek.

The impact of any development on 100 yr ARI Hawkesbury-Nepean flood behaviour would likely be limited to slight increases in peak levels along the eastern side of the site as overland flows from the Old Bathurst Road underpass would be diverted into the Lapstone Creek and main channel flowpaths.

The impact of any development on 200 yr ARI Hawkesbury-Nepean flood behaviour is expected to be similar to the 100 yr flood with the addition of the extra overland flows being somewhat compensated for by flow passing across the site between the buildings with the increased water levels.

Should the appropriate industrial zoning be approved, it is recommended that the development application for subdivision highlight the flowpath corridor extent and level at the northern end of the site plus treatment of the Lapstone Creek corridor, and the spacing and elevation between the buildings.

4 WATER MANAGEMENT

This section examines stormwater quantity and quality for site runoff. For discussion of flooding, see other sections of this report.

4.1 WATER QUANTITY

4.1.1 Existing Conditions

The site is currently undeveloped and approximately 24 ha. The Hawkesbury Nepean River borders the site in the north and Lapstone Creek passes through the southern part of the site traversing the site from east to west. A southern portion of the site comprising approximately 12.5 ha drains towards the Lapstone Creek tributary. A number of ephemeral swales also traverse the site in a northwesterly direction in the northern portion, draining towards the Hawkesbury Nepean River.

4.1.2 Hydrology

XP-RAFTS software was used to derive peak flows for the 2, 5, 20 and 100 year average recurrence interval (ARI) storm events for pre-development and post-development conditions, with on-site detention (OSD).

RAFTS was chosen for this investigation because it has the following attributes:

- it can account for spatial and temporal variation in storm rainfall across a catchment;
- it can be used to estimate discharge hydrographs at any location within the catchment;
- it can accommodate variations in catchment characteristics;
- it is able to route hydrographs through detention basins; and
- it has successfully been widely used across NSW.

4.1.2.1 Proposed Rezoning

Following the proposed rezoning, the relevant planning instrument for the Stormwater Management Plan (SMP) would be Penrith City Council's (Council's) Development Control Plan (DCP) for Industrial Lands. The DCP requires On-Site Detention (OSD) for industrial areas. Post-developed runoff must not to exceed pre-developed runoff for all storm events, demonstrated by the 2, 5, 20, and 100 year ARI events. Council also requires that the 20 year ARI flows be fully piped within the street drainage system.

4.1.2.2 On-Site Detention (OSD)

Council planning staff have advised that there are no requirements governing the maximum impervious area of industrial developments except for building set backs as listed below.

Roadway	Building setback (m)
Old Bathurst Road	15
Internal roads	9
Secondary road frontages for corner lots	5

Building setbacks are to be landscaped with the exception of any access points. Given the maximum standard width for driveways of 15 m, an overall impervious area was conservatively assumed as 95%, including road surfaces. This was used to determine peak flows under post development conditions.

The determination of required on-site detention is based on reducing post-development flows back to existing conditions. Existing conditions were assumed to be rural and 100% pervious. The actual peak flows resulting from proposed development after subdivision may be less, depending on actual impervious areas associated with proposed development.

The northern portion of the site drains directly to the receiving waters of the Hawkesbury Nepean River and undergoes inundation during large storm events, essentially acting as flood storage. As such it is considered appropriate to forego formal detention requirements for this section. Furthermore, it is considered that runoff from this area should be allowed to discharge as soon as possible, without being detained, to prevent coincidence with the peak mainriver flows.

The southern portion of the site drains towards the Lapstone Creek which passes through the site. This portion of the site may require detention to prevent increases in Lapstone Creek flows. This would be assessed as part of a development application for the site. Based on reducing post-development flows back to existing conditions, the maximum total site storage requirement was determined to be 3300 cubic metres or 264 m³/ha. This storage volume was determined for the 1 in 100 year ARI event. For more frequent events, a lower volume of storage would be required.

If detention is found to be required for the portion of the site draining directly to Lapstone Creek, this storage could be provided through a combination of surface storage and OSD tanks. Shallow surface storage could be provided within carpark areas of developments (maximum depth of 300 mm). Pipe outlets from the individual detention discharge control pits would connect into the proposed street drainage system. Individual on-site detention systems may or may not be located within the building set-back area.

4.2 WATER QUALITY

Water quality objectives stated in Council's DCP include the improvement of water quality discharging to the Hawkesbury Nepean River system.

Modelling requirements for large (>50) hectare sites include the analysis of actual distribution of concentrations and loads within storm events. Applicable loading rates given in the DCP are listed in **Table 4-1**

Table 4-1 Average Annual Pollutant Loading Rates

Land Use	Run-off Co-efficient	Coarse Sediment (kg/ha/year)	Fine Particulates (kg/ha/year)	Total Phosphorus (kg/ha/year)	Total Nitrogen (kg/ha/year)	Organic Matter (m ³ /ha/year)	Litter (m ³ /ha/year)
Pre-development	0.2	90	-	0.16	1.26	0.05	0.01
Industrial	0.52	950	110	1.7	9.5	0.2	0.35

(taken from Penrith City Council's Development Control Plan for Industrial Lands)

However, the DCP also allows adoption of pollutant loading values that differ from the above table provided that it is supported by detailed investigation. For this study, Patterson Britton and Partners have utilised the findings of work by Duncan (1999) as it represents the latest and most comprehensive study of pollutant loading rates for various land uses. It is anticipated that adoption of Duncan's pollutant loading rates would lead to a smaller difference in pre to post annual loads than Council's DCP values.

According to Council's DCP, sites over 5 ha must as a minimum comply with the following pollution retention criteria:

Pollutant	% Reduction
Litter	70
Coarse sediment	80
Nutrients	45
Fine Particles	50
Free Oil and Grease	90

4.2.1 MUSIC Water Quality Model

MUSIC is a continual-run conceptual water quality assessment model developed by the Cooperative Research Centre for Catchment Hydrology (CRCCH). MUSIC can be used to estimate the long-term annual average stormwater volume generated by a catchment as well as the expected pollutant loads. MUSIC is able to conceptually simulate the performance of a group of

stormwater treatment measures (*treatment train*) to assess whether a proposed water quality strategy is able to meet specified water quality objectives.

To undertake the water quality assessment, a long-term MUSIC model was established for the proposed rezoning site. The model was used to estimate the annual pollutant load generated under existing state and developed conditions for a mean rainfall year.

MUSIC was chosen for this investigation because it has the following attributes:

- it can account for the temporal variation in storm rainfall throughout the year;
- modelling steps can be as low as 6 minutes to allow accurate modelling of treatment devices;
- it can model a range of treatment devices;
- it can be used to estimate pollutant loads at any location within the catchment; and
- it is based on logical and accepted algorithms.

4.2.2 Existing Conditions

The existing pollutant export from the site was estimated to establish the base case against which to measure the performance of proposed development.

The catchment as defined in the water quantity section was adopted to create a MUSIC model for the rezoning site. An existing impervious area of 1 % was assumed based on the existing concrete-lined channel and an investigation of the site.

4.2.2.1 Rainfall

In order to develop a model that could comprehensively assess the performance of water quality treatment devices such as bio-retention swales, the use of 6 minute pluviograph data was considered necessary. Council's DCP states that the average annual rainfall for Penrith is 900 mm/year. The 1997 pluviograph record at Sydney Observatory Hill measured 1019 mm during the year and was adopted for the analysis. This was considered to be representative of the average annual rainfall experienced at the Emu Plains site. **Figure 5** compares the Penrith mean monthly rainfall with the observed mean monthly rainfall for Sydney Observatory Hill in 1997.

4.2.2.2 Evaporation

Monthly areal potential evapotranspiration values were obtained for the site from default values in MUSIC, which were obtained from Bureau of Meteorology data and are shown in **Table 4-2**

Table 4-2 Monthly Areal Potential Evapotranspiration

Month	Areal Potential Evapotranspiration (mm)
January	180
February	135
March	128
April	85
May	58
June	43
July	43
August	58
September	88
October	127
November	152
December	163

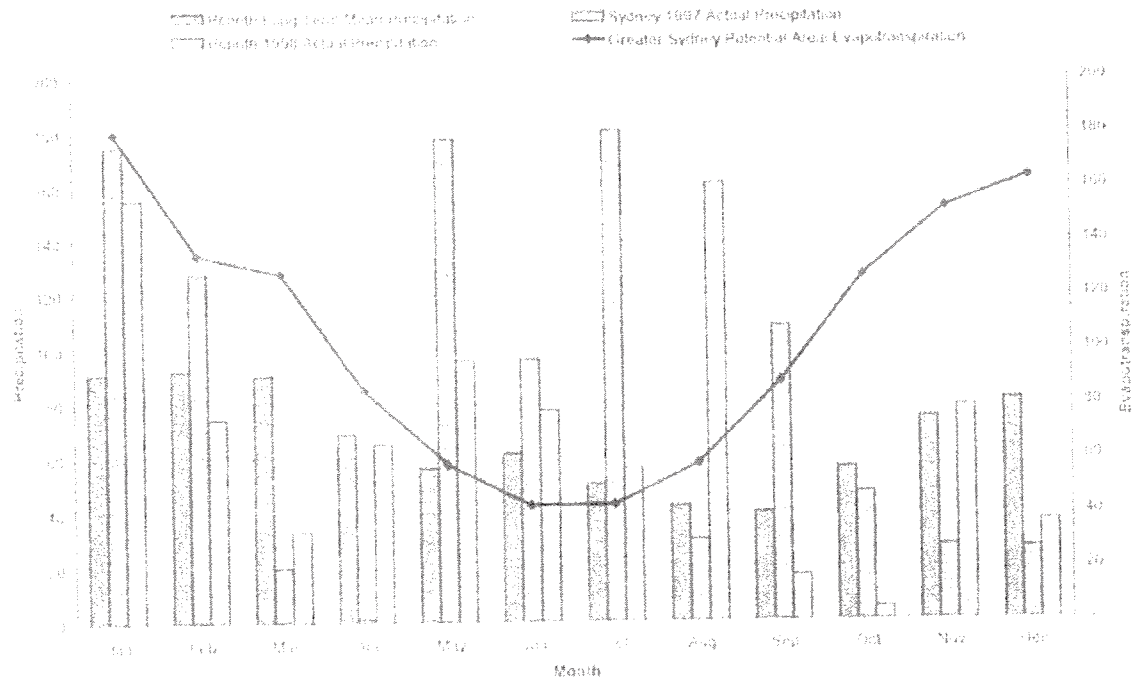


Figure 5 Comparison of Monthly Precipitation and Evapotranspiration

The 1997 pluviograph record at Sydney Observatory Hill can be considered to represent a typical year at the Emu Plains site with the sum of all rainfall events totalling average precipitation for nearby Penrith. A typical year would include monthly and daily events in excess of and well below long term averages, representative of the stochastic nature of storm behaviour. This can be seen in **Figure 5**. The diagram shows that the rainfall data used for modelling purposes includes more extreme rainfall events than an average year, which means the model results are more conservative than if average data had been used.

4.2.2.3 Soil Data And Model Calibration

A rainfall-runoff calibration was undertaken prior to modelling. The model was calibrated to achieve a natural state volumetric runoff coefficient close to the value of 0.15 given in Council's DCP. A value of 0.15 was achieved using appropriate parameters for the site. This gave a volumetric runoff coefficient of 0.17 for the existing conditions of the site (*assuming 1% impervious*).

Based on the calibration process, the following soil parameters were adopted for the site:

field capacity	200 mm
soil capacity	250 mm
initial storage	25 mm
coefficient 'a'	170
coefficient 'b'	0.1

A rainfall threshold of 3 mm per day was adopted for impervious areas. This is representative of the estimated volume of storage available in depressions on impervious surfaces or in constructed storage areas (i.e. bio-retention systems) across the site.

4.2.2.4 Pollutant Concentrations

The pollutant concentrations used for the various land-uses in the existing and developed catchments were derived from '*Urban Stormwater Quality: A Statistical Overview*' (Duncan, February 1999) and Default MUSIC values. The adopted pollutant concentrations are shown in Table 4-3.

Table 4-3 Adopted Pollutant Concentrations

	Pollutant Concentration (mg/L)		
	Suspended Solids	Total Phosphorous	Total Nitrogen
Source Values			
Forested (MUSIC default)	79	0.079	0.84
Urban (MUSIC default)	158	0.355	2.63
Agricultural (MUSIC default)	199	0.54	3.89
Low Urban (<i>Duncan</i>)	102	0.205	2.05
Industrial (<i>Duncan</i>)	105	0.28	2.2
Roads (<i>Duncan</i>)	111	0.26	2.1
Adopted Local Existing Land Use	102	0.205	2.05
Adopted Post-Developed Land Use	105	0.28	2.2

4.2.2.5 Existing State Pollutant Export

The MUSIC model, once calibrated for runoff, was used to simulate the pollutant export generated during a mean rainfall and evaporation year using the typical pollutant concentrations contained in Table 4-3.

The estimated annual export of pollutants at the outlets of the existing subcatchments for a mean year are shown in Table 4-4.

Table 4-4 Annual Pollutant Export Loads – Existing State

Location	Pollutant Load (kg/yr)			
	Suspended Solids	Total Phosphorous	Total Nitrogen	Gross Pollutants
Proposed Industrial Estate	266	0.86	17.1	0

4.2.3 Developed (*No Treatment*) Pollutant Export

To assess the requirements of the treatment system, the existing state model was modified to reflect the degree of possible development. No treatment techniques were implemented in the developed (*no treatment*) model. The model was modified to reflect the impervious proportions of the catchment as defined in the section on water quantity. The runoff coefficient was calculated to be 0.74, conservatively higher than Council's advisory rate of 0.52 for industrial sites.

The estimated annual export of pollutants from the developed (*no treatment*) site for a mean rainfall year are shown in Table 4-5.

Table 4-5 Annual Pollutant Export Loads – Developed State (*No Treatment*)

Location	Pollutant Load (kg/yr)			
	Suspended Solids	Total Phosphorous	Total Nitrogen	Gross Pollutants
Proposed Industrial Estate	9820	26.4	208	2220

4.2.4 Proposed Treatment Strategy

It was considered appropriate at the current level of planning, to assume a single wetland could be used to treat all low flow runoff from the proposed development. A wetland typically consists of a deep sedimentation zone and a shallow macrophyte zone. However, a other treatment measures may be incorporated, which would be investigated for a development application.

The proposed water management strategy was simulated for a mean rainfall year. The results showed that a wetland of 6,500 m² could provide the required treatment. An indicative location for the wetland is shown on **Figure 6**. This location would be subject to revision during concept design, but has been preliminarily located within the flood zone toward the lower end of the site.

Additional water quality treatment facilities could be incorporated into an overall treatment train strategy at a later stage, on the condition that Council's pollutant reduction objectives were still attained. Additional treatment facilities could include:

- Bio-retention systems;
- Permeable paving; and
- Gross pollutant traps.

A description of these additional treatment facilities is listed below

4.2.4.1 Bio-Retention Systems

Bio-retention systems consist of low relief areas of grasses, shrubs and trees with an underlying infiltration area. Bio-retention systems can be either long strips of swales for narrow areas, or wider areas of open space heavily vegetated or grassed with a series of infiltration trenches throughout the basin area.

The purpose of bio-retention is to provide a filtering effect when the runoff flows in the surface through the vegetation to remove pollutants in the runoff. Further treatment is achieved by filtering through the gravel trench and biological action due to growth on the gravel. Low flows are maintained as much as possible on the surface exposed to sunlight and with turbulence introducing oxygen to the flows. The role of the bio-retention systems is not to promote infiltration into the subsoils, although it would be appropriate in areas of suitable soils.

Bio-retention systems may or may not be located within building set-back areas.

Due to the industrial nature of the development, it may be necessary to prevent damage to any bio-retention systems by vehicular activity through the use of physical protection measures such as a low post and rail fences or bollards.

4.2.4.2 Permeable Paving

Permeable paving could be used to allow greater design flexibility allowing otherwise impervious surfaces such as carparks to be incorporated into the water treatment strategy.

4.2.4.3 Gross Pollutant Trap

GPTs capture litter, debris, coarse sediment, oils and greases. GPTs would need to be installed on outlets to Lapstone Creek and treatment facilities such as wetlands.

The GPTs would be designed to treat the peak 3 month ARI flow (i.e. approximately 90% of annual runoff volume).

4.2.4.4 Developed (With Treatment) Pollutant Export

The water quality controls outlined were incorporated into the developed MUSIC model for the developed scenario. The estimated annual export of pollutants from the developed (*with treatment*) site for a median rainfall year are shown in **Table 4-6**.

Table 4-6 Performance of Proposed Water Quality Management Strategy

Location	Treated Pollutant Load (kg/yr)			
	Suspended Solids	Total Phosphorous	Total Nitrogen	Gross Pollutants
Proposed Industrial Area	1890	9.28	113	0

Table 4-7 details the reduction in pollutant export from the post untreated to the post treated conditions. It can be seen that the requirements of 80% reduction in suspended solids export, and 70% reduction in litter and 45% nutrient export have been achieved.

Table 4-7 Percentage Pollutant Load Reductions from Post Untreated to Post treated.

Location	Percentage Pollutant Load Reductions (%)			
	Suspended Solids	Total Phosphorous	Total Nitrogen	Gross Pollutants
Proposed Industrial Area	80.8	62.8	45.5	100

5 SERVICES

To support the proposed rezoning of the subject site, a servicing feasibility study was carried out, in consultation with servicing authorities. The results of the study support the rezoning of the site.

5.1 ELECTRICITY

The site is located directly adjacent to the Emu Plains Zone Substation, which is on the corner of Old Bathurst Road and Russell Street, in the southwest corner of the site. Integral Energy has advised that due to this location, this substation would be the only possible source of power for the site.

It is estimated that the site, once developed as an industrial estate, would require a single primary feeder to supply power requirements estimated to be 3 to 4 MVA. Integral Energy has advised that the zone substation currently has no capacity to supply additional feeder lines.

Integral Energy have a program in place to upgrade the zone substation, which would be completed mid 2007. The upgrade would provide sufficient capacity to supply the required feeder to the subject site.

Refer Appendix A for correspondence from Integral Energy.

5.2 WATER

Sydney Water has advised that there are existing water mains fronting the site in both Russell Street and Old Bathurst Road, and a water easement transects the site. Hence, locations for connection to water supply are readily available.

5.3 SEWER

Sydney Water sewer mains to service the site are located in Russell Street.

Sydney Water has advised that due to the low-lying nature of the northern area of the site, it may not be possible to gravity drain to the sewer main. Hence, a pump station may be required to service lots in the north. However, the extent of development in the north will be limited by the required flood zone, thus a pump station may not be required, depending on the development extent, once determined.

5.4 TELECOMMUNICATIONS

Information from Telstra indicates that there are existing telephone services to the site. Services are also present along the Russell Street and Old Bathurst Road frontages.

5.5 GAS

Information from Agility indicates that gas supply is available in the local area. A secondary gas main is present on the south side of Old Bathurst Road. A smaller line is also present in Russell Street.

FIGURES

Bernard LeBoursicot
Re lots 1- 4 Old Bathurst rd Emu Plains
Via Email bernard@bandg.com.au

Dear Bernard ,

Thank you for the opportunity to submit this report to you, I hope to clearly demonstrate to you the importance of a development such as this for the short to medium term of supply of such lands for industrial purposes within Penrith LGA .

By way of background I have been involved in many of the industrial developments within Penrith and surround for the past 16 years being the Managing Director of LJ Hookers Commercial and in fact specialising in industrial land developments. I very much have my finger on the pulse of what is required from this avenue of the market.

When the current and future land stocks are scrutinised you can see that there is a vast difference between serviced or serviceable land and non serviced or serviceable lands , to add to this factor one needs to consider if the owner of ready and serviced lands have any intention of utilising these lands them self or selling it to some whom is in a position to utilise it.

As such I point out the following information, Currently within Penrith LGA there are 15 lots of serviced lands for sale. A large proportion of these are of a substantial size and as such with no subdivision potential are only suitable for a medium to large user.

A number of these owners have their property's on the market at " Their Price" and are not willing to meet the market as such it is unlikely some of these lands will be realised in the near future.

I note that the vast majority of enquiry is from small to medium users is for lands as per your proposal.

The proposed subdivision will provide a greater variety of lot sizes to the market. Most of our employment within Penrith LGA comes from small to medium size businesses that hire 4 – 10 employees. Typically these types of industrial developments within other industrial estate within the LGA , have been very successful Peachtree Rd estate and Jack Williams Drive are great examples of this type of development. These developments have produced a very high employment yield per sqm relatively speaking.

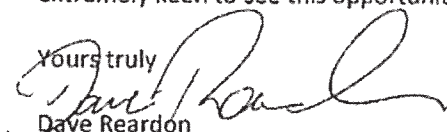
In regards to current time frame and market demand, with a development such as this we would typically achieve a number of Pre sales Prior to commencement or during the construction process and would anticipate that the current market for this would be relatively strong.

I would urge this development to be brought forward as soon as possible to help ensure growth and job opportunities within our area.

The timing of this development if progressed shortly could help to alleviate the shortage of supply I anticipate in the near future for industrial lands.

If you need any further information please don't hesitate to contact me as I would be extremely keen to see this opportunity to progress for our local community.

Yours truly



Dave Reardon

Managing Director

L J Hooker Commercial Penrith