

# **SYDNEY WEST JOINT REGIONAL PLANNING PANEL**

## **STATEMENT OF REASONS**

### **for decision under the**

### **Environmental Planning and Assessment Act 1979 (NSW)**

The Sydney West Joint Regional Planning Panel provides the following Statement of Reasons for its decision under section 80 of the *Environmental Planning and Assessment Act 1979* (NSW)(the Act) to:

grant consent to the development application subject to conditions

for:

The use of the premises as a 'Waste or Resource Management Facility' at unit 1/10 Smith Street, Emu Plains (Lot 330 DP 575290).

Council Ref: DA12/1346 – JRPP Ref: 2013SYW026

made by: Turnbull Planning International Pty Ltd

Type of regional development: The application is Designated Development under Schedule 3 of the Environmental Planning & Assessment Regulation, 2000 (EPAR) and in accordance with Schedule 4A of the Act, is to be determined by the Sydney West Joint Regional Planning Panel.

The application is also classified as Integrated Development under Section 91 of the Act, requiring general terms of approval from the NSW Environment Protection Authority (EPA) based on the types and volumes of materials being processed on the site.

### **A. Background**

Sydney West Joint Planning Panel meeting was held on 30 January 2014 at Penrith City Council at 2.00pm.

Panel members present:

Mary-Lynne Taylor – Chair  
Bruce McDonald – Panel member  
Paul Mitchell – Panel member  
Ross Fowler – Panel member  
Barry Huskings – Panel member

Council staff in attendance:

Peter Wood – Development Assessment Co-ordinator  
Paul Lemm – Development Services Manager

Kate Smith – Environmental Planner  
Robert Craig – Principal Planner

Apologies: Nil

Declarations of Interest: Nil

### ***JRPP as consent authority***

Pursuant to s 23G(1) of the Act, the Sydney West Joint Planning Panel (the Panel), which covers the Penrith City Council area, was constituted by the Minister.

The functions of the Panel include any of a council's functions as a consent authority as are conferred upon it by an environmental planning instrument [s 23G(2)(a) of the Act], which in this case is the *State Environment Planning Policy (State and Regional Development)* 2011.

Schedule 4A of the Act sets out development for which Joint Regional Planning Panels may be authorised to exercise consent authority functions of councils.

### ***Procedural background***

The Sydney West Joint Regional Planning Panel Meeting was held on 21 November 2013 at Penrith City Council, and the matter was deferred as the Panel required future information on the odour upgrade control report required by the EPA.

A site meeting was undertaken by Mary-Lynne Taylor, Paul Mitchell and Bruce McDonald on 21 November 2013. The matters observed at the site meeting included:

- Position and dimension of the site;
- Traffic access;
- Area for car parking and manoeuvring on site
- Landscape area;
- Closeness of buildings on neighbouring sites.

A briefing meeting was held with council on 26 April 2013.

A final briefing meeting was held with council on 30 January 2014.

### **B. Evidence or other material on which findings are based**

In making the decision, the Panel considered the following:

#### **Environmental Planning and Assessment Act 1979**

s.79C (1) Matters for consideration—general

(a) the provisions of:

- (i) *any environmental planning instrument,*

Namely:

- State Environmental Planning Policy (Infrastructure) 2007
- Penrith Local Environmental Plan 2010
- State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)
- Sydney Regional Environmental Plan No.20 – Hawkesbury/Nepean River (SREP 20)

(ii) *any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority*

- The Stage 2 City Wide Penrith Planning Proposal.

(iii) *any relevant development control plan*

- Penrith Development Control Plan 2010

(iv) *relevant regulations:*

- The EPAR, Clause 94, fire safety upgrade of the existing building required as per the Building Code of Australia.

## **Submissions**

After public exhibition for 1 month Council received 3 submissions objecting to existing offensive odour, site management and site suitability for this application.

The Panel was provided with the three submissions which were made in accordance with the Act and regulation. In making the decision, the Panel considered the submissions.

The Council advised that there had been ongoing complaint relating to offensive odour and the Panel is aware that Council commenced legal proceedings to achieve compliance. The Panel believes that the conditions proposed for this application will, if complied with, ensure a satisfactory response to neighbouring concerns.

In making the decision, the Panel considered the following material:

1. Penrith Council Development Assessment Report dated 30 January 2014.

2. Appendix A of the above report contain Penrith Council Recommended Conditions of consent.
3. Odour Management Plan prepared by Benbow Environmental (Ref: 131072\_OMPU1\_Rev3), dated December 2013.
4. The 'Environmental Management Plan' prepared by Sustainable Consulting Solutions Pty Ltd (Project No. 3439.001 Revision 0) dated May 2012.
5. Environmental Impact Statement, prepared by Turnbull Planning International Pty Limited, dated January 2013.
6. Supplementary Report for Statement of Environmental Effects, prepared by SEMF Pty Ltd, dated May 2012.
7. Acoustic Assessment, prepared by BGMA Pty Ltd, Ref:120426, dated May 2012.
8. Odour Impact Assessment Report, prepared by Benbow Environmental Ref:121042, dated May 2012.
9. Traffic and Parking Assessment, prepared by Varga Traffic Planning Pty Ltd, Ref:12374, dated October 2012.
10. Architectural Plans prepared by Turnbull Planning International Pty Limited, reference Nos. 01C, 02C, and 03A all dated August 2013.
11. NSW Director General's Requirements (DGR638) dated 6 December 2012.
12. Sydney Regional Advisory Committee Concurrence dated 3 April 2013.
13. Environmental Protection Licence No 13253, dated 21 December 2012.
14. Locality map by Penrith City Council.
15. Water Management Plan dated 7 May 2012.

All of this material was given to the Panel members. In making the decision, the Panel would consider any representations made at the meeting of the Panel on 30 January 2014, however there were no such representations.

### **C. Findings on material questions of fact**

The Panel has carefully considered all of the material referred to in Section B.

#### ***(a) Environmental planning instruments.***

The Panel has considered each of the environmental planning instruments referred to in Section B.

The Panel agrees and adopts the analysis in the Council Assessment Report in relation to each of the environmental planning instruments referred to in Section B:

- Under clause 8(c) of Schedule 4A of the Act the Panel is to determine designated development under clause 32 of Schedule 3 EPAR and this application for a waste and resource management facility meets the definition of "designated development".

- Under section 91 of the Act the application is classified as integrated development and is to be referred to the EPA for their General Terms of Approval (GTAs) based on the types of material and volumes to be processed as part of this application.
- The EPA has provided their GTAs and has required an update of the odour mitigation measures as a condition of their approval.
- Under section 77A of the Act, the development is classified as designated development due to the activities relating to waste and volumes of waste being processed. The application has been referred to Department of Planning & Infrastructure for the list of Director General's requirements and those requirements have been obtained and the Council assessment report states the application has been prepared in accordance with those requirements.

#### State Environmental Planning Policy (Infrastructure) 2007

Under clause 104 of this policy a waste transfer station of any size is classified as a traffic generating development and requires referral to Roads and Maritime Services (RMS) and Sydney Regional Development Advisory Community (SRDAC).

The application has been referred to both those bodies together with the applicant's traffic and parking assessment report, both of which were reviewed by those bodies which found the application satisfactory subject to the imposition of conditions relating to parking and manoeuvrability and those conditions have been included in the proposed conditions of approval.

#### Penrith Local Environment Plan 2010

Under this LEP the proposal is a prohibited land use but it is permissible under SEPP (Infrastructure) and the SEPP prevails and the development is therefore permissible.

#### State Environmental Planning Policy No. 33

The Council has assessed this application under the department's guidelines relating to possible hazardous and offensive development and have concluded that emissions from this development can be controlled in a manner that ensures that there is no significant impact noting that the applicant has been granted a licence by the EPA (Environmental Protection Authority 12353).

The combination of new licence conditions relating to a pollution reduction program attached to the licence, and the general terms of approval now conditioned under this consent will, in the opinion of the Panel, ensure the site emissions will be managed appropriately.

#### Sydney Regional Environmental Plan No. 20

This plan deals with the Hawkesbury/Nepean River catchment area and this has been addressed by appropriate conditions of consent.

#### Conclusion

It is for the above reasons that the Panel has adopted the analysis in the Council's Assessment Report in relation to each of the environmental planning instruments.

#### ***(b) Draft environmental planning instruments.***

The Panel has considered The Stage 2 City Wide Penrith Planning Proposal referred to in Section B.

The Stage 2 City Wide Penrith Planning Proposal has been placed on public exhibition and therefore must be considered and Council's Assessment Report finds the proposal will not be affected by this development.

#### ***(c) Development control plan.***

The Panel has considered the Penrith Development Control Plan 2010.

The Panel agrees with and adopts the analysis in Council's Assessment Report in relation to the Development Control Plan and notes that the proposed development generally complies with the Penrith Development Control Plan 2010.

#### ***(d) Regulations.***

The Panel agrees with and adopts the analysis in Council's assessment report in relation to the fire safety upgrade of the existing building in accordance with the requirements of Clause 94 of the EPAR.

Conditions requiring the upgrading of fire safety requirements under the BCA can be imposed and 3 relevant conditions relating to fire upgrade have been recommended by Council's Building Surveyor and are imposed by conditions of consent.

***(e) Likely environmental impacts of the development.***

In relation to the likely environmental impacts of the development on the natural environment, the Panel's findings are as follows.

The Panel agrees with and adopts the analysis in relation to the likely environmental impacts of the development on the natural environment in section 8, (pages 8 and 9) of Council's Assessment Report.

Current Odour Controls

Whilst the Panel was concerned about Council's records showing numerous and ongoing complaints from surrounding landowners about offensive odour from the present operation of this site and was concerned about the adequacy of this application, the applicant has prepared a further Odour Management Plan (OMP) which was referred to the EPA and has been assessed. The EPA has accepted the OMP subject to additional conditions which it has been imposed on this application. The proposed conditions set time limits by which the odour management requirements must be met. The Panel now finds the manner in which odour management will be carried on this site to be satisfactory.

In addition a condition has been imposed to limit the duration of the approval to ensure that the application will meet the proposed conditions of consent when operating.

Traffic and Access

Neighbouring property owners had complaints on traffic problems from the use of this site and conditions imposed by a previous major project approval have also been placed on this site operation and further conditions have been imposed on this consent. In particular there is a prohibition of the use of vehicles exceeding a 9m rigid vehicle by way of a condition on this application. The Panel is now satisfied that the conditions imposed will avoid conflict with other uses on the site and with other vehicles in nearby streets.

Mainstream Flooding

The Panel adopts the analysis of resolution of flood measures proposed to minimise the risk of flood damage and pollution. Satisfactory conditions of consent have been imposed.

Noise Generation, Waste Management and Environmental Plan

These matters have all been the subject of reports from the applicant which, together with conditions of consent, have been resolved satisfactorily.

***(f) Suitability of site.***

Based on a consideration of all of the material set out in Section B and given the Panel's findings in this Section C, the Panel agrees that the site is suitable for the proposed development.

Because of the submission of amended reports, acceptance by the Department and EPA, satisfactory internal referrals comments and final resolution of the conditions of consent the Panel now finds this site is suitable for development which will appropriately mitigate potential impacts.

***(g) Public Interest.***

Based on a consideration of all of the material set out in Section B and given the Panel's findings in Section C, the Panel's finding is that granting consent to the development application is in the public interest. In particular, the Panel is of the view that the following matters lead to the conclusion that granting consent to the development application is in the public interest

The development proposed in this application is for an important civic service to deal with waste. The Council and the Panel were concerned in the past about the manner in which the service was provided from the site, and that it generated serious environmental amenity problems. The Panel believes that the amended reports and the assessment by state government and local government demonstrate that the development can be appropriately managed with suitable conditions. It is in the public interest for this development to continue subject to strict compliance with the conditions.

**D. Why the decision was made**

In light of the Panel's findings in Section C, all five members of the Panel decided this was an appropriate use of the site and granted consent to the development application, subject to the conditions recommended by Council in its Assessment Report.

The Panel has given serious consideration to all aspects of this application noting the importance of the development in the public interest, the present and previous complaints of neighbouring occupants, failure to meet environmental conditions and breach of amenity. The conditions suggested by the council have been thoroughly analysed and in some cases amended to ensure that, in particular, upgraded odour management will occur in a timely fashion.

The application has received consideration by Department of Planning & Infrastructure, the EPA and the Council. Each body has recommended strict



conditions relating to environmental controls including the imposition of a condition allowing a time limited consent to ensure environmental conditions are met. The Panel unanimously approved the application subject to the conditions attached as drawn up by the Council and the Panel.

The Panel noted the continuing unauthorised use of the site and the Council's continuing efforts to secure compliance with the Act. This approval is founded on the material provided with this application (DA12/1346) as amended throughout the assessment process and as conditioned by all relevant authorities, and has approved the application on the basis that no activity is authorised under this application until all prerequisite conditions have been satisfied and an occupation certificate is in place.



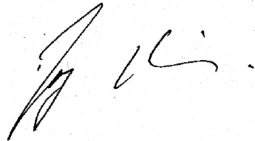
JRPP member (Chair)



JRPP member



JRPP member



JRPP member



JRPP member