

MEMORANDUM

Reference: PPSSWC-289 (Council Reference: DA22/1080)
To: Sydney Western City Planning Panel
From: Gavin Cherry, Development Assessment Coordinator
Date: 16 May 2023

Subject: Penrith City Council Response to SWCPP Suggested Determination Deferral (PPSSWC-289) - Proposed Warehouse Development at No. 68 Lockwood Road, Erskine Park – Post Determination Meeting Memorandum

1. Background Information and Reiteration of Recommendation for Refusal

Reference is made to the above Development Application which was reported to the Sydney Western City Planning Panel (**the Panel**) for determination with a recommendation for Refusal. The application was considered at a 'Final Briefing for eDetermination' (**Determination meeting**) held **8 May 2023**.

Although no formal Reasons for a Decision or minutes have been issued by the Panel as yet, during the 'Final Briefing for eDetermination' meeting, the Panel Chairperson requested that Council provide draft recommended conditions for the Panel's review. This request raises a number of procedural concerns which suggest that the Panel is considering favourable determination of the application.

Council maintains that the application is unsupportable and raises procedural concerns with the Panel's consideration of amended plans and documentation tabled by the Applicant at the Determination Briefing. This information has not been lodged via the NSW Planning Portal. Any information received outside the Portal should not be taken to form part of the development application, nor considered in the assessment and determination of the development application. Specific attention is drawn to Division 2, Section 37 of the Environmental Planning and Assessment Regulation 2021 where it is outlined that any amendment to an application must be made via the NSW Planning Portal. These provisions are only exempt for a Land and Environment Court Appeal.

The Panel's allowance and consideration of amended material outside the NSW Planning Portal, has also not afforded sufficient opportunity for the assessment authority, separate from the consent authority, to undertake its necessary processes under Section 4.15 of the Environmental Planning and Assessment Act, 1979. In addition, amended and further material sent via email (dated 10 May 2023) to the Secretariat after the close of the determination meeting has not been considered in Council 'assessment of the application

MEMORANDUM

and cannot be considered by the Panel as this documentation has also not been lodged in support of or as an amendment to the Application via the NSW Planning Portal.

Council's internal referral departments have also not been provided sufficient or reasonable opportunity to assess or consider the additional or amended material in relation to development application DA22/1080 noting this information does not form part of the application as lodged.

Due to the above it is maintained that the application cannot be favourably determined with any reliance on information submitted outside the NSW Planning Portal. If the Panel seeks to consider or allow amended information, specific direction from the Panel is required to enable that information to be lodged, accepted and re-assessed by Council.

2. Section 4.14, Consultation, and development consent—certain bush fire prone land, under Environmental Planning and Assessment Regulation 2021

It is also Council's continued view that the application cannot be favourably determined by Panel as the Applicant has not lodged a Bushfire Assessment Report in support of the application and thus the matters for consideration under section 4.14 of the Environmental Planning and Assessment Act 1979 have not been satisfied. Section 4.14 4.14(1) specifically states that:

Development consent cannot be granted for the carrying out of development for any purpose...on bushfire prone land...unless the consent authority –

- (a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled 'Planning for Bush Fire Protection' prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*
- (b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.*

The subject site is identified as being bushfire prone land. No bushfire report has been submitted.

As no consultation has been undertaken with the Commissioner of the NSW Rural Fire Service as may be required under 4.14 (1A) *concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire* and the Applicant has not detailed if the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the

MEMORANDUM

document entitled 'Planning for Bush Fire Protection' prepared by the NSW Rural Fire Service, as is required by the Section, Council raises that the Application cannot be Approved by the Panel.

3. Deemed Refusal Court Proceedings

The Panel should also be aware that the Development Application is subject to a 'deemed refusal' proceedings in the Land and Environment Court and is listed for a 'Section 34 Conciliation Conference' on Thursday **18 May 2023**. It is because of this that Council maintains that the development as lodged should be refused and any attempts from the applicant to amend the proposal should be progressed via the court process as enacted by the Applicant.

Alternatively, the Applicant should immediately discontinue the appeal with the Court and advance any amendments to the development application via the NSW Planning Portal for consideration as part of the development application. This will ensure that concurrent, yet inconsistent, assessment processes are not occurring.