



Department of
Environment and Conservation (NSW)

Your reference 4114/65
Our reference : 01/00810
Contact :RayFowke

Ms Tanya Jackson
Senior Environmental Planner
Penrith City Council
POBox60
PENRITH NSW 2750

Dear Ms Jackson

Section 62 consultation - draft Local Environmental Plan for Penrith

I refer to your letter dated 12 January 2006 in which you seek to consult with the DEC on the above draft plan in accordance with s.62 of the *Environmental Planning and Assessment Act 1979*. Unfortunately it has not been possible to respond earlier due to competing priorities.

As you are aware, the DEC has previously provided detailed comment on the preparation of the draft LEP, and the earlier Rural Lands LEP, as follows:

- s.34A consultation (December 2005);
- s.62 consultation for the Rural Lands LEP (November 2004);
- s.34A consultation for the Rural Lands LEP (July 2004); and
- earlier comments by the former NPWS and EPA on the Rural Lands Study and Rural Lands Strategy.

The DEC understands that the new integrated LEP will deal with the full range of planning issues for the LGA, subsuming the former proposed Rural Lands LEP. The DEC is also aware that the LEP is one of those identified as a high priority and is to be prepared by 2007. The LEP will be prepared in stages, starting with the rural lands component. This appears logical given the work that Council has already undertaken in this area.

Issues raised by the DEC in previous submissions remain relevant to the current LEP process. I note that Council has summarised a number of these in its latest letter. To reiterate, the key issues of interest to the DEC are:

- biodiversity- particularly opportunities to identify key areas of conservation significance, including corridor opportunities, and to develop appropriate planning mechanisms to protect these;
- Aboriginal heritage - the DEC has previously highlighted the critical need to undertake an assessment of Aboriginal heritage values, in consultation with the Aboriginal communities, to support the LEP process;
- land use conflict - especially with regard to avoiding conflicts between agricultural uses and residential development (including rural residential);

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Please note! that, although the EPA is now a part of the Department of Environment and Conservation, certain statutory functions and powers continue to be exercised in the name of the Environment Protection Authority (EPA).

- **water** - particularly the need to use the LEP to promote achievement of the Government endorsed Water Quality and River Flow Objectives for the Hawkesbury-Nepean Catchment; and
- **air quality** - including the development of strategies to improve integration of land use and transport planning (especially via public transport) and the limitations on the use of solid fuel heaters.

The DEC recommends that Council continue to address the issues already raised by the DEC during development of the comprehensive LEP and supporting DCP. Some more specific comments on queries raised in your letter, and addressing issues of interest to the DEC, are provided at Attachment A.

The DEC remains very interested to provide further advice and support to the Council as preparation of the LEP progresses. The DEC views the LEP and DCP as an important test-case for the roll-out of other comprehensive LEPs across Western Sydney.

I note specifically that Council has identified that it expects a number of limitations will occur on its ability to use the LEP to drive desired outcomes in a range of areas, given that Council will be obliged to use the new LEP template (once released). This means that the DCP will assume a significant level of importance as the tool to define and guide the form of future development. The DEC would encourage Council to review the forthcoming Development Code for the Growth Centres as this will provide some useful guidance in preparation of the Penrith DCP.

I look forward to further discussions with Council on this matter. If you have any queries please contact Ray Fowke on 9585 6921.

Yours sincerely

Lou Ewins
Manager, Planning and Aboriginal Heritage
Metropolitan Branch
Environment Protection and Regulation Division

Former Air Services Australia site. Cranebrook

The DEC is aware that one of the site-specific issues to be addressed in the first stage of the comprehensive LEP is the future land use options for the above site. The site was formerly owned by the Commonwealth but has been on-sold to a private company. The site remains zoned for Special Uses, although the current landowners are seeking to have it rezoned for residential purposes.

The DEC has had a number of discussions with the Council and landowners regarding this site. Assessments of the biodiversity and Aboriginal heritage values have been undertaken and made available to the DEC (the final Aboriginal heritage assessment was obtained via Council only in the last week).

Based on the assessments that have been undertaken to date it is clear that the site has significant biodiversity and Aboriginal heritage values. The DEC considers that those values must clearly drive any future decisions regarding the site.

Having regard to those values, the DEC is of the firm view that the site has virtually no development potential. Given the identified conservation values and its size, shape, and current and likely future surrounding land uses, the protection of the entire site is therefore considered essential to maintaining its ecological integrity and the protection of Aboriginal heritage.

The DEC therefore considers that strong preference should be given to ensuring that the LEP delivers protection for the site as a whole. Options to achieve this outcome will obviously need to be the subject of further discussion. However, the DEC is not convinced that simply because the land has passed into private ownership that this in itself provides a clear justification for making the site available for development.

Biodiversity certification

As Council is aware, the Minister for the Environment now has statutory powers to confer biodiversity certification on an environmental planning instrument (EPI) if satisfied that it will maintain or improve biodiversity values, including threatened species. The process for certifying EPIs is still under development and guidelines should be available in the near future. Although no EPIs have yet been certified, the Growth Centres SEPP is likely to be one of the first that is formally considered by the Minister.

The prospect for the Penrith LEP to be certified will need to be the subject of further discussion with Council. Clearly, the key factors to consider will be the extent to which the LEP (and any planning initiatives that accompany the LEP) can protect the extent, quality, connectivity and security of areas of biodiversity value. Work being undertaken by the Department of Planning for the Growth Centres will provide a useful basis on which to further consider this matter.

Aboriginal heritage

Council's letter requests advice on provisions and approaches to Aboriginal heritage assessment that could be included in the City Wide DCP.

The DEC considers that the work currently being undertaken in developing an Aboriginal heritage assessment framework for the Growth Centres will provide the most suitable model for Council to consider. That work is summarised at Attachment B. Essentially, it involves agreements with the Aboriginal groups about how they will be consulted during the assessment process and the development of a standard assessment methodology. The DEC expects that the Development Code for the Growth Centres will make it mandatory for an assessment to be undertaken for each precinct using the methodology and in accordance with the consultation protocol.

The DEC can provide more information on this approach as it develops during the next few months.

However, it should be noted that the precinct planning focus of the Growth Centres approach has been developed based on the scale of the Growth Centres and the anticipated long-term roll-out of development. The DEC would still recommend that Council undertake assessments for Aboriginal

heritage to guide development of the LEP itself, rather than leaving that work to specific development proposals or areas. As with biodiversity, the best opportunities to achieve conservation outcomes for Aboriginal heritage will always be at the strategic level of land-use decision-making.

On a related matter, it is noted that Council has consulted with two of the key Aboriginal groups for the area. The DEC strongly recommends that Council seek to consult all relevant groups on the draft LEP. One key group that has not been identified by Council is the Darug Custodian Aboriginal Corporation.

Air quality

Council's letter indicates that there are likely to be difficulties in achieving a complete ban on solid fuel heaters via the LEP (given the constraints on the forthcoming standard LEP template). This matter is also being addressed in the Growth Centres, where the DEC is seeking to ensure that the Development Code specifies requirements for gas infrastructure to be provided to all urban areas for heating and cooking.

The DEC recommends that Council review the Growth Centres Development Code for further guidance on this matter, once it is available.

Water issues

The DEC also recommends that Council examine the approach to water management that is being developed for the Growth Centres, and which will be embedded in the Development Code. The DEC expects that a feature of that approach will be the identification of specified outcomes and targets for stormwater. The DEC is currently working with the Growth Centres Commission to develop the mandatory stormwater targets that will apply to new development in the South Creek catchment (ie. pollutant loads for total suspended solids, nitrogen, phosphorous, and flows).

The DEC is also developing new "Managing Urban Stormwater Guidelines", which should be available in time for Council to refer to in preparation of the DCP. Those Guidelines will provide details of the types of stormwater objectives that should be applied to a range of receiving environments (eg. bushland, riparian areas, etc) and the range of techniques available to meet these. These objectives are designed to provide certainty without being prescriptive, are financially and technically feasible and to allow stormwater systems to be customised to local circumstances.

In addition, the DEC also recommends that Council incorporate water sensitive urban design requirements into the LEP (eg. via the LEP objectives), supported by more detailed measures in the DCP. In particular, the DEC would recommend that the DCP specify the preparation of a Water Management Study for all new subdivisions. The broad scope of a Water Management Study is described at Attachment C.

Aboriginal Cultural Heritage Assessment Process for the NW and SW Growth Centres

The overall aim of the ACH Assessment Process to establish a streamlined assessment and approvals framework for the conservation of Aboriginal cultural heritage values within the NW & SW Growth Centres. This will be achieved in three stages, which are:

Stage 1 - development of a consultation protocol in collaboration with the Aboriginal community groups for their involvement in the project and development of a methodology for Aboriginal cultural heritage assessments to be undertaken in each Precinct

Stage 2 - for each Precinct, undertake the Aboriginal cultural heritage assessments which will:

- identify Aboriginal cultural heritage places and landscapes within the Precinct with the aim of informing precinct planning outcomes;
- identify prospective conservation areas based on their Aboriginal cultural heritage values; and,
- provide the information base on which the Department of Environment and Conservation can assess precinct level approvals.

Stages - based on the results and recommendations of the cultural heritage assessment, develop guidelines that will inform the precinct planning process and consideration of precinct level Part 6 approvals under the *NSW National Parks and Wildlife Act 1974*.

Current Status

Context Pty Ltd have been engaged by the Growth Centres Commission to undertake Stage 1 of the Assessment Process described above. Context, with guidance and input from DEC, are currently liaising with the relevant Aboriginal groups regarding the consultation protocol and methodology for Aboriginal cultural heritage assessments.

This consultation protocol and methodology should be finalised by mid 2006.

Aboriginal cultural assessments must comply with the established protocol and methodology. Assessments will be undertaken at a Precinct level and as stated above will provide detailed guidelines/recommendations for conservation outcomes as well as advise on any further investigation or assessment requirements necessary to enable the DEC to issue Precinct wide section 90 Consents.

Water Management

A Water Management Study, (or Water Sensitive Development Plan) should incorporate (depending on the scale of development):

- an identification of water management and other relevant objectives (relating, for example, to salinity hazard);
- an identification and assessment of relevant site characteristics and constraints;
- an identification of potentially feasible (storm) water management strategies, which may comprise stormwater reuse options, best planning practices, stormwater treatment measures (in both the public and private domain) and indicative maintenance requirements and arrangements;
- an assessment of the potential strategies, including the nature, basis and outcomes of stormwater modelling used to assess alternative solutions. This assessment of alternative strategies should address their compliance with management objectives, life-cycle costs, ongoing operations and maintenance requirements, land-take requirements, expected reliability and likely level of community acceptance; and
- a suitably detailed description of the preferred WSUD strategy, in the form of documents, plans and conceptual diagrams (as appropriate).

The new DEC Managing Urban Stormwater series will provide more detail on preparing such a plan.

OurRef: 4114/65 Contact: Tanya
Jackson Telephone: 4732 7722 (Wed and
Thurs)

12 January 2006

<<Name>>, <<Title>>
<<Organisation>>
<<Address_1>>
<<Address 2>>

Dear Sir/Madam,

**Section 62 notification - Penrith City Council
Draft Penrith Local Environmental Plan 2007**

In October 2005 Council resolved to prepare a draft Local Environmental Plan for the City, based on the template for Local Environmental Plans developed by the Department of Planning. Council also resolved to prepare a City wide draft Development Control Plan to correspond with and support the new integrated Local Environmental Plan.

In September / October 2004 Council consulted with your organisation regarding the draft Rural Lands Plan, which was to be prepared to implement the Penrith Rural Lands Strategy adopted by Council in September 2003. Please be aware that preparation of this plan will now be incorporated into the new integrated Local Environmental Plan - Penrith Local Environmental Plan 2007.

In accordance with Section 62 of the Environmental Planning and Assessment Act, your comments regarding the preparation of the draft Penrith Local Environmental Plan 2007 are requested. Please find attached the following:-

1. a list of the key points raised by your agency *in* response to Council's Section 62 consultation for the Rural Lands Plan, together with some specific questions Council would like you to consider,
2. a copy of the report to Council from 10 October, 2005, including the minute resolving to prepare the draft plan; and
3. a preliminary table of contents for the draft Local Environmental Plan and draft Development Control Plan, to provide an indication of issues to be dealt with by each plan.

* Council seeks information on any issues you consider need to be addressed by the draft plan, or potential solutions to the issues already identified. It would be appreciated if your comments could be received by Council no later than 24 **February 2006**.



Department of
Environment and Conservation (NSW)

Your reference Our 4050/8 :
reference Contact 01/00810
:RayFowke

AllegraZakis
Senior Environmental Planner
Penrith City Council
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| PENRITH CITY COUNCIL | |
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RECEIVED

Dear Ms Zakis

Section 34A consultation - draft Local Environmental Plan for Penrith

I refer to your letter dated 9 November 2005 in which you seek to consult with the DEC on the above draft plan in accordance with S.34A of the *Environmental Planning and Assessment Act 1979*.

As you note in your letter, the DEC has previously provided extensive comment on biodiversity matters associated with the draft Rural Lands Plan. Those submissions also addressed other DEC responsibilities and interests such as Aboriginal heritage, land use conflicts, and air and water quality.

The DEC understands that the Rural Lands Plan is now being subsumed into the larger comprehensive LEP for the LGA, which is to be prepared using the new LEP standard (once this is released by the Minister for Planning).

The DEC is supportive of your suggestion that a range of biodiversity conservation issues will now be dealt with through the draft comprehensive LEP. Clearly, this will provide an important opportunity to identify and protect areas of conservation significance across the LGA, consistent with the NSW Government's broad intent to maintain and improve biodiversity values. However, I acknowledge that the extent to which this is possible via the LEP will depend on the content of the standard LEP.

At this stage, the DEC does not intend to provide detailed comment on the content of the proposed draft LEP. However, the DEC would be very interested in participating in any steering, advisory or consultative group established to oversee development of the LEP. Key biodiversity issues that the DEC would be seeking to discuss further with the Council include:

- processes for refining the identification and mapping of conservation values within the LGA, building on the regional-scale information already available but applying ground-truthing and more detailed assessment techniques to provide better information that can be applied at this scale of planning;
- the scope for biodiversity certification to be considered for the LEP. This will depend on whether a maintain or improve outcome can be delivered by the LEP and any associated elements of a planning package for the LGA; and

- options for key sites, such as the former ASA site at Cranebrook and the Orchard Hills RAAF base, and corridor connections between these. A number of key areas and linkages were highlighted in the DEC'S previous S.34A advice on the Rural Lands LEP.

The DEC is also very interested to provide input to the LEP with respect to Aboriginal heritage and other environmental protection matters.

I look forward to further discussions with Council early in 2006. If you have any queries regarding these matters, please contact Ray Fowke on 9585 6921.

Lou Ewins

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lou Ewins', followed by the date '15/12/05' written to the right of the signature.

**Manager, Planning and Aboriginal Heritage
Metropolitan Branch
Environment Protection and Regulation Division**

Our Ref 4050/8 Contact: Allegra
Zakis Telephone: 4732 7827 (Mon &
Wed) 0416 049475

9 November 2005

Derek Steller
Regional Planning Co-ordinator
Conservation Programs and Planning Division
Department of Environment and Conservation
PO Box 1967
Hurstville 2220

Dear Mr Steller,

Draft Local Environmental Plan - Penrith Local Plan

On 10 October, 2005, Council resolved to prepare a comprehensive draft Local Environmental Plan for the City. This plan is to be based on the Department of Planning's draft template for Local Environmental Plans, and will be the comprehensive planning instrument covering all land within Penrith Local Government Area. Penrith has been designated a two year Council by the Department of Planning under the current reform process, meaning that the draft plan for the whole City is expected to be completed by the end of 2007.

In order to undertake such a large and complex task, Council will approach the plan in stages. The initial stage will cover the northern rural lands, Mulgoa and Wallacia, the Penrith City Centre and the St Marys Town Centre. To ensure that the plan does not require significant amendment between stages, however, statutory consultations under Section 34A and Section 62 will be undertaken for the entire City. You are accordingly requested to provide comments under section 34A for the whole City, not just those areas covered in the initial stage.

In accordance with Section 34A of the Environmental Planning and Assessment Act 1979, the information required to be supplied by Council is set out below:-

1. Reasons for preparing the draft Local Environmental Plan

Penrith City Council is committed to reviewing all its planning instruments and has been working towards this goal for some time. The primary reason, however, for preparing a single, City wide plan at this point is the requirement of the State Government's Planning Reform process that Council have a single Local Environmental Plan in place by the end of 2007.

2. Aims, objectives, policies and strategies to achieve the aims of the Act

The draft LEP will achieve a number of things:-

- Apply consistent zonings across all lands in the City, and prescribe permissible and prohibited uses for each;
- Establish appropriate minimum lot sizes for future subdivision in all areas;

- Establish definitions for key land uses, according to the State Government's draft template for Local Environmental Plans;
- Establish controls for land subject to natural hazards, such as salinity, bushfire and flood;
- Establish controls to regulate the bulk and scale of buildings;
- Define key riparian corridors and other areas of key biodiversity value, and set parameters for determining to what extent land within these corridors can be developed.

3. Land to which the draft instrument will apply

The draft plan will apply to all land within the City of Penrith.

4. Matters to be dealt with in the draft instrument.

Please refer to the attached Council report dated 10 October 2005. The draft LEP will deal with the following matters which are particularly relevant to the DEC:-

- Application of definitions for *native flora*, *native fauna*, *native vegetation*, *clearing native vegetation*, *regrowth* and *riparian land* (among others) as per the draft template. Council will then determine in which zones these uses should be prohibited, permissible with consent or permissible without consent;
- Possible future use of the former Air Services Australia land at Cranebrook, currently zoned 5(a) Special Uses Wireless Station, but now in private ownership and therefore requiring an alternate zone;
- The width of key riparian corridors; and
- Appropriate zonings and permissible / prohibited uses for identified key biodiversity areas, given the suite of zones available under the draft template (further information on zones is attached to this letter).

The DEC provided a comprehensive response to section 34A consultation for the Rural Lands Plan. The Rural Lands Plan has now been incorporated into the current Local Plan process. Issues raised by the DEC as part of the Rural Lands consultation will be taken into consideration as far as possible, given the limitations imposed by the Department's draft template for Local Environmental Plans. A summary of the issues previously raised by DEC and a preliminary response from Council is attached to this letter.

If the Department wishes to raise any additional issues to those outlined in the Department's previous section 34A response, please provide comments in writing by Friday, 23 December 2005. If no comments have been received by this date, it will be assumed that the Department has no further comment to make at this stage. If you have any questions in regard to this plan prior to this date please do not hesitate to contact me. Questions after this date should be referred to Tanya Jackson - 4732 7722 (Wed and Thurs).

Yours faithfully,

Allegra Zakis
Senior Environmental Planner

Key points from Section 34A submission for rural lands

F14, pt 14050/8

- 1) NPWS is supportive of the ongoing strategic process.
- 2) DEC is supportive of council's efforts to identify areas of conservation value and corridor options. Consolidated core and support for core maps are now available, and this information should be considered when developing areas to be conserved through LEP provisions. Use maps then undertake ground truthing. Undertaking vegetation mapping, this information should also be used to determined final areas.

Comment - Council will reference both the consolidated core and support for core maps and the vegetation mapping as part of identifying lands to be zoned for some form of conservation outcome.

- 3) Areas to be looked at again considering the DEC maps are:-
 - East west corridor between Castlereagh Nature Reserve and Cranebrook / Agnes Banks Conservation Area. Core vegetation not included in corridor, shown under Rural Lands Strategy as Rural Living Mixed Uses;
 - East from Castlereagh Nature Reserve towards north west structure planning area and the corridor shown along South Creek. Again, core vegetation is shown as Rural Living Mixed Uses which could link to the creek and possibly commonwealth lands at Shanes Park;
 - Lands north from Castlereagh Nature Reserve, along eastern edge of Waste Services depot to Nature Conservation area behind correctional centre;
 - Ropes Creek and South Creek corridor. Shown as Rural Conservation (Corridor) but subject to current planning exercise (being undertaken by Trevor Sier)
 - Orchard Hills RAAF base. NPWS do not want to see the Defence zoning maintained. Draft LEP should recognise conservation areas of the site through zoning or affectation.
 - East west link between Orchard Hills and Glenmore Park / Mulgoa Nature Reserve.

Comment - Council will review these areas.

- 4) Conservation areas should, where possible, fit with the NW and SW structure planning process.

Comment - Council will investigate this and conform with it as far as possible.

- 5) Corridors should be as wide as possible when linking large areas. Corridor width of 200 m used in recent NW and SW structure planning processes.

Comment - Corridor widths will be set through the LEP process. Wide corridors should certainly be possible for riparian land, but may be more difficult to achieve for conservation areas not focussed around creek systems.

- 6) DEC supports zoning and hatching / affectations.

Comment - it is unclear whether affectations will be possible under the draft template. The Department of Planning has indicated that there are mechanisms within the template to allow hatchings or similar. Council is pursuing this option and will use it if available.

- 7) All lands reserved under National Parks and Wildlife Act should be subject to a single consistent zoning.

Comment - it is anticipated these areas will be zoned 'Natural Areas' under the new template.

- 8) Areas of high ecological significance and adjoining moderate significance should be included in a primary conservation zone.

Comment — it is anticipated these areas will be zoned either 'Conservation' (within the suite of Environment Protection Zones) or 'Special Uses — Conservation' under the new template. The use of a Special Uses zone may be preferable given the range of uses current permitted under the 'Conservation' zone.

- 9) Areas of moderate ecological significance not adjoining areas of high significance - secondary conservation zone

Comment - there is no secondary conservation zone available under the draft template. This may support the use of a 'Special Uses' zone for those areas of high value, and the more flexible 'Conservation' zone for areas of moderate value.

- 10) Habitat linkages and corridors - two options, include all as secondary conservation zone, or include areas with vegetation in primary conservation zone, but include other areas with an affection which enables council to regulate uses within the corridor.

Comment - again, this may be possible under the template if a 'Special Uses - Conservation' zone is developed. This would allow inclusion of those areas with vegetation within this zone, and other areas as part of the 'Conservation' zone. This may, however, present difficulties on large lots where a split zoning would present the best outcome, as it is unclear whether split zonings are possible under the template.

- 11) Introductory aims and objectives for the LEP and Conservation zones must include clear and unambiguous statements regarding priority to be given to conservation of biodiversity and aboriginal heritage in identified corridor and conservation areas.

Comment - some objectives for both the LEP and the Environment Protection Zones have already been set through the template. Council has, however, the opportunity to include additional objectives, and this will be used to strengthen the objectives of the zone along the lines suggested by DEC.

- 12) Council should look at offsets or incentive within the LEP itself - 'no net loss' principle.

Comment - this does not appear to be possible under the current draft template. The 'no net loss' principle may, however, be able to be incorporated into the objectives for relevant zones.

- 13) Look at considering which zones a plan of management is required prior to development consent

Comment - the current draft template does not appear to allow this to occur, as it is not possible to add provisions. Council will, however, pursue this option with the Department of Planning, and will endeavour to include appropriate provisions in the Development Control Plan if they cannot be incorporated into the LEP.

- 14) Possibility of introducing clauses such as those used with cultural heritage to provide positive conservation incentives.

Comment - this does not appear to be possible under the current draft template. Council does not have the ability to add to set clauses on conservation.