



**Environment,
Climate Change
& Water**

Your reference: MP10_0075 and
MP10_0078
Our reference: DOC10/56619
Contact: Rachel Lonie, 9995 6837

The Director
Strategic Assessment
Department of Planning
GPO Box 39
Sydney NSW 2001

Attention: Simon Bennett, Strategic Assessment

Dear Director

**Re: North Penrith Defence Site – State Significant Site – Concept Plan and Stage 1 Project
Application (MP10_0075 and MP10_0078)**

I refer to your letter received on 14 December 2010 inviting the Department of Environment, Climate Change and Water (DECCW) to provide comment on the above Concept Plan and Stage 1 development.

DECCW comments are provided in Attachment 1. If you have any queries regarding this matter please contact Rachel Lonie on 9995 6837 (Monday or Wednesday only).

Yours sincerely

STEVE HARTLEY
A/Director Metropolitan Branch
Environment Protection and Regulation

ATTACHMENT 1

DECCW Comments on North Penrith Defence Site – State Significant Site – Concept Plan and Stage 1 Project Application (MP10_0075 and MP10_0078)

1. Flood Risk Management

The applicant's North Penrith Regional Flooding Assessment (Stage 1) Report (Appendix O Worley Parsons 2010) states that:

- the minimum habitable floor level should be RL 25.9mAHD (100yr ARI flood level plus 500mm freeboard) in accordance with the NSW Government's Flood Prone Land Policy as set out in the *Floodplain Development Manual 2005* and *Section 117 Direction*.
- The flood levels in rarer floods are affected by the capacity of relatively narrow gorges downstream of Penrith such that typically the 200yr, 500yr, 1000yr and PMF floods cause flood levels up to 0.9m, 1.7m and 5.6m higher respectively than for the 100yr ARI flood.

These two statements are generally correct.

The report also includes an assessment of the structural risk from flooding. Table 2 – Site Flood Risk Assessment identifies a “Low” Structural Damage Risk for 200yr ARI to probable maximum flood (PMF) floods. However, the full basis of this low risk assessment is not clear. Table 2 refers to the maximum depths of flooding in the P1 area above the 100 year floor level during a 200 year flood event as being 0 to 0.3 metres. On the other hand the text in the report gives the depth of flooding as 1.0 metre, which appears to be the correct figure. The applicant should address this inconsistency which may result in a “Medium” or “High” risk structural damage rating.

Assuming that a 1m depth of flooding above floor level is the appropriate depth of flooding above floor level in a 200 year flood event, the actual risk of structural failure to a contemporary “dry” single or two storey dwellings without appropriate flood proofing measures is likely to be high due to the very expensive building structure replacement costs (e.g. load bearing timber components, including certain types of wind bracing, which can lose strength following water immersion).

DECCW suggests that “flood aware” development controls are needed for all development below the flood of record (i.e. 1867 flood) and / or the 200 year flood level in order to limit / avoid structural and contents damage in residential development to an amount which can be endured by individual households and ensure flood insurance premiums remain affordable.

The Worley Parson report includes an assessment of the flood evacuation needs and impacts from the proposed development. This assessment, which aims to minimise the risk to life, is based on car evacuation to nearby high ground above the PMF level. It is noted that the assessment identifies two flood evacuation routes from the site, which provides some redundancy. Whilst this strategy is based on timely evacuation warning and appropriate community response, such actions may not be guaranteed. In order to minimise the risk to effective flood evacuation, the site grading and road layout and road grading (i.e. continuously rising grade egress is desirable for flood evacuation purposes) needs to provide for staged orderly retreat to high ground away from rising floodwaters.

Notwithstanding the above comments, the SES should be consulted to help determine the acceptability of the proposed car based flood evacuation strategy for the development proposal in terms of the impacts on the existing communities and the needs of the future residents.

2. Aboriginal Heritage

Both the *Brief Reassessment of Site 45-5-2491 Report to Landcom* (June 2010) and *Aboriginal Heritage Management Plan for Site #45-5-2491 Assessment Report* (28/10/2010) prepared by Jo McDonald Cultural Heritage Management Pty Ltd have been reviewed.

DECCW recommends that the following Aboriginal cultural heritage issues are addressed prior to determination of the proposal.

2.1 Assessment

DECCW notes that the DGR 5 relating to Heritage states that an Archaeological and Aboriginal cultural heritage assessment be conducted. It would appear that the assessment to date is incomplete and does not provide either an archaeological or Aboriginal cultural heritage assessment of the grounds of Thornton Hall. This is acknowledged in the assessment and it is recommended that:

"In the future detailed planning stage proposed for the North Penrith Development area, Landcom should assess the Aboriginal heritage values associated with the two historic properties in this development area (Thornton Hall and setting and the Combewood outbuildings) as previous studies have not included an indigenous assessment of these two properties" .

DECCW recommends that the cultural heritage and archaeological assessment be completed for the grounds of Thornton Hall prior to determination of the proposal for the following reasons.

Assessment prior to a decision on the proposal will identify whether the area contains Aboriginal objects or has the potential to contain an archaeological deposit (PAD) and to assess the archaeological and cultural significance of any identified Aboriginal objects or PADs, and to make recommendations as to the management of the objects or PADs based on their assessed significance.

In line with this recommendation DECCW does not support Statement of Commitment 14 which states:

Prior to commencing works within the vicinity of Thornton Hall (i.e.: the area denoted as H1 on the Indicative Subdivision Plan map) and Coombewood (i.e. the area shown as OS55 on the Indicative Subdivision Plan map), Landcom will investigate and record any indigenous archaeological remains within the areas utilising current best practice methodologies.

2.2. Aboriginal Consultation

The Director General Requirements include the requirement to provide an archaeological and Aboriginal cultural heritage assessment in line with the draft *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation 2005*.

The following has not been provided as required under the consultation guidelines:

- the date the advertisement was placed in the Penrith Star,
- copies of all correspondence sent and received in relation to Aboriginal community consultation including correspondence to the DECCW EPRG regional office, relevant Land Council, Registrar Aboriginal Land Rights Act 1983, National Native Title Tribunal, Native Title Services Corporation Limited, relevant local councils and relevant catchment authority.

The report also does not make clear whether any responses were received from the Aboriginal community. If written responses have been received they should also be included in the report. If no responses were received then that should be reflected in the report. DECCW recommends that the report be revised to include this information.

3. Biodiversity

The Environmental Assessment Report (EAR) states that Cumberland Plain Woodland (CPW) occurs on the site as wooded remnants and as derived native grasslands. The remnant areas identified in the EAR as being collectively 0.63 ha in size with over 70% of the understorey comprised of exotic species and around 20 – 30 % projected canopy cover. These remnants are described as being “relatively intact” (p22 Flora and Fauna Assessment Report (FFA), Appendix P).

The two remnants adjoin a further area of derived native grasslands. As noted in the FFA the classification of CPW as a critically endangered ecological community under the *Threatened Species Conservation Act 1995* now includes derived native grassland. The total area of CPW including the derived grassland is 0.86 hectares (p 28). The FFA notes that the grassland to the west of the woodlands is likely to have a similar composition of understorey flora although it is currently mown. This area was not included in the total area of CPW.

The impact assessment states that there will be removal of a “small area” of CPW but does not quantify the loss. Some CPW vegetation is proposed to be protected through the use of a Section 88b instrument. This appears to only be intended to retain existing trees and shrubs rather than an area of CPW and is not considered to be a practical or effective conservation measure given that the area will be privately owned and that the listing covers a vegetation community comprised of trees, midstorey and understorey species. Over time it could be expected that this remnant would decline and be lost unless it was given ongoing active and expert ecological management. DECCW however acknowledges the difficulties of retaining and managing this vegetation in private ownership. The use of a Section 88e instrument rather than a Section 88b instrument is recommended as DECCW considers this to be more legally binding.

The proposal involves direct removal of all of the derived grasslands.

Most of the second remnant appears to be within an area proposed to be zoned RE1 Public Recreation. The proposal involves under scrubbing of the area with some tree removal expected following arboricultural assessment.

Reference is made to the DECCW publication titled *‘Recovering bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of*

bushland' (available at <http://www.environment.nsw.gov.au/resources/nature/RecoveringCumberlandPlain.pdf>)

DECCW considers that all reasonable efforts should be made to retain and protect this second remnant of CPW in accordance with best practice guidelines. The above guidelines state that it is firstly critical to retain all existing native vegetation where possible. Active management is recommended and should include activities to suppress weeds and encourage regeneration of native plants. It may also include increasing the size of remnants through the planting of local native species or the planting of supplementary understorey and groundcover species (Department of Infrastructure, Planning and Natural Resources 2003a as referenced in the above guidelines). Planting of species should only be undertaken with material sourced from local provenance stock. The planting schedule in Appendix X does not indicate that this will be the case as it lists cultivars and does not specify provenance.

It is recommended that:

- The Statement of Commitments include a requirement to prepare and implement a Bushland Management Plan for the CPW area to be retained as open space. The plan should include aims, timeframes, description of methods, monitoring requirements, key accountabilities and key milestones. The aims should include to protect and restore CPW vegetation in accordance with best practice guidelines (such as the DECCW guidelines referenced above).
- Replanting in areas of CPW should be with plants grown from local provenance seed (as described in Section 5.0 of the guidelines referenced above).