

PENRITH LOCAL PLANNING PANEL

ELECTRONIC DETERMINATION AND STATEMENT OF REASONS

APPLICATION NUMBER	DA23/0506
DATE OF DETERMINATION	23/08/2023
PANEL MEMBERS	Jason Perica- Chair (In person) Christopher Hallam- Expert (In person) John Brunton- Expert (Online) Stephen Welsh- Community Representative (Online)
DECLARATIONS OF INTEREST	No conflicts of interest were declared
LIST OF ADDITIONAL ATTENDEES	Donna Clarke- Council's Consultant Planner (Online) Gavin Cherry- Penrith City Council (In person) Katelyn Davies- Penrith City Council (In person) Alyssa LeHuray- Penrith City Council (In Person) Alison Veron- Penrith City Council (In Person) Paul Reynolds- Penrith City Council (In Person) Carlie Fulton- Penrith City Council (In Person)

Electronic Determination Meeting held via video conference on Wednesday, 23rd August 2023, starting at 1.00pm. The Panel heard from Applicant representatives prior to deliberating and making a decision.

Matter Determined pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

DA23/0506, Land Remediation Works at No. 158-164 Old Bathurst Road, Emu Plains, NSW, 2750.

Panel Consideration

The Panel had regard to the assessment report prepared by Council staff, supporting plans and information, and the following environmental planning instruments and policies:

- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity & Conservation) 2021
- State Environmental Planning Policy (Resilience & Hazards) 2021

In terms of considering community views, the Panel noted there were no submissions received in response to the public notification of the Development Application.

The Panel also had regard to material submitted by the applicant in response to review of the recommended conditions of consent. The material was received on the day of the Panel Meeting, and included:-

- Email from GLN dated 22 August 2023
- Legal Advice from Dentons Australia Limited dated 22 August 2023

In accordance with the Local Planning Panel Operational Guideline, the Panel had discretion as to whether the late information listed above would be considered in the determination of the application. The Panel formed the view that the information was worthy of consideration and thus the above was considered in the Panel's deliberation on the matter.

Panel Decision

DA23/0506 - Land Remediation Works at No. 158-164 Old Bathurst Road, Emu Plains, NSW, 2750 be approved subject to the recommended conditions of consent accompanying the assessment report as amended by the following- Replacement of Recommended Condition No. 19 to state:

- ***Upon submission of the Site Audit Statement to Penrith City Council, the applicant must also submit to Council for endorsement, land title dealing paperwork for the creation of a positive covenant over the subject site. Penrith City Council must be the recorded beneficiary and nominated as the authority to release, vary or modify the restriction.***

The positive covenant shall contain the wording:

- *Development on the site is to ensure compliance with a Construction, Environment and Management Plan which has prepared, submitted to and approved by Penrith City Council's Environmental Health Unit. The Plan is required to reference management measures that must be implemented during any development works to address inert materials on site and ensure that materials do not require long term or ongoing management. The Construction, Environment and Management Plan is to be prepared by an appropriately qualified person.*

The required positive covenant must be registered with NSW Land Registry Services within 28 days of Council's endorsement of the covenant terms.

However, in the event that it is determined that a Construction Environment Management Plan is not required, or the approved Plan does not stipulate specific management or monitoring requirements to be adhered to across the site, a positive covenant is not required to be registered on the title of the property, subject to written agreement from Penrith City Council's Environmental Health Unit.

(Note: An appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, ecotoxicology, sampling and analytical procedures, risk evaluation and




remediation technologies". In addition, the person will be required to have appropriate professional indemnity and public risk insurance.)

Reasons for the Decision

- The Panel agreed with the assessment of the proposal outlined within Council's assessment report.
- Appropriate conditions (subject to the revision above) ensure the proposed works will have minimal environmental impacts and that the site can be made suitable.
- The retention of Condition 19, but amended to refer to a Positive Covenant, was considered reasonable to ensure a Construction Environment Management Plan is implemented and complied with in perpetuity. The condition however as revised, includes capability to negate the need for the positive covenant to be registered on the title of the property, if the terms of the condition can otherwise be met.
- The proposal is compliant with applicable development controls and objectives contained within relevant State Environmental Planning Policies, Penrith Local Environmental Plan 2010 and the Penrith Development Control Plan 2014 specifically relating to contamination, remediation and management of land considerations.

Votes

The decision was unanimous.

Jason Perica (Chair) 	John Brunton (Expert) 
Christopher Hallam (Expert) 	Stephen Welsh (Community Representative) 