



IRF 23/3169

## Gateway determination report – PP-2021-4118

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Rezoning from Deferred Matter land to E4 General  
Industrial - 170 Russell Street, Emu Plains

March 24



Published by NSW Department of Planning, Housing and Infrastructure

[dphi.nsw.gov.au](https://dphi.nsw.gov.au)

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview.....	1
1.2	Objectives of planning proposal .....	1
1.3	Explanation of provisions .....	2
1.4	Site description and surrounding area.....	3
1.5	Mapping.....	4
1.6	Background .....	6
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>7</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>7</b>
3.1	Regional Plan .....	7
3.2	District Plan .....	9
3.3	Local planning Framework.....	12
3.4	Local planning panel (LPP) recommendation.....	14
3.5	Section 9.1 Ministerial Directions .....	15
3.6	State environmental planning policies (SEPPs) .....	<u>1817</u>
<b>4</b>	<b>Site-specific assessment .....</b>	<b>19</b>
4.1	Environmental.....	19
4.2	Social and economic.....	<u>2322</u>
4.3	Infrastructure .....	24
<b>5</b>	<b>Consultation.....</b>	<b>25</b>
5.1	Community .....	25
5.2	Agencies.....	25
<b>6</b>	<b>Timeframe .....</b>	<b>25</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>25</b>
<b>8</b>	<b>Assessment summary .....</b>	<b><u>2625</u></b>
<b>9</b>	<b>Recommendation.....</b>	<b>26</b>

**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Attachment A – Planning Proposal (July 2022)
Attachment B – Gateway determination
Attachment C – Letter to Council
Attachment D – Draft LEP Maps (July 2022)
Attachment E – Floodplain Risk Management Strategy, Rienco Consulting (June 2022)
Attachment F – Local Planning Panel Advice (22 December 2021)
Attachment G - Draft Additional Permitted Uses clause
Attachment H – Draft Development Control Plan
Attachment I – Traffic and Parking Report, Positive Traffic (June 2022)
Attachment J - Rienco Response to Planning Panel (24 June 2022)
Attachment K – Engineering Review, North Western Surveys (May 2021)
Attachment L – Indigenous Heritage Report, Comber Consultants (July 2020)
Attachment M – Deerubbin Local Aboriginal Land Council (July 2020)
Attachment N – European Heritage Report Comber Consultants (July 2020)
Attachment O – Concept Draining Plan, North Western Surveys (June 2022)
Attachment P – Storm Water Management Strategy, North Western Surveys (June 2022)
Attachment Q – Services Report, North Western Surveys (July 2021)
Attachment R – Cut and Fill Plan, North Western Surveys (July 2021)
Attachment S – Council Report and Minutes (31 October 2022)
Attachment T – Preliminary Site Investigation (April 2023)
Attachment U – PMF and Evacuation Report, Egis (August 2023)

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Penrith</b>
<b>PPA</b>	<b>Penrith City Council</b>
<b>NAME</b>	<b>Seeking a partial rezoning of the land from Deferred Matter to E4 General Industrial, extending the existing Height of Building, Scenic and Landscape Values and Additional Permitted Uses controls to the rezoned area of the land and introducing a new Minimum Lot Size control and a new Additional Local Provisions clause to address flood mitigation and filling on the entirety of the site</b>
<b>NUMBER</b>	<b>PP-2021-4118</b>
<b>LEP TO BE AMENDED</b>	<b>Penrith LEP 2010</b>
<b>ADDRESS</b>	<b>170 Russell Street, Emu Plains</b>
<b>DESCRIPTION</b>	<b>Lot 1, DP 1273251</b>
<b>RECEIVED</b>	<b>30/11/2022</b>
<b>FILE NO.</b>	<b>IRF23/3169</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The planning proposal explains the objectives of the planning proposal, to:

- Deliver additional industrial zoned land to facilitate employment generation.
- Align zoning and development standards relating to the Height of Building, Additional Permitted Uses and Minimum Lot Size across the site.
- Add a new Additional Local Provisions clause in relation to flood mitigation and filling on the site.
- Provide more regularly shaped zoning boundaries to facilitate efficient land development outcomes.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Penrith LEP 2010 and Interim Development Order 93 (IDO 93) per the changes below:

**Table 3 Current and proposed controls**

Control	Current Penrith LEP 2010 applicable to the western part of Lot 1	Current IDO 93 (Deferred Matter land) applicable to the eastern part of Lot 1	Proposed controls to apply to the entire Lot 1
Zone	E4 General Industrial	Rural 1(d) (Future Urban) – shown as Deferred Matter land on Penrith LEP 2010	E4 General Industrial
Maximum height of building	12m	N/A	12m
Minimum lot size	6,000m <sup>2</sup>	2 hectares	2,000m <sup>2</sup>
Scenic Land Values	Applies	N/A	Extend the application of this control to the entirety of the site.
Additional Permitted Uses	<p>The following uses are included as additional permitted uses under Schedule 1 of Penrith LEP 2010;</p> <ul style="list-style-type: none"> <li>a) amusement centres,</li> <li>b) centre-based childcare facilities,</li> <li>c) community facilities,</li> <li>d) crematoria,</li> <li>e) educational establishments,</li> <li>f) electricity generating works,</li> <li>g) function centres,</li> <li>h) hotel or motel accommodation,</li> <li>i) medical centres,</li> <li>j) recreation facilities (indoor),</li> <li>k) resource recovery facilities,</li> <li>l) respite day care centres,</li> <li>m) service stations,</li> <li>n) vehicle sales or hire premises,</li> <li>o) veterinary hospitals,</li> <li>p) waste or resource transfer stations.</li> </ul>	N/A	Extend the application of the additional permitted uses to the entirety of the site.

Control	Current Penrith LEP 2010 applicable to the western part of Lot 1	Current IDO 93 (Deferred Matter land) applicable to the eastern part of Lot 1	Proposed controls to apply to the entire Lot 1
Additional Local Provisions	N/A	N/A	<p>A new Local Provision in relation to flood mitigation and filling of the site be added to the Penrith LEP 2010. The new provision should state:</p> <p><i>Prior to the erection of any buildings on the site, flood mitigation and filling works consistent with the endorsed flood impact assessment report and filling strategy which support Planning Proposal PP-2021-4118, are to be completed to Council's satisfaction.'</i></p>

The planning proposal contains an explanation of provisions that adequately show how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The site has an area of 2 hectares and is irregular in shape (**Figures 1 and 2**). The site borders 172 Russell Street (Lot 2, DP1273251) to the north for 230m and Old Bathurst Road to the south for 160m. To the west, the site borders Russell Street for approximately 30m and adjoins an electrical substation (162-168 Russell Street) for 92m.

The site is vacant and predominantly cleared of vegetation because of historical agricultural uses. The site is generally flat, with a gentle fall from RL 25m along its southern boundary to RL 23.5m on its north-eastern corner.

Lapstone Creek runs along the eastern boundary of the site. The Nepean River is located approximately 1km north of the site. Figure 2 shows the site in its immediate surroundings.

The site is predominately surrounded by open, cleared land to the north and east. To the south of Old Bathurst Road are a number of industrial, commercial and retail uses within a large manufacturing site (ACO Pty Ltd). The low-density residential suburb of Emu Heights is located to the west of the site beyond Russell Street. Emu Plains train station is approximately 1.5km to the east of the site. Approximately 1km north-east of the site is the Emu Plains Correctional facility. Figure 1 shows the site in its larger context.



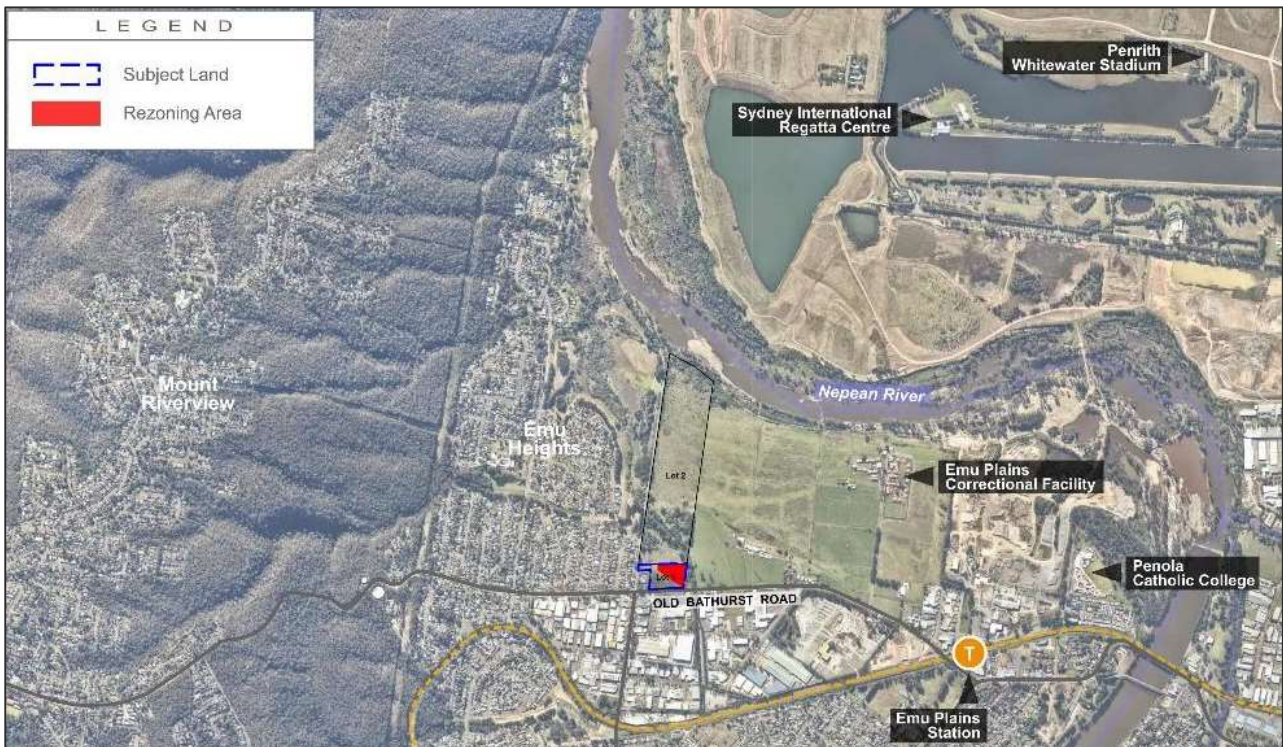


Figure 1 - The site in a larger context (source: planning proposal)



Figure 2 – The site in its immediate surroundings (source: planning proposal)

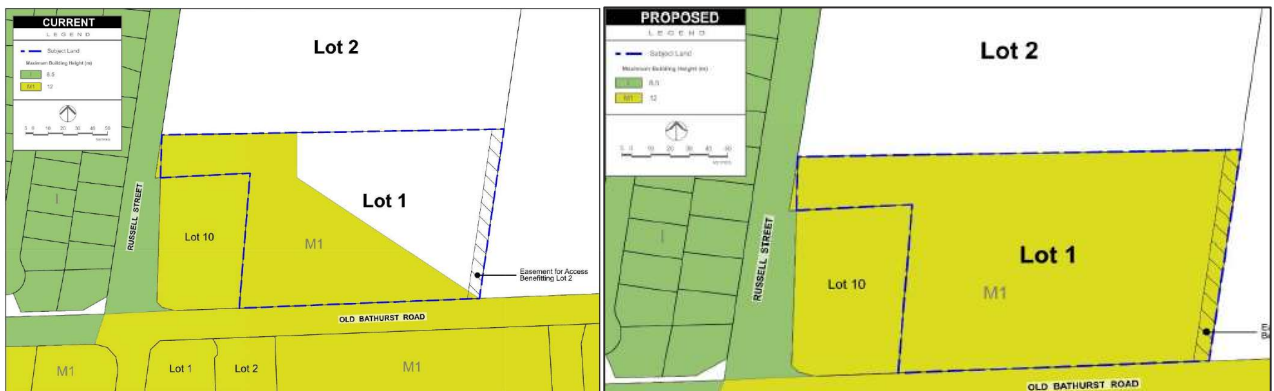
## 1.5 Mapping

The planning proposal includes amendments to several LEP control maps. **Figure 3 to 7** show the proposed changes to the Penrith LEP 2010 maps.

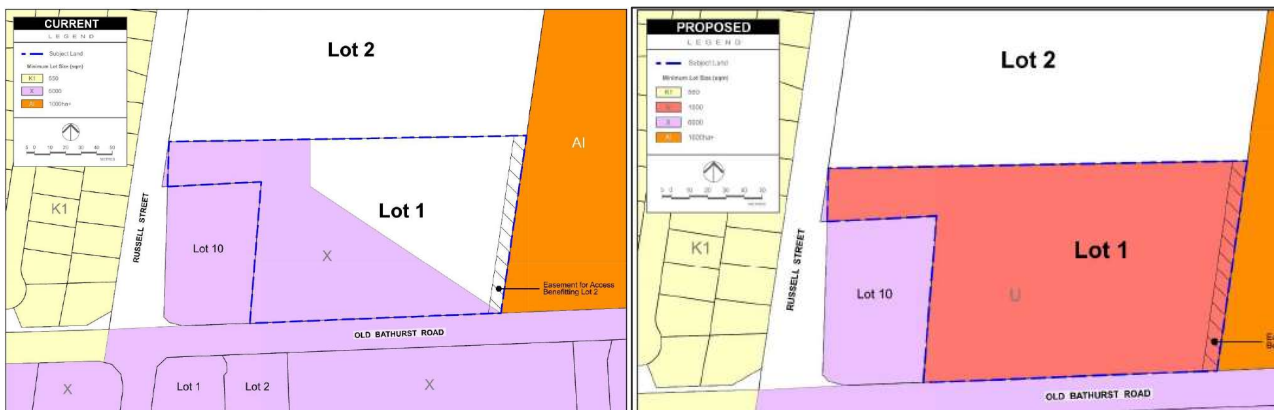




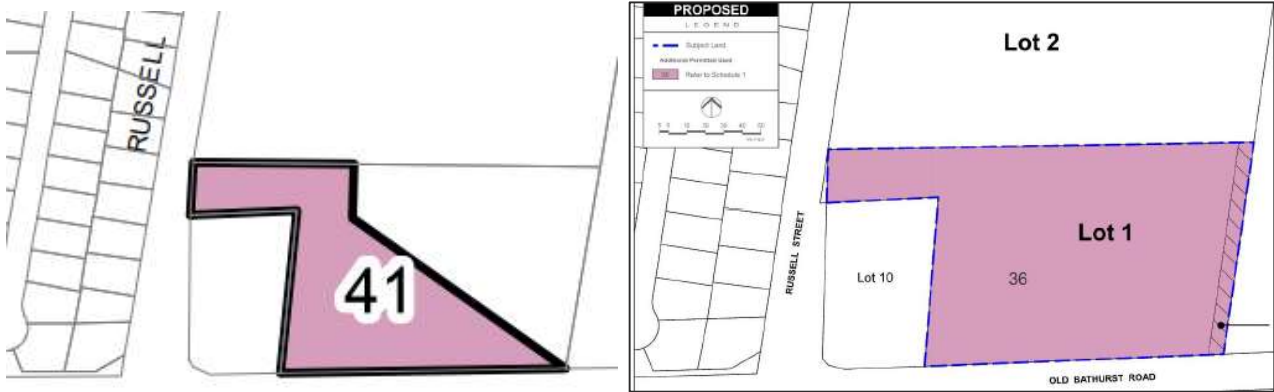
**Figure 3 - Current (left) and proposed (right) Land Zoning Map (source: PLEP 2010, January 2024 and Planning Proposal, December 2022)**



**Figure 4 - Current (left) and proposed (right) Height of Building Map (source: Planning Proposal, December 2022)**



**Figure 5 - Current (left) and proposed (right) Lot Size Map (source: Planning Proposal, December 2022)**



**Figure 6 - Current (left) and proposed (right) Additional Permitted Uses Map (source: PLEP 2010, January 2024 and Planning Proposal, December 2022)**



**Figure 7 - Current (left) and proposed (right) Scenic and Landscape Values Map (source: Planning Proposal, December 2022)**

## 1.6 Background

- 2010 – Penrith LEP 2010 was notified. However, the north-eastern portion of the site and Lot 2 to the north of the site (previously identified as Lots 2 and 3) were excluded from the instrument and identified as Deferred Matters.
- 2011 – Penrith City Council (Council) received a planning proposal for the site and 172 Russell Street to rezone of the Deferred Matter land for industrial purposes. Council requested for an independent evaluation of the planning proposal by the Sydney West Joint Regional Planning.
- March 2012 – Following a request from Council for an independent evaluation of the planning proposal, the Sydney West Joint Regional Planning Panel advised that it did not support the rezoning of the Deferred Matter land for industrial purposes due to the amount of existing industrial land and uncertainty around flooding.
- 25 September 2012 – The Department endorsed a report which indicated that there was sufficient strategic justification for industrial uses on the Deferred Matter land, subject to future flood studies.
- 19 November 2012 – A planning proposal (PP\_2012\_PENRI\_002\_00) was submitted to the Department for Gateway determination to rezone the site from Part Rural 1D (Future Urban) under *Interim Development Order 93* and part IN2 Light Industrial under *Penrith Local Environmental Plan 2010* to IN2 Light Industrial and E3 Environmental Management to permit expanded industrial development.

- 17 January 2013 – A Gateway determination was issued for the proposal with conditions including that the LEP amendment be completed within 24 months.
- 23 April 2015 – Gateway extension was issued for PP\_2012\_PENRI\_002\_00, allowing an additional 12 months for completion.
- 25 May 2015 – Council resolved not to proceed with the proposed rezoning on the basis that the planning proposal was inconsistent with Section 117 (Now Section 9.1), Direction 4.3 – Flood Prone Land.
- 16 February 2016 – Gateway Determination for PP\_2012\_PENRI\_002\_00 was subsequently altered by the Department to 'do not proceed'.
- August 2020 – Development consent was issued by Council to amend the subdivision pattern of the land.
- 24 June 2021 – A new planning proposal (PP-2021-4118) was lodged with Council by Bernard Le Boursicot c/o Urbanco.
- 21 December 2021 – The planning proposal reviewed by the Local Planning Panel and was considered to lack strategic and site-specific merit and as a result, was not supported.
- August 2022 – The planning proposal was revised to address the concerns raised by the Local Planning Panel.
- 31 October 2022 – Council resolved to forward the planning proposal to the Department for Gateway determination.
- 25 June 2023 – The Department issued a do not proceed decision to the Gateway.
- 28 July 2023 – The proponent requested a Gateway review.
- December 2023 – On the basis of advice received by the NSW Reconstruction Authority, the Department progressed internal review of the Gateway determination, with a view to allow the Gateway to proceed.

## 2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The Department understands that the planning proposal is not a result of Local Strategic Planning Statement (LSPS) or any other strategy or study. However, the planning proposal will give effect to objectives of Penrith LSPS and Penrith Employment Land Strategy.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal is the best means of achieving the intended objectives and outcomes, as changes to land use and built forms controls are required to facilitate the proposed development of the site.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Region Plan, A Metropolis of Three Cities.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
<b>Objective 4: Infrastructure is optimised</b>	<p>This Objective seeks to deliver growth in a manner that maximises the use of existing infrastructure.</p> <p>The proposal has the potential to deliver new jobs on a site that can be accessed by public transport. The site is approximately 350m from a bus stop (route 688 between Penrith and Emu Heights), and approximately 1.5km from Emu Plains train station.</p> <p>The Services Report (North Western Surveys, July 2021) (<b>Attachment Q</b>) notes that the site is likely to have access to electricity and water. However, the future development of the site may require an extension of the sewer main. It should be noted that the site does not have access to gas.</p> <p>The Department is satisfied that the proposal is aligned with this objective. The Department notes the requirement for a new sewer main and a gas connection, however it considers that these requirements can be satisfied at a later Development Application stage.</p>
<b>Objective 23: Industrial and urban services land is planned, retained and managed</b>	<p>This Objective identifies that the retention, growth and enhancement of industrial and urban services land is critical for the ongoing success of Greater Sydney. It notes that approach to industrial and urban services land should reflect District needs and the local context and it should provide a wide range of businesses that support the city's productivity and integrated economy.</p> <p>The Department supports the industrial use of the land to deliver ongoing economic and employment growth in Greater Sydney. The Department also notes that the proposal has the potential to provide job opportunities.</p>
<b>Objective 28: Scenic and cultural landscapes are protected</b>	<p>This objective identifies the importance of the scenic and cultural landscape areas in connecting the contemporary urban environment with natural environment.</p> <p>The planning proposal seeks to extend the application of Scenic and Landscape Values requirements to the entirety of the site to ensure the visual impact of any future development on the landscape, is minimised.</p> <p>The Department is satisfied that the proposal is aligned with this objective.</p>
<b>Objective 37: Exposure to natural and urban hazards is reduced</b>	<p>This Objective identifies that the Hawkesbury-Nepean Valley (in which the site is located) has a high flood risk and climate change may increase the severity and frequency of floods in the future. It highlights the need to consider Probable Maximum Flood (PMF) in addition to 1% Annual Exceedance Probability (AEP) events.</p> <p>The Department has undertaken further assessment on additional information provided on the flood impacts of the site and its surroundings and is now satisfied that the proposal has adequately addressed the flooding and evacuation matters at the rezoning stage. The Gateway determination requires Council to consider the proposed fill and its implications of any changes to flood levels and velocities in the locality as a result of the NSW Reconstruction Authority's review of the Hawkesbury Nepean Valley Regional Flood Study prior to any public exhibition. This matter is further discussed in Section 4.1.</p>

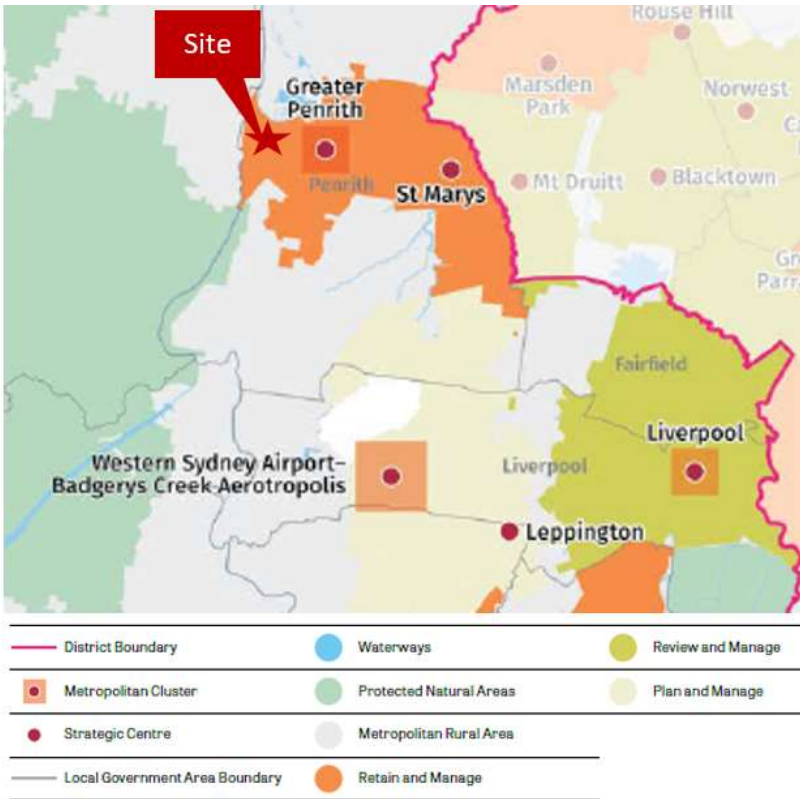
## 3.2 District Plan

The site is within the Western City District. The then Greater Sydney Commission released the Western District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The Department is satisfied the proposal gives consideration to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*, as outlined in Table 5 below.

**Table 5 District Plan Assessment**

District Plan Priorities	Justification
<b>Planning Priority W1 - Planning for a city supported by infrastructure</b>	<p>This Priority seeks to deliver growth in a manner that maximises the use of existing infrastructure.</p> <p>The proposal has the potential to deliver new jobs in an area that can maximise the use of the existing infrastructure. The site is approximately 350m from a bus stop (bus route 688 between Penrith and Emu Heights). Emu Plains train station has some potential to support additional employment in the area. However, the station is 1.5km from the site that is beyond the regular 800m walking distance for convenient access.</p> <p>The Services Report (North Western Surveys, July 2021) (<b>Attachment Q</b>) notes that the site is likely to have existing access to electricity and water. However, future development of the site may require an extension to the sewer main and access to gas.</p> <p>The Department considers that the proposal aligns with this objective and notes the site would require connection to some services such as sewer mains and gas in the future. This can be dealt with at a later development application stage.</p>

District Plan Priorities	Justification
<p><b>Planning Priority W10 - Maximising freight and logistics opportunities and planning and managing industrial and urban services land</b></p>	<p>This Priority identifies the importance of good local access to industrial and urban services land, as well as the need to safeguard industrial land and provide opportunities for expansion. It includes an objective that <i>‘industrial and urban services land is planned, retained and managed’</i>.</p> <p>The Priority identifies an ongoing need for industrial and urban service land that can deliver jobs and services close to home and acknowledges that industrial land is evolving from traditional industrial and freight uses into complex employment lands.</p> <p>The Priority identifies three ‘categories’ of industrial land to guide future management, of which the Emu Plains industrial area is classified as ‘retain and manage’ (<b>Figure 8</b>). This classification:</p> <ul style="list-style-type: none"> <li>• supports the safeguarding of existing industrial land</li> <li>• encourages a mix of economic outcomes and accommodation of evolving business and community needs</li> <li>• identifies the need to consider what land uses are most appropriate.</li> </ul>  <p><b>Figure 8 Western District industrial and urban services land approaches</b> (Source: Western District Plan, 2018)</p> <p>On 30 July 2022, the Greater Cities Commission released their <i>Industrial Lands ‘Retain and Manage’ Policy Review</i>. The review acknowledged:</p>



District Plan Priorities	Justification
	<ul style="list-style-type: none"> <li>the value of, and need to secure, industrial capacity to ensure sufficient land and floor area, of the right types, to meet the state's industrial needs.</li> <li>the importance of supporting economic resilience and future business investment, especially at a time when there is increased demand for industrial lands.</li> <li>that there are circumstances where some industrial land could transition to alternative uses, including other types of employment, office and medical/health services, mixed uses and in some cases, residential use.</li> <li>encroachment from competing uses can be detrimental to industrial lands and that some safeguarding is necessary to ensure the productivity and economic functionality of Greater Sydney.</li> </ul> <p>The review identified eight guiding principles for industrial land in the 'retain and manage' classification. The following principles are considered relevant to this proposal:</p> <ul style="list-style-type: none"> <li><b>supporting sustainability and aspirations of industrial lands:</b> policy should align with government environmental objectives and community expectations including minimising commute and delivery times, enabling efficient freight and logistics networks, and minimising environmental and social impact</li> <li><b>providing business certainty:</b> ensure consistency and clarity regarding the function of each industrial area, including their economic relationship with activity centres, to send clear market signals that foster business investment and productivity</li> <li><b>servicing population needs:</b> households and businesses should have access to the goods and services they need and to local employment opportunities.</li> </ul> <p>The planning proposal does not comment on how the proposal addresses this Priority, or the <i>Industrial Lands 'Retain and Manage' Policy Review</i>. As the proposal seeks to rezone ~9,840m<sup>2</sup> of Deferred Matter land to E4 General Industrial, the Department considers this priority is relevant.</p> <p>Previously, the subject site was not rezoned industrial in line with the Emu Plains Employment area, due to flooding concerns. Given there is an opportunity for flooding matters to be resolved, the Department supports the proposal proceeding past gateway on economic grounds. Further, given the relatively small area being rezoned, the addition of the E4 General Industrial land is not expected to have any impact on the viability of other uses throughout the Emu Plain employment land precinct. The Department supports the retention and expansion of industrial land to drive ongoing economic and employment growth in Greater Sydney and acknowledges that the proposal can deliver increased industrial floor space and future job opportunities in Emu Plains.</p>
<b>Planning Priority W16 – Protecting and enhancing scenic and cultural landscapes</b>	<p>This Priority identifies the importance of scenic views and cultural landscapes, including the Hills, Mulgoa Valley and the Blue Mountains escarpment.</p> <p>The Department notes that the western half of the site is currently mapped as Land with Scenic and Landscape Values (SLV) (which triggers assessment under Clause 7.5 of the PLEP). The planning proposal seeks to apply this mapping across the entirety of the site. The SLV mapping means the location and design of any future development on the site should ensure to minimise the visual impact on the scenic landscape.</p> <p>The proposed expansion of the SLV mapping throughout the site aligns with this Priority.</p>

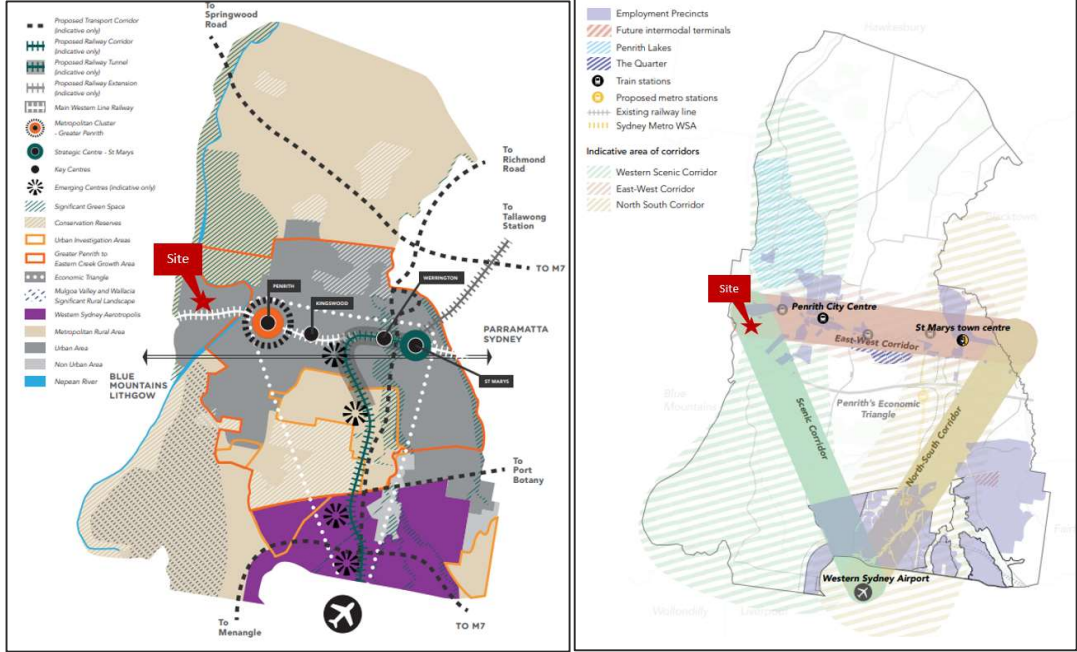
District Plan Priorities	Justification
<b>Planning Priority W20 - Adapting to the impacts of urban and natural hazards and climate change</b>	<p>This Priority identifies the importance of planning to reduce exposure to hazards and build resilience to shocks and stresses. The Priority specifically notes that for areas in the Hawkesbury-Nepean Valley (such as the subject site), that significant flooding depths between the 1:100 chance per year flood (1% AEP) and the probable maximum flood (PMF) exist, a risk-based approach that considers the full range of flood sizes is appropriate.</p> <p>The Priority also notes that prior to a flood risk strategy being released, development in the area should “<i>avoid alterations to flood storage capacity of the floodplain and flood behaviour through filling and excavation ('cut and fill') or other earthworks</i>”.</p> <p>The Department has undertaken further assessment on additional information provided on the flood impacts of the site and its surroundings and is now satisfied that the proposal has adequately addressed the flooding and evacuation matters at the rezoning stage. A Gateway condition is added that the Planning Proposal Authority must consider the implications of fill and any changes to flood levels and velocities in the locality as a result of the NSW Reconstruction Authority’s review of the Hawkesbury Nepean Valley Regional Flood Study.</p> <p>This matter is further discussed in Section 4.1.</p>

### 3.3 Local planning Framework

The proposal states that it is consistent with the following local plans and endorsed strategies. The Department is satisfied that the proposal is also consistent with the strategic direction and objectives, of the subject local plans and strategies as discussed in the Table 6 below:

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
<b>Local Strategic Planning Statement (LSPS)</b>	<p>The planning proposal identifies the site as both an ‘urban area’ in the LSPS structure plan and ‘industrial land’ in the LSPS ‘Economic Triangle’ (<b>Figure 9</b>).</p> <p>The planning proposal contends that it is consistent with the objectives of the LSPS to:</p> <ul style="list-style-type: none"> <li>• deliver ongoing employment opportunities that are ‘close to home’,</li> <li>• address the long-term demand for employment lands, and</li> <li>• address Planning Priority 12 (Enhance and grow Penrith’s economic triangle).</li> </ul>

Local Strategies	Justification
	 <p><b>Figure 9 Penrith Structure Plan (right) and economic triangle (left) (Source: LSPS)</b></p> <p>The Department considers that the following LSPS priorities also apply:</p> <ul style="list-style-type: none"> <li> <b>Planning Priority 1 - Align development, growth and infrastructure</b> – the proposal would deliver ~9,840m<sup>2</sup> additional industrial land adjacent to the existing E4 General Industrial land that is serviced by some existing infrastructure with frontages to both Russell St and Old Bathurst Road. Providing access to necessary infrastructure such as sewerage and gas is possible in the future.         </li> <li> <b>Planning Priority 16 - Protect and enhance our high value environment lands</b> – the existing E4 General Industrial zoned portion of the site is mapped as having Scenic and Landscape Values. The proposal seeks to extend this value across the entirety of the site. The extension of this requirement to the whole site area would provide further protection for areas of scenic value.           <p>The planning proposal indicates that there are no identified areas of critical habitat, threatened species or ecological communities within the site that could be impacted by the proposed rezoning, nor is there any significant vegetation. While there is no ecological assessment provided with the proposal, the Department notes that the site is largely cleared of vegetation and it is unlikely for any areas of critical habitat or threatened species to exist on site.</p> </li> <li> <b>Planning Priority 20 - Manage Flood Risk</b> – the Deferred Matter land identified for rezoning is affected by flooding. A Flood Risk Management Study (FRMS) has been prepared to support the proposal. The FRMS concludes that the proposal will not result in any adverse flood impacts.         </li> </ul>
<b>Employment Lands Strategy and Study, 2021</b>	<p>The Penrith Employment Lands Strategy 2021 (ELS) indicates that Penrith will need to attract and enable businesses to grow the number of existing jobs by between 85,000 and 109,000 jobs for local people to support the growing population. The ELS notes that while there is currently enough vacant industrial land (463 hectares) to meet job targets (largely driven by land around the Aerotropolis), further work is required to ensure local employment and business opportunities are provided across the LGA.</p>

Local Strategies	Justification
	<p>The ELS Study (Hill PDA, 2021) assessed levels of capacity for each precinct. For Emu Plains, the study found that <i>“there is currently 19 hectares of vacant land within the precinct (13% of the total land area), meaning that there is little space to expand existing industrial uses. While there is limited available vacant land, the Special Purpose lands to the north could be rezoned to accommodate industrial lands demand.”</i></p> <p>The ELS re-iterates the District Plan Priority to ‘retain and manage’ existing industrial areas along the East-West Corridor, which includes the site (<b>Figure 9</b>), and aims to increase job density and business diversity.</p> <p>Council has outlined the proposal’s alignment with the following actions of the ELS:</p> <ul style="list-style-type: none"> <li>• <b>Action 9: Considering zoning for low impact businesses near centres and as a buffer between residential and industrial areas</b> - the proposed rezoning will deliver increased industrial land near Emu Plains Industrial Area that can be developed for low impact businesses.</li> <li>• <b>Action 13: Planning a mix of lot sizes to allow local businesses to start-up and scale-up</b> - the proposal will enable lot subdivision opportunities for delivering medium to small scale industrial sites and development.</li> <li>• <b>Action 15: Reviewing zoning, height limits and development controls to offer greater flexibility for business operations while preventing land use conflicts, and ensuring controls are appropriate to lot size and location</b> - the proposal will deliver employment opportunities by extending industrial zoning, maximum height and lot size controls to the whole site.</li> </ul> <p>The Department considers that the provision of employment lands must be carefully managed to ensure adequate capacity for future demand. The Department also acknowledges that there is some level of demand for such land in the Emu Plains industrial precinct and the proposal addresses this demand.</p>

### 3.4 Local planning panel (LPP) recommendation

The Local Planning Panel (LPP) reviewed the proposal on 21 December 2021 (**Attachment F**).

The Panel considered that the proposal did not have strategic or site-specific merit and recommended that the proposal should not proceed to Gateway Determination for the following reasons:

- impacts on the flood plain, flooding and stormwater management.
- filling of the land resulting in loss of flood storage capacity and impacts flooding on adjoining land.
- cumulative impact of filling below the flood limit.
- potential impacts on the stormwater performance of Lapstone Creek.
- potential adverse traffic impacts on Old Bathurst Road and the operation of the local traffic network.
- potential adverse visual impacts caused by raising the level of the land.
- impact of development on important fauna and flora located on the site.
- impact of development on the outlook from the floodplain towards the escarpment.

The Department understands that the proposal was subsequently updated to address the Panel’s concerns and a revised planning proposal (August 2022) was prepared and submitted to Council. The Council supported the revised planning proposal and submitted it to the Department for Gateway in October 2022. Council was satisfied that flood concerns were addressed with the cut and fill plan raising the site above the flood planning level. In its current form the proposal is considered satisfactory by the Department.

## 3.5 Section 9.1 Ministerial Directions

The consistency of the planning proposal with relevant section 9.1 Directions is discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Inconsistent but justified	<p>This direction applies when a relevant planning authority prepares a planning proposal that creates, removes, or alters a zone or a provision that affects flood prone land.</p> <p>The proposal seeks to rezone a portion of Lot 1 (the site) which is partly mapped as flood affected land.</p> <p>Part (2) of the Direction notes that a planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Employment, Mixed Use, W4 Working Waterfront or Special Purpose Zones.</p> <p>Part (3) of the Direction prevents planning proposals that apply to the flood planning area from including provisions that:</p> <ul style="list-style-type: none"> <li>(a)(b) permit development in floodway areas or impact downstream properties</li> <li>(g) result in increased requirement for government spending on emergency management services and</li> <li>(f) permit uses where hazardous materials cannot be effectively contained during a flood event.</li> </ul> <p>The Direction sets out conditions under which that the planning proposal may be inconsistent with this direction:</p> <ul style="list-style-type: none"> <li>• if it's in accordance with a floodplain risk management study or plan or a flood study adopted by the relevant Council and prepared in accordance with the principles of the <i>Floodplain Development Manual 2005</i>, or</li> <li>• is supported by a flood and risk impact assessment accepted by the relevant planning authority, or</li> <li>• the planning proposal is of minor significance as determined by the relevant planning authority.</li> </ul> <p>The flood study (by Reinco Consulting <b>Attachment E</b>) provided with this planning proposal notes that:</p> <ul style="list-style-type: none"> <li>• The Penrith City Council has not adopted a Floodplain Risk Management Study/Plan for the Nepean River.</li> <li>• The Planning Proposal is supported by this flood study which has been prepared in accordance with the principles of the Floodplain</li> </ul>

Development Manual 2005 and is consistent with the relevant planning authorities' requirements.

- The flood study has adequately demonstrated that the development will not result in significant flood impacts on surrounding properties.

The cut and fill plan demonstrates that minor filling of Lot 1 (less than 0.5m at its highest point) will result in the site being flood free in the 1 in 100 year storm event.

The minor filling of Lot 1 (the site) is offset by the removal of an existing soil stockpile located on Lot 2 to the north of Lot 1 and adjacent to the drainage channel.

The cut and fill plan demonstrates an increase of 550m<sup>3</sup> in flood storage through the removal of the stockpile, with a corresponding decrease of 500m<sup>3</sup> in flood storage through filling of Lot 1.

The proposed cut and fill results in an increase of 50m<sup>3</sup> of flood storage across the land holding demonstrating that a balanced approach to cut and fill is realised across the site.

The previous decision by the Department to do not proceed was made partly based on concern that the flood study lacked consideration of the cumulative impacts of cut and fill on flood behaviour up and down stream. Following the decision, an additional study (**Attachment U**) was undertaken responding to the Department's concerns and found there is no up- or down-stream impacts. The Department has reviewed the additional information in conjunction with a further review and consideration of advice from the NSWRA and is now satisfied that flood behaviour changes due to the proposed cut and fill is within the 100 mm guidelines established by the Penrith DCP.

A Gateway condition has been added that the Prior to finalisation, the LPMA in consultation with the NSWRA must consider the proposed fill in the context of the most recent publicly available regional flood study for the Hawkesbury Nepean Catchment, to test for any off-site impacts. In accordance with the Gateway condition, further consideration must be given if additional fill is required due to any changes in flood levels.

Another reason why the Department did not support this proposal initially was due to known evacuation risks in this catchment for uses below the PMF. Since that initial assessment and the release of the Hawkesbury Nepean Flood Evacuation Model (FEM), the Department has received advice from the NSW Reconstruction Authority (NSWRA) on this issue. The NSWRA generally concluded that the proposal would not exceed the capacity the local or regional evacuation routes and are satisfied that the site can be evacuated. A condition has been added to the gateway certificate that prior to finalisation, an amended evacuation plan to the satisfaction to the NSW SES and RA, be provided.

A further condition will be added to satisfy this Direction, Prior to finalisation the proponent must demonstrate to the satisfaction of the Local Plan Making Authority (LPMA) the planning proposal will not result in hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.



Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		Based on the above, the Department is satisfied that the proposal can proceed to Gateway.
4.4 Remediation of Contaminated Land	Consistent	<p>This Direction applies when there is a proposal to rezone land. It requires consideration of the current contamination status of the land and if the site is (or can be) made suitable for the future intended land use.</p> <p>The proposal is accompanied by a Stage 1 preliminary site investigation (PSI) which concluded that the site is suitable for proposed rezoning. The PSI required the excavated soil material generated during development activities be classified in accordance with the NSW EPA (2014) Waste Classification Guidelines and disposed of to an appropriate permitted facility/site.</p> <p>The Department considers the proposal is consistent with this direction as the site is suitable for the proposed land use.</p>
5.1 Integrating Land Use and Transport	Consistent	<p>This Direction applies when a proposal creates, alters or removes a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p> <p>The planning proposal contends that it is consistent with the objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001) by locating employment generating development in an accessible location that extends on an existing employment precinct. The Department considers the proposal is consistent with this Direction.</p>
9.1 Rural Zones	Inconsistent but justified.	<p>This Direction applies when a planning proposal affects land within an existing or proposed rural zone.</p> <p>This Direction stipulates that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>The proposal seeks to rezone the eastern part of the site (currently zoned under IDO 93 as "Rural 1(d) (Future Urban)") to E4 General Industrial. The balance was recently rezoned to E4 General Industrial through the Department's Employment Zones review process.</p> <p>The planning proposal contends that the rezoning is justifiably inconsistent as it is of minor significance. Specifically, it notes that the eastern portion of the site does not include any strategic or key farming land (as shown in the Western City District Plan), is not currently utilised for any agricultural purposes and represents a relatively small portion of rural land (9,840m<sup>2</sup>) when compared against Lot 2 (directly north of the subject site) that will retain over 21ha as Deferred Matter (Rural 1(d) (Future Urban)).</p> <p>The Department notes that the site is currently vacant and that the area does not serve any strategic agricultural value. Therefore, the Department considers the proposal is justifiably inconsistent with this Direction.</p>

### 3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Biodiversity and Conservation	<p><b>Chapter 6 – Water Catchments</b></p> <p><b><i>Division 2 Controls on development generally</i></b></p> <p>The consent authority must consider the impact of the development on water quality, aquatic ecology, flooding, recreation and public access and total catchment management.</p>	Consistent	<p>The site is located in the Hawkesbury-Nepean River sub-catchment area and is partially mapped as flood prone land and with Scenic and Landscape Values (SLV). A Gateway condition is added that the Planning Proposal Authority must consider the implications of filling on the site and any changes to flood levels and velocities in the locality as a result of the NSW Reconstruction Authority's review of the Hawkesbury Nepean Valley Regional Flood Study.</p> <p>The proposal also seeks to:</p> <ul style="list-style-type: none"> <li>• apply SLV mapping across the entirety of the site, and</li> <li>• update the DCP controls to apply the provisions of C1 Site Planning and Design Principles for areas with Scenic and Landscape Values across the entirety of the site (<b>Attachment H</b>).</li> </ul> <p>The Department considers that the proposed provisions do not conflict with existing SEPP requirements, and that relevant environmental considerations (including flooding and scenic quality) will continue to be triggered at the DA stage.</p>
	<p><b><i>Division 3 Controls on development in specific areas</i></b></p> <p>The consent authority must consider the impact of the development on the condition of the sub-catchment, native vegetation, the scenic quality of the location and any previous development.</p>	Consistent	
Resilience and Hazards	<p>A consent authority must not consent to development unless it has considered whether the land is contaminated, that the land is suitable in its contaminated state, or requires remediation.</p>	Consistent	<p>A Stage 1 Preliminary Site Investigation (PSI) has been prepared for the site.</p> <p>The PSI notes that the site is suitable, or capable of being made suitable for the development.</p> <p>This provision will continue to apply to future development applications on the site.</p> <p>The proposal is consistent with the SEPP.</p>

## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 9 Environmental impact assessment**

Environmental Impact	Assessment
Scenic and Visual Impacts	<p>The proposal seeks to extend the Scenic and Landscape Values (SLV) mapping over the Deferred Matter land to be consistent with the western portion of Lot 1 (<b>Figure 7</b>). The Department understands the extension of the SLV mapping to the eastern part of the site is in response to comments from the LPP (<b>Attachment F</b>).</p> <p>Under Cl.7.5 of the PLEP 2010, areas with SLV mapping are required to ensure that development minimises the visual impact from major roads and other public places.</p> <p>Under the Penrith DCP, the site is classified as Industrial Precinct 7 with scenic values described as:</p> <ul style="list-style-type: none"> <li>Land within Industrial Precincts 4 and 8 which have views to and from the Nepean River and the Blue Mountains escarpment, and within Industrial Precincts 7 and 9 which can be viewed from elevated locations elsewhere in the City.</li> </ul> <p>The Department notes that Council intends to update SLV provisions in the DCP to align with the proposed PLEP 2010 mapping.</p> <p>The Department is generally supportive of the SLV mapping amendment.</p>
Flooding	<p><b><u>Background</u></b></p> <p>During the preparation of the PLEP 2010, the western portion of the site was identified for industrial zoning (originally IN1 Light Industrial, and later amended to IN2 Light Industrial following community consultation) as it was located above the flood planning level. However, Council resolved not to determine a zoning for the eastern portion of the subject site (and the larger 21ha lot immediately to the north), as both sites are located below the flood planning level.</p> <p>Council resolved that the flood-impacted sites would be deferred for future consideration upon completion of additional flooding analysis which would determine the flood planning level for the property as a whole. Eastern part of Lot 1 (the site) and the whole Lot 2 are currently identified as 'Deferred Matter' on the LEP maps and have retained their previous zoning under the Penrith IDO 93 as Rural 1(d) (Future Urban).</p> <p><b><u>Flood Study</u></b></p> <p>A detailed Flood Study has been prepared in support of the Planning Proposal by Rienco and is included as <b>Attachment E</b>.</p> <p>The Flood Study has been prepared to address the following matters:</p> <p><i>a) Review of existing flood information available for the site, as quantified in:</i></p> <p><i>i. Nepean River Flood Study (2018)</i></p>

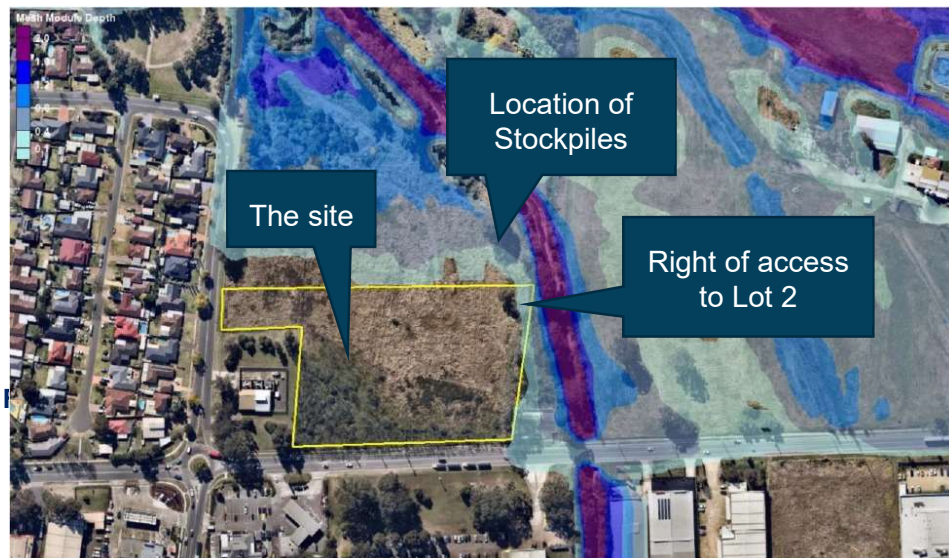
Environmental Impact	Assessment
	<p data-bbox="475 297 1054 322"><i>ii. Emu Plains Overland Flow Flood Study (2020)</i></p> <p data-bbox="379 353 1420 414"><i>b) Prepare a detailed hydraulic model that replicates as best as practical the worst case 1% AEP design flood behaviour at the site under pre-development conditions.</i></p> <p data-bbox="379 445 1385 506"><i>c) Determine the potential impacts of the proposed development, and the associated flood hazard categorisation, by way of additional hydraulic modelling.</i></p> <p data-bbox="379 537 1382 598"><i>d) Review the proposed development, together with the hydraulic model results, and assess it against Clause 4.3 of the Section 9.1 Directions relating to flooding.</i></p> <p data-bbox="379 629 1391 719">The flood study has been prepared taking into consideration the cut / fill design which demonstrates that minor filling of Lot 1 (less than 0.5m at its highest point) can be undertaken to make Lot 1 flood free in the 1 in 100 year flood event.</p> <p data-bbox="379 750 1401 931">As such, a hydraulic model was prepared by the proponent to quantify the impacts of the proposed cut and fill in the standard design flood event – the 1% AEP design flood modelling for the Nepean River system. The flood model demonstrates that the fill proposed for the site will result in water level changes below 100 mm for surrounding properties during flood events, which is within the acceptable range specified in the Penrith DCP 2014</p> <p data-bbox="379 963 735 992"><b>Pre-Development Modelling</b></p> <p data-bbox="379 996 1428 1115">The flood study indicates that the existing peak 1% AEP flood depths vary across the site, but these depths are relatively shallow across Lot 1. The peak flood depths reach a maximum of 250 mm along the northern boundary. With an average of less than 200mm peak flood depths across the lot as shown in Figure 10 below.</p> <p data-bbox="379 1146 1428 1207">The entire area of Lot 1 is denoted as Low Provisional Hydraulic Hazard when assessed in accordance with the NSW Government's Floodplain Development Manual (2005).</p> <p data-bbox="379 1238 748 1267"><b>Post Development Modelling</b></p> <p data-bbox="379 1272 1374 1361">The post development modelling accounted for the removal of the existing stockpile and distribution of material over Lot 1 as shown in the preliminary engineering plans (<b>Attachment R</b>).</p> <p data-bbox="379 1366 1417 1451">The modelling demonstrated that the proposed earthworks would result in a materially flood-free lot by re-inundating the areas where the stockpiles were previously located in the 1% AEP flood as shown in <b>Figure 11</b> below.</p> <p data-bbox="379 1482 1396 1572">The flood affected area in the north-eastern corner of the site is less than 100 mm in depth and accommodates the right of access to Lot 2. This area is not proposed to be developed or filled at this time.</p> <p data-bbox="379 1603 1428 2004">In not supporting the gateway in June 2023, the Department's initial assessment raised concern about the proposed cut and fill to raise site above the 1% AEP. In particular, the Floodplain Risk Management Strategy (<b>Attachment E</b>) did not provide any details on the cumulative flooding impacts (both up and downstream) that may result from the earthworks. As a part of the gateway review process, the Department has received additional information from the proponent (<b>Attachment U</b>) and has investigated this further and is now satisfied that the proposal will not alter the overall flood storage in the area. This is due to the cut and fill involving moving fill around the site from the stockpiles shown in <b>Figures 10 and 11</b>, rather than introducing new fill. The modelling provided (<b>Attachment E</b>) has also demonstrated that changes to flood behaviour on adjoining sites are within the 100 mm acceptable threshold established in Section 3.5 Flood Planning of the Penrith DCP 2014.</p>

Environmental  
Impact

## Assessment



Figure 10 – Pre-development flood mapping





Environmental Impact	Assessment
Evacuation	<p>The Department initially did not support the proposal on the basis on flood evacuation risk, but more information has since been provided by the NSWRA and the proponent as part of the review process.</p> <p>The Flood Emergency Response Strategy has been prepared for the proposed rezoning at 170 Russell Street, Emu Plains. It has been developed with reference to flood data derived from simulations of design floods that have been developed as part of Council's Lower Nepean Floodplain Risk Management Study (in draft, 2022).</p> <p>Modelling results indicate that the site is flood free in the 1% AEP event but would be inundated in the PMF event. Flood conditions at the site would begin to pose a risk to life in a 0.2% AEP flood. Accordingly, it is not appropriate to shelter-in-place at the site during a 0.2% AEP or higher flood event. To prevent tenants and staff from becoming trapped at the site and then potentially being exposed to hazardous flood conditions, it will be necessary to complete evacuation of the site before inundation of Old Bathurst Road.</p> <p>The preferred evacuation route is through the western boundary of the site along Old Bathurst Road toward Blaxland. Land outside of the PMF flood extent would be reached at Wedmore Road. If road conditions permit, evacuees could continue west to Baxland. An alternative evacuation route identified in the Hawkesbury-Nepean Valley Flood Plan (SES, 2020) would be west along Old Bathurst Road, then south along Russell Street to the M4 Motorway. If continuing in an easterly direction along the M4, land outside the PMF would be reached about 5 kilometres from the site, near the Mulgoa Road intersection with the M4. In a westerly direction land outside the PMF would be reached about 3 kilometres from the site, just a few hundred metres after entering the M4.</p> <p>It is recommended that evacuation begins when a Major Flood Level is reached at the 'Nepean River at Penrith' gauge. This would allow about 3.5 hours for evacuation to occur prior to inundation of Old Bathurst Road (assuming floodwaters continue to rise).</p> <p>Based on the flood modelling prepared and the review of the PMF and Evacuation Report (Attachment U), the Department is satisfied that there is adequate rising flood free access and flood warning times to achieve tenancy evacuation in the PMF flood event without risk to life. This included a review of by the NSWRA of local and regional flood evacuation routes. This found that as there is relatively little developable land in this area, the NSWRA qualitative assessment has assumed that the possible increase in cars would still be able to evacuate from this area. Based on this the NSWRA concluded that the proposal would not exceed the capacity the local or regional evacuation routes.</p> <p>The NSWRA identified some concerns with the methodology adopted in the Proponents PMF Flood Review and Evacuation Plan, noting it does not consider local flood impacts that could occur separately or together with regional flood events. The NSWRA also indicated the rates of rise could be higher than indicated in the submitted report, and therefore evacuation times could be much less.</p> <p>Therefore, a condition will be placed on the gateway to require an amended evacuation plan to be provided to the plan making authority that has been prepared to the satisfaction of the NSW SES and NSWRA prior to finalisation.</p>



## 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Employment Land	<p>As per the District Plan and Penrith LSPS, there is a demonstrated need for employment opportunities across the Penrith LGA to meet increasing population growth. Furthermore, the Penrith Employment Lands Strategy (2021) includes a number of considerations for future industrial land in Penrith, including appropriate zoning, increased flexibility of controls, and diversity of job opportunities.</p> <p>The proposal argues that the rezoning of ~1ha of land to E4 General Industrial would enable additional employment floorspace on the site and could generate new job opportunities. The proposal has not provided an estimate of how many jobs would be generated but has indicated that the rezoning would contribute to Penrith's employment target of between 85,000 and 109,000 additional jobs.</p> <p>The site is classified as a 'retain and manage' area in the Western District Plan, the purpose of which is to "<i>accommodate evolving business practices and changes in needs for urban services from the surrounding community and businesses</i>".</p> <p>The Department acknowledges that the planning proposal would deliver additional employment land that would facilitate a wide range of land uses and a diverse range of employment opportunities.</p>
Employment Zones Review – Zone Translation	<p>The proposal seeks an Additional Permitted Use (APU) clause across the entirety of the site. The inclusion of this clause has resulted from the Department's 2021 review of Employment Zones which amended previous Business and Industrial zones by consolidating them into five new employment and three new supporting zones. This amendment was finalised in December 2022 and came into effect on 26 April 2023.</p> <p>The commencement of the new employment zones resulted in a transition of the western portion of the site from IN2 Light Industrial zone to the new E4 General Industrial zone, which was identified as the 'equivalent' zone for IN2 Light Industrial zoned land in the Penrith LGA.</p> <p>The impact of this transition was the loss of 16 previously permitted land uses and the introduction of 7 more intensive land uses. The permissible land uses for the E4 General Industrial zone generally reflect those under the previous IN1 General Industrial, not IN2 Light Industrial (which permitted a wider, but less intensive range of land uses).</p> <p>The planning proposal seeks to re-instate the 16 removed permissible land uses through an APU clause, inclusive of the following:</p> <ul style="list-style-type: none"> <li><i>amusement centres, centre-based childcare facilities, community facilities, crematoria, educational establishments, electricity generating works, function centres, hotel or motel accommodation, medical centres, recreation facilities (indoor), resource recovery facilities, respite day care</i></li> </ul>

Social and Economic Impact	Assessment
	<p><i>centres, service stations, vehicle sales or hire premises, veterinary hospitals, and waste or resource transfer stations.</i></p> <p>The following seven land uses were added to E4 zone as a result of Employment Zones reform:</p> <ul style="list-style-type: none"> <li><i>animal boarding or training establishments, boat building and repair facilities, freight transport facilities, general industries, industries, rural industries, vehicle body repair workshops</i></li> </ul> <p>Council has indicated that the APU will be delivered alongside a smaller minimum lot size and DCP controls, which will discourage more intensive industrial development. The reduction in minimum lot size from 6,000m<sup>2</sup> (in the part of the site currently zoned E4) to 2,000m<sup>2</sup> across the site was recommended by Council staff as it will promote smaller scale industrial activities and is consistent with the majority of Industrial land within Emu Plains. The Department agrees with this approach.</p>

## 4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

**Table 11 Infrastructure assessment**

Infrastructure	Assessment
Utilities	<p>As per the Services Report (North Western Surveys, July 2021) (<b>Attachment Q</b>) the site is likely to have existing access to electricity and water. However, an extension to the sewer main and gas pipeline has to be provided in the future.</p> <p>The Department is satisfied that adequate arrangements can be made to connect the site to public utilities.</p>
Roads and Transport	<p>A Traffic and Parking Assessment Report (Positive Traffic, June 2022) (<b>Attachment I</b>) has been prepared in support of the planning proposal. The report assumed the development of the entirety of Lot 1 (estimated development yield of 11,940m<sup>2</sup>) would result in traffic generation outcomes of between 62 (AM peak) and 67 (PM peak) trips.</p> <p>The report also assumed that the main access would be from Old Bathurst Road, while a second entry is located on Russell Street for light vehicles only.</p> <p>The report found that the potential traffic generation from the site was low (in the context of the existing traffic demands), and that the forecast 2033 traffic conditions would be similar with or without the proposed rezoning.</p> <p>The report also determined that the proposed parking provision would comply with Council's parking requirements.</p> <p>To further mitigate impacts to roads and traffic, Council have included a number of draft DCP controls, including the preparation of a detailed traffic study prior to</p>

Infrastructure	Assessment
	<p>development consent and restriction of driveway access from Old Bathurst Road only.</p> <p>The Department considers that given no specific land use is anticipated for the site (beyond the rezoning to E4 General Industrial), the modelling of traffic generation is difficult to determine at this stage. The assumptions made for the purpose of traffic modelling may be revisited when specific industrial uses on site are better defined.</p>

## 5 Consultation

### 5.1 Community

The planning proposal is categorised as standard in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days.

The exhibition period proposed is considered appropriate, and it makes part of the conditions of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically state which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 20 working days to comment:

- NSW Department of Climate Change, Energy, the Environment and Water
- NSW Reconstruction Authority (NSWRA)
- Transport for NSW
- NSW State Emergency Services (SES)
- Sydney Water
- Endeavor Energy
- Relevant infrastructure providers for telephone, NBN and gas

## 6 Timeframe

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard planning proposal.

The Department recommends an LEP completion date is 9 months from the date of the Gateway determination, in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

It is recommended Council be the local plan-making authority, as requested by a resolution of Penrith City Council. The Department and Council will work together with Council as the local plan-making authority, to resolve issues around evacuation risks.

## 8 Assessment summary

The planning proposal is supported to proceed subject to conditions considering it:

- has demonstrated that flooding and flood evacuation issues can be sufficiently addressed subject to satisfying the relevant gateway conditions.
- will deliver additional industrial zoned land to facilitate employment generation.
- will assist in achieving the employment target by providing additional jobs.
- aligns land use zoning and development standards relating to building height, additional permitted uses and lot size across the site.
- provides for more regular shaped zoning boundaries which will facilitate efficient land development outcomes.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that all inconsistencies with section 9.1 Directions have been justified.

It is recommended the delegate of the Minister:

- determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. Prior to exhibition consideration must be given by the planning proposal authority to:
  - Ensure the Planning Proposal documentation, including all maps, are updated to reflect current planning controls, as per the Penrith LEP 2010, and relevant State and local planning policies and strategies.
  - Ensure the proposed planning control maps are consistent with the intended amendments.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).

Exhibition must commence within 3 months following the date of the gateway determination.

3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:
  - NSW Department of Climate Change, Energy, the Environment and Water
  - NSW Reconstruction Authority (NSWRA)
  - Transport for NSW

- NSW State Emergency Services (SES)
- Sydney Water
- Endeavor Energy
- Relevant infrastructure providers for telephone, NBN and gas

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 20 working days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. Prior to finalisation, the Local Plan Making Authority (LPMA) in consultation with the NSW Reconstruction Authority must consider the proposed fill in the context of the most recent publicly available regional flood study for the Hawkesbury Nepean Catchment, and any off site impacts.
6. Prior to finalisation an amended evacuation plan must be provided to the Local Plan Making Authority (LPMA) that has been prepared to the satisfaction of the NSW SES and NSW RA. The amended evacuation plan must consider the Hawkesbury-Nepean Valley Flood Evacuation Model (FEM) and any implications the FEM has for the proposed rezoning in relation to the capacity of regional evacuation routes in the area.
7. Prior to finalisation the proponent must demonstrate to the satisfaction of the LPMA that the planning proposal will not result in hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.



12 January 2024

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