

Planning Services

Gateway Determination Report

LGA	Penrith
PPA	Penrith City Council
NAME	Orchard Hills North (1700-1900 dwellings, 274 jobs)
NUMBER	PP_2018_PENRI_006_00
LEP TO BE AMENDED	Penrith Local Environmental Plan 2010
ADDRESS	Orchard Hills North
DESCRIPTION	See Attachment G
RECEIVED	An adequate proposal was received on 20 December 2018
FILE NO.	IRF18/4519
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Planning proposal

This planning proposal seeks to amend the Penrith Local Environmental Plan (PLEP) 2010 by the rezoning of 146.1 hectares of land in Orchard Hills North from RU4 Primary Production Small Lots to R1 General Residential, B2 Local Centre, RE1 Public Recreation, E2 Environmental Conservation and E3 Environmental Management.

The rezoning of Orchard Hills North aims to provide between 1700 – 1900 new residential lots and 274 jobs.

It is anticipated the site will provide a broad mix of housing types ranging from larger environmental living lots (2,000sqm) to traditional detached residential lots (primarily 300-600sqm) and smaller compact and attached housing lots (125-300sqm).

A proposed neighbourhood centre will provide approximately 6,000-8,000sqm of retail space.

Approximately 20.87ha of open space, playing fields, bushland and riparian corridors is proposed.

A new/relocated primary school is proposed.

Further, the proposal indicates that the proponent is committed to providing affordable housing in response to Penrith City Council's target of 3% affordable housing.

Supporting Studies

The proposal is supported by a number of studies (**Attachments H1 to H15**) and an open space diagram (**Attachment H16**), as follows:

- Attachment H1:** Urban Design Report, Design & Planning, March 2018
- Attachment H2:** Landscape and Visual Assessment, Place Design Group, 23 March 2018.
- Attachment H3:** Open Space Strategy, Place Design Group, 23 March 2018
- Attachment H4:** Ecological Services, Cumberland Ecology, March 2018.
- Attachment H5:** Heritage Constraints and Opportunities, NBRs Architecture Heritage, 21 March 2018.
- Attachment H6:** Aboriginal Heritage Study, Kelleher Nightingale Consulting Pty Ltd, March 2018.
- Attachment H7:** Preliminary Agricultural Assessment, Aspire Agri - Agricultural and Management Services, 19 March 2018.
- Attachment H8:** Report on Geotechnical Assessment, Douglas Partners, March 2018.
- Attachment H9:** Bushfire Constraints Report, Australian Bushfire Protection Planners Pty Ltd, 15 March 2018.
- Attachment H10:** Preliminary Site Investigation, JBS&G, 9 March 2018.
- Attachment H11:** Orchard Hills North Rezoning Services Infrastructure Assessment, J. Wyndham Prince, March 2018.
- Attachment H12:** Social Infrastructure Assessment, Elton Consulting, 9 March 2018.
- Attachment H13:** Traffic Study, SCT Consulting, 6 March 2018.
- Attachment H14:** Stormwater Management Strategy, J. Wyndham Prince, March 2018.
- Attachment H15:** Orchard Hills North Retail Market Demand and Impact Assessment, Urbis, March 2018.
- Attachment H16:** Open Space Area Plan.

Background

This site was nominated by Legacy Property (Legacy) in October 2017 in response to Penrith City Council's Accelerated Housing Delivery Program (AHDP). The program is open to all landowners and was introduced by Council to ensure that there is a supply of affordable and diverse housing, subject to nominated sites meeting certain criteria.

As development of the site would potentially contribute to housing needs and was located near existing urban development and available services, Council gave indicative support for consideration to be given to a rezoning process.

The Department of Planning and Environment and Penrith Council have identified the need to consider the subject land in conjunction with the likely development of land located immediately to the west. This adjoining land is 116.9 hectares in area and has the potential to be rezoned, providing additional dwellings and an estimated 1,100 jobs. This adjoining site is identified as the Structure Plan Area. The two sites hold the potential to deliver a total of approximately 1,274 jobs.

Figure 1 (overleaf) illustrates the proposed indicative rezoning of the subject land and indicative zones for the Structure Plan Area.

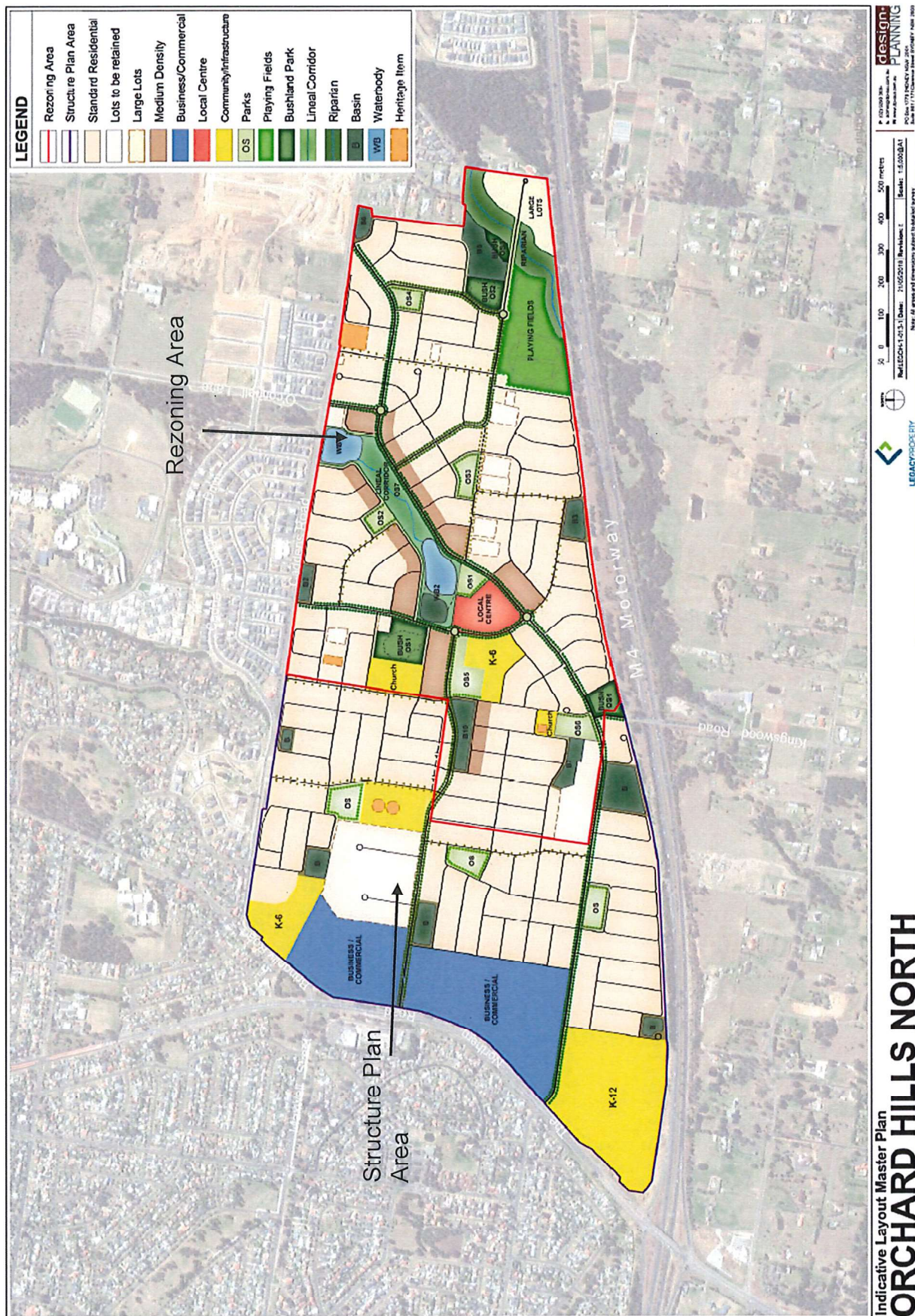


Figure 1: Subject land and proposed Structure Plan Area – concept diagram

Site description

The 146.1 hectare area of the subject land is located at Orchard Hills North, immediately north of the M4 Motorway. It is bordered by Caddens Road, Kingswood Road, Frogmore Road and the M4 and is intersected by Castle Road, Kingswood Road and Ulm Road. Werrington Creek and Claremont Creek both transverse sections of the land and there is a riparian zone in the south-east corner which is identified on flood maps.

The total site area comprises 54 existing lots with a land area of 140.38 hectares and an area of 5.73 hectares of roads.

The planning proposal (**Attachment A** - p.3) indicates that approximately 70% of land holdings are controlled by Legacy Properties. It is noted that one lot is owned by Penrith City Council (occupied by the Rural Fire Service) and another lot is owned by the Brethren Church (p.3).

Site context

This site is identified within the Western City District Plan as an Urban Investigation Area and within the Greater Penrith to Eastern Creek Growth Area. The land also forms part of the Metropolitan Rural Area, as identified in the district plan (Figure 2).

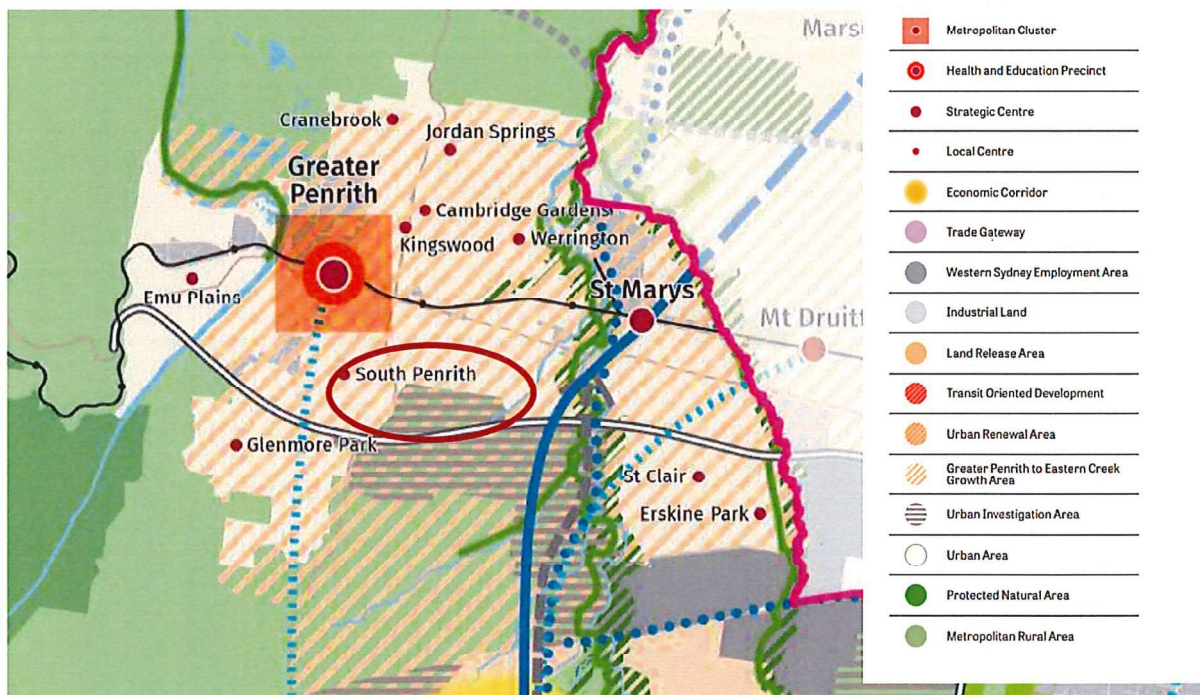


Figure 2: Location within Structure Plan for the Western City District - urban area north (red line indicates location of the site)

Surrounding area

The Caddens development (an urban release area) is located to the north, within the Werrington Enterprise Living and Learning Precinct and is principally a residential area. The east is bordered by new residential development in Claremont Meadows. To the west is the established suburb of South Penrith. Across the M4 to the south, the land remains rural, with this area being designated as an urban release investigation area.

St Marys, Werrington, Kingswood and Penrith train stations are to the north, within varying distances ranging from 2.6km to 4.7km. Penrith CBD is located 4.4km to the north east and the Western Sydney University is located 1.5km to the north (see Figure 3).

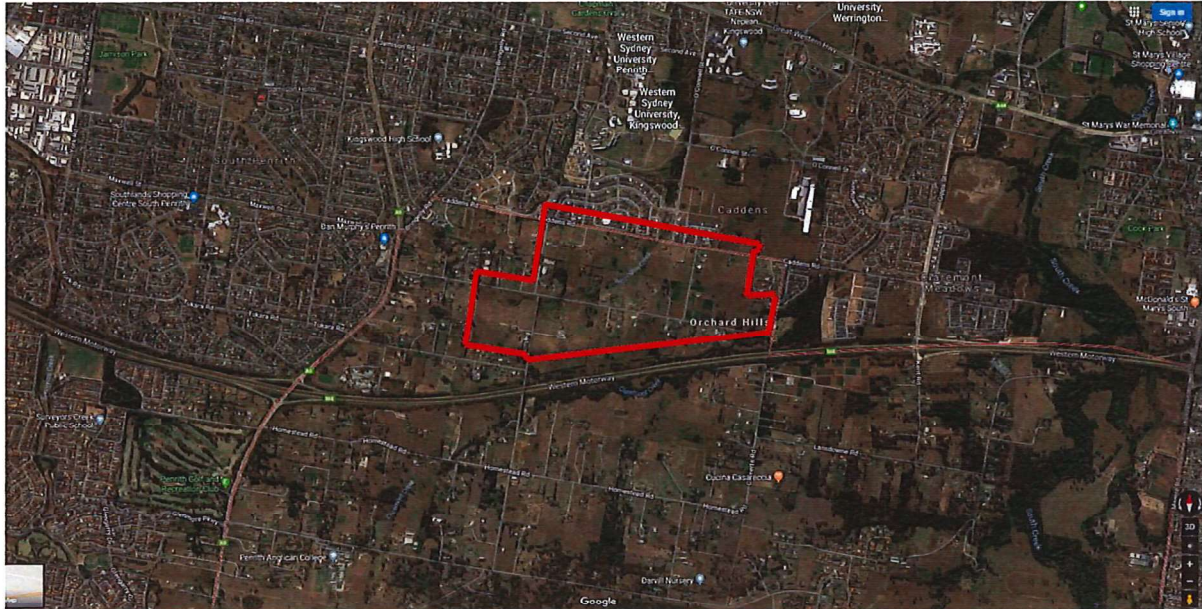


Figure 3: Orchard Hills location within Penrith

Existing planning controls

The site is zoned RU4 Primary Production Small Lots (see Figure 4) under the Penrith LEP 2010 (PLEP) with the majority of land classified as 'Land with Scenic and Landscape Values' (Figure 5). Scenic character and landscape values of the area are protected under clause 7.5 of PLEP which require development to be located and designed in a manner that minimises the visual impact of the development from major roads and other public places.

Relevant current controls are:

- Height Control: nil;
- Floor Space Ratio: nil;
- Minimum Lot Size: a minimum allotment size of 2 hectares applies to the majority of the site, with a minimum lot size of 1,000 hectares applying to three discrete areas (see Figure 6).

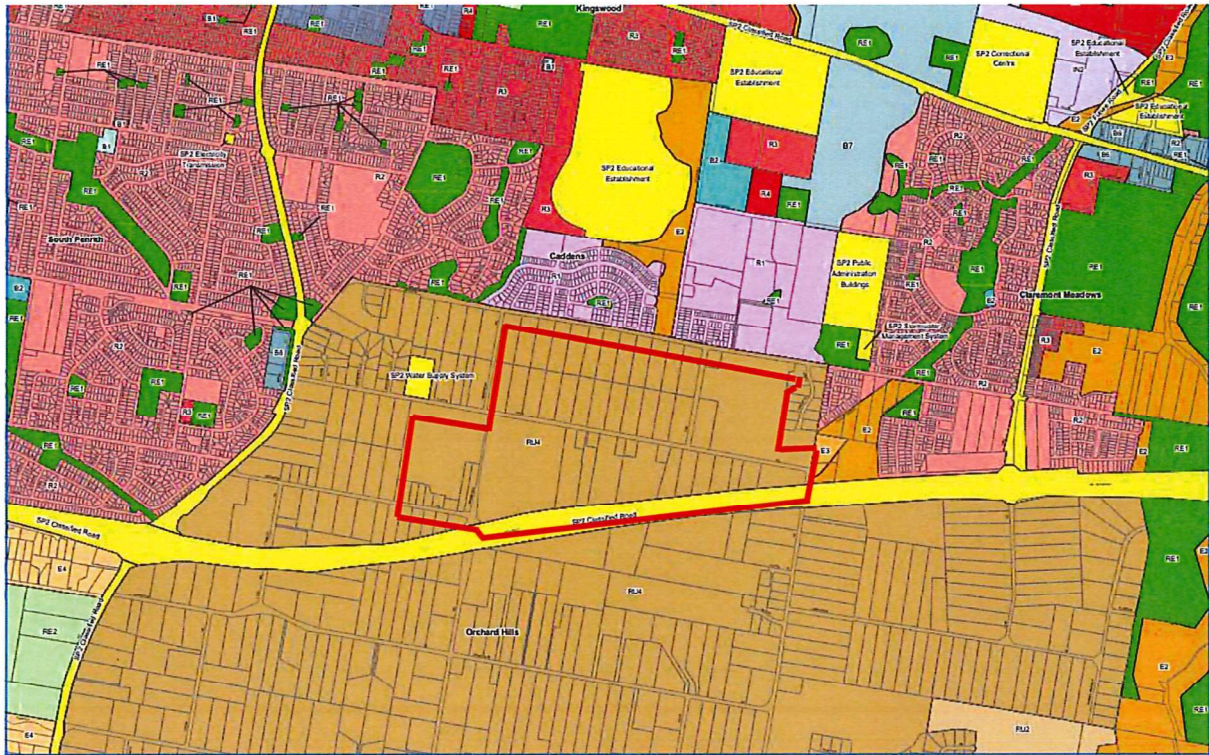


Figure 4: Zoning of subject land

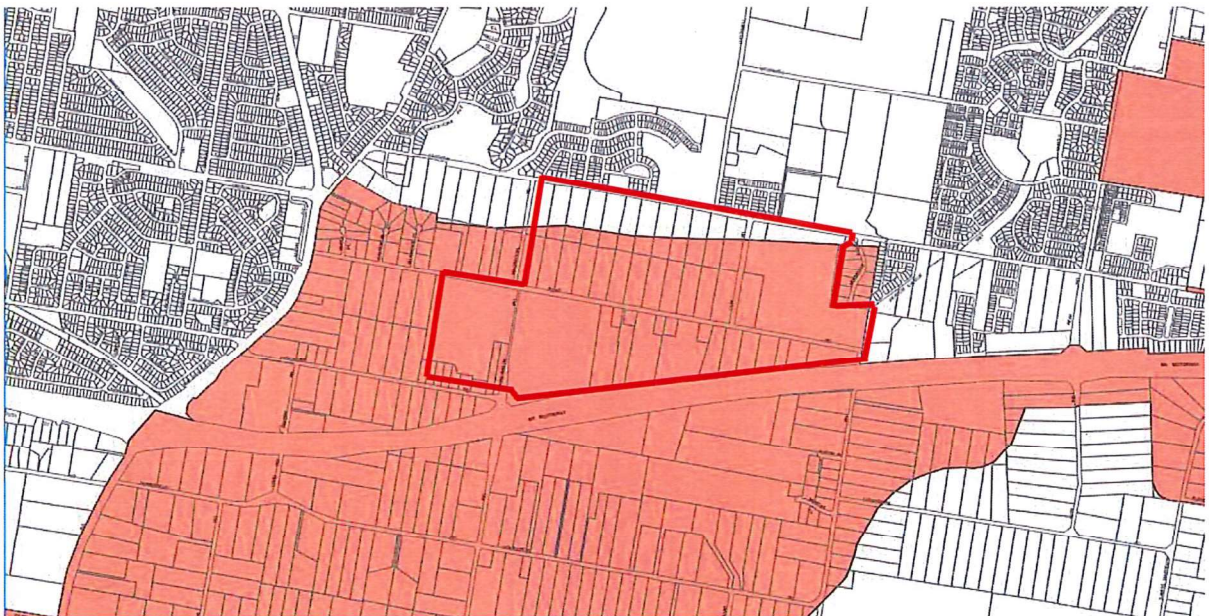


Figure 5: Scenic and Landscape Values Map

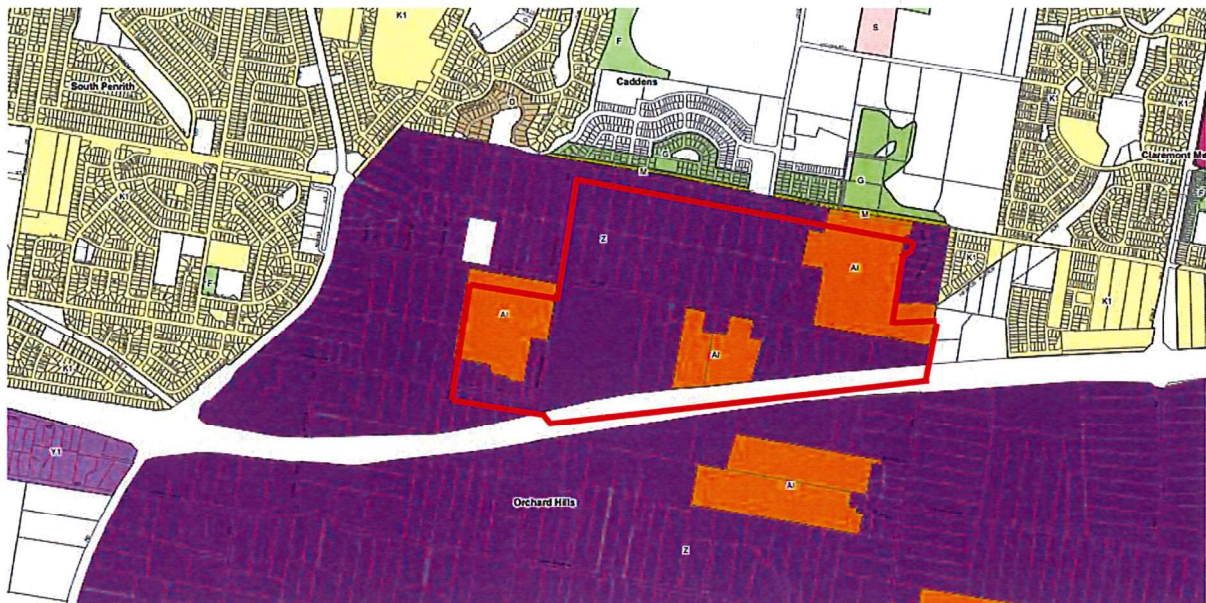


Figure 6: Current minimum lot size (A1:1000ha; Z: 2ha)

Flooding

Council's Flood Planning Maps indicate the site contains a flood planning area in the south-east corner. It is noted, however, that the stormwater management strategy (**Attachment H14**) identifies an existing 1 in 100 year flood extent area associated with Werrington Creek. While this area is absent in Council's Flood Planning Maps, as seen in Figures 7 and 8, the matter is addressed in local provision 7.20 Orchard Hills of Penrith LEP 2010 (see over page).

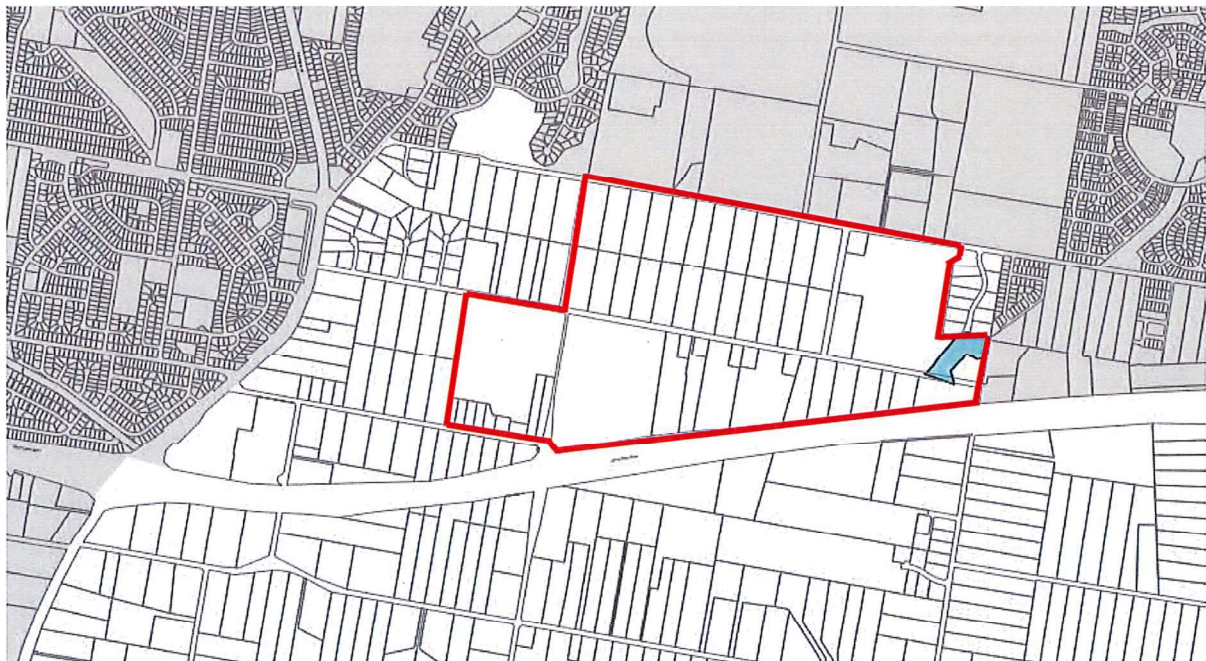


Figure 7: Flood planning land (source: Council's LEP map)

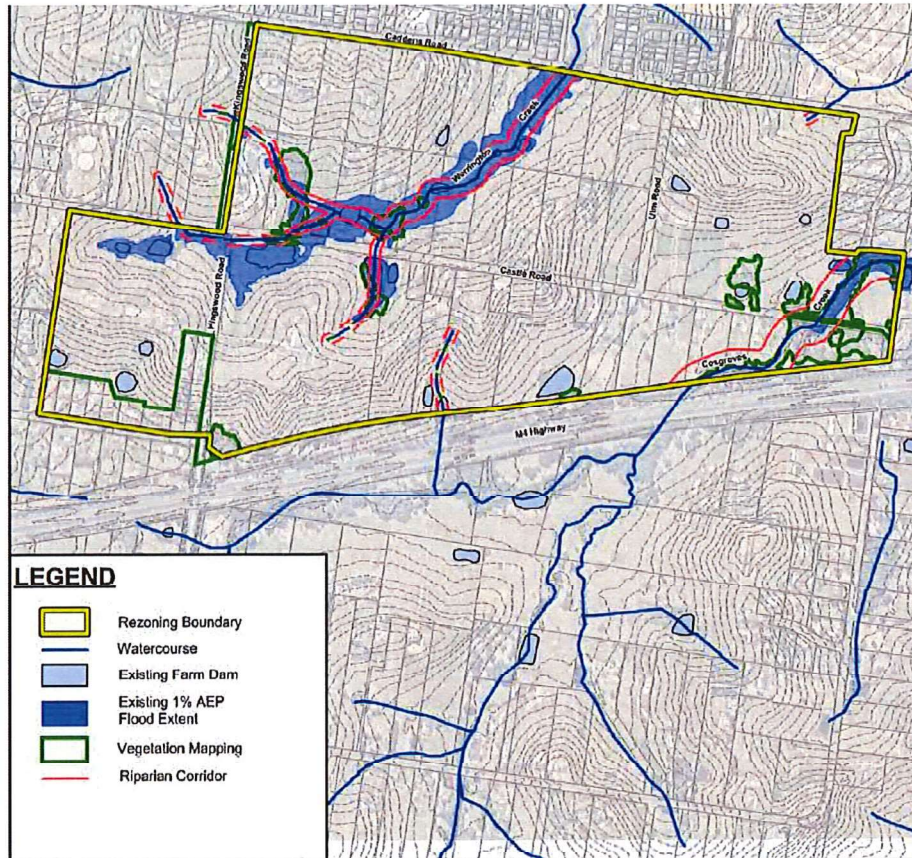


Figure 8: 1 in 100 year flood extent at Werrington Creek (source: Appendix H14 of planning proposal)

Clause Application Map – noise and flood events

The subject site is also identified on the Clause Application Map. Under local provisions of PLEP clause 7.20 includes specific measures that development must meet to address noise from major roads (i.e., M4 Motorway and The Northern Road) and flood events. An extract of the clause applications map follows (Figure 9).

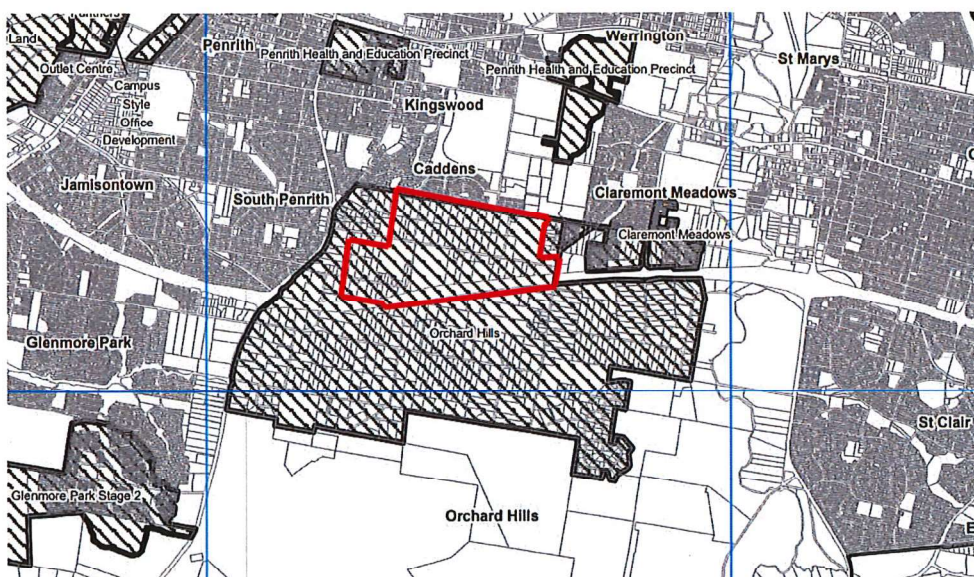


Figure 9: Location within the Clause Application Map

Heritage

The rezoning area contains 3 local heritage items. An extract from the Heritage map follows (Figure 10).

Item #	Item name	Address	Lot/DP	Local or state
155	Brick farmhouse	80-88 Caddens Road	Lot 6, DP 1344	Local
156	Orchard Hills Uniting Church	3 Frogmore Road	Lot 101, DP 128254	Local
845	Linfield	182-188 Caddens Road	Lot 1, DP 583439	Local

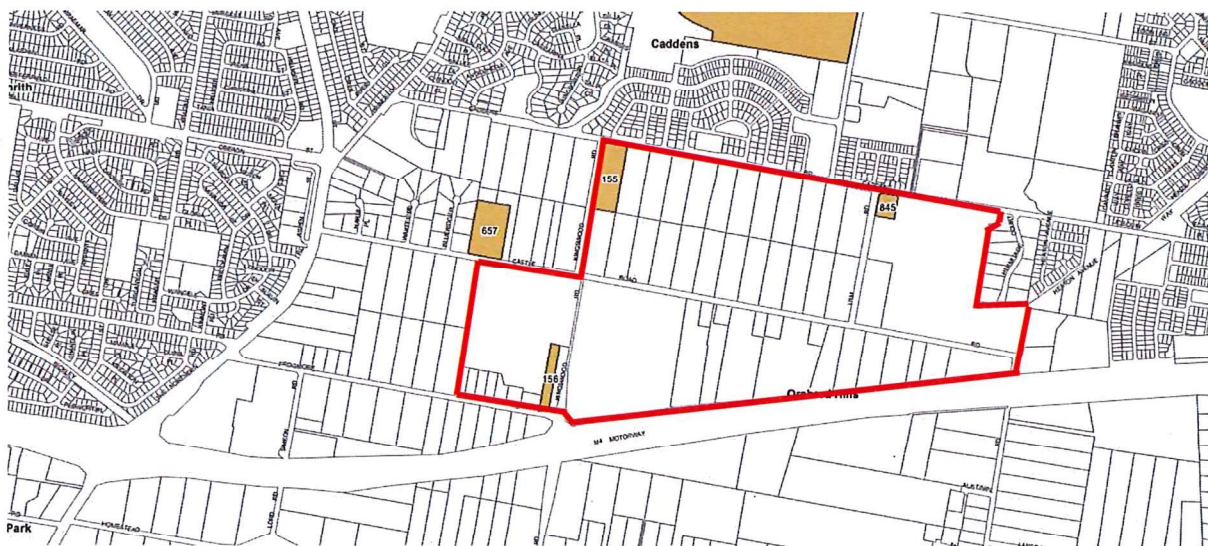


Figure 10: Heritage items

Additional Permitted Uses

Lot 1 DP 239091 is identified on the Additional Permitted Uses Map as having development application approval (02/0230) to subdivide as either a 9-lot subdivision creating 8 lots with areas ranging from 5,000 square metres to 1.26 hectares and one residue lot of 13.48 hectares; or to subdivided into lots with a minimum area of 2ha. The Additional permitted uses map is included as Figure 11 (over page).

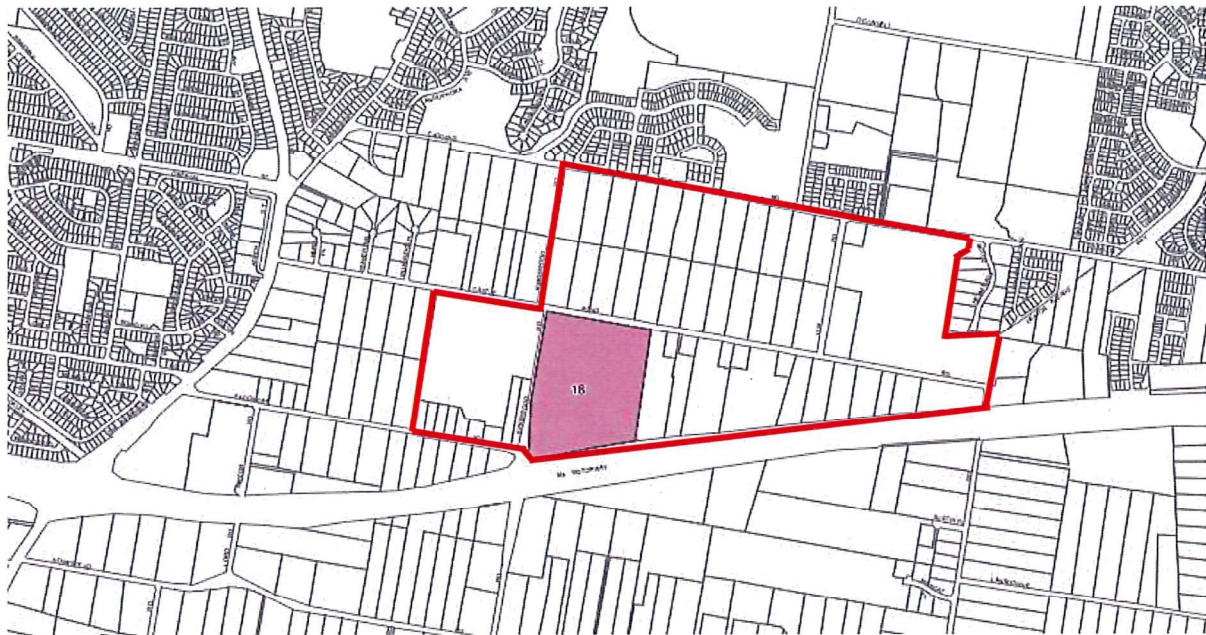


Figure 11: Additional permitted uses

Summary of recommendation

It is recommended that the planning proposal proceeds with conditions. The majority of the site is in single ownership and, at this initial stage, there does not appear to be any major constraints to development.

Further, proposed development holds strategic merit, supporting the delivery of new housing and employment opportunities in close proximity to existing services and facilities, as well as, the foreshadowed Western Sydney Airport and its associated development.

PROPOSAL

Part 1 – Objectives or intended outcomes

The primary objective is to rezone 146.1 hectares of Orchard Hills North to deliver 1700-1900 new dwellings. The stated intended outcomes are:

- provide opportunities for a diverse mix of housing types, with medium density housing located around the neighbourhood centre and major open space amenity;
- create a new neighbourhood centre combined with a relocated primary school to establish a community focal point;
- retain key creek lines and capitalise on the opportunity to create a central green link;
- retain existing significant vegetation as natural bushland;
- respect heritage buildings and the character of the area;
- integrate with the community to the north, west and east;
- link O'Connell Lane, Caddens Road, Frogmore Road and The Northern Road into a meaningful urban road network; and,
- utilise landscaping and topography on the southern boundary to manage noise.

The objective and outcomes of this proposal are clear and adequate as these apply to the subject land.

The Department notes, however, under Part 2 Explanation of Provisions (p.50) of the proposal, it is intended to include an additional clause for all land release areas to provide some flexibility in the development of these sites. A draft clause is provided (see pp. 50/51 of the proposal).

The intention is to insert this draft clause into Part 6 – Urban Release Area of PLEP. This clause proposes to increase the flexible boundary in release areas to 20 metres for the RE1 zoned land and 50 metres for all other zones, except for certain land identified in this clause, including RE1 Public Recreation; E1 National Parks and Nature Reserves; E2 Environmental Conservation and E3 Environmental Management.

Under the subject proposal, proposed zones are: R1 General Residential, B2 Local Centre, RE1 Public Recreation, E2 Environmental Conservation and E3 Environmental Management.

This wider intention is not included in Part 1 – Objectives or Intended Outcomes, of the proposal.

The draft clause is based on clause 5.3 Development near zone boundaries, which is a mandated clause under the Standard Instrument Order that has been previously adopted by Council in PLEP. To clarify:

- Council has previously adopted the optional provision in PLEP i.e. clause 5.3;
- the Standard Instrument (Local Environmental Plans) Order 2006 – clause 4, specifies: if an optional provision is adopted it is a mandatory provision;
- further, if the optional provision is adopted, it is to be adopted without variation.

Clause 5.3 allows consideration to be given to allowing a use permitted on one side of a zone boundary in the other side of the boundary to enable a more logical and appropriate devolvement of the site, where that use is compatible with the planning objectives and land use of for the adjoining zone.

The draft clause is inconsistent with the mandated 5.3 clause, as follows:

- a 20-metre relevant distance is specified in clause 5.3(2) for all zones (with exceptions i.e. doesn't apply to zones: RE1; E1; E2; E3; and W1), where the distance specified in draft clause 6.20 is 50 metres;
- draft clause 6.20 removes the RE1 Public Recreation Zone as an 'exclusion' in clause 5.3(3) and introduces a 20-metre distance for the RE1 Zone; and,
- draft clause 6.20(4) adds the words: '...and aligns with the objective of the Development Control Plan associated with the land release area...'

In view of legal limitations, the Department has taken the view that the adopted provisions can be varied by amending clause 5.3 to set a greater distance in the case of any land, other than land in zone RE1 Public Recreation to which Part 6 of the plan applies.

The other proposed variations are not supported as these are:

- inconsistent with the mandated provision, i.e. cannot apply to RE1 Public Recreation or E3 Environmental Management; and,

- specific reference to a development control plan is not necessary as this is a separate requirement for consideration under section 4.15(1)(a)(iii) of the Act.

In these circumstances, a condition to the Gateway determination is recommended, as follows:

1. Council is to include this proposed amendment as an additional objective under Part 1 – Objectives or Intended Outcome, of the planning proposal;
2. Council is to remove draft clause 6.20 from the planning proposal and amend the text under the heading: 2 Amendments to Part 6 – Additional clause.
3. Council must further indicate the intent of introducing an additional clause to increase the flexible boundary to land that is subject to Part 6 – Urban Release Areas of the LEP and is not subject to the following:
 - land in Zone RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone W1 Natural Waterways, or
 - land within the coastal zone, or
 - land proposed to be developed for the purpose of sex services or restricted premises, or
 - land in Zone B4 Mixed Use; and,
4. maps of the land release areas subject to this amendment are to be included in the planning proposal.

It is also noted that a site-specific development control plan (DCP) will be created post Gateway determination. This DCP will include specific controls for setbacks and minimum lot sizes.

Part 2 - Explanation of provisions

The planning proposal provides a description of the proposed amendments to the local environmental plan and an explanation of these amendments. Proposed amendments are summarised as follows:

Table 1: Proposed amendments

Map	Current	Proposed
Land zoning map	RU4 Primary Production Small Lots	R1 General Residential B2 Local Centre RE1 Public Recreation E2 Environmental Conservation E3 Environmental Management
Height of Buildings map	n/a	On certain R1 land specify a height of 9m On land zoned B2 specify a height of 15m On all other land specify a height of 8.5m
Maximum Floor Space Ratio	n/a	n/a
Minimum Lot Size map	Z (2ha) and AI (1000ha+)	On land zoned E3 specify a minimum lot size of 2000m ² On all other land there will be no minimum lot size control

Map	Current	Proposed
Urban Release Area map	n/a	Inclusion of the site within the Urban Release Area mapping
Scenic and Landscape Values map	Majority of North Orchard Hills is included as land with scenic and landscape values	Remove the area of landscape value from the map
Additional Permitted Use map	Item #18 [126–164 Castle Road, Orchard Hills] listed	Remove site "18"
Land Reservation Acquisition map	n/a	Add all identified RE1 lands to the map, except for Lot 6 DP 239091 which is in Council ownership
Site specific clause		
Insert a new clause (clause 6.20) to increase the flexible boundaries (referred to in Penrith LEP 2010 Clause 5.3) to a distance of 20m for RE1 zones and 50m for all other zones except on certain land identified in the clause.		

1.2 Minimum Lot Size (p.50)

The proposal seeks to partly apply a 2,000 sqm minimum allotment size to land proposed to be zoned E3 Environmental Management. A minimum allotment size is not proposed for the remainder of the site. It is understood that Council would prefer to include this control in a development control plan for the subject land and has taken this approach with other greenfield sites.

While the Department holds no objection to this approach in-principle, it is noted that Council holds a deferral from the Low Rise Medium Density Housing Code under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This exemption is on the basis that Council is preparing a local housing strategy. The deferral will lapse in July 2019 and the deferred status will be reviewed.

Should an on-going exemption not be granted, the housing code will apply and housing density may increase to that envisaged by the DCP controls.

This matter was discussed with council officers and it was agreed that Council will review the situation. This matter is addressed in the covering determination letter to Council.

Mapping

The proposed maps have been included within the planning proposal as '**Attachment F – Proposed LEP Map tiles**' (see Table 2).

Current maps are not identified as a separate attachment in the proposal, however, these are included by Council in 'Attachment G – Council report and confirmed minutes', showing both proposed and current provisions.

For clarity it is recommended that:

- the current maps be included in Attachment F;
- the subject land is highlighted on the current and existing maps by thin red outline or other appropriate means;
- existing and proposed maps be identified by an appropriate label denoting 'current' and 'proposed';
- within Part 4 – Mapping of the proposal, the text be amended to indicate that both current and proposed maps are included in Appendix F.

Subject to the above, the maps are considered suitable for exhibition purposes.

Table 2: Proposed Maps

Map	Tile Number
Additional Permitted Uses map	Additional Permitted Uses Map – Sheet APU_013
Height of Buildings map	Height of Buildings Map – Sheet HOB_013
Land Reservation Acquisition map	Land Reservation Acquisition Map – Sheet LRA_013
Lot Size Map	Lot Size Map – Sheet LSZ_013
Land Zoning map	Land Zoning Map – Sheet LZN_013
Scenic and Landscape Values map	Scenic and Landscape Values Map – Sheet SLV_013
Urban Release Area map	Urban Release Area Map – Sheet URA_013

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report. The proposal is the result of Penrith City Council's Accelerated Housing Delivery Program (AHDP) requiring the delivery of short term housing within the next 3-5 years. A planning proposal is required to change the development controls over this parcel of land as RU4 Primary Production Small Lots zoning is incompatible with the delivery of increased housing density.

The proposal is considered to hold strategic merit and will assist in meeting the need for increased housing in the locality.

STRATEGIC ASSESSMENT

State

The Western Sydney City Deal (2018)

The Western Sydney City Deal is described as a 20 years agreement between the three levels of government to deliver the transformation of Sydney's outer west. The participating councils include Penrith City Council. The Deal focuses on 6 priorities: connectivity; jobs for the future; skills and education; planning and housing; liveability and environment; and, governance. The proposal is generally consistent with the commitments of the 'Western Sydney City Deal'.

The proposal notes (**Attachment A** - p.55) that an Implementation Plan will be released in 2018. An implementation paper was released in December 2018 and it is recommended the proposal be amended accordingly.

A Metropolis of Three Cities – the Greater Sydney Region Plan (2018)

The proposal adequately addresses the key priorities in the Greater Sydney Region Plan and is generally consistent with the objectives of that Plan (refer **Attachment A** - pp.56/58).

Western City District Plan (2018)

The proposal adequately addresses the key priorities in the Western City District Plan (refer **Attachment A** - pp.59/61) and is generally consistent with that Plan.

It is noted that the proposal takes into consideration the site's location within three identified areas under the District Plan. These areas are: an Urban Investigation Area; the Greater Penrith to Eastern Creek Growth Area; and, the Metropolitan Rural Area (MRA).

Proposed urban development in the MRA is limited, however, as the subject land is located within an Urban Investigation Area and the Greater Penrith to Eastern Creek Growth Area, its inclusion with the MRA area will not exclude the proposal progressing (refer to Strategy 29.2 of *A Metropolis of Three Cities* which permits urban development to occur within the investigation areas, including Orchard Hills).

Local

Accelerated Housing Delivery Program (AHDP)

This proposal is in response to Penrith's AHDP calling for the delivery of housing in a timeframe of 3-5 years.

Penrith Community Plan (2017)

The proposal has adequately addressed the community's long-term aspirations for Penrith City over the next ten years (refer to **Attachment A** - pp.68/70).

Other Strategies

It is noted that the proposal (**Attachment A**) also adequately addresses the following:

- Cooling the City Strategy (2015) (p.70);
- Draft Penrith Urban Strategy – Managing Growth to 2031 (2009) (pp.70/72);
- Draft Penrith Integrated Transport and Landuse Strategy (2008) (pp.72/73);
- Employment Planning Strategy (2007) (p.72); and
- Werrington Enterprise Living and Learning Precinct Strategy (2004) (pp.73/74).

Section 9.1 Ministerial Directions

The proposal refers to section 117 directions and it is recommended that these words, where appearing in the proposal, be altered to section 9.1 Directions.

The proposal's consistency with relevant section 9.1 Directions is discussed below.

3.1 Residential Zones

The Direction applies as it seeks to permit significant residential development.

The proposal is consistent with the Direction. In taking this view, it is noted that existing clause 6.2 Public utility infrastructure of Penrith LEP 2010, specifies that development consent must not be granted for development on land in an urban

release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available.

3.4 Integrating Land Use and Transport

The Direction applies as the planning proposal seeks to apply an urban zone to the subject land. It is noted that the planning proposal indicates that this Direction is not applicable (**Attachment A** - p.78).

The proposal is considered to be consistent with the Direction as the site is located adjacent to, and near, a series of existing and proposed transport networks that will appropriately provide for the development of the subject land to satisfy the Direction.

4.1 Acid Sulfate Soils

The planning proposal indicates that this Direction is not relevant. It is noted that the Preliminary Site Investigation report (JBS&G - 9 March 2018) indicates that a review of the Australian Soil Resource Information System (ASRIS) Acid Sulfate Soil (ASS) map indicates that the site is located within an area with an extremely low probability of ASS with a very low confidence. As such there is no known occurrence of ASS in the site the Direction is not applicable.

Direction 1.1 Business and Industrial Zones

This Direction applies as the proposal seeks to introduce a B2 Local Centre Zone. Comments on the consistency with the Direction is not provided within Table 19 of the planning proposal. A condition is recommended to address this oversight.

The Direction (among other things) requires that a proposed new employment area is in accordance with a strategy that it approved by the Secretary. As a strategy has not been endorsed, a planning proposal may be inconsistent with the Direction where the proposal is justified by a study, prepared in support of the proposal, which gives consideration to the objectives of this Direction.

The proposal is supported by a retail market demand and impact assessment (URBIS March 2018) - copy at **Attachment H1**. It is noted that the assessment does not address the objectives of Direction 1.1 but addresses Direction 1.2 – Rural Zones (see p.31 of the Assessment – **Attachment H1**). While this is the case, the findings of the assessment support the proposal proceeding in satisfaction of Direction 1.1, i.e. the assessment indicates that the proposed centre would not threaten the viability of existing and emerging Penrith centres.

In these circumstances it is recommended that the delegate of the Secretary agree the planning proposal's inconsistency with the Direction is justified based on the suitability of the supporting assessment study.

Direction 1.2 Rural Zones

The Direction specifies that a planning proposal must not rezone land from a rural to a residential, business, industrial, village or tourist zone, unless the proposal is supported by a study prepared in support of the planning proposal, which gives consideration to the objections of the direction. This requirement applies to the Penrith local government area. The objective of the Direction is to protect the agriculture production value of the rural land.

The proposal is supported by an agriculture assessment (ASPIRE agri and Tremain Ivey Advisory – 19 March 2018) (**Attachment H7**). It is noted that under the heading of section 6.2 Section 117 Directions (p.52) of the assessment, it is erroneously

indicated that Direction 1.2 – Rural Zones does not apply and that Direction 1.5 – Rural Lands, applies. In fact, Direction 1.2 applies, and Direction 1.5 does not apply. A determination condition is recommended to address this inconsistency in the supporting study.

While this is the case, it is considered that the assessment provides sufficient information to satisfactorily determine the agriculture production value of the rural land to satisfy Direction 1.2.

While the report acknowledges that the proposal will result in the loss of agriculture land which is potentially available for agriculture production, in practice, only a limited proportion of potential agriculture land is currently being used for agriculture purposes. In this regard, fragmentation has impacted upon the potential for commercial agricultural land use and, it is reported, many small-scale operators have ceased commercial production.

The Department also notes that the land is located within an urban investigation area under the Western City District Plan, further justifying any inconsistency with the direction.

In these circumstances, it is concluded that adequate consideration has been given to the objective of the Direction, justifying any inconsistency on the basis of limited agriculture production value. To formally satisfy the Direction, it is recommended that any inconsistency be justified on the basis of minor significance.

Direction 6.3 – Site Specific Provisions.

The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. The proposal seeks to insert a local planning provision for development near zone boundaries in identified land release areas. This provision will provide some flexibility in development and is not considered to be a restrictive provision.

While this is the case, the proposed provision may be considered to be technically inconsistent with this Direction as it imposes a development standard in addition to those contained in the principal LEP, irrespective of the proposed provision being less restrictive.

In these circumstances and as a matter of process, it is recommended that the delegate of the Secretary agree that any inconsistency is of minor significance.

4.2 Mine Subsidence and Unstable Land

The Direction applies where the land has been identified as a Mine Subsidence District or has been identified as unstable land.

The land has not been identified within a Mine Subsidence District nor as unstable.

A geotechnical assessment prepared by Douglas and Partners (March 2018) (**Attachment H8**) concludes the site is generally suitable for residential development with the key geotechnical constraints being:

- potential for slope instability on the steeper slopes (particularly on south facing slopes);
- moderately to highly reactive soils;
- moderate and high potential of saline soils; and
- a high soil erosion hazard, particularly along drainage lines.

Further, provided these constraints are investigated further during the design development phase and the development designed to mitigate the risks, then the proposed rezoning should be able to proceed without serious impact on slope stability, soil erodibility or contamination of the local streams.

No further geotechnical investigations were proposed to support the rezoning application at this stage. During the development of the plans for the DCP, however, the assessment indicated that there would be a need for detailed geotechnical investigations to identify the geotechnical limitations of different areas of the site and to develop specific design and construction guidelines for the development.

It is recommended that this matter be further addressed by a Gateway determination condition.

Direction 4.3 – Flood Prone Land

The objective of this Direction is to:

- ensure that the development of flood prone land is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development manual 2005 and,
- to ensure the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The proposal is supported by a stormwater management strategy (J. Wyndham Prince – March 2018) (**Attachment H14**). The study identifies both Werrington Creek and Claremont Creeks within the existing 1 in 100 year flood extent. Claremont Creek in the eastern part of the site is also identified on the Flood Planning Land map – sheet FLD_013 of the LEP.

The Claremont Creek riparian corridor is to be rezoned as E2 Environmental Conservation and the Werrington Creek riparian corridor is to be rezoned as RE1 Public Recreation.

The planning proposal (**Attachment A**) states that detailed flood modelling will be undertaken and submitted to Council as part of the post Gateway submission (prior to exhibition). This flood modelling, which will refer to *Floodplain Development Manual 2005*, is to assist in determining whether the planning proposal is consistent with this Direction.

Accordingly, consistency with the Direction is to be considered upon this further advice being received and considered by Council.

The Department also notes that the land is not situated within the extent of the Probable Maximum Flood. While this is the case, to ensure broader evacuation issues are considered, consultation with the NSW State Emergency Service is recommended (refer to condition 7 of the determination).

Direction 4.4 – Planning for Bushfire Protection

The proposed rezoning area is identified in the Penrith Bushfire Prone Land Map as Category 2 Bushfire Prone Vegetation with Category 1 Bushfire located to the east of the site. The bushfire constraints report (**Attachment H9**) identifies the rehabilitation of the vegetation within the riparian corridors will introduce the need to provide Asset

Protection Zones (APZ) associated with this vegetation. Additionally, the vegetation in the M4 Motorway to the south of the rezoning area presents a bushfire hazard to the southern edge of the rezoning area.

It is also noted that both the Landscape and Visual Assessment report (**Attachment H2**) and the Bushfire Constraints report (**Attachment H9**) propose to incorporate an APZ along the riparian corridors.

Accordingly, to satisfy the terms of the Direction, it is recommended that the proposal be referred to the Commissioner of the NSW Rural Fire Service prior to exhibition.

Direction 6.2 – Reserving Land for Public Purposes

The proposal seeks to introduce the RE1 Public Recreation Zone with Council as the acquisition authority. The Direction requires a planning proposal not to create, alter or reduce existing zonings or reservations for public purposes without the approval of the relevant public authority and the delegate of the Secretary.

In-principle, there is no objection to the zone applying, however, it is anticipated that consulted authorities may request further zones for public purposes and this matter would be better addressed by the Secretary's delegate during the plan making process.

State environmental planning policies

SEPP No. 44 – Koala Habitat Protection

While SEPP 44 does not apply to the Penrith LGA the ecology assessment prepared to support the planning proposal (**Attachment H4**) indicates that the site does not represent 'potential koala habitat' or 'core koala habitat' as defined in the State Policy. Thus, the proposal may proceed without being restricted by the Policy.

SEPP No. 55 – Remediation of Land

The Policy applies as the proposal seeks to permit a change of use in an investigation area.

The Policy requires that in preparing a LEP, the council has considered whether the land is contaminated, and if so, the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which the land is permitted to be used

Further, if the land requires remediation to be made suitable for any purpose for which the land is zoned, the council is satisfied that the land will be so remediated before the land is used for that purpose.

Similarly, the Policy provides for a consent authority to have consider similar requirements at the development application stage.

A preliminary site investigation report (JBS&G – 9 March 2018) supports the proposal (**Attachment H10**). Subject to the limitations specified in the report, it indicates (p.30) that:

Whilst there is the potential for contamination to be present in some areas proposed for rezoning, JBS&G did not identify the potential for gross or widespread contamination which may preclude rezoning; and

there are no significant opportunities or constraints to rezoning associated with land contamination issues.

JBS&G recommend that when detailed development proposals are made that individual properties be suitably investigated in accordance with relevant NSW EPA endorsed guidelines to confirm site suitability.

This approach is consistent with relevant planning instruments, including SEPP 55 and associated guidelines.

It is considered that this approach is consistent with the State Policy and Council be reminded of its obligations within the Gateway covering letter.

SITE-SPECIFIC ASSESSMENT

Social

The proposal adequately addresses the provision of social infrastructure that is anticipated will be required to support the development of the subject land. The proposal is supported by a social infrastructure assessment (Elton Consulting – 9 March 2018) (**Attachment H12**). Based on the assessment, the proposal addresses: community facilities, educational facilities; health care and childcare facilities, as well, as the provision of open space.

The need for these facilities, and their nature and extent, will be reviewed and refined as part of the agency consultation process.

Heritage

The proposal is supported by a European heritage assessment (NBRS Architecture Heritage) (**Attachment H5**) and an aboriginal heritage study (Kelleher Nightingale Consulting) (**Attachment H6**).

Three listed local heritage items are situated within the subject area. The planning proposal plans aims to retain these items with appropriate curtilages.

No Aboriginal objects or Aboriginal archaeological sites were identified within the subject land. Seven areas of potential archaeological deposits, however, were identified, which displayed moderate Aboriginal archaeological potential. The remainder of the site displayed low archaeological potential.

It is recommended that the Office of Environment and Heritage and the Deerubbin Local Aboriginal Land Council be consulted as part of the post Gateway agency consultation process.

Environmental

Flora

Threatened plant species were not detected within the subject site, however the vulnerable species Juniper-leaved Grevillea (listed as vulnerable under the *Biodiversity Conservation Act 2016*) and threatened species Spiked Rice-flower (listed as threatened under the *Biodiversity Conservation Act 2016*) are considered to have the potential to occur. An ecology assessment (**Attachment H4**) indicates that the proposed development is unlikely to have a significant impact on these threatened flora species.

Vegetation communities

Cumberland Plain Woodland (CPW) and River-flat Eucalypt Forest (RFEF) communities exist on this site. CPW is classified as critically endangered and RFEF as endangered. While the planning proposal (**Attachment A** – p. 81) indicates that all areas of CPW will be retained, there is an inconsistency between the proposed clearance rate for RFEF in the planning proposal and the supporting ecology assessment (**Attachment H4**), as shown in the following table.

Table 3: Area of vegetation communities

Native Vegetation Community	BC Act Status	EPBC Act Status	Total Area (ha)	Hectares to be cleared as per Attachment H4 Ecology Assessment	% to be cleared	Hectares to be cleared as per planning proposal
Cumberland Plain Woodland	Critically endangered	Critically endangered	2.05	0.53	25.9%	0.00
River-flat Eucalypt Eucalypt Forest	Endangered		5.09	1.21	23.8%	0.85

Council has confirmed the proposed clearance rates reported in the ecology assessment are correct. A Gateway determination condition is consequently recommended that Council clarify the proposed clearance rates in the planning proposal.

Fauna

Five species listed as either vulnerable or threatened under the *Biodiversity Conservation Act 2016* and *Environmental Protection and Biodiversity Conservation Act 1999* were detected onsite and four more listed as endangered or threatened are considered to have the potential to occur.

The assessment report (**Attachment H4**) indicates that assessments of significance have determined that the proposed rezoning is unlikely to have a significant impact on threatened vegetation communities and fauna.

Geotechnical

As indicated in the geotechnical assessment (**Attachment H8**), the site is generally suitable for residential development provided the identified constraints of slope instability, reactive soils, saline soils and soil erosion are investigated further during the design development phase to mitigate risks. This attachment also cites the need for further geotechnical and salinity investigations at the DCP stage.

The site and surroundings have been used for rural residential and agriculture purposes. Currently only 2 lots within the site, however, are used for commercial agriculture production.

Economic

There are no anticipated detrimental impacts upon the local economy, as indicated in the supporting retail market demand and impact assessment (**Attachment H15**).

A local centre is proposed that will provide an anticipated 274 direct jobs and 54 indirect jobs. The proposed shopping centre has been assessed as not having a negative effect on the existing and emerging Penrith centres hierarchy.

It is noted that population and spending growth within the main trade area is expected to result in additional expenditure of \$23 million per annum.

Infrastructure - Services

A servicing infrastructure assessment has been prepared by J. Wyndham Prince (March 2018) (**Attachment H11**). The assessment addresses the provision of physical services as illustrated in the following table.

Table 4: Servicing

Service	Comment
Potable Water	The development can be serviced from the existing WS0038 Reservoir located to the West of the proposed rezoning area. The development will be serviced through standard staged reticulation utilising a combination of new and existing infrastructure.
Wastewater	The existing major wastewater infrastructure will need to be extended from their current locations, outside of the proposed development, into the proposed rezoning area. The development will require Sydney Water to undertake some downstream amplifications works, however, the extent of this is still unknown.
Electrical	Two 11kV feeders will be required to be brought into the proposed development site from the nearby Claremont Meadows Zone Substation. Endeavor Energy has confirmed that the Claremont Meadows Zone Substation currently has the capacity for the proposed development, however, this will need to be review closer to the time of the development due to ongoing developments in the area.
Telecommunications	NBN Co. has confirmed that telecommunication services are available the area of the development. The developer will be required to submit a formal application for the development for NBN Co. to arrange the appropriate lead-in feed to the development.
Natural Gas	Jemena has confirmed that Natural gas is available for the proposed development. Formal supply agreements will need to be entered into with Jemena to ensure the appropriate infrastructure is in place prior to being required by the development.

Infrastructure – Transport

The Department has attended meetings with Transport for NSW (TfNSW), Roads and Maritime Services (RMS), Penrith City Council and the proponent, in view of anticipated traffic generation resulting from the development of the land.

Council, TfNSW and RMS have agreed that stage 2 of the traffic and transport assessment is to be conducted at the post-Gateway stage.

Further, RMS has requested the following:

- input into the provisions of the traffic modelling methodology;
- the proponent be required to liaise with TfNSW; RMS and Penrith Council prior to undertaking the transport study to define key assumptions and scope of work;
- land be reserved for the main east/west road (Frogmore Road) to accommodate a four-lane corridor in addition to parking and turning lanes; and,
- land be reserved for Kingswood Road to accommodate a four-lane corridor in addition to parking and turning lanes.

Furthermore, RMS has requested that this proposal be referred to the Hawkesbury-Nepean Valley Flood Risk Management Directorate for advice.

To address the above, these matters have been included in the determination covering letter. The Department, however, considers that as Orchard Hills North is not located within the extent of the probable maximum flood, it is not anticipated that evacuation will be necessary. It is accordingly recommended that the proposal be referred to the NSW State Emergency Service (SES) and not to the Directorate.

Local Contributions

A local voluntary planning agreement (VPA) is proposed to be prepared between the proponent (Legacy Property) and Council for local contributions.

Council has indicated that the proponent intends to prepare a contributions plan in conjunction with Council once a Gateway Determination has been issued. Council anticipates that the contributions plan will incorporate the following elements:

- dedication and embellishment of local open space;
- the upgrade of local roads and intersections outside the rezoning area;
- the delivery of key collector roads within the rezoning area;
- monetary contributions towards district/regional active open space; and
- monetary contributions towards a community facility (should one not be provided on site).

Council also envisages that the following items will be delivered by developers as part of general subdivision works:

- dedication and embellishment of detention basins and water quality devices; and
- construction and dedication of local roads within the rezoning area.

Following Gateway determination, Council will consider exhibition of a contributions plan with the Planning Proposal, together with a draft development control plan.

Legacy anticipates to ultimately enter into a Voluntary Planning Agreement (VPA) with Council to deliver its proportion under the contributions plan. Legacy has provided a letter of intent to Council that confirms its intention to negotiate and execute a VPA with Council relating to Legacy's landholdings within the subject area.

A Gateway determination condition is recommended that the contributions plan be prepared and exhibited with the planning proposal.

State Contributions

Special Infrastructure Contributions arrangements (SIC) have not been made for the subject site. Consequently, the land will be identified as an urban release area and the satisfactory arrangements clause under Part 6 of the Penrith LEP 2010 will be relied upon provide a mechanism for contributions towards state infrastructure in lieu of a SIC.

A condition for attachment to the Gateway determination is recommended that, in consulting with authorities, Council seeks the advice of the relevant authorities on the need for State contributions.

Further, following consultation, Council be required to prepare schedule detailing these infrastructure requirements, identifying the items/works, costs (including apportioned cost) and the relevant authorities. The schedule is to be provided to the Sydney Region West Office of the Department at the earliest opportunity during the plan making process.

CONSULTATION

Exhibition Material

The supporting studies are adequate for exhibition purposes. It was noted, however, that studies are based on a projected residential allotment yield of between 1800 and 2000 lots, while the planning proposal indicates that the yield will be in the order of 1700 to 1900 lots. As this is an indicative projected yield, it is not considered necessary for the supporting studies to be amended for exhibition purposes.

Council proposes to prepare and exhibit a development control plan and a contributions plan for the proposal and exhibit these at the same time as the planning proposal. This approach is supported and a condition is recommended accordingly.

Further, the need for a stage 2 traffic study assessment to support the rezoning has been identified (refer to p. 24 of the proposal – **Attachment A**). This assessment will identify intersection and network traffic modelling to understand the implications of the development on surrounding networks and critical intersections.

For transport agencies to adequately respond to Council's consultation, it is necessary for early advice to be available. Accordingly, it is recommended that Council undertakes this work prior to the exhibition and consultation period and provides this advice to the relevant agencies. A condition is recommended accordingly.

Community

The planning proposal outlines a community consultation process that is consistent with A guide to Preparing Local Environmental Plans (2016)

Given the nature of the planning proposal it is recommended that a 28-day community consultation period be applied.

Agencies

Council propose to consult with:

- NSW Rural Fire Service;
- Roads and Maritime Services;
- Transport for NSW;
- Department of Planning and Environment;
- Office of Environment and Heritage; and
- Department of Education.

The Department also recommends consultation with the following agencies:

- Department of Primary Industries – Agriculture;
- Deerubbin Local Aboriginal Land Council;
- NSW Office of Water;
- NSW Environment Protection Authority
- NSW State Emergency Service
- NSW Police Service;
- Fire and Rescue NSW;
- NSW Health – Western Sydney Local Health District;
- Sydney Water and other relevant authorities for the supply of electricity, gas, and telecommunications.

TIME FRAME

It is recommended that a 24-month timeframe is applied for completing the LEP in view of the scale and complex nature of the proposal and in view of the need to prepare and exhibit supporting documents.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. It is recommended that delegation not be granted in this instance, in view of the foreshadowed need to consider and co-ordinate state infrastructure contributions.

CONCLUSION

Subject to the conditions of a Gateway determination, the planning proposal has merit and is supported to proceed as it will:

- provide a variety of residential housing, incorporating a range of housing types and addresses the need for affordable housing;
- contribute in meeting the housing needs of Penrith;
- provide housing in a location that will be complementary to the development of the Badgerys Creek Aerotropolis; and
- the site is well located near other existing urban development, existing and proposed transport services and existing facilities and other services.

RECOMMENDATION

It is recommended that the Executive Director, Regions, as delegate of the Secretary:

1. agree that any inconsistency with section 9.1 Directions: 1.1 Business and Industrial Zones; 1.2 Rural Zones; and, 6.3 Site Specific Provisions is justified in accordance with the terms of the Directions; and
2. note that the consistency with section 9.1 Directions: 4.2 Mine Subsidence and Unstable Land; 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; and 6.2 Reserving Land for Public Purposes remains unresolved and may require further consideration.

It is recommended that the Executive Director, Regions, as delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to amend the planning proposal in the following manner:
 - (a) Under Part 1 – Objectives or intended outcomes, include the intention to introduce a flexibility boundary clause to apply to the subject land and other specified release areas;
 - (b) Under Part 2 – Explanation of provisions Council is to:
 - remove draft clause 6.20 from the planning proposal and amend the text under the heading: 2 Amendments to Part 6 – Additional clause, to indicate the intent of introducing an additional clause to increase the

flexible boundary to land that is subject to Part 6 of the LEP, providing details including advice that the clause will not apply to the following:

- land in Zone RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone W1 Natural Waterways, or
 - land within the coastal zone, or
 - land proposed to be developed for the purpose of sex services or restricted premises, or
 - land in Zone B4 Mixed Use;
 - include maps of the land release areas subject to the above proposed amendment in the planning proposal; and
 - under the heading: *1.2 minimum lot size*, specify the minimum allotment sizes proposed to be included in the foreshadowed development control plan;
- (c) Under *Part 3 – Justification*, provide the current situation with the release of the Implementation Plan for the Western Sydney City Deal;
- (d) Under *Part 4 – Mapping*, include:
- the relevant current maps in Attachment F;
 - highlight the subject land on the current and existing maps by thin red outline or other appropriate identification means;
 - identify the existing and proposed maps by an appropriate label denoting ‘current’ and ‘proposed’; and
 - amend the text within that Part to indicate that both current and proposed maps are included in Appendix F;
- (e) Under *Section C – Environmental Social and Economic Impacts*, clarify the inconsistencies between the vegetation clearance rates specified in the planning proposal and those specified in the supporting ecological study; and
- (f) replace the words ‘Section 117 Direction(s)’ with the words ‘Section 9.1 Direction(s)’, where appearing in the planning proposal; and
- (g) address the justifiable inconsistency with Section 9.1 Direction 1.1 Business and Industrial Zones in Table 19 of the proposal;
- (h) amend the supporting agriculture assessment on page 52 to indicate that Section 9.1 Direction 1.2 – Rural Zones, applies and that Direction 1.5 Rural lands, does not apply, and make necessary corresponding amendments to the commentary on that page.
2. As part of the supporting exhibition material, Council is to include a site-specific development control plan; a stage 2 transport assessment to support the rezoning, identifying intersection and network traffic modelling to understand the implications of the development on surrounding networks and critical intersections; and a local contributions plan for the proposal;
3. In preparing the development control plan, Council is to include proposed development standards that are not proposed to be included in the LEP;
4. To satisfy section 9.1 Direction 4.2 Mine Subsidence and Unstable Land, Council is to consider detailed geotechnical investigations to identify the geotechnical limitations of different areas of the site and to include specific

design and construction guidelines for the development within the development control plan, prior to the finalisation of the LEP.

5. Prior to exhibition consultation is required with the NSW Rural Fire Service under section 3.34(2)(d) of the Act to comply with the requirement of the relevant Section 9.1 Direction. The NSW Rural Service is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
6. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - Roads and Maritime Services;
 - Transport for NSW;
 - Department of Planning and Environment;
 - Office of Environment and Heritage;
 - Deerubbin Local Aboriginal Land Council;
 - Department of Education
 - Department of Primary Industries – Agriculture;
 - NSW Office of Water;
 - NSW State Emergency Service;
 - NSW Police Service;
 - Fire and Rescue NSW;
 - NSW Health – Western Sydney Local Health District; and
 - Sydney Water and other relevant authorities for the supply of electricity, gas, and telecommunications.
7. In consulting with authorities, Council is to seek the views of the relevant authorities over the need for state infrastructure contributions to support the proposal.
8. Following agency consultation, should an agency(s) seek a state contribution(s), Council is to prepare a state infrastructure schedule detailing requested contributions (costs and apportionment) and provide the schedule to the Department at the earliest opportunity and prior to finalisation of the LEP amendment.
9. The planning proposal should be made available for community consultation for a minimum of 28 days.
10. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.
11. The time frame for completing the LEP is to be 24 months from the date of the Gateway determination.



Terry Doran
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22/02/2019
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