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Plan finalisation report – PP-2020-1693

Penrith LEP 2010, Orchard Hills North

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Acknowledgment of Country

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

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1 Introduction

1.1 Overview

1.1.1 Penrith LEP 2010

Penrith Local Environmental Plan 2010 (Amendment No. 29).

The planning proposal (**Attachment A**) seeks to amend the Penrith Local Environmental Plan (LEP) 2010 by rezoning of 151.9 hectares of land in Orchard Hills North from RU4 Primary Production Small Lots to R1 General Residential, E1 Local Centre, RE1 Public Recreation, C2 Environmental Conservation and SP2 Infrastructure (local road).

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal applies to land at Orchard Hills North (Figures 1 and 2)
Type	Area
Council / LGA	Penrith City Council
LGA	Penrith

Orchard Hills North (OHN) is an irregularly shaped 151.9-hectare area of land that comprises 54 existing lots. The land is bordered by Caddens Road to the north, Kingswood Road to the west, Frogmore Road to the east and the M4 Motorway to the south (Figure 1).

The area is intersected by Castle Road (running east/west), Kingswood Road (running north/south) and Ulm Road (running north/south). Werrington Creek and Claremont Creek also traverse sections of the land to the north-west and south-east of the site, respectively.

The site consists of the following allotments:

Table 2: Allotments within the Orchard Hills North Area

LOT & DP	STREET ADDRESS
Lot 6 DP 1344	2 Kingswood Road, Orchard Hills
Lot 43 DP 811320	26-48 Kingswood Road, Orchard Hills
Lot 1 DP 118729	79-101 Kingswood Road, Orchard Hills
Lot 7 DP 1344	90-96 Caddens Road, Orchard Hills
Lot 8 DP 1344	98-104 Caddens Road, Orchard Hills
Lot 9 DP 1344	106-112 Caddens Road, Orchard Hills
Lot 101 DP 805778	110-112 Castle Road, Orchard Hills
Lot 100 DP 700141	114-122 Caddens Road, Orchard Hills
Lot 101 DP 700141	124-130 Caddens Road, Orchard Hills
Lot 12 DP 1344	132-138 Caddens Road, Orchard Hills
Lot 13 DP 1344	140-146 Caddens Road, Orchard Hills
Lot 14 DP 1344	148-154 Caddens Road, Orchard Hills
Lot 15 DP 1344	148-154 Caddens Road, Orchard Hills
Lot 16 DP 1344	148-154 Caddens Road, Orchard Hills
Lot 17 DP 1344	148-154 Caddens Road, Orchard Hills
Lot 1 DP 583439	182-188 Caddens Road, Orchard Hills

Lot 1 DP 863335	190-226 Caddens Road, Orchard Hills
Lot 15 DP 239091	2-24 Castle Road, Orchard Hills
Lot 14 DP 239091	26-34 Castle Road, Orchard Hills
Lot 9 DP 239091	36-40 Castle Road, Orchard Hills
Lot 8 DP 239091	42-48 Castle Road, Orchard Hills
Lot 7 DP 239091	50-56 Castle Road, Orchard Hills
Lot 31 DP 1344	53-61 Castle Road, Orchard Hills
Lot 6 DP 239091	58-64 Castle Road, Orchard Hills
Lot 32 DP 1344	65-73 Castle Road, Orchard Hills
Lot 5 DP 239091	66-70 Castle Road, Orchard Hills
Lot 43 DP 881960	72-76 Castle Road, Orchard Hills
Lot 33 DP 1344	75-81 Castle Road, Orchard Hills
Lot 42 DP 881960	78-88 Castle Road, Orchard Hills
Lot 34 DP 1344	83-89 Castle Road, Orchard Hills
Lot 41 DP 881960	90-94 Castle Road, Orchard Hills
Lot 35 DP 1344	91-97 Castle Road, Orchard Hills
Lot 33 DP 1056800	96-104 Castle Road, Orchard Hills
Lot 36 DP 1344	99-105 Castle Road, Orchard Hills
Lot 34 DP 1056800	106-108 Castle Road, Orchard Hills
Lot 37 DP 1344	107-115 Castle Road, Orchard Hills
Lot 105 DP 825993	114 Castle Road, Orchard Hills
Lot 41 DP 879632	116-118 Castle Road, Orchard Hills
Lot 38 DP 1344	117-123 Castle Road, Orchard Hills
Lot 42 DP 879632	120-124 Castle Road, Orchard Hills
Lot 39 DP 1344	125-131 Castle Road, Orchard Hills
Lot 1 DP 239091	126-164 Castle Road, Orchard Hills
Lot 40 DP 1344	133-139 Castle Road, Orchard Hills
Lot 41 DP 1344	141-147 Castle Road, Orchard Hills
Lot 42 DP 1344	149-155 Castle Road, Orchard Hills
Lot 8 DP 857982	166-204 Castle Road, Orchard Hills
Lot 101 DP 128254	3 Frogmore Road, Orchard Hills
Lot 7 DP 857982	7-11 Frogmore Road, Orchard Hills
Lot 6 DP 857982	15 Frogmore Road, Orchard Hills
Lot 5 DP 857982	19-21 Frogmore Road, Orchard Hills
Lot 4 DP 857982	23-25 Frogmore Road, Orchard Hills
Lot 3 DP 857982	27-29 Frogmore Road, Orchard Hills
Lot 2 DP 857982	31-33 Frogmore Road, Orchard Hills
Lot 1 DP 857982	35-37 Frogmore Road, Orchard Hills

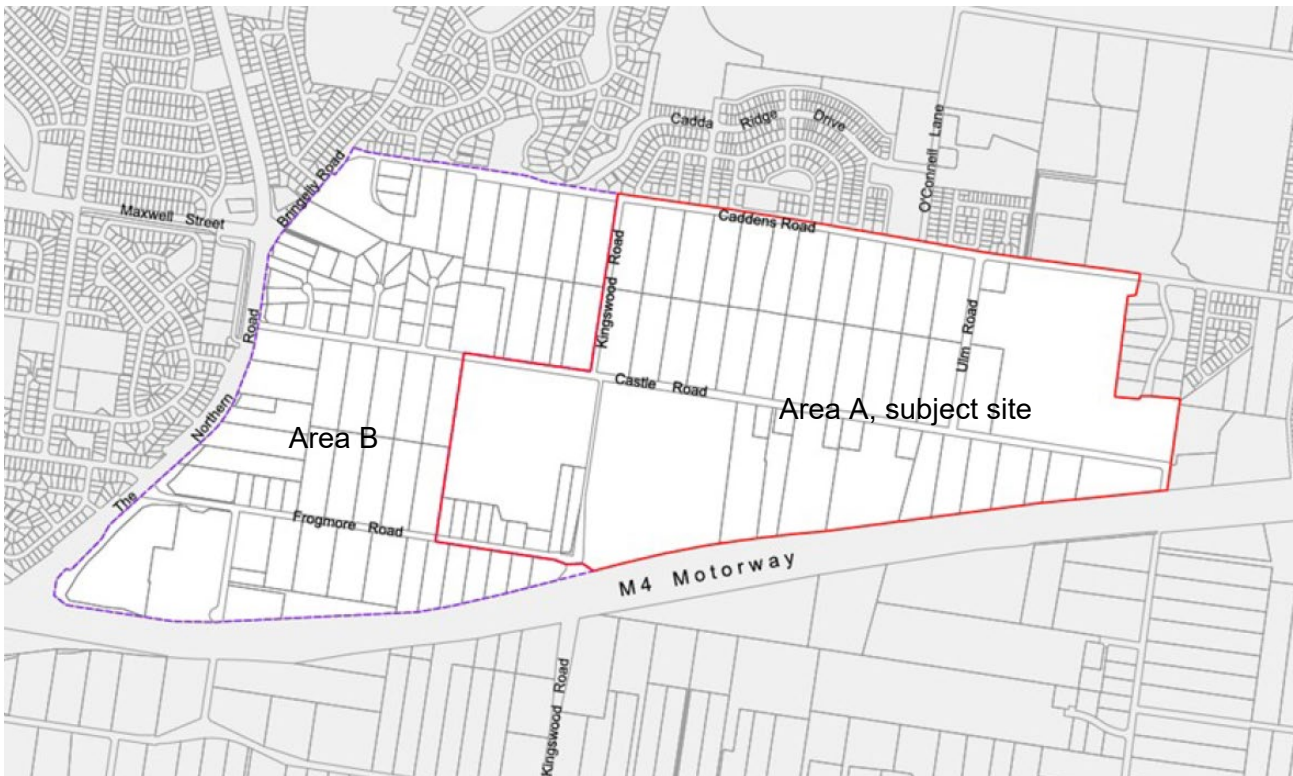


Figure 1 Subject site, Area A (outlined in red) Note: Area B (outlined in purple), is not part of this planning proposal (source: planning proposal, December 2022)



Figure 2 Aerial image of subject area (outlined in red) (source: SixMaps, accessed 24/05/23)

1.1.3 Purpose of plan

The table below outlines the current and proposed LEP controls.

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU4 Primary Production Small Lots	R1 General Residential E1 Local Centre RE1 Public Recreation C2 Environmental Conservation SP2 Infrastructure (local road)
Maximum height of the building	N/A	On R1 land: ranging from 8.5m to 9m On land zoned E1: 16m
Minimum lot size	Z (2ha) and AI (1000ha+)	On land zoned R1 General Residential: between 220m ² and 300m ² (450m ²) allowed for sloping lots
Number of dwellings	50	Up to 1,729
Number of jobs	N/A	175 direct jobs

The planning proposal also seeks to:

- amend the Land Zoning map to rezone Orchard Hills North from RU4 Primary Production Small Lots to R1 General Residential, E1 Local Centre, RE1 Public Recreation, C2 Environmental Conservation, SP2 Infrastructure (local road);
- apply a Transport Investigation Area overlay to relevant land to be preserved for a potential future North-South roadway;
- amend the height of building controls map to apply appropriate heights for residential and local centre uses;
- amend the Lot Sizes map to accommodate a diversity of lot sizes in the R1 zone;
- amend the Land Reservation Acquisition Map to include local open space zones RE1 and C2 and local road infrastructure zone SP2 to be provided on public land;
- remove the area from the Scenic and Landscape Values Map and add the area to the Urban Release Areas and Clause Application Maps;
- introduce a new Clause 7.20B Orchard Hills North that will:
 - restrict the maximum R1 General Residential lot and dwelling yield to a total of 1,729
 - define 5 precincts and control subdivision outcomes in each precinct;
- update Clause 5.3 to provide up to 50m of flexibility across nominated zone boundaries in Orchard Hills North;
- introduce a new clause to require development not be carried out in the Transport Investigation Area (TIA) unless an appropriate authority provides concurrence;

- amend the Additional Permitted Use map and related clauses to delete Clause 19 relating to site 18 (126-164 Castle Road, Orchard Hills (Lot 1, DP 239091)) and add a new clause to permit development for a rural fire brigade station and ancillary uses with consent at 58-64 Castle Road, Orchard Hills (Lot 6, DP 239091);
- add a site-specific control to enable a development up to 15m for educational purposes only at 126-164 Castle Road, Orchard Hill (Lot 1, DP 239091).

1.1.4 State electorate and local member

The site is within the Londonderry state electorate. Prudence Ann Car MP is the State Member.

The site falls within the Lindsay federal electorate. Melissa McIntosh MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 22/02/2019 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered as follows:

- on 24/02/2022 to extend the timeframes for public exhibition and completion, and imposed a new condition requiring the proposal to be reported to Council by 30 June 2022
- on 16/12/2022 to extend the timeframe for completion to 31 March 2023.

In accordance with the Gateway determination (as altered) the proposal was due to be finalised on 31/03/2023.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 25/07/2022 to 22/08/2022, as required by section 29 of the *Local Government Act 1993*.

A total of 62 community submissions were received. Of the individual submissions, 5 (8%) objected to the proposal 30 (48%) supported the proposal and 27 (43%) were unclear on their position (**Attachment C**).

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

The planning proposal received 30 submissions supporting the amendments. These submissions identified that the site was a logical choice for rezoning, that the proposal would address housing demand, and that the site was adequately serviced to accommodate the growth.

The Department notes the submissions made in support of the proposal.

3.1.2 Submissions raising issues about the proposal

Table 3 below summaries the key issues raised in submissions.

Table 4 Summary of Key Issues

Issue raised	Submissions (#)	Council response and Department assessment of adequacy of response
<p>Changes to the boundary of the rezoning area, including removal/addition of some properties.</p>	15	<p>Council Response:</p> <p>Requests for removal or addition of land from the rezoning is not supported on the basis of ensuring a holistic planning process that aligns with wider strategic goals for the area and captures sites that have been identified as suitable and/or demonstrate strategic merit.</p> <p>Department Response:</p> <p>The Department is satisfied with Council's response.</p>
<p>Road infrastructure capacity and delivery, including:</p> <ul style="list-style-type: none"> • clarification around proposed road infrastructure and its suitability, • requests for alternative alignments, • calls for timely delivery of infrastructure, • concern over the impact on the Uniting Church site and Orchard Hills Public School site from the proposed east-west road. 	9	<p>Council Response:</p> <p>Council supports all proposed road improvements as they address site-specific requirements of the subject site and will support future growth.</p> <p>A Heritage Constraints and Opportunities report (NBRS Architecture and Heritage, 21 March 2018) (Attachment J) considered the impact of the east-west road on the Mt Hope Uniting Church and concluded that the proposed road development would have no impact on the local heritage item.</p> <p>The east-west road on the existing Orchard Hills Public School is considered acceptable given that Schools Infrastructure NSW (SINSW) submission did not raise objection to this. The east-west road is critical infrastructure required to support the development, with its location determined based on several key factors with a view to minimise impacts as much as possible.</p> <p>Department Response:</p> <p>The proposed road network has been determined in consultation with DPE and Transport for NSW, and is supported by a Traffic Management and Accessibility Plan (TMAP) (SCT Consulting, January 2023) (Attachment K) and relevant DCP controls.</p> <p>A new school site will also be delivered as part of the SVPA.</p> <p>The Department considers Council's response is appropriate.</p>

Issue raised	Submissions (#)	Council response and Department assessment of adequacy of response
<p>Stormwater management, including the suitability of proposed locations of stormwater infrastructure and its impact on properties, and the suitability of the proposed new school site, notably in respect to stormwater and flood affectation</p>	4	<p>Council Response</p> <p>Stormwater infrastructure is considered critical infrastructure and is located in areas best suited to detain water during storm and flood events. A Stormwater and Flood Management Strategy (J. Wyndham Prince, February and May 2023) (Attachments E and D) has been prepared to support the rezoning area. No changes are proposed to the proposed locations of any basins.</p> <p>The post-development scenario of the proposed school site will result in the land being free from flood affectation, which is presented in the exhibited Stormwater Strategy.</p> <p>Department Response:</p> <p>The Department is satisfied with Council's response and does not consider that any further amendments are required to address the issues raised. SINSW supports the proposed location of the school (see correspondence dated 10 November 2022) (Attachment C).</p>
<p>Planning controls and structure plan, including requests to enable larger minimum lot sizes, provision of privacy controls, and use of materials to combat urban heat, as well as concerns over some proposed elements in the Area B structure plan, such as proposed open space, and impact on affected properties.</p>	5	<p>Council Response</p> <p>There are several planning mechanisms which will encourage a range of lot sizes within the rezoning area, including the use of a minimum lot size clause in addition to precinct dwelling caps.</p> <p>Regarding urban heat, Clause 7.30 of Penrith LEP 2010 and the Urban Heat Chapter of DCP 2014 will apply and future development within the precinct must include planning and design measures to mitigate the impacts of the heat island effect.</p> <p>Regarding the Area B Structure Plan, this is indicative only and was developed to guide the overall function and purpose of open space between Area A (subject site) and Area B (not part of this planning proposal). Further detailed investigations will occur on this land as part of the Department's precinct-planning process. The proposed rezoning to this land is expected to be placed on public exhibition by mid-end 2023, as outlined in DPE's discussion paper.</p> <p>Department Response:</p> <p>The Department is satisfied with Council's response and does not consider that any amendments are required to address the issues raised.</p>

Issue raised	Submissions (#)	Council response and Department assessment of adequacy of response
Questions regarding changes to Council rates	4	<p>Council Response</p> <p>The planning proposal and exhibited information provided details on potential changes to Council rates.</p> <p>Department Response:</p> <p>The Department is satisfied with Council's response and does not consider that any amendments are required to address the issues raised.</p>

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies, listed in Table 5 below, who have provided the following feedback.

Table 5 Advice from public authorities

Agency	Advice raised	Council response
Schools Infrastructure NSW (SINSW)	<p>Initial advice from SINSW detailed that Orchard Hills Public school is currently at capacity, and that SINSW supports the provision of a new school site (subject to funding).</p> <p>Concerns were raised with regards to the proposed location of the school with consideration to available size and environmental risks on the proposed site (including bushfire and flooding).</p> <p>SINSW sought updates to the proposal for consistency and clarity, including details in the Social Infrastructure Assessment, masterplan layouts, references to dwelling numbers.</p> <p>SINSW also requested further consultation on the planned release dates.</p> <p>Correspondence dated 10 November 2022 demonstrated that Council and SINSW had reached an agreement on the location of the new school site. SINSW requested minor amendments to the planning proposal and DCP, including:</p> <ul style="list-style-type: none"> • 15m HOB control for the new school site • Ensuring existing school remains a permissible use • Updates to the DCP and other relevant documents to reflect the updated location of the school. 	<p>The location, dimensions and size of the new school site result in minor changes to the proposed zoning map. These changes do not result in any fundamental change to the size or embellishment of the proposed open space parcel OS8. All other agencies raised either minor matters or no objections.</p>
Department of Planning and Environment (The Department)	<p>There is no identified acquisition authority for the new North South Road. The State Government and Legacy Property are preparing a State VPA to secure land required for the North-South road corridor and the school, amongst other things. The need for the North-South road, and funding, will be determined as a part of future strategic investigations to be undertaken for</p>	<p>The Department's suggested principles for the State VPA would address financial risk to Council.</p> <p>It is acknowledged that the need for the North South road corridor will be confirmed at a future time, including the selection of the bridge</p>

Agency	Advice raised	Council response
	<p>the Orchard Hills Metro station and adjoining lands.</p> <p>To ensure the road corridor is preserved, the corridor is identified as a TIA, where Planning Secretary Concurrence is required as part of any application for development consent.</p>	<p>alignment option across the M4 Motorway.</p> <p>The anticipated removal of the interim North-South Road from the Section 7.11 Plan reduced the need for the masterplan rezoning areas to respond to, and include significant parts of the North-South corridor. If the North-South corridor was not to proceed, it is unlikely that the masterplan would contain poor planning outcomes or inefficiencies.</p> <p>Retaining the application of the Transport Investigation Area (TIA) overlay and concurrence clause will assist to mitigate financial risk to Council until the State VPA is executed to ensure the preservation of the North South corridor.</p>
Transport for NSW (TfNSW)	<p>TfNSW acknowledges that the preservation of land for the North South corridor needs resolution prior to making the LEP.</p> <p>TfNSW does not support the use of the Transport Investigation Area (TIA) overlay and concurrence clause for the North-South Road corridor and instead proposes transfer of the land required for the road to Council through a State VPA.</p> <p>No funding source for the construction of the North South corridor will be identified as part of this Planning Proposal process. The road will not be a state road due to its Collector Road function. The funding source for future construction of the North-South Road corridor can be identified at a later stage as part of the planning and investigations of the planned Orchard Hills Centre and broader Greater Penrith to Eastern Creek (GPEC) investigation area.</p> <p>Future planning and investigations are to occur to determine the preferred bridge alignment option across the M4 motorway (the exhibited TIA is wide enough to capture land relating to both options).</p> <p>Council, as the roads authority is best placed to determine the width of the</p>	<p>Council is of the view that the TIA overland and concurrence clause needs to remain on the LEP map to preserve the corridor land from development and ensure this objective is included within a planning instrument without solely relying on the state VPA to preserve the land.</p> <p>It is recommended that instead of Council or TfNSW, DPE be identified as the appropriate concurrence authority for development proposal on the affected land. This is to avoid any conflicts between Council's role as the consent authority for the assessment of development applications.</p> <p>The exhibited TIA overlay (proposed by DPE and TfNSW) is regarded by Council as needlessly affecting properties that were not intended to be identified. The bridge alignment option and the need for the ultimate North-South corridor are yet to be confirmed and will not be confirmed as part of</p>

Agency	Advice raised	Council response
	<p>corridor, including the verge and median widths. The corridor should accommodate a 4-lane road that is bus capable and integrates with the preferred bridge option (subject to further investigation).</p>	<p>this planning proposal process. The exhibited TIA overlay widens at the southern end to accommodate space for two potential bridge options. There are 2 non-Legacy controlled properties which are affected by the TIA that were not intended to be affected when stakeholder discussed the need to apply a TIA overlay to the rezoning area. Those 2 properties are not intended to form part of the State VPA for land acquisitions.</p> <p>Council proposes to retain a 33.6m wide TIA overlay on the draft LEP zoning map for the North-South road in accordance with the width previously agreed to by stakeholder during the preparation of the TMAP (Attachment K). As the southern end of the rezoning area, Council proposed to modify the proposed TIA so it does not impact on the 2 non-Legacy owned properties. The resulting amended TIA overlay still widens at the southern end to accommodate space for batters and structure for the future bridge.</p>
DPE Environment and Heritage Group (EHG)	<p>The first EHG submission requested an assessment of consistency be prepared against the Cumberland Plain Conservation Plan (CPCP). The submission also noted that:</p> <ul style="list-style-type: none"> • The site is likely to contain a range of threatened biodiversity and did not consider that the proposal adequately considered the protection and enhancement of riparian corridors and the existing Cumberland Plain Woodland and River Flat Eucalyptus Forest threatened ecological communities. • the indicative masterplan relied upon, to inform clearing impacts in the Ecological Services Report varied from the most up to date Indicative masterplan and raised concern that the clearing rates may not accurately reflect 	<p>Legacy has completed the assessment of consistency against the CPCP, which concludes that the planning proposal is consistent with the CPCP and that all land to be cleared is identified as 'Certified - Urban Capable Land' under the CPCP.</p> <p>Ministerial Direction 3.6 Strategic Conservation Planning applies to the site as the rezoning area contains avoided land. The planning proposal must be consistent with this Direction.</p> <p>For avoided land, sub clause 1 of the direction states that the planning proposal needs to protect and enhance native vegetation, riparian corridors, ecological communities, threatened species</p>

Agency	Advice raised	Council response
	<p>the proposal. As such, unclear if condition 1(e) of the Gateway Determination has been resolved.</p> <p>Requested further information, following review of the submitted consistency assessment, and raised concern that the assessment had not addressed key issues in relation to the protection and enhancement of existing native vegetation and riparian corridors on avoided land.</p> <p>Key issues raised in the second submission were concerns with the consistency assessment, including that it</p> <ol style="list-style-type: none"> 1. did not assess impacts of the proposal on avoided land (including the use of the area for active and passive recreational uses). 2. did not consider impacts in the context of Chapter 13 of the Biodiversity and Conservation SEPP 3. lacks consistency with relevant Ministerial directions and zone objectives. 	<p>and their habitats, koala habitat and corridors and matters of national environmental significance. The planning proposal is consistent with subclause 1.</p> <p>Subclause 3 of the Direction requires that avoided land cannot be rezoned to rural, residential, business, industrial or SP zones. The proposal seeks a C2 Environmental Zone on the avoided land and is therefore consistent.</p> <p>A supplementary response to the second EHG submission concluded that the Planning Proposal addresses the key issues relating to the protection and enhancement of existing native vegetation and riparian corridors on Avoided land.</p> <p>The area of avoided land designated by the CPCP will not be cleared or developed if the Planning Proposal is implemented. No drainage infrastructure or other development will occur within the Avoided land and a Vegetation Management Plan will be prepared to provide for permanent protection of the Avoided land and replanting of native vegetation.</p> <p>This is further discussed in Section 4.1.</p>
Department of Primary Industries	<p>No objection raised.</p> <p>The submission notes that there is limited future agricultural potential for this area.</p>	<p>Noted. No further action.</p>
NSW Environment Protection Authority (EPA)	<p>No objection raised.</p> <p>Raised considerations to be addressed at the DA stage, including management of noise and contamination.</p>	<p>Mitigation of potential noise impacts are addressed in DCP acoustic controls for residential development.</p> <p>Council note that the site complies with Ministerial Direction 4.4 and therefore no specific considerations around</p>

Agency	Advice raised	Council response
		contamination need to be addressed.
State Emergency Service (SES)	<p>No objection raised.</p> <p>Identified that some areas of the site remain within the PMF and therefore are not suitable for development and should be excluded from the proposal.</p> <p>SES also noted that the proposal may result in an increased risk to life, health and/or property.</p>	<p>The proposal was supported by an updated stormwater and flood management strategy (SWFMS) (J. Wyndham Prince, February 2023) (Attachment D), which has been accepted by Council officers.</p> <p>The proposal is justifiably inconsistent with Ministerial Direction 4.1 Flooding.</p>
NSW Police Force	<p>No objection raised.</p> <p>Request made that planning controls address Crime Prevention through Environmental Design (CPTED) in open space design.</p>	DCP controls have been amended to include CPTED principles for open spaces and the village centre.
NSW Fire and Rescue	<p>No objection raised.</p> <p>The scale of the development itself is not sufficient to generate the need for a new fire station.</p>	No further action.
NSW Health – Nepean Blue Mountains Local Health District	<p>No objection raised.</p> <p>Submission provides suggestions and comments for consideration related to the provision of housing diversity, green spaces, urban heat mitigation and reduction in gas usage. The submission also requested clarification of the envisaged development outcome.</p>	<p>There are several planning mechanisms to encourage a range of lot sizes within the rezoning area and housing diversity.</p> <p>The provision of green spaces is considered appropriate to sufficiently address community demand.</p> <p>Clause 7.30 of the PLEP and the DCP Urban Heat chapter will apply to ensure that future developments in the precinct will mitigate against the heat island effect.</p> <p>The reticulation of gas in new subdivisions is still common practice however future owners ultimately have the choice to utilise this.</p> <p>The planning proposal has been updated to respond to matters raised by NSW Health.</p>
Sydney Water	No objection.	The site has been identified as an Urban Investigation Area in the

Agency	Advice raised	Council response
	Raised the need to better understand the timeframes for the rezoning to enable better servicing planning. Raised the possibility that the proponent may be required to fund an interim wastewater servicing solution until a permanent solution is identified and funded.	District Plan and LSPS, and in Sydney Water's growth serving plans. No further action required.
Endeavour Energy	No objections raised. Provides detailed conditions for the developer to apply in future planning.	Noted. No further action.
Jemena Gas	No objection raised.	No further action.
Telstra	No objection raised.	No further action.

The Department considers Council has adequately addressed the matters raised by the agencies and authorities.

No response was received from Deerubbin Local Aboriginal Land Council or DPE Office of Water despite attempts by Council and the Department's Planning Delivery Unit to make contact. The Department considers that the proposal can proceed despite no submissions having been received from these organisations.

The NSW Government has set construction and operational phase stormwater management targets to achieve waterway health objectives for protecting and restoring the blue grid in the Wianamatta–South Creek catchment. The planning proposal was lodged prior to the release of the water quality targets for this catchment and has not informed the design of the precinct. It is recommended that the site-specific DCP considers the requirements of the *Applying the Risk-based Framework to improve stormwater management in Wianamatta-South Creek* and whether there is any potential to achieve the set targets, prior to the DCP being finalised.

A response was received from the NSW Rural Fire Service on 24 March 2022, but not addressed in Council's response to submissions. This is discussed in Section 4.1

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 12/12/2022, Council resolved to proceed with the planning proposal with the following post-exhibition changes:

- Updated mapping (zoning, height of building, lot size and land reservation acquisition) to reflect revised dimensions, alignment and location of Open Space Parcel 8, the new school site and various roads and reservations (Figure 3).

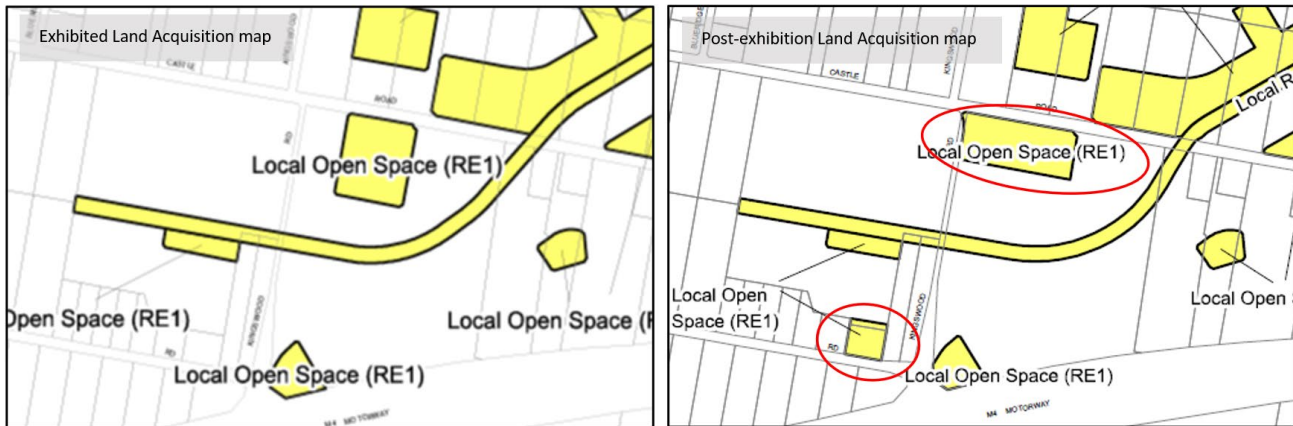


Figure 3: Exhibited and Post-exhibition Land Acquisition Zones showing changes to local open spaces (source: planning proposal July 2022 and February 2023)

- New Additional Local Provision to enable a 15m HOB control for educational purposes only at 126-164 Castle Road, Orchard Hills.
- Remove proposed Additional Permitted Uses provision on the existing Orchard Hills Public School, which seeks to enable the site to continue to be used for educational purposes.
- Amendment to the TIA zone (See Figure 4) and alteration of TIA concurrence clause to require DPE to determine the appropriate concurrence authority for development proposals on the affected land instead of TfNSW.



Figure 4 Exhibited and post-exhibition amendments to the Transport Investigation Area (source: planning proposal July 2022 and February 2023)

- Insert a new clause into Part 6 of Penrith LEP 2010 (Urban Release Areas) relating to the provision of local infrastructure.
- Correction to proposed local provision for Orchard Hills North under Part 7 of the LEP in relation to the applicability of integrated housing to development proposals for 300sqm size lots

3.3.2 The Department's recommended changes

Following the receipt of the revised planning proposal from Council, the Department has made further changes to the proposal as follows:

- The proposed Transport Investigation Area (TIA) clause has been updated to identify the concurrence authority as the Planning Secretary (rather than the Department of Planning and Environment).
- The proposed Part 6 Local Infrastructure Clause by Council has been removed from planning proposal as Contributions Plans are comprehensively dealt with by Part 7 of the EP&A Act, and contributions plans are outside of the LEP.
- As part of the finalisation of the Glenmore Park Stage 3 (PP-2020-2803) planning proposal, the Department included a new clause, 6.3A in PLEP, which will require Secretary's concurrence that a planning agreement has been, or will be, entered into to improve or contribute to relevant planning matters which are defined as including transport and traffic management, water cycle management, land used for public open space or recreational purposes.
- Inclusion of an additional provision specifying a cap of 1,729 dwellings (further discussed in Section 4.1 below).
- The Department has recommended exclusion of Lot 15 in DP239091 and part Lot 1 in DP863335 in the south east corner of the site, which were proposed to be zoned C3 Environmental Management, from the planning proposal. The proposed C3 zoned land is accessed by a single lane road via Castle Road and requires crossing Claremont Creek, which is not accessible in a flood event. This single lane road access to the area appears to be cut by creek flooding at approximately 1% AEP. The flood water depth would be unsafe for vehicles to cross during a flood event. See further assessment in 4.1.3 Environmental Impacts below.
- The Department has made a post exhibition amendment to prohibit certain uses in the C2 zone to further protect the CPCP avoided lands contained within the C2 zone, and in response to comments from EHG. Refer to Section 4.1.3 Environmental impacts below.

3.3.3 Justification for post-exhibition changes

The post-exhibition changes are in response to advice, submissions and further studies and do not require re-exhibition. It is considered that the changes are reasonable in response to the comments provided by the public authorities and are minor amendments that do not alter the intent of the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment Q**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with all relevant Section 9.1 Directions
- Remains consistent with all relevant SEPPs

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or reconsideration of any unresolved matters these are addressed in Section 4.1

Table 6 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

Table 7 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section f
Infrastructure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Penrith LSPS

At the time of the Gateway determination, the Penrith LSPS (2020) was not in effect.

The proposal submitted for finalisation included an assessment against the LSPS and found that the proposal aligns with various planning priorities. The Department agrees that the proposal delivers on a range of planning priorities, specifically including Planning Priority 3 – *provide new homes to meet the diverse needs of our growing community*, which incorporates action 3.2 – *investigate the rezoning of land in Orchard Hills North*.

Under the Western City District Plan, the site is identified in the Metropolitan Rural Area (MRA) as well as an Urban Investigation Area and within the Greater Penrith to Eastern Creek Growth Area (GPEC). To enable urban development in the MRA, the LSPS has identified Orchard Hills as an Urban Investigation Area. These areas have been identified for investigation on their potential for growth as they directly adjoin existing urban area, environmental constraints are limited or can be managed, and servicing of the sites with infrastructure is cost effective.

The Greater Cities Commission has confirmed that the Western City District Plan map will be updated to remove the site from the MRA as part of their review of current District Plans later in 2023 (**Attachment P**).

4.1.2 Section 9.1 Directions

Table 8 below provides an updated assessment against relevant Section 9.1 Directions.

Table 8 Assessment against Section 9.1 Directions

Ministerial Direction	Application	Summary of Gateway Assessment	Finalisation Assessment
3.6 Strategic Conservation Planning	Applies to planning proposals that relate to land identified as avoided land or a strategic conservation area under the State Environmental Planning Policy (Biodiversity and Conservation) 2021.	N/A	<p>The Department considers that the proposal is consistent with the Direction because it:</p> <ul style="list-style-type: none"> protects areas of Avoided land through the proposed C2 Environmental Conservation zoning includes a range of DCP controls to further protect the environmental values of avoided land areas <p>This position is supported by comments from EHG (17 March 2023 & 19 June 2023) (Attachment M).</p>

Ministerial Direction	Application	Summary of Gateway Assessment	Finalisation Assessment
4.1 Flooding (previously Direction 4.3 – Flood Prone Land)	Applies when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	<p>The Gateway determination report was unable to assess consistency with this Direction as the 2018 Stormwater Management Strategy (SMS) was not submitted with any flood modelling. This requirement was included as a Gateway condition</p> <p>Consistency was to be considered upon receipt for further flood modelling.</p>	<p>The proposal is inconsistent with the Direction as a very small part of a new street adjoining the town centre (being rezoned from RU4 Zone to R1 Zone) is impacted by the 1 in 100 flood event.</p> <p>The inconsistency is considered to be justified for the following reasons:</p> <ul style="list-style-type: none"> • The updated Stormwater and Flood Management Strategy (SWFRMS) (May 2023) gives adequate consideration to relevant flood planning guidelines, manuals and risk management strategies (including the College, Orth and Werrington Creek Floodplain Risk Management Study (CSS, 2021)) • No residential development is proposed in high hazard areas. <p>It is recommended that the delegate of the Secretary agree that the inconsistency is justified.</p>
4.4 Planning for Bushfire Protection	This direction applies as the planning proposal is mapped as bushfire prone land (Vegetation Category 2).	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.	<p>In accordance with the requirements of this Direction, Council consulted with the NSW Rural Fire Service (RFS) prior to public exhibition to ensure it does not object to the progression of the planning proposal.</p> <p>The proposal is consistent with this Direction.</p>

Ministerial Direction	Application	Summary of Gateway Assessment	Finalisation Assessment
5.2 Reserving Land for Public Purposes (previously 6.2 Reserving Land for Public Purposes)	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 RE1 zone applying to land. 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.	<p>The relevant public authority is Penrith City Council. Its resolution to lodge the planning proposal for finalisation (inclusive of the proposed RE1 zoning) indicates their approval for the proposed reservations for public purposes. Council is also the identified acquisition authority for RE1 zoned land under Clause 5.1 of the PLEP.</p> <p>Consistent with Gateway, The Department has no objections and understands that the proposed areas of RE1 land (as detailed on the land zoning map) have been settled by Council, after taking into account any relevant agency comments.</p> <p>The Executive Director's approval to finalise this planning proposal ensures consistency with this Direction.</p>
4.6 Mine Subsidence and Unstable Land (previously 4.2 Mine Subsidence and Unstable Land)	Applies where the land has been identified as a Mine Subsidence District or has been identified as unstable land.	<p>The land has not been identified within a Mine Subsidence District nor as unstable.</p> <p>It is recommended that this matter be further addressed by a Gateway determination condition.</p>	<p>A preliminary geotechnical investigation (Geotechnique, 1 December 2021) (Attachment S) was prepared to support the proposal. The investigation found that the site is suitable for the construction of residential buildings, after undertaking preparation works (e.g. cut and fill). The proposal is consistent with this Direction.</p>

4.1.3 Environmental Impacts

Flooding

Existing Flooding impacts

Orchard Hills North comprises two creeks, being Werrington and Claremont Creeks. Werrington Creek enters the site along the northern boundary and runs south-west through the site. Claremont Creek enters the site along the eastern boundary and runs diagonally in a south-west direction. There is also evidence of springs in the subject area, with several small farm dams constructed in these areas.

The site is located mainly within the College, Orth and Werrington Creek catchments in which the site is identified in the Flood Planning Area (Figure 5 and Figure 6). A small portion in the south-east located in the South Creek catchment.



Figure 5: Flood Planning Area (coloured dark grey), College, Orth and Werrington Creek Catchment (CSS, 2021, Plate 22)

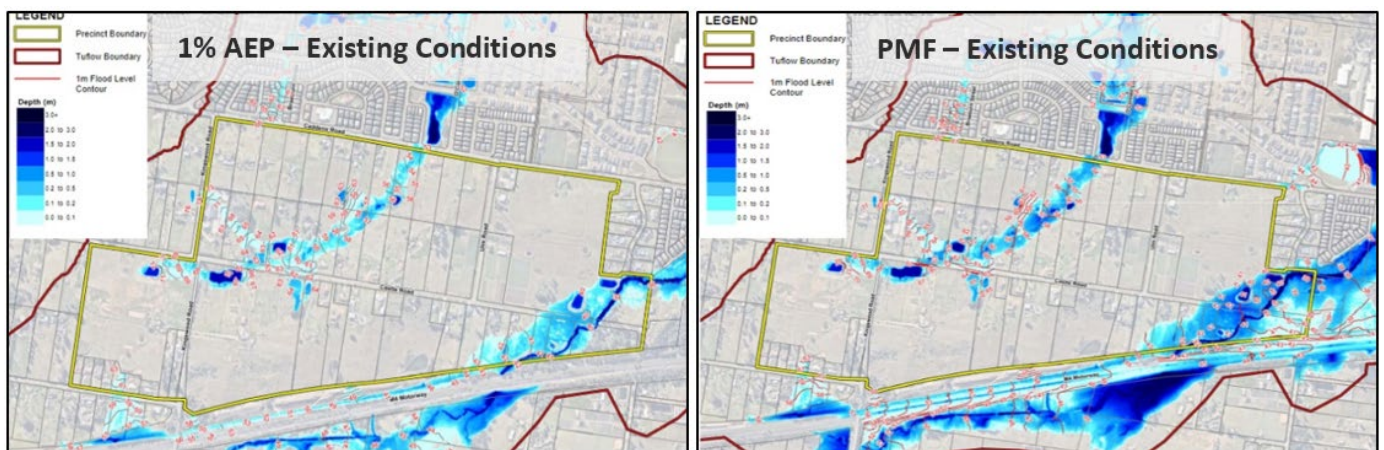


Figure 6: Existing conditions, 1% AEP and PMF flood depth and level (site outlined in yellow) (Source: J. Wyndham Prince, 2023)

Stormwater and Flood Management Strategy

A Stormwater Management Strategy (SMS) (J. Wyndham Prince, 2018) was prepared to support the planning proposal. A key element to the strategy included 9 detention basins with a combined volume of approximately 50,780m³. As the 2018 SMS did not include any flood modelling, the Gateway assessment was unable to determine if the proposal was consistent with Ministerial

Direction 4.1 Flooding (formerly Ministerial Direction 4.3 Flood Prone Land). A Gateway condition was included to require flood modelling be undertaken.

An updated Stormwater and Flood Management Strategy (SWFMS) (J. Wyndham Prince, March 2022) was prepared prior to exhibition. It included modelling information on flood depths, levels and hazards for 1% AEP and PMF events (Figure 7). The 2022 SWFMS modelling demonstrated that:

- in a 1% AEP event, flooding conditions and flood depths on the north, south and eastern sides of the precinct will be improved.
- in a PMF event, the majority of residential areas also remain flood free, with the exception of the south-eastern corner which continues to be affected by up to 0.2m of low hazard flooding.

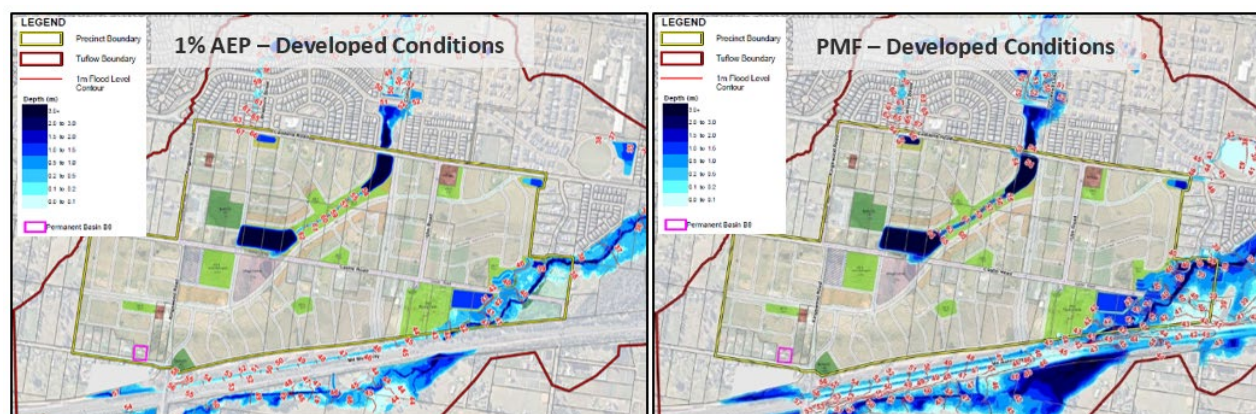


Figure 7: Developed conditions 1% AEP and PMF flood depth and level (site outlined in yellow)
(Source: J. Wyndham Prince, 2022)

A post-exhibition update was made to the SWFMS (J. Wyndham Prince, February 2023) (**Attachment D**) to amend elements of the SMS. The updated version included 6 detention basins located throughout the site with an updated total storage capacity of 71,550m³ an increase of 20,770m³ from the 2018 SMS. Ultimately, the SMS has been engineered to ensure that peak post-development discharges are less than the pre-development levels and has resulted in almost all areas being flood free in a PMF event.

Department review

In February 2023, the Department undertook an internal review of the SWFMS. The review was largely satisfied with the SWFMS submitted for finalisation as majority of the site is flood-free and the DCP will include site-specific development controls on habitable floor levels and flood compatible materials.

However, Council was requested to update the February 2023 SWFMS to address a wider range of flooding events and include a variance for climate change. Council was also requested to give further consideration to the appropriateness of the proposed C3 Environmental Management zone (due to the remaining flood risk on these sites (Figure 8 and Figure 9)), and provide information on evacuation routes.

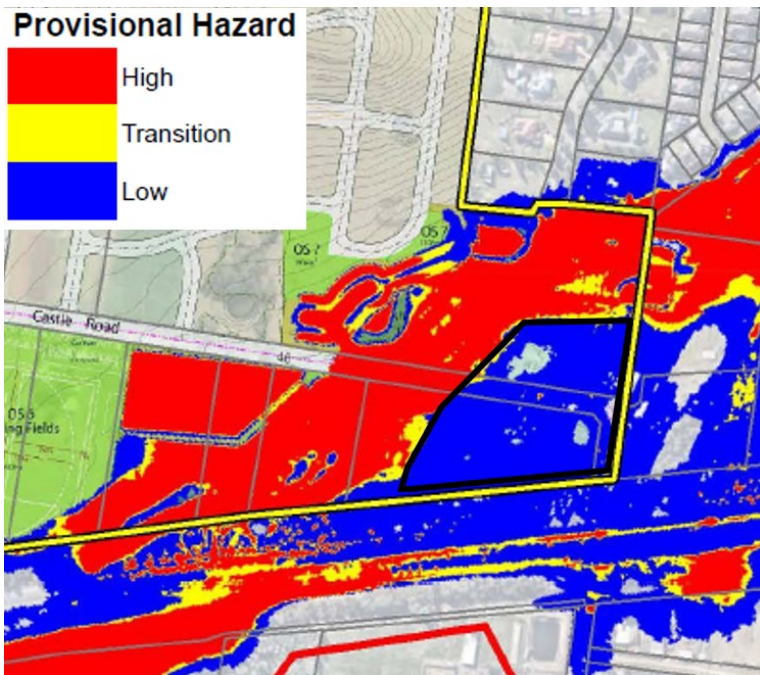


Figure 8: Low PMF provisional hazard risk for C3 zoned sites (outlined in black) (Source: SWFMS, J Wyndham Prince, February 2023)

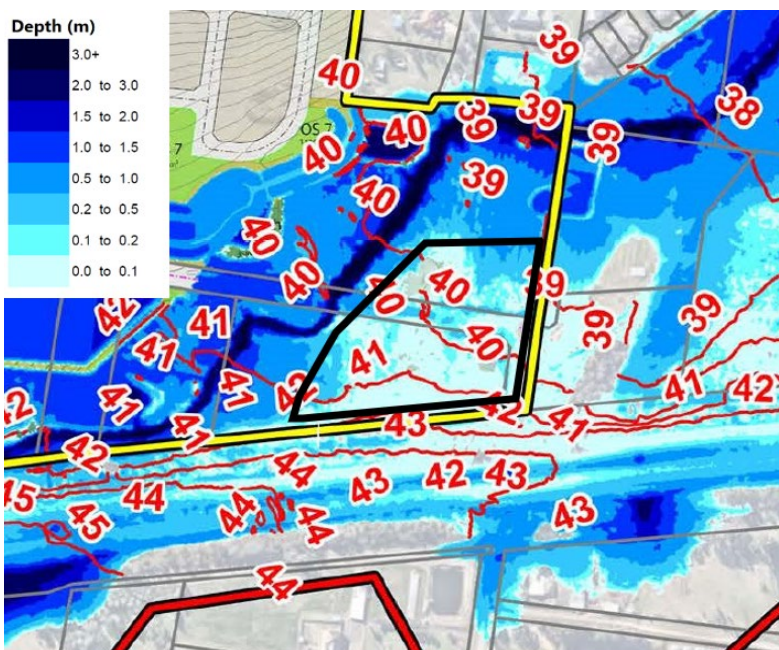


Figure 9: PMF flood depth for C3 zoned sites (outlined in black) (Source: SWFMS, J. Wyndham Prince, February 2023)

An updated SWFMS (J. Wyndham Prince, May 2023) (**Attachment E**) was provided to the Department, generally in accordance with the required updates, however the proposed C3 Environmental Management lots were still affected by PMF flooding and without access to flood free evacuation.

The report identified that:

“The proposal for the maximum of four dwellings/lots within the C3 Environmental Living Zone is appropriate, however sufficient flood warning time for evacuation is not currently available due quick rate of rise of flood level in the Claremont Creek at Castle Road in the PMF event. Shelter-in-place is seen as an option to manage the flood risk within C3 Zone due to the

shallow PMF flood inundation depth and the very short duration of flood retreat (approx. 2 hours). Council may wish to include a DCP control related to a finished floor level requirement for any future residential development within the C3 Zone”.

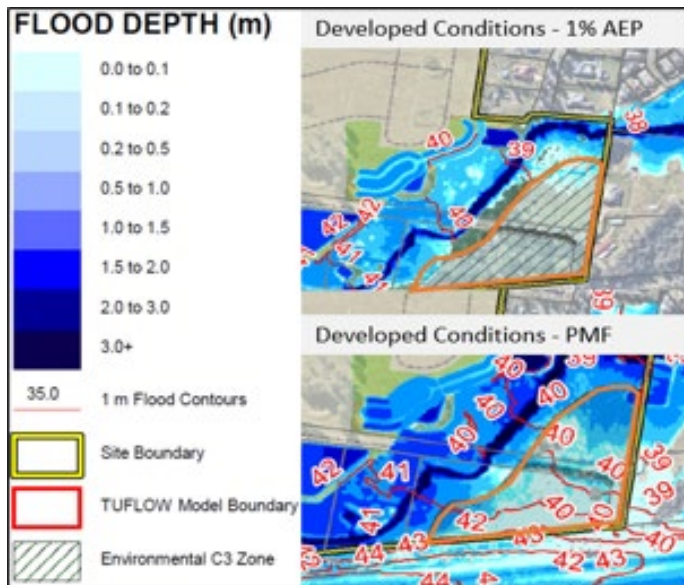


Figure 10: 1% AEP and PMF Flood Depths (site outlined in orange) (Source: SWFMS, J Wyndham Prince, May 2023)

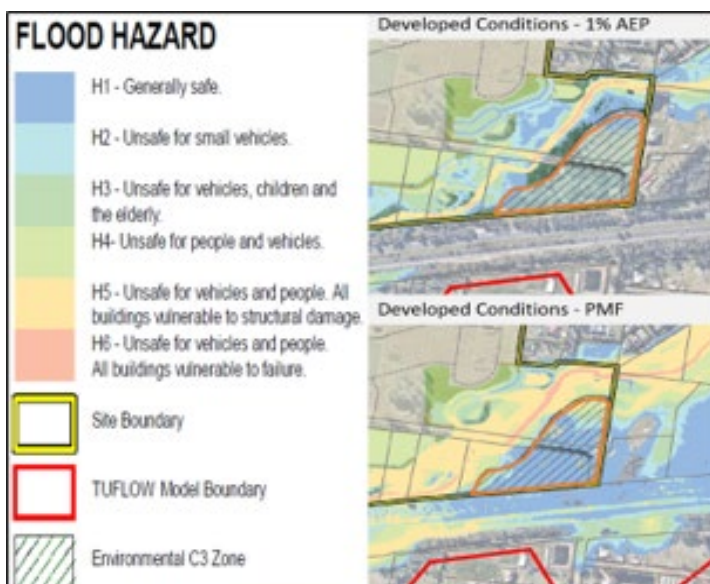


Figure 11: 1% AEP and PMF Flood Hazard (site outlined in orange) (Source: SWFMS, J Wyndham Prince, May 2023)

In considering the known risk for evacuation for sites Lot 15 in DP239091 and part Lot 1 in DP863335, the Department considers it inappropriate to rezone the land to allow for additional dwellings at this time.

While it is acknowledged the depth of flooding on the land is predominately low (less than 0.2m) with a low hazard rating (H1 – Generally Safe) an evacuation / shelter in place approach has not been resolved.

Biodiversity

Cumberland Plain Conservation Plan

The final Cumberland Plain Conservation Plan (CPCP) was released on 17 August 2022, 5 days before the completion of the exhibition period for Orchard Hills North.

The CPCP identifies areas suitable for development ('*certified urban capable*'), for which development will not require further biodiversity approvals (if development is in accordance with the CPCP). It also identifies important biodiversity areas ('*avoided land*') that are not certified for development.

The CPCP covers the entirety of OHN, the majority of which is classified as '*Urban Capable Land*', however, a small section of '*avoided land*' is located in the south-east corner (Figure 10).

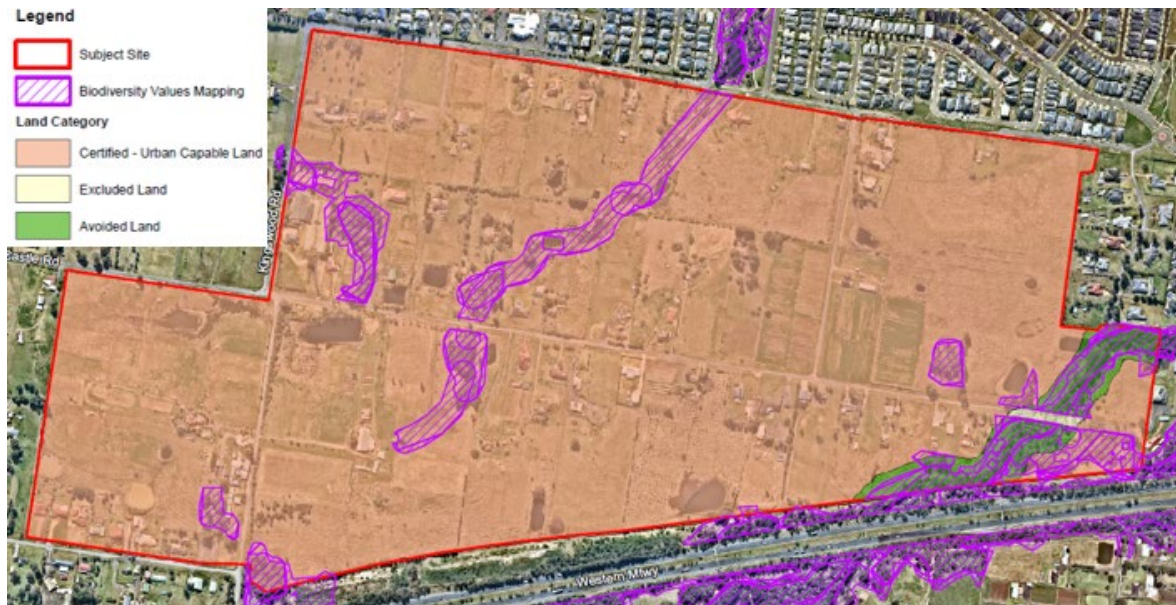


Figure 12: CPCP categories in Orchard Hills North (Source: Cumberland Ecology, 27 October 2022)

Future clearing rates for the area has previously been determined based on the Biodiversity Assessment Method (BAM). Council argue that using the BAM (rather than CPCP certification) would result in less areas of Threatened Ecological Communities (TEC) being cleared (namely 1.61 ha of Cumberland Plain Woodland and 1.47 ha of River-flat Eucalypt Forest). Council has indicated it continues to support the BAM method but has also agreed that the proposal is consistent with the CPCP (Cumberland Ecology, 27 October 2022) (**Attachment F**).

Environment and Heritage Group Comments

The second EHG submission continued to raise concerns with the proposal. As previously outlined, these concerns included that the proposal:

- did not assess the impacts on avoided land (including the use of the area for active and passive recreational uses)
- did not consider Chapter 13 of the Biodiversity and Conservation SEPP
- lacked consistency with relevant ministerial directions and zone objectives.

A detailed response to the issues raised in the second EHG submission was prepared by Cumberland Ecology (30 November 2022) (**Attachment L**). Key points included:

- clarification that no development was anticipated for avoided land areas, and that it will be protected through a Vegetation Management Plan
- that the proposal is consistent with relevant SEPP provisions
- that adequate consideration has been given to the protection and enhancement of areas of important biodiversity.

The Department sought further clarification from EHG following Council's request for finalisation (EHG, 17 March 2023) (**Attachment M**). EHG remained concerned that CPCP 'avoided land' could still be impacted by the proposed development. However, it raised no specific objection to the proposal.

The Department further consulted with EHG (**Attachment M**) which subsequently supported the Department's recommended solution (EHG, 19 June 2023) to address the above concerns:

- Amend the C2 zoned land to contain all CPCP avoided lands that are primarily along Claremont Creek
- Include a site-specific clause that prohibits uses that may hinder the protection of the CPCP avoided lands such as Environmental facilities and Recreational areas
- Request that Council updates the site specific DCP and Open Space Strategy to ensure protection of the CPCP avoided lands.

EHG supports Council's inclusion of a Vegetation Management Plan and 40m no works zone (established from the top of the bank of Claremont Creek) in the site specific DCP.

Approvals under the Commonwealth Environment Protection and Biodiversity Conservation Act (EPBC Act)

The CPCP was approved under the NSW *Biodiversity Conservation Act* 2016 (BC Act) in August 2022. This approval removes the requirement for landholders on land identified under the CPCP as "certified – urban capable land" to seek their own biodiversity approvals under the BC Act for development as long as that development complies with CPCP planning controls. Further information on these controls can be found in the Strategic Conservation Chapter of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

The NSW government has also submitted the CPCP to the Commonwealth Government for consideration under the EPBC Act. As of the date of this LEP being made, the CPCP has not received relevant approval under that Act. As such, while landholders can submit development applications, seek subdivision, start master planning or impact State listed threatened species authorised under the CPCP, impacts to matters of national environmental significance (MNES) are currently not permitted. If MNES are likely to be present on certified - urban capable land, landholders must seek their own individual approvals from the Commonwealth under the EPBC Act, until such a time as the CPCP is determined.

Department considerations

The proposal and supporting studies have adequately detailed how the proposal will minimise impacts to avoided land. The Department's assessment is that areas of avoided land are adequately protected from development through the post exhibition changes, the proposed zoning and DCP controls, and that the surrounding land use (predominately public recreation) is a compatible land use. Further consideration to appropriate biodiversity impact assessment methods can be determined at the DA stage.

Bushfire

The subject area is affected by Vegetation Category 2 (Figure 13).

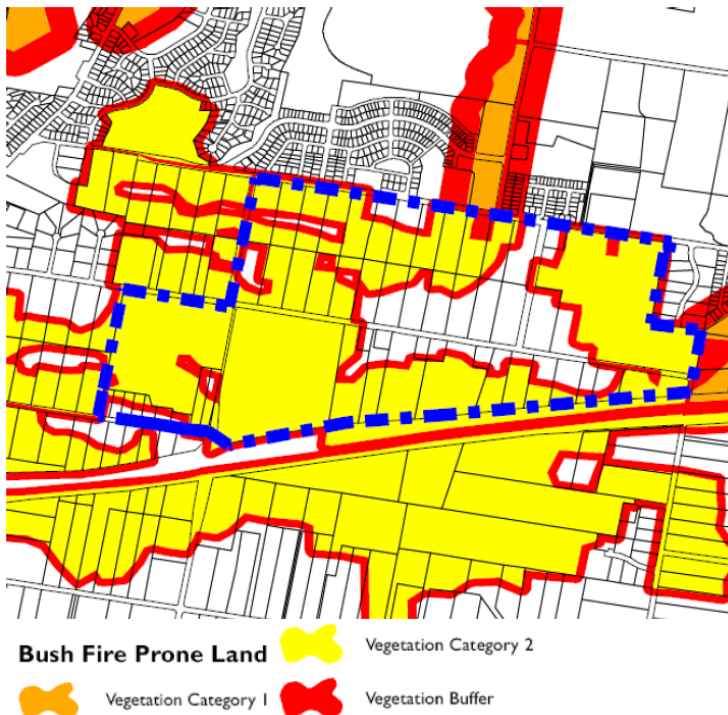


Figure 13: Bushfire Prone Land. Subject site outlined in blue (Source: Bushfire Constraints Report, 2019)

Council received a submission from the RFS on 24 March 2022 (**Attachment R**). However, the RFS did not address the site's location in a bushfire prone area in its submission. The RFS did not object to the proposal, however, it has outlined a range of Asset Protection Zones to be applied around specific bushland open space areas.

It is the Department's assessment that the proposed APZs (Bushfire Constraints Report, Australian Bushfire Protection Planners, December 2021) (**Attachment N**) broadly met the requirements outlined by the RFS but several discrepancies required further consideration.

Consequently, the Department requested additional information from Council to clarify these discrepancies. An updated Bushfire Constraints Report and letter addressing RFS comments was provided by Australian Bushfire Protection Planners (19 May 2023) (**Attachment O**) to justify the differences in the proposed APZs.

The Department considers that the proposal had adequately justified the proposed APZs (as per **Attachment O**), and that any further clarification relating to these can be addressed at the DA stage. This may require further consultation with the RFS.

4.1.4 Infrastructure

Dwelling Caps

The planning proposal originally submitted for Gateway outlined an intention to enable approximately 1,700 to 1,900 homes by rezoning the majority of the site as R1 General Residential Zone. In doing so, the proposal could have achieved the intention of *facilitating a mix of residential typologies, consistent with the vision for an increased diversity of housing choices in Penrith* as the R1 zone permits a wider range of dwelling types, including attached and semi-detached dwellings (which are not permitted in R2 Low Density Residential Zones).

The exhibited planning proposal (June 2022) included a range of controls that provided more structure around the proposed housing diversity. Specifically, it proposed a new Part 7 clause to cap the total number of lots that Orchard Hills could be subdivided into (1,729), including specifying how many lots each precinct could achieve.

Council sought to cap both lots and dwellings at 1,729 at different stages in the development of the planning proposal, however, the exhibited draft provisions only restricted subdivision and lot yield.

The Department acknowledges that at times, references to lots and dwellings were interchangeable, but that the intent was to cap lots – despite many documents supporting the proposal were based on a dwelling yield of 1,729 (e.g. the TMAP (**Attachment K**) and draft contributions plan (**Attachment G**)).

Without a dwelling ‘cap’, there is a risk of development in the precinct exceeding projections and placing pressure on planned infrastructure. This is particularly the case given that the proposal seeks an R1 zoning which could enable dwelling types, including multi-dwelling housing and residential flat buildings, and does not propose a floor space ratio or dwelling density control.

Similar dwelling caps apply to other Urban Release Areas in Penrith (e.g. Glenmore Park Stage 3) for the same reason. As such, the Department recommends a post-exhibition change to include a provision that specifies dwelling yield. Noting that the masterplan may undergo further amendments, it is recommended that the R1 zoning remain in place to facilitate maximum flexibility in dwelling types.

State Voluntary Planning Agreement

Condition 9 of the Gateway determination required Council to prepare a state infrastructure schedule detailing requested contributions (costs and apportionments) and provide the schedule to the Department.

A letter of offer was provided from Legacy Properties to the Department on 9 March 2022 (**Attachment I**), inclusive of a schedule of contributions.

The key terms of a State Planning Agreement have been agreed to and are supported by SINSW and TfNSW. It includes the following contributions:

- land required for the ultimate North-South Road corridor,
- land required for a new school site,
- monetary contributions towards off-site state intersection upgrades,
- a biodiversity contribution under the Cumberland Plain Conservation Plan.

The State VPA will include a 5-year sunset clause, where the Minister will benefit from a call option requiring Legacy to dedicate the ultimate North-South road land to the Minister’s nominee. The Minister’s nominee will not be identified in the State VPA, thereby ensuring that the land will not be dedicated to Council until there is demonstrable need and funding for delivery. The call option would only occur upon publication of a strategic plan confirming the need for the transport link and land, and a funding and contributions framework that includes the ultimate road and M4 crossing. If the land is not required, Legacy would make an alternative contribution towards State and regional infrastructure.

These principles will maintain an opportunity for a future transport link should planning determine the need for one.

Local Contributions and Voluntary Planning Agreement

In accordance with the Gateway determination, a draft contributions plan was prepared and exhibited (**Attachment G**). However, Council is unable to authorise the s7.11 plan to be made until:

- the s7.11 Plan is reviewed by the Independent Pricing and Regulatory Tribunal (IPART), and
- the Minister, after considering the review, directs Council to make the plan

IPART will prepare a draft report on its findings which will be placed on public exhibition. Following this, a final report will be prepared and sent to the Minister. The Minister will consider the report and direct Council to make the s7.11 Plan, with or without amendment.

The need for a contributions plan was identified during the Gateway determination assessment. The Department acknowledges that the preparation and adoption of a s7.11 plan sits outside the planning proposal process. However, given the level of development anticipated for the Orchard

Hills North area, there is a need to ensure that appropriate infrastructure and public amenity is provided. With this need in mind, Council and the proponent have actively worked to develop the contributions plan. A letter of offer was provided from Legacy Properties to Council on 14 April 2022 (**Attachment H**)

The Department understands that, at the time of preparing this report, the contributions plan has not yet been submitted for IPART review. Given the potential delay in an endorsed s7.11 plan, Council adopted a post-exhibition amendment to include a Part 6 Local Contributions Clause requiring that development consent cannot be granted to land in an Urban Release Area unless a relevant Contributions Plan is in effect, or an alternative mechanism is provided for the delivery of local infrastructure.

The aim of this clause is to reduce (or eliminate) any potential financial liabilities of infrastructure delivery by ensuring that all relevant contributions are either captured through an endorsed contributions plan or in a VPA. Given local Contributions Plans are comprehensively dealt with by Part 7 of the EP&A Act, and contributions plans are outside of the scope of the LEP, this clause was not supported.

Secretary's Concurrence

The Department has supported inclusion of a new clause, 6.3A, which will require Secretary's concurrence that a planning agreement has been, or will be, entered into to improve or contribute to relevant planning matters which are defined as including transport and traffic management, water cycle management, land used for public open space or recreational purposes.

The proposed clause relates to all urban release areas and has been adopted into the PLEP through PP-2020-2803 (Glenmore Park Stage 3) and no Part 6 amendment is required as part of this planning proposal. Given this clause will apply to all Urban Release Areas within Penrith LGA, the Department will provide advice to Council regarding its ongoing operation, including instances where a concurrence request is not required and if/when the Secretary's concurrence can be assumed (e.g. where a local contributions plan is already in place), or if a strategic concurrence can be granted for a precinct or area. This advice will be provided to Council, following finalisation of the planning proposal.

Draft Greater Penrith to Eastern Creek Strategic Framework

The site is within the investigation area for the Greater Penrith to Eastern Creek (GPEC) potential growth area. The GPEC is a regionally significant growth area, which will over time connect Penrith CBD, St Marys and Eastern Creek. The site's location within GPEC establishes it as an appropriate place to consider for development.

In late 2022, the Department exhibited the draft GPEC Strategic Framework for feedback. When finalised, the strategic framework will guide the future planning for new homes and jobs, close to transport, schools and public spaces.

The feedback submitted during exhibition is now being considered. The team finalising the Strategic Framework has confirmed that the final Strategic Framework will be adopted soon and is proposed to identify the Site as an urban release area, consistent with the approach proposed by the GCC in the District plan.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 9 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Eight maps have been prepared by Council and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment T).</p> <p>Council's response to the draft LEP was received on 21/06/2023 (Attachment T).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 28/06/2023 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the draft LEP has strategic merit being consistent with Penrith Local Strategic plan.
- it is consistent with the Gateway Determination.
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



Robert Hodgkins
A/Director, Metro West

Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination and alterations

Attachment	Document
C	Council Response to Submissions
D	Stormwater and Flood Management Strategy (J. Wyndham Prince, Feb 2023)
E	Stormwater and Flood Management Strategy (J. Wyndham Prince, May 2023)
F	CPCP Consistency Assessment (Cumberland Ecology, 27 October 2022)
G	Orchard Hills North Draft Exhibited S7.11 Plan
H	Draft Voluntary Planning Agreement Letter of Offer (Legacy Properties, 14 April 2022)
I	State Voluntary Planning Agreement Letter of Offer (Legacy Properties, 9 March 2022)
J	Heritage Constraints and Opportunities report (NBRS Architecture and Heritage, 21 March 2018)
K	Traffic Management and Accessibility Plan (TMAP) (SCT Consulting, Jan 2023)
L	Supplementary response to EHG comments (Cumberland Ecology, 30 November 2022)
M	EHG Comments (17 March 2023)
N	Bushfire Constraints report (Australian Bushfire Protection Planners, February 2023)
O	Bushfire Constraints report(V2) and Letter (19 May 2023)
P	Greater Cities Commission (8 February 2023)
Q	Gateway Determination Report
R	RFS Submission (24 March 2022)
S	Preliminary Geotechnical Investigation (Geotechnique, December 2021)
T	DPE consultation and Council response on draft instrument
PC	Parliamentary Counsel Opinion (date 28 June 2023)