

Greater Sydney, Place and Infrastructure

IRF19/6902

Gateway determination report

LGA	Penrith
PPA	Penrith City Council
NAME	LEP Review Phase 1
NUMBER	PP_2019_PENRI_001_00
LEP TO BE AMENDED	Penrith Local Environmental Plan 2010
ADDRESS	Penrith LGA
DESCRIPTION	LEP Review Phase 1
RECEIVED	30 September 2019
FILE NO.	EF19/27724
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.

1. INTRODUCTION

1.1 Description of planning proposal

This planning proposal is Phase 1 of amendments to the Penrith Local Environmental Plan 2010 (Penrith LEP 2010) to align and implement the draft Penrith Local Strategic Planning Statement (Penrith LSPS). The draft Penrith LSPS was exhibited from 30 September to 11 November 2019 and endorsed by Penrith City Council on 30 September 2019.

The Phase 1 planning proposal includes the following amendments to the Penrith LEP 2010:

1. increase the minimum lot size control for multi-dwelling housing in medium and high-density zones as follows:
 - from 800m² to 1200m² in the R3 Medium Density Residential and R4 High Density Residential zones for a standard lot; and
 - from 900m² to 1200m² in the R3 Medium Density Residential and R4 High Density Residential zones for a battle-axe lot;
2. include 'eco-tourist facilities' as a permitted use (with development consent) in the E4 Environmental Living zone;
3. strengthen the role of Castlereagh's 'centre' by amending Schedule 1 to allow the following uses to be permitted with development consent:
 - centre-based child care facilities;
 - kiosks;

- markets;
 - neighbourhood shops;
 - recreation facilities (indoor); and
 - restaurants or cafes.
4. amend Clause 7.17 (dwelling houses on certain land in Castlereagh, Cranebrook, Llandilo, Londonderry, Kemps Creek and Mulgoa) to permit dwelling houses on 1 hectare lots on certain sites in Llandilo. This amendment is proposed to apply to 11 lots which are currently require a minimum lot size of two hectares to permit dwelling houses;
 5. introduce a new control for development in the B4 Mixed Use zone in the St Marys Town Centre which will require the ground and first floor levels to only permit non-residential uses;
 6. housekeeping matters to resolve identified errors and anomalies;
 7. prohibit cemeteries and crematoriums in the Mulgoa Valley and parts of Wallacia; and
 8. rezone Triangle Park, Penrith from its B3 and B4 zonings to RE1 Public Recreation to reflect the sites use as a park.

1.2 Site description

The planning proposal applies to land identified on the Land Application Map under the Penrith LEP 2010 (Figure 1 next page). The planning proposal does not apply to several areas in the Penrith LGA which are currently deferred from the Penrith LEP 2010 and covered by the Western Sydney Employment Area State Environmental Planning Policy (WSEA SEPP) and the St Marys Regional Environmental Plan 30 (SREP 30).

Penrith LEP 2010 applies to areas in the Penrith LGA which form part of the Aerotropolis Growth Area. It is anticipated that a future State Environmental Planning Policy will be implemented for the Aerotropolis Growth Area in 2020, which when implemented will prevail over the LEP.

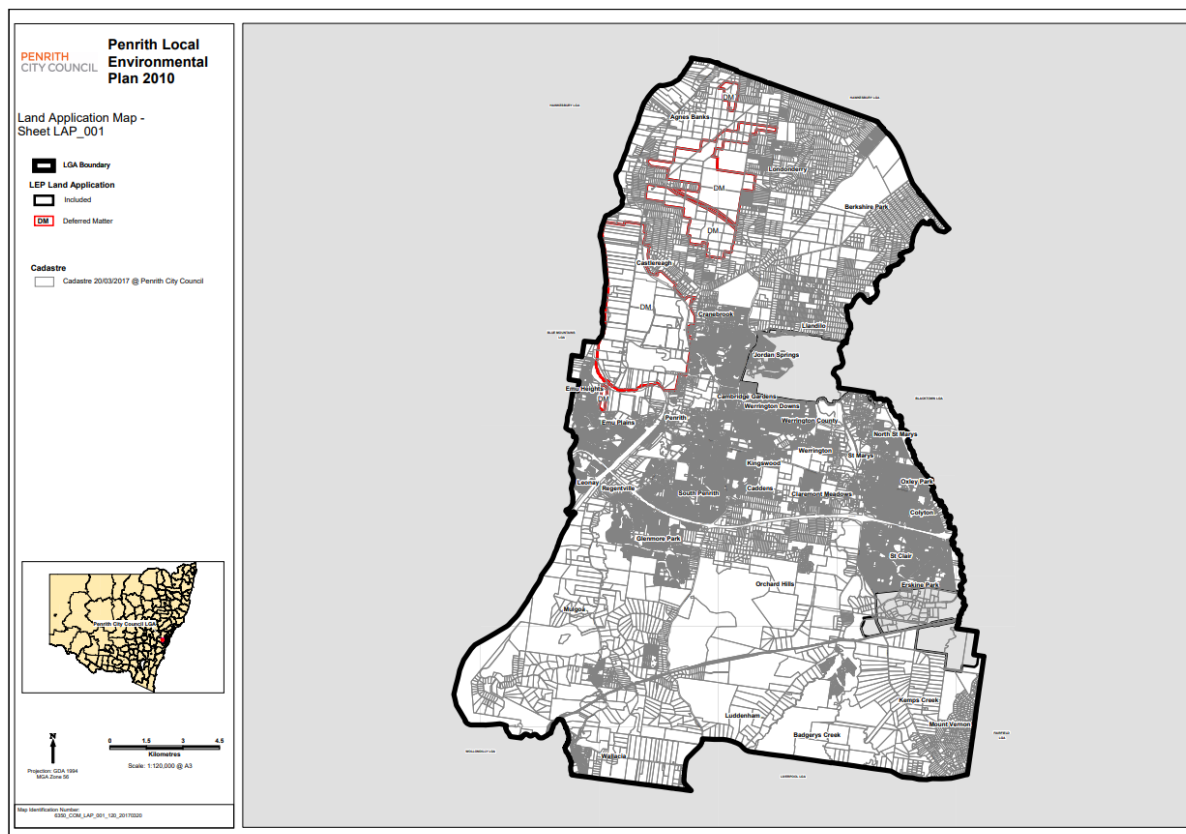


Figure 1: Penrith LEP 2010 Land Application Map.

1.3 Existing planning controls

The Penrith Standard Instrument LEP has been in force since 2010. The LEP has been amended through various planning proposals with the last amendment on 27 September 2019.

1.4 Summary of recommendation

It is recommended that the planning proposal proceed with a Gateway Determination subject to conditions as the proposed amendments have strategic and site-specific merit, are generally consistent with the Western City District Plan and form the first stage of amendments to align the Penrith LEP 2010 with the draft Penrith LSPS.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal is the first stage of aligning Penrith LEP 2010 with the draft Penrith LSPS. It is anticipated that further amendments will be made to Penrith LEP 2010 following the adoption of the Penrith LSPS.

This proposal also responds to section 3.8(4) of the EP&A Act which requires councils to review the LEP to ensure it gives effect to the relevant district plan within two years of the district plan being made final.

2.2 Explanation of provisions

The planning proposal has been prepared in accordance with the Department's guide to preparing planning proposals. The planning proposal seeks to make the following amendments to the Penrith LEP 2010.

1. Increase the lot size control for multi-dwelling housing in medium and high-density zones

The following amendments to Clause 4.1A (minimum lot sizes for dual occupancies, multi-dwelling housing and residential flat buildings) are proposed:

- increase the minimum lot size for multi-dwelling housing from 800m² to 1200m² in the R3 Medium Density Residential and R4 High Density Residential zones for a standard lot; and
- increase the minimum lot size for multi dwelling housing from 900m² to 1200m² in the R3 Medium Density Residential and R4 High Density Residential zones for a battle-axe lot.

The amendments to the lot size controls were identified under the Local Housing Strategy to provide housing diversity. Council's intention for these changes are to:

- deliver better amenity and design outcomes;
- ensure appropriate lot size and dimensions are provided for medium density housing; and
- strengthen existing controls by elevating them from the DCP to the LEP.

A map of the subject R3 and R4 zoned land in the LGA is provided at Figure 2 (below).

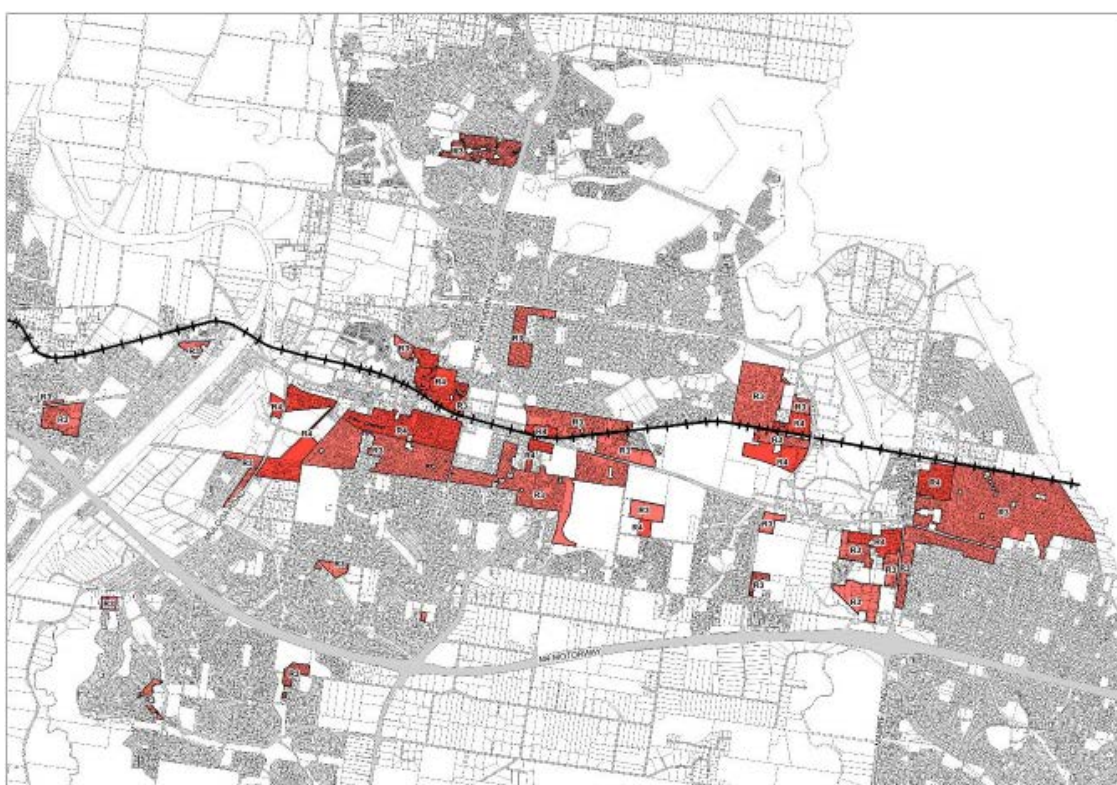


Figure 2: R3 Medium Density Residential and R4 High Density Residential zoned land in LGA.

The proposed amendment was prepared in response to the commencement of the Low Rise Medium Density Housing Code under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). The code permits the construction of medium-density housing under a complying development

certificate and enables subdivision of this development, but only where the development fully complies with the provisions of the code.

The code commenced on 6 July 2018 and permits new types of medium-density development, being manor houses and multi-dwelling housing (terraces), as complying development in residential zones where multi-dwelling housing is currently permitted under a council's LEP.

On 5 July 2018, the Minister granted Council deferral for the commencement of the code until 1 July 2019 or until Council prepares a local housing strategy and finalises this planning proposal, whichever is sooner.

A further extension of the deferral of the code to 1 July 2020 has been announced following an independent review. The extension will allow councils to progress strategic planning initiatives (i.e. the Local Strategic Planning Statement) and demonstrate how each council intends to meet local housing needs through a local housing strategy. The Department will also use the time to work closely with councils to identify and map areas of exceptional local character.

As described in the Local Housing Strategy, medium density housing delivery has occurred 'haphazardly' throughout the established residential areas of Penrith. Existing LEP and DCP controls have resulted in medium density housing that are characterised by larger, narrow lots, older and poorer quality housing stock, lower medium housing prices and high availability of unconstrained medium density zoned land (such as Oxley Park). The resulting built form has seen areas with rows of townhouses that are not in keeping with the surrounding local neighbourhood character and streetscape amenity.

A recommendation of the Local Housing Strategy involves increasing the minimum lot size controls for multi-dwelling housing in the R3 and R4 zone to 1,200m².

This proposed amendment builds on the initiatives Council have undertaken to date to address built form outcomes and preserving local character values as it relates to multi dwelling housing (defined as three or more dwellings on one lot of land). This LEP amendment in combination with recently updated DCP controls will contribute to a more attractive, liveable and better functioning built form and result in improvements to amenity.

Department Comment:

The increase in the minimum lot size control for multi-dwelling housing developments on R3 and R4 zoned land will reduce the development potential for multi-dwelling housing for some lots throughout the Penrith LGA. It will also restrict these types of developments from being carried out pursuant to the code.

A Gateway condition is recommended requiring Council to provide further information. Once provided, further assessment will be undertaken at the plan-making stage to understand the impacts of the planning proposal on the code to determine the acceptability of the proposal. Council has indicated that it would also like to investigate the need for a designated minimum lot size for dual occupancies on RU5 Village zoned land. The Department has included a condition on the Gateway to enable this investigation.

Another condition should also be included in the Gateway determination that requires a savings and transitional provision for any development applications

lodged and not determined to ensure the proponents are not adversely impacted by the proposed changes.

2. Permit eco-tourist facilities in environmental living zones

This amendment seeks to permit (with development consent) 'eco-tourist facilities' in the E4 Environmental Living zone. The E4 zone applies to areas in Agnes Banks, Castlereagh, Cranebrook, Glenmore Park, Luddenham, Mount Vernon and Mulgoa.

This amendment was one of the outcomes from the Rural Lands and Villages Strategy to grow rural tourism. The Rural Lands and Villages Strategy identified opportunities to leverage existing natural areas, rural heritage properties and rural event spaces to grow rural tourism.

The definition of an eco-tourist facility states that it must be "located in or adjacent to an area with special ecological or cultural features". Clause 5.13 of Penrith LEP 2010 also requires an eco-tourist facility to satisfy other requirements including demonstrating a connection between the development and the ecological, environmental and cultural values of the site or area; enhancing an appreciation of these values; and not adversely affecting the agricultural productivity of adjoining land.

It is noted that Bed and breakfast accommodation is already a permitted use within the E4 zone. Eco-tourist facilities are permissible (with consent) within the E3 Environmental Management Zone.

Department Comment:

The proposed inclusion of 'eco-tourist facilities' within the E4 Environmental Living zone is considered to be generally consistent with the objectives of this zone for low-impact residential development in areas with ecological or aesthetic values. The addition of this land use will not detrimentally impact the environmental values and character of land within this zone.

The Penrith LGA has been identified as an enhanced tourist destination in NSW with the future delivery of the Western Sydney Airport. This amendment to provide additional short-term accommodation in the Penrith LGA is supported.

3. Strengthen the role of Castlereagh's centre

The planning proposal seeks to strengthen the role of Castlereagh's 'centre' by amending Schedule 1 to allow the following uses to be permitted with development consent in the centre:

- centre-based child care facilities;
- kiosks;
- markets;
- neighbourhood shops;
- recreation facilities (indoor); and
- restaurants or cafes.

This amendment seeks to implement an outcome of the Rural Lands and Villages Strategy to 'reinforce the network of rural centres'. To achieve this, the strategy recommends that the Castlereagh centre be strengthened by permitting these

additional uses to allow the centre to be further developed and meets the needs of the local community.

The boundary of the area identified to be the Castlereagh 'centre' is outlined in Figure 3 (below) with the land where additional land uses are proposed to be permitted identified in the area outlined in red.

It is noted that the additional permitted use will not apply to the southern portion of the centre as this land contains the Castlereagh Hall (the former chambers of Castlereagh Council), Smith Park (and memorials) and Castlereagh Rural Fire Station to ensure that these uses continue to be provided for the local community.



Figure 3: Castlereagh centre with area identified for additional permitted uses.

Department Comment:

This proposed change is supported. Existing controls in Clause 5.4 of LEP 2010 which limit the scale of kiosks (gross floor area to no more than 50m²) and neighbourhood shops (retail floor area to no more than 200m²) will continue to apply the centre. This will ensure that any development within the centre would be relatively low scale and will predominantly service the neighbouring community. The proposed amendment will not likely result in development that would threaten the viability of other local centres.

4. Dwelling houses on certain land in Llandilo

This seeks to amend Clause 7.17 to permit dwelling houses on one hectare lots on certain sites in Llandilo. This amendment is proposed to include 11 existing lots which are required to have at least two hectares to construct a dwelling house.

These 11 lots are shown in Figure 4 next page (lots identified with a red dot), and are as follows:

- Lot 280 DP 2147, 280 Eighth Avenue;
- Lots 310 & 310A DP 2147, 310 Eighth Avenue;
- Lot 323 DP 2147, 323 Eighth Avenue;
- Lot 111A DP 2147, 111A Fifth Avenue;
- Lot 27A DP 2147, 27 Fourth Avenue;
- Lot 45 DP 2147, 45 Fourth Avenue;
- Lot 251A DP 2147, 251A Seventh Avenue;
- Lot 157 DP 2147, 157 Sixth Avenue;
- Lot 173A DP 2147, 173A Sixth Avenue; and
- Lot 182A DP 2147, 182A Sixth Avenue.

However, there are 6 properties in Llandilo that are excluded from the operation of clause 7.17 as they had no capacity to consolidate with adjoining lots to achieve the two hectare minimum.

Penrith City Council has undertaken a review of one hectare lots in Llandilo affected by clause 7.17. This review identified the 11 lots where dwelling houses are not currently permitted and have no capacity to consolidate with adjoining lots to achieve the two hectare minimum, as adjoining lots are under different ownerships. The amendment is proposed to allow these lots to now develop dwelling houses.

The Rural Lands and Villages Strategy acknowledges that the current two hectare requirement for a dwelling house has a role in preserving the rural character of Llandilo.

Department Comment:

The amendment to allow dwelling houses on 11 sites in Llandilo is supported. The potential development of dwellings on one hectare lots would not diminish the rural character of the area or threaten its role as part of the Metropolitan Rural Area.

The two hectare minimum requirement for a dwelling house will continue to apply to the remaining majority of lots in Llandilo. This retention of this requirement will help preserve the rural character of Llandilo.



Figure 4: Sites proposed to allow dwelling houses on 1 hectare lots (sites with red dot).

5. Requirement for non-residential uses in St Marys Town Centre in the B4 Mixed Use Zone

This amendment proposes to introduce controls to require non-residential uses on the ground and first-floor of developments in the B4 Mixed Use zone in the St Marys Town Centre. The intention of this amendment is:

- to protect the retail and commercial core of the St Marys Town Centre for future non-residential use;
- to ensure retail and commercial floorspace demand can be met into the future as St Marys transitions to a strategic centre as identified in the Western City District Plan; and
- to be applied alongside a suite of other DCP controls for the St Marys Town Centre that seek to protect the character and commercial potential of Queen Street.

The amendment has been identified to implement a principle of the St Marys Economic Development Strategy to encourage mixed-use residential renewal whilst ensuring employment uses are still provided. Residential uses would be provided in the levels above with the provision of new dwellings anticipated to encourage redevelopment throughout the St Marys Centre.

The proposed mechanisms to achieve this amendment may include:

- introducing a new non-residential floor space ratio in the vicinity of 0.8:1 that will require a proportion of a developments' total floorspace be provided, at a

minimum, for non-residential uses on the ground and first floors, with residential uses above; or

- introducing a new Clause 7.12A Minimum gross floor area of commercial premises that requires ground and first floor levels of any development in the St Marys Town Centre core to be used exclusively for non-residential uses.

Council advised that further work will be undertaken to refine this mechanism throughout the Gateway process. This work will also take account of the planning work for the Greater Penrith to Eastern Creek growth area investigation. This amendment will affect the B4 Mixed Uses zoned area within the town centre as shown in Figure 5 below.

This amendment will achieve the intended outcomes by:

- elevating the expected retail and commercial floorspace delivery outcome of the DCP to the LEP;
- provide a robust LEP mechanism that removes flexibility for delivery of ground and first floor retail and commercial floorspace; and
- requiring the whole first floor to be provided for non-residential uses.



Figure 5: Land subject to the amendment in the St Marys Town Centre (blue outline).

Department Comment:

This amendment seeks to ensure that employment uses are maintained as part of future mixed-use development. The promotion of economic activity and greater employment in St Marys is consistent with the current vision for St Marys as a Strategic Centre in the Western City District Plan. Further changes to planning controls within St Marys will be required following the completion of planning for the Greater Penrith to Eastern Creek growth investigation area.

It is also recommended that Council confirm the proposed mechanism to achieve the intended outcome prior to public exhibition.

6. Housekeeping matters

The planning proposal includes several amendments as part of 'housekeeping' matters which are stated to resolve errors and anomalies. There are 10 housekeeping matters proposed which are summarised in the table below.

Table 1: Proposed housekeeping items.

Item No.	Title	Proposed change
6A	Additional Permitted Uses provisions for 164 Station Street, Penrith.	The existing partial coverage of the additional permitted uses on the site is proposed to be extended to cover the full site to provide a uniform and consistent suite of planning provisions to the site.
6B	Rezoning of several parcels of Sydney Water land. The subject properties are: a. 99a Mackellar Street, Emu Plains b. 18b The Haven, Orchard Hills c. 312a Wentworth Road, Orchard Hills d. 1 Alston St, Glenmore Park E. 76a Christie St, St Marys F. 171-175 Andrews Rd, Cranebrook G. 2a Fitch Ave, Penrith H. 1 Hickeys Lane, Penrith I. 13a Mackellar St, Emu Plains J. 23a Loftus St, Regentville K. 1 Factory Rd, Regentville L. 1a Carcoar Cl, Erskine Park M. 2180 Castlereagh Rd, Penrith N. 18 Winbourne Rd, Mulgoa O. 334a Londonderry Rd, Londonderry p. 9 William Hart CRES, Penrith q. 2181-2185 Castlereagh Road, Penrith	Rezoning of 16 Sydney Water properties that are currently inappropriately zoned. The properties are proposed to be rezoned to SP2 Infrastructure. It is also proposed to remove lot size and building height controls, consistent with the approach taken to SP2 zones. A further Sydney Water site already currently zoned SP2 Infrastructure is proposed to remove the lot size and building height controls.
6C	Correction to LEP 2010 Clause 8.4 (Design excellence)	Clause 8.4(6) incorrectly refers to matters set out in subclause (3) of Clause 8.4. A correction to this clause is proposed to refer to matters set out in subclause (2) of Clause 8.4.

Item No.	Title	Proposed change
6D	Exclude the application of Clause 8.4 (Design excellence) from Clause 4.6 (Exceptions to development standards)	<p>Correct Clause 4.6 (Exceptions to development standards) to exclude the application of LEP 2010 Clause 8.4 (Design excellence) if the subject development proposal already seeks a variation to the development standards allowed under the design excellence provisions.</p> <p>This change would prevent a development seeking non-compliance with a development standard more than once.</p>
6E	Alignment of mapped planning controls at Peak Place and Edgewater Drive, Glenmore Park	Correction to the mapping for zoning, lot size, building height, and urban release area mapping for part of the road reserve of Peak Place and Edgewater Drive to provide consistency with the predominant planning controls in that locality.
6F	Update to property descriptions and mapping for Schedule 1 sites at Thornton Estate	Update the property descriptions and mapped planning controls relating to sites identified in Schedule 1 Additional Permitted Uses at the Thornton Estate in Penrith to reflect subdivision approvals in this area.
6G	Correction to zoning of park at Buttercup Street, Claremont Meadows	An existing park in Buttercup Street is incorrectly zoned R2 Low Density Residential and is proposed to be rezoned RE1 Public Recreation. The height and lot size controls are also to be removed.
6H	Removal of heritage item at 9 Railway Row, Emu Plains	The land is listed as containing a heritage item. The item no longer exists and is therefore proposed to remove its heritage listing from LEP 2010.
6I	Removal of heritage item at 65 Mulgoa Road, Penrith	The land is listed as containing a heritage item. The item no longer exists and is therefore proposed to remove its heritage listing from LEP 2010.
6J	Amendment to mapping of heritage items (milestones) at Kingswood	Two heritage item milestones are to have their heritage mapping amended to identify the correct location within the road reserve and not on adjoining lots.

Department Comment:

The proposed housekeeping amendments are generally supported. Most of the amendments are considered to be straight forward with no significant planning implications. It is recommended that Council consults Sydney Water on the proposal as it seeks to rezone land owned by this agency.

However, item 6A in the planning proposal is not considered to be a ‘housekeeping’ amendment as it will expand the application of the additional permitted uses (i.e. business premises, entertainment facilities, food and drink premises, function centres, hotel or motel accommodation, kiosks, markets, office premises, serviced apartments, signage and shops) for land at 164 Station Street, Penrith from a portion of the site to the whole allotment as shown in Figure 6 (below).



Figure 6: Proposed change to the APU map.

The site is vacant and zoned R4 High Density Residential. Allowing the additional permitted use to apply to the whole of the site will significantly increase the development potential and future use of the site.

The proposed amendment will allow a number of non-residential uses which are currently not permitted in the R4 High Density Residential zone on the site. Whilst this amendment is supported, classifying this amendment in the planning proposal as a ‘housekeeping amendment’ is misleading and does not accurately illustrate the increased development potential for the site.

It is therefore recommended that the Gateway Determination include a condition that requires amendment 6A to be identified as a separate amendment within the planning proposal and not included as part of ‘housekeeping’ amendment section.

7. Prohibition of cemeteries and crematoriums in the Mulgoa Valley and parts of Wallacia

This proposed amendment replicates an existing planning proposal with the Department for consideration for Gateway (i.e. PP_2017_PENRI_003_00). Penrith City Council seeks to incorporate the proposed amendments in this planning proposal into the LEP Review Phase 1 planning proposal as follows:

- remove 'cemeteries' from the list of land uses permitted with consent from the E3 Environmental Management zone;
- include an additional local provision that prohibits 'cemeteries' and 'crematorium' in the Mulgoa Valley and parts of Wallacia (the subject area), and overrides any other provision of the LEP; and
- include a local provision that excludes the operation of Clause 5.10.10 as it relates to 'cemeteries' and 'crematoriums' in the Mulgoa Valley and parts of Wallacia (the subject area).

The planning proposal identifies the intention for this amendment is to:

- prevent the establishment of cemeteries and crematoria in the subject area, due to this form of development being incompatible with the character and values of the Mulgoa Valley;
- remove land uses from the E3 Environment Management zone that are inconsistent with the objectives of this zone;
- align the Penrith LEP with the Standard Instrument-Principal Local Environmental Plan and LEP's across NSW. Cemeteries are not mandated in the E3 zone under the Standard Instruments. Also, cemeteries are prohibited in the E3 zones in LGA's across NSW;
- ensure that cemetery and crematorium development are located in more appropriate areas of the LGA. This amendment would have limited impacts on the vast majority of land in the LGA, leaving two other zones RU2 and RU4 (that are widely applied across the LGA) where cemeteries are permissible;
- provide an additional layer of protection for the landscape and heritage qualities of the subject area and safeguard these for future generations;
- protect tourism as an economic driver for the area; and
- reinforce Council's support for planning for cemeteries and crematoriums to be considered at a Greater Sydney level, to ensure a broader strategic approach to cemetery provision.

Department Comment:

The existing planning proposal has not been given Gateway and is on hold until further consideration is given to the provision of cemeteries and crematoriums for Greater Sydney based on the GSC's review. This review follows a number of recent reports on the need for burial spaces and an assessment of the associated statutory framework to provide these spaces. Cemeteries and crematoriums are considered to be critical community infrastructure and there is a growing concern about the lack of available land to accommodate this necessary but sensitive land use.

It is therefore recommended that this proposed amendment is deleted from the planning proposal and considered separately as not to delay the progression of the Phase 1 planning proposal. This approach has been discussed with Council officers.

8. Rezoning of Triangle Park, Penrith

Triangle Park is located at the end of High Street, between Riley and Henry Streets in Penrith. The site has been developed as a park by Penrith City Council and opened in 2018.

The planning proposal seeks that to rezone the site from part B3 Commercial Core and part B4 Mixed Use to RE1 Public Recreation to align the zoning with the current use of the land as a local parks (Figure 7 below). It is also proposed to remove the existing height and floor space ratio control from the site, as this is the standard practice for RE1 zoned land under Penrith LEP 2010.

Department Comment:

The proposed amendments to reflect the use of the site as a park is supported.

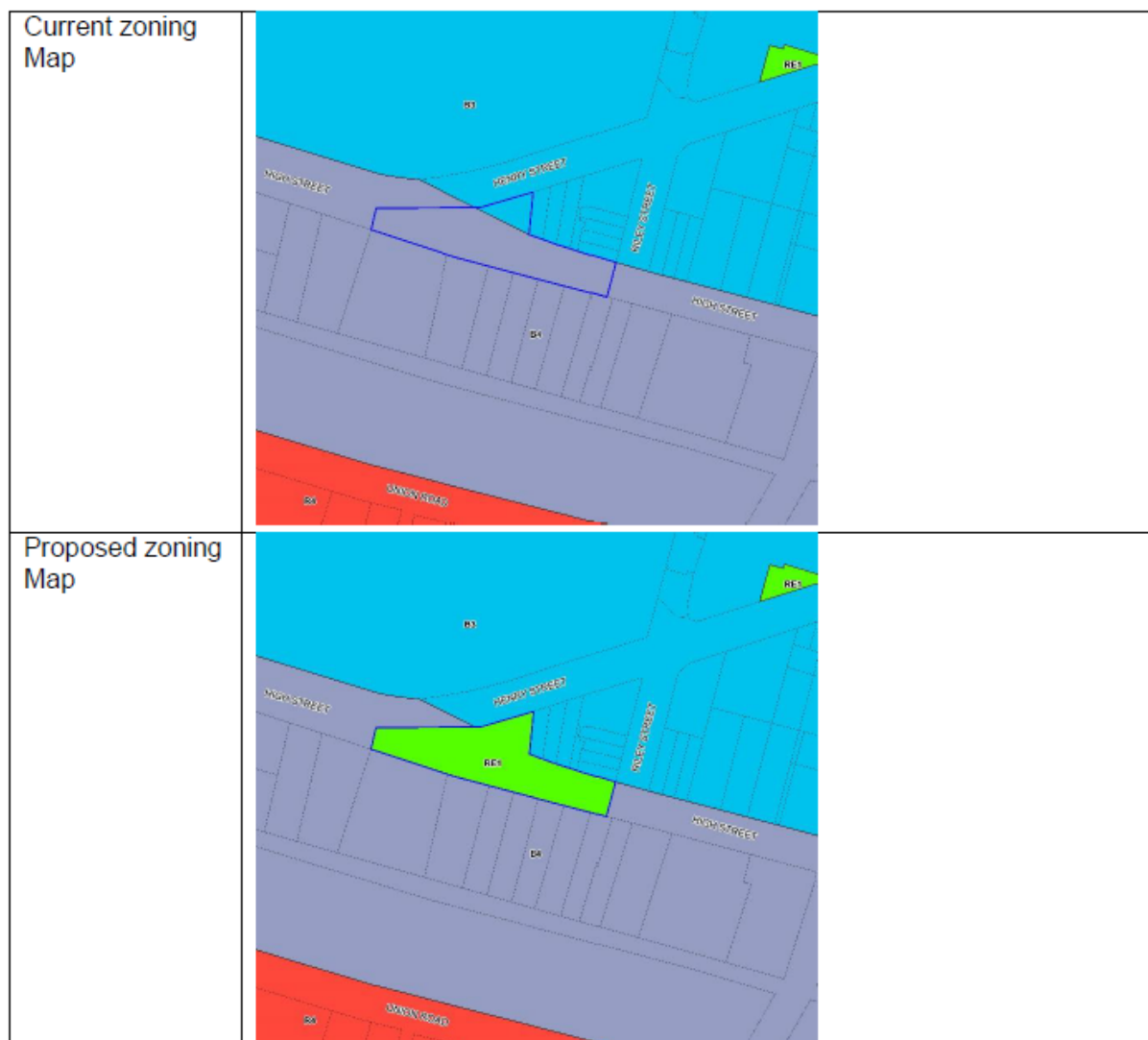


Figure 7: Proposed zoning change for the local park.

2.3 Mapping

The planning proposal includes several mapping amendments to the Penrith LEP 2010. The map tiles proposed to be amended are presented in the table below.

Table 2: Maps subject to changes

Map	Tile Number
Land Zoning (LZN)	005, 006, 007, 012, 013, 014, 018
Lot Size (LSZ)	005, 006, 007, 012, 013, 014, 018
Height of Buildings (HOB)	005, 006, 007, 012, 013, 018
Heritage (HER)	005, 006, 013
Additional Permitted Uses (APU)	005, 006, 012, 013
Urban Release Area (URA)	007
Floor space ratio (FSR)	006
Clause Application Map (CAP)	002

Details of these mapping amendments are identified in the planning proposal which includes both current and proposed controls. The maps are considered to be adequate for public exhibition.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal forms Phase 1 of the LEP Review as part of the Local Strategic Planning Statement process. Section 3.8(4) of the Act requires councils to review the LEP to give effect to the planning priorities and actions in the relevant district plan.

The planning proposal implements some of the strategic outcomes of the draft Penrith Local Strategic Planning Statement. Further amendments to the Penrith LEP 2010 are anticipated in the future with the Penrith LSPS is adopted. Penrith Council has proposed the following phases are proposed:

- LEP Review Phase 1: Immediate outcomes from Local Housing Strategy, Rural - Lands and Villages Strategy, minor housekeeping amendments and consolidation of Planning Proposals where appropriate.
- LEP Review Phase 2: Outcomes of the remaining strategies.
- LEP Review Phase 3: LEP-related outcomes from short-medium term actions within the LSPS.

4. STRATEGIC ASSESSMENT

4.1 District

In March 2018, the GSC published the Western City District Plan. It is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. The Western City District Plan informs the assessment of planning proposals and provides the link between regional and local planning.

The planning proposal is consistent with the Western City District Plan as it aligns Penrith LEP 2010 with the planning priorities set in the District Plan.

The following Planning Priorities in the Western City District Plan have direct implications for the planning proposal.

W5: Providing housing supply, choice and affordability, with access to jobs, services and public transport

Amendment 1 seeks to increase the lot size controls for multi-dwelling housing in medium and high-density zones which would reduce the development potential on certain sites within the Penrith LGA.

However, the proposed minimum lot sizes are a result of the Local Housing Strategy drafted by Council in accordance with the actions of the draft LSPS and the District Plan. It does not aim to remove the permissibility of multi-dwelling housing developments in the current zones but instead aims to create better-quality developments and well-designed neighbourhoods for the community.

Furthermore, Council will be required to meet the relevant housing targets for the Penrith LGA as identified under the Western City District Plan, LSPS and the Local Housing Strategy. As noted previously, it is recommended that Council provide further analysis of the impacts of this proposed amendment on housing potential.

W17: Better Managing rural areas

The planning proposal includes several amendments which affects rural areas including the Metropolitan Rural Area (MRA) as addressed below:

- Amendment 2 Permit 'eco-tourist facilities' in the E4 Environmental Living zone which is identified as MRA - It is considered that permitting 'eco-tourist facilities' will enhance the E4 zone and not threaten the objectives and value of the MRA.
- Amendment 3 Additional permitted uses for the Castlereagh's 'centre' – This amendment was identified by Penrith Councils Rural Lands and Village Strategies to reinforce the network of rural centres. The proposed uses are considered to be consistent with the character of the MRA and would support the existing rural community. Clause 5.4 of the LEP will continue to limit the scale of kiosks and neighbourhood shops and ensure these developments would be appropriate with the character of the MRA.
- Amendment 4 Permit dwelling houses on 1 hectare lots on certain sites in Llandilo – It is considered that the potential development of a total of 11 dwellings on 1 hectare lots would not diminish the rural character of the area or threaten its role as part of the MRA.

4.2 Local

The Phase 1 planning proposal directly seeks to implement the Penrith Local Strategic Planning Statement.

Draft Penrith LSPS – Planning for a Brighter Future

Penrith City Council's draft LSPS – Planning for a Brighter Future was endorsed by Council at its meeting on 23 September 2019. The draft LSPS was exhibited between 30 September to 11 November 2019. It is noted that the GSC's assurance letter endorsing the draft LSPS has not yet been issued.

Table 3: Summary of draft LSPS Planning Priorities related to proposed amendments

Item	Proposed LEP 2010 Amendment	Related draft LSPS Planning Priority
1	Increase lot size control for multi-dwelling housing in medium and high density zones	<ul style="list-style-type: none"> • PP3 Provide new homes to meet the diverse needs of our growing community • PP5: Facilitate sustainable housing • PP7: Enrich our places
2	Permit eco-tourist facilities in environmental living zones	<ul style="list-style-type: none"> • PP14: Grow our tourism, arts and cultural industries • PP17: Define and protect the values and opportunities of the Metropolitan Rural Area
3	Establish the Castlereagh Village	<ul style="list-style-type: none"> • PP7: Enrich our places • PP17: Define and protect the values and opportunities of the Metropolitan Rural Area
4	Llandilo dwelling house Development	<ul style="list-style-type: none"> • PP17: Define and protect the values and opportunities of the Metropolitan Rural Area
5	Requirement for non-residential uses in St Marys Town Centre mixed use zones	<ul style="list-style-type: none"> • PP12: Enhance and grow Penrith's economic triangle
6	Housekeeping matters	<ul style="list-style-type: none"> • The housekeeping update to LEP 2010 will broadly support the Planning Priorities of the draft LSPS.
7	Prohibition of cemeteries and crematoriums in the Mulgoa Valley and Wallacia	<ul style="list-style-type: none"> • PP6: Ensure our social infrastructure meets the changing needs of our communities • PP17: Define and protect the values and opportunities of the Metropolitan Rural Area
8	Rezoning of Triangle Park, Penrith	<ul style="list-style-type: none"> • PP6: Ensure our social infrastructure meets the changing needs of our communities • PP7: Enrich our places

Associated Studies

The preparation of the Planning Proposal was informed by a number of studies and strategies that respond to the forecast growth for the Western City District and Penrith LGA.

- Local Housing Strategy;
- Rural Lands and Villages Study;
- Rural Lands and Villages Strategy;
- Scenic and Cultural Landscapes Study;
- St Marys Economic Activity Study; and

- St Marys Economic Development Strategy.

These studies and strategies provide the evidence base to inform recommendations about how Penrith City Council can respond to the new strategic direction.

Future Studies

Penrith City Council also intends to prepare the following studies and strategies relating to the following:

- Penrith City Centre;
- Industrial Lands;
- The Northern Road Corridor Land Use Study;
- Employment;
- Centres; and
- Green Grid.

The outcomes of these studies are anticipated to inform future amendments to the Penrith LEP 2010.

Local Planning Panel

The Penrith Local Planning Panel (the Panel) considered the planning proposal on 11 September 2019. The Panel supported the planning proposal subject the following points:

1. In relation to item 1, the Panel raises concerns that 1200m² may be insufficient for the development subject to the ADG and SEPP 65 where 1500m² is considered more appropriate to ensure compliance with ADG. 1200m² should only be considered for Town House development.
2. In relation to item 7 the Panel agrees with the Department that a planning proposal that seeks to prohibit cemeteries should not proceed until GSC has completed its review into the need for land for cemeteries and crematoria in the Greater Sydney Region and therefore recommends the removal of this item from the planning proposal.

In response, Council officers note that the Panel's advice in relation to 1200m² being only considered for Town House development is considered consistent with the changes sought for multi-dwelling housing in R3 and R4 zones. As the changes do not apply to apartment developments, the Panel's comments in relation to the 1500m² requirement are not considered relevant.

Although Council did not implement the second recommendation from the Panel, the Department recommends that the Amendment 7 is removed from the planning proposal as previously advised.

4.3 Section 9.1 Ministerial Directions

The following 9.1 Ministerial Directions are considered relevant to the planning proposal.

Direction 1.1 Business and Industrial Zones

The objectives of this direction are to encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified centres. This direction applies as Amendment 8 seeks to rezone land from B3 Commercial Core and B4 Mixed Use to RE1 Public Recreation.

The proposal is inconsistent with the requirement of this direction to retain of areas and locations of existing business and industrial zones as it seeks to rezone the B3 and B4 zoned land.

However, the inconsistency is considered to be justified of minor significance as the land was developed into a park in 2018 to provide open space opportunities in Penrith City Centre. There is sufficient land adjoining the site which can cater for business uses in the centre.

Direction 2.1 Environmental Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas. This direction applies as Amendment 2 of the planning proposal seeks to permit eco-tourist facilities in the E4 Environment Living zone.

The planning proposal is consistent with this direction as it does not reduce the environmental protection standards that apply to the land and will help enhance the environmental value of land within this zone.

Direction 2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The planning proposal is technically inconsistent with this direction as it proposes to remove the heritage classification of several items as part of the housekeeping amendments.

As all items which are proposed to have their heritage status removed no longer exist, it is considered that the removal of their heritage status reflects the current situation on the site and the inconsistency with this direction is justified as of minor significance.

Direction 3.1 Residential Zones

The objectives of this direction are to encourage a variety and choice of housing, make efficient use of existing infrastructure and services, and minimise the impact of residential development on the environment and resource lands. This direction applies as the planning proposal affects R3, R4 and RU5 zoned land.

The planning proposal is inconsistent with this direction as it may reduce dwelling potential by introducing a larger minimum lot size for multi-dwelling housing developments compared to the new code. This may impact on the economic viability of these development types when considering other housing types available within the subject zones. Therefore, a Gateway condition is recommended to require further information to address and further justify this inconsistency.

It is considered suitable to allow the planning proposal to progress with the inconsistency with this direction remaining unresolved. This will allow further informed consideration and a decision to be made over the inconsistency prior to finalisation of the plan-making process.

Direction 4.3 Flood Prone Land

This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. The provisions of the planning proposal that affect flood prone land are of minor significance and do not propose to increase the planning provisions related to flood prone land. It is therefore considered that the planning proposal is consistent with this direction.

Direction 4.4 Planning for Bushfire Protection

This direction applies to all planning proposals that will affect or is in proximity to land mapped as bushfire prone land. The following amendments will affect land which has been identified as bushfire prone.

- Amendment 1 - Increase the lot size control for multi-dwelling housing in medium RU5 Village zone and high density zones;
- Amendment 2 - Permit eco-tourist facilities in environmental living zones;
- Amendment 3 - Strengthen the role of Castlereagh's centre;
- Amendment 4 - Dwelling houses on certain land in Llandilo; and
- Recommended amendment to RU5 zoned land.

The planning proposal is generally consistent with this direction as it will not significantly increase density in bushfire prone land or alter the existing bushfire controls under the LEP or DCP.

However, in accordance with the requirements of this direction, Council is required to consult the NSW Rural Fire Service prior to public exhibition to ensure it does not object to the progression of the planning proposal.

Direction 6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls. The planning proposal includes a number of amendments which proposes site specific provisions to enable a certain development outcome therefore is inconsistent with this direction.

The inconsistency with this direction is considered to be justified as the intended development outcomes are generally supported by the Department as described in section 2.2 of this report. Any inconsistency with this direction is considered to be justified as of minor significance.

Direction 7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan

The planning proposal does not address the consistency of the planning proposal with Direction 7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan. This direction applies to the Penrith LGA therefore applies to this planning proposal.

The proposal affects land within the Aerotropolis including the inclusion of eco-tourist facilities in the E4 zone, minimum lot sizes for RU5 zoned land, and Sydney Water owned land in the proposed housekeeping amendment.

The Department notes that these amendments will not impact the strategic intent of the Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan therefore is consistent with this direction. However, it is recommended that the planning proposal is updated prior to public exhibition to demonstrate consistency with this direction.

4.4 State environmental planning policies (SEPPs)

State Environmental Planning Policy (Affordable Rental Housing) 2009

The intent of the Affordable Housing SEPP is to increase the supply and diversity of affordable rental housing.

Under the SEPP, a multi-dwelling housing development that is used for affordable housing and complies with the requirements of the SEPP may be subject to a bonus floor space ratio.

The proposed minimum parent lot size requirements may have implications for this type of development from being carried out under the SEPP. The provision of further information, as required by a Gateway determination condition, will enable a better understanding of the impact of the proposal on housing supply and diversity.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The new Low Rise Medium Density Housing Code aims to provide greater housing choice and facilitate faster housing approvals for medium-density housing. It allows one-storey and two-storey dual occupancies, manor houses and multi-dwelling housing (terraces) to be developed in accordance with a complying development certificate provided this development fully accords with the requirements of the code.

In relation to the planning proposal, the code will additionally permit manor houses and multi-dwelling housing (terraces) in zones where multi-dwelling housing is currently permitted under a council's LEP.

Consequently, the planning proposal to increase the minimum lot sizes for dual occupancies and multi-dwelling housing developments for R3 Medium Density Residential zoned land will restrict these types of developments from being carried out pursuant to the code.

A Gateway condition is recommended requiring Council to provide further information. Once provided, further assessment will be undertaken at the plan-making stage to understand the impacts of the planning proposal on the code to determine the acceptability of the proposal.

The planning proposal is generally consistent with all other relevant SEPPs and SREPs.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal seeks to implement the recommendations of several supporting studies which has considered potential social impacts.

The most significant social impact is the proposed prohibition of cemeteries and crematoriums in the Mulgoa Valley and Wallacia. This prohibition has the potential to reduce the amount of available land for this necessary community infrastructure. It is therefore recommended that this amendment be deleted from this planning proposal.

None of the other amendments in the planning proposal will result in adverse social impacts.

5.2 Environmental

The planning proposal does not impose any adverse impact on critical habitat or threatened species, populations or ecological communities or their habitats.

It is unlikely that the proposal will have significant impacts to the natural environment as no lands are to be rezoned as part this planning proposal and changes are proposed within Metropolitan Rural Areas or to environmental sensitive zones are considered to be minor and will retain the objectives of these zones.

5.3 Economic

The planning proposal seeks several amendments to Penrith LEP 2010 which seeks to facilitate the economic growth of the area.

The most significant amendment is the proposed requirement for non-residential uses in mixed use zoned sites in the St Marys Town Centre. This amendment was identified as part of the St Marys Economic Development Strategy to deliver new employment generating development.

This is consistent with the current vision for St Marys as a Strategic Centre with the area anticipated to undergo significant growth with the future delivery of Sydney Metro Greater West. It is considered that the proposed control will help ensure that new mixed-use buildings are required to deliver employment uses and retain economic activity within this centre. Future revisions to planning controls will be required to implement the findings of the GPEC investigation area.

The proposed amendment to strengthen the role of Castlereagh's centre will also promote economic activity in this area. However, the development that may be facilitated by these additional controls will not likely impact on any other centres within the Penrith LGA.

The amendment to allow eco-tourist facilities in the E4 Environmental Living zone will help grow rural tourism in Penrith. This will support Penrith's role in growing their tourist economy to capitalise in the future delivery of the Western Sydney Airport (Nancy-Bird Walton).

5.4 Infrastructure

The proposal is a review of the existing Penrith LEP 2010. No new infrastructure funding is proposed and considered necessary as part of the Phase 1 planning proposal.

The planning proposal will not directly result in major developments that would place significant demands on infrastructure in terms of utilities, transport or other services. Any future development applications which are enabled by the planning proposal will

be required to either demonstrate that there are adequate services or will address arrangements for the provision of infrastructure as part of the DA process.

6. CONSULTATION

6.1 Community

A consultation period of 28 days is recommended.

6.2 Agencies

Consultation with the following agencies are recommended:

- Sydney Water;
- NSW Rural Fire Service; and
- Greater Sydney Commission.

7. TIME FRAME

Council is required to submit the planning proposal to the Department for finalisation prior to 30 June 2020.

8. LOCAL PLAN-MAKING AUTHORITY

Council has not requested for authorisation for local plan-making authority. As the planning proposal is for a comprehensive review of Penrith LEP 2010, authorisation for Council to be the local plan-making authority is not recommended.

9. CONCLUSION

The planning proposal is supported to proceed to Gateway Determination subject to a number of conditions as the proposed amendments have strategic and site-specific merit, are generally consistent with the Western City District Plan and form the first stage of amendments to align the Penrith LEP 2010 with the draft Penrith LSPS.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.1 Business and Industrial Zones, 2.3 Heritage Conservation, and 6.3 Site Specific Provisions are minor or justified; and
2. note that the consistency with section 9.1 Direction 3.1 Residential Zones and 4.4 Planning for Bushfire Protection is unresolved and will require further justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal is to be amended as follows:
 - (a) update Amendment 1 of the planning proposal to include the following:
 - i. the number of potential lots that would be achieved under the minimum standards within the Low Rise Medium Density Housing Code considering the Codes SEPP exclusions (such as sites below the minimum lot size and land subject to heritage provisions);

- ii. the number of potential lots under the proposed development standards;
 - iii. the number of dual occupancy and multi-dwelling housing developments approved in the R3 Medium Density Residential and R4 High Density Residential zones in the LGA in the past five years; and
 Note: These numbers are to be shown under each relevant zone and by housing type.
 - iv. include the intention to introduce a new savings and transitional clause to ensure that proposed amendments do not affect any development applications or appeal processes;
- (b) include the consideration of a minimum lot size for dual occupancy development in the RU5 Village zone;
 - (c) update Amendment 5 of the planning proposal to identify the preferred mechanism of the two proposed to introduce a new non-residential floor space ratio for development in the St Marys Town Centre;
 - (d) identify Amendment 6A as a separate amendment within the planning proposal and not part of the 'housekeeping' amendment section;
 - (e) remove Amendment 7 from the planning proposal and any references seeking to prohibit cemeteries and crematoriums in the Mulgoa Valley and parts of Wallacia;
 - (f) include a note that the draft proposed clauses will be subject to legal drafting and may alter under this process;
 - (g) consult the NSW Rural Fire Service prior to public exhibition in accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection and address any comments from this agency;
 - (h) update the consistency of the planning proposal with the relevant section 9.1 Directions as outlined in this report and address the consistency with Direction 7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan; and
 - (i) update the consistency of the planning proposal with the State Environmental Planning Policy (Affordable Rental Housing) 2009 and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 as outlined in this report.
- 2. The revised planning proposal is to be updated in accordance with condition 1 and forwarded to the Department for review and approval prior to public exhibition.
 - 3. The planning proposal should be made available for public exhibition for a minimum of 28 days.
 - 4. Council is to inform all landowners affected by the proposed minimum lot size amendment in writing about the exhibition of the proposal, outlining the effect of the proposed changes.

5. Consultation is required with the following public authorities:
 - Sydney Water;
 - NSW Rural Fire Service; and
 - Greater Sydney Commission.
6. Council is required to submit the planning proposal to the Department for finalisation prior by 30 June 2020.
7. Given the nature of the planning proposal, Council is not authorised to exercise delegation to make this plan.



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Updated with comments 4 February 2020
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