

2 Rezoning Application RZ17/0001: 39-49 Henry Street, Penrith**Compiled by:** Matthew Rose, Senior Planner**Authorised by:** Natasha Baker, City Planning Manager

Outcome	<i>We plan for our future growth</i>
Strategy	<i>Facilitate quality development in the City that considers the current and future needs of our community</i>
Service Activity	<i>Plan for and facilitate development in the City</i>

Procedural note: Section 375A of the Local Government Act 1993 requires that a division be called in relation to this matter.

Applicant: Think Planners**Owner:** 3945 Penrith Pty Ltd and 4749 Penrith Pty Ltd**Executive Summary**

Council has received a rezoning application for 39-49 Henry Street, Penrith. The application seeks to maintain the current mixed-use zone, but asks for an increase in the maximum permissible floor space. The application also seeks changes to the current controls for achieving design excellence and proposes to expand the definition of public benefit to include hotels and motels. These changes are sought to enable the development of the site with a mixed-use development including apartments, a hotel, and ground floor commercial and retail premises.

This report presents a review of the rezoning application including an examination of its strategic and site-specific merits. The application is considered to have sufficient merit for Council to consider the sponsor of a planning proposal that increases the permissible floor space on the site. The proposed changes to the current controls for achieving design excellence and providing a public benefit are not supported.

The application responds to the changing strategic policy platform that has elevated Penrith City Centre to one of the Cities in the Western City Metropolitan Cluster. The proposed development will help provide a range of housing in a location that good access to public transport, jobs, shops, services. The new residential population and the activity generated by the proposed hotel and associated commercial uses present an opportunity to stimulate the eastern part of the City Centre, particularly its night-time economy. The proposed hotel will also generate new jobs, provide short-term accommodation in the City Centre, and contribute to Penrith's emerging tourism industry sector.

The sponsor and submission of a planning proposal to the NSW's Department of Planning and Environment's Gateway process will allow Council to undertake community and agency consultation on the Planning Proposal, consider submissions received in response to such an exhibition, and determine whether or not to proceed with the planning proposal and amend the current planning controls.

Background

39-49 Henry Street, Penrith is in Penrith City Centre and is approximately 800-900 metres from Penrith Train Station. The site is located on the edge of the City Centre's commercial

core, immediately east of the Lemongrove Bridge between Henry Street and Jane Street (refer Attachment 1). The site is largely vacant, but is also occupied by a derelict, single-storey commercial building. The site consists of two lots (Lot 1 DP 710350 and Lot 10 DP 788189) that together have an area of 6,356m². The site benefits from a frontage on Henry Street frontage of about 120 metres.

The site is currently zoned B4 Mixed Use (refer Attachment 2) in *Penrith Local Environmental Plan 2010*. The supporting controls include a split building height increasing from 24 metres (7-8 storeys) to 32 metres (9-10 storeys) and a floor space ratio of 3.5:1 (providing a maximum permissible floor space of 22,246m²).

The site is also part of a larger Key Site and benefits from additional controls that provide a bonus floor space ratio in return for the delivery of certain community infrastructure, such as recreation facilities, car parks or roads. The bonus floor space ratio is 1.5:1 increasing the potential maximum floor space ratio to 5:1 or a maximum permissible floor space of 31,780m². This control also removes the maximum building height. The current controls for Key sites in the City centre also require a design excellence competition for any future development application.

The Rezoning Application

The application was received in July 2017; it seeks several amendments and additions to the current planning controls to facilitate a mixed-use development containing 445 apartments, a 100-room hotel, and ground floor commercial and retail premises. The proponents have received an expression of interest from a reputable hotel provider/operator to partner in the delivery of short term accommodation.

An assessment of the application was undertaken and further information was requested regarding flooding, feasibility, the proposed hotel component, urban design and traffic and parking. This additional information was received throughout 2017-18 and officers worked through related issues with the proponents. A revised draft planning proposal was submitted on 23 April 2018. Councillors were briefed on the Planning Proposal in August and October 2017.

To achieve the proposed outcome, the application requests:

1. An increase in the baseline floor space ratio from 3.5:1 to a split floor space ratio of 6:1 increasing to 6.5:1.
2. An increase in the bonus floor space ratio for part of the site from 1.5 to 2.5:1 increasing the potential maximum floor space ratio to 8.5:1.
3. A new control that facilitates a collaborative process to achieve design excellence to replace the current design competition requirements.
4. An expansion of the currently defined community infrastructure uses to include "hotel or motel accommodation".

The proposed changes to the floor space controls are detailed in the following table. In summary, the application seeks an additional 15,685m² of floor space. The proposed changes would also facilitate a development of up to 34 storeys.

Site	Current FSR	Current Incentive	Current Total	Proposed FSR	Proposed Incentive	Proposed Total
Lot 10 DP 788189	3.5:1 (10,763m ²)	1.5:1 (4,613m ²)	5:1 (15,375m ²)	6:1 (18,450m ²)	2.5:1 (7,688m ²)	8.5:1 (26,138m ²)

Lot 1 DP 710350	3.5:1 (11,484m ²)	1.5:1 (4,922m ²)	5:1 (16,405m ²)	6.5:1 (21,327m ²)	-	6.5:1 (21,327m ²)
Totals	31,780m²			47,465m²		

The application seeks an alternative design excellence collaborative process, instead of the current competitive process, to allow for consideration of a staged development application. The proponent indicates that:

- a staged development application would be required for commercial reasons, with the first stage identifying building envelopes and subsequent stage(s) settling a detailed design, and
- the current design completion requirements may not accommodate a staged development application.

The application also proposes the expansion of the current community infrastructure definition to include *hotel and motel accommodation*. It makes the case that this type of land use is “a significant piece of community infrastructure that delivers a public benefit [...]” justifying that:

- it is an employment generating opportunity,
- will contribute to Penrith’s emerging tourism industry sector, and
- potential provide a catalytic effect for further investment and development in the City Centre.

The application is supported with a draft Planning Proposal and the following technical studies:

1. Flood Impact Assessment - March 2018.
2. Urban Design Study (including overshadowing analysis) - February 2018.
3. Traffic and Parking Assessment Report - January 2018.
4. Wind Assessment – November 2017.
5. Acoustic Assessment – November 2017.

Review of Rezoning Application

A Metropolis of Three Cities is the region plan for Greater Sydney. It sets a vision of three cities – the Western Parkland City, Central River City and Eastern Harbour City - where most residents live within 30 minutes of their jobs and necessary services and facilities. The Western City District is focused on the established centres of Greater Penrith, Liverpool and Campbelltown/Macarthur. The growth and development of this city will draw on the significant investment in the Western Sydney Airport, associated public transport, and the Badgerys Creek Aerotropolis.

Council has commenced a comprehensive review of its planning for the City Centre to respond to this new strategic direction. This review focusses on how the City Centre can be positioned to capitalise on the future growth and transform it into a centre of business, tourism and economic intensity. This work will identify the required amount of commercial and retail floorspace as well as the public spaces required to attract new businesses and residents to the City Centre.

The proposed increase in development density, through an increase in the maximum permissible floor space, is considered to respond to the changing strategic policy platform

that has elevated Penrith City Centre to one of the Cities in the Western City Metropolitan Cluster. The proposed increase in floor space aligns the site with similar centres in the Western City. It also takes advantage of the site's distance (800m) from the train station.

The proposed development also responds to current strategic plans, including the City Centre Vision and Penrith Progression. It will help provide a range of housing in a location with good access to public transport, jobs, shops, services. The new residential population and the activity generated by the proposed hotel and associated commercial uses present an opportunity to stimulate the eastern part of the City Centre, an area dominated by single storey commercial and bulky goods uses. The proposed hotel will also generate new jobs and contribute to Penrith's emerging tourism industry sector. New development within the eastern gateway into the City Centre will also enhance the City's appearance, serving as a catalyst for further investment and development.

Proposed Increase in Floor Space

The application is seeking to amend the current floor space controls ahead of the City Centre review. The current controls are also less than 12 months old. In June 2017, the maximum permissible floor space for certain Key Sites in the City Centre (including the site) was increased through an incentivised bonus in return for community infrastructure. The aim of these changes is to facilitate higher density development that reflects the desired character of development of the Key Sites while undertaking the broader City Centre review.

The recent changes to the planning controls were based on a detailed analysis of development feasibility (by the AEC Group). This work identified the feasibility of current controls and a reasonable amount of public benefit that could be captured from proposed residential developments seeking to use the incentive (\$150 per square metre of additional floor space). The policy supporting the controls does not impose a public benefit payment on new commercial development (which would include new hotels). The feasibility work was revisited in the assessment of this application and confirms that an increase in the current controls is not required to make the proposed development feasible.

However, considering the potential benefits of the proposed hotel and the fact that the viability of this land use is largely untested in the City Centre, it is recommended that the proposed increase in floor space be delivered through an amendment of the bonus floor space control (with the baseline floor space ratio maintained at 3.5:1). This delivers the requested increase in floor space, providing the incentive for the proposed development. This promotes three different scenarios:

1. If the uplift is used to deliver the hotel, it will not attract a public benefit contribution,
2. if the uplift is used for residential development, it will attract the public benefit contribution.
3. If a public benefit contribution is not made, the existing height and floor space ratio controls apply.

The exact amount of floor space that will be exempt will be identified in any future development application.

Public Benefit

The proposal seeks to use the proposed hotel as an off-set for the community infrastructure required under the public benefit controls and policy. Although the proposed hotel could bring many benefits to the City Centre, it is a commercial use and is not considered to provide any direct benefit to the community. There is also no guarantee that a hotel will be delivered on the site as a result of the proposed change in planning controls. As such, the proposed expansion of community infrastructure to include hotels would not align with the

intent of the incentive clause, which is to capture a share of the value of any uplift in residential density for the benefit of the community in the form of parks and other recreation facilities, car parks and roads.

This element of the proposal should not be supported. If the Planning Proposal proceeds without this change, any future development application will be assessed against the current clause and associated policy. This means that it will need to provide an appropriate public benefit (works in kind or cash contribution) if it seeks to develop the site with the bonus floor space.

Design Excellence

The currently required design excellence competition process (for Key sites in the City Centre) was set by the NSW Government Architects Office. It aims to secure design excellence on the Key Sites because they are large landholdings in important locations and any development of them needs to make a positive contribution to the architectural quality, appearance and design of the City Centre.

The current process requires a minimum of three architectural firms to participate in an invited or open competition judged by a jury of representatives from the proponent, Council and the Department of Planning and Environment. The process already provides for an exemption from the design competition, for example, where concept drawings are submitted for a manifestly outstanding building, and the architect has a reputation for delivering buildings of the highest quality. This is normally resolved through development application considerations.

The proposed collaborative approach would give the developer sole discretion to select an architectural firm(s) and is considered to remove the scrutiny and independence provided by the current competition process. As such, this element of the proposal should not be supported.

Other Site-Specific Considerations

The technical documents supporting the application demonstrate that:

1. Overshadowing: The increased heights will affect additional properties when compared with a development under the current controls. However, these impacts are contained within the area zoned B4 Mixed Use associated with the City Centre and do not affect adjacent residential areas. Any development application will have to address this matter in more detail and will need to examine ways to manage potential impacts.
2. Traffic: The traffic generated by the development will have a limited impact on the existing road network, but this could be accommodated in the upgrades being considered in the traffic and transport component of the City Centre review. Further traffic modelling will be required to support any development application. This is likely to be at a time when Council's City-wide study will be available to provide a more accurate reflection of future traffic activity in the City Centre. Council will also be guided by Roads and Maritime Services on this matter as part of the Gateway Process.
3. Car parking: Suitable car parking can be provided on-site.
4. Flooding: Part of the site is affected by an overland flood route and contains below ground, drainage infrastructure (a 1.5 by 1.2 metre box culvert). Although the impact of the proposed development on flooding elsewhere can be appropriately managed

(in a development application) both of these matters may affect the future built footprint that could be achieved on site. Council does not support development over drainage infrastructure due to the limitations on and the risks and costs associated with any future maintenance or upgrade activities. It is highly likely that infrastructure will need to be relocated as part of any future development.

5. Noise and wind: The impacts associated with noise from the nearby train line and wind tunnelling associated with the tall buildings can be appropriately managed through suitable design or mitigation measures (to be considered as part of any future development application).
6. Contamination: The site is already zoned B4 Mixed Use and the proposal does not seek to introduce any more sensitive land uses than currently permitted.

Conclusion

The application responds to the changing role of the City Centre and Western Sydney more generally as new infrastructure is delivered and the anticipated growth occurs. It also responds to Council's aim of encouraging new-mixed use and high-density residential development in the eastern part of the City Centre.

The application precedes Council's comprehensive body of work planning the future of the City Centre and seeks an amendment to Council's recent interim arrangements through the incentives clause to encourage some early development within the City Centre. The proposed increases are also not required to achieve development feasibility. However, the potential benefits of the proposed development, specifically the hotel, allow the support of a measured approach to increasing the permissible floor space through the public benefit incentives clause. This would provide the incentive of increased floor space to encourage the development of the site, including with a hotel, and ensure that any development would be considered against the checks and balances of the adopted public benefit policy.

The concerns outlined with the proposed amendment of the current design excellence requirements and the request for the hotel to be considered as a public benefit mean that these elements of the proposal should not be supported. They can be further managed in the consideration of any future development application.

The technical studies supporting the application suggest that any potential impacts can be adequately managed through the development application process.

It is recommended that the submitted planning proposal (Attachment 3) be amended so that it:

1. Maintains the current floor space ratio for the site (both lots) at 3.5:1.
2. Amends the maximum floor space ratio set in *Clause 8.7 Community infrastructure on certain key sites*, of LEP 2010 (i.e. bonus floor space) for:
 - a) Lot 10 DP 788189 from 5:1 to 8.5:1, and
 - b) Lot 1 DP 710350 from 5:1 to 6.5:1.
3. Does not seek amendments to the existing public benefit and design excellence controls.

A full copy of the planning proposal and supporting studies will be provided as a separate enclosure for the meeting.

The sponsor of the amended Planning Proposal will allow it to be submitted to the Department of Planning & Environment's Gateway Process for making and amending local environmental plans. This will allow Council, subject to any Gateway Determination issued by the Department, to:

1. Undertake community consultation on the planning proposal (public exhibition of 28 days),
2. Consider the community's submission on the planning proposal, and
3. Determine whether or not to amend *Penrith Local Environmental Plan 2010* (LEP 2010) to deliver the requested (or similar) outcome.

To expedite any amendment of the planning controls, it is also recommended that Council request the Minister for Planning to delegate his plan making authority to Council.

RECOMMENDATION

That:

1. The information contained in the report on Rezoning Application RZ17/0001: 39-49 Henry Street, Penrith be received.
2. The planning proposal (provided as Attachment 3) be amended to:
 - a. Maintain the current floor space ratio for the site at 3.5:1.
 - b. Set a maximum floor space ratio in clause 8.7 *Community infrastructure on certain key sites*, of *Penrith Local Environmental Plan 2010* for Lot 10 DP 788189 at 8.5:1.
 - c. Set a maximum floor space ratio in clause 8.7 *Community infrastructure on certain key sites*, of *Penrith Local Environmental Plan 2010* for Lot 1 DP 710350 at 6.5:1.
 - d. Remove the proposed amendments concerning the types of community infrastructure and the design excellence competition.
3. The General Manager be granted delegation to update and finalise the Planning Proposal before submitting it to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.
4. In accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, Council forward the amended Planning Proposal to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.
5. The Minister for Planning be requested to delegate his authority for Council to finalise and make the proposed amendments to *Penrith Local Environmental Plan 2010*.
6. Consultation with the New South Wales Government's agencies be undertaken in accordance with any Gateway Determination.
7. The Planning Proposal be placed on public exhibition in accordance with any Gateway Determination.

8. A report be presented to Council on the submissions received from NSW Government Agencies during the public exhibition.

ATTACHMENTS/APPENDICES

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|--------------------------------------|----------|----------------------|
| 1. Site Location | 2 Pages | Attachments Included |
| 2. Land Use Zones | 2 Pages | Attachments Included |
| 3. Planning Proposal (No Appendices) | 59 Pages | Attachments Included |

**CONFIRMED MINUTES
OF THE POLICY REVIEW COMMITTEE MEETING OF PENRITH CITY COUNCIL HELD
IN THE PASSADENA ROOM, PENRITH
ON MONDAY 14 MAY 2018 AT 7:00PM**

PRESENT

His Worship the Mayor, Councillor John Thain, Deputy Mayor, Councillor Tricia Hitchen, and Councillors Jim Aitken OAM, Bernard Bratusa, Marcus Cornish, Kevin Crameri OAM, Greg Davies, Mark Davies, Aaron Duke, Ross Fowler OAM, Karen McKeown and Kath Presdee.

APOLOGIES

PRC11 RESOLVED on the MOTION of Councillor Aaron Duke seconded Councillor Karen McKeown that apologies be received for Jim Aitken OAM, Todd Carney, Mark Davies and Ross Fowler OAM.

CONFIRMATION OF MINUTES - Policy Review Committee Meeting - 16 April 2018

PRC12 RESOLVED on the MOTION of Councillor Aaron Duke seconded Councillor Kevin Crameri OAM that the minutes of the Policy Review Committee Meeting of 16 April 2018 be confirmed.

Councillors Jim Aitken OAM, Mark Davies and Ross Fowler OAM arrived at the meeting, the time being 7:03pm.

DECLARATIONS OF INTEREST

Councillor Ross Fowler OAM declared a Non-Pecuniary Conflict of Interest – Significant interest in *Item 2 – Rezoning Application RZ17/0001: 39-49 Henry Street, Penrith and Item 3 - Planning Proposal to amend Penrith Local Environmental Plan 2010 - 57 Henry Street, Penrith* as he is a director of AFFORD which owns property adjoining the properties mentioned in both reports. Councillor Fowler indicated he would leave the room when these items are considered.

DELIVERY PROGRAM REPORTS

OUTCOME 2 - WE PLAN FOR OUR FUTURE GROWTH

1 Rezoning Proposal for 33-43 Phillip Street, St Marys (Station Plaza Shopping Centre)

PRC13 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Kevin Crameri OAM

That:

1. The information contained in the report on Rezoning Proposal for 33-43 Phillip Street, St Marys (Station Plaza Shopping Centre) be received.
2. The Planning Proposal, included as Attachment 3, be sponsored for submission to the New South Wales Government's Department of Planning and Environment's Gateway Process.
3. The General Manager be granted delegation to make minor changes to the Planning Proposal.
4. The Minister be requested to delegate his authority for Council to finalise and make the proposed amendments to *Penrith Local Environmental Plan 2010*.

5. Consultation with the New South Wales Government's agencies be undertaken in accordance with any Gateway Determination.
6. The Planning Proposal be placed on public exhibition in accordance with any Gateway Determination.
7. A report be presented to Council on the submissions received during the public exhibition.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

For

Councillor John Thain
Councillor Kath Presdee
Councillor Bernard Bratusa
Councillor Kevin Crameri OAM
Councillor Karen McKeown
Councillor Greg Davies
Councillor Mark Davies
Councillor Ross Fowler OAM
Councillor Jim Aitken OAM
Councillor Tricia Hitchen
Councillor Marcus Cornish
Councillor Aaron Duke

Against

Councillor Ross Fowler OAM left the meeting, the time being 7:10pm.

2 Rezoning Application RZ17/0001: 39-49 Henry Street, Penrith

PRC14 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Marcus Cornish

That:

1. The information contained in the report on Rezoning Application RZ17/0001: 39-49 Henry Street, Penrith be received.
2. The planning proposal (provided as Attachment 3) be amended to:
 - a. Maintain the current floor space ratio for the site at 3.5:1.
 - b. Set a maximum floor space ratio in clause 8.7 *Community infrastructure on certain key sites*, of *Penrith Local Environmental Plan 2010* for Lot 10 DP 788189 at 8.5:1.
 - c. Set a maximum floor space ratio in clause 8.7 *Community infrastructure on certain key sites*, of *Penrith Local Environmental Plan 2010* for Lot 1 DP 710350 at 6.5:1.
 - d. Remove the proposed amendments concerning the types of community infrastructure and the design excellence competition.
3. The General Manager be granted delegation to update and finalise the Planning Proposal before submitting it to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.

4. In accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, Council forward the amended Planning Proposal to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.
5. The Minister for Planning be requested to delegate his authority for Council to finalise and make the proposed amendments to *Penrith Local Environmental Plan 2010*.
6. Consultation with the New South Wales Government's agencies be undertaken in accordance with any Gateway Determination.
7. The Planning Proposal be placed on public exhibition in accordance with any Gateway Determination.
8. A report be presented to Council on the submissions received from NSW Government Agencies during the public exhibition.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

For

Councillor John Thain
Councillor Kath Presdee
Councillor Bernard Bratusa
Councillor Karen McKeown
Councillor Greg Davies
Councillor Mark Davies
Councillor Jim Aitken OAM
Councillor Tricia Hitchen
Councillor Marcus Cornish
Councillor Aaron Duke

Against

Councillor Kevin Crameri OAM

3 Planning Proposal to amend Penrith Local Environmental Plan 2010 - 57 Henry Street, Penrith

Councillor Jim Aitken OAM left the meeting, the time being 7:39pm.

Councillor Jim Aitken OAM returned to the meeting, the time being 7:40pm.

PRC15 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Aaron Duke

That:

1. The information contained in the report on Planning Proposal to amend Penrith Local Environmental Plan 2010 - 57 Henry Street, Penrith be received.
2. In accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, Council forward a Planning Proposal to amend the Penrith Local Environmental Plan 2010 to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.
3. The General Manager be granted delegation to update and finalise the Planning Proposal, written instrument and associated maps before submitting it to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.

4. The Minister for Planning be requested to delegate his authority for Council to finalise and make the proposed amendment to Penrith Local Environmental Plan 2010.
5. Council undertake community consultation as outlined within any approved Gateway Determination.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

For

Councillor John Thain
Councillor Kath Presdee
Councillor Karen McKeown
Councillor Greg Davies
Councillor Mark Davies
Councillor Tricia Hitchen
Councillor Aaron Duke

Against

Councillor Jim Aitken OAM
Councillor Bernard Bratusa
Councillor Kevin Crameri OAM
Councillor Marcus Cornish

Councillor Ross Fowler OAM returned to the meeting, the time being 7:47pm.

OUTCOME 4 - WE HAVE SAFE, VIBRANT PLACES**4 Oxley Park Place Plan Progress**

Councillors Aaron Duke and Mark Davies left the meeting, the time being 7:51pm.

Councillors Aaron Duke and Mark Davies returned to the meeting, the time being 7:54pm.

PRC16 RESOLVED on the MOTION of Councillor Tricia Hitchen seconded Councillor Greg Davies

That:

1. The information contained in the report on Oxley Park Place Plan Progress be received.
2. Council congratulate Place Manager, Jeni Pollard and Community Engagement Officer, Rubie Ireson on their efforts and hard work.

There being no further business the Chairperson declared the meeting closed the time being 8:01pm.

I certify that these 4 pages are the Confirmed Minutes of the Policy Review Committee Meeting of Penrith City Council held on 14 May 2018.

Chairperson

Date