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Plan Finalisation Report – PP-2020-2132 (PP_2018_PENRI_001_01)

Penrith Local Environmental Plan 2010 (Amendment
No. 24): 39-49 Henry Street, Penrith

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1 Introduction

1.1 Overview

1.1.1 Name Of Draft LEP

Penrith Local Environmental Plan 2010 (Amendment No. 24).

The planning proposal is to amend clause 8.7(4)(c) of the *Penrith Local Environmental Plan 2010* (Penrith LEP 2010) to increase the maximum Floor Space Ratio (FSR) control for 39 Henry Street, Penrith and 47 Henry Street, Penrith from 5:1 to 6:1.

1.1.2 Site Description

Table 1: Site Description

Site Description	<p>The planning proposal (Attachment A) applies to 39 Henry Street, Penrith (Lot 10 DP 788189) and 47 Henry Street, Penrith (Lot 1 DP 710350) (the Site). The site is outlined blue in Figure 1.</p> <p>The site is forms part of 'Key Site 7' in the Penrith Local Government Area (LGA), as established under the Penrith LEP 2010. This is shown in Figure 1, with 'Key Site 7' outlined red.</p>
Type	Site
Council	Penrith City Council (Council)
LGA	Penrith LGA



Figure 1: The Site Outlined Blue (Source: Penrith City Council, 2021)

The site is rectangular in shape, has an area of approximately 6,356sqm and contains two street frontages onto Henry Street to the south and Evan Street to the west. The site is occupied by a derelict single storey commercial building and scattered trees and vegetation. This is shown in **Figure 3** and **Figure 4** below.



Figure 2: Existing Site Condition (Source: Google Maps, 2021)



Figure 3: Existing Site Condition (Source: Google Maps, 2021)

The site is surrounded by the following:

- To the north is a Council operated car park. Further north is a rail corridor and a residential neighbourhood containing multiple detached low-density dwellings and medium-density residential flat buildings.
- To the east are multiple commercial premises. Further east is a small open space containing scattered trees and vegetation.
- To the south is Henry Street and multiple commercial premises. Further south is the Penrith Anglican Church and further commercial premises.
- To the west is Evans Street and a site containing abandoned buildings, scattered trees and vegetation, and a local heritage item (Item 177: Penrith Infants Department (1884 building)).

1.1.3 Purpose Of Plan

The draft LEP aims to amend the floor space ratio controls applying to the site. The intent of the planning proposal is to:

- Increase the development potential of the site, given its 'key site' status and close proximity to public transport, jobs and services in Penrith.
- Facilitate the construction of a mixed-use development at the site, comprising residential dwellings, a hotel, commercial floor space and community infrastructure.

To achieve this outcome, the planning proposal seeks to amend the Penrith LEP 2010 as it applies to the site, as follows:

1. Amend 'Key Site Map – Sheet KYS_013' to:
 - Introduce 'Key Site 12' and include the site within the new Key Site 12.
 - Amend 'Key Site 7' to remove the site.
 - Note: This is because the site is to be contained to the new 'Key Site 12' as part of the planning proposal.
2. Amend Clause 8.7(4)(c) to increase the maximum Floor Space Ratio (FSR) that applies to the site from 5:1 to 6:1.

It is important to note that this planning proposal does not amend the 'base' FSR and maximum height controls of 32m and 24m and 3.5:1 respectively. The additional FSR is to be allocated through clause 8.7 of the Penrith LEP 2010 which acts as an incentive provision. If a community infrastructure offer is not made at the Development Application (DA) stage, clause 8.7(4)(c) of the Penrith LEP 2010 cannot be utilised, and the existing 'base' height of buildings and FSR controls are applicable.

No other changes are proposed as part of the planning proposal, as shown in **Table 2**.

Table 2: Current and Proposed Controls

Control	Current	Proposed
Zone	B4 Mixed Use	B4 Mixed Use (no change)
Maximum height of the building	Part 32m and part 24m	Part 32m and part 24m (no change)
Base FSR (under clause 4.4 and as mapped)	3.5:1 FSR	3.5:1 FSR (no change)
Maximum FSR (under clause 8.7(4))	5:1 FSR (3.5:1 base FSR + 1.5:1 incentive FSR)	6:1 FSR (3.5:1 base FSR + 2.5:1 incentive FSR) (proposed change)
Key Site	Part of 'Key Site 7'	Part of 'Key Site 12' (proposed change)
Minimum lot size	N/A	N/A (no change)

The draft LEP has been amended post-exhibition to include a commencement date of 30 September 2021. This will enable the planning proposal to be finalised, but not commence until the necessary local infrastructure required to support the development has been secured through a Voluntary Planning Agreement (VPA). At the time of this report, the VPA had been drafted and was on public exhibition (from 15 June to 13 July), providing some certainty that the planning proposal can be progressed whilst the final stages of securing contributions take place. The associated VPA is

intended to facilitate the future construction of road and infrastructure upgrades to support increased development capacity created through this planning proposal (**Attachment E**).

The deferred commencement gives Council and the planning proposal proponent sufficient time to finalise and execute the VPA before the draft LEP officially commences. If required, this deferred commencement date can be extended to ensure that commencement is delayed again to provide adequate time for resolution of local infrastructure matters.

1.1.4 State Electorate and Local Member

The site falls within the Penrith state electorate. Stuart Ayres 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 planning proposal.

The planning proposal applicant has made multiple political donations, which are disclosed in a completed Council political donation disclosure form (**Attachment F**).

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

2 Gateway Determination and Alterations

The Gateway determination issued on 27 September 2018 (**Attachment B**) determined that the planning proposal should proceed, subject to conditions (refer also to the Gateway Determination report at **Attachment K**).

The Gateway determination was altered on 7 November 2019, 16 April 2020 and 27 November 2020 for the following reasons:

- 7 November 2019 (**Appendix G**) - To extend the timeframe to complete the LEP by 27 March 2020.
- 16 April 2020 (**Appendix H**) - To extend the timeframe to complete the LEP by 27 September 2020.
- 27 November 2020 (**Appendix I**) - To extend the timeframe to complete the LEP by 27 March 2021.

Council has met all of the Gateway determination conditions (as altered), with the exception of the LEP completion timeframe condition. In accordance with the Gateway determination (as altered), the planning proposal was due to be finalised on 27 March 2021. Council endorsed the planning proposal, subject to the execution of the VPA, on 7 December 2020 (**Attachment C**).

Whilst the gateway determination date was not met, the extended completion time to complete the LEP is considered justifiable in this instance to allow enough time for the landowner and Council to resolve the details of the local intersection design, amongst other things.

3 Public Exhibition and Post-Exhibition Changes

The planning proposal was publicly exhibited by Council from 12 November 2018 to 10 December 2018, as required by section 29 of the *Local Government Act 1993*.

The planning proposal as exhibited by Council sought to increase the maximum FSR that applies to both lots at the site (then part of 'Key Site 7') under clause 8.7(4)(c) of the Penrith LEP 2010, as follows:

- A maximum FSR of 8.5:1 (3.5:1 base FSR + 5:1 incentive FSR) for Lot 10 DP 788189.
- A maximum FSR of 6.5:1 (3.5:1 base FSR + 3:1 incentive FSR) for Lot 1 DP 710350.

During the public exhibition period, a total of 24 community submissions were received, all of which objected to or raised concerns about the planning proposal. **Table 3** below outlines the key issues raised in the community submissions, Council's response and the Department's assessment.

Table 3: Key Submission Issues and Response

Topic	Issues raised	Council Response and Department Assessment
Height, Bulk and Scale / Building Character	<ul style="list-style-type: none"> Concern that Penrith will lose its identity and value from the future development. Concern that the future development at 34 storeys high is excessive and not suited to the context and character of the locality. Concern that the height of the future development would impact on flight paths for helicopters to the nearby Nepean Hospital. Concerns that the height of the future development would cause significant overshadowing on surroundings and illuminate the sky at night. Concern that the future development would not be visually attractive. Concern that the intended uses of the future development are not suited to this part of Penrith. Suggestions that the future development should instead be restricted to 7, 10 or 15 storeys. Development of a lower scale should be promoted as it is more organic to the character of Penrith. Concern that the future development would impact the nearby Lemongrove Heritage Conservation Area by being out of character and not compatible with the development objectives of the conservation area. Concern that residential areas to the north of the site will experience a loss of privacy as a result of the proposed future development. 	<p><u>Council Response:</u></p> <p>The planning proposal has been amended post-exhibition to reduce the proposed maximum FSR applying to the site under clause 8.7(4)(c) to 6:1, instead of 8.5:1 and 6.5:1. A reduced maximum FSR reduces the allowable height, bulk and scale of future development at the site, which will correspondingly reduce associated overshadowing, view loss, privacy and heritage impacts from future development at the site on the surrounding locality.</p> <p>Built form and design related matters will be addressed as part of the future DA assessment process.</p> <p><u>Department Response:</u></p> <p>Council's response to the local planning issues raised is considered adequate. No further action is required to address these submissions.</p>
Achievement of the Planning Proposal's 'Objectives and Intended Outcomes'	<ul style="list-style-type: none"> Concern that there is no guarantee that the future development will achieve any of the 'Objectives and Intended Outcomes' stated in the planning proposal report. Concerns the proposed change to planning controls does not guarantee 	<p><u>Council Response:</u></p> <p>The planning proposal will facilitate the future provision of a mixed-use development comprising residential dwellings, a hotel, commercial floor space and community infrastructure. This will</p>

	<p>affordable dwellings or revitalisation of the city centre.</p> <ul style="list-style-type: none"> Concern that the intended future development may be vacant once built. Concern that the intended future development will increase the population of the area and lower job opportunities as more people will be competing for them. 	<p>revitalise Penrith CBD and provide a range of jobs.</p> <p>The future development at the site will be assessed in detail as part of the future DA assessment process, with all relevant matters considered.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. The requirements of clause 8.7(5) and the objectives of the zone will provide a framework for Council to ensure the appropriate mixed use and employment outcomes at application stage. No further action is required to address these submissions.</p>
Noise Impacts	<ul style="list-style-type: none"> Concern that the future development would generate noise (including traffic and nightlife noise) that would impact on surrounding residential areas. Concern that the development would reflect train noise towards surrounding residential areas. 	<p><u>Council Response:</u></p> <p>Noise impacts can be addressed as part of the future DA assessment process.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. No further action is required to address these submissions.</p>
Traffic and Parking Impacts	<ul style="list-style-type: none"> Concern that the future development would generate significant traffic volumes that would contribute to traffic congestion on the surrounding road network. Concern that the future development would further exacerbate existing traffic congestion at the junction of a number of main access roads to and from Penrith CBD. Concern that infrastructure upgrades are needed to accommodate traffic impacts from the future development. Concern over pedestrian safety along Henry Street in the vicinity of the site, due to increased traffic/parking congestion resulting from the future development. Concern that the future development will create on-street parking demand/on-street parking congestion. Concern that the new adjacent Council carpark will be used by occupants of the future development. The carpark is intended for commuters. 	<p><u>Council Response:</u></p> <p>To resolve community concerns relating to traffic and parking, a VPA between the planning proposal applicant and Council is being finalised for the delivery of works that will, amongst other things, contribute to upgrading the Henry Street and Evan Street intersection to improve traffic flow.</p> <p>In addition to this, a post-exhibition amendment to the planning proposal to reduce the proposed maximum FSR applying to the site under clause 8.7(4)(c) to 6:1, instead of 8.5:1 and 6.5:1, will consequentially reduce the total number of carparking spaces in the future development and the number of people that will be travelling to and from the site on the surrounding road network.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. No further action is required to address these submissions.</p>

The Department considers that each of the key issues raised in the community submissions have been adequately addressed by Council.

3.1.1 Other Issues Raised

Other issues and comments that were raised in the community submissions comprise the following:

- Concern that future residents of the proposed future development will hang washing from apartments, which will create adverse visual impacts.
- Concern that the proposed future development will increase pressure on infrastructure and services.
- Concern that public transport in Penrith is inadequate and underutilised.
- Query on how waste would be collected from the proposed future development.
- Query on whether a portion of the future apartments to be contained to the proposed future development would be affordable housing.
- Query on whether a play/park area is proposed as part of the proposed future development.

The Department considers that Council's decision to reduce the proposed maximum FSR sought for the site under the planning proposal is an adequate response to address the abovementioned issues relating to infrastructure and services. The other abovementioned issues can be adequately addressed as part of the future DA assessment process.

3.2 Advice From Agencies

In accordance with the Gateway determination (as altered), Council was required to consult with the agencies listed in **Table 4**. **Table 4** also outlines the advice raised in the agency submissions, Council's response and the Department's assessment.

Table 4: Advice From Public Authorities

Agency	Advice Raised	Council Response and Department's Assessment
Transport for NSW	<ul style="list-style-type: none"> • The Traffic and Parking Assessment Report undertaken to support the planning proposal should include a comprehensive assessment of the needs of pedestrians and cyclists associated with the future development, including a review of existing facilities in the vicinity of the development. This may result in the need for additional local infrastructure. 	<p><u>Council Response:</u></p> <p>No amendments to the planning proposal are required to address this submission. The advice raised can be addressed at the future DA assessment stage.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. No further action is required to address this submission.</p>
Roads and Maritime Services (now part of Transport for NSW)	<ul style="list-style-type: none"> • A number of issues have been identified in the Traffic and Parking Assessment Report undertaken to support the planning proposal. An addendum report should be provided prior to finalisation of the planning proposal or at a minimum, as part of any future 	<p><u>Council Response:</u></p> <p>To ensure appropriate transport infrastructure is provided to support the future development at the site, a VPA between the planning proposal applicant and Council is being finalised for the delivery of works that will, amongst other things, contribute to upgrading the Henry Street and Evan Street intersection to improve traffic flow.</p>

	<p>DA for the site. The report should address the following:</p> <ul style="list-style-type: none"> ○ Appropriate SIDRA modelling. ○ Identification of future site access points. These should be located as far as practical away from the Henry/Evan Street intersection. ○ Confirmation that the Henry/Evan Street intersection is able to accommodate swept paths for the largest service vehicles to access the site. • Mitigation measures will likely be required to ensure that flooding evacuation routes are not prematurely cut off by local flooding, flooded for longer duration and that hydraulic hazard levels along the route are not increased. • Council should be satisfied that developer contributions are obtained for the provision of transport infrastructure required to support the development. 	<p>Each of the other matters raised by TfNSW can be adequately addressed at the future DA assessment stage.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. No further action is required to address this submission. In addition to the road and infrastructure upgrade works that will be provided as part of the future development at the site to resolve traffic matters, the Department notes the following:</p> <ul style="list-style-type: none"> • The future DA at the site will be required to be supported by a detailed traffic and parking report that will recommend further mitigation measures, if required. • It is assumed that the future development will constitute 'traffic generating development' under schedule 3 of <i>State Environmental Planning Policy (Infrastructure) 2007</i> and will therefore be required to be referred to TfNSW at the DA stage. TfNSW will consequently have further opportunity to comment on the future development at the site. • The planning proposal has been amended post-exhibition to reduce the maximum FSR applying to the site under clause 8.7(4)(c) to 6:1, instead of 8.5:1 and 6.5:1. This will consequentially reduce the total number of carparking spaces in the future development and the number of people that will be travelling to and from the site on the surrounding road network.
Sydney Water	<ul style="list-style-type: none"> • Sydney Water does not object to the proposed development. • Sydney Water is undertaking options planning works for the broader Penrith CBD area to investigate capacity and servicing requirements. • Detailed planning and servicing requirements will be provided once the development is referred to Sydney Water for a Section 73 compliance certificate. 	<p><u>Council Response:</u></p> <p>Sydney Water raised no objection to the planning proposal. The advice raised can be adequately addressed at the future DA assessment stage.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. No further action is required to address this submission.</p>
State Emergency Service (SES)	<ul style="list-style-type: none"> • The duration, depth and velocity during a 1 in 100 year AEP flood does not significantly change in the pre and post development scenarios at the 	<p><u>Council Response:</u></p> <p>The SES raised no issues in respect to flooding and evacuation. The advice raised can be</p>

	<p>points surveyed along Henry Street and evacuation should still be possible along Henry Street in a 1 in 100 year AEP overland flood event.</p> <ul style="list-style-type: none"> • The flood conditions would be in the H5 hazard category during the PMF. In these conditions it would be unsafe for people and vehicles, and buildings would need to be designed to ensure structural stability to withstand the significant flood forces. • In the final development outcome, 1000 or more people would be at risk in floods greater than the 1 in 100 year AEP flood. • Approval of the planning proposal could result in a significant increase to emergency service personnel conducting response and rescue operations in the area. • It would be difficult for a subsequent DA on the site to meet the flooding requirements of the Penrith LEP 2010. 	<p>adequately addressed at the future DA assessment stage.</p> <p><u>Department Response:</u></p> <p>The Department is of the opinion that SES has raised issues in respect to flooding and evacuation that require further discussion.</p> <p>The Department has consulted with the internal Resilience Team, and considers it acceptable to proceed with the planning proposal, for the following reasons:</p> <ul style="list-style-type: none"> • The Department's Resilience Planning team has reviewed the SES submission and relevant flood maps and advised the site is located outside of the extent of the Hawkesbury-Nepean Probable Maximum Flood (PMF) extent, and that the flooding impact is local catchment flooding only (typically flooding of a short duration of say 1.5 hours only). As such, it is considered this development should be allowed to proceed. • The Department agrees with Council that most of the issues raised by SES can be adequately addressed at the DA stage. The future development will be required to be designed in accordance with applicable stormwater/ flooding controls and with appropriate structural integrity. • The planning proposal has been amended post-exhibition to reduce the maximum FSR applying to the site under clause 8.7(4)(c) to 6:1, instead of 8.5:1 and 6.5:1. This will consequentially reduce the total number of people that will be contained to the future development at the site at any one time. • Detailed stormwater and flooding reports will be required to accompany any future DA for the site, which will further assess stormwater/ flooding impacts and recommend additional mitigation measures to address these impacts, if required.
Endeavour Energy	<ul style="list-style-type: none"> • Endeavour Energy has no objection to the planning proposal, subject to various recommendations and comments that can be addressed at the DA stage that are not directly relevant or significant to the planning proposal. 	<p><u>Council Response:</u></p> <p>Endeavour Energy raised no objection to the planning proposal. The advice raised can be adequately addressed at the future DA assessment stage.</p> <p><u>Department Response:</u></p>

Council's response is considered adequate. No further action is required to address this submission.

Council's response to each of the matters raised in the submissions from the public authorities is considered to be adequate, excluding Council's response to the agency submission from SES. However, the Department has considered each of the matters raised by SES and deems that the planning proposal is able to proceed.

3.3 Post-Exhibition Changes

3.3.1 Council Resolved Changes

The planning proposal as exhibited by Council sought to increase the maximum FSR that applies to the site (then part of 'Key Site 7') under clause 8.7(4)(c) of the Penrith LEP 2010, as follows:

- A maximum FSR of 8.5:1 (3.5:1 base FSR + 5:1 incentive FSR) for Lot 10 DP 788189.
- A maximum FSR of 6.5:1 (3.5:1 base FSR + 3:1 incentive FSR) for Lot 1 DP 710350.

At Council's Policy Review Committee Meeting on 7 December 2020 (**Attachment C**), Council endorsed the planning proposal with a post-exhibition amendment. The post-exhibition amendment proposed to apply a maximum FSR of 6:1 to both lots at the site under clause 8.7(4)(c) of the Penrith LEP 2010, instead of 8.5:1 and 6.5:1 as originally proposed.

This amendment was made by Council to address community concerns relating to the anticipated height, character, bulk and scale of the future development at the site. A reduced maximum FSR will consequentially reduce the total allowable height, bulk and scale of future development at the site, which will correspondingly reduce associated carparking, overshadowing, view loss and privacy impacts from the future development at the site on the surrounding locality.

The Department supports this post-exhibition amendment by Council.

3.3.2 The Department's Recommended Changes

Following receipt of the revised planning proposal from Council, the Department has made further changes to the planning proposal. These post-exhibition changes by the Department comprise the following:

1. Identification of a new key site - 'Key Site 12' to the Penrith LEP 2010, which is to apply to the subject site. This amendment has been made by the Department to ensure the proposed FSR amendments only apply to the site and not the entire 'Key Site 7' area, which also contains other lots not subject to the planning proposal.
2. Removal of the subject site from 'Key Site 7'. This amendment has been made by the Department, as the Department seeks to identify the site separately as 'Key Site 12'.
3. Introduction of a 30 September 2021 deferred commencement to the draft LEP. This amendment has been made by the Department to enable the planning proposal to be finalised whilst negotiations between Council and the planning proposal applicant on an associated VPA continue. This post-exhibition amendment gives Council and the planning proposal applicant sufficient time to finalise and execute the VPA before the draft LEP officially commences.

3.3.3 Justification for Post-Exhibition Changes

The Department notes that the post-exhibition changes made to the planning proposal by Council and the Department are justified and do not require the planning proposal to be re-exhibited.

It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by the community and public authorities.
- Will ensure the planning proposal can be finalised and provide certainty that the necessary local infrastructure will be provided.
- Do not alter the overall intent of the planning proposal.

4 Department's Assessment

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

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

The planning proposal submitted to the Department for finalisation:

- Is consistent with the Regional and District Plans relating to the planning proposal.
- Is consistent with the Local Strategic Planning Statement relating to the planning proposal.
- Is consistent with the relevant Section 9.1 Ministerial Directions relating to the planning proposal, excluding a technical inconsistency with Direction 6.3, which is justified.
- Is consistent with the relevant SEPPs relating to the planning proposal.

Table 5 and **Table 6** identify whether the planning proposal is consistent with the assessment undertaken at the Gateway determination stage as outlined in the Gateway determination report on the planning proposal (**Attachment J**). Where the planning proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these are addressed in section 4.1 of this report.

Table 5: Summary Of Strategic Assessment

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 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
SEPPs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 6: 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
Environment Impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Infrastructure

☐ Yes☒ No, refer to section 4.1

4.1 Detailed Assessment

The following section provides an assessment of the matters relating to the planning proposal that are marked as inconsistent in **Table 5** and **Table 6** with the Gateway determination report assessment for the planning proposal dated 27 September 2018 (**Attachment J**).

4.1.1 Local Strategic Planning Statement

The Penrith Local Strategic Planning Statement (Penrith LSPS) was adopted in March 2020 and is a relevant consideration in finalising the planning proposal. The Penrith LSPS contains planning priorities to guide the future growth and development of the Penrith LGA.

The following planning priorities are applicable to the planning proposal:

- *Planning Priority 1 – Align development, growth and infrastructure.*

The future development facilitated by this planning proposal will provide greater housing supply, hotel accommodation, commercial floor space and community infrastructure for Penrith, which will support future residents, workers and visitors. To support this growth, an associated VPA for road and infrastructure upgrades is being finalised between Council and the planning proposal applicant.

- *Planning Priority 3 – Provide new homes to meet the diverse needs of our growing community.*

The future development facilitated by this planning proposal will provide greater housing supply to Penrith in a location close to jobs, services and public transport. The facilitation of new homes will support a growing community.

- *Planning Priority 6 – Ensure our social infrastructure meets the changing needs of our communities.*

The future development facilitated by this planning proposal is anticipated to contain community infrastructure. This is because incentive FSR provisions specified under clause 8.7(4) of the Penrith LEP 2010 (currently being modified as part of the draft LEP) cannot be applied unless community infrastructure is provided. The provision of increased community infrastructure in Penrith will support residents, workers and visitors into the future.

- *Planning Priority 12 – Enhance and grow Penrith's economic triangle.*

The site is contained to the 'East West Economic Corridor' in the Penrith LGA. The future development facilitated by this planning proposal will assist with the growth and development of this economic corridor by providing additional temporary and on-going job opportunities to Penrith, as well as additional residents and visitors who will contribute to the economic corridor.

- *Planning Priority 14 – Grow our tourism, arts and cultural industries.*

The future development facilitated by this planning proposal will provide additional hotel accommodation to Penrith. This will assist with the growth of Penrith's tourism industry and allow future guests of the development to stay in an accessible location close to local attractions, services and public transport.

The Department considers the planning proposal to be consistent with these applicable Penrith LSPS planning priorities and is acceptable.

4.1.2 Section 9.1 Ministerial Directions

Section 9.1 Ministerial Directions that weren't previously considered in the Gateway determination report on the planning proposal (**Attachment J**) or require further consideration are assessed against the planning proposal in **Table 7**.

Table 7: Section 9.1 Ministerial Directions Assessment

Directions	Consistent/Inconsistent	Reasons for Consistency or Inconsistency
Direction 2.6: Remediation of Contaminated Land	Consistent	The planning proposal is consistent with this Direction, as the planning proposal does not seek to amend the existing 'B4 - Mixed Use' zoning applying to the site or introduce any additional land uses than currently permitted. Detailed site/contamination studies will be required to support any future DA at the site to ensure the development satisfies <i>State Environmental Planning Policy No 55 – Remediation of Land</i> .
Direction 5.10: Implementation of Regional Plans	Consistent	The planning proposal is consistent with this Direction, as the planning proposal is consistent with a range of objectives contained to the 'Greater Sydney Regional Plan - A Metropolis of Three Cities' (Region Plan). An assessment of the planning proposal against the Region Plan was previously undertaken in the Gateway determination report on the planning proposal (Attachment J).
Direction 6.3: Site Specific Provisions	Technical inconsistency (justified)	<p>In the Gateway determination report on the planning proposal (Attachment J), the Department noted that whilst the planning proposal is considered to be consistent with Direction 6.3, for certainty, it was considered that any technical inconsistency with this direction is minor and the approval of the Secretary recommended.</p> <p>On 27 September 2018, in the Letter to Council (Attachment K) that formed part of the Gateway determination for the planning proposal, the then Director, Sydney Region West "agreed, as delegate of the Secretary, the planning proposal's inconsistency with section 9.1 Direction 6.3 Site Specific Provisions is justified in accordance with the terms of the Direction". Any technical inconsistencies with Direction 6.3 are therefore considered to be adequately justified.</p>

4.1.3 Infrastructure Impacts

The Gateway determination report on the planning proposal (**Attachment J**) recommended that Council consult with relevant utility providers, including Sydney Water, to ensure the intended future development could be serviced by required infrastructure.

Adequate consultation was undertaken by Council with Sydney Water and Endeavour Energy on the planning proposal, with the agency comments, Council's response and the Department's response outlined in **Table 4** of this report. No post-exhibition amendments by the Department are required to address the agency submissions from Sydney Water and Endeavour Energy.

5 Post Assessment Consultation

The Department has consulted with the following stakeholders after the assessment.

Table 8: Consultation Following The Department's Assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	An amended 'Key Site Map – Sheet KYS_013' has been prepared by the Department's ePlanning team and meet the technical requirements (Attachment Map).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	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 D).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 22 June 2021, 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 planning proposal has strategic merit, being consistent with the following plans and strategies:
 - Greater Sydney Region Plan – A Metropolis of Three Cities.
 - Western City District Plan.
 - Penrith Local Strategic Planning Statement.
 - Penrith Community Plan.
 - Penrith City Strategy.
- The planning proposal has site-specific merit, as it will facilitate a future development at the site that satisfies the objectives of the B4 Mixed Use zone. The future development will provide greater housing supply, hotel accommodation, commercial floor space and community infrastructure for Penrith in a location close to jobs, services and public transport.
- The planning proposal is generally consistent with the Gateway determination (as altered).
- The planning proposal is consistent with each relevant Section 9.1 Ministerial Directions applying to the planning proposal, excluding a technical inconsistency with Direction 6.3, which is justified.
- The planning proposal is consistent with each of the relevant SEPPs applying to the planning proposal.
- Each of the issues raised by the community and agencies have been adequately addressed through the implementation of post-exhibition amendments by Council and the Department.



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Attachments

Attachment	Document
PC	PC Opinion and Instrument dated 22 June 2021
Map	Draft LEP Map
A	Planning Proposal dated March 2021
B	Gateway Determination dated 27 September 2018
C	Council Meeting Report dated 7 December 2020
D	Council Consultation under S3.36(1) of the Act dated 23 June 2021
E	Letter of Offer dated 15 February 2021
F	Political Donation Disclosure Form dated 10 July 2017
G	Gateway Alteration dated 7 November 2019
H	Gateway Alteration dated 16 April 2020
I	Gateway Alteration dated 27 November 2020
J	Gateway Determination Report dated 27 September 2018
K	Gateway Determination Letter to Council dated 27 September 2018