

Planning Services

Gateway Determination Report

LGA	Penrith LGA
PPA	Penrith City Council
NAME	57 Henry Street, Penrith (454 dwellings, 64 jobs)
NUMBER	PP_2018_PENRI_002_00
LEP TO BE AMENDED	Penrith Local Environmental Plan 2010
ADDRESS	57 Henry Street, Penrith
DESCRIPTION	Refer to Part 2 of Attachment A2
RECEIVED	13 June 2018
FILE NO.	IRF18/3517
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal (**Attachment A1-A9**) seeks to amend Penrith Local Environmental Plan (LEP) 2010 to identify 57 Henry Street, Penrith as a key site and apply an existing incentive clause, Part (4) of clause 8.7 Community infrastructure on certain key sites, to the site. This will enable the site to access a total maximum bonus FSR of 6.5:1 and remove height restrictions in return for community infrastructure.

The planning proposal also seeks to amend Schedule 1 of the LEP to introduce residential fat building and shop top housing as an additional permitted use on the site for a period of 3 years if a minimum non-residential FSR of 0.75:1 is provided.

The planning proposal would facilitate the provision of 454 dwellings and 64 jobs.

Site description

The planning proposal applies to 57 Henry Street, Penrith (Lot 1/DP905016, Lot 1/DP103609, Lot 1/DP724160, Lot 1/DP795083, Lot A/DP15940, Lot B/DP159402), and is an irregular shaped site with an area of approximately 8,425sqm. The site is located at the eastern end of Penrith CBD, approximately 700m from Penrith Railway Station and Penrith Westfield. Historically, the site was used as the Department of Education Regional Office and contains vacant buildings and a local heritage item identified in Schedule 5 of Penrith LEP 2010 (Penrith Infants Department constructed in 1884).

The site is bounded by the Great Western Highway and the Western train line to the north, Evans Street to the east and Henry Street to the south. The site adjoins 2 key sites. Key Site 8 to the west has a bonus total FSR of 5.5:1 and Key Site 7 to the east has a bonus total FSR of 5:1. The site is outlined in red in **Figure 1** below.



Figure 1 - Aerial photo of the Site

There is no detailed property description of the site or relevant maps identifying the subject site in the planning proposal.

Existing planning controls

Under the Penrith Local Environmental Plan (LEP) 2010, the following zone and development controls apply to the subject site:

- B3 Commercial Core and SP2 Infrastructure (see **Figure 2** overleaf);
- a maximum FSR of 4:1; and
- a maximum building height of part 12m and part 32m.

The B3 Commercial Core zone does not permit residential flats or shop top housing. The zoning extract is at **Attachment E1**.

On 6 August 2018, Council confirmed that the part of the site zoned SP2 Infrastructure is not part of the proposed key site. It is recommended Council update the planning proposal to remove this site and related information from the planning proposal. Council's email confirming this change is at **Attachment F**.

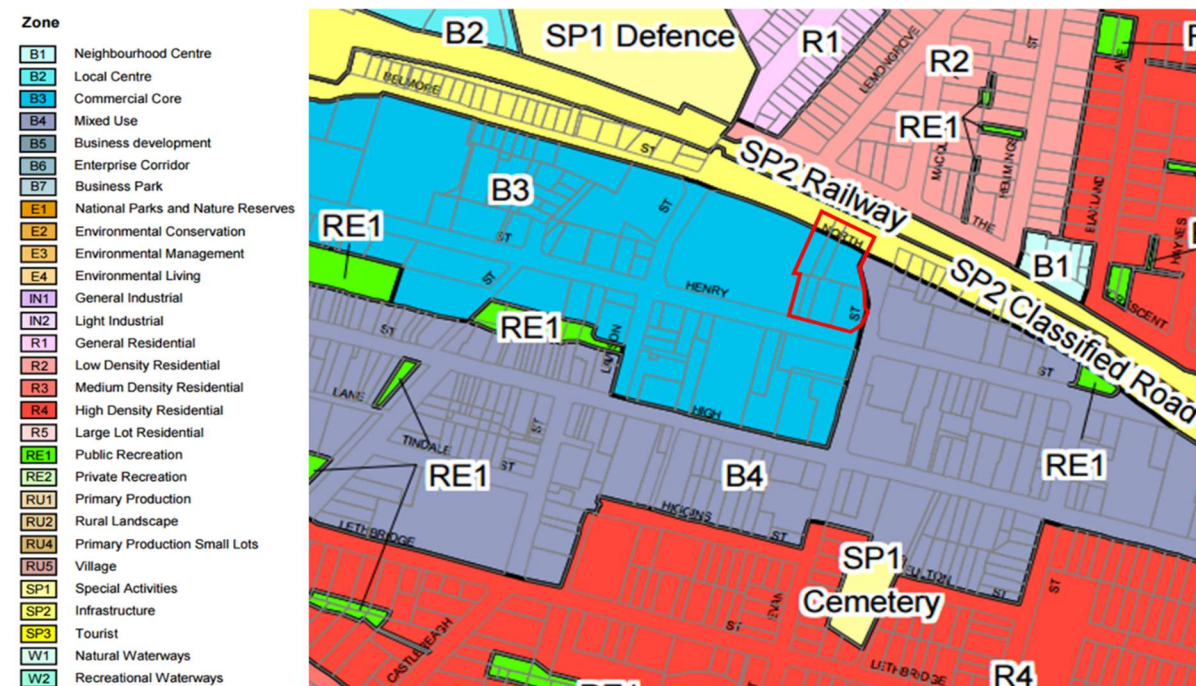


Figure 2 - Land Zoning Map Extract

Surrounding area

The subject site is surrounded by B3 Commercial Core and B4 Mixed Use zoned land. The B3 and B4 area contains mainly 2-3 storey buildings used for commercial and retail uses. It is located at the eastern part of the city centre and is accessible to the northern side of the city centre via an overbridge (Lemongrove Bridge) across the railway line on Evan Street.

Summary of recommendation

It is recommended that the planning proposal proceed with conditions as it will assist in revitalising the eastern part of the Penrith CBD and provide additional housing and commercial uses in a suitable location with access to jobs, infrastructure and services whilst delivering additional community infrastructure.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal as outlined in the proposal (**Attachment A2**), is to identify the subject site as a key site and facilitate the redevelopment of land at 57 Henry Street, Penrith, for residential and employment purposes, whilst delivering additional community infrastructure, and to:

- respond to current market conditions and feasibility challenges by providing the opportunity to redevelop, activate and revitalise the eastern end of the Penrith City Centre;
- promote development at a density and height that is consistent with the site's role as a Gateway and adjacent development;

- ensure timely redevelopment of the site along with other Key Sites in the City Centre as envisaged by Council's Incentives Clause (clause 8.7 of Penrith LEP 2010);
- allow for flexibility in the application of built form controls and address impacts upon the heritage building on site at the same time allowing for the adaptive reuse of this heritage item;
- allow the introduction of residential accommodation on the site to respond to market demand, and at the same time, ensure adequate commercial land area remains available in the Commercial Core;
- maintain a proportion of commercial/retail development floor area on the land to provide for an increase in employment-related floor area; and,
- provide for additional community infrastructure from any density uplift for the benefit of the broader community.

The objectives of the planning proposal are considered to be clear and adequate.

Explanation of provisions

The planning proposal (**Attachment A2**) seeks to amend Penrith Local Environmental Plan (LEP) 2010, as follows:

- insert a new key site – Key Site 12 at 57 Henry Street, Penrith on the Key Site Map, (enabling the site to access bonus FSR in return for community infrastructure in line with the incentives clause provisions);
- amend Clause 8.7 (4) Community infrastructure, to identify a maximum bonus FSR of 6.5:1 for the subject site (Key Site 12);
- identify the site on the Additional Permitted Uses Map and amend Schedule 1 – Additional Permitted Uses, to:
 - permit residential flat buildings and shop-top housing, if the development includes a minimum non-residential gross floor area 0.75:1, and,
 - specify that the permissibility of residential development ceases to apply 3 years after the date the LEP amendment is made.

An excerpt of Clause 8.7 of the LEP is provided at **Attachment E2**.

Consistent with Clause 8.7 of the LEP, if no community infrastructure offer is provided, the existing height and FSR controls will remain and the bonus FSR provisions specified in Clause 8.7(4) of the LEP will not be applied.

The planning proposal would facilitate the provision of 454 dwellings and 64 jobs. The local heritage item no. 177, Penrith Infants Department (1884 building), is proposed to be retained.

The future built form outcome on the site will be settled through a design excellence competition in accordance with Clause 8.4 Design Excellence of the LEP (excerpt provided at **Attachment G**) to ensure it responds to the site's significant location and enhances the City Centre's appearance. An Urban Design Study (**Attachment A5**) and Urban Design Analysis (**Attachment A6**) identifies a number of constraints and opportunities to enhance the site. The studies also outline a concept development proposal for the site, which includes a mixed-use development with retail and

commercial at the ground floor and podium and a 38 storey residential tower on the corner of Evans Street and Henry Street and a 25 storey residential tower facing Henry Street.

It is recommended that prior to public exhibition the planning proposal is amended to include a plain English explanation of the proposed clauses and include a note that the clauses may be amended following legal drafting.

The planning proposal does not provide information illustrating existing provisions or site maps. It is recommended that prior to exhibition, Part 2 Explanation of Provisions - of the planning proposal is amended to indicate the existing zone, standards and provisions that currently apply to the land, together with the proposed standards.

Mapping

The current and proposed maps are provided in Part 2 and Appendix 1 of the planning proposal (**Attachment A2**). The planning proposal will amend the following maps:

- Key Sites Map (KYS_013); and,
- Additional Permitted Uses Map (APU_013).

The proposed maps in the planning proposal are considered to be suitable for community consultation purposes.

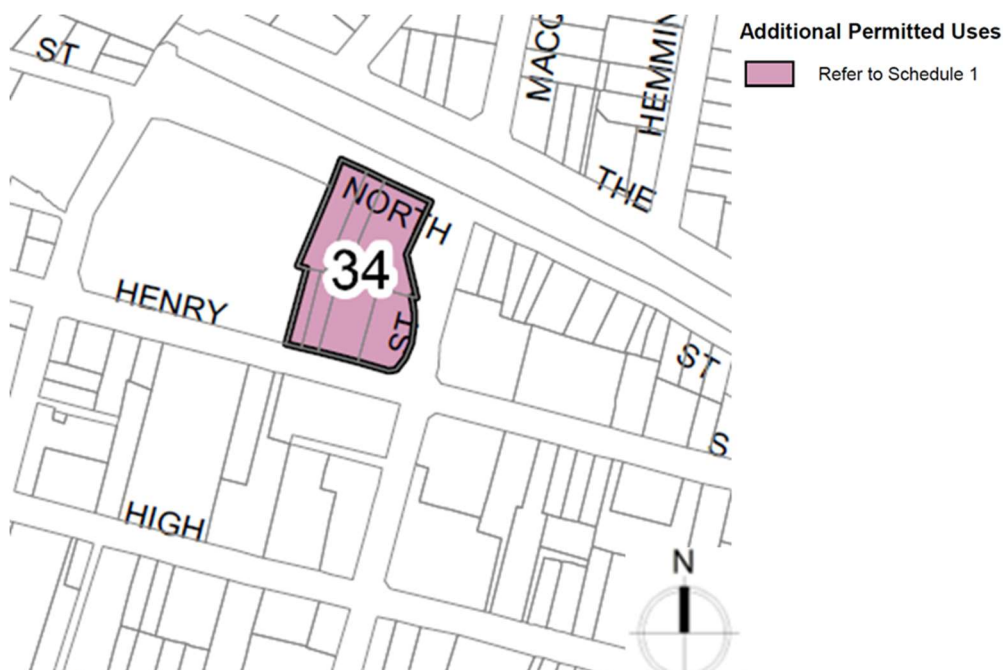


Figure 3 - Proposed Additional Permitted Map

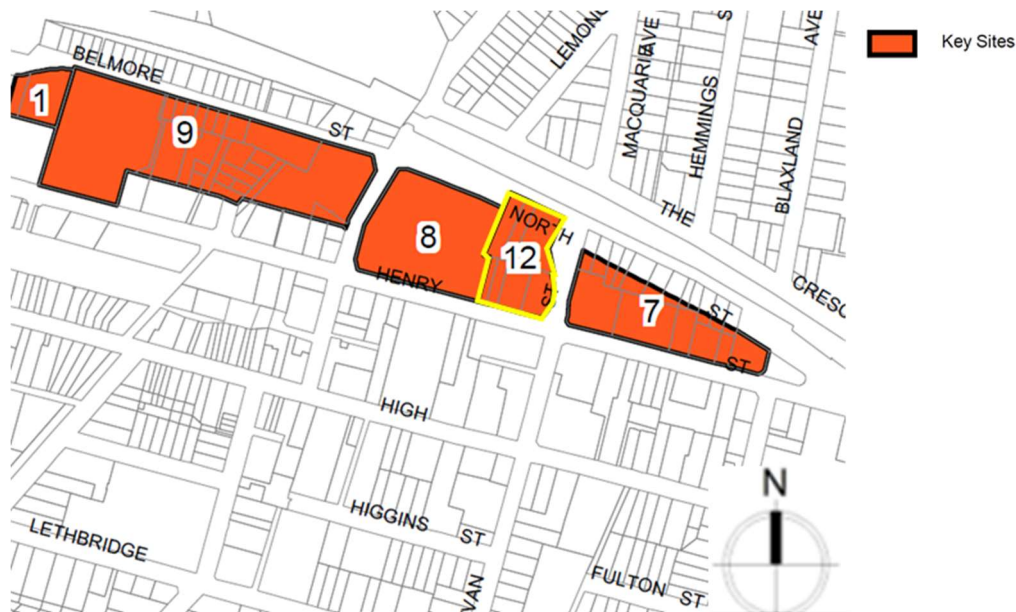


Figure 4 – Proposed Key Sites Map (subject site outlined in yellow)

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not a direct result of a strategy or study; however the proposal includes the following supporting studies and reports:

- Heritage Impact Statement (**Attachment A3**)
- Economic Impact Assessment (**Attachment A4**)
- Urban Design Report (**Attachment A5**)
- Urban Design Analysis Report (**Attachment A6**)
- Traffic Assessment Report (**Attachment A7**)
- Flooding Assessment (**Attachment A8**)
- Contamination Report (**Attachment A9**)

The site is proposed to be identified as a Key Site given that it aligns with the height spine in keeping with the existing incentive Key Sites within Penrith CBD and incentive clauses. Council advises the site was not originally identified as a key site because, at the time of the analysis, the site was owned by the NSW Government. The site is located between two existing Key Sites, 7 and 8 (which the incentive clause 8.7 applies to) and therefore will provide cohesive uplift and built form within the Penrith City Centre.

Council advises the proposed amendment responds to issues regarding feasibility, loss of employment land and the deliverability of the development and is an opportunity to activate the eastern part of the Penrith City Centre, delivering community infrastructure in accordance with Council's 'Community Infrastructure Policy' (**Attachment H**).

The planning proposal is the best and most appropriate means of achieving Council's intentions and is the only means available to introduce these amendments under the Penrith LEP 2010.

STRATEGIC ASSESSMENT

Regional / District

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

The proposal is consistent with:

- Objective 10 - Greater housing supply: as it will supply a range of housing types in the right location to support Sydney's growing population.
- Objective 11 – Housing is more diverse and affordable: the planning proposal will facilitate the delivery of 454 dwellings of varying styles to support housing diversity in Penrith CBD.
- Objective 13 – Environmental heritage is identified, conserved and enhanced: the proposal provides an opportunity to revitalise the subject site whilst enhancing and protecting the heritage item.
- Objective 14 – A Metropolis of three cities: the planning proposal supports the delivery of additional housing supply at a walkable distance to train station and mixed-use area.
- Objective 22 – Investment in business and activity in centres: the proposal includes a minimum non-residential gross floor area requirement to facilitate employment related uses.

Western City District Plan (March 2018)

The Western City District Plan (the Plan) applies to this planning proposal. The proposal retains non-residential floor space in the Penrith City Centre, therefore the planning proposal is consistent with Planning Priority W11 as it aims to promote business opportunities and jobs in a strategic location.

In addition, it will provide greater housing supply in a location with access to jobs, services and public transport (Planning Priority W5) and respects the local heritage (Planning Priority W6).

Local

Penrith Community Plan

The Penrith Community Plan (adopted by Council on 26 June 2017) identifies the community's long-term aspirations for Penrith City, with outcomes and strategies.

Council advises that the planning proposal is consistent with this Plan as it aligns with the intended outcomes and strategies to accommodate future growth and facilitate development.

Penrith City Strategy

The objective of the Strategy is to help build a sustainable future for the Penrith Community.

Council advises the proposal is consistent with the Strategy as it will assist in delivery of Council's policy for housing, which seeks to plan for housing that meets the community needs with regard to supply, choice, design quality, sustainability and affordability.

Section 9.1 Ministerial Directions

Inconsistent

The planning proposal is inconsistent with the following Section 9.1 directions:

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 to the planning proposal as it affects land zoned B3 Commercial Core.

The Planning Proposal is inconsistent with this Direction as it will reduce the potential floor space area for employment uses in the B3 Commercial Core zone with the introduction of residential uses. The Planning Proposal seeks to facilitate the permissibility of residential development on the subject land as an Additional Permitted Use for a period of 3 years. Council's intention for this provision is to provide a short-term incentive to develop the land to activate the eastern end of the City Centre without reduction to land zoned for commercial purposes. A minimum non-residential FSR proposed for retail and commercial uses as well as existing DCP controls that promote active street frontages will ensure these land uses are retained on the site.

The Economic Impact Assessment (**Attachment A4**) commissioned by the land owner, as well as a peer review of the study commissioned by Council, concluded that the economic viability of any future redevelopment of the precinct is impacted by the limited residential potential within the precinct.

The Greater Sydney Commission was consulted and has provided comments (**Attachment I**) on this aspect of the proposal, outlining that the Greater Penrith Collaboration Area has identified 5 key themes. One of these being increasing the economic diversity of the Penrith CBD. The Commission further added that the Council's preference to retain the B3 zoning with residential as an additional permitted use is consistent with this broader strategic objective.

The inconsistency with this direction is considered to be of minor significance as the proposal will retain the existing business zone for the city centre. Whilst potential floor space for employment uses may be reduced if the Additional Permitted Uses clause is utilised within the 3 year timeframe, the proposed minimum non-residential FSR requirement will ensure retail and commercial uses will occur on the site.

It is accordingly considered that any inconsistency is of minor significance and recommended accordingly.

Consistent

The planning proposal is consistent with the following relevant Section 9.1 directions, as follows.

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 site contains a local heritage item no. 177, Penrith Infants Department (1884 building) as identified in Schedule 5 of the LEP.

Council notes that the planning proposal is consistent with this Direction as there are provisions in the Penrith LEP 2010 to facilitate the conservation of this heritage item. A Heritage Impact Study (**Attachment A3**) was submitted with the proposal that is supportive of the concept development and retention of the heritage item.

It is agreed that this is the case and that the proposal is not inconsistent with the direction. While this is the case, there remains some concern over the related issue of overshadowing.

The Urban Design Analysis Report suggested the proposed built form, open spaces (plaza) and publicly accessible open spaces will maximise solar access and create optimum set-backs around the heritage building. However, it is noted that the shadow diagrams for the proposed built form option (FSR of 6.5:1, for two 25 and 38 storey towers with stepped two to three podium levels) in the Urban Design Report (Dickson Rothschild, August 2016) (**Attachment A5**) is unlikely to achieve optimum solar access on the heritage building and the public spaces or be consistent with the objectives of the urban design strategies identified in the report.

The shadow diagram (page 51- **Attachment A5.1**), as illustrated in the report, does not show that the heritage building, and public open space areas, will have sun access for 3 hours between 10:00 am to 3:00 pm winter solstice on 21 June. This is confirmed in the Further Urban Design Analysis Report (**Attachment A6**). Attached is an extract from this report showing the shadow diagram at 22 June (**Attachment A6.1**)

The proposal seeks to provide for a significant uplift in the development potential of the site. Consequently in view of this uplift, it is reasonable to ensure that the item and proposed public space is protected from the extent of proposed development under this planning proposal. It is also acknowledged, however, that development of the site under current controls may also overshadow the site. Taking these matters into consideration and to ensure this matter is transparently and appropriately dealt with, it is recommended that the planning proposal be amended by Council prior to exhibition to include:

- an analysis demonstrating overshadowing under existing and proposed controls;
- consideration of the variation of proposed development controls or inclusion of a local provision to ensure that the proposed open spaced and heritage item receives two hours of sunlight sun light between the hours of 12 noon and 2pm at winter solstice.

Direction 3.1 Residential Zones

This direction aims to encourage a variety and choice of housing types, 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 residential flat buildings and shop top housing are proposed as an additional permitted use on the site.

The planning proposal is consistent with this direction as it will provide additional housing in a suitable location with access to existing infrastructure and services.

Direction 3.4 Integrating Land Use and Transport

The objective of this direction is to increase the choice of available transport and reduce dependence on cars.

The planning proposal is consistent with this direction as the site is in close proximity to the Penrith train station and a number of bus stops, therefore future residents will be able to adequately access public transport services.

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 subject site, as well as the adjoining Key sites 7 and 8, are outside the extent of the PMF and development is not considered to pose a risk to life or property.

It is noted, however, that the Penrith City Centre is broadly affected by overland flooding including the subject site. Comments received from Infrastructure NSW dated 30 July 2018 raised no issues with the proposal in relation to flooding or evacuation of the Penrith City Centre (**Attachment J**).

It is considered that the overland flooding issues can be adequately addressed during development assessment stage as demonstrated within the Flooding and Overland Flow Report (**Attachment A8**).

The Planning Proposal is consistent with this direction.

Direction 6.3 Site Specific Provisions

This direction aims to discourage unnecessarily restrictive site-specific development controls. The planning proposal is consistent with this direction as although it will introduce a site-specific clause, this clause is not restrictive.

The additional permitted use clause will enable additional residential uses on the subject site within the City Centre whilst the key sites incentive clause will enable additional floor space ratio and unlimited height provided they meet the design excellence requirements and provide community infrastructure.

While the proposal is considered to be consistent with this Direction, for the sake of clarity, it is recommended that the delegate advise Council that any inconsistency – that may be perceived by a different interpretation of the direction, is of a minor nature.

State environmental planning policies

The planning proposal is consistent with all relevant State Environmental Planning Policies.

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal has the potential to generate opportunities for community benefits that can be provided through the key sites incentives clause.

An Urban Design Study (**Attachment A5**) and an Urban Design Analysis Study (**Attachment A6**) has been submitted with the proposal which identified potential impacts including overshadowing and solar access.

The issue of overshadowing has been addressed under the heading of Direction 2.3 Heritage Conservation within this report.

Environmental

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

Economic

The planning proposal and Economic Impact Assessment (**Attachment A4**) advises that the proposed density increase will result in an increased population and would be a catalyst to reactivate the economy and redevelopment within the city centre.

Traffic and Transport

The proposed bonus floor space ratio will enable greater development on the subject site, which has the potential to create additional traffic impacts. Whilst a Traffic Assessment Report (**Attachment A7**) has been submitted, it is based on an earlier version of the proposal and does not reflect the details of the latest proposal. As such, it is recommended that this report be updated prior to public exhibition. In addition, it is also recommended that Council consult with the Roads and Maritime Services and Transport for NSW in relation to the planning proposal.

Infrastructure

Whilst the city centre has access to existing infrastructure and utilities, the increased development potential will increase the population and number of people accessing services in this area. It is recommended that during the public exhibition stage, Council consults the relevant utility providers, including Sydney Water and other relevant infrastructure providers, on the planning proposal.

Heritage

The subject site contains a heritage item of local significance. No changes are proposed to the heritage listing on the site. The Urban Design Analysis Report (**Attachment A6**) and the Heritage Impact Statement (**Attachment A3**) identifies that any issues can be mitigated through future design of the development. Consideration of heritage impacts will be further addressed as part of any future development application.

It is recommended that the Office of Environmental and Heritage – Heritage Division be consulted during the public exhibition process.

CONSULTATION

Community

A public exhibition period of 28 days is considered an appropriate amount of time to gauge the response by the community.

Agencies

The Department recommends that Council consulted the following State agencies in relation to the planning proposal:

- Roads and Maritime Services;
- Transport for NSW - Rail Corp;
- Transport for NSW;

- Sydney Water;
- Office of Environment and Heritage;
- State Emergency Service; and
- relevant infrastructure providers for telephone, gas and electricity.

Should these agencies require any additional information, or specify any additional matters to be addressed, the proposal is to be updated in response.

TIME FRAME

Council proposes a timeframe of 9-months to finalise this planning proposal. Given the nature of the planning proposal, a 12-month timeframe is considered appropriate.

LOCAL PLAN-MAKING AUTHORITY

Council has requested delegation of the plan making function be issued to it in relation to this planning proposal. Given the significant nature of the planning proposal and potential need for revision of the planning proposal, it is recommended that delegation of plan making functions not be issued in this instance.

CONCLUSION

The Department recommends that the planning proposal proceeds with conditions, given that it will provide additional housing, commercial space, employment opportunities and potential community infrastructure in an appropriate location and will assist in revitalising the Penrith City Centre.

RECOMMENDATION

It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, Council is to amend the planning proposal as follows:
 - (a) Remove the SP2 Infrastructure zoned part of site from the planning proposal, proposed maps (Key Sites Map and Additional Permitted Uses map) and all other relevant parts of the planning proposal.
 - (b) Within Part 1 – Introduction of the planning proposal, include a description of the subject site and surroundings, including a site photo with the site highlighted by edging or other suitable means.
 - (c) Under Part 2 – Explanation of Provisions include:
 - I. a plain English explanation of the proposed clauses and include a note that the clause may be amended following legal drafting; and,
 - II. illustrate the existing zone, standards and provisions that currently apply to the land.
 - (d) Under Part 3 – Justification, include the following:
 - i. an analysis demonstrating overshadowing of the local heritage item and proposed open space under existing and proposed controls; and,
 - ii. commentary on the need to vary the proposed development controls or include a local provision to ensure that the proposed open space and heritage item receives two hours of sunlight between the hours of 12 noon

and 2pm at winter solstice, including justification for Council's proposed course of action.

Should Council wish to vary the planning proposal to address overshadowing of the local heritage item and proposed open space, it should include this intention and explanation under Part 2 – Explanation of Provisions.

A revised Gateway determination will not be required to implement the above matters within condition 1(d).

2. Prior to exhibition, amend the supporting traffic study by addendum to take into consideration that future use of the land may not include a large residential hotel and assess associated traffic impacts without that use.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the following public authorities:
 - Roads and Maritime Services;
 - Transport for NSW - Rail Corp;
 - Transport for NSW;
 - Sydney Water;
 - Office of Environment and Heritage;
 - State Emergency Service; and,
 - relevant infrastructure providers for telephone, gas and electricity.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



10/9/2018

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26/10/2018

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