

Planning Services

Gateway Determination Report

LGA	Penrith
PPA	Penrith City Council
NAME	Reclassification of four Council owned sites in St Marys and Penrith from Community to Operational – the subject land is currently zoned for industrial and housing purposes and, consequently, the number of potential jobs and potential dwellings is not applicable.
NUMBER	PP_2018_PENRI_008_00
LEP TO BE AMENDED	Penrith Local Environmental Plan 2010
ADDRESS	12A Champness Crescent, St Marys - Lot 41 DP 35970, 32A Champness Crescent, St Marys - Lot 51 DP 35970, 110A Dunheved Circuit, St Marys - Lot 211 DP 31909, Part Soper Place Car Park, 5-7 Lawson Street, Penrith - Lot 1-3 DP 1159119
DESCRIPTION	As above
RECEIVED	22 November 2018. The planning proposal was however subject to further information being provided by Council.
FILE NO.	IRF18/6522
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 seeks to amend the Penrith Local Environmental Plan 2010 by:

- reclassifying four Council owned sites from community land to operational land;
- removing the public reserve status of three sites and removing any interest or trust relating to the land being a public reserve; and
- remove any real or inferred interest or trust for community purpose (car parking) relating to a site.

The planning proposal will allow Council to consider the future use of these sites. The planning proposal does not seek to rezone or vary development standards. The planning proposal does not include a proposal to develop or sell the sites.

Site description and surrounding

The planning proposal applies to four Council's owned sites, as identified in the table (Table 1) and location maps (Figure 1, 2 and 3), following.

Sites	Address	Lot/DP	Area m ²	Existing Zoning
Site 1	12A Champness Crescent, St Marys	Lot 41 DP 35970	1315m ²	R4 High Density Residential
Site 2	32A Champness Crescent, St Marys	Lot 51 DP 35970	1298m ²	R4 High Density Residential
Site 3	110A Dunheved Circuit, St Marys	Lot 211 DP 31909	2909m ²	IN1 General Industrial
Site 4	Part Soper Place Car Park, 5-7 Lawson Street,	Lot 1-3 DP 1159119	1295m ²	B3 Commercial Core

Table 1 – Land Description

Sites 1 & 2

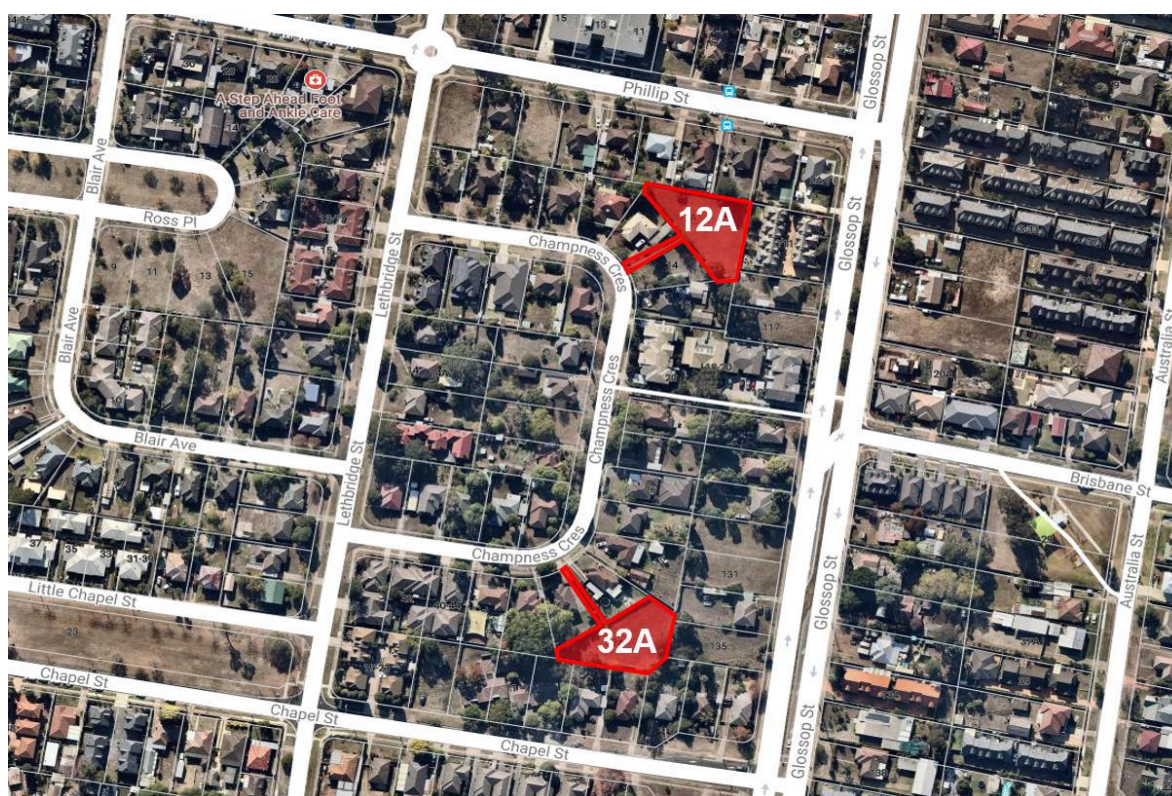


Figure 1: Sites 1 and 2 – 12 A and 32 A Champness Crescent, St Marys

Both of these battle axe shaped sites are vacant, surrounded by residential development and have restricted access via narrow access handles approximately 2.4 m wide. The St Marys town centre and access to public transport are within 800m walking distance of the site. The sites are not used for formal recreational purposes.

The proposal indicates there are three parks within a 450m radius of these sites (refer to p.25 of the planning proposal).

Site 3



Figure 2 - Site 3 – 110A Dunheved Circuit St Marys

The site is within an existing industrial estate and has been used for unauthorised parking. The site is in close proximity to existing and future (Outer Sydney Orbital) freight routes. The site is bounded by three roads. The site is nearly flat and irregular in shape.

Site 4



Figure 3 - Site 4 – Part Soper Place Car Park - 5-7 Lawson Street, Penrith

The Soper Place Car Park is located within the Penrith CBD and provides all-day parking for commuters and the local community. The site holds capacity for over 350 vehicles and comprises 16 lots. Apart from the subject lots, all other lots in the car park are classified as Operational.

The site was originally acquired for car parking, which means there is an implied trust over the land for community purposes. Therefore, the initial operational classification is considered invalid, and a community classification is assumed.

Council is currently exploring preliminary design options for a new multi deck car park over a portion of the car park. This would result in additional parking. Reclassification and the removal of the trust will enable greater design flexibility should site 4 be required for future development or business dealings. The planning proposal seeks to provide a consistent classification over the whole car park and remove the implied car parking trust.

The proposal to reclassify site 4 will not result in any net loss of parking.

Existing planning controls

Sites 1 and 2

The sites 1 and 2 are currently zoned R4 High Density Residential. Both lots have a maximum building height of 15 metres and are not subject to a maximum lot size or floor space ratio controls.

The sites were dedicated as recreational reserves in 1962 and were later rezoned from 6(a) Public Recreation and Community Uses (under Penrith LEP 1998) to R4 High Density Residential in Penrith LEP 2010. As part of the rezoning process, community consultation at that time was undertaken.

These two sites are considered to be public reserves and the proposal seeks to remove this status as part of the reclassification process. Council has advised that following reclassification these sites may either be disposed of, consolidated with adjoining land, or redeveloped for housing purposes, in accordance with the current zoning of the land.

Site 3

Site 3 is zoned IN1 General Industrial, with a 12m maximum building height and a minimum lot size of 1000m². The land is not subject to floor space ratio controls. The site was dedicated to Council in 1967 as Public Garden and Recreation Space. Council has advised that site has no formal use other than as passive open space since acquisition. Unauthorised vehicle parking, including large B-double and semi-trailers has been observed at the site on numerous occasions. Council has advised that it has limited industrial land and development and retention of this property as a rental property would be provide an opportunity for Council to diversify its portfolio in a key location.

Site 4

Site 4 is zoned B3 Commercial Core. Lot 3 has an 80m maximum building height. Lots 1 and 2 are partially affected by the 80m maximum building height and partly affected by a 24m maximum building height. A floor space ratio control of 4:1 applies.

Summary of recommendation

It is recommended that the planning proposal proceed with conditions as the reclassification will enable Council to consider the future use of all the four sites.

PROPOSAL

Objectives or intended outcomes

The objectives of this planning proposal are to amend the Penrith Local Environmental Plan 2010 by:

- reclassifying four Council owned sites from community land to operational land;
- remove the public reserve status applying to sites 1, 2 and 3 and remove any interest or trust relating to the land being a public reserve; and
- remove any implied interest or trust for community purpose (car parking) relating to a site 4.

Department comment

These objectives are considered to be clear and adequate.

Explanation of provisions

The planning proposal seeks to amend Schedule 4 Classification and Reclassification of Public Land of Penrith Local Environmental Plan 2010 as follows:

- Insert the following under Part 2 Land classified or reclassified, as operational land – interests changed:

Insert into Column 1 Locality	Insert into Column 2 Description	Insert into Column 3 Any trusts etc not discharged
12A Champness Crescent, St Marys NSW 2760 N.B. holds reserve status	Lot 41 DP 35970	Easement to drain water over existing line of pipes affecting the part of the land shown so burdened in DP 644218, as noted on Certificate of Title Folio Identifier 41/35970 (copy at Appendix 1 of the planning proposal).
32A Champness Crescent, St Marys NSW 2760 N.B. holds reserve status	Lot 51 DP 35970	Nil

Insert into Column 1 Locality	Insert into Column 2 Description	Insert into Column 3 Any trusts etc not discharged
Lot 110A Dunheved Circuit, St Marys NSW 2760 N.B. considered to be a public reserve.	Lot 211 DP 31909	Easement for water main affecting the part of the land shown so burdened in DP 31909 as noted on Certificate of Title Folio Identifier 9043/104 (copy at Appendix 3 of the planning proposal).
Part Soper Place Car Park, 5-7 Lawson Street Penrith NSW 2750 N.B. implied trust for community purposes.	Lots 1-3 DP 1159119	Nil

Further, the planning proposal seeks to remove the public reserve status of site 1, 2 and 3 and to remove any interest or trust relating to the land being a public reserve.

The planning proposal also seeks to remove any implied interest or trust for community purposes (car parking) relating to site 4.

The proposal does not involve any change to the existing zones or development standards that apply to the subject sites. Easements will not be affected.

Department comment

The explanation of provisions is considered to be adequate.

Mapping

The planning proposal does not involve any changes to the Penrith LEP 2010 maps.

Locational aerial photos for all the sites are provided. These also show the surrounding environs.

Department comment

The planning proposal does not include existing zoning maps for the sites. For clarity, it is recommended that Council amend the planning proposal to include existing zoning maps with the sites illustrated by a lot boundary line to indicate site location. The maps should also include a key so that these maps may be more readily understood by the public.

It is noted that sites 1 and 4 are affected by floods. It is also noted that site 3 is prone to bush fires. However, no maps have been included in the planning proposal indicating these affectations. It is recommended Council amend the planning proposal to include these maps, as above.

The other supporting diagrams in the planning proposal are considered to be suitable for community consultation purposes, however, the following is also recommended:

- Figures 6 and 7 are to be amended to show the location of the subject land by lot boundary outline; and
- on page 20 of the proposal, the numbers '4.00' is to be replaced with '1:4'.

NEED FOR THE PLANNING PROPOSAL

Sites 1 and 2 Champness Crescent St Marys

In 2008, Council prepared the Glossop Street Precinct Urban Design Study to provide a strategic framework for the redevelopment of the Glossop Street Precinct. The aim of the study was to revitalise the precinct, deliver greater housing choice and diversity and encourage connectivity between housing, transport and commercial area. At that time, the Champness Crescent sites were zoned 6(a) Public Recreation and Community Uses under the Penrith Local Environmental Plan 1998 (Urban Land). The study recommended that Council:

- negotiate land swaps to develop underutilised pocket parks, and
- retain view to the west towards Blue Mountains escarpment at high point of the precinct and along view corridors.

The Glossop Street Urban Design Study informed the Penrith Urban Strategy, which recommended an increase in densities around the St Marys Town Centre, proposing the northern portion of the Glossop Street Precinct (including the Champness Crescent sites) be zoned for high density residential development. Consequently, the Champness Crescent sites were zoned from 6(a) Public Recreation and Community Uses to High Density Residential under Penrith LEP 2010.

This planning proposal will unlock the high-density potential of these two sites.

Site 3 110A Dunheved Circuit

The reclassification of this site is not the direct result of a strategic study or report. It is Council's initiative to more effectively manage its land holdings and contribute to the strategic planning directions for Greater Sydney. The proposal is consistent with this broader strategic planning framework.

Site 4 Part Soper Place Car Park

The redevelopment of Soper Place Car Park including construction of a new multi deck car has been identified as a Council priority in a number of strategic documents.

The redevelopment of Soper Place Car Park has been identified as a Council priority in number of strategic documents including Penrith Progression – A Plan for Action and Council's 2018 Delivery Program. Although the planning proposal is not a direct result of these documents, an operational classification will enable more flexibility when considering detailed concept designs and future business dealings.

The sites currently being classified as community land cannot be sold, exchanged or disposed under the provisions of the Local Government Act 1993. The planning

proposal will enable Council to consider the future use of the land in line with the current zoning, allowing for more effective management of Council assets.

Department comment

It is noted that the planning proposal is the best and most appropriate means of achieving the Council's intended outcome.

STRATEGIC ASSESSMENT

Regional / District

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

The proposal is consistent with:

- *Objective 4: Infrastructure use is optimised:* as the proposal will maximise utilisation of the existing infrastructure.
- *Objective 6: Services and infrastructure meet communities' changing needs:* as the best use of the sites 1 and 2 within a walkable environment would assist with raising the liveability standards for future residents and businesses.
- *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:* as the proposal will provide a greater dwelling mix than is currently available in the area.
- *Objective 14 – A Metropolis of three cities – Integrated land use and transport creates walkable and 30-minute cities:* as the Plan identifies St Marys as a strategic centre and the planning proposal supports the delivery of additional housing supply in a walkable distance to the train station at sites 1 and 2.
- *Objective 15 – The Eastern, GPOP and Western Economic Corridors are better connected and more competitive:* it is anticipated the north south rail corridor, connecting the Western Sydney Airport to St Marys, will act as a catalyst for a Western Economic Corridor. Sites 1, 2 and 3 are expected to take advantage of this economic activity corridor.

Western City District Plan (March 2018)

The proposal is consistent with:

- the *Liveability Planning Priority - W5 Providing housing supply, choice and affordability, with access to jobs, services and public transport:* the proposal will provide housing supply at a location with good access to jobs, services and public transport; and
- the *Liveability Planning Priority – W6 Creating and renewing great places and local centres and respecting the District heritage:* Council has advised that sites 1 and 2 are currently underutilised, with the proposal delivering new housing, shops, business and services optimising the use of these sites.
- the *Planning Priority – W7 Establishing the land use and transport structure to deliver a liveable, productive and sustainable Western Parkland City:* Dunheved Business Park is strategically located to leverage new freight infrastructure networks, with the proposal enabling industrial land uses of site 3 (which falls within the Dunheved Business Park) and providing community benefits through the provision of local jobs and increased economic productivity.

The Department is satisfied that the planning proposal gives effect to the District Plan in accordance with section 3.8 of the Environmental Planning and Assessment Act 1979.

Local

Penrith City Strategy

The Strategy aims to integrate various Council adopted planning strategies, examine the long-term issues facing Penrith and set directions for the City's future.

The planning proposal is consistent with this strategy as it relates creating dwellings, jobs and the economy.

Penrith Community Strategic Plan 2017

The Plan provides a representation of the community's vision for the entire Council area. The vision for Penrith is to facilitate delivery of a City that offers both cosmopolitan and cultural lifestyle of a mature city and the casual character of a rural community.

The proposal is consistent with the Plan as it enable infill development on sites 1 and 2, allowing industrial uses on a vacant site (site 3) and reclassification of site 4 to ensure a consistent land classification across the entire Soper Place Car Park.

Penrith Progression – A Plan for Action

Penrith Progression – A Plan for Action is a Council strategic plan that aims to transform the city centre and deliver jobs for the future. It seeks to identify new economic, social and environmental drivers. It addresses barriers to investment and identifies catalyst projects. Action 8.4 of the plan recommends the eastern portion of the Soper Place Car Park be utilised for a multi-level car par. The reclassification of the site 4 from community to operational land will enable flexibility when considering detailed concept designs and future business dealings.

Section 9.1 Ministerial Directions

Relevant directions are discussed as follows:

Direction 1.1 Business and Industrial Zones

While this Direction is relevant for site 3, it is not technically inconsistent with item (4) of the Direction. However, to ensure there is no unintended inconsistency, it is recommended that any technical inconsistency with Direction 1.1 Business and Industrial Zones, be treated as of minor significance, and the approval of the delegate of the Secretary has been recommended, accordingly.

Direction 3.1 Residential Zones

As the proposal affects an existing residential zone, it is recommended that any technical inconsistency with Direction 3.1 Residential Zones, be treated as of minor significance, and the approval of the delegate of the Secretary has been recommended, accordingly.

Direction 3.4 Integrating Land Use and Transport

The Direction applies to the planning proposal.

Under this Direction, a planning proposal must include provisions that give effect to and are consistent with the aims, objectives and principle of:

(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001) and

(b) The right Place for Business and Services – Planning Policy (DUAP 2001).

Central to these two documents is the objective of improving access to housing, jobs and services by walking, cycling and public transport, and the reducing travel demand including the number of trips generated by development and the distance travelled, especially by car.

Department Comment

The planning proposal is consistent with the objectives of this Direction given the sites 1 and 2 are within 800m of St Marys train station and has access to employment opportunities and services within St Marys Centre.

Direction 4.3 Flood Prone Land

This Direction aims to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and that potential flood impacts are considered. The planning proposal does not seek to change the existing controls relating to flooding. Council has advised that the sites are not impacted by mainstream flooding. However, sites 2 and 4 are affected by local overland flow flood paths.

Council has advised that the flood assessment will occur at development application stage.

Department comment

It is noted that Council has indicated that a flood assessment will be required at the development application stage. As the site is not impacted by mainstream flooding, it is appropriate that further consideration is given to the matter at the development application stage and it is considered that the proposal is not inconsistent with the direction.

Direction 4.4 Planning for Bushfire Protection

This Direction applies when a council prepares a planning proposal that affects, or is in proximity to land mapped as bushfire prone land.

Council has advised that the site 3 is identified as bushfire prone land. Hence, this Direction is relevant to this planning proposal.

Council has also advised that it will consult with the Commissioner of NSW Rural Fire Service as required by the Direction.

Department comment

It is considered that once Council consults with the Commissioner of the NSW Rural Fire Service, and should any concerns be raised, Council be required to demonstrate the consistency of the proposal with this Direction prior to undertaking community consultation.

Direction 6.2 Reserving Land for Public Purposes

This Direction requires that a planning proposal shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of

the relevant public authority and the Secretary (or an officer of the Department nominated by the Secretary).

It may be construed that this Direction applies as the proposal seeks to remove the public reserve status from sites 1, 2, 3 and an implied trust for community purposes for site 4. All the four sites are owned by Council.

Department comment

There will be no loss of land zoned for open space and site 4 will continue to be used for a public purpose (i.e., a car park). Given Council has requested the reclassification and removal of the status of the land, it is considered that the planning proposal satisfies the requirement of the Direction which requires the approval of the relevant authority. The Secretary's approval has, however, not been provided.

In the circumstances, any inconsistency in this regard is considered to be of a minor nature. Consequently, the approval of the delegate of the Secretary is recommended to satisfy the Direction on the basis of minor significance.

State environmental planning policies

State Environmental Planning Policy No. 55 – Remediation of Land

Council has advised that any future redevelopment of the site will need to address the requirements of the State Policy.

Clause 6 *Contamination and remediation to be considered in zoning or rezoning proposal* of the State Policy, addresses certain matters to be considered - where an environmental planning instruments proposes to include land in that zone, where there is an unresolved issue of possible contamination. This is on the basis that a change of the use of the land is proposed.

As there is no proposed change to the relevant zones and permissible uses under those zones, Council's approach in considering the matter at development application stage in accordance with clause 7 of the State Policy is satisfactory and is consistent with that Policy.

SITE-SPECIFIC ASSESSMENT

Environmental

Council has advised that none of the sites contain any critical habitat or threatened fauna. Further, any development application for these sites will be subject to merit assessment to manage any potential impact to the surrounding natural environments.

Social and Economic

Overall, it is envisaged that the planning proposal will have positive social and economic impact as it will enable Council to achieve the future and appropriate development potential for these sites.

It is noted, however, that under Q9. *Has the Planning Proposal addressed any social and economic effects* (p. 25 of the proposal), the removal of open space for sites 1, 2 and 3 has been justified based on the availability of other open space areas, without providing detailed commentary.

To ensure this aspect is appropriately addressed, it is recommended that the proposal be amended by Council to include a description of the alternative open space sites, including ownership, property description and dimensions, zone, and current use, i.e. formal or informal usage, as well as, location diagrams to illustrate the location of these sites in relation to the subject land.

Infrastructure

Council has advised that due to the nature of the planning proposal and because there are no immediate plans for redevelopment, a formal traffic and parking assessment has not been carried out.

Council, however, does acknowledge that reclassifying the land would result in an increase in demand for services in an existing urban area.

It is noted that Council further advises that sites 1, 2 and 3 are very well serviced by the existing public transport network. Sites 1 and 2 are within 800m walking distance from St Marys Railway Station and within 500m of two bus stops. Given poor sites access through narrow battle axe handles, these sites are likely to be developed for low density development. For high density development these sites need to be developed with adjoining lots, which would require a traffic and parking impact assessment as part of the development application.

Site 3 is approximately 300m from the nearest bus stop and any development of this site would be subject to assessment at development application stage.

Site 4 would continue to operate as a car park in the short term. It is noted that the redevelopment of Soper Place, including construction of a new multi-level car park, will increase the number of parking spaces available in the city centre.

Development Impacts

The proposal involves reclassification only. As the proposal does not seek to rezone, amend building or floor space ratio controls, it is considered that the proposal would not impact upon neighbouring properties.

Flood and water management

Site 1 is not affected by flooding.

Site 2 is affected by local overland flow flood paths on the southern boundary. Council has advised that any future development of this site would be subject to Council's flood related development controls.

Site 3 is not affected by flooding.

Site 4 is affected by local overland flow flooding. Council has advised that any future development of this site would be subject to Council's DCP Water Management controls.

Contamination

Council has advised (p.24 of the proposal) that it is not aware of contamination of the sites. While no geotechnical or contamination investigation has been carried out, a detailed investigation may be required at development application stage.

Bushfire

As previously discussed, the southern portion of site 3 is the only site which is identified as bushfire prone land. Council has advised that it will consult the NSW Rural Fire Service as required by the section 9.1 Direction.

CONSULTATION

Community

Council proposes to undertake a community consultation period of 28 days. An independent chaired public hearing is also proposed, as required under the Local Government Act 1993.

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

Agencies

Council has advised that the Gateway will determine which public authorities will be consulted.

Given the limited nature of the planning proposal, consultation with government agencies is not recommended, with the exception of consultation with the NSW Rural Fire Service to satisfy the requirements of section 9.1 Direction 4.4.

TIME FRAME

Council indicates that the proposal be finalised in August 2019.

Given the nature of the planning proposal, a 9-month timeframe is considered appropriate.

LOCAL PLAN-MAKING AUTHORITY

Council has not requested authorisation to exercise the delegation for the plan making function.

Given the planning proposal involves the extinguishment of interest in the land and the Governor's approval is required, it is recommended that authorisation not be issued for Council under section 3.36 of the *Environmental Planning and Assessment Act 1979* in this instance.

CONCLUSION

The Department recommends that the planning proposal proceeds with conditions, given that it will enable Council to investigate future options for the sites including sale or development in accordance with the current zones.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions: 1.1 Business and Industrial Zones; 3.1 Residential Zones; and, 6.2 Reserving Land for Public Purposes, are of minor significance;
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and may require justification.

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

1. Prior to public exhibition, Council is to:
 - (a) amend Part 4 – Mapping, by:
 - including existing zone map extracts for the subject sites and identifying the location of these sites by lot boundary outline;
 - providing a key to each zoning extract so that these maps can be readily understood by the public;
 - where applicable, including flood diagrams for the affected sites; and
 - including a bush fire prone map indicating its relationship to site 3.
 - (b) amend Figures 6 and 7 to illustrate the location of the subject land by lot boundary outline;
 - (c) on page 20 of the proposal, replace the numbers '4.00' with '1:4'; and,
 - (d) under Q9. *Has the Planning Proposal addressed any social and economic effects* (p. 25 of the proposal), include a description of the alternative open space sites, including ownership, property description and dimensions, zone, and current use, i.e. formal or informal usage, as well as, location diagrams to illustrate the location of these sites in relation to the subject land;
 - (e) provide further details on how funds from divestment or development of the sites would be used to fund proposed open space or improvements to existing open space; and
 - (f) consult with the Commissioner of the NSW Rural Fire Service and, if necessary, address any issues raised by the Service.
2. With the exception of consultation with the NSW Rural Fire Service, consultation is not required with public authorities.
3. The planning proposal is to be made available for community consultation for a minimum of 28 days.
4. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council is not authorised to be the local plan-making authority to make this plan.
6. An independent chaired public hearing is to be conducted as required under the Local Government Act 1993.



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