

## Planning Services

IRF18/6389

### Plan finalisation report

**Local government area:** Penrith

#### 1. NAME OF DRAFT LEP

Penrith Local Environmental Plan 2010 (Amendment No 25)

#### 2. SITE DESCRIPTION

The land subject to Amendment No.25 comprises six key sites identified as follows and illustrated at Figure 1:

- key site 1 – 46 Belmore Street, Penrith;
- key site 2 – 129-133 Henry Street, Penrith;
- key site 3 – 640-650 High Street, Penrith (Sinclair Hyundai site);
- key site 5 – 122-160 Station Street, Penrith (Nepean Village shopping centre);
- key site 9 – land bounded by Belmore, Commercial, Woodriff and Lawson Streets, Penrith; and
- key site 10 – 634-638 High Street, 614-632 High Street, 83-85 Union Road, 87 Union Road and 89-91 Union Road, Penrith.



Figure 1: Map of key sites.

### 3. PURPOSE OF PLAN

The subject land was deferred from a previously made amendment (Amendment No 14) to the Penrith Local Environmental Plan (LEP) 2010 due to unresolved flooding and evacuation issues.

These issues have been resolved and the draft LEP seeks to apply an 'incentives clause' provision to the subject land, which permits increased building heights and floor space where design excellence has been demonstrated and community infrastructure is provided.

#### Planning proposal

The planning proposal was lodged with the Department in April 2016 (**Attachment B**) and sought to amend the Penrith LEP 2010 by applying an incentives clause to 11 key sites within the Penrith city centre. The intention was to facilitate increased residential and mixed-use development in the Penrith CBD.

In response to discussions with relevant agencies and updated flooding and evacuation information, it was recommended that:

- the incentive provisions do not apply to key sites 1, 2, 3, 5, 9 and 10 as these sites are below the probable maximum flood (PMF) level and will require further investigation into flooding and evacuation constraints;
- the incentive provisions apply to key sites 4, 7 and 8 as these sites are beyond the PMF; and,
- although key sites 6 and 11 are within the PMF area, the incentive provision be applied to these key sites as relevant agencies agreed the sites can proceed prior to evacuation modelling being completed.

It was considered that key sites 1, 2, 3, 5, 9 and 10 could be further considered on completion of more detailed flood investigations and evacuation modelling for the Penrith city centre.

On 21 June 2017, the amendment to the LEP was made (**Attachment G**), which applied to five of the 11 sites, identified as 4, 6, 7, 8 and 11 (known as Amendment No 14). The remaining six sites were deferred from the plan.

In approving the plan, the Department required Council to adequately address flood risk and evacuation to progress the deferred sites. No further community consultation was required unless there were substantial changes to proposed planning controls.

The subject draft LEP (**Attachment LEP**) seeks to apply the incentives clause to the remaining six key sites.

Approximately 3430 dwellings will be created as a result of the proposal.

#### Incentives clause

The incentives clause seeks to enable a development on the identified key sites to:

- exceed the maximum height of building controls; and
- exceed the current maximum floor space ratio (FSR) controls to a 'bonus' maximum FSR, if the development:
  - has regard to the objectives of the clause;
  - exhibits design excellence; and
  - includes community infrastructure.

The proposed incentive clause does not limit the extent to which a proposal can exceed the maximum height of buildings standards, however, each key site has a maximum bonus FSR. The maximum FSR control for each key site is provided in the table below.

Table 1: FSR controls under the incentives clause

Site	Base FSR	Bonus FSR
1	4:1	5.5:1
2	4:1	5.5:1
3	3:1	6:1
4	3.5:1	5:1
5	1.5:1	2:1
6	2:1	2.5:1
7	3.5:1	5:1
8	4:1	5.5:1
9	4:1	5.5:1
10	3:1	6:1
11	—	5:1

As part of the Gateway determination, Council was required to prepare a public benefit policy to inform the planning proposal. The planning proposal was exhibited with 'public benefit policy principles' to give the community and potential developers certainty regarding what may be considered within the proposed provision. Following exhibition of the planning proposal, Council resolved to exhibit the draft policy.

Through the drafting process, the description of 'public benefit' has been amended to refer to 'community infrastructure' consistent with similar provisions in other instruments.

The community infrastructure refers to development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation areas (major), public car parks or public roads. The clause requires that the community infrastructure is provided on the site of the development.

Clause 8.7 Community Infrastructure on Certain Key Sites was introduced to the LEP under Amendment No 14, which allows development to exceed planning controls for sites 4, 6, 7, 8 and 11 if the sites include design excellence and contribute to community infrastructure. In progressing the deferred sites, this clause will be updated to include sites 1, 2, 3, 5, 9 and 10.

#### Flood risk

Key sites 1, 2, 3, 5, 9 and 10 were deferred to ensure that flood risk and evacuation issues were appropriately addressed prior to increasing development potential.

The NSW Government's Hawkesbury-Nepean Valley Flood Risk Management Strategy is a long-term plan for the government, local councils, businesses and the community to work together to reduce and manage flood risk in the Hawkesbury-Nepean Valley.

There are nine outcomes contained in the flood strategy designed to reduce flood risk to life, property and social amenity from floods in the Hawkesbury-Nepean Valley now and into the future. Outcome three in the strategy requires the Department to prepare a regional land use planning framework as a component of managing risk in the valley.

The preparation of the planning framework is underway. In the interim, an adaptive approach to managing flood risk to enable development is supported for the Penrith city centre. The adaptive management framework seeks to allow residential development in the Penrith and Hawkesbury local government areas to proceed in a staged process. It has

been agreed that the deferred sites can proceed based on additional information that has been received (see Section 7 of this report).

#### **4. STATE ELECTORATE AND LOCAL MEMBER**

The site falls within the Penrith State Electorate. The Hon Stuart Ayres MP is the State Member for Penrith.

The site falls within the Lindsay Federal Electorate. Ms Emma Husar MP is the Federal Member for Lindsay.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal

**NSW Government reportable political donation:** there are no donations or gifts to disclose and a political donation disclosure is not required.

#### **5. GATEWAY DETERMINATION AND ALTERATION**

The Gateway determination issued on 14 April 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 8 June 2017 (**Attachment D**) to extend the completion date to 21 June 2017.

The proposal was partially finalised and Amendment No 14 was made on 21 June 2017 (**Attachment G**). The subject of this report is to finalise the deferred sites following the further investigation into flooding and evacuation constraints.

The current Gateway determination is still valid for the planning proposal as the proposal (including the deferred sites) was received before 21 June 2017. An amendment to the Gateway determination is not required.

#### **6. PUBLIC EXHIBITION**

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 9 May to 6 June 2016.

In accordance with the Deputy Secretary's letter to Council (**Attachment G**), further public exhibition was not required for the deferred sites.

During the public exhibition period, Council received 15 submissions from the community. Five submissions supported the proposal, with the remaining submissions raising issues concerning: the public benefit policy and its purpose; traffic congestion and parking; and the bulk and scale of key site 11 at Thornton. There were also requests to have additional sites included in the key sites map.

The above concerns were adequately addressed in Council's submissions report (**Attachment J**).

A summary of Council's response to the key issues is outlined below:

- the definition of 'public benefit' was amended to 'community infrastructure' for consistency with other instruments;
- Council noted the concerns for increased traffic and congestion in the CBD and will investigate the potential impacts via a CBD traffic study and plan;
- Council noted key site 11 is intended for commercial development and not residential. Any overshadowing will impact on the adjoining train station and Westfield shopping

centre and is not expected to impact on the residential development to the north of the site in Thornton.

A submission was made by UrbanGrowth NSW as the developer of the Thornton site (key site 11). UrbanGrowth NSW supported the proposed amendments and sought clarification over whether the proposal will require modification to the North Penrith Concept Plan. Council noted that it anticipated the concept plan would require modification.

Council may consider additional key sites where there are supporting studies and justification.

Since the release of Councils submission report in July 2016, Council has commenced the Penrith Core Centre Transport Management Study and Plan.

In May 2018, Council commissioned a consultant to undertake the work. The study is expected to identify current and future congestion and parking constraints, which will guide recommendations to appropriately manage traffic and transport in the Penrith CBD. The study and plan are expected to be completed by June 2019.

The proposal was not required to be referred to the local planning panel.

While additional information has been received to support the progress of the deferred sites, there has been no change to the planning proposal from that originally exhibited. As such, re-exhibition of the proposal is not considered to be required.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

In accordance with the Gateway determination (**Attachment C**), Council was required to consult with public authorities. Four submissions were received.

### Roads and Maritime Services (RMS) and Transport for NSW (TfNSW)

RMS and TfNSW recommended that a detailed traffic and transport study be prepared prior to finalisation of the planning proposal. RMS also recommended that minimum road frontages be inserted into the LEP to avoid fragmentation of development.

As noted above, Council has commissioned the Penrith Core Centre Transport Management Study and Plan, which is expected to be completed by June 2019.

Council advised that it will consider minimum road frontages as part of the future review of the broader city centre planning controls and when development applications are lodged for each key site.

It is considered that the concerns raised by RMS and TfNSW have been satisfactorily addressed.

### Heritage Council of NSW

The Heritage Council requested that any proposed development at certain sites be sympathetic to the adjoining development and consideration be given to urban design and amenity, and issues such as overshadowing and local character.

Council noted the concerns raised by the Heritage Council and noted that any future development of these sites must show design excellence, which includes, but is not limited to, the type of materials, the impact on the public domain, views, overshadowing and heritage. Further, any development proposal on a key site, where the value exceeds \$1 million will undergo an architectural design competition.

It is considered that the concerns raised by the Heritage Council have been satisfactorily addressed.

## Office of Environment and Heritage (OEH)

OEH highlighted that the key sites at: 164 Station Street (key site 6); 41, 184 and 192 Lord Sheffield Circuit (key site 11); 614-652 High Street (key site 3); and 87-91 Union Road (key site 10), Penrith are affected by flooding and flood investigations should be undertaken at the development application stage.

Council noted a flood study would be undertaken by any proponent seeking to lodge a development application on land that is flood prone or partially flood prone. Therefore, Council agrees that this matter will be addressed during the development application process.

The Department notes that a flood study is generally undertaken during the development application process. However, in this situation, further assessment was required for the key sites within the probable maximum flood (PMF) extent to address flood and evacuation concerns by the Hawkesbury-Nepean Valley Flood Management Taskforce (see further details below).

## **8. POST-EXHIBITION CHANGES**

### Post-exhibition consultation — Hawkesbury-Nepean Directorate

Following the Gateway determination, advice was sought from the Hawkesbury-Nepean Directorate as some of the key sites were identified as being within the PMF area.

The Directorate was consulted on the planning proposal on 17 November 2016. Based on a more focused assessment commissioned by the Department on flood risk and evacuation within the CBD, it was demonstrated that the development of only five of the 11 sites should proceed at that time, while broader assessments of flooding and evacuation for the CBD were undertaken.

As previously discussed, the Department is responsible for the development of a regional land use framework as part of the implementation of the Hawkesbury-Nepean Flood Strategy and has examined the evacuation processes within the Penrith CBD in conjunction with Council, SES, RMS and NSW. While six of the sites were originally deferred from the plan-making process, the Department is satisfied that these sites can be progressed through an amendment to clause 8.7 (see Sections 2 and 7 of this report) as the flood risk and evacuation requirements could be adequately addressed.

### Amendment to public benefit – community infrastructure requirements

The planning proposal sought a public benefit that exceeds development contributions that apply to the site to satisfy the demand for facilities and services at the level reflected in the existing, non-bonus building height and FSR provisions. Council proposed that this benefit be guided by a public benefit policy.

Following public exhibition, the 'public benefit' definition was amended to 'community infrastructure' to be consistent with the requirements of the *Environmental Planning and Assessment Act 1979* (**Attachment G**). The definition of community infrastructure is provided in clause 8.7 of the Penrith LEP and this clause and definition will apply to the deferred sites.

### Site-specific flood and evacuation management

Two of the deferred incentive sites, i.e. key sites 3 and 10 at 640-652 High Street, Penrith and known as the TOGA development, were identified as having the highest flood and evacuation risk of the planning proposal sites within the Penrith CBD. TOGA is seeking to develop the two sites for residential development, with the potential for 565 dwellings and ground-floor commercial space.

To address flood and evacuation risks, TOGA is proposing several measures including building design and structural resilience, early evacuation, safe path of travel and short-term refuge.

The Department has reviewed and considers that TOGA has provided the relevant supporting documentation to justify that the proposed residential development will be able to withstand the expected flood inundation of the site and successfully evacuate residents.

## **9. ASSESSMENT**

Since the deferral of the key sites in 2017, the Hawkesbury Nepean Valley Flood Management Directorate have been progressing the Resilient Valley, Resilient Communities – Hawkesbury-Nepean Valley Flood Risk Management Strategy. The flood strategy has nine key outcomes one of which involves the preparation and implementation of a regional planning framework that integrates land uses and road planning to better adapt to and manage flood risk in the Valley.

The Directorate has been working with key stakeholders including the Department and Council to progress the regional planning framework in particular identifying areas earmarked for future development and their potential impact on the regional flood evacuation route.

Given the level of complexity involved in preparing and making the regional planning framework, the Directorate, Council and the Department developed and approved an interim solution to allow residential development impacted by the PMF within the Penrith CBD to occur.

Infrastructure NSW, NSW SES, RMS, GSC, Council and the Department have developed a staged solution that will enable residential development impacted by the PMF within the Penrith City Centre to occur whilst not exceeding the regional evacuation route capacity. The adaptive management framework approved by the NSW Government, focusses on developing solutions that will build resilience of the community as development occurs, including improving evacuation awareness and management processes, identifying transport and utility upgrades, identifying funding mechanisms, and establishing planning and development controls to allow buildings and places to be more resistant to flood inundation.

The development of the adaptive management framework will allow the planning proposals in the Penrith CBD that were deferred as a result of flood and evacuation concerns to progress to finalisation.

The adaptive management framework will ensure residential growth does not exceed the capacity of the regional evacuation routes. Growth will be monitored through the development application process and the issuing of construction certificates, recognising that once land is rezoned further approvals are required before development can occur.

As mentioned above, site-specific assessment was also requested by land owners such as TOGA to address the management of flooding and evacuation in and around their site. The Department is satisfied that the measure proposed by TOGA are appropriate to address site specific flood and evacuation risks and considers that a similar assessment to TOGA will be required by the other sites impacted by the PMF. However, the Department is now satisfied that this assessment can occur through the development application process.

It is this combination of the adaptive management framework and site-specific flood assessment and mitigation measures that supports the recommendation the draft LEP be made.

## Section 9.1 Directions

It is recommended that the Secretary's delegate agree that the inconsistency with section 9.1 Directions 4.3 and 6.3 is justified on the basis of minor significance, as detailed below:

### *Direction 4.3 Flood Prone Land*

The Direction applies as there will be a significant increase in the development of the land within a flood planning area. The Direction requires that the proposal give effect to and be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).

The Penrith CBD and surrounding areas are subject to severe to extreme flood events that are greater than the 1-in-100 year flood event.

As previously discussed, key sites 3 and 10 at 640-652 High Street, Penrith, known as TOGA, were identified as having the highest flood and evacuation risk of the proposed key sites. Recent correspondence from the Department to TOGA (**Attachment I**) confirmed that TOGA has provided the relevant supporting documentation to justify that the proposed residential development will be able to withstand the expected flood inundation of the site and evacuate residents sufficiently.

The remaining deferred key sites will require similar flooding and evacuation assessment and reference to flood resilient design at the development application stage.

Any inconsistency of the proposal with this Direction is considered to be of minor significance as the adaptive management framework and site-specific flood and evacuation assessment are sufficient to manage the flood risk in accordance with the principles and guidelines of the Floodplain Development Manual 2005.

### *Direction 6.3 Site Specific Provisions*

This Direction applies when a planning proposal allows a particular development to be carried out. An inconsistency arises as the proposal does not:

- allow the land use, i.e. the extent of the land use in the form envisaged under the incentives clause, in the wider zone; or
- rezone the sites; or
- allow the land use without imposing any development standards or requirements in addition to those contained in the principle LEP.

The Secretary's delegate agreed that this inconsistency was of minor significance with the making of Amendment No 14.

It is considered that any inconsistency in respect of the deferred sites is of minor significance as the application of incentives provisions will be in accordance with the objective of this Direction, i.e. the proposal does not apply unnecessarily restrictive site-specific planning controls and will seek to encourage appropriate development removed from any restrictive standards as contemplated by the Direction.

## State environmental planning policies (SEPPs)

The draft LEP is consistent with all relevant SEPPs or deemed SEPPs.

## State, regional and district plans

The draft LEP is consistent with the objectives outlined in the Western City District Plan as it will support housing supply, choice and affordability. The proposal is consistent with planning priority W5 by providing housing supply and choice, W6 by creating and renewing great places and W9 by growing and strengthening the metropolitan cluster.

Particular attention has been made to addressing planning priority W20 which requires that desired development outcomes are balanced with appropriate flood risk management outcomes. The draft LEP is consistent with this priority as measures such as the adaptive management framework and the design of flood resilient buildings are in place to ensure the cumulative impact of urban growth is assessed and managed in and around the Penrith city centre.

#### **10. MAPPING**

There are no maps associated with the LEP amendment.

#### **11. CONSULTATION WITH COUNCIL**

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment H**). Council confirmed on 7 November 2018 that it was happy with the draft and the plan should be made (**Attachment H**).

#### **12. PARLIAMENTARY COUNSEL OPINION**

On 14 November 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

#### **13. 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:

- all relevant environmental impacts have been assessed;
- there are no significant environmental, social or economic impacts anticipated as a result of the amendments sought; and
- the flooding and evacuation concerns have been adequately addressed.



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