
1.2 Appendix 2 – DIPNR and Council Resolutions



PLANNING SYSTEM

Local planning

Circular	PS 05-005
Issued	19 August 05
Related	LEP preparation guidance notes 2004-1 & 2 EP&A Act and Regulation Note Dec 2000 DUAP letter to councils 21 December 1999

Reports by the Director General under section 69 of the EP&A Act

This Circular provides councils with advice on the Director-General's requirements for reporting to the Minister under section 59 of the *Environmental Planning and Assessment Act 1979*, and clarifies the circumstances under which amending plans may be prepared.

Introduction

Councils are able to use delegations to provide the Director-General's requirements for reporting to the Minister under section 59 of the *Environmental Planning and Assessment Act 1979*. The delegations will be reviewed to accommodate the standardisation of planning instruments. In the interim, the delegations issued in 1997 continue to apply.

Preparation of new instruments and amendments of existing LEPs

One of the major planning reforms is to make local environmental plans the primary instrument including all mandatory development controls. To achieve a single plan for each local government area, both the department and councils will need to direct effort to strategic planning and preparation of new instruments.

Councils are requested to avoid, where possible, resolving to prepare minor amendments to existing plans. There will be instances, however, where Councils can justify preparing a draft amending plan in advance of the new standard instrument.

Examples of such exceptions include the following:

- the amendment is to facilitate an employment generating activity
- existing provisions jeopardise or undermine State government policy
- the amendment implements agreed strategic direction for development in the area, including land release or preservation of strategic corridors
- council has completed strategic work and delays in implementing recommendations would be unreasonable and inefficient.

When notifying the Director-General under section 54 of the intention to prepare an amending plan, councils will need to demonstrate the need for any proposed amendments. Any LEP amendment will also need to be consistent with the standard template as far as possible, to facilitate consolidation into the new instrument.

Local councils should not impose a moratorium on rezoning, and instead should assess proposals on a case by case basis on their merits, in consultation with the DIPNR regional office. The preference is for minor amendments to LEPs that fall outside the above criteria to be incorporated into the process for the new comprehensive LEP.

Note that the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*, when it commences, will introduce a process enabling correction of errors and omissions from plans without complying with all provisions of Part P. If councils have minor amendments that fit the criteria, the department will administer a process entailing council notification of the proposed amendment, and, on the department agreeing that it is minor in nature, a report to the Minister.

A future practice note will provide further detailed guidance on the need to comply with the standard local environmental plan template and transitional arrangements under the Reform Act.

Quality Improvement

To improve and maintain the quality of reporting to the Minister this Circular sets out a number of points which councils need to ensure are covered adequately in section 59 submissions.

A format for a section S9 report prepared under delegation is attached to this Circular. The format covers the requirements of section S8(4) and section S9. Particular attention should be paid to the following points, which have been common weaknesses in recent reporting:

Clear statement of what the draft plan does and why it has been prepared

Begin with a clear, plain English statement, in the Summary section, of what the draft plan will do and why it was necessary to prepare it. A statement such as 'The draft plan is necessary because of the following reasons' is not sufficient.

Maps showing location and existing zoning

Provide information in the report on the current zoning of the land (refer to the model format) and a map identifying the land to which the draft plan applies, the existing zoning, and the zoning of the surrounding land. Attach an additional map indicating the general location of the land, in the context of the local government area.

Submissions

Identify the main issues raised in submissions received from members of the public (attach copies). This section of the report should contain the council's response and conclusions concerning the main issues raised in submissions.

Views of public authorities

Section 54 of the Environmental Planning and Assessment Act 1979 requires that the council must have regard to the views of public authorities in preparing a draft plan. Note that if there is an unresolved objection to the draft LEP made by a public authority, council should seek to resolve the matter. If the matter remains unresolved, the draft LEP must be forwarded to the department for the preparation of a report to the Minister.

Alterations to the draft plan after exhibition

Briefly identify any alterations made to the plan after exhibition, the reason for the changes, and whether or not the draft plan was re-exhibited.

It is established practice that the draft plan submitted to the Minister is consistent with the section 54 notification to the Director-General, both in terms of the subject matter of the draft LEP and of the land to which the draft plan applies. If a council alters a draft plan after exhibition, it must consider whether the plan requires re-exhibition. The Court has recognised (John Lenton Brown v Blue Mountains Council, the Minister for Urban Affairs and Planning & Anor) that section 54 of the Environmental Planning and Assessment Act allows significant alterations to be made to a draft plan without the plan being re-exhibited. However, where a plan is changed significantly, it may pass the point where it is so altered that it becomes a different plan from the one first exhibited, and cannot be said to be the result of the process under Part 4 of the Act. It must then be re-exhibited.

In making changes to a draft plan under section 54, councils should also be aware that there may be a

need to consult with public authorities who will or may be affected by the altered draft plan.

Whether the draft LEP is inconsistent with SEPPs, REPs or section 117 directions

Section S9(a) requires the Director-General to report on whether a draft plan is inconsistent with any State environmental planning policy (SEPP), regional environmental plan (REP) or section 117 direction relevant to the land. Note that if a draft LEP is inconsistent with a SEPP or REP, council may not exercise delegations under section S9 and the draft plan must be forwarded to the department for the preparation of a report to the Minister. When exercising delegations, councils must state in the section S9 report that the draft plan is not inconsistent with SEPPs and REPs. Any inconsistency with section 117 directions must be identified and justified.

Note that councils are required to place on exhibition a copy of the relevant SEPPs, REPs and section 117 directions, together with a statement identifying which SEPPs, REPs and section 117 directions substantially govern the operation of the draft LEP.

New section 117 directions

New section 117 directions will be issued when the Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 commences. Under the new provisions, a direction may require draft plans to be strictly consistent or substantially consistent with the terms of the direction, or provide for circumstances in which an inconsistency can be justified.

This represents a departure from the existing position where a plan can be inconsistent with a section 117 direction if the inconsistency can be justified. When the Reform Act commences and new directions are issued, councils preparing draft LEPs should ensure that their draft plans are consistent with new directions where this is required.

In some instances, draft plans already in preparation may need to be amended and re-exhibited to comply with new section 117 directions.

Advice on compliance with sections 66 and 67

A statement is required under section S9(c) to inform the Minister whether council has complied with the provisions of sections 66, 67 and 68 for public involvement in the preparation of the draft LEP.

Relationship of the draft plan to section 117 directions and other instruments

Section S9(d) requires the Director-General to report on the relationship between the draft plan and relevant section 117 directions and other proposed and existing environmental planning instruments.

Section 71 determination

The section 71 determination made on 17 January 1988 has been revoked. Note that the determination made in conjunction with section 117 direction G22 on 17 February 1988 remains in force until the Reform Act commences, revoking section 71. This direction governs the format, structure and subject

The City in Its Environment

4 Department of Infrastructure, Planning and Natural
Resources –Planning Reform Process

4114/65

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Management Plan 4 Year Outcome:	<i>Development enhances the City's living and working environments.</i>
Critical Action:	<i>Implement policy and regulatory responses to achieve quality urban outcomes.</i>

Purpose:

To inform Council of the latest developments in the planning reform process, and their implications for current and future rezoning applications. The Report recommends that Council limit proposals to amend existing planning instruments to those which satisfy the criteria established by the Department of Infrastructure, Planning and Natural Resources.

Background

The need for reform to the planning system is well understood, and has been the subject of previous reports to Council. The State Government is introducing a number of reforms to the existing system to create a more modern, effective planning system, with a focus on improving and standardising the preparation of Local Environmental Plans. Under the new system each council area will have one Local Plan, which will consolidate all existing planning instruments, reflect State and regional priorities, and provide a single source for all mandatory land use and development controls.

In late 2004, Council received funding from the Department of Infrastructure, Planning and Natural Resources (DIPNR) under the Planning Reform Fund to assist in the preparation and electronic delivery of Penrith's Local Plan. This work is well underway, with the software that will enable electronic delivery now installed, and the framework for the Local Plan being developed.

Current Status of Planning Reforms

In April 2005, Council received a letter from DIPNR providing information on the current status of the planning reform process. Although only advisory at this stage, the letter outlines directions that will impact on Council's planning processes and operations over the next three years. The three key points are outlined below –

Timeframe for the Local Plan – all local Councils in NSW are required to have a new Local Plan in place within the next five years. Sydney metropolitan councils are to implement the reforms as a priority, and DIPNR requires these councils (including Penrith) to have the new Local Plan in place by early 2007.

Structure of the Local Plan – DIPNR has indicated that it is not expecting that all planning instruments within a local government area will be reviewed and replaced by 2007, as some areas (such as Penrith), have very complex planning situations. The Local Plan can apply

initially to part of the local government area and be subsequently amended, in a staged way, to apply to the whole City within three years (by early 2010).

It is pleasing to note that this approach reflects the successful outcomes of discussions that Penrith Council officers pursued with the Department's senior executive over the last few months. Developing strategic directions for the significant elements of the City, and then reviewing all of Penrith's planning instruments and preparing a single, comprehensive plan is a considerable undertaking. An approach that allows the Local Plan to initially apply to part of the City, and subsequently preparing additional 'chapters' of the Plan to cover the whole of Penrith, enables Council to manage the process efficiently, with the identified resources.

Model template – DIPNR is producing a model template, with which all councils must comply, to standardise the format of the Local Plans. A previous version of the model template was released last year, and reported to Council in October 2004. DIPNR have been revising the template in response to submissions received, and is aiming to release a new version in the middle of this year. The amended version of the template will also be reviewed in the context of its applicability to planning for Penrith, and the Department will be advised if opportunities for further improvements or changes are identified.

Proposed 'Penrith Local Plan' Process

One of the aims of the planning reforms was to more clearly articulate a council's strategic directions in their new Local Plan, as a policy basis for the land use and development controls. This approach reflects Council's established process for carrying out its broad Citywide planning investigations, which involves –

1. undertaking a Study to identify the current situation, including opportunities and constraints
2. developing a Strategy that identifies required future actions
3. preparing contemporary planning controls (LEP, DCP, and Section 94 Plan if required)
4. facilitating the implementation of, or implementing, other agreed Strategy actions.

Given the complexity of the City's planning context, review of Council's existing planning instruments has been undertaken in stages, based either on land use, or specific issue (rural, City Centres, heritage, employment, and residential). The Local Plan process will involve –

1. The Rural Lands Study and Strategy

Council adopted the Rural Lands Strategy in September 2003. One 'deferred' area requires further consideration by Council, and a report is being prepared on that matter. The preparation of new planning controls for the City's rural lands has commenced, and will be developed, as a 'chapter', within the Local Plan framework.

2. The City Centres' Review

A recent workshop with staff, specialist consultants, and representatives from both Centre Associations, together with the information determined through the earlier studies and community consultation, has contributed to the current preparation of draft Strategies for Penrith and St Marys.

An 'Issues' Workshop has been arranged in early June with Councillors, to enable further consideration of identified issues, prior to seeking further community feedback.

It is proposed to seek Council's endorsement of the Strategies following the resolution of identified issues, then undertake further consultation with stakeholders and the City's communities, and prepare draft planning controls for each Centre by December 2005.

The draft planning controls will be developed, as 'chapters', within the Local Plan framework.

3. *Heritage Review*

A Thematic History for the City and Suburb Histories have been completed, and a draft Report, Strategy and Inventory is currently being developed. Council staff will review the draft documents, and comments and advice will also be sought from the Heritage Study Reference Group.

It is proposed to seek Council's endorsement for public exhibition of the Strategy, Inventory, and draft planning controls later this year. The draft planning controls will be developed within the Local Plan framework.

4. *Employment Strategy*

An Employment Lands Study for the City has been completed and endorsed by Council, and an Employment Strategy is currently being developed. It is proposed to seek Council's endorsement for the Strategy, and subsequently prepare draft planning controls within the Local Plan framework.

5. *Residential Strategy*

A review of Council's adopted Residential Strategy will also be required, to ensure that the urban growth projections for the City reflect the policy directions of the Metropolitan Strategy, and also recognise the City's physical capacity to support that growth. Given the breadth and complexity of the current projects, and staff resourcing levels, it is proposed to commence this Review next year, when significant elements of the above projects have been progressed.

The new planning controls will be developed in land use 'chapters', and more specifically in precincts, based on the City's existing and future suburbs. Council, in receiving funding from DIPNR for this project, has committed to the preparation of draft planning controls for six 'precincts' by December 2005. Subject to DIPNR's agreement, these precincts may include the Penrith City Centre, the St Marys Town Centre, heritage provisions, and rural precincts.

Integrating the Release Areas

There are eight urban, and one employment, release areas across the City. Where planning controls have been gazetted, such as Erskine Park Employment Area, those controls will be incorporated into the Local Plan. This approach can also apply to Lakes Environs.

As the planning for each release area progresses, the planning requirements should be developed within the Local Plan framework. The release area would be incorporated into the Local Plan, as a separate precinct, upon completion of the planning process. This approach can be applied to North Penrith, Glenmore Park Expansion, the Werrington Mixed Use site, Caddens Release Area, and Claremont Meadows.

Clarification will be required from DIPNR regarding the future integration of planning controls where release areas are currently being planned through Regional Environmental Plans, which are the responsibility of DIPNR, rather than Local Environmental Plans. This clarification is required for Penrith Lakes and ADI, and clearly the integration of these areas within the City's new Local Plan would be an appropriate outcome.

Other Rezoning Applications and Proposals

In its recent letter, DIPNR specifically asked councils to avoid minor amendments to existing plans, to enable both Council and the State Government to focus on implementing the reforms and the preparation of new instruments. DIPNR has indicated that support for

specific amendments, over the next three to six years, will need to be based on compelling reasons. DIPNR has provided examples of 'reasonable justification', which include facilitation of an employment generating activity, amendment of existing provisions that currently undermine or jeopardise State Government policy, or implementation of agreed strategic directions for the area.

DIPNR has also advised that this approach applies to applications that have been received by Council, but not yet forwarded to the Department. Any minor LEPs will need to be accompanied by reasons why they need to proceed in advance of the overall reforms to the planning controls.

Council presently has a total of 12 current minor rezoning applications. The processes for a number of these rezonings are significantly advanced, and the remainder would appear to generally fit the DIPNR criteria. It is anticipated that, subject to DIPNR's agreement, the individual processes for these site-specific rezonings will still be pursued. A table outlining the nature and status of each of these is appended to this report.

In having regard to the advice provided by DIPNR, it would be prudent to consider introducing criteria to determine whether there are compelling arguments to progress applications for rezoning in advance of the Local Plan. DIPNR has indicated that acceptable reasons for processing minor amendments are where the applications propose to –

- facilitate employment generating development
- bring provisions in line with State Government policy, or
- implement agreed strategic directions for the area.

These criteria provide Council with a basis for managing existing and future proposals for site-specific rezonings, and preference should be given to proposals that meet all of the recommended criteria. It is considered, however, that support for a rezoning proposal must be based on more than the delivery of individual benefit to the proponent, and any application should demonstrate exceptional planning benefit providing social and economic benefit to the community to be progressed ahead of the Local Plan. It must also demonstrate that it delivers an exceptional planning response to be supported.

This approach enables Council to focus on processing those existing applications that are supported, and could potentially allow for additional resources to be dedicated to the preparation of the Local Plan. The criteria will, however, still allow significant rezoning applications to proceed ahead of the new planning controls.

Conclusion

The Department of Infrastructure, Planning and Natural Resources has indicated that the timeframes for the preparation of Local Plans will be formalised through legislation. It is therefore critical that Council devote sufficient resources to the planning process to ensure that the timeframes can be met.

A number of the necessary Studies and Reviews are underway, and draft planning controls are being developed to articulate the policy directions in Council's adopted Rural Lands Strategy. The strategic directions of the Rural Lands Strategy, and those being developed through the City Centres' Vitality and Viability Review, the Employment Lands Strategy and the Heritage Review, will be expressed by contemporary planning controls in the new Local Plan. The planning provisions for release areas will also be incorporated into the Local Plan.

Managing the number of site specific or minor rezonings will assist in ensuring there is the necessary resource capacity to prepare and electronically deliver the Local Plan. It is therefore recommended that Council only support proposals for site-specific rezonings

(amending existing planning instruments) where the proposals meet the criteria outlined in this report.

RECOMMENDATION

That:

1. The information contained in the report on the Department of Infrastructure, Planning and Natural Resources - Planning Reform Process be received
2. Consideration of support will only apply to a site-specific rezoning proposal (amending existing planning instrument/s), where the proposal –
 - (a) demonstrates social and economic benefit to the City's communities, and
 - (b) delivers an exceptional planning response, and
 - (c) meets the recommended DIPNR criteria, being that the rezoning proposal
 - (i) facilitates employment generating development
 - (ii) brings provisions in line with State Government policy,
 - (iii) implements agreed strategic directions for the area.
3. Site-specific rezoning proposals that do not meet the criteria outlined in (2) above will not be supported.

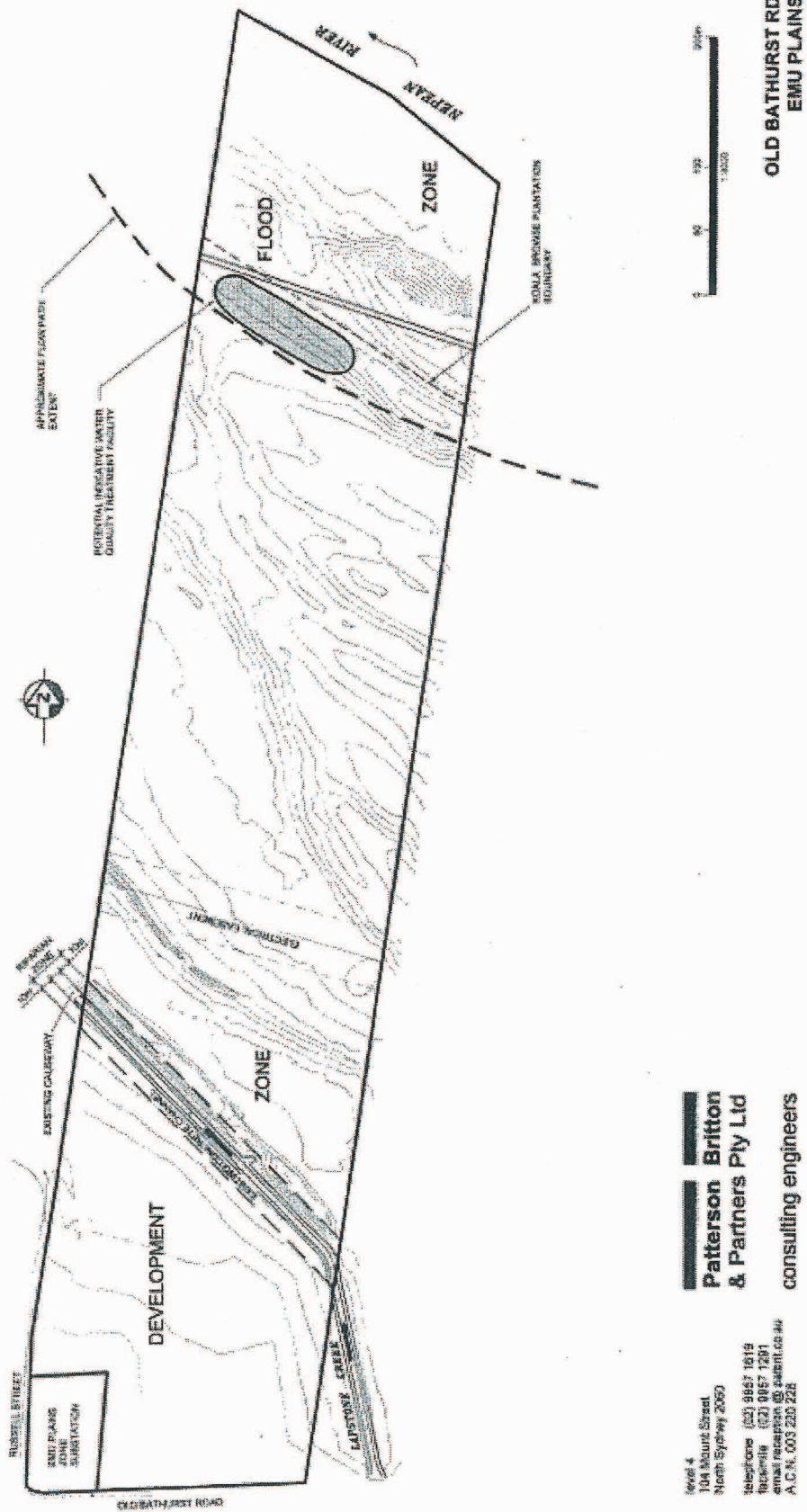


Appendix – Current Rezoning Applications

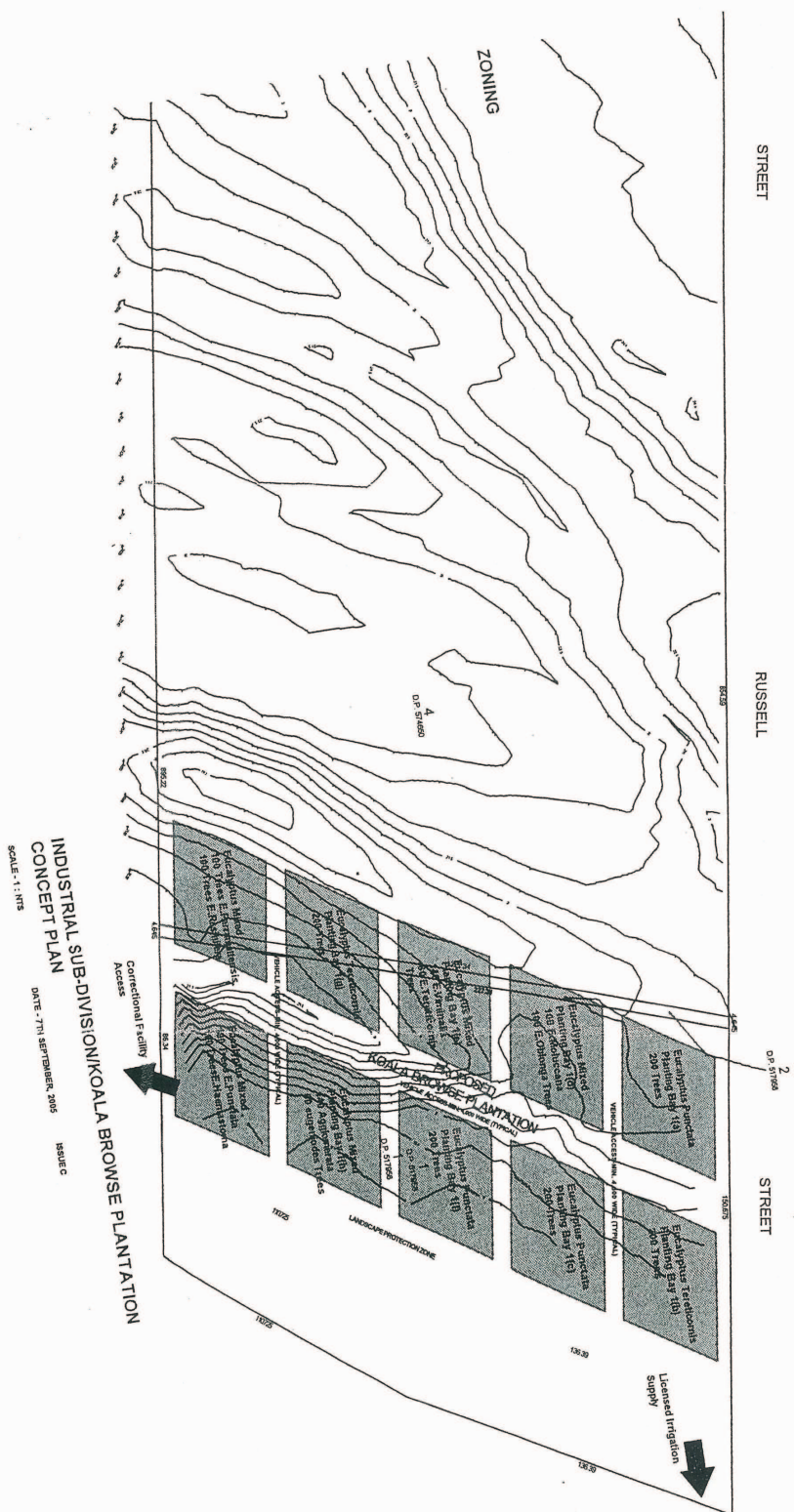
	Property	Nature of amendment proposed	Current status
1.	Brethren School	Amendment to SREP 25 to make an educational establishment for up to 50 students permissible on the site.	Submitted to the Minister for gazettal in December 2004.
2.	Penrith LEP 2002 (Villages of Mulgoa and Wallacia) (Amendment No. 1)	Correction of an error in the subdivision table and modification of some definitions to bring them in line with other plans.	Submitted to the Minister for gazettal in December 2004.
3.	Wolseley St, Jamisontown	Rezoning from 3(d) Highway Service to 4(b) Special Industry, under Penrith LEP 1996.	Submitted to the Minister for gazettal on 16 Feb 2005.
4.	Penrith LEP 1998 (Urban Land) (Amendment 18) Cook Parade, St Clair and the St Clair Shopping Centre	Reinstatement of planning controls inadvertently repealed by the gazettal of Penrith LEP 1998 (Urban Land).	Submitted to the Minister for gazettal on 21 March 2005.
5.	Bradley St, Glenmore Park	Amendments to the 2(r) zone under LEP 188 (Glenmore Park).	Submitted to the Minister for gazettal on 18 May 2005.
6.	Penrith Anglican College, Wentworth Road, Orchard Hills	Amendment to SREP 25 to make an educational establishment permissible on the site to enable the expansion of the adjacent Penrith Anglican College.	Draft LEP currently on exhibition. Exhibition closes on 17 June 2005.
7.	SITA, Elizabeth Drive, Luddenham	Modification of Penrith LEP 201 to make an Advanced Waste Treatment Facility permissible on the site.	Section 62 completed. Draft LEP to be exhibited in June / July 2005.
8.	Penrith LEP 1998 (Urban Land) (Amendment 19)	Modification of Penrith LEP 1998 (Urban Land) to update the zoning on land previously reserved for open space, but now acquired by Council. Will also clarify building envelope controls for the 2(c) zone to permit two storey dwellings.	Section 62 completed. Exhibition material currently being prepared. Draft LEP to be exhibited in June / July 2005.
9.	Links Rd, St Marys	Rezoning of land within the South Creek Corridor	Section 62 completed. Exhibition not yet commenced.

1.3 Appendix 3 - Plan indicating Development Zone

1.3 Plan indicating development zone



1.4 Appendix 4 - Plan indicating non-development / rural zone





1.5 Appendix 5 – Expression of Interest from Taronga Park Zoo