

DEPARTMENT OF PLANNING AND INFRASTRUCTURE – SYDNEY WEST REGION

PLANNING REPORT

Local Government Area: Penrith

File Number: 10/12116

Name of draft Plan: Penrith Local Environmental Plan 2010 (Amendment 2) ('draft LEP').

The draft written instrument is at **Tag LEP** and the draft LEP maps are at **Tag MAP**.

Subject Land Description

The draft LEP covers part of the Penrith Local Government Area. The draft LEP specifically rezones the "Penrith Panthers site" at:

- Lot 151 DP 863625 (83 Mulgoa Road, Penrith),
- Lot 13 DP 710086 (123-135 Mulgoa Road, Penrith),
- Lot 1021 DP 812335 (63 Mulgoa Road, Penrith),
- Lot 1 DP 1064526 (Lot 1 Retreat Road, Penrith – a Council owned road),
- Lot 12 DP 710086 (Penrith City Council open space),
- Lot 152 DP 863625 (109 Mulgoa Road, Penrith), and
- Lot 1 DP 1043008 (73 Mulgoa Road, Penrith)

Purpose of Plan

The purpose of the plan is to amend the Penrith Local Environmental Plan 2010 to implement Penrith City Council's strategic work adopted as the Riverlink Precinct Plan (2008).

The site is currently zoned by multiple Interim Development Orders and planning instruments ranging from 1(a1) and 1(d) Rural; Special Uses 5(a) and 2(d) Residential.

Most elements of the Riverlink Precinct Plan are already permissible and it is the purpose of this plan to apply a zoning pattern that is consistent across the entire site - SP3 Tourist and RE1 Public Recreation in accordance with Standard Instrument. The plan also introduces new land uses – including 'campus style' office premises, retail up to 12,500 square metres and further retail defined as 'outlet centre' up to an additional 25,000 square metres.

The cap of 25,000 square metres and a clear definition of 'outlet centre' was included to ensure that the impacts on other general retail outside of this development could be limited and managed; and that retail uses as distinct from outlet centre are limited and controlled on the site.

State Electorate and Local Member

The local member for Penrith is Mr Stuart Ayres MP. It is understood that Mr Ayres has made representations about the status and finalisation of the draft LEP.

NSW Government Lobbyist Code of Conduct:

* There have been no meetings with registered lobbyists in relation to this planning proposal.

Background Studies

Council undertook a range of studies prior to preparing the Planning Proposal including:

- Riverlink Precinct Plan
- Nepean River Flood Modelling 2008
- Peachtree Creek Waterways Assessment Initiative (prepared by AECOM), December 2008
- Visual Character and Urban Design Study (prepared by HBO+EMTB), September 2009
- Traffic, Transport, and Access Impact Assessment (prepared by GHD), June 2009
- Land Use and Economic Impact (prepared by Hill PDA), February 2010 (Tag STUDIES)
- Retail Impact Assessment of Development Proposals of Penrith Panthers Sites and Parkview Site (prepared by Hill PDA), February 2010 (Tag STUDIES).

A copy of the Land Use and Economic Impact study (Hill PDA) and Retail Impact Assessment of Development Proposals of Penrith Panthers Sites and Parkview Site (Hill PDA) are provided at Tag STUDIES.

Consistency of draft LEP with relevant Acts, EPIs, Strategies, Policies and s.117 Directions

Council has provided an analysis of all relevant Acts, EPIs, strategies, policies, s117 directions and practice notes against the draft LEP.

Consistency with the Standard Instrument Order

The draft LEP has been prepared in accordance with the applicable standard instrument under s.33A of the EP&A Act.

In addition to the compulsory and settled model local clauses supplied by the Department the draft LEP contains three additional local clauses and two local definitions to address local needs which have been drafted/checked by the Department.

Consistency with SEPPs

Council has considered the draft LEP against the relevant SEPPs and the draft LEP is not considered inconsistent with any SEPPs. Full details are provided in the table at **(Tag B)**.

Consistency with Section 117 Ministerial Directions

Council has considered the draft LEP against the relevant Section 117 Directions and the draft LEP. Full details are provided in the table at **(Tag B)**. The draft LEP is not considered inconsistent with any Section 117 Directions except for the following.

At Gateway, it was considered that the planning proposal was justifiably inconsistent with Section 117 Direction 1.2 – Rural zones and Section 117 Direction 4.3 – Flood prone land.

Section 117 Direction 4.3 – Flood prone land: During the public exhibition process Council consulted with SES and Office of Environment and Heritage (OEH) on the flood studies prepared for the planning proposal. SES and OEH reviewed the studies and were ultimately satisfied that the planning proposal could proceed. The planning proposal is consistent with this direction.

Section 117 Direction 6.3 – Site specific provisions: The planning proposal is inconsistent with this Direction as it includes site specific land uses, definitions and caps on retail and office development. This inconsistency with this direction is justified as the provisions are required to limit the impact of the proposed development on the retail trade in the Penrith CBD.

Consistency with any Metropolitan, Regional and Local Strategies

Draft Metropolitan Strategy 2031

Page 52 of the draft Metropolitan Strategy for Sydney to 2031 (draft Strategy) notes a strong retail presence attracts office jobs to centres. Recognising retail as a significant trip generating activity, the Metropolitan Strategy for Sydney will encourage the location for large retail primarily in Strategic Centres well serviced by public transport.

Page 93 of the draft Strategy identifies the key priorities for Penrith Regional City as:

- To strengthen Penrith Regional City as the regional hub for office, retail, administration, recreation and culture;
- Strengthen Penrith CBD and protect the commercial core
- Provide capacity for at least 8,000 additional jobs by 2031.

Therefore, the planning proposal is not consistent with all of the key elements of this draft Strategy, in terms of preferred location for 'retail development'. While the proposal does not meet the preferred location for 'retail development', the proposal as whole is estimated to generate 2100 Full Time Equivalent (FTE) jobs on the site, post construction, which equates to 76% of the workers estimated within the Riverlink Precinct. These 2100 potential jobs will assist in meeting the employment targets for the Penrith LGA.

Metropolitan Plan and draft North West Subregional Strategy

The Metropolitan Plan for 2036 (Metropolitan Plan) represents the previous Government's planning strategy for Sydney. The Metropolitan Plan seeks to ensure that there is adequate availability for growth in existing centres in order to avoid "pressure for such development to occur in inappropriate out of centre locations". The Strategy also notes that centres will need to grow and change over time and that "the main criteria for determining these centres will be the current and proposed level of transport capacity and access".

To complement the Metropolitan Plan, the previous Government was also developing a draft Centres Policy which provided greater clarification of the need to expand and/or identify new centres in Sydney. Whilst this approach was not formally endorsed by either the former or current Government, the key elements of the approach have been used by the Department to guide its consideration of other retail related rezonings in Western Sydney and was referred to Penrith City Council to assist in assessing this proposal.

Like the Metropolitan Plan, the draft Centres Policy promotes commercial and retail activity being located in centres, but it acknowledges the need for new centres in circumstances where existing centres can not accommodate the demand. The draft Policy contains a 'Sequential Test' which requires the Relevant Planning Authority to demonstrate that the proposed retail activity can not be accommodated within either an existing centre, or land adjoining that existing centre and is proposed to be accommodated on land that is appropriate for centre-type development.

When Council originally submitted the planning proposal for a Gateway determination, it was noted in the planning team report, that a sequential test was submitted to support and justify the proposed 'brand outlet' centre. This sequential test was reviewed by the regional team and the Policy Branch and it was determined to be inadequate for a number of reasons.

Further to the determination that the assessment in the sequential test was inadequate, the planning team report identified a number of sites within the existing Penrith City Centre which were suitable and could accommodate the proposed 'outlet centre'. The sites identified in the 4 June 2010 planning team report were:

- Two Council owned sites of over 2,500 square metres each with an FSR of 4.1 available for disposal;
- 45,000 square metres of Council owned at grade car parks that are potential redevelopment sites; and
- A 40+ hectare site at North Penrith that Landcom is now in the process of redeveloping.

Council's subsequent studies made reference to the draft Centres Policy and Sequential Test; however, no further analysis was undertaken by Council. The BBC Consulting Planners 'Net Community Benefit Test' (April 2010) (**Tag J**) recommended to Council that a cost-benefit assessment was of more utility than the sequential test. However, the Cost Benefit Assessment prepared by Hill PDA, post exhibition, in October 2011, has been independently reviewed and determined to have some outstanding and unresolved issues. This is discussed later in the report.

Therefore, the draft Plan does not demonstrate clear consistency with these former and draft policies, particularly in relation to the 'outlet centre' component. This component is contrary to the centres-objectives in the Metropolitan Plan and does not meet the Sequential Test. Nonetheless, these policies are not formal policies adopted by the present Government.

That being said, as stated above, the proposal is estimated to generate 2100 FTE jobs on the site, post construction, which equates to 76% of the workers expected within the Riverlink Precinct. This would assist in meeting the employment targets identified in the Metropolitan Plan and the draft North West Sub Regional Strategy.

Consistency with Local strategic framework

The Riverlink Economic Impact and Land Use Analysis that informed the Riverlink Precinct Plan, adopted by Council in 2008, generally supported a smaller retail component on the Penrith Panthers Site of approximately 12,500 square metres to service the precinct, but did not include any reference to the 'outlet centre' component. None of the studies prepared to support the planning proposal have provided specific justification as to how the 'brand outlet' component is in accordance with the Riverlink Precinct Plan, however, they do all indicate that the 'brand outlet' will support the general implementation of the Precinct Plan. In particular, the section of Hill PDA cost-benefit analysis on non-quantifiable benefits found a strong consistency between the Precinct Plan objectives and the 'brand outlet' component. In addition, Council concluded there was a net benefit in proceeding with the proposal, despite its potential to impact on the nearby Penrith City Centre.

As such the proposal may be considered to be consistent with the local strategic framework.

Consultation

Advice from Public Authorities

In accordance with the Gateway determination, Council was required to consult with the following Government Agencies:

- Department of Environment, Climate Change and Water (now Office of Environment and Heritage)
- Ministry of Transport (now Transport for NSW)
- Roads and Traffic Authority (now Roads and Maritime Services – Roads)
- State Emergency Services.

Council provided a summary of the issues raised in submissions (**Tag F**). Council has incorporated relevant advice from agencies provided during the public exhibition, where appropriate.

Public participation

Council advised in its section 58 submission that sections 56 and 57 of the EP&A Act, relating to public involvement, have been complied with (**Tag B**). The draft planning proposal was publically exhibited from 29 September 2010 to 26 October 2010. A total of 27 submissions were received, including a petition with 87 signatures.

The submissions received during the exhibition of the planning proposal were centred on 5 key areas:

- Retail and City Centre impacts – Council's response to these issues is discussed in the section below title "Key Outstanding Issues"
- Zoning and Planning Policies – Council's consideration of these issues is considered adequate.

- Flooding– Council's consideration of these issues is considered adequate.
- Local issues including noise and dust– Council's consideration of these issues is considered adequate.
- Traffic and Transport issues– Council has responded to these concerns by finalising a VPA to implement roadworks as agreed with the RMS. Council's response in this regard is considered adequate.

Public Hearing

A public hearing was not held in relation to the draft planning proposal. As no public land is being classified or reclassified by this draft planning proposal, a public hearing was not required under the *Local Government Act 1993*.

Gateway Determination

The Gateway determination to allow the draft LEP to be exhibited was issued on 13 August 2010 (**Tag C**). The relevant requirements in the Determination and Council's response are as follows:

The provision of development standards and rationale for the controls which distinguish “campus style” office development: Council has provided a revised explanation and definition to distinguish “campus style office development” with ‘large floor plates being for a single purpose commercial development’ which would complement rather than compete with the City Centre.

To achieve the planning outcomes proposed for this use, “campus style office development” has been included in Schedule 1 as an Additional Permitted Use on the site, and a local clause ‘Office premises in Zone SP3’ has been included which includes development standards which must be complied with when undertaking this type of development on the site. The site specific provisions appear reasonable to achieve the intended planning outcome on the site.

The provision for a clear rationale for ‘brand outlet’ definition: Penrith Council has completed a number of studies to provide a clear rationale for a ‘brand outlet’ centre definition. The need for this definition to be prepared was further emphasised by a number of submissions which raised issues regarding the impacts of this proposed ‘brand outlet’ development on the existing retail trade in the Penrith CBD; how the economic impacts on other existing retail would be managed; and questioned how this use and its impact could be controlled if it was not legally defined. Following the public exhibition period, additional studies were completed which resulted in a local definition and site specific provisions which limit the floor area and staging of a ‘brand outlet’ centre to minimise the impact of the development on existing retail trade. This is discussed further in the next section titled ‘Key Outstanding Issues’. However, the rationale for the proposed location of the ‘brand outlet’ centre has not been provided, especially as this use was not considered or identified in any of the original studies or strategies on the Riverlink precinct. This has been discussed previously in ‘Metropolitan Plan and draft North West Sub Regional Strategy’ and ‘consistency with local strategic framework’ sections.

The provision of a scheme which ensures that the 12,500 square metres of general retail space accompanies, rather than precedes the development which it supposed to support: The planning proposal includes provisions which are intended to stage development on general retail, ensure there is a ratio of 1 metre square general retail to 10 metre square of non-general retail and provide a cap of 12,500 square metres of general retail. This condition has been met in the drafting process.

The design excellence provisions being removed as the site is not part of a strategic centre that warrants State input into design outcome: The design excellence provisions have been removed from the draft instrument.

The urban release area provisions be removed as the site is considered to be an urban infill rather than a Greenfield development: The urban release area provisions have not been included.

Community and Agency Consultation: As stated above, Council has met the requirements of consultation with both Government agencies and the community.

The Department's cover letter that accompanied the Determination advises Council to provide, as part of the exhibition material, suitable justification and explanation of the total retail space proposed, and how it is to be controlled.

In response to this and in response to issues raised during exhibition a number of further studies (**Tag G**) were commissioned by Council (although these were not available during the exhibition period).

- Peer review of Retail Analyses (SGS Economics and Planning), November 2010
- Cost Benefit Analysis (prepared by Hill PDA), October 2011

The community has not had the opportunity to review or comment on these studies. The content of these studies and the associated issues are discussed in the next section.

KEY OUTSTANDING ISSUES

From the above assessment, all issues relating to the drafting of the proposal and relating to issues other than the impact of the proposed retail land use have been adequately addressed.

Whilst the brand outlet component is not clearly consistent with the various draft and previous strategies, none of these strategies are final strategies endorsed by the present Government. In addition, the proposal will deliver significant employment outcomes.

Given the considerable economic/employment benefits arising from the proposal, an initial analysis was undertaken by the Department to closely review the impacts of the proposal on the Penrith City Centre (and other centres) with a view to clarifying the extent of impact that might be expected to result from the proposed retail activity. Key findings were:

- Council had not undertaken a sequential test and there is little (if any) material demonstrating that either a new centre is required or if the proposed location is suitable for become a new centre;
- The brand outlet centre is estimated to reduce trade in the Penrith City Centre by around 12% and that will mean the Centre in general will take around 6 years to return to existing trading levels and 11 years for apparel trade;
- Council's assessment of the costs and benefits of creating a new centre are entirely locally focussed. When Council's cost/ benefit assessment is adjusted to account for costs outside of the LGA, not proceeding with the brand outlet centre appears to provide a much better benefit/ cost outcome than proceeding with the Outlet Centre;
- In terms of the non-quantifiable benefits, the criteria appears heavily weighted to the Riverlink precinct and could better reflect the other local, regional, metropolitan and state wide issues.

Also, a meeting was held between the Department of Planning & Infrastructure, Westfield and the Shopping Centre Council of Australia in which they expressed the view that their chief concerns regarding the proposal related to the impact of the 12,500 square metres of general retail.

As a result of these findings and outstanding concerns, JBA Planning and Location IQ were asked to provide a review of key aspects of the studies supporting the planning proposal and the key submissions regarding the retail impact (the 'JBA Review'). A copy of the report is at **TAG H**. The JBA Review:

- Confirmed the Hill PDA Retail Impact Assessment finding that the brand outlet centre is estimated to reduce trade in the Penrith City Centre by around 12%. The review considered that the recovery time for the Centre to return to existing trading levels of 6 years is in the range of a 'high' impact and not within the standard range of an acceptable recovery timeframe (see further dot point below regarding this forecast);
- Considered that impact on the apparel trade, on the above assumptions, is likely to be around 20% and therefore in the highly significant range;
- For the above findings, JBA notes that the Retail Impact Assessment forecasts a rate of population growth to 2021 (2,500 persons per annum) that is around 50% higher than what is actually

occurring (1,650 persons per annum). While the projections are consistent with current official projections from the NSW Transport and Population Data Centre, these projections are based on the 2006 Census and are currently being revised to be (re) published in July 2013 (see note below). It is therefore noted that if the actual rate of population growth continues at current rates, and not as forecast, the length of time taken for retailers in Penrith CBD to recover will be longer.

- (Note - The Department's current Government endorsed projections estimate population growth in Penrith of around 3600 people per year in the period 2011-2016 and, for the period 2011 to 2036, an average growth rate of 2300 persons per year. Therefore, whilst JBA notes that the forecasts used by studies (2500 per annum) is higher than actual growth (1650 per annum) the official forecasts continue to expect growth in the relevant period more in line with the higher forecasts used in the initial studies. It remains quite possible that these higher forecasts will be realised, if not exceeded. This would mean that actual impacts of the proposal would be lower than predicted.
- Against this, JBA also note that the Retail Impact Assessment assumed the outlet centre would trade at \$5,600 p/sqm, whereas a later cost-benefit assessment assumed trading at \$4,500 p/sqm – around 20% lower. It is therefore noted that if the actual rate of trading in the outlet centre is lower, this will decrease the length of time taken for retailers in Penrith CBD to recover and reduce the impacts in the CBD.

Therefore, as indicated above, if the potential retail trade levels of the Brand Outlet Centre have been overestimated and the population growth has been underestimated, the results, if adjusted to the actual levels, could indicate that the level of impact on the existing retail trade of the Penrith CBD and time required for the CBD to recover may be lower than what is presently predicted and within the accepted impact range.

- Confirmed there exist a number of issues with the methodology and assessment of non-quantifiable issues in the cost-benefit analysis
- Confirmed that the cost-benefit analysis did not consider the costs accruing outside the LGA and this influenced the conclusions of the CBA.
- Considered that the impact of the general retail being proposed is unlikely to have an impact greater than 10% or require a recovery period of longer than 5 years.

The independent review reaffirms previous concerns regarding the “brand outlet” aspect of the planning proposal and its potential impact outside the Penrith LGA and on the apparel trade in the Penrith High Street. Concerns regarding the impact of the “general” retail appear unfounded as this activity has been capped so as to meet the amount of demand for general retail that is generated on-site.

However, the independent review concludes that there is insufficient information to say with certainty that the impacts will or will not be at an acceptable level if the full development potential of the proposal is realised.

Therefore, it is proposed that Council be advised that it must ensure that the assessment of any development applications for retail purposes on the site include careful consideration of the impact on surrounding centres, the time it will take for these centres to recover and the overall cost/benefit for the community. This will allow for these issues to be dealt with in the context of a particular development application (which may not be as large as the capacity being permitted by the proposal) and, possibly, in light of more up to date population and spending forecasts.

Furthermore, as stated above, if the potential retail trade of the brand outlet centre has been overestimated and the population forecast has been underestimated, the combined outcomes may result in a lower level of impact on the existing retail trade than is presently predicted. This may be determined in the development assessment process.

Changes to draft LEP following exhibition

Changes made by Council

Council has made a number of changes to the planning proposal since exhibition, including the commissioning of two further studies which have not been publically exhibited. A table summarising the changes resulting from submissions is at **(Tag I)**.

- Deleted B7 Business Park zone and extending the SP3 Tourist zone over the land
- Changed terminology from 'brand outlet' to 'outlet centre'
- Inserted a specific definition of 'outlet centre'.
- Amended the 'retail premises in SP3 zone' clause
- Amended the definition of 'campus style office development'.

Changes made by the Department

A number of minor changes have been made to the draft Plan by Parliamentary Counsel and/or the Department to ensure consistency with the Standard Instrument Order, applicable SEPPs, and model local clauses. These changes were discussed with Council and do not substantially affect the substance of the draft Plan.

Amendment to the SEPP (Exempt and Complying Development Codes) 2008

In the drafting process, it was determined that to ensure that the 'brand outlet' centre could not have a change of use to another retail or commercial use or be subdivided under the SEPP (Exempt and Complying Development Codes) 2008, an exemption from the SEPP for this site was required.

This request for exemption from the Codes SEPP was agreed to by both Council and the Codes Team **(TAG E)**. This exemption was the best means to ensure that the intended planning outcomes could not be varied without Council approval or development consent.

Parliamentary Counsel Opinion

The Parliamentary Counsel's Office provided an Opinion on 05 June 2013 that the draft LEP could be legally made **(Tag PC)**.

Recommendations

It is RECOMMENDED that the report be endorsed.

Endorsed:  06.06.2013
Regional Director, Sydney West Region

Endorsed:  6/6/13
A/ Executive Director, Metropolitan Planning

Endorsed:  20/6/13
Deputy Director-General, Planning Operations & Regional Delivery