

## Planning Services

### Plan Finalisation Report

**Local Government Area:** Penrith

**File number:** IRF17/12

#### 1. NAME OF DRAFT LEP

Penrith Local Environmental Plan 2010 (Amendment No 19).

#### 2. SITE DESCRIPTION

The planning proposal (**Attachment A**) applies to seven Penrith City Council-owned sites at Erskine Park and St Clair as described in Table 1 below.

The sites	Address	Lot description	Area for disposal
Site 1: Regulus Reserve	73 Swallow Drive, Erskine Park	Lot 3280 DP786811	4400m <sup>2</sup> (entire site)
Site 2: Dilga Crescent Reserve	9A Dilga Crescent, Erskine Park	Lot 148 DP703879	2315m <sup>2</sup> (entire site)
Site 3: Pacific and Phoenix Reserve (part)	27A Phoenix Crescent, Erskine Park	Part Lot 1444 DP788282	1234m <sup>2</sup> of the 12,510m <sup>2</sup> site
Site 4: Capella Street Reserve (part)	11A Canopus Close, Erskine Park	Part Lot 2174 DP776426	1100m <sup>2</sup> of the 9752m <sup>2</sup> site
Site 5: Spica Reserve (part)	85 Swallow Drive, Erskine Park	Part Lot 3281 DP786811	1500m <sup>2</sup> of the 4499m <sup>2</sup> site
Site 6: Chameleon Drive (part)	25 Chameleon Drive, Erskine Park	Part Lot 1106 DP709078	2484m <sup>2</sup> of the 5541m <sup>2</sup> site
Site 6: Chameleon Drive (part)	29 Chameleon Drive, Erskine Park	Part Lot 1107 DP709078	2484m <sup>2</sup> of the 5541m <sup>2</sup> site
Site 7: Ashwick Reserve	11 Ashwick Circuit, St Clair	Lot 35 DP812241	1817m <sup>2</sup> (entire site)

Table 1: The sites.

Refer to **Attachment B** for the location map and land descriptions.

The sites are identified as community land under the *Local Government Act 1993* and are owned by Council. The public reserve status and interests for each of the sites are listed on the Certificate of Title (**Attachment L**).

#### 3. PURPOSE OF PLAN

The draft LEP seeks to amend the Penrith Local Environmental Plan 2010 as follows:

- rezone the sites from RE1 Public Open Space to R2 Low Density Residential;
- apply a maximum building height of 8.5m to the sites; and
- apply a minimum lot size requirement of 550m<sup>2</sup> to the sites.

The draft LEP will remove the public reserve status and interests on the sites, except for the easements, and allow Council to sell the sites to fund the improvement of other existing open spaces. The draft LEP will facilitate the provision of 21 additional dwellings at these sites.

#### 4. STATE ELECTORATE AND LOCAL MEMBER

The sites fall within the Penrith State Electorate. The Hon Stuart Ayres MP is the State Member for Penrith.

The sites fall 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.

<b>NSW Government Lobbyist Code of Conduct:</b> There have been no meetings or communications with registered lobbyists with respect to this proposal.
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<b>NSW Government reportable political donation:</b> There are known no donations or gifts to disclose and a political donation disclosure is not required in this instance.
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#### 5. GATEWAY DETERMINATION

The Gateway determination issued on 19 October 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions. No alterations to the Gateway were issued.

The proposal was due to be finalised by 26 October 2017. The Department received Council's request to finalise the planning proposal before the due date. The Department is satisfied that Council has met the conditions of the Gateway determination and the planning proposal is adequate for finalisation.

#### 6. PUBLIC EXHIBITION AND PUBLIC HEARING

In accordance with the Gateway determination, public exhibition was undertaken by Council from 10 February to 10 March 2017. Council received 16 submissions from the community, including one submission that contained a petition with 35 signatures.

A public hearing conducted by an independent consultant was held on 7 April 2017 in accordance with the Gateway determination. It was attended by 10 community members, four of whom addressed the meeting.

The main issues raised in the community submissions and during the public hearing are summarised as follows:

- Site 1: One submission was received, accompanied by 35 signatories, supporting an amended indicative subdivision plan in respect of Regulus Reserve.
- Site 3: One submission objected to the reclassification of Pacific and Phoenix Reserve over the loss of vegetation, the adverse impact on birdlife, and the loss of open space heritage for residents and their grandchildren.
- Site 4: Three submissions raised objections in respect of Capella Street Reserve over drainage, outlook, privacy, disability access and overshadowing impacts associated with the proposed residential development of the site.
- Objections in-principle: Several submissions objected in-principle to: the loss of green space, trees, amenity, recreation space and wildlife habitat; the uncertainty surrounding the application of funds raised from the proposed sale of the land; increased housing density; change in suburb character; risks of exacerbating youth crimes; and the establishment of an adverse precedent.

The issues raised in the community submissions and at the public hearing have been responded to under the public hearing report (**Attachment D**) and Council's report (**Attachment E**) as follows:

- Regulus Reserve (site 1): Council has indicated that should the land be rezoned, design issues will be addressed in accordance with Council's relevant controls and policies.
- Pacific and Phoenix Reserve (site 3): Approximately 9.8% of the park is subject to the planning proposal and this land represents a small area, i.e. 1234m<sup>2</sup>, on the fringe of the main body of the park. A study indicates that the fauna habitat is generally poor and the biodiversity values of the site are relatively low. Further, the remaining 90% of the park will be embellished, including the planting of mature trees significantly greater in number than would be removed if the site were rezoned and developed.
- Capella Street Reserve (site 4): Council has reduced the extent of land, subject to the proposal, to lessen any future development impacts and has committed to undertake drainage remedial work.
- Objections in-principle: While Council acknowledged these concerns, in its review of these matters it was found that an abundance of green space would remain and be enhanced, the evidence underpinning the project was sound and overall amenity would be improved for residents.

The public hearing report recommended that prior to advancing the planning proposal Council:

- implement planning controls that align with the surrounding area;
- provide a divestment guide for the use of the funds from the sale of the land; and
- consider the requests to sell the sites to neighbouring landowners

Council satisfactorily responded to these issues by:

- referring to existing planning controls in the Penrith LEP 2010 and Council's development control plan that address relevant issues, such as privacy, overshadowing, parking and safe access;
- indicating that it will develop a reinvestment and works program, which can be determined when final funds are available; and
- regarding the sale of land to adjoining landowners, Council sought legal advice that recommended open-market negotiations rather than exclusive negotiations; however, where special circumstances exist e.g. a landlocked site, exclusive negotiations may be warranted.

Council resolved to support the amended planning proposal and proceed to finalisation (**Attachment F**).

## 7. ADVICE FROM PUBLIC AUTHORITIES

Council consulted the Office of Environment and Heritage (OEH) in accordance with condition 4 of the Gateway determination. No submission was received from OEH.

During the exhibition period, Council received submissions from the Environment Protection Authority (**Attachment G**) and Endeavour Energy (**Attachment H**). Council advised that a contamination report would be required at the development application stage, which would address the concerns raised by the Environment Protection Agency, and noted the easement constraints identified by Endeavour Energy.

## 8. POST-EXHIBITION CHANGES

The planning proposal was amended post-exhibition as follows:

### 1. Capella Street Reserve site

Council resolved to reduce the extent of the Capella Street Reserve site from 1700m<sup>2</sup> to 1100m<sup>2</sup> (Figures 1 and 2). This was due to drainage issues on the southern portion of the site, which confirmed that this portion could not be occupied by dwellings and an accessible pathway would be required.



Figure 1: Original extent (2016).

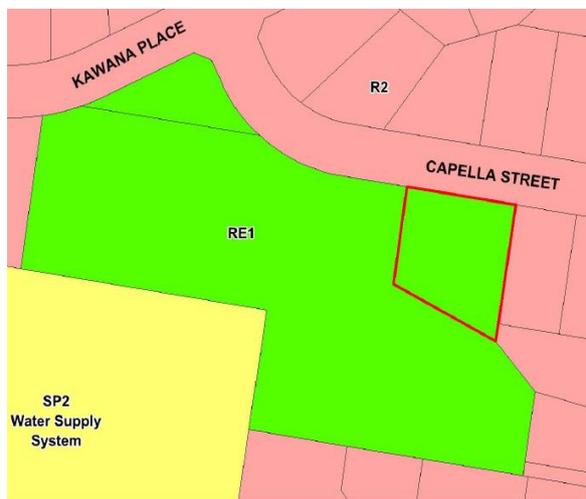


Figure 2: Revised extent (2017).

### 2. Chameleon Drive site

The Chameleon Drive site originally only referenced land at 25 Chameleon Drive (Lot 1106 in DP 709078). However, the proposed map (Figure 3) also identified land at 29 Chameleon Drive (Part Lot 1107 DP 709078).

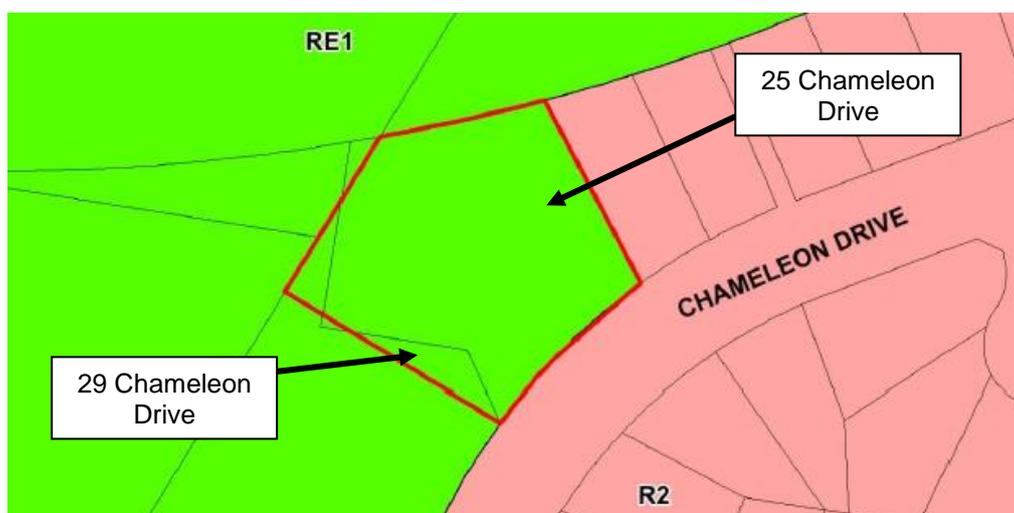


Figure 3: The Chameleon Drive site.

The land description for the Chameleon Drive site was amended to include 25 and 29 Chameleon Drive. The land identification map and the proposed map changes have not been consistent since the Gateway determination was issued.

### 3. Land Reclassification (Part Lots) Map

A Land Reclassification (Part Lots) Map was provided as the planning proposal will rezone and reclassify part of four lots. As only a portion of the sites are being reclassified from community to operational, a part lots map is required to identify the section of the land that is operational under schedule 4 of the Penrith LEP 2010.

The sites on the part lots map include the following:

- 27A Phoenix Crescent, Erskine Park (Part Lot 1444 DP 788282);
- 11A Canopus Place, Erskine Park (Part Lot 2174 DP776426);
- 85 Swallow Drive, Erskine Park (Part Lot 3281, DP 786811); and
- 25 and 29 Chameleon Drive, Erskine Park (Part Lot 1106 DP 709078 and Part Lot 1107 DP 709078).

#### Department comment

The Department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- are a reasonable response to comments provided by the community and the drainage impacts;
- do not alter the intent of the planning proposal; and
- provide clarity to the community regarding the extent of the reclassification on part of certain lots.

### 9. ASSESSMENT

#### Section 9.1 Directions

The planning proposal is consistent with all relevant section 9.1 Directions; however, comment is provided below:

#### Direction 6.2 Reserving Land for Public Purposes

This Direction aims to facilitate the provision of public services and facilities by reserving and removing land for public purposes. This Direction applies to the planning proposal as it will remove the reservation of land for public purposes.

The planning proposal is consistent with this Direction as Council is the relevant public authority for these sites and has resolved to divest these sites to generate revenue to improve and upgrade other existing public open spaces. Furthermore, the planning proposal will not impact on the availability of land zoned for public purposes in the Penrith LGA.

#### State environmental planning policies (SEPPs)

The planning proposal has addressed and is consistent with all relevant SEPPs; however, comment is provided below.

#### State Environmental Planning Policy No 55 – Remediation of Land

This SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

The planning proposal is consistent with this SEPP as a preliminary site investigation was undertaken and identified potential contamination (i.e. a large amount of rubble) at the Regulus Reserve site (**Attachment I**).

Although there is potential contamination, the preliminary site investigation concluded that the site is suitable for residential purposes provided further work is completed at the

development application stage. The Environment Protection Authority agreed that further investigation be undertaken prior to the sale or development of the site. Council has agreed to implement this investigation at the development application stage.

## **Regional and district plans**

### Greater Sydney Region Plan

The planning proposal is consistent with the Greater Sydney Region Plan (March 2018) as it will provide additional housing (Objective 10: Greater housing supply).

### Western City District Plan

The site is within the Western City District, therefore the Western City District Plan (March 2018) applies to the site.

The planning proposal aligns with the actions of the plan and is consistent with the plan as follows:

- liveability priorities – the planning proposal will diversify and provide additional housing within close proximity to jobs and services; and
- sustainability priorities – the planning proposal will assist in delivering high-quality open space through generated funds and does not impact on the connectivity of the Ropes Creek green link.

## **10. MAPPING**

There are seven maps associated with this planning proposal, which have been submitted via the ePlanning Portal. These maps have been examined and meet the technical requirements.

## **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 J**).

Council confirmed on 23 November 2017 that it approved the draft LEP and the plan should be made (**Attachment K**).

## **12. PARLIAMENTARY COUNSEL OPINION**

On 23 February 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. The Opinion is provided at **Attachment PC**.

## **13. GOVERNOR'S APPROVAL**

On 13 February 2018, the Minister for Planning sought the Governor's approval to remove certain restrictions (i.e. public reserve, drainage reserve and fencing restriction) on the title of community land at the sites to enable its reclassification from community to operational under the *Local Government Act 1993*.

On 14 March 2018, the Governor approved the removal of these restrictions.

## **14. RECOMMENDATION**

It is recommended that the Greater Sydney Commission's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the proposed reclassification is consistent with the intent and purpose of the planning proposal (**Attachment A**) and the Gateway determination (**Attachment C**);

- Council has satisfied all conditions of the Gateway determination, including the community consultation and public hearing requirements under the *Local Government Act 1993*;
- the reclassification provides an additional 21 dwellings within the Erskine Park and St Clair areas; and
- it assists in delivering Council's vision for the site as identified in Council's local strategies.



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