

## Planning Services

IRF18/6190

### Plan finalisation report

**Local government area:** Penrith City Council

#### 1. NAME OF DRAFT LEP

Penrith Local Environmental Plan 2010 (Amendment No 15)

#### 2. SITE DESCRIPTION

The planning proposal applies to land identified as “Penrith City Centre” on the Clause Application Map under the *Penrith Local Environmental Plan 2010* at Penrith. The land is described as:

- Lot 1DP 611050, 92 – 112 Henry Street, Penrith;
- Lot 1 DP 545587, 114 – 116 Henry Street, Penrith;
- Lot 1 DP 113118, 118 – 120 Henry Street, Penrith;
- Lot 1 DP 254763, 122 – 132 Henry Street, Penrith;
- Lot 1 DP 164798, 134 – 138 Henry Street, Penrith;
- Lot 1 DP 252457, 134 – 138 Henry Street, Penrith;
- Lot 10 DP 553665, 140 – 142 Henry Street, Penrith;
- Lot 11 DP 553665, 140 – 142 Henry Street, Penrith;
- Lot 2 DP 556075, 144 Henry Street, Penrith;
- Lot 3 DP 1200790, 42 – 44 Station Street, Penrith;
- Lot E DP 163176, 46 Station Street, Penrith;
- Lot 1 DP 526304, 48 – 50 Station Street, Penrith; and
- Allen Place (road)

The site is shown by dark blue outline on the current zone map (Figure 1, next page) and is located within the ‘Commercial Core’ (i.e. B3 zoning) of the Penrith City Centre, adjoining land zoned B4 Mixed use. The site is bordered by Henry Street, Station Street and Woodriff Street.

As shown in Figure 2 (next page), the site is rectangular and has an overall area of approximately 22,280m<sup>2</sup>.

The site currently contains commercial and retail uses, which primarily front Henry Street and includes the Allen Place Car Park (zoned RE1 Public Recreation) at the rear of the site, as shown in Figure 2.

The site is located approximately 200 metres south of the Penrith Railway Station and is readily accessible by regular bus services.





Figure 1: Zoning extract – Penrith LEP 2010.

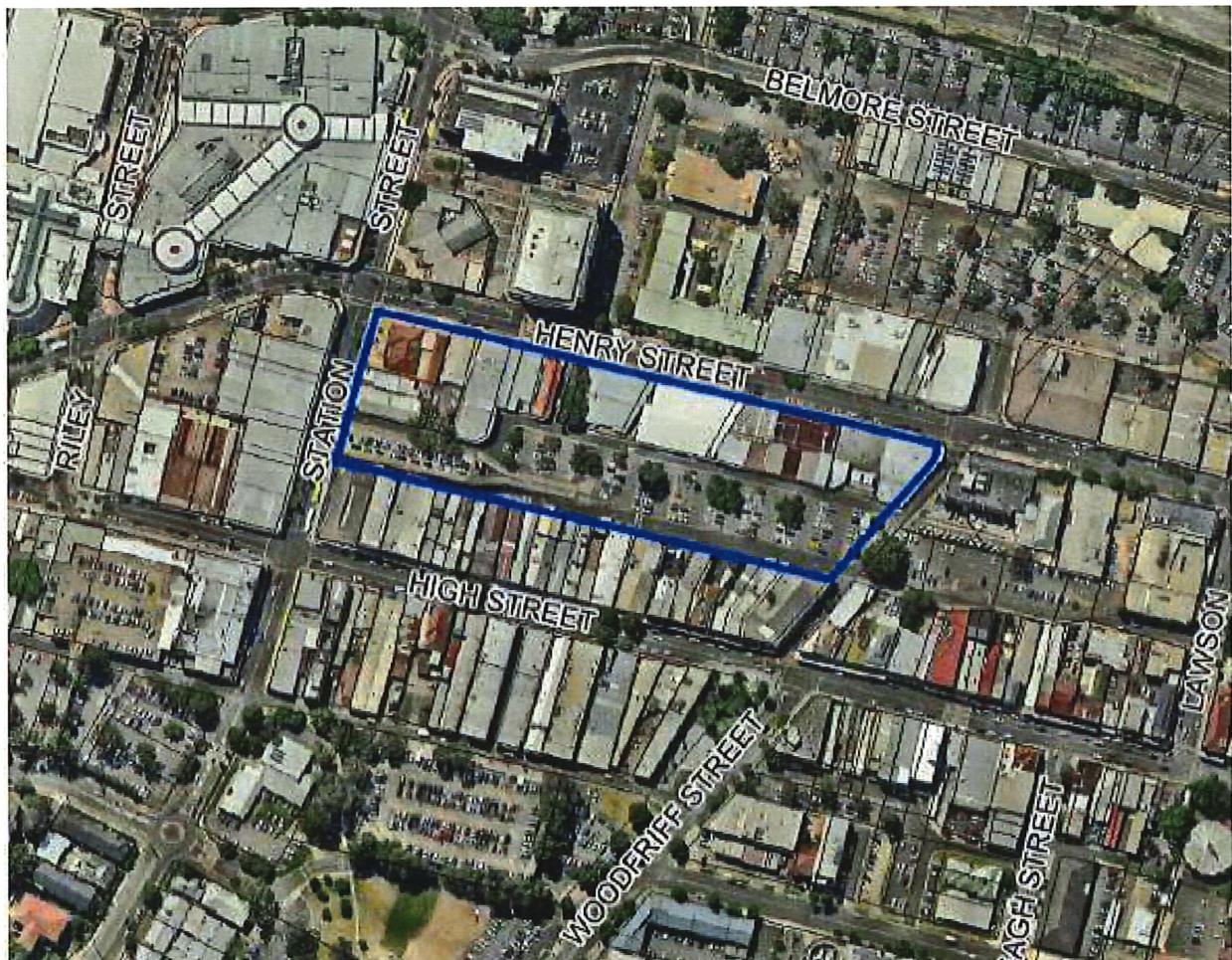


Figure 2: Aerial photograph of the subject site.



### 3. PURPOSE OF PLAN

The draft LEP seeks to rezone the site from B3 Commercial Core to B4 Mixed Use which will expand the permissible uses of the site, and make residential development permissible.

The proposal also aims to retain a portion of land zoned RE1 Public Recreation to create a park (refer Figure 3). The site has good access to transport, health and recreation facilities and Penrith's retail centre. The addition of residential uses and a structured green space would encourage the development of an active city centre and facilitate the revitalisation of the Penrith City Centre.

The draft LEP seeks the following:

#### Map changes

- Rezone the site from part RE1 Public Recreation and B3 Commercial Core to B4 Mixed Use.
- Remove 'Area 4' on the height of building map sheets: HOB\_006 and 013, as the corresponding LEP clause i.e. Clause 8.2 – Sun Access, is being amended to refer to all public open space in the Penrith City Centre rather than a discrete area i.e. area 4 (refer to 'Instrument Changes', below).
- Amend the Active Street Frontage map sheets: ASF\_006 and 013, to reflect pedestrian movement concepts identified by Council.

#### Instrument changes

- Amend clause 8.2 – Sun access, so that it refers to 'open space' instead of the specified open space in 'the vicinity of Allen Place, Memory Park and Judges Park and to High Street between Station Street and Lawson Street.
- Amend clause 8.4 Design excellence, to remove reference to area 4.

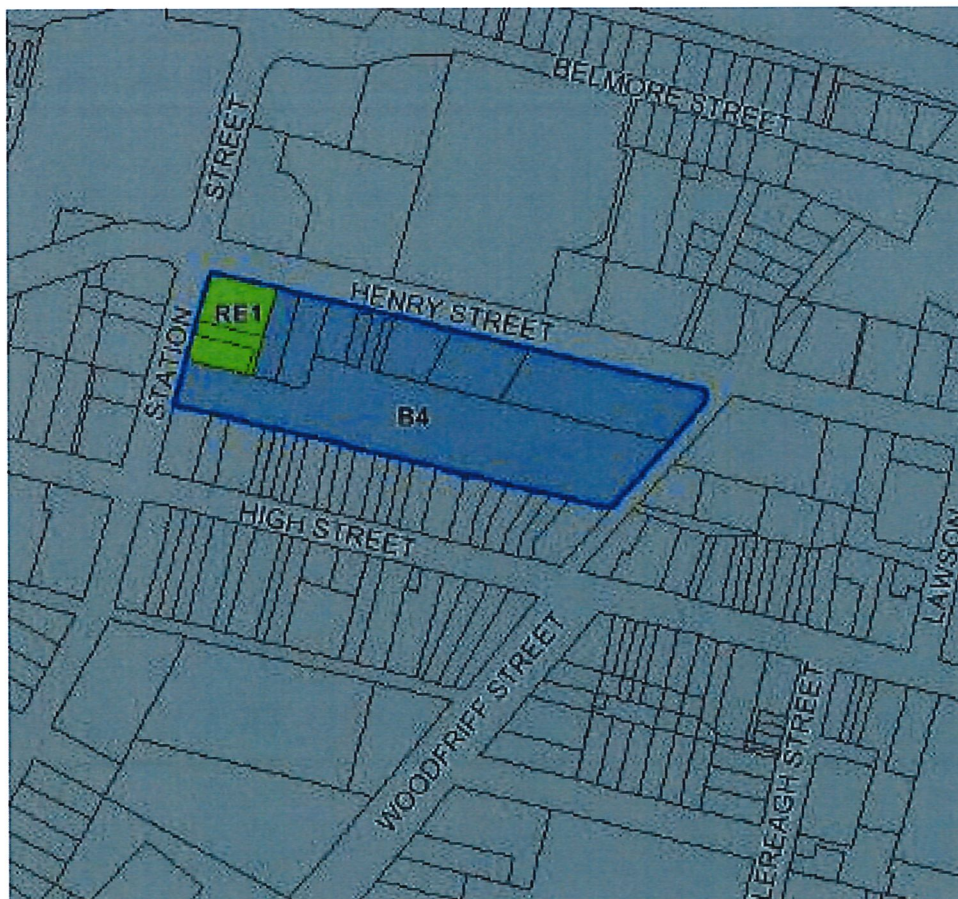


Figure 3: Proposed zoning of the site.

#### 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

The Gateway determination issued on 7 April 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions.

The planning proposal was to be finalised by 7 April 2017. The finalisation was deferred as strategies were being developed to address the potential flood and evacuation concerns by the NSW State Emergency Services and Infrastructure NSW within the Penrith CBD.

#### 6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 2 May to 30 May 2016 (29 days).

The proposal attracted thirteen written submissions from the community. In summary, the main issues raised were:

- traffic and parking (seven submissions);
- inconsistency with section 9.1 Directions: 3.4 – Integrating Land Use and Transport and 6.2 Reserving land for Public Purposes (one community submission – refer p.4 of Council's report – **Attachment E**);
- urban design comments (one submission); and
- general comments (four submissions) on the proposal, which raised ten issues:
  - provision of universal access outdoor park furniture;
  - one submission agreed with the proposal;
  - underutilisation of nearby parks, casting doubts over the need for a city park;
  - prioritisation of other Council initiatives;
  - questions the relationship between the proposed B4 zoned land the park;
  - the need for a masterplan;
  - the need for optimising the city park and its relationship to other open space;
  - no need to constrain the use by height and scale limitations;
  - upfront funding by council to deliver the park; and
  - better engagement of stakeholders.

A schedule of Council's response to submissions and to advice provided by public authorities is at **Attachment D** and in Council's report of 11 July 2016, at **Attachment E**. Assessment of these issues is provided in Section 10 of this report.

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

Council to consulted with the following public authorities in accordance with the Gateway determination:

- Family and Community Services – Housing NSW;
- Transport for NSW;
- NSW Police Force;
- Transport for NSW – Roads and Maritime Services;
- Department of Education and Communities;
- Sydney Water; and
- Telstra.

Responses were received from:

- Transport for NSW – Roads and Maritime Services;
- Transport for NSW (TfNSW);
- Sydney Water; and
- Endeavour Energy (additional agency consulted by Council).

### **Endeavour Energy and Sydney Water**

Endeavour Energy and Sydney Water did not object to the proposal and raised issues that can be satisfactorily addressed at the design and development application stages.

### **Roads and Maritime Services (RMS)**

RMS (**Attachment RMS Submission**) raised no objections, subject to the following issues being satisfactorily addressed prior to the instrument being made:

- the proposal being supported by suitable evidence i.e. traffic/transport study, demonstrating how the compliance with Section 9.1 direction 3.4 Integrating Land Use and Transport – objective (1) (c), i.e. a reduction in travel demand, especially by car.
- the planning proposal is supported by a suitable infrastructure funding and delivery mechanism which provides details of any road and transport infrastructure works required to support maximum development yields of the proposal. This mechanism must also identify the timing of the infrastructure works.

### **Transport for NSW (TfNSW)**

TfNSW (**Attachment TfNSW Submission**) recommended that:

- a transport study should be undertaken to demonstrate the proposal would effectively integrate with existing and planned future walking, cycling and transport networks (i.e. buses and rail); and,
- transport facilities and measures be identified to support future developments and consider the cumulative impacts of surrounding development proposals.

Council's comments on and the Department's assessment of the matters raised by public authorities are provided in Section 10 of this report.

## 8. PEER REVIEW

As the majority of the land subject to this proposal is Council owned, Penrith City Council engaged Square Link Pty Ltd to undertake an independent peer review of the Penrith City Park planning proposal.

The peer review (**Attachment Peer Review**) indicated that Council generally followed all procedural requirements in the preparation of the planning proposal, it raised the following:

- the planning proposal does not specifically identify that the proposal affects Council land and that Council is the land owner for most of the subject land;
- the proposal does not identify or disclose that the proposal has potential to result in financial and commercial benefits to Council; and
- the proposal does not clearly outline that there will be a reduction in RE1 Public Recreation zoned land.

Other inconsistencies identified in the review are of a minor, procedural nature.

### Department comment

While these issues are acknowledged, the proposal has been considered on planning merit and will be determined by the delegate on the same grounds, irrespective of the ownership of the land.

In addition, it is noted that the supporting diagrams and diagrams in the proposal clearly indicate that it is proposed to reduce the area of the RE1 Public Recreation zoned land (refer **Attachment B** – pages 6, 9 and 10).

## 9. POST-EXHIBITION CHANGES

No changes have been made to the planning proposal following public exhibition.

## 10. ASSESSMENT

### **Flood risk – Hawkesbury Nepean Valley**

Finalisation of this proposal was placed on hold by the Department to ensure that flood risk and evacuation issues were appropriately addressed. It is considered that these issues have now been satisfactorily resolved.

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 City Centre to proceed in a staged process. It has been agreed that the deferred site can proceed based on this framework.

### **Probable Maximum Flood and flood evacuation**

The planning proposal submitted for a Gateway determination did not identify the site as flood affected.

The planning proposal was exhibited from 2 May to 30 May 2016.

In June 2016, the Hawkesbury-Nepean Taskforce released mapping identifying land which is affected by the Probable Maximum Flood from the Hawkesbury-Nepean River System, which included sections of Penrith City Centre, including the site of this planning proposal. As a consequence, this planning proposal was held by the Department until the flooding and evacuation concerns were addressed.

The Hawkesbury-Nepean Flood Risk Management Directorate managed by Infrastructure NSW is implementing the Hawkesbury-Nepean 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, 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 State Emergency Service, Roads and Maritime Services, Greater Sydney Commission, 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 building 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.

Subsequently, the Department advised Council that following the successful progression of the Department's collaboration with Council and the Hawkesbury-Nepean Valley Flood Management Directorate to address potential flood risk and evacuation in the Penrith CBD, finalisation of this planning proposal can proceed.

### **Reduction of the Commercial Core**

The draft LEP seeks to rezone the site from B3 Commercial Core to B4 Mixed Use. The surrounding city centre currently comprises 30 hectares of land zoned B3 Commercial Core. This amendment seeks to reduce the total area of the B3 zone by less than 4%. In view of the intent to revitalise the centre by the proposed zone, and as this reduction is of minor significance, the proposal is supported.



## Transport and parking

The issues from the community primarily involved the perceived loss of car parking and the negative impact upon businesses, particularly if future car parks were not identified.

### Council response

- Council is seeking to investigate short, medium and long-term actions to manage parking in the future and recognises the requirements of commuters who need all day parking close to the station, as well as workers, who need parking close to the city centre and shoppers.
- Council's current focus is on making the most of the existing spaces by increasing the turnover of short-term spaces and encouraging long term stay parking on the edge of the city centre.
- In addition, Council is acting to provide greater car parking facilities, in compensation for the potential loss of car parking spaces in the subject land.

In relation to RMS and TfNSW comments about the need for a transport study and funding and delivery mechanisms, Council considers that the proposal will enable a mixed use development around the city park that is within walking distance to Penrith Station, retail facilities and the commercial core. This will reduce travel demand and minimise unnecessary car travel. Consequently, Council has not undertaken a transport study for this purpose.

Council also has not undertaken the preparation of a suitable funding and delivery mechanism that provides details of any road and transport infrastructure works required to support maximum development of the site.

At the time of its consideration, Council indicated it was undertaking a broad review of the existing controls for the city centre and, as part of this process, would ensure that an analysis of transport and traffic impacts was undertaken. In lieu of a site-specific transport study as requested, Council considered that a broad scale analysis was considered more appropriate. This view was taken on the basis that specific studies would be unlikely to capture the cumulative impacts of numerous developments on traffic impacts within Penrith City Centre and surrounds.

In terms of funding Council indicated that, where appropriate, infrastructure provision will be directly negotiated with landowners through the voluntary planning agreement process at development application stage.

### Department comment

The proposal would result in the loss, in total, of 187 car spaces. Council, however, is actively taking action to provide other public car spaces within the CBD. In particular, the nearby Union Road decked car park is being developed to accommodate 1,000 car spaces. It is considered that Council has adequately addressed the parking issue.

The Department considers that Council has satisfied issue relating to the preparation of a transport study and infrastructure funding and delivery, as follows:

- Given the location of the site, within walking distance of Penrith Railway Station, bus services, and other facilities, it is considered that this plan will readily comply with the section 9.1 Direction and a study is not necessary.
- Council is committed to ensuring that negotiations will proceed through the voluntary planning agreement process. In determining works required to support development, however, in its submissions report (**Attachment D**) Council acknowledged that its current traffic model needs revision, to ensure an understanding of localised traffic conditions as well as impacts on the broader network.



In discussions with council officers during February 2019, it was advised that Council commenced a traffic and formulation of a parking strategy in 2018. This work is expected to be completed within 24 months and will assess development impacts within the CBD to determine necessary infrastructure works.

#### **Inconsistencies with Section 9.1 Directions:**

One community submission asserted that the proposal is inconsistent with:

- *Direction 3.4: Integrating Land Use and Transport*, as it did not improve access to services, reduces the transport choices and is forcing people to reduce the number of trips, without providing suitable alternatives for people who have no other options due to inadequate public transport options; and
- *Direction 6.2: Reserving Land for Public Purposes*, on the basis that the proposal removes open space and all existing car parking spaces must be included in the design for the site and cannot be left for the development stage.

#### Council response

The proposal complies with Direction 3.4 as the site is located within walking distance services offered by the proposed mixed development and is within walking distance to Penrith Station, thereby contributing to a walkable centre to minimise unnecessary car travel.

The development of a city park, in lieu of the present hard stand car park area, will provide adjoining residents and business owners with a useable open space area which represents a significant infrastructure investment by Council for the benefit of the community.

#### Department comment

It is agreed with Council that the proposal satisfies the intent of Direction 3.4.

Regarding Direction 6.2, it is acknowledged that the proposal will reduce the area of land zoned for open space purposes. It is noted that Council's strategic work has identified the proposal will enable a multi-purpose recreational space and become a community hub for both residents and workers within city centre. It is envisaged that the proposed rezoning will encourage mixed use development with land uses such as restaurants, cafes, markets and apartments, contributing to the development of the centre.

The *Penrith City Park Review* (April 2015) outlines that the practical intent of the park is to "enhance the environmental, social, and economic performance of Penrith". The review particularly identified that such a proposal would provide a flexible civic space to meet the needs and demands of a growing local population and workforce.

In these circumstances and taking into consideration the current use of the site, which largely provides an at-grade car parking area, it is considered that the proposed structured and orderly development of the land under the proposal outweighs any inconsistency with the Direction.

#### **Urban design comments**

One submission raised urban design issues. In summary, the relevant issues were:

- Too much emphasis has been placed on development and economics and more emphasis is required about the relevance and importance of public open space to the various communities involved.
- The proposal should clarify the extent of deep soils which will be critical to achieve amenity and provide more greening in the city centre. There are depth limits for basement car parking due to sub-surface water level of the river. Expectations to keep parking onsite and any miscalculation for onsite capacity should not compromise the extent of deep soil areas. There are several very mature fig trees that should be carefully considered for retention.

- The City Park site has a relatively low height limit of between 4 to 6 storeys, compared to the Incentives Clause/Key Sites Planning Proposal. This latter proposal has been finalised and applies to certain key sites within the city centre. Under that amendment, a bonus provision operates to allow greater height than prescribed. The submission suggested the City Park development be included as a key site in the Key Sites Planning Proposal.

#### Council's response

- The emphasis on development and housing was made to reflect the need to enable the types of land uses needed to stimulate economic activity around the City Park.
- The Planning Proposal only seeks to facilitate an LEP amendment. The Urban Design work would incorporate the extent of deep soils. The limitations for basement car parking and the retention of mature trees would be addressed at the detailed design stage.
- The key sites in the City Centre were identified by the Cities Taskforce in 2007. These were identified as having potential to accommodate additional floor space subject to the proposed development exhibits design excellence. In work undertaken for the City Park so far, an increased building height was not identified as a potential option.

#### Department comment

Council has adequately addressed the issues. In particular, it would not be appropriate to increase building heights under this proposal. At this time, building heights are currently limited to 20m. In this regard, impacts, such as amenity, transport and economic considerations have not been considered as part of the proposal.

#### **General comments raised in submissions**

Apart from one submission supporting the proposal, the issues included matters for consideration at the development application stage. Other issues included use of the proposed park; Council's priorities; isolation of the proposed park; development should not be constrained by existing controls; funding; and engagement of stake holders.

#### Department comment

These related issues are related matters that may either be satisfactorily addressed at the development application stage or concern Council's aims and approach for the development of the subject land that have guided the proposal. These latter matters do not impede the progression of the planning proposal and Council has appropriately addressed these issues.

It is considered that Council has adequately addressed all the issues raised in the submissions.

#### **Amendments**

It is noted that no changes have been made to the exhibited planning proposal adopted by Council. Further community consultation is not necessary.

#### **Section 9.1 Directions**

The planning proposal is consistent with all relevant section 9.1 Directions, except for Directions 4.3 Flood prone land and 6.2 Reserving land for public purposes.

It is recommended that the Secretary's delegate agree that the inconsistency with these Directions is justified based on minor significance as detailed below.

#### Direction 4.3 Flood Prone Land

This Direction applies as there will be a significant increase in the development of the land within a flood planning area. The Penrith CBD and surrounding areas are subject to severe to extreme flood events that are greater than the 1-in-100 chance per year flood.

This Direction requires that the proposal gives effect to and is 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).

Any inconsistency with the proposal and the Direction is considered to be of minor significance as the impending 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 6.2 Reserving Land for Public Purposes

Section 9.1 Direction 6.2 Reserving Land for Public Purposes applies to this amendment, as the amendment seeks to reduce the existing zone RE1 Public Recreation Zone (refer to Figures 4 and 6 – following). This land currently comprises a car park and is not useable open space (refer to aerial photo at Figure 5).



Figure 4: Current land zoning of the site





Figure 5: Aerial view of the subject site



Figure 6: Proposed rezoning of the site

The amendment seeks to retain a portion of this land to create a city park and seeks to rezone the remainder of the land zoned RE1 Public Recreation to B4 Mixed Use. The proposal will enable the creation of useable green space and provide additional uses on the remainder of the site, including residential development, to facilitate the creation of an active, vibrant city park precinct.

A Gateway condition required Council to amend the planning proposal to address the proposal's consistency with this direction. Council amended the proposal accordingly, and it is considered that Council has adequately addressed this direction and that any inconsistency is of minor significance.

In accordance with section 9.1 Direction 6.2 Reserving Land for Public Purposes, it is recommended that the Secretary's delegate agrees to the proposal on the basis that the inconsistency is of minor significance.

It is noted that the Secretary's delegate has previously agreed that the proposal's inconsistency with Section 9.1 Direction 1.1 – Business and Industrial Zones, is justified on the basis of minor significance (**Attachment C**).

The planning proposal is not inconsistent with any other Section 9.1 Directions.

#### State environmental planning policies

The covering letter (**Attachment C**) to the Gateway determination for the planning proposal recommended that Council consider undertaking a phase one assessment report for the site to satisfy Clause 6 of the State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55).

To satisfy the requirements of SEPP 55, Council engaged a consultant to undertake a preliminary environmental site assessment Report (PESAR) to determine whether contamination activities have occurred on that part of the site currently occupied by a dry cleaning business.

The PESAR concluded that an exceedance of soil vapour assessment criteria indicates that the potential of contamination exists and that further investigation would be required to determine if the vapour intrusion pathway exists (copy at **Attachment Environmental Assessment Report**). The report also identified the following potential sources of contamination on the wider site:

- fill of unknown origin; and
- a former off-site service station across Gaymark Lane to the east (refer page 11 of **Attachment Environmental Assessment Report**)

Council has advised (refer to **Attachment B**, page 20) that remediation work will be undertaken at the development stage. Council is satisfied that the concerns raised in the PESAR can be addressed through clause 7 of the SEPP.

#### Department comment

While it would have been preferable for the assessment (**Attachment Environmental Assessment Report**) to have taken a wider review of the site, including that part of the site currently zoned RE1 Public Recreation, it is acknowledged that Council is the responsible authority in this regard and is of the view that the proposal is considered to be consistent with the SEPP (refer **Attachment B** – pp. 20/21). Council has agreed to undertake the remediation work at development stage.

Further, it is noted that Council will be required to consider contamination and remediation of the site in accordance with clause 7 *Contamination and remediation to be considered in determining development application*. To ensure this is the case, the letter to Council (**Attachment Council**) includes a request for Council to ensure that appropriate consideration is given in this regard to other parts of the site at the development application stage.

The planning proposal is consistent with all other relevant SEPPs.

#### State, regional and district plans

The Planning Proposal is consistent with Planning Priority W5 *Providing housing supply, choice and affordability, with access to jobs, services and public transport*, of the Western City District Plan. The planning proposal will contribute to greater housing supply, meeting Objective 10 of the plan and will enable more diverse and affordable housing to be constructed in accordance with Objective 11 of the plan.



As such, the Department is satisfied that the planning proposal gives effect to the Western City District Plan in accordance with Section 3.8 of the *Environmental Planning and Assessment Act 1979* (the Act).

#### **11.MAPPING**

There are six (6) maps associated with this planning proposal (**Attachment Map**) which have been submitted via the ePlanning Portal. These maps have been examined by GIS staff and meet the technical requirements.

#### **12.CONULTATION WITH COUNCIL**

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the Act (**Attachment H**). Council confirmed on 11 February 2019 that the plan should be made (**Attachment I**).

#### **13.PARLIAMENTARY COUNSEL OPINION**

On 7 February 2019 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

#### **14.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 as it will allow Council to enable appropriate re-development of the Penrith City Park precinct in accordance with the Council adopted strategy.



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