

**7 Planning Proposal to amend Penrith Local Environmental Plan  
2010 - 170 Russell Street, Emu Plains**

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<b>Outcome</b>	<i>We plan and shape our growing City</i>
<b>Strategy</b>	<i>Undertake strategic planning that will ensure balanced growth and liveability</i>
<b>Principal Activity</b>	<i>Facilitate appropriate land use outcomes for our city that are consistent with our Local Strategic Planning Statement</i>

**Previous Items:** 1- Planning Proposal – 1-4 Old Bathurst Road, Emu Plains- Ordinary Meeting- 25 Oct 2021 7:00PM  
2- Update on Development Activity and Planning Proposals- Councillor Briefing- 15 Aug 2022 7:00PM  
4- Planning Proposal to amend Penrith Local Environmental Plan 2010 - 170 Russell Street, Emu Plains- Ordinary Meeting- 26 Sep 2022 7:00PM  
1- Planning Proposal to amend Penrith Local Environmental Plan 2010 - 170 Russell Street, Emu Plains- Councillor Briefing- 17 Oct 2022 7:00PM

**Procedural note:** Section 375A of the Local Government Act 1993 requires that a division be called in relation to this matter.

**Applicant:** Bernard Le Boursicot c/o Urbanco  
**Land:** 170 Russell Street, Emu Plains (Lot 1 DP 1273251)  
**Land Owner:** Bernard J Le Boursicot & Linna Le Boursicot

### **Executive Summary**

The purpose of this report is to present to Councillors a Planning Proposal for 170 Russell Street, Emu Plains and to seek Council's endorsement that the Planning Proposal proceed through the Department of Planning and Environment's (DPE) Gateway process for undertaking Local Environmental Plan (LEP) amendments.

On 24 June 2021, a Planning Proposal was lodged by Bernard Le Boursicot c/o Urbanco, seeking changes to Penrith Local Environmental Plan 2010 (LEP 2010) in respect to the land known as 170 Russell Street, Emu Plains, being the subject site. It is noted that this land and adjacent land to the north have previously been known as 1-4 Old Bathurst Road, Emu Plains.

The intent of the proposed amendments is to extend the existing industrial zoning on the western portion of the site across the eastern portion of the subject site also, thereby providing for a single, consistent zoning across all of the subject lot, and in a more regular-shaped, usable lot.

Previously, during the preparation of LEP 2010 between 2010 and 2012, Council resolved not to determine a zoning for the eastern portion of the subject site, as well as the larger lot immediately to the north, as these lands were located below the flood planning level.

More recently, the subject site and adjacent lot to the north were subject of a Planning Proposal that was not supported by Council in May 2015 on the grounds of flooding.

The June 2021 Planning Proposal was presented to the Local Planning Panel at its meeting of 22 December 2021 to obtain advice. The Local Planning Panel did not provide support to the Planning Proposal as it was of the view the proposal had no strategic or site-specific merit.

In respect to the Local Planning Panel's advice, Council officers are of the view that the Planning Proposal demonstrates strategic merit, which is outlined further in this report. In relation to site-specific matters such as around flood behaviour and fill, this can be addressed through appropriate planning controls.

The changes sought to LEP 2010 in the June 2021 Planning Proposal have been altered in response to Council officer assessment of the application and Local Planning Panel advice. The proposed changes are encapsulated in a revised August 2022 version of the Planning Proposal.

Following extensive assessment and amendments, the Planning Proposal proposes to apply an E4 General Industrial zoning (formerly being zones IN1 General Industrial and IN2 Light Industrial) across the subject site, nominate additional permitted uses to apply to the site, apply a height control, minimum lot size control, scenic and landscape value designation, apply additional local provisions to the site, and remove the "Deferred Matter" designation from the eastern part of the site. The removal of the "Deferred Matter" designation allows the entire site to be governed by LEP 2010.

The Planning Proposal outlines that recently more detailed flood modelling of the local Emu Plains catchment has been released to inform the consideration of land use outcomes on the eastern portion of the subject site. To enable this, the proponent seeks to import fill to the eastern portion of the subject land, utilising fill located on Lot 2 immediately to the north of the subject land. Therefore, the rezoning is premised on filling being undertaken to the subject site.

In this regard, the Planning Proposal seeks to apply local LEP provisions to the site to link the rezoning to the proposed filling strategy and flood impact assessment supporting the Planning Proposal. Draft Development Control Plan (DCP) provisions are also proposed to address potential land uses conflicts, traffic access to the site, and adherence to the filling strategy.

The Planning Proposal if endorsed by Council, will then proceed through the DPE Gateway process for LEP amendments which requires the issuing of a Gateway Determination to enable public exhibition. Council endorsement is also sought to prepare a draft DCP amendment in accordance with changes outlined in this report prior to a future exhibition, and this will be exhibited concurrently with the Planning Proposal.

The Planning Proposal was reported to Council's Ordinary Meeting of 26 September 2022. After consideration of the report presented to the meeting, Councillors resolved as follows:

*That the matter be deferred to the next Council meeting and taken to a Councillor Briefing to explain the conclusion that the Council Officers have come to, which is contrary to the Planning Panel's recommendation.*

The Planning Proposal was presented to the Councillor Briefing of 17 October 2022.

### **Background**

On 24 June 2021, Planning Proposal PP-2021-4118 was lodged with Penrith City Council via the DPE Planning Portal by Bernard Le Boursicot c/o Urbanco. A copy of the Planning Proposal has been provided to Councillors as an enclosure to this report.

The Planning Proposal seeks changes to LEP 2010 in respect to the land known as 170 Russell Street, Emu Plains (Lot 1 DP 1273251). It is noted that this land and adjacent land to the north have previously been known as 1-4 Old Bathurst Road, Emu Plains. Attachment 1 provides a site location map and the current planning controls which apply to the site.

The subject site is 2 hectares in size and is divided into its western and eastern portions. The western portion is governed by LEP 2010 and zoned IN2 Light Industrial. The eastern portion is governed by Interim Development Order 93 (IDO 93), under which the site is zoned Rural 1(d) (Future Urban).

During the preparation of LEP 2010 between 2010 and 2012, Council resolved not to determine a zoning for the eastern portion of the subject site, as well as the larger 21 hectare lot immediately to the north, as these lands were located below the flood planning level. Council resolved that these lands be deferred for future consideration upon completion of additional flooding analysis which would determine the flood planning level for the property as a whole. At that time the western portion of the subject site was determined to be zoned IN2 Light Industrial, as this portion of the lot was above the flood planning level.

The subject site and adjacent lot to the north have been subject of a previous Planning Proposal that was not supported by Council in 2015 on the grounds of flooding.

The changes sought to LEP 2010 in the June 2021 Planning Proposal have been altered in response to Council officer assessment of the application and Local Planning Panel advice. The land use outcome intended for the site is not for intensive industrial uses, but rather to deliver less-intensive land uses currently permitted in IN2 zones, which would reduce the potential for land use conflict within the site and also between the site and its surrounds. This would be managed through LEP and DCP controls specific to this site that would minimise impacts to adjoining residential areas.

An indicative development layout is provided in the traffic assessment supporting the application, envisaging an industrial development consisting of 6 separate buildings, landscaping and car parking.

Following extensive assessment and amendments, the Planning Proposal proposes to apply an E4 General Industrial zoning (formerly being zones IN1 General Industrial and IN2 Light Industrial) across the subject site, nominate additional permitted uses to apply to the site, apply a height control, minimum lot size control, scenic and landscape value designation, apply additional local provisions to the site, and remove the "Deferred Matter" designation from the eastern part of the site. The removal of the "Deferred Matter" designation allows the entire site to be governed by Penrith LEP 2010. The proposed changes are encapsulated in a revised August 2022 version of the Planning Proposal.

The amended Planning Proposal was reported to Council's Ordinary Meeting of 26 September 2022. After consideration of the report presented to the meeting, Councillors resolved as follows:

*That the matter be deferred to the next Council meeting and taken to a Councillor Briefing to explain the conclusion that the Council Officers have come to, which is contrary to the Planning Panel's recommendation.*

### **Previous Planning Proposals on the subject site**

The subject site and adjacent lot to the north have been subject of a previous Planning Proposal that was not supported by Council in 2015 on the grounds of flooding. At its Policy Review Committee meeting of 11 May 2015 Council considered a report on a Planning Proposal relating to Lots 1-4 Old Bathurst Road, Emu Plains. Council resolved in part that:

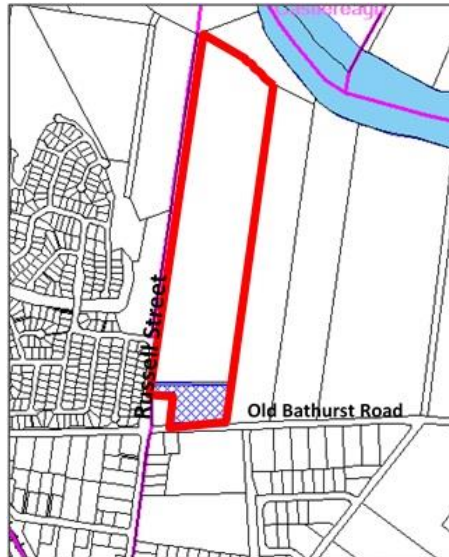
*Council request the Minister for Planning to determine that the matter not proceed on the basis that the provisions of the Planning Proposal are inconsistent with Section 117 Direction 4.3 and that the inconsistency is not considered to be of minor significance.*

The previous 2015 Planning Proposal generally sought changes to the entire subject site and included proposed filling which modified flood storage, flow capacity and velocity. At the time, these proposals were not supported by contemporary flood studies to provide certainty to development outcomes.

Council has recently completed more detailed flood modelling of the Emu Plains overland flow catchments (2020), as well as updated flood modelling of the Nepean River Catchment (2018), which resulted in defining a revised and clearer affectation of the subject site in a 1 in 100-year flood event.

The current August 2022 Planning Proposal seeks changes primarily only to the eastern portion of the subject site, being around 1 hectare of land. This equates to around 4.5% of the affected land area of the previous 2015 Planning Proposal that related to 23 hectares of land.

Most importantly, the August 2022 Planning Proposal does not seek changes to overall flood storage. The following map presents in red outline the land subject to the previous 2015 Planning Proposal whilst the hatched area indicates the site subject of the current August 2022 Planning Proposal.



Attachment 2 presents the proposed LEP maps of the subject site, under the current August 2022 Planning Proposal.

### Local Planning Panel advice

Section 2.19 of the Environmental Planning & Assessment Act 1979 specifies that a function of a Local Planning Panel constituted by Penrith City Council is *to advise the council on any planning proposal that has been prepared or is to be prepared by the council under section 3.33 and that is referred to the panel by the council*. It is noted that the Panel does not perform a decision-making function in respect to Planning Proposals but provides advice only, for consideration.

The June 2021 Planning Proposal was presented to the Local Planning Panel at its meeting of 22 December 2021 to obtain advice. In its June 2021 form, the Planning Proposal sought to extend the existing IN2 Light Industrial zoning on the western portion of the site across the eastern portion also, as well as extend the existing building height (12m) control and the 6,000sqm lot size control also to the eastern portion, whilst also seeking to remove the “Deferred Matter” designation from the eastern portion. No local provisions were proposed to tie the rezoning to the undertaking of filling of the land, nor were any DCP amendments proposed to address issues such as land use conflict or traffic access.

The Local Planning Panel’s advice is provided at Attachment 3 and has been considered by Council officers. The Panel considered that the Planning Proposal does not have strategic or site-specific merit, and therefore should not proceed through the Gateway process.

The majority of the Panel noted that the Planning Proposal does not have strategic merit due to impacts on the flood plain, flooding and stormwater management. Concern was raised that the filling of the land to achieve ground levels above the flood limit suitable for construction of buildings will result in loss of flood storage capacity. Therefore, the cumulative impact of filling below the flood limit has adverse strategic impacts.

It is noted that the changes sought to LEP 2010 in the June 2021 Planning Proposal have been altered in response to Council officer assessment of the application and Local Planning Panel advice and are encapsulated in a revised August 2022 version of the Planning Proposal.

## Response to Local Planning Panel advice

Council officer responses to each of the Panel's objections are presented in the table below.

Local Planning Panel point of objection	Council officer comment
<p>The Planning Proposal does not have strategic merit due to impacts on the flood plain, flooding and stormwater management. Concern was raised that the filling of the land to achieve ground levels above the flood limit suitable for construction of buildings will result in loss of flood storage capacity. Therefore, the cumulative impact of filling below the flood limit has adverse strategic impacts.</p>	<p>The proposed filling strategy does not result in the loss of flood storage capacity. The proposal seeks to move fill from Lot 2 to Lot 1 (the subject site), resulting in no net change to flood storage capacity on the floodplain.</p> <p>To address the Panel's concern, the Planning Proposal has been amended to propose an LEP 2010 Part 7 additional local provision which requires adherence to the endorsed flood impact assessment and filling strategy prepared in support of the Planning Proposal, given that the proposed rezoning is premised on filling being undertaken to the site. The flood impact assessment presents the performance of the site during flood events and is supported by Council officers.</p>
<p>The Planning Proposal does not have site-specific merit due to:</p> <ul style="list-style-type: none"> <li>- The need to import fill to raise the level of the land would have flood impacts on adjoining land</li> </ul>	
<p>The Planning Proposal does not have site-specific merit due to:</p> <ul style="list-style-type: none"> <li>- The potential impacts on the stormwater performance of Lapstone Creek</li> </ul>	
<p>The Planning Proposal does not have site-specific merit due to:</p> <ul style="list-style-type: none"> <li>- Potential adverse traffic impacts on Old Bathurst Road and the operation of the local traffic network</li> </ul>	<p>The traffic study supporting the Planning Proposal presents a detailed traffic analysis to identify traffic impacts from the intensification in development potential of the site. The analysis identifies no adverse impacts on the traffic network. Council officers do not raise objection with the analysis presented.</p>
<p>The Planning Proposal does not have site-specific merit due to:</p> <ul style="list-style-type: none"> <li>- Potential adverse visual impacts caused by raising the level of the land that will increase the height of future buildings on the site</li> </ul>	<p>The land to be rezoned is currently deferred from Penrith LEP 2010.</p> <p>There is currently no building height limit specified for the land zoned Rural 1(d) (Future Urban) under Penrith IDO 93.</p> <p>The proposal will introduce maximum building heights identical to the surrounding land, ensuring consistency in the scale of buildings.</p> <p>Ground levels along Old Bathurst Road and Russell Street frontages generally remain unchanged. As such, there is no visual impact to the height of buildings. Building heights on the subject site will be</p>

Local Planning Panel point of objection	Council officer comment
	the same as surrounding buildings.
<p>The Planning Proposal does not have site-specific merit due to:</p> <ul style="list-style-type: none"> <li>- The impact of development on important fauna and flora located on the site</li> </ul>	<p>Council officers do not raise objection to the Planning Proposal however any future development application will need to identify the biodiversity values of the site and assess the impacts in respect to the relevant legislation. At a minimum, the development application will need to be supported by a Flora and Fauna Assessment and will need to address whether the proposed development will trigger the Biodiversity Offset Scheme and if it does, a Biodiversity Development Assessment Report will need to be prepared and submitted to Council for review.</p>
<p>The Planning Proposal does not have site-specific merit due to:</p> <ul style="list-style-type: none"> <li>- The impact of development on the outlook from the floodplain towards the escarpment will adversely affect landscape and scenic qualities</li> </ul>	<p>The proposal will introduce maximum building heights identical to the surrounding land, ensuring consistency in the scale of buildings.</p> <p>Any future development application for the site is required to have regard to the provisions of Clause 7.5 of Penrith LEP 2010 and Chapter C1 – Site Planning and Design Principles of Penrith DCP 2014 in respect to scenic and landscape values and in minimising likely visual impact as a result of new development.</p>

It is noted that, in respect to the Local Planning Panel's advice, Council officers are of the view that the Planning Proposal is consistent with the direction of the Western City District Plan, Council's Local Strategic Planning Statement and recently adopted Employment Lands Strategy and therefore demonstrates strategic merit in providing employment zoned land for smaller lots. In relation to site-specific matters such as around flood behaviour and fill, this can be addressed through planning controls.

The Panel's objections and Council officer comments are presented in this report for Councillors to consider in making a decision in respect to supporting the Planning Proposal to proceed through the DPE Gateway process for making of LEP amendments.

### The Planning Proposal

The changes sought to Penrith LEP 2010 in the June 2021 application have been altered in response to Council officer assessment of the application and negotiation undertaken with the applicant, as well as in response to the Local Planning Panel advice.

The table below presents the final agreed changes sought to LEP 2010 by the Planning Proposal to the subject site. A detailed discussion of the planning considerations made to inform the formulation of the proposed LEP and DCP amendments is presented later in the report.

LEP provision	Proposal change	Explanation
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LEP provision	Proposal change	Explanation
Land Zoning Map	<p>Apply an E4 General Industrial zone to the entire subject site.</p> <p>The "Deferred Matter" designation on the eastern portion of the site will be removed.</p>	<p>The E4 zone reflects the proposed new zonings under the DPE Employment Zone Reforms. Current IN2 Light Industrial and IN1 General Industrial zones will be translated to an E4 General Industrial zone as part of the new Employment Zones framework.</p> <p>The removal of the "Deferred Matter" designation from the eastern portion of the subject site enables this land to be governed by Penrith LEP 2010 and be zoned E4 General Industrial.</p>
Land Use Table	<p>The LEP Land Use Table for E4 zones will be introduced. Refer to Attachment 4 for the full E4 General Industrial zone land use table.</p> <p>The E4 zone land use table encompasses mostly the same permissible land uses that are currently allowed by the IN1 General Industrial zone of Penrith LEP 2010.</p>	<p>The Land Use Table for the E4 General Industrial zone was endorsed by Council for public exhibition by DPE at its 28 March 2022 meeting as part of Council's consideration of the proposed DPE Employment Zone Reforms.</p>
Additional Permitted Uses Map	<p>Add the entire subject site to the APU map, and add an identifier notation on the site, being "36".</p>	<p>At its 28 March 2022 meeting, Council endorsed to apply APU provisions to the western portion of the subject site as part of Council's consideration of the proposed DPE Employment Zone Reforms. The Planning Proposal seeks to also apply those same provisions to the eastern portion of the site, to enable any existing uses to remain permissible as a result of the translation.</p>
Schedule 1 (Additional Permitted Uses)	<p>Introduce provisions which enable certain additional permitted uses at the subject site, reflecting land uses currently permitted in IN2 Light Industrial zones. Proposed provision:</p> <p><b><i>Sub-clause 36: Use of certain land at 170 Russell Street Emu Plains (Lot 1 DP1273251)</i></b></p> <p><i>1. This clause applies to land at 170 Russell Street, Emu Plains, being Lot 1, DP1273251, that is identified as "36" on the Additional Permitted Uses Map.</i></p>	<p>The additional land uses enabled on the subject land reflect the permissible land uses currently permitted in IN2 Light Industrial zones of LEP 2010. IN2 Light Industrial zones will no longer exist under the DPE Employment Zone Reforms, and therefore it is important to enable certain land uses that are currently permitted in IN2 zones to continue to be permitted at the subject site.</p> <p>The additional permitted uses for the western portion of the subject</p>



LEP provision	Proposal change	Explanation
	2. <i>Development for the purposes of amusement centres, centre-based child care facilities, community facilities, crematoria, educational establishments, electricity generating works, function centres, hotel or motel accommodation, medical centres, recreation facilities (indoor), resource recovery facilities, respite day care centres, service stations, vehicle sales or hire premises, veterinary hospitals and waste or resource transfer stations is permitted with development consent.</i>	site were endorsed by Council for public exhibition by DPE at its 28 March 2022 meeting as part of Council's consideration of the proposed DPE Employment Zone Reforms.
Height of Buildings Map	The existing provision for maximum building height (12m) on the western portion of the land would be applied to the eastern portion of the land also.	The change would deliver a single, uniform height control across the entire subject site.
Lot Size Map	A minimum lot size control of 1,000sqm will be applied across the entire site, instead of the current 6,000sqm that applies to the IN2 zone.	<p>The change would deliver a single, uniform lot size control across the entire subject site.</p> <p>The 1,000sqm lot size allows for subdivision of the site to deliver smaller lots consistent with Council's Employment Lands Strategy, and the potential delivery of less intensive industrial land uses and create less land use conflict within and away from the site.</p>
Land Application Map	The "Deferred Matter" designation on the eastern portion of the site will be removed.	The removal of the "Deferred Matter" designation from the eastern portion of the subject site enables this land to be governed by LEP 2010.
Scenic and Landscape Values Map	The existing designation of "Land with scenic and landscape values" on the western portion of the land would be applied to the eastern portion of the land also.	The change would deliver a single, uniform "Land with scenic and landscape values" control across the entire subject site.
Part 7 (Additional local provisions)	<p>In Part 7 (Additional local provisions), a provision is to be introduced to apply to the subject site, to link the flood impact assessment and filling strategy to the proposed rezoning. Proposed provision:</p> <p><b><i>Sub-clause 7.31: "Development on land at 170 Russell Street, Emu</i></b></p>	<p>This provision reflects the fact that the rezoning is premised on filling being undertaken to the subject site.</p> <p>This provision also addresses some of the concerns raised by the Local Planning Panel.</p>

LEP provision	Proposal change	Explanation
	<p><b><i>Plains (Lot 1 DP 1273251)</i></b></p> <p><i>Prior to the erection of any buildings on the site, flood mitigation and filling works consistent with the endorsed flood impact assessment report and filling strategy, which support Planning Proposal PP-2021-4118, are to be completed to Council's satisfaction.</i></p>	

### Draft Development Control Plan

Changes are sought to Penrith DCP 2014 to complement the changes sought by the Planning Proposal. The changes consist of:

- Aligning the mapped areas for scenic and landscape values and the Emu Plains industrial area with the similar changes sought in the LEP amendments
- Apply specific provisions to the subject site to:
  - Protect the nearby residential area from amenity impacts as a result of traffic movements generated by development on the subject site, or more intensive industrial development types.
  - Restrict driveway access to specified points to improve traffic safety and efficiency.
  - Require the construction of kerb and gutter through development of the site.
  - Ensure that filling of the land is to be completed in accordance the endorsed flood impact assessment report and the endorsed filling strategy.

The proposed draft DCP amendments may be found at Attachment 5.

Prior to a future exhibition of the Planning Proposal, the proponent is required to prepare a draft DCP amendment that reflects the changes presented at Attachment 5, as well as incorporate any other changes which may be identified as being required during the preparation process. The draft DCP is then required to be exhibited concurrently with the Planning Proposal.

### Planning considerations

#### Proposed industrial zone and land use conflict

The subject site contains existing IN2 Light Industrial-zoned land on its western portion and is opposite land zoned IN1 General Industry in the Emu Plains industrial precinct to the south. The subject site is situated in a location where it presents as a “buffer” between residential areas in the west, intensive industrial areas in the south, and rural-zoned lands to the north and east.

The June 2021 Planning Proposal sought to extend the existing IN2 zoning across the entire subject site, with the intention to enable development of the subject site for light industrial purposes with low impacts on surrounds. This zoning proposed was considered reasonable at that time, as the site would deliver less intensive industrial development located between the three surrounding and competing land use zones.

Council endorsed its Employment Lands Strategy in October 2021. The June 2021 Planning Proposal's intent to extend the IN2 zoning across the site is consistent with Action 9 of the Employment Lands Strategy: *to consider zoning for more light industry for low impact businesses near centres and as a buffer between residential and industrial areas.*

DPE's Employment Zone Reforms translates the IN1 General Industrial zone and the IN2 Light Industrial zone into a single consolidated zone known as "E4 General Industrial", which permits more intensive industrial land uses. In response to these reforms the Planning Proposal has been revised to propose an E4 General Industrial zoning across the entire subject site, instead of the IN2 Light Industrial zone.

The challenge is that the E4 General Industrial zoning permits intensive industrial land uses. Therefore, to address any potential land use conflict, the proposal includes additional LEP and DCP controls as outlined below:

- Introduce LEP additional permitted use provisions to enable land uses in IN2 zones to be permissible at the subject site;
- Apply a smaller minimum lot size LEP control to the subject site to deliver less intensive industrial development;
- Apply a DCP control to the subject site to limit driveway access for heavy and rigid vehicles to/from Russell Street; and
- Apply a DCP controls to require the positioning of larger industrial lots along the Old Bathurst Road frontage instead of at Russell Street.

#### Justification for the loss of rural-zoned land

Council's Local Strategic Planning Statement (LSPS), that was endorsed in March 2020, sets out a rural edge for the LGA. The rural edge is the boundary between the rural and urban lands of the LGA and is based on the boundary of the Metropolitan Rural Area identified in the Greater Sydney Region Plan - A Metropolis of Three Cities, and the Western City District Plan.

In April and May 2022, Council exhibited a draft Rural Lands Strategy which confirmed a rural edge boundary for Penrith LGA. The subject site is not located within the rural lands defined by the Region Plan, District Plan, LSPS or draft Rural Lands Strategy. Therefore, the proposed removal of rural-zoned land as sought in this Planning Proposal is justified and consistent with this draft strategy.

#### Flood impact assessment and proposed filling strategy

It is noted that shortly after lodgement of the June 2021 Planning Proposal, initial consultation with DPE was undertaken by Council in respect to DPE's requirements around flood planning associated with the subject site. DPE provided written advice (received 5 August 2021) which requested for the developer to prepare information and responses to Section 9.1 Planning Direction 4.1 Flooding (formerly Direction 4.3 Flood Prone Land). This letter is provided at Attachment 6. This information was subsequently prepared and provided by the proponent and now forms part of the package of information submitted in support of the Planning Proposal for consideration.

Direction 4.1 requires that a Planning Proposal cannot rezone flood prone land from a rural to an industrial zone. However, a Planning Proposal may be inconsistent with the Direction if Council can appropriately justify the inconsistency such as by way of a supporting floodplain risk management study, flood study or flood and risk impact assessment, or if the provisions of the Planning Proposal are of minor significance. The DPE advice, after initial review, indicated that there are no particular policies or draft studies underway that would preclude this planning proposal being assessed on its merits.

The Planning Proposal is supported by a Floodplain Risk Management Plan which has been prepared by the proponent and considered acceptable by Council officers and has been prepared in accordance with the principles of the Floodplain Development Manual 2005. The flood study has demonstrated that the development will not result in significant flood impacts to other properties and are of minor significance. In this respect, the Planning Proposal may be justified against Direction 4.1 and has merit to be considered by DPE through the Gateway process for making of LEP amendments.

The subject site is affected by flooding from the Nepean River as well as local overland flows. In general, up to 5% Annual Exceedance Probability (AEP) flows are contained within the adjacent channel. However, during the 1% AEP event about one quarter of the subject site (north-east corner) would be flooded to varying depths of between 200mm and 400mm, prior to any filling being undertaken. During a larger flood event such as the Probable Maximum Flood (PMF) the entire site would be under several metres of water. The 1% AEP flooding of the site is identified as low hydraulic hazard areas as the depth of flood is shallow and also the flood velocities are relatively slow.

The proponent seeks to utilise existing mounds of fill material located on an adjacent lot to the north (Lot 2 DP 1273251) of the subject site and relocate this fill to the subject site, with the purpose to raise the subject site above the 1% AEP level. This "Cut and Fill" method is not proposing to fill the site with imported fill from outside the floodplain and is an approach agreed by Council officers.

The Planning Proposal and supporting technical documents note that, as part of a future Development Application process, the stockpile on the site will be tested and, if found to be unsuitable for filling purposes, then the stockpile will need to be removed from the site to an approved waste management facility.

The amended Planning Proposal proposes an LEP local provision which applies to the subject site that requires that all elements required to be undertaken to the subject site by the endorsed flood impact assessment report and the endorsed filling strategy will need to be undertaken before development consent is issued for any buildings on the site. This is because the proposed rezoning is premised on the filling being undertaken.

A direction of the Western City District Plan in respect to flooding in the Hawkesbury-Nepean Valley is that a principle to be applied in local strategic planning and development decisions is to avoid alterations to flood storage capacity of the floodplain and flood behaviour through filling and excavation ('cut and fill') or other earthworks.

The proposed filling strategy does not result in the loss of flood storage capacity. The proposal seeks to move fill from Lot 2 to Lot 1 (the subject site), resulting in no net change to flood storage capacity on the floodplain. The amended Planning Proposal proposes a Part 7 additional local provision to Penrith LEP 2010 which requires adherence to the endorsed flood impact assessment and filling strategy prepared in support of the Planning Proposal, given that the proposed rezoning is premised on filling being undertaken to the site. Therefore, the Planning Proposal is consistent with the direction of the Western City District Plan.

#### Stormwater strategy

The Stormwater Strategy is to be revised and is required prior to public exhibition to demonstrate how the site will drain for various flood events. The Stormwater Strategy is to

demonstrate how the site will drain in the 1% and 5% AEP flood events from the Nepean River. Council officers have identified that the Concept Drainage Plan that forms Appendix A to the Concept Stormwater Strategy (June 2022) shows the outlet pipe from the subject site as being fully submerged in a 1% AEP flood event and as such stormwater discharge from the site will be compromised. Details have not been provided for the smaller flood event of a 5% AEP flood which is the normal capacity of a piped trunk drainage system.

Once resolved, the revised information prepared as a result of this process will be included as part of the material used in the public exhibition of the Planning Proposal.

#### Amendment to Interim Development Order 93

The Planning Proposal seeks to remove the “deferred matter” designation from the subject site via an amendment to the Land Application Map, thereby applying LEP 2010 completely to the subject site and removing the governance of IDO 93.

Clause 1.8(2) of LEP 2010 prescribes that all local environmental plans and deemed environmental planning instruments applying to the land to which LEP 2010 applies cease to apply to the land to which LEP 2010 applies. In this respect, IDO 93 will cease to apply to the subject site upon the application of LEP 2010 through the LEP amendments sought by this Planning Proposal.

It is recommended that investigation during exhibition is made by Council officers in regard to whether any amendment is required to IDO 93 as a result of any changes sought by the Planning Proposal. Should an amendment be required, Council is to amend IDO 93 through the relevant legislative requirements separate to this process.

#### **Financial Implications**

There are no financial implications relating to this report.

#### **Risk Implications**

There are no risk implications relating to this report.

#### **Next steps**

Should the Planning Proposal be endorsed by Council to proceed through the DPE Gateway process for LEP amendments, the Planning Proposal will be forwarded to the Minister for Planning with a request to issue a Gateway Determination. The submission will include a request to issue Council with Delegation for plan making authority.

The Minister for Planning or delegate will then issue a Gateway Determination that will resolve whether the Planning Proposal may proceed through the Gateway process to a public exhibition. The Gateway Determination may include conditions requiring that certain tasks are undertaken prior to commencement of a public exhibition and may identify the State agencies to be consulted.

Prior to the public exhibition occurring, the proponent is to prepare a draft DCP amendment that reflects the changes identified in this report, as well as any other changes identified during preparation of the draft DCP. The draft DCP will then be publicly exhibited concurrently with the Planning Proposal.

Prior to exhibition occurring, the unresolved element of stormwater management as identified in this report, is to be addressed and resolved by Council officers and the

proponent. Once resolved, the revised information prepared as a result of this process will be included as part of the material used in the public exhibition of the Planning Proposal.

The public exhibition of the Planning Proposal, draft DCP and supporting information will then be undertaken in accordance with the requirements of the Gateway Determination.

Following completion of the public exhibition, a report will be made to Council for consideration to endorse the Planning Proposal and finalise the LEP and DCP amendments.

## Conclusion

Council is in receipt of a Planning Proposal which seeks changes to Penrith LEP 2010 in respect to the land known as 170 Russell Street, Emu Plains. Changes are also sought to Penrith DCP 2014 to complement the changes sought to the LEP.

The changes sought to Penrith LEP 2010 and Penrith DCP 2014 are considered reasonable and are supported. It is recommended that the Planning Proposal is endorsed to proceed through the Gateway process for LEP amendments.

## RECOMMENDATION

That:

1. The information contained in the report on Planning Proposal to amend Penrith Local Environmental Plan 2010 - 170 Russell Street, Emu Plains be received.
2. Council endorses the Planning Proposal (provided under separate cover) to proceed through the Department of Planning and Environment's Gateway process for Local Environmental Plan amendments.
3. Council officers forward the Planning Proposal to the Minister for Planning with a request to issue a Gateway Determination. The submission will include a request to issue Council with Delegation for plan making authority.
4. A draft Development Control Plan amendment is to be prepared to reflect the proposed changes that are presented in this report, and that the draft Development Control Plan amendment is publicly exhibited concurrently with the Planning Proposal.
5. Prior to public exhibition of the Planning Proposal, the outstanding matters identified in this report in relation to the stormwater strategy are to be resolved, and the strategy amended.
6. Council officers investigate whether any amendment is required to Interim Development Order 93 as a result of any changes sought by the Planning Proposal.
7. The General Manager be granted delegation to make any necessary minor changes to the Planning Proposal referred to in resolution 2.

## ATTACHMENTS/APPENDICES

1. Site location map and current planning controls	5 Pages	Appendix
2. Proposed Penrith LEP maps	6 Pages	Appendix
3. Local Planning Panel Advice	1 Page	Appendix
4. E4 General Industrial zone land use table	1 Page	Appendix
5. Draft DCP amendments	2 Pages	Appendix

- 6.** Letter from Department of Planning and Environment   2 Pages   Appendix