



IRF23/1101

## Gateway determination report – PP-2021-4118

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Rezoning from Deferred Matter land to E4 General  
Industrial - 170 Russell Street, Emu Plains

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Attachment A – Planning Proposal October 2022
Attachment B – Draft LEP Maps

**Relevant reports and plans**

Attachment C – Local Planning Panel Advice 21 December 2021

Attachment D – Rienco Response to Planning Panel 24 June 2022

Attachment E - Council Report and Minutes 31 October 2022

Attachment F - Floodplain Risk Management Strategy, Rienco Consulting August 2022

Attachment J - Draft Additional Permitted Uses clause

Attachment K – Draft Development Controls

Attachment L – Traffic and Parking Report, Positive Traffic June 22

Attachment M – Engineering Review 4 May 2021

Attachment N – Indigenous Heritage Report, Comber Consultants July 2020

Attachment O – Deerubbin Local Aboriginal Land Council July 2020

Attachment P – European Heritage Report Comber Consultants July 2020

Attachment Q – Concept Draining Plan, North Wester Surveys June 2022

Attachment R – Storm Water Management Strategy, North Western Surveys June 2022

Attachment S – Services Report, North Western Services July 2021

Attachment T – Cut and Fill Plan, North Western Services July 2021

Attachment U - JRPP advice (3 March 2012)

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Penrith</b>
<b>PPA</b>	<b>Penrith City Council</b>
<b>NAME</b>	<b>Rezone the site from part IN2 Light Industrial / part Deferred Matter to E4 General Industrial, apply new development standards, including height of buildings, minimum lot size, scenic landscape values, and introduce a new additional permitted uses clause.*</b>
<b>NUMBER</b>	<b>PP-2021-4118</b>
<b>LEP TO BE AMENDED</b>	<b>Penrith LEP 2010</b>
<b>ADDRESS</b>	<b>170 Russell Street, Emu Plains</b>
<b>DESCRIPTION</b>	<b>Lot 1, DP 1273251</b>
<b>RECEIVED</b>	<b>30/11/2022</b>
<b>FILE NO.</b>	<b>IRF23/735</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

\*Note: The Planning proposal was submitted prior to the employment zone reform process being finalised, which has recently resulted in the IN2 portion of the site being translated into the E4 zone. The designation of the Deferred Matter area did not change as part of that process.

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- Deliver additional industrial zoned land to facilitate employment generation.
- Harmonise zoning and development standards relating to building height and lot size across Lot 1.
- Provide for more regular shaped zoning boundaries which allow for the delivery of efficient land development outcomes.

The objectives of this planning proposal are generally clear and adequate.

## 1.3 Explanation of provisions

The planning proposal (**Attachment A**) seeks to amend the Penrith LEP 2010 and Interim Development Order 93 (IDO 93) per the changes below:

**Table 3 Current and proposed controls**

Control	Current Penrith LEP 2010	Current IDO 93 (Deferred Matter land)	Proposed
Zone	Part E4 General Industrial	Part Rural 1(d) (Future Urban)	E4 General Industrial for the entire site
Maximum height of building	12m	N/A	Part 12m
Minimum lot size	6,000m <sup>2</sup>	2,000m <sup>2</sup>	2,000m <sup>2</sup>
Scenic Land Values	Applies	Does not apply	Apply across the entirety of the site.
Additional Permitted Uses	N/A	N/A	Development for the purpose of amusement centres, child-care 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.
Additional Local Provisions	N/A	N/A	Prior to the erection of 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.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The site has an area of 2 hectares and is irregular in shape (**Figures 1 and 2**). The site borders Lot 2 to the north for 230m and Old Bathurst Road to the south for 115m. To the west, the site borders Russell Street for approximately 30m and adjoins an electrical substation (162-168 Russell Street) for 90m.

The site is vacant and predominantly cleared of vegetation in association with historical agricultural uses. The site is generally flat, with a fall from RL 25 along its southern end site to RL 23.5 in the north-eastern corner.

Lapstone Creek runs along the site's eastern and northern boundaries, and the Nepean River is approximately 1km north of the site.

The site is predominately surrounded by open, cleared land. The Emu Plains Correctional facility is approximately 1km north-east of the site and south of Boundary Road are a number of industrial, commercial and retail uses within a large manufacturing site (ACO Pty Ltd), petrol station and food and drink premises. The low-density residential suburb of Emu Heights is located to the west of the site beyond Russell Street. Emu Plains train station is approximately 3km to the east of the site.



**Figure 1 Subject site (source: planning proposal)**





Figure 2 Site context (source: planning proposal)

## 1.5 Mapping

The planning proposal includes mapping (**Attachment B**) showing the proposed changes to the Penrith LEP 2010 maps.

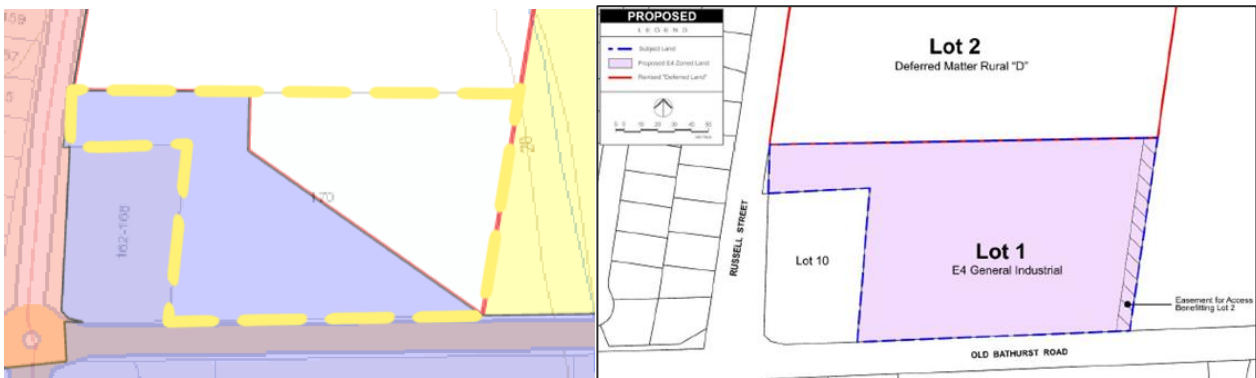


Figure 3 Current (left) and proposed (right) zoning map (source: NSW Legislation online, 8/5/22 and Planning Proposal, December 2022)

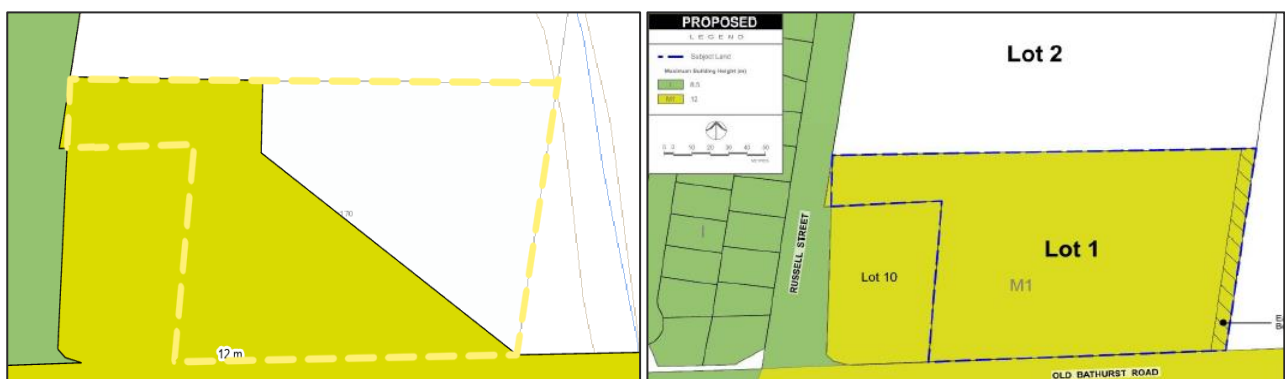
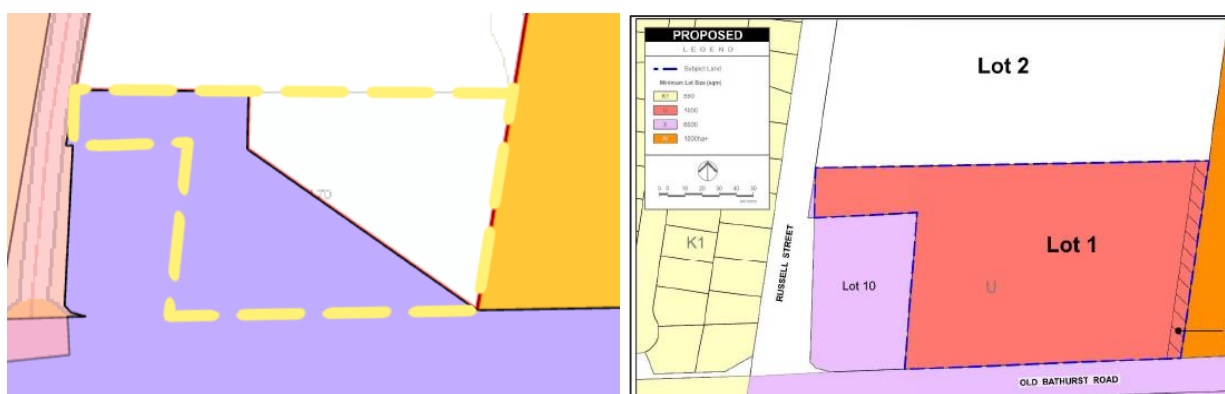
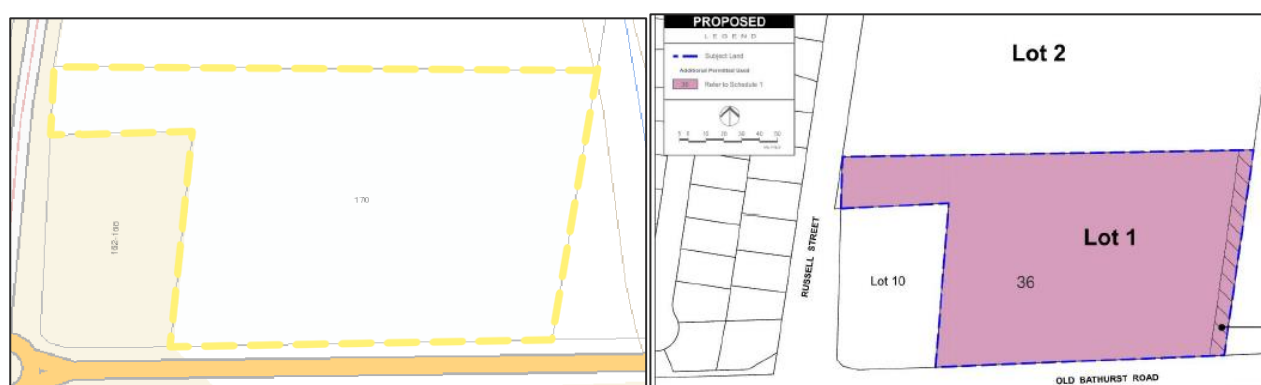


Figure 4 Current (left) and proposed (right) height of building map (source: NSW legislation online, 15/12/22 and Planning Proposal, December 2022)





**Figure 5 Current (left) and proposed (right) minimum lot size (source: NSW legislation online, 08/05/22 and Planning Proposal, December 2022)**



**Figure 6 Current (left) and proposed (right) Additional Permitted Uses Map (source: NSW legislation online, 15/12/22 and Planning Proposal, December 2022)**



**Figure 7 Current (left) and proposed (right) Scenic and Landscape Values Map (source: NSW Legislation online, 15/12/22 and Planning Proposal, December 2022)**

## 1.6 Background

- 2010 – Penrith LEP 2010 was notified however the north-eastern portion of the site and Lot 2 (previously identified as Lots 2 and 3) were excluded from the instrument and identified as Deferred Matter land.
- March 2012 – Following a request from Penrith City Council, the Sydney West Joint Regional Planning Panel advised that it did not support the rezoning of the Deferred Matter land for industrial purposes due to the amount of existing industrial land and uncertainty around flooding.

- 25 September 2012 – Then Director General of the Department of Planning endorsed a report which indicated that there was sufficient strategic justification for industrial uses on the Deferred Matter land, subject to future flood studies.
- 19 November 2012 – A planning proposal (PP\_2012\_PENRI\_002\_00) was submitted to the Department for Gateway determination to rezone the site from Part Rural 1D (Future Urban) under *Interim Development Order 93* and part IN2 Light Industrial under *Penrith Local Environmental Plan 2010* to IN2 Light Industrial and E3 Environmental Management to permit expanded industrial development.
- 17 January 2013 – A Gateway determination was issued for the proposal with conditions, including that the LEP amendment be completed within 24 months.
- 23 April 2015 – Gateway extension was issued for PP\_2012\_PENRI\_002\_00, allowing an additional 12 months for completion.
- 25 May 2015 – Council resolved not to proceed with the proposed rezoning, on the basis that the planning proposal was inconsistent with Section 117, Direction 4.3 – Flood Prone Land.
- 16 February 2016 – Gateway Determination for PP\_2012\_PENRI\_002\_00 was subsequently altered by the Department to 'do not proceed'.
- August 2020 – Development consent was issued by Penrith City Council to amend the subdivision pattern of the land allotments.
- 21 December 2021 – Planning proposal reviewed by the Local Planning Panel and was considered to lack strategic and site-specific merit and as a result, was not supported (**Attachment C**).
- August 2022 – An updated planning proposal was submitted to Council, addressing Panel concerns.
- 31 October 2022 – Council resolved to forward the current planning panel to the Department for Gateway determination (**Attachment E**).

In 2012, both the subject site and Lot 2 to the north were included in a previous planning proposal (PP\_2012\_PENRI\_002\_00) (2012 proposal), which received a Gateway determination on 17 January 2013. The Department understands that the 2012 proposal included filling which modified flood storage, flow capacity and velocity and that at the time, Council was unable to support the proposal as there was no flood study available to provide certainty to development outcomes.

The Department also understands that Penrith City Council requested an independent evaluation of the planning proposal in 2011 (prior to submission for a Gateway). This review was undertaken by Sydney West Joint Regional Planning Panel (JRPP), which did not support the proposal.

## 2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

Council contend that the planning proposal responds to revised Flood Studies prepared over the Emu Plains catchment, the Penrith LSPS and the Penrith Employment Lands Strategy (PELS).

However, the Department is unaware of any specific strategic documents or strategies that have specifically resulted in the current planning proposal to expand the existing zoned employment land area on the subject site. The existing industrial zoned portion of the site is identified in the PELS but there isn't a specific action which proposes expansion of this employment area. Previous planning proposals to rezone the site to an industrial zone date back to 2012, which pre-dates any strategic study or report currently relevant to this site.

The Department therefore does not agree that the planning proposal is a result of any assured strategy, study or report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal considers the amendments to the Penrith LEP 2010 to be the best means of achieving the intended objectives and outcomes.

The Department agrees that a planning proposal is the best means of achieving the intended objectives and outcomes.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Region Plan, A Metropolis of Three Cities.

**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
<b>Objective 4: Infrastructure is optimised</b>	<p>This Objective seeks to deliver growth in a manner that maximises the use of existing infrastructure.</p> <p>The proposal has the potential to deliver new jobs on a site that can maximise the use of existing infrastructure. The site is approximately 350m from a bus stop (route 688 between Penrith and Emu Heights), and Emu Plains train station (~3km from the site) has potential to support additional employment in the area.</p> <p>The Services Report (North Western Surveys, July 2021) (<b>Attachment S</b>) notes that the site is likely to have existing access to electricity and water, however may require a sewer main extension and does not have access to gas.</p> <p>The Department considers that the proposal demonstrates some alignment with this objective, but notes the requirement for some new service connections including sewer mains and access to gas.</p>
<b>Objective 23: Industrial and urban services land is planned, retained and managed</b>	<p>This Objective identifies that the retention, growth and enhancement of industrial and urban services land is critical for the ongoing success of Greater Sydney. It notes that approaches to this land should reflect District needs and the local context and that industrial land should provide a wide range of businesses that support the city's productivity and integrated economy.</p> <p>The Planning Proposal did not provide a response to this objective.</p> <p>The Department supports the retention of industrial land to deliver ongoing economic and employment growth in Greater Sydney and it is noted that the proposal has the potential to provide future job opportunities by increasing industrial floor space.</p> <p>However, noting that the proposal seeks the expansion of an industrial zone in a 'retain and manage' area, the Department's assessment is that the proposal lacks clear justification for the rezoning (for example, through an economic demand analysis).</p>

Regional Plan Objectives	Justification
<b>Objective 37: Exposure to natural and urban hazards is reduced</b>	<p>This Objective identifies that the Hawkesbury-Nepean Valley (in which the site is located) has a high flood risk and climate change may increase the severity and frequency of floods in the future. It highlights the need to consider Probable Maximum Flood (PMF) in addition to 1% Annual Exceedance Probability (AEP) events.</p> <p>In response to this risk, Infrastructure NSW prepared the <i>Resilient Valley, Resilient Communities - Hawkesbury-Nepean Valley Flood Risk Management Strategy</i> (Infrastructure NSW, 2017) to improve knowledge and preparedness for flooding events. This document has guided subsequent flood studies across the Hawkesbury Nepean catchment.</p> <p>The Planning Proposal did not provide a response to this objective. However, a site-specific Floodplain Risk Management Strategy (FRMS) (Rienco, 2022) (<b>Attachment F</b>) was prepared in support of the proposal.</p> <p>The Department has undertaken internal assessment of the FRMS and determined that it has not adequately addressed the PMF. This is further discussed in Section 4.1.</p>

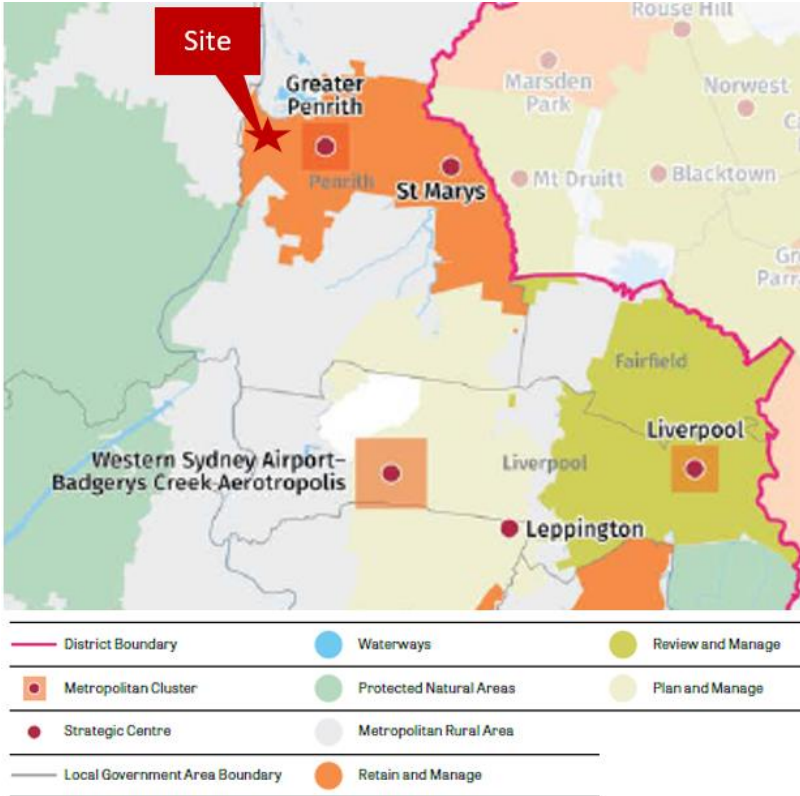
## 3.2 District Plan

The site is within the Western City District and the then Greater Sydney Commission released the Western District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The Department is not satisfied the proposal gives consideration to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*, as considered in the table below.

**Table 5 District Plan Assessment**

District Plan Priorities	Justification
<b>Planning Priority W1 - Planning for a city supported by infrastructure</b>	<p>This Priority seeks to deliver growth in a manner that maximises the use of existing infrastructure.</p> <p>The proposal has the potential to deliver new jobs in an area that can maximise the use of existing infrastructure, as the site is approximately 350m from a bus stop (bus route 688 between Penrith and Emu Heights). Emu Plains train station has some potential to support additional employment in the area, however as its 3km from the site it is too far to be considered convenient for walking.</p> <p>The Services Report (North Western Surveys, July 2021) (<b>Attachment S</b>) notes that the site is likely to have existing access to electricity and water, however may require a sewer main extension and does not have access to gas.</p> <p>The Department considers that the proposal demonstrates some alignment with this objective and notes the site would require connection to some services such as sewer mains and access to gas.</p>

District Plan Priorities	Justification
<p><b>Planning Priority W10 - Maximising freight and logistics opportunities and planning and managing industrial and urban services land</b></p>	<p>This Priority identifies the importance of good local access to industrial and urban services land, as well as the need to safeguard industrial land and provide opportunities for expansion. It includes an objective that <i>‘industrial and urban services land is planned, retained and managed’</i>.</p> <p>The Priority identifies an ongoing need for industrial and urban service land that can deliver jobs and services close to home, and acknowledges that industrial land is evolving from traditional industrial and freight uses into complex employment lands.</p> <p>The Priority identifies three ‘categories’ of industrial land to guide future management, of which the Emu Plains industrial area is classified as ‘retain and manage’ (<b>Figure 8</b>). This classification:</p> <ul style="list-style-type: none"> <li>• supports the safeguarding of existing industrial land</li> <li>• encourages a mix of economic outcomes and accommodation of evolving business and community needs</li> <li>• identifies the need to consider what land uses are most appropriate.</li> </ul>  <p><b>Figure 8 Western District industrial and urban services land approaches</b> (Source: Western District Plan, 2018)</p>



District Plan Priorities	Justification
	<p>On 30 July 2022, the Greater Cities Commission released their <i>Industrial Lands 'Retain and Manage' Policy Review</i>. The review acknowledged:</p> <ul style="list-style-type: none"> <li>the value of, and need to secure, industrial capacity to ensure sufficient land and floor area, of the right types, to meet the state's industrial needs</li> <li>the importance of supporting economic resilience and future business investment, especially at a time when there is increased demand for industrial lands</li> <li>that there are circumstances where some industrial land could transition to alternative uses, including other types of employment, office and medical/health services, mixed uses and in some cases, residential use</li> <li>encroachment from competing uses can be detrimental to industrial lands and that some safeguarding is necessary to ensure the productivity and economic functionality of Greater Sydney.</li> </ul> <p>The review identified 8 guiding principles for industrial land in the 'retain and manage' classification, the following of which are considered relevant to this proposal:</p> <ul style="list-style-type: none"> <li><b>supporting sustainability and aspirations of industrial lands:</b> policy should align with government environmental objectives and community expectations including minimising commute and delivery times, enabling efficient freight and logistics networks, and minimising environmental and social impact</li> <li><b>providing business certainty:</b> ensure consistency and clarity regarding the function of each industrial area, including their economic relationship with activity centres, to send clear market signals that foster business investment and productivity</li> <li><b>servicing population needs:</b> households and businesses should have access to the goods and services they need and access to local employment opportunities.</li> </ul> <p>The planning proposal does not comment on how the proposal addresses this Priority, or the <i>Industrial Lands 'Retain and Manage' Policy Review</i>. As the proposal seeks to rezone ~9,840m<sup>2</sup> of Deferred Matter land to E4 General Industrial, the Department considers this priority relevant.</p> <p>The Department supports the retention of industrial land to drive ongoing economic and employment growth in Greater Sydney, and acknowledges that the proposal could deliver increased industrial floor space and future job opportunities in Emu Plains.</p> <p>However, the Department does not consider that the proposal has clearly demonstrated alignment with this priority. Specifically, the proposal lacks sufficient justification for expanding industrial zone in a 'retain and manage' area, and no consideration has been given to how the proposal addresses the principles of the Greater Cities Commission' 2022 review.</p> <p>While it is the Department's position that the proposal has not clearly explained how the proposal aligns with this Priority, it is acknowledged that consistency could potentially be demonstrated, if the site was suitable for the proposed employment use. Information to explain justify the proposal against this Priority might include the preparation of appropriate supporting studies (e.g. an economic demand analysis).</p>

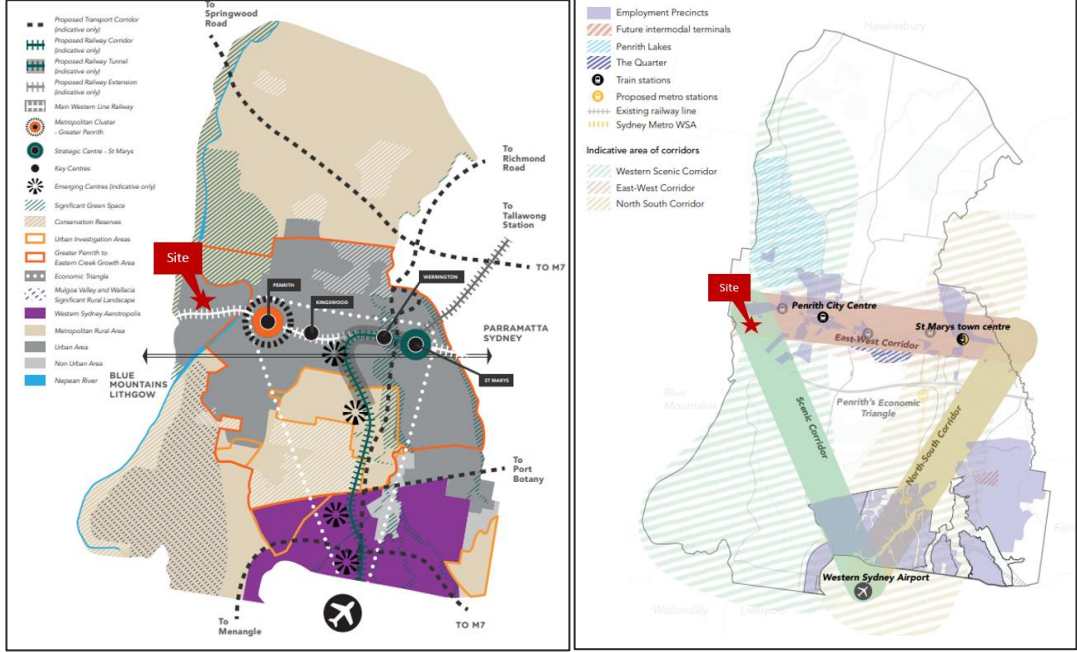
District Plan Priorities	Justification
<b>Planning Priority W11 - Growing investment, business opportunities and jobs in strategic centres</b>	<p>This Priority aims to boost employment growth in metropolitan and strategic centres, diversify uses and create safe, vibrant places that are human-scaled and well connected.</p> <p>The Planning Proposal contends that the rezoning is consistent with this Priority.</p> <p>The Department notes that the Western District strategic centres are: Fairfield, Narellan, Richmond-Windsor, St Mary's, Katoomba and Leppington. Therefore, Priority W11 is not relevant to the proposal.</p> <p>Emu Plains is identified as a local centre in the Western District centres hierarchy (addressed under Priority W6), however this Priority would also not apply as the site is located on the periphery of the Emu Plains industrial precinct, not within the local centre.</p>
<b>Planning Priority W16 – Protecting and enhancing scenic and cultural landscapes</b>	<p>This Priority identifies the importance of scenic views and cultural landscapes, including the Hills, Mulgoa Valley and the Blue Mountains escarpment.</p> <p>The planning proposal has not assessed consistency with this Priority.</p> <p>The Department notes that the western half of the site is currently mapped as Land with Scenic and Landscape Values (SLV) (which triggers assessment under Clause 7.5 of the PLEP), and that the planning proposal seeks to apply this mapping across the entirety of the site. The SLV mapping means that future development on the site would be required to be located and designed in a way to minimise visual impact.</p> <p>The proposed expansion of the SLV mapping is considered to align with this Priority.</p>
<b>Planning Priority W20 - Adapting to the impacts of urban and natural hazards and climate change</b>	<p>This Priority identifies the importance of planning to reduce exposure to hazards and build resilience to shocks and stresses. The Priority specifically notes that for areas in the Hawkesbury-Nepean Valley (such as the subject site), the significant flooding depths between the 1:100 chance per year flood (1% AEP) and the probable maximum flood (PMF) means a risk-based approach that considers the full range of flood sizes is appropriate.</p> <p>The Priority also notes that prior to a flood risk strategy being released, development in the area should “<i>avoid alterations to flood storage capacity of the floodplain and flood behaviour through filling and excavation ('cut and fill') or other earthworks</i>”.</p> <p>The planning proposal has not provided an assessment against this Priority. In the absence of flood risk strategy for the area, a site-specific flood risk management strategy (FRMS) (Rienco, 2022) (<b>Attachment F</b>) was prepared to support the proposal. Importantly, the FRMS was prepared in response to the proposed filling on the site.</p> <p>The Department has reviewed the FRMS and considers it to be insufficient for the following reasons:</p> <ul style="list-style-type: none"> <li>• it has not addressed the impacts of the proposal at the PMF level;</li> <li>• it lacks consideration of the cumulative impacts on flood behaviour (both upstream and downstream) as a result of filling Lot 1.</li> <li>• It lacks detail on future industrial development on the site as a result of the proposed rezoning, including how this may impact flood behaviour.</li> </ul> <p>As a result of both the proposed filling and the insufficient FRMS, the Department considers that the proposal has not adequately addressed this Priority. This is further discussed in Section 4.1.</p>

### 3.3 Local Planning Framework

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
<b>Local Strategic Planning Statement (LSPS)</b>	<p>The planning proposal states that the site is identified as both an ‘urban area’ in the LSPS structure plan and ‘industrial land’ in the LSPS ‘Economic Triangle’ (<b>Figure 8</b>).</p> <p>The planning proposal contends that it is consistent with the objectives of the LSPS to:</p> <ul style="list-style-type: none"> <li>• deliver ongoing employment opportunities that are ‘close to home’,</li> <li>• address the long-term demand for employment lands, and</li> <li>• address Planning Priority 12 (Enhance and grow Penrith’s economic triangle).</li> </ul> <p>The Department considers that the following LSPS priorities also apply:</p> <ul style="list-style-type: none"> <li>• <b>Planning Priority 1 - Align development, growth and infrastructure</b> – the proposal would deliver additional industrial land (~1ha) adjacent to existing E4 General Industrial land with frontage to both Russell St and Old Bathurst Road.</li> <li>• <b>Planning Priority 16 - Protect and enhance our high value environment lands</b> – the existing E4 General Industrial zoned portion of the site is mapped as having Scenic and Landscape Values, and the proposal seeks to extend this across the entirety of the site. This would provide further protection for areas of scenic value.</li> </ul> <p>The planning proposal indicates that there are no identified areas of critical habitat, threatened species or ecological communities within site which would be impacted by the proposal, nor is there any significant vegetation. While there is no ecological assessment provided with the proposal, the Department notes that the site is largely cleared of vegetation.</p> <ul style="list-style-type: none"> <li>• <b>Planning Priority 20 - Manage Flood Risk</b> – the Deferred Matter land identified for rezoning is affected by flooding and a FRMS has been prepared to support the proposal. This concludes that the proposal will not result in any adverse impacts. The Department is concerned with the FRMS, notably that it: <ul style="list-style-type: none"> <li>○ only addresses proposed cut and fill (earthwork) activities (not future industrial uses)</li> <li>○ lacks detail on the cumulative flooding impacts as a result of the earthworks</li> <li>○ has not adequately addressed evacuation plans.</li> </ul> </li> </ul> <p>The planning proposal also does not consider that the site is located at a junction between the ‘Scenic Values’ and ‘East-West’ corridors of the Economic Triangle (<b>Figure 8</b>). No assessment has been undertaken to clarify how the proposal aligns with the intended outcomes of each corridor, and/or how the proposal achieves a balance of scenic value protection and economic development.</p> <p>While the Department does not consider that the proposal has adequately demonstrated alignment with the LSPS.</p>

Local Strategies	Justification
	 <p>The figure consists of two maps. The left map, titled 'economic triangle', shows a region with various land use zones including 'Urban Investigation Areas', 'Conservation Reserves', 'Urban Area', 'Non-Urban Area', and 'Rural Area'. It also shows 'Indicative area of corridors' such as the 'Western Scenic Corridor', 'East-West Corridor', and 'North South Corridor'. A red star marks a 'Site' in the western part of the triangle. The right map, titled 'Penrith Structure Plan', shows a more detailed view of the Penrith area, including 'Employment Precincts', 'Future intermodal terminals', 'Penrith Lakes', 'The Quarter', 'Train stations', 'Proposed metro stations', 'Existing railway line', and 'Sydney Metro WSA'. It also shows 'Indicative area of corridors' and 'Employment Precincts'. A red star marks a 'Site' in the western part of the plan.</p>
<p><b>Figure 9 Penrith Structure Plan (right) and economic triangle (left) (Source: LSPS)</b></p>	
<p><b>Employment Lands Strategy and Study, 2021</b></p>	<p>The Penrith Employment Lands Strategy 2021 (PELS) indicates that Penrith will need to attract and enable businesses to grow the number of jobs for local people by between 85,000 and 109,000 jobs to support the growing population. The PELS notes that while there is currently enough vacant industrial land (463 hectares) to meet job targets (largely driven by land around the Aerotropolis), further work is required to ensure local employment and business opportunities are provided across the LGA.</p> <p>The PELS Study (Hill PDA, 2021) assessed levels of capacity for each precinct. For Emu Plains, the study found that <i>“there is currently 19 hectares of vacant land within the precinct (13% of the total land area), meaning that there is little space to expand existing industrial uses. While there is limited available vacant land, the Special Purpose lands to the north could be rezoned...to accommodate industrial lands demand.”</i></p> <p>The PELS re-iterates the District Plan Priority to ‘retain and manage’ existing industrial areas along the East-West Corridor, which includes the site (<b>Figure 9</b>), and aims to increase job density and business diversity.</p> <p>Council has outlined the proposal’s alignment with the following actions of the ELS:</p> <ul style="list-style-type: none"> <li>• <b>Action 9: Considering zoning for more light industry for low impact businesses near centres and as a buffer between residential and industrial areas</b> as proposed rezoning will deliver increased industrial land within Emu Plains as there is a recognised shortage of industrial land.</li> <li>• <b>Action 13: Planning a mix of lot sizes to allow local businesses to start-up and scale-up</b> as the proposal will deliver opportunities for smaller scale industrial sites and development.</li> <li>• <b>Action 15: Reviewing zoning, height limits and development controls to offer greater flexibility for business operations while preventing land use conflicts,</b></li> </ul>

Local Strategies	Justification
	<p><b>and ensuring controls are appropriate to lot size and location</b> as the proposal delivers employment opportunities by applying a new zone.</p> <p>The Department agrees there is a need to carefully manage employment lands to ensure adequate capacity for future need, and it is acknowledged that there is some level of demand for such land in the Emu Plains industrial precinct.</p> <p>The proposal seeks several changes to the PLEP, however the two amendments that relate specifically to the PELS include both the expansion of industrial zoning and the application of an APU clause across the entirety of the site. It is the Department's position that the proposal lacks sufficient justification for these amendments, and specific concerns include that:</p> <ul style="list-style-type: none"> <li>• The proposal has not demonstrated why the E4 General Industrial zone is appropriate for the eastern portion of site, beyond the fact that the western portion is zoned as such. If the site was suitable for the proposed development, additional justification e.g. an economic demand analysis (or similar) or similar analysis would still be required to justify the proposed E4 General Industrial zoning as being the highest and best use of the land.</li> <li>• The proposal seeks to permit all land uses previously permissible under the (now revoked) IN2 Light Industrial zone, as the western portion of the site has transitioned to E4 General Industrial. The new E-zone adopted the permissible land uses of the (revoked) IN1 General Industrial zone (and therefore reduced permissible land uses). There is concern that several of the proposed land uses may conflict with either nearby residences (e.g. crematoria, resource recovery facilities and waste or resource transfer stations), or with the flooding issues (e.g. child-care centres). If the site had been suitable for the proposed E4 zone, these additional permitted uses would not have been supported, in this location.</li> </ul> <p>Overall, the proposal lacks a detailed response to demonstrate how it prevents land use conflicts and is an appropriate location for the zone (as per Action 15 of the ELS). If the site had been considered suitable for the proposed use, the Department considers further clarification would have been needed, to demonstrate alignment with the ELS.</p>

### 3.4 Local planning panel (LPP) recommendation

The Local Planning Panel (LPP) reviewed the proposal on 21 December 2021 (**Appendix C**).

The Panel considered that the proposal did not have strategic or site-specific merit and recommended that the proposal should not proceed to Gateway Determination for the following reasons:

- impacts on the flood plain, flooding and stormwater management
- 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
- cumulative impact of filling below the flood limit has adverse strategic impacts
- need to import fill to raise the level of the land would have flood impacts on adjoining land
- potential impacts on the stormwater performance of Lapstone Creek
- potential adverse traffic impacts on Old Bathurst Road and the operation of the local traffic network
- potential adverse visual impacts caused by raising the level of the land that will increase the height of future buildings on the site
- impact of development on important fauna and flora located on the site



- impact of development on the outlook from the floodplain towards the escarpment will adversely affect landscape and scenic qualities.

The Department understands that the proposal was subsequently updated in response to the Panel's concerns, and that a revised planning proposal (August 2022) was prepared and submitted to Council.

## 3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.4 Site Specific Provisions	Consistency yet to be demonstrated	<p>This Direction seeks to restrict unnecessarily restrictive site-specific planning controls. It applies because the proposal seeks to include a range of site-specific additional permitted uses (APUs) and development controls.</p> <p>The proposal did not consider this Direction to be applicable.</p> <p>The Department's assessment is that consistency is yet to be demonstrated as the proposal lacks sufficient detail to justify the proposed APU clause, particularly as proposed additional land uses may already be permissible under existing mechanisms. This is further discussed in Section 4.2 (Table 10).</p>
4.1 Flooding	Inconsistent	<p>The objective of this Direction is to ensure development is consistent with the principles of the Floodplain Development Manual 2005 and the provisions of an LEP are commensurate with flood behaviour both on and off the subject site.</p> <p>The planning proposal contends that while the proposal is inconsistent with the Direction, it is supported with a Flood Risk Management Strategy (FRMS) (<b>Attachment F</b>) which justifies the inconsistency.</p> <p>The Department has assessed the proposal against the relevant considerations of the Direction and agrees that the proposal is inconsistent because it would:</p> <ul style="list-style-type: none"> <li>• rezone an area within the flood planning area from a rural zone (Rural 1(d) (Future Urban)) to an employment zone (E4 General Industrial),</li> <li>• permit development in a floodway area, and</li> <li>• permit increased development density in an area between the flood planning area and PMF.</li> </ul> <p>The Direction sets out four considerations that could justify inconsistency. The Department has assessed the proposal against these considerations and does not consider that the inconsistency has been justified, as detailed below.</p> <p><b>a) the planning proposal is in accordance with a floodplain risk management study/plan adopted by council in accordance with the principles and</b></p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p><b>guidelines of the Floodplain Development Manual 2005</b></p> <p>Not applicable, as no floodplain risk management study/plan has been adopted by Council.</p> <p><b>b) where there is no Council adopted study/plan, the planning proposal is consistent with the flood study adopted by the council prepare in accordance with the principles of the Floodplain Development Manual 2005</b></p> <p>Both the Nepean River Flood Study and the Emu Plains Overland Flow Study (2020) apply to the site.</p> <p>The FRMS acknowledges that the Nepean River Flood Study has been prepared, however it is not detailed if/ how the planning proposal and FRMS is consistent with this study.</p> <p><b>c) the planning proposal is supported by a flood and risk impact assessment accepted by the relevant planning authority and is prepared in accordance with the principles of the Floodplain Development Manual 2005 and consistent with the relevant planning authority's requirements</b></p> <p>The FRMS states that it gives effect to, and is consistent with, the Floodplain Development Manual 2005. Council has outlined that it accepts this assessment.</p> <p>The Department's review of the FRMS has highlighted that it lacks assessment of:</p> <ul style="list-style-type: none"> <li>• the impact of PMF events</li> <li>• the cumulative impacts of proposed filling on flood behaviour both up and downstream</li> <li>• evacuation management for PMF events.</li> </ul> <p>The Department does not support the FRMS as a supporting document for the planning proposal. Given the level of flooding risk on the site, the Department also does not believe that the document could be made suitable through updates and/or amendments.</p> <p><b>d) the provisions of the planning proposal that are inconsistent are of minor significance as determined by the relevant planning authority</b></p> <p>The proposed provisions are not considered to be minor as they would significantly increase permissible development density across almost 1ha of vacant land and in close proximity to residential uses.</p> <p>The Department has assessed the planning proposal as inconsistent with this Direction. Further discussion on flooding is provided at Section 4.1.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.4 Remediation of Contaminated Land	Consistency not demonstrated	<p>This Direction applies when there is a proposal to rezone land. It requires consideration of the current contamination status of the land and if the site is (or can be) made suitable for the future intended land use.</p> <p>The proposal references a Stage 1 preliminary site investigation (PSI) undertaken in 2006, which concluded that the site is, or could be made suitable for industrial development. However, this report has not been provided to support the planning proposal.</p> <p>Given the existing rural nature of the Deferred Matter land, there is potential that land uses referenced in Table 1 of the contaminated land planning guidelines may have been carried out (e.g. agricultural or horticultural uses).</p> <p>The Department considers that the proposal has not adequately demonstrated consistency with this Direction.</p>
5.1 Integrating Land Use and Transport	Consistent	<p>This Direction applies when a proposal creates, alters or removes a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p> <p>The planning proposal contends that it is consistent with the objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001) by locating employment generating development in close proximity to existing residents as an extension of existing employment land.</p> <p>The Department considers the proposal is consistent with this Direction as it proposes to locate employment land in close proximity to existing residential and employment areas, and is connected via transport infrastructure such as roads and public transport (buses).</p>
7.1. Business and Industrial Zones	Consistent	<p>This Direction applies when a planning proposal will affect land within an existing or proposed business or industrial zone.</p> <p>As per Direction 7.1 (1)(e), the proposal must <i>ensure that proposed new employment areas are in accordance with a strategy that is approved by the Planning Secretary</i>, or otherwise justify the inconsistency.</p> <p>The planning proposal considers that it is consistent with this Direction as it retains existing industrial zoning on the current IN2 Light Industrial (now B4 following employment zone reform) zoned area of Lot 1.</p> <p>The Department has assessed the proposal as consistent with this Direction as it does not reduce the available area for employment.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
9.1 Rural Lands	Inconsistent	<p>This Direction applies when a planning proposal that will affect land within an existing or proposed rural zone.</p> <p>This Direction stipulates that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>The proposal seeks to rezone the western portion of the site (currently zoned under IDO 93 as Rural 1(d) (Future Urban)) to E4 General Industrial. The balance was recently rezoned to E4 General Industrial through the Department's Employment Zones review process.</p> <p>The planning proposal contends that the rezoning is justifiably inconsistent as it is of minor significance. Specifically, it notes that the eastern portion of the site does not include any strategic or key farming lands, is not currently utilised for any agricultural purposes and represents a relatively small portion of rural land (9,840m<sup>2</sup>) when compared against Lot 2 (directly north of the subject site) that will retain over 21ha as Deferred Matter (Rural 1(d) (Future Urban)).</p> <p>The Department notes that the site is currently vacant and that the area does not serve any strategic agricultural value. However, the Department is not satisfied that the proposal has adequately justified the inconsistency with this Direction as:</p> <ul style="list-style-type: none"> <li>the District Plan does not identify the eastern portion of the site as being potential future industrial/employment land</li> <li>Council's ELS does not identify the site as a future employment precinct</li> <li>Given that there is no clear direction for the remaining Deferred Matter land (Lot 2 to the north), the Department does not consider that the proposal is of minor significance as the outcome of this proposal could have implications on the future rezoning of Lot 2.</li> </ul> <p>The Department does not consider that the proposal has adequately justified the inconsistency with this Direction.</p>

### 3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Biodiversity and Conservation	<p><b>Chapter 6 – Water Catchments</b></p> <p><b><i>Division 2 Controls on development generally</i></b></p> <p>The consent authority must consider the impact of the development on water quality, aquatic ecology, flooding, recreation and public access and total catchment management.</p>	Consistent	<p>The site is located in the Hawkesbury-Nepean River sub-catchment area, and is partially mapped as flood prone land and with Scenic and Landscape Values (SLV).</p> <p>Noting the above, the proposal seeks to:</p> <ul style="list-style-type: none"> <li>insert a new site-specific provision to ensure any works on the site are consistent with any endorsed flood impact assessment, to the satisfaction of the consent authority,</li> <li>apply SLV mapping across the entirety of the site, and</li> <li>update its DCP controls to apply the provisions of C1 Site Planning and Design Principles for areas with Scenic and Landscape Values across the entirety of the site (<b>Attachment K</b>).</li> </ul> <p>The Department considers that the proposed provisions do not conflict with existing SEPP requirements, and that relevant environmental considerations (including flooding and scenic quality) will continue to be triggered at the DA stage.</p> <p>However, the Department has significant concerns with the level of flood risk on the site. Noting that Council does not currently have an adopted Flood Risk Management Strategy, and the Department does not consider the submitted FRMS (<b>Attachment F</b>) adequate, the Department does not consider that the consent authority could adequately consider flooding impacts at the development application stage.</p> <p>The proposal is therefore inconsistent with the SEPP.</p>
	<p><b><i>Division 3 Controls on development in specific areas</i></b></p> <p>The consent authority must consider the impact of the development on the condition of the sub-catchment, native vegetation, the scenic quality of the location and any previous development.</p>	Consistent	



SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Precincts – Western Sydney Parkland City	N/A	Not applicable	The planning proposal has indicated that this SEPP applies to the proposal.  The Department does not consider that there are any relevant provisions in this SEPP that apply.
Resilience and Hazards	<b>Chapter 4 Remediation of Land</b>  A consent authority must not consent to development unless it has considered whether the land is contaminated, that the land is suitable in its contaminated state, or will be after remediation.	Consistency not demonstrated	The proposal notes that a previous PSI for the site found it suitable, or capable of being made suitable for development.  This provision will continue to apply to future development applications on the site.  The proposal is consistent with the SEPP.

## 4 Site-specific assessment


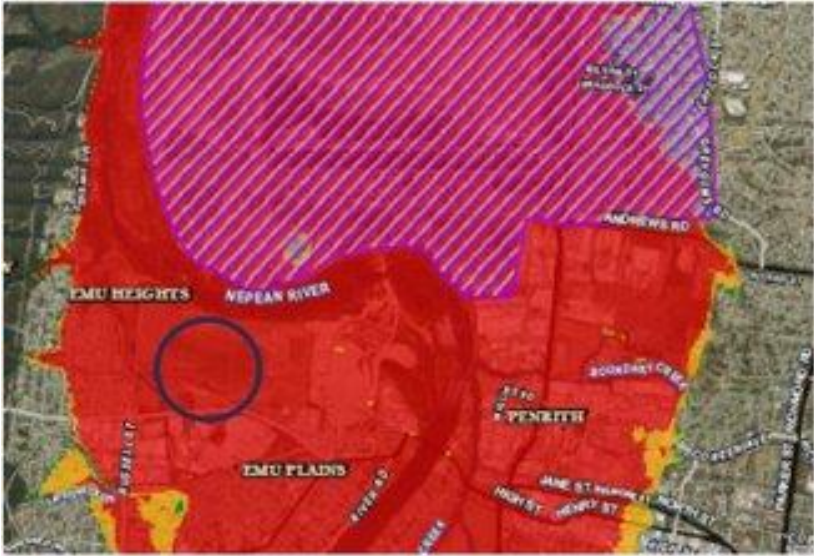
### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 9 Environmental impact assessment**

Environmental Impact	Assessment
Scenic and Visual Impacts	<p>The proposal seeks to extend the Scenic and Landscape Values (SLV) mapping over the Deferred Matter land to be consistent with the reminding portion of Lot 1 (<b>Figure 9</b>). The Department understands that this is in response to advice from the LPP (<b>Attachment C</b>).</p> <p>Under Cl.7.5 of the PLEP 2010, areas with SLV mapping are required to ensure that development minimises the visual impact of the development from major roads and other public places.</p> <p>Under the Penrith DCP, the site is classified as Industrial Precinct 7 with scenic values described as follows:</p> <ul style="list-style-type: none"> <li><i>Land within Industrial Precincts 4 and 8 which have views to and from the Nepean River and the Blue Mountains escarpment, and within Industrial Precincts 7 and 9 which can be viewed from elevated locations elsewhere in the City.</i></li> </ul> <p>The Department notes that Council intends to update its SLV DCP provisions to align with the proposed PLEP 2010 mapping.</p>

Environmental Impact	Assessment
	<p>Given the scenic values of the site (as identified in the LSPS), the Department generally supports the SLV mapping amendment however notes that no information (e.g. such as a visual impact analysis) was provided to:</p> <ul style="list-style-type: none"> <li>• qualify potential visual impacts of any future industrial development; and</li> <li>• demonstrate that future development on Lot 1 would be achievable under both Cl. 7.5 of the PLEP and relevant DCP provisions.</li> </ul>
Flooding	<p><b><u>Background</u></b></p> <p>During the preparation of the PLEP 2010, the western portion of the subject site was identified for industrial zoning (originally IN1 Light Industrial, but amended to IN2 Light Industrial following community consultation) as it was located above the flood planning level. However, Council resolved not to determine a zoning for the eastern portion of the subject site (and the larger 21ha lot immediately to the north), as both sites are located below the flood planning level.</p> <p>Council resolved that the flood-impacted sites would be deferred for future consideration upon completion of additional flooding analysis which would determine the flood planning level for the property as a whole. The sites are currently identified as ‘Deferred Matter’ on the LEP maps, and have retained their previous zoning under the Penrith IDO 93 as Rural 1(d) (Future Urban).</p> <p>Since 2006, both the subject site and Lot 2 to the north have been the subject of a number of attempts to rezone the Deferred Matter land to an industrial zone under the PLEP 2010.</p> <p>In 2011, Penrith City Council requested an independent evaluation of the 2006 planning proposal request. This review was undertaken by Sydney West Joint Regional Planning Panel (JRPP) (<b>Attachment U</b>).</p> <p>Ultimately, the JRPP did not support the proposal for a number of reasons, including flooding. Specifically, the JRPP concluded that:</p> <p><i>that at the present time uncertainties exist in relation to the environmental impacts of proposed flood mitigation works, on-going maintenance responsibilities and costs, and the consistency of the proposed development with floodplain management policies. Thus, the Panel considers that any rezoning now would be premature and inappropriate.</i></p> <p>A revised planning proposal was lodged with Council in October 2012 and submitted to the Department for a Gateway determination, which was subsequently issued. Following public consultation, Council resolved not to progress with the 2012 proposal as the proposal was inconsistent with Section 117 Direction 4.3 (Flooding), and the Department was requested to alter the Gateway determination to ‘do not proceed’ in February 2016.</p> <p>Prior to the lodgement of the current (2022) proposal, it was reviewed by the Local Planning Panel (LPP) on 21 December 2021, and not supported on a range of strategic and site-specific reasons, including flooding (refer Section 3.4 of this report).</p> <p>The planning proposal was updated in response to the LPP review and advice (<b>Attachment C and E</b>) and pre-Gateway consultation was undertaken with DPE. A written response was subsequently provided by DPE (5 August, 2021) requesting that the proposal be supported with a response to Ministerial Direction 4.1</p>

Environmental Impact	Assessment
	<p>Flooding. DPE's advice indicated that there are no particular policies or draft studies underway that would preclude this planning proposal being assessed on its merits.</p> <p><b><u>Flood Impacts</u></b></p> <p>The site is partially affected by the 1% AEP and would be entirely covered by the PMF (Nepean River Flood Study, Advisian, 2018). As shown in Figures 10 and 11 below, the site would be flooded to at least 4m in a PMF event, and has a H6 hazard rating (unsafe for vehicles and people, and all building types considered vulnerable to failure).</p>  <p>Figure 10: 4m+ flooding at PMF (subject site and surrounds circled in blue) (source: NSW State Emergency Service)</p>  <p>Figure 11: H6 rating at PMF (subject site and surrounds circled in blue) (source: Hawkesbury-Nepean Valley Regional Flood Study (2018)).</p> <p><b><u>Proposal</u></b></p>

Environmental Impact	Assessment
	<p>As previously outlined, the planning proposal seeks to align zoning, height, minimum lot size and scenic landscape values across the site, and apply both APU and local provisions across its entirety.</p> <p>Beyond an outline of amendments to the PLEP 2010, the proposal has not provided a clear outline of how the site will be developed in the future to the exception of providing a cut and fill plan for the site. The proposed earthworks include the filling of Lot 1 (potentially up to an additional 1.5m at its highest point), which results in raising the ground level and removing flooding from the site at the 1% AEP flood event. The filling relies on removal of an existing soil stockpile on Lot 2 to the north.</p> <p>The FRMS has been prepared based on the proposed cut and fill of the site only. The FRMS supports the proposal based on it's finding that it will not increase flooding impacts and/or liabilities, re-distribute water flow or adversely affect surrounding areas.</p> <p><b><u>Department Concerns</u></b></p> <p>The Department is aware of, and actively seeking to implement the recent findings of the 2022 NSW Independent Flood Inquiry which recommended that NSW move to a more risk-based approach to flooding and land use planning, including consideration of flooding impacts up to the PMF (rather than predominantly relying on the 1% AEP).</p> <p>It is not evident from the planning proposal and supporting FRMS that the impact of the PMF, and evacuation from such an event, has been considered. Given the 2022 Inquiry findings, the Department's assessment of the FRMS is that the planning proposal has not adequately considered the PMF flood risk on the site.</p> <p>With consideration to the proposed cut and fill, the Department's internal review of the FRMS raised significant concern with this aspect of the proposal. Specifically, that the FRMS has not provided any details on the cumulative flooding impacts (both up and downstream) that may result from the earthworks.</p> <p>The planning proposal considers the earthworks to be minor in nature and would 'balance' flood storage across Lot 1 and 2. Notwithstanding the small level of change anticipated from the earthworks, the proposed works remain a significant issue for the Department given the 2022 Flood Inquiry (Recommendation 20) and the Western District Plan (Priority 20) both adopt floodplain management principles that discourage earthworks and encourage the natural flow of watercourses in favour of engineered solutions. The Penrith DCP 2014 also advises that filling of land will generally not be supported (with exceptions to be considered on a case-by-case basis).</p> <p>Additionally, aerial imagery suggests that there may have been clearing and potential earthworks in the period between late 2022 and early 2023 (i.e. after the date of the FRMS) and as result, the Department is concerned about the validity of the submitted FRMS.</p> <p>While the proposal could be updated with a revised FRMS to include assessment of the PMF, the Department does not consider that a revised FRMS for this proposal could adequately address and mitigate the level of PMF flooding (4m+) and hazard (H6) on the site. This is particularly the case given that, to date, the FRMS has only modelled the impact of 'cut and fill' on the site, not any future industrial development), which would further exacerbate off-site flooding impacts.</p>

Environmental Impact	Assessment
	Based on the flooding concerns, the Department does not support the proposal.

## 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Employment Land	<p>The District Plan and Penrith LSPS both identify a demonstrated need for employment opportunities across the Penrith LGA, to meet increasing population growth. The Penrith Employment Lands Strategy (2021) also includes a number of considerations for future industrial land in Penrith, including appropriate zoning, increased flexibility of controls, and diversity of job opportunities.</p> <p>The proposal argues that the rezoning of ~1ha of land to E4 General Industrial would enable additional employment floorspace on the site and could generate new job opportunities for the area. The proposal has not provided an estimate of how many jobs could be generated but has indicated that the rezoning would contribute to Penrith's employment target of between 85,000 and 109,000 additional jobs.</p> <p>The site is classified as a 'retain and manage' area in the Western District Plan, the purpose of which is to "...accommodate evolving business practices and changes in needs for urban services from the surrounding community and businesses".</p> <p>The Department acknowledges that the planning proposal would deliver additional employment land that would facilitate a wide range of land uses and a diverse range of employment opportunities. It is also acknowledged that previous advice provided by the then Department of Planning and Industry in 2011 indicated that, from a strategic perspective, the site is appropriately located for industrial uses and could assist in delivering jobs.</p> <p>However, the Department notes the JRPP advice (<b>Attachment U</b>) received for the 2012 proposal found that:</p> <ul style="list-style-type: none"> <li>• <i>there is sufficient vacant zoned employment land in Penrith LGA to accommodate likely demand for at least the next 20 years, and therefore to satisfy Council's obligations under current state and regional planning requirements; and</i></li> <li>• <i>existing vacant employment lands do not suffer from comparable flooding or other environmental constraints to those on the subject Emu Plains site.</i></li> </ul> <p>Furthermore, and since the JRPP advice was received, the Greater Cities Commission has prepared and published both the Sydney Regional and</p>

Social and Economic Impact	Assessment
	<p>Western District plans which locate the site in a 'retain and manage' area; that is, the site is not specifically identified for industrial expansion.</p> <p>With this context in mind, the Department is unconvinced that the planning proposal represents an appropriate outcome for the site (flooding concerns notwithstanding), given that:</p> <ul style="list-style-type: none"> <li>• Emu Plains has an existing available supply of vacant industrial zoned land (approximately 19ha) available for development (Penrith PELS Study, HillPDA, 2021); and</li> <li>• the proposal was not supported by an economic demand analysis to justify the additional ~1ha of industrial land.</li> </ul> <p>The Department considers that, if the proposal was instead recommended to proceed, further information would be required to justify the proposed industrial expansion.</p>
Employment Zones Review – Zone Translation	<p>The proposal also seeks an Additional Permitted Use (APU) clause across the entirety of the site. The proposal seeks this clause as the Department's 2021 Employment Zones review consolidated previous Business and Industrial zones into five new employment zones and three new supporting zones. This amendment was finalised in December 2022 and came into effect on 26 April 2023.</p> <p>The Employment Zones review changed the zone on the western portion of the site from IN2 Light Industrial zone to E4 General Industrial zone, as this was considered an 'equivalent' zone within the Penrith LGA.</p> <p>While the new employment zones are different to the previous zones, the intent of the reform was to maximise productivity and minimise loss of land use permissibility. Therefore, there are limited cases where a land use ceases to be permissible under the new employment zones. If a particular land use is not listed under the new zone, it may still be permissible where:</p> <ul style="list-style-type: none"> <li>• it is covered by a 'group term';</li> <li>• it is prescribed under a SEPP;</li> <li>• it is permitted as 'any other development' in an open zone;</li> <li>• it is already listed as an APU in Schedule 1 of the LEP; or</li> <li>• it is captured under the savings and transition clause (which maintains the permissibility of land uses for two years).</li> </ul> <p>The Department does not support an APU clause for the western portion of the site, as the planning proposal is unclear which specific land uses require an APU in the context of the above. In addition, the employment zones reform already includes mechanisms to minimise the loss of land use permissibility and therefore includes mechanism to potentially permit land uses that may no longer be specified in the new employment zones.</p> <p>With regards to the eastern portion of the site, the Department does not support the proposed rezoning to E4 General Industrial (as discussed elsewhere in the report) and therefore the associated APU is redundant.</p>



## 4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

**Table 11 Infrastructure assessment**

Infrastructure	Assessment
Utilities	As per the Services Report (North Western Surveys, July 2021) ( <b>Attachment S</b> ) the site is likely to have existing access to electricity and water, however would require a sewer main and gas extension.
Roads and Transport	<p>A Traffic and Parking Assessment Report (Positive Traffic, June 2022) (<b>Attachment L</b>) is included with the planning proposal. The report assumed the development of the entirety of Lot 1 (estimated development yield of 11,940m<sup>2</sup>) which would result in traffic generation outcomes of between 62 (AM peak) and 67 (PM peak) trips.</p> <p>The report also assumed that the main access would be on Old Bathurst Road, while a second entry located on Russell Street for light vehicles only.</p> <p>The report found that the potential traffic generation of the site was low (in the context of the existing traffic demands), and that the forecast 2033 traffic conditions would be similar with or without the proposed rezoning.</p> <p>The report also determined that the proposed parking provision would comply with Council's parking requirements.</p> <p>To further mitigate impacts to roads and traffic, Council has included a number of draft DCP controls, including the preparation of a detailed traffic study prior to development consent and restriction of driveway access from Old Bathurst Road only.</p> <p>The Department considers that, given no specific land use is anticipated for the site (beyond the rezoning to E4 General Industrial), the modelling of traffic generation is difficult to determine and cannot be relied upon.</p>

## 5 Assessment summary

The planning proposal is not supported on both strategic and site-specific merit considerations.

From a strategic perspective, the proposal lacks clear alignment with district and local planning priorities regarding both the location and future expansion of industrial land. While the proposal would provide additional floor space for jobs in an area with some demand for industrial floor space, the proposal has not adequately addressed the priorities of the district plan and LSPS, particularly with consideration to:

- the lack of available services on the site (District Planning Priority W1, and LSPS Planning Priority 1)
- the site's location in 'retain and manage' employment land classification (District Planning Priority W10), which encourages the exploration of alternative uses and accommodation of evolving business and community needs (as appropriate)
- how future industrial development would be compatible with surrounding cultural landscapes and scenic views (District Planning Priority W16 and LSPS Planning Priority 16)

- flooding impacts on the site and surrounding area (District Planning Priority W20 and LSPS Planning Priority 20).

From a site-specific perspective, the Department does not support the proposal because of unresolved flooding issues. Overall, the Department considers that the proposed rezoning would result in a poor development outcome on a floodplain. Specifically, the submitted FRMS lacks detail with regards to future industrial development and cumulative impacts of filling and does not adequately demonstrate that the proposal will minimise risk to life and ensure safe evacuation.

Furthermore, the proposal has not justified inconsistencies with Ministerial Directions 4.1 Flooding and 9.1 Rural Lands, and has not provided sufficient detail with regards to both contamination issues on the site and future traffic impacts as a result of development.

## 6 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal not proceed for the following reasons:

- Is inconsistent with Ministerial Directions 4.1 Flooding and 9.2 Rural Lands.
- The Flood Risk Management Strategy (Rienco, 2022) does not adequately support the proposal as it:
  - does not justify the inconsistency with Ministerial Direction 4.1
  - has not addressed the impacts of the proposal at the PMF level;
  - lacks consideration of the cumulative impacts on flood behaviour (both upstream and downstream) as a result of filling Lot 1.
  - lacks detail on how future industrial development on the site (as a result of the proposed rezoning) will impact on flood behaviour.
- The proposal seeks to 'fill' the site, which:
  - is not supported by strategic documents including the Western District Plan and
  - has the potential for cumulative impacts on flood behaviour and result in off-site impacts.
- Given the level flood impact and hazard, it is not considered that the proposal could be supported by an updated flood impact assessment
- The proposal also lacks sufficient justification to expand the proposed E4 General Industrial zoning across the site (and associated development control amendments).



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(Signature)

2/6/2023 (Date)

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