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Environment

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Gateway determination report – PP-2021-6479

Insert a local provision into the Penrith Local Environmental Plan 2010 to mitigate urban heat island effect

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1 Introduction

1.1 Overview

The planning proposal is supported by the following reports and plans:

- Attachment A – Planning Proposal, Council Report, Penrith Local Planning Panel advice
- Attachment B – Council Resolution 25 October, 2021
- Attachment C – Council letter requesting Gateway 26 October 2021

Table 1 Proposed local provision details

LGA	Penrith
PPA	Penrith Council
NAME	Amend Penrith Environmental Plan 2010 (Penrith LEP) to insert a local provision to mitigate urban heat island effects
NUMBER	PP-2021-6479
LEP TO BE AMENDED	Penrith LEP 2010
ADDRESS	Land to which Penrith LEP 2010 applies
RECEIVED	26/10/2021
FILE NO.	IRF21/4540
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Site description

This planning proposal applies to land to which Penrith LEP 2010 applies as shown in the Land Application map of Penrith LEP 2010:

https://eplanningdlprod.blob.core.windows.net/pdfmaps/6350_COM_LAP_001_120_20201123.pdf

This includes most of the land in the Penrith local government area (LGA), however excludes land defined by the following:

- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020, and
https://eplanningdlprod.blob.core.windows.net/pdfmaps/SEPP_WSA_LAP_001_060_20200901.pdf
- State Environmental Planning Policy (Western Sydney Employment Area) 2009.
https://eplanningdlprod.blob.core.windows.net/pdfmaps/SEPP_WSEA_LAP_001_080_20200902.pdf

Throughout this report the area subject to this planning proposal is referred to as 'Penrith' or 'City of Penrith'. City of Penrith Council is referred to as 'Council'.

1.3 Background

Penrith City is susceptible to urban heat impacts due to the region's existing climate and topography, geographic position, large and growing population and urban development. As the City grows and becomes more urbanised, reducing and removing heat from the urban environment is critical to achieving an environment that has high amenity, provides opportunities for active, healthy and safe activities and is comfortable throughout summer.

Urban Heat Island Effect

Urban heat island effect results from a combination of factors occurring over time:

- Urban development replacing natural land surfaces and vegetation with hard, non-permeable and non-reflective surfaces that absorb heat, cause water to run-off and the soil to dry out;
- Naturally occurring evapotranspirative cooling is prevented and heat is trapped so temperatures do not drop significantly at night providing no respite from daytime heat;
- Heat from sources such as air conditioners and cars combine with trapped absorbed heat to make urban areas significantly hotter than surrounding, less urbanised areas.

Why Penrith City is prone to urban heat impacts

Council outlines why Penrith City is particularly prone to urban heat island impacts:

- Penrith experiences mean summer maximum temperatures of 29°C or higher. Penrith's vulnerability to high temperatures and heatwaves is projected to increase in the future.
- Mean yearly rainfall in Penrith is 720mm, significantly less than Sydney (1200mm).
- Cooling sea breezes reach only about nine kilometres inland so that Penrith City's inland, low lying position in the Sydney Basin up against the Blue Mountains means hot air is trapped. Temperature differences on a hot day and between Penrith and Sydney can be up to 10°C;
- Penrith has a large and growing residential population, expansive largely unvegetated areas and is undergoing rapid urban development.

Need for Planning Controls

Specific targeted building and design responses can significantly help to mitigate urban heat such as light-coloured surfaces to promote reflectivity, increasing ventilation, protecting and increasing vegetation for shade, using water sensitive urban design to harvest and reuse water for cooling, and adopting building design principles that are suited to the local climate.

2 Proposal

2.1 Objectives or intended outcomes

The objective of this Planning Proposal is to amend the Penrith LEP 2010 to ensure that mitigation of urban island heat effect is considered during the planning and design of new developments.

The intended outcomes of the Planning Proposal are to:

- Ensure development incorporates effective planning and design measures to reduce the urban heat island effect in Penrith;
- Ensure buildings and outdoor spaces are thermally comfortable, particularly during summer, for people living and working in Penrith; and
- Promote green infrastructure and water in the landscape for their cooling benefits.

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

2.2 Explanation of provisions

The objectives of the proposal will be achieved through simultaneous changes to the Penrith LEP 2010 to introduce a new local provision and inserting a new Urban Heat chapter into the Penrith Development Control Plan (DCP) 2014.

The planning proposal seeks to insert a new local provision to apply to select land use zones, supported by objectives, matters for consideration and a new definition.

The local provision will apply to development on land in the following zones:

- All residential zones - R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential and R5 Large Lot Residential
- All business zones - B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor and B7 Business Park
- All industrial zones - IN1 General Industrial and IN2 Light Industrial
- All special purpose zones - SP1 Special Activities, SP2 Infrastructure and SP3 Tourist
- All recreation zones - RE1 Public Recreation and RE2 Private Recreation
- RU5 Village zone; and
- E4 Environmental Living zone.

The clause is not intended to apply to rural zones (except for RU5 Village zone), environmental zones (except for E4 Environmental Living zone) or waterways zones as they are not considered to contribute significantly to urban heat island effects.

The local provision seeks to include the following objectives:

- Ensure development incorporates effective planning and design measures to reduce the urban heat island effect in Penrith;
- Ensure buildings and outdoor spaces are thermally comfortable, particularly during summer, for people living and working in Penrith; and
- Promote green infrastructure and water in the landscape for their cooling benefits.

The local provision seeks to ensure development consent is not granted unless the consent authority is satisfied that planning and design measures have been considered and incorporated into the development to reduce the urban heat island effect including:

- Measures to retain and extend green infrastructure, including vegetation that contributes to the local tree canopy;
- Measures to retain water in the landscape, including permeable surfaces, rainwater harvesting, water reuse and water features;
- Passive design measures, including siting, orientation, natural ventilation and external shading;
- Use of building, paving and other materials to minimise heat impacts, including green and cool roofs and walls, eaves and awnings, light-coloured materials, permeable paving; and
- Measures to reduce reliance on mechanical ventilation and cooling systems to conserve energy and minimise heat sources.

The proposal also seeks to define 'green infrastructure' consistent with the definition within *Design and Place State Environmental Planning Policy, Explanation of Intended Effect* as follows:

"...the network of green spaces, natural systems and semi-natural systems that support sustainable communities and includes waterways, bushland, tree canopy, green ground

cover, parks and open spaces that are strategically planned, designed and managed to support a good quality of life in the urban environment”.

Department comment

The Department supports Council’s work on this matter and the intended approach. The proposed clause is similar to the new Clause 6.12 of the recently gazetted Cumberland LEP 2021, which provides a precedent for the subject planning proposal.

As there is a precedent, Council will need to justify variations to the Cumberland LEP, should it progress to finalisation. The establishment of this precedent may mean little variation will be permitted.

Noting the additional information Council provided examining the differences between Cumberland’s LEP clause and Penrith’s proposed clause, Council is to review the planning proposal’s objectives, matters for consideration, and definition of ‘green infrastructure’ against the Cumberland LEP and justify any departure. The planning proposal is to be updated to include this analysis prior to exhibition. In addition, prior to Council’s consideration of the post exhibition report, Council should consider consulting the Parliamentary Counsel Office on the finalised intent for the proposal. s

A key difference between the two clauses is in relation to the weight a consent authority is to consider the matters set out in the local provision. The Cumberland provision states that a consent authority must consider matters in deciding whether to grant development consent whereas the proposed Penrith provision states that a consent authority must be satisfied of certain matters. Within Council’s justification for departures from the Cumberland provision, Council will need to consider and articulate what would enable the consent authority to be satisfied that thresholds have been met.

Considering both the amendments to the LEP and DCP will achieve the objectives of the planning proposal, the Gateway will be conditioned that the draft DCP is exhibited concurrently with the planning proposal.

2.3 Mapping

The planning proposal recommends no mapping amendments.

3 Need for the planning proposal

The planning proposal is the best means of achieving the proposal’s intended outcomes particularly as it will be supported by amendments to Penrith’s DCP containing more specific controls. It responds directly to planning priorities and an action within the *Penrith Local Strategic Planning Statement* (LSPS) and responds to a number of outcomes from several documents and strategies (outlined in Section 4 of this report) regarding urban heat.

4 Strategic assessment

4.1 District Plan

The site is within the Western City District and the Greater Sydney Commission released the Western City 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 planning proposal is consistent with the District Plan and gives effect to the two key planning priorities and actions listed below.

- *Planning Priority W20: Adapting to the impacts of urban and natural hazards and climate change, supported by:*

Action 89: Mitigate the urban heat island effect and reduce vulnerability to extreme heat; and

- *Planning Priority W15: Increasing urban tree canopy cover and delivering Green Grid connections, supported by:*

Action 75: Expand urban tree canopy in the public realm.

The District Plan recognises the significant impact of heatwaves and extreme heat on communities and infrastructure networks. It notes that more highly developed parts of the district, including areas in Penrith City, are exposed to conditions of extreme heat as a direct result of urban heat island effects. To help cool the environment and mitigate the urban heat island effect, it highlights the importance of retaining water in the landscape, enhancing and extending urban tree canopy and using appropriate building and paving materials.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

4.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies.

Local Strategic Planning Statement

The Planning Proposal will give effect to the Penrith LSPS by specifically responding to:

- *Planning Priority 21: Cool our City, and*
- *Action 21.3: Introduce objectives, planning and development controls to deliver a cooler city.*

and by supporting:

- *Planning Priority 18: Connect our green and blue grid.*

Other documents and strategies

The planning proposal will also give effect to:

- *Penrith Cooling the City Strategy 2015* which identifies the need for planning and development controls for new developments to mitigate urban heat;
- *Resilient Penrith Action Plan 2021-2030* which has an action to address urban heat and cooling in the Penrith LEP and DCP; and
- *Green Grid Strategy 2021* which includes recommendations that can be supported through planning and development controls.

Penrith Community Plan

The Penrith Community Plan was adopted by Council on 26 June 2017 and represents the community's 20 year vision as a sustainable and prosperous regional city representing urban and rural qualities and a strong commitment to environmental protection and enhancement.

The Plan identifies seven community outcomes, including:

- *Outcome 5. We care for our environment, and*
- *Strategy 5.3: Minimise risks to our community from natural disasters and a changing climate.*

Under outcome 5, the Plan acknowledges the risk of heatwaves and extreme heat, indicating an intention to reduce the impact of extreme urban heat and to consider this risk when assessing proposed development.

The Planning Proposal is consistent with the Community Plan and will give effect to Strategy 5.3.

4.3 Local planning panel (LPP) recommendation

On 22 September 2021 Penrith Local Planning Panel's advice on the planning proposal was sought in accordance with requirements of Section 2.19 of the *Environmental Planning and Assessment Act 1979*. The LPP supported and commended the initiative, recommending the proposal be progressed through the next steps in the Gateway process.

The planning proposal is justified in terms of strategic consistency with the state and local strategic planning framework.

The LPP supported Council's proposed combined approach of a broad-based clause in the LEP supported by new detailed controls in the DCP, advising:

- The two-pronged approach, will elevate a key priority of Council to the LEP as a planning consideration allowing the DCP to be more easily adapted in response to new research and thinking on urban heat and the built environment;
- As part of its justification, the planning proposal should demonstrate the proposed approach is the best, most efficient and most time effective approach to delivering the desired outcome;
- While further work is necessary to establish clear and robust quantitative controls on urban heat for Penrith, the approach enables urban heat island effects at least to be considered ahead of this work;
- The proposed approach is similar to that taken with other provisions in the LEP, such as clause 7.4 Sustainable Development and clause 8.4 Design Excellence, which have no quantitative controls, but are supported by more detailed controls in the DCP.

The LPP's views were sought on the level detail to be included in the new LEP provision, related to planning and design measures. Of two options presented, the LPP supported the second option containing additional detail on key elements to be considered when preparing and assessing development applications.

In respect of the planning proposal, the LPP advised:

- The term "green infrastructure" be defined to avoid confusion;
- Consideration should be given to including an appropriate aim in Clause 1.2 of the LEP;
- Consideration should be given to the application of the LEP clause to the E3 Environmental Management zone, as intensive urban development in this zone may occur.

Following the LPP's advice, the Council amended the planning proposal:

- To include the intention to provide more detail in the LEP provisions on how the objectives may be achieved; and
- To indicate the intention to include a definition for "green infrastructure" in the new provision consistent with the definition in the EIE for the proposed Design and Place SEPP and/or the definition adopted in the final SEPP, depending on its timing.

Council did not proceed with the following comments:

- Inclusion of an aim in Clause 1.2 of the LEP: Council considered the existing aim adequate in not only capturing urban heat, heatwaves and extreme heat, but also other potential climate change impacts such as increased risk of drought, bushfire, storms and floods;
- Inclusion of the E3 zone in the area to which the provision is to apply: The LEP permits a limited range of development in the E3 Environmental Management zone consistent with

rural zones. Council does not consider these zones to contribute significantly to the urban heat island effect.

The Department supports Council's response to the LPP advice.

4.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below. The proposal is consistent with all applicable section 9.1 Directions.

Table 2 Ministerial Direction assessment

Direction	Demonstration of Consistency
1.1 Business and Resources	<p>This Direction applies as the proposal will affect land within an existing business or industrial zone.</p> <p>The planning proposal will not affect land suitable for employment or potential floor space area in business or industrial zones. Development in these zones will be required to consider effective planning and design measures to reduce urban heat effects.</p>
1.2 Rural Zones	<p>This Direction applies as the proposal will affect land within an existing rural zone (RU5 Village). It does not seek to amend zoning or density of land in this zone.</p>
2.1 Environment Protection Zones	<p>This Direction requires a planning proposal must include provisions that facilitate the protection and conservation of environmental sensitive areas.</p> <p>The planning proposal seeks application to land zoned E4 Environmental Living, however will not affect existing environmental protection standards in the LEP. Development in the E4 zone will be required to consider effective planning and design measures to reduce urban heat effects. Measures such as retaining and extending green infrastructure and water in the landscape, will support environmental protection standards.</p>
2.3 Heritage Conservation	<p>This Direction requires a planning proposal to contain provisions that facilitate the conservation of heritage.</p> <p>The planning proposal will not affect existing heritage conservation provisions in the LEP. The new provision, with its broad outcomes-based measures, has sufficient flexibility to enable suitable planning and design measures to be chosen based on the heritage circumstances of the site and development.</p>
2.6 Remediation of Contaminated Land	<p>This Direction requires a planning proposal authority to consider findings of a preliminary investigation of the land if the proposal includes land within an investigation area under the meaning of the <i>Contaminated Land Management Act 1997</i>, development for residential, educational, recreational or childcare purposes, or development to which development for a purpose referred to the contaminated land planning guidelines is being, or known to have being, carried out.</p> <p>While the planning proposal will apply to several land use zones, it does not propose a change of use of land. The provisions will not prevent the application of SEPP No 55 – Remediation of Land. The planning proposal authority is not required to consider the findings of a preliminary investigation of the land.</p>

Direction	Demonstration of Consistency
3.1 Residential Zones	<p>This Direction applies as the proposal will affect land within an existing residential zone and other zones allowing residential development. Development in these zones will need to consider effective planning and design measures to reduce urban heat effects.</p> <p>The provision will support this direction's aims to use existing infrastructure (e.g. green infrastructure, water and electricity) and minimise environmental impacts (e.g. reduce urban heat effects).</p>
3.4 Integrating Land Use and Transport	<p>This Direction applies as the proposal seeks to create a provision relating to urban land.</p> <p>The new provision will require development to consider measures to retain and extend green infrastructure, including trees (on private and public land) that contribute to local tree canopy. Increasing urban tree canopy will help to cool local environments and create conditions conducive to walking and cycling. This will support this direction's objective to increase transport choices and reduce dependence on cars.</p>
3.5 Development Near Regulated Airports and Defence Airfields	<p>This Direction applies as the proposal creates a provision relating to land near a regulated airport. The planning proposal will not affect provisions relating to residential development within the 20 ANEC/ANEF contour for Western Sydney Airport.</p>
4.3 Flooding	<p>This Direction applies as the proposal creates a provision in a land use zone that may contain flood prone land. The planning proposal will not affect existing provisions in the LEP related to flood planning and the flood planning area.</p>
4.4 Planning for Bushfire Protection	<p>The planning proposal applies to some land mapped as bushfire prone land or in proximity to land mapped as bushfire prone land. The proposed provision does not seek to affect zoning or densities, but to require development to consider effective planning and design measures to reduce the urban heat island effect</p> <p>A planning proposal may only be consistent with this Direction if the council has obtained written advice from the Commissioner of the NSW Rural Fire Service (RFS) that it does not object to the proposal. In accordance with this direction, consultation with the NSW Rural Fire Service will be required, prior to community consultation. As NSW RFS is yet to be consulted, the planning proposal is inconsistent with Direction 4.4 Planning for Bushfire Protection.</p>
6.1 Approval and Referral Requirements	<p>The planning proposal will not include any provisions requiring concurrence, consultation or referral of development applications to a Minister or public authority or identify development as designated development.</p>
6.2 Reserving Land for Public Purposes	<p>The planning proposal applies to land for public purposes, including land zoned SP1 Special Activities, SP2 Infrastructure and RE1 Public Recreation. It will not create, alter or reduce existing zones or reservations of land for public purposes.</p>

Direction	Demonstration of Consistency
6.3 Site Specific Provisions	The planning proposal does not propose a provision allowing a particular development to be carried out. It proposes a new provision requiring development in a range of zones to consider effective planning and design measures to reduce urban heat effects.
7.8 Implementation of the Western Sydney Aerotropolis	<p>The planning proposal does not apply to land shown on the Aerotropolis SEPP's Land Application Map. Nor does it apply to the additional land shown on the Aerotropolis Boundary Map, which is zoned for rural purposes.</p> <p>The planning proposal will not prevent the application of the airport safeguards provisions in the SEPP. Therefore, the Planning Proposal is consistent with the Western Sydney Aerotropolis Plan.</p>

4.5 State environmental planning policies (SEPPs)

The following SEPPs are not applicable as the planning proposal does not apply to land to which these SEPPs apply:

- SEPP (Major Infrastructure Corridors) 2020
- SEPP (Western Sydney Aerotropolis) 2020
- SEPP (Western Sydney Employment Area) 2009

The following SEPP is not applicable as the land is a 'deferred matter' under Penrith LEP 2010

- SEPP (Penrith Lakes Scheme) 1989

The following SEPPs are relevant and applicable in so far as they affect land to which this planning proposal seeks to apply, however in each case, the provision will not challenge or obstruct application of the SEPP or conflict with its objectives:

- SEPP No.21 – Caravan Parks
- SEPP No.33 – Hazards and Offensive Development
- SEPP No. 50 – Canal Estate Development
- SEPP No. 55 – Remediation of Land
- SEPP No. 64 – Advertising and Signage
- SEPP No. 70 – Affordable Housing (Revised Schemes)
- SEPP (Affordable Rental Housing) 2009
- SEPP (Concurrences and Consents) 2018
- SEPP (Educational Establishments and Child Care Facilities) 2017
- SEPP (Infrastructure) 2007
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007
- SEPP (Primary Production and Rural Development) 2019
- SEPP (State and Regional Development) 2011

The planning proposal is consistent with all relevant applicable SEPPs as discussed below:

Table 3 Relevant and applicable SEPPS – Demonstration of consistency

SEPP	Demonstration of Consistency
No.19 – Bushland in Urban Areas	The Planning Proposal supports the aim of this SEPP to protect and preserve bushland in Penrith’s urban areas, through its associated aim of reducing urban heat. The new provision proposes an objective to promote green infrastructure and measures to retain and extend green infrastructure, including bushland.
No.65 – Design Quality of Residential Apartment Development	The Planning Proposal supports the aim of this SEPP: <ul style="list-style-type: none"> • To improve design quality in residential apartment development to ensure it contributes to sustainable housing (particularly development that incorporates measures to reduce urban heat); • To maximise amenity (particularly thermal comfort) for the benefit of occupants and the wider community; and • To minimise consumption of energy and reduce greenhouse gas emissions (particularly measures to reduce reliance on mechanical ventilation and cooling systems)
Building Sustainability Index (BASIX) 2004	The new provision (and supporting urban heat DCP controls) will complement the existing energy efficiency and thermal performance outcomes for buildings under BASIX. It is intended to ensure broad consideration of issues related to urban heat beyond a building’s thermal performance, particularly thermal comfort and reduction of heat stress. The SEPP will continue to prevail over the LEP 2010.
Exempt and Complying Development Codes 2008	This SEPP applies to Penrith LGA, however the new provision will not apply to exempt or complying development. It is noted that some complying development, such as new homes and renovations of \$50,000 or more, will continue to require a BASIX certificate.
Housing for Seniors or People with a Disability 2004	The new provision is consistent with design principles related to solar access and design for climate in the SEPP, and consistent with aims to ensure safety and comfort for occupants.
Vegetation in Non-Rural Areas 2017	The planning proposal supports the aim of this SEPP to preserve amenity in non-rural areas through preservation of trees and other vegetation, through its associated aim of reducing urban heat. The new provision proposes to promote, retain and extend green infrastructure, including vegetation.

5 Site-specific assessment

5.1 Environmental

The Department supports Council’s view that the proposed provision’s focus on cooling local environments will improve environmental outcomes and is likely to result in benefits for the environment. For example, retaining and extending green infrastructure helps to protect habitat and biodiversity values, and improve air quality and local amenity.

Retaining water in the landscape through water sensitive urban design can help improve water quality and water conservation outcomes. Passive design measures and the use of light-coloured or permeable materials can help to reduce energy usage and create attractive outdoor spaces.

5.2 Social and economic impacts

The Department notes the planning proposal responds to Council's *Cooling the City Strategy* and *Resilient Penrith Action Plan*, which highlights the significant impact urban heat has on the health and wellbeing of the community. These documents also highlight particularly vulnerable groups in the community and the socio-economic factors that can increase the impacts of urban heat.

The Department considers the planning proposal will enhance social outcomes for people living and working in the City of Penrith through improvement in health, wellbeing, amenity, and opportunities for engagement in outdoor activities.

In respect of economic impacts, the planning proposal states given the LEP provisions broad outcomes-based measures, the proposed provision is considered to have sufficient flexibility to enable suitable planning and design measures to be chosen based on the circumstances of the site and development.

The local development industry was also consulted on potential urban heat controls primarily to be contained in the DCP. Feedback was relatively positive with developers largely supportive of Council's initiative. The planning proposal also states that the community, including developers will have the opportunity to provide further feedback on potential social and economic impacts during the period of public exhibition.

Given the above, the Department does not envisage the proposal will facilitate adverse economic outcomes.

5.3 Infrastructure Impacts

The planning proposal refers to ways in which the LEP provision will positively impact infrastructure including:

- measures to retain and extend green infrastructure, including trees that contribute to the local tree canopy. This will encourage walking and cycling and has the potential to reduce reliance on motor vehicles, roads and parking facilities;
- measures to retain water in the landscape, including rainwater harvesting and water reuse. This which will help to reduce demand on potable water and associated infrastructure; and
- measures to reduce reliance on mechanical ventilation and cooling systems. This will help to conserve energy and reduce pressure on the electricity network.

Given the above, the Department concludes the planning proposal will not adversely impact existing public infrastructure.

6 Consultation

6.1 Community

Public exhibition of the planning proposal is appropriate and should be made available for community consultation for a minimum of 28 days. This will form a condition of the Gateway determination.

6.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- NSW Rural Fire Service
- Sydney Water;
- Endeavour Energy;

7 Timeframe

Council proposes a 9 month time frame to complete the LEP. It is recommended that if the gateway is supported it also includes conditions requiring Council to exhibit and report on the proposal by specified milestone dates.

8 Local plan-making authority

Council has requested that they be authorised to be the plan making authority. Considering the nature of the planning proposal and that Council will be considering an updated DCP concurrently, it is appropriate for Council to be authorised to be the local plan-making authority for this proposal.

9 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- Consistency with District Plan and Penrith Local Strategic Planning Statement responding to key planning priorities and actions aimed at reducing urban heat island effects;
- Consistency with all local strategic documents, which identify the need for planning and development controls to mitigate urban heat, and appropriate actions and recommendations;
- Support and commendation for Council's initiative from Penrith Local Planning Panel and recommendation for the proposal to be progressed through the next steps in the Gateway process;
- Consistency with all relevant and applicable Section 9.1 Ministerial Directions
- Consistency with all relevant and applicable State Environmental Planning Policies
- Demonstration of environmental, social and economic benefits, no negative impacts to state infrastructure and further opportunities for consultation with the community during the public exhibition period.

Based on the assessment outlined in this report, the proposal is required to be updated prior to consultation to:

- Identify and justify any departure from Clause 6.12 of the Cumberland LEP 2021;
- Insert the draft DCP as an attachment to the Planning Proposal so that it is exhibited concurrently with the planning proposal

10 Recommendation

It is recommended that the delegate of the Secretary:

- Note that the inconsistency with section 9.1 Directions 4.4 Planning for Bushfire Protection is unresolved until consultation has occurred with NSW Rural Fire Service

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - Identify and justify any departure from Clause 6.12 of the Cumberland LEP 2021;
 - Insert the draft DCP as an attachment to the Planning Proposal so that it is exhibited concurrently with the planning proposal.
2. Prior to community consultation, consultation is required with the following public authorities:
 - NSW Rural Fire Service in accordance with 4.4 Planning for Bushfire Protection.
3. Prior to community consultation, the planning proposal is to be revised to address conditions 1 and 2;
4. Consultation is required with the following public authorities:
 - Sydney Water;
 - Endeavour Energy;
5. The planning proposal should be made available for community consultation for a minimum of 28 days;
6. The planning proposal must be exhibited 4 months (March 2022) from the date of the Gateway determination;
7. The planning proposal must be reported to Council for a final recommendation 7 months (June 2022) from the date of the Gateway determination;
8. Given the nature of the proposal, Council is authorised as the local plan-making authority.



24.11.21

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