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URBIS

REQUEST FOR PLANNING PROPOSAL

Penrith LEP 2010 | Clause 8.2
(Sun access)

Prepared for

URBAN PROPERTY GROUP & TOGA

13 February 2024

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1. INTRODUCTION

1.1. PURPOSE OF THIS PLANNING PROPOSAL

This Planning Proposal request has been prepared by Urbis Ltd on behalf of Urban Property Group (**UPG**) and Toga (collectively, **the Proponents**) to initiate the preparation of an amendment to Clause 8.2 of the *Penrith Local Environmental Plan 2010 (the LEP)* as it relates to sun access.

This Planning Proposal seeks to amend Clause 8.2 (Sun Access) of the Penrith LEP 2010 in order to facilitate the orderly and economic development of two 'key sites' identified under the LEP, being:

- **Key Site 10 (part)** – 634–638 High Street, Penrith (UPG landholding)
- **Key Site 10 (part) and Key Site 3** – 87–93 Union Road, Penrith (Toga landholding)

This Planning Proposal follows two DA refusals by the NSW Land and Environment Court resulting from apparent non-compliance with the provisions of Clause 8.2 of the LEP which, in their current form, protect an area of public open space at the expense of planned dwelling density and community infrastructure on Key Sites 3 and 10 in the Penrith City Centre which would otherwise be achieved. Renders of these refused developments are shown at **Figures 1 & 2**, overleaf.

The relevant area of open space is small and was residual to the establishment of Mulgoa Road and the resultant extension of Union Road in the c.1970s-80s (as opposed to being a formally planned public open space, such as a public park). Aside from a row of trees along the western alignment, the land does not appear to demonstrate any significant landscape qualities. The site is effectively an 'island' with multiple frontages to busy roads, which diminish the amenity and safety of the open space for either active or passive recreation uses. An image of this open space is shown at **Figure 3**, overleaf.

The Planning Proposal is required to amend the control relevant to this area of public open space in order to facilitate the realisation of up to 1,500 dwellings planned for these two key sites. As demonstrated throughout this report, Key Sites 3 & 10 are ideally situated within a key strategic centre which is forecast for significant population growth, owing to planned increases to employment-generating floorspace and current and future infrastructure investment by the NSW Government.

The Penrith City Centre currently provides a range of civic and commercial services (including education and employment opportunities) for a population catchment in excess of 1 million residents and, with the development of the Western Sydney International Airport, the Aerotropolis, and investments in road and rail, it is crucial that underdeveloped land in the City Centre is unlocked to provide equitable access to a range of housing options. This is particularly prescient in the context of the present-day housing affordability crisis, which to a large degree is the result of supply not keeping pace with demand.

Figure 1 – Proposed Toga scheme (DA20/0148)



Source: SJB, 2020

Figure 2 – Proposed UPG scheme (DA20/0148)



Source: DKO Architects, 2022

Figure 3 – The public open space, viewed facing north along John Tipping Grove



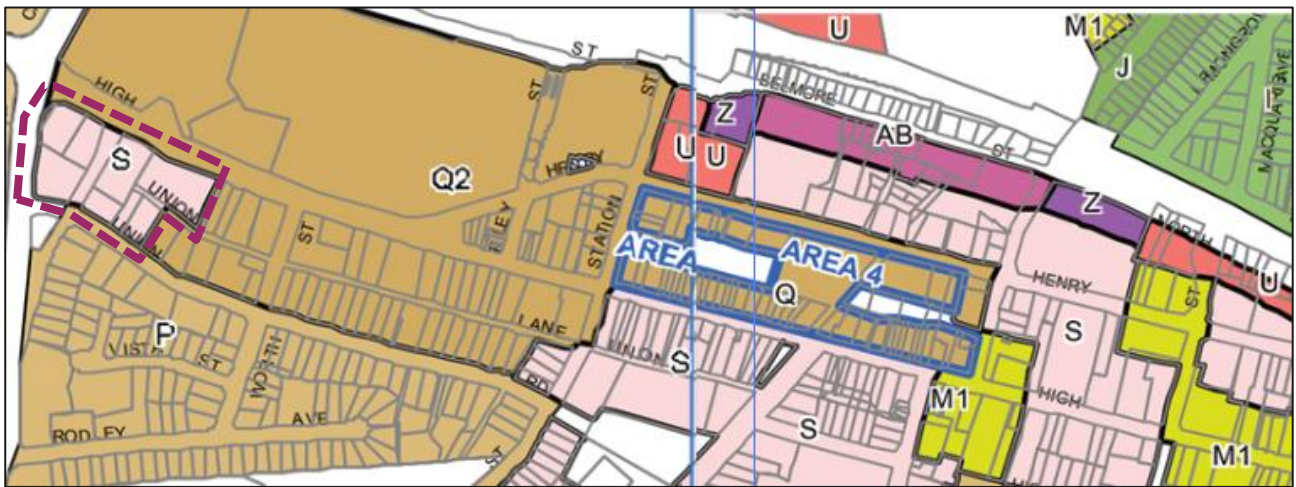
Source: Google Maps, 2024

1.2. CLAUSES 8.2 AND 8.7 OF THE PENRITH LEP 2010

Clause 8.2 (Sun Access) was introduced through gazettal of the *Penrith City Centre LEP 2008* (known as Clause 23 at the time) in 2008 and applied only to land immediately surrounding the future Penrith 'City Park' (being mapped land within the vicinity of Allen Place, Memory Park, Judges Park and to High Street between Station Street and Lawson Street), identified as 'Area 4' (refer to **Figure 4**, below).

The clause was introduced to limit overshadowing resulting from development on land immediately surrounding the future City Park, ensuring that the amount of overshadowing was no greater than that caused by buildings constructed in accordance with the mapped height limit in this block. For this specific block, this had the effect of 'turning off' additional height allowances under the LEP available from the design competition height bonus clause and the architectural roof feature clause. Clause 23 was merged into the Penrith LEP 2010 in 2015, along with various other city centre controls from the repealed *Penrith City Centre LEP 2008*, without amendments.

Figure 4 – Penrith LEP 2010 map (2014), showing the extent of 'Area 4' where the sun access clause was originally applied. The UPG & Toga landholdings (Key Sites 10 & 3) are shown dashed purple.



Source: Penrith LEP 2010, Height of Buildings Map sheets 006 & 013 (map dated 21.05.2014), with Urbis overlay

On 23 June 2017, 21 Dec 2018, and 30 September 2021 the Penrith LEP 2010 was amended to nominate 12 'key sites' in the Penrith City Centre for significant planning uplift (floor space ratio (FSR) uplift and unrestricted height limits) in order to realise residential and community infrastructure targets for the Penrith City Centre (Amendment Nos. 14, 24, and 25). The key sites were selected following strategic planning investigations which identified these 12 sites as being most capable of accommodating significant floor space and height.

However, in 2019 (through LEP Amendment No. 15) a Planning Proposal was prepared by Penrith City Council which primarily sought to change the zoning of the block immediately surrounding the future City Park in Allen Place, to permit a wider range of land uses immediately surrounding the future City Park. Importantly, the Planning Proposal was also gazetted with amendments to Clause 8.2 (Sun Access) to broaden its application. This resulted in Clause 8.2 applying to all public open space within and surrounding the Penrith City Centre.¹

However, the amendments were gazetted without the preparation of solar or built form studies to determine the implications on development potential for land throughout the Penrith City Centre, in particular the impacts such a change to the clause would have on the development potential of the 12 key sites which were granted uplift through LEP Amendments 14, 25, and 24 to exceed height and FSR controls in return for community infrastructure.

A detailed overview of the evolution of Clauses 8.2 and 8.7 is included at Section 4.1 of this report.

¹ Notwithstanding the fact that, pursuant to Clause 8.1 (Application of Part), the Part 8 provisions only apply to land identify as "Penrith City Centre" on the Clause Application Map in the LEP.

1.3. REFUSED DEVELOPMENT APPLICATIONS – KEY SITES 3 & 10

The consequence of the amendments to Clause 8.2 has been two recent refusals for Development Applications (DAs) on Key Site 3 (Toga) and Key Site 10 (UPG), refusals which were upheld on appeal at the NSW Land and Environment Court. The DAs, which sought to take advantage of the nominated incentive FSR and height controls under Clause 8.7 of the LEP, were refused because of non-compliance with the sun access provisions in Clause 8.2, as the proposals resulted in overshadowing to the small area of public open space to the immediate south of these key sites at 10 Mulgoa Road, Penrith (Lot 37 DP 731213), located outside the mapped city centre.

1.3.1. The UPG development

In the case of *Urban Apartments Pty Ltd v Penrith City Council [2023] NSWLEC 1094*, Horton C concluded against the proponent's request that compliance with the development standard at Clause 8.2 was unreasonable or unnecessary.

As discussed in Section 5.3.3 of this report, the shadowing of the public open space resulting from the UPG proposal was limited to prior to 10am, year-round. Notwithstanding, the clause does not permit any overshadowing of the open space to a greater extent than the overshadowing which occurs from development which complies with the mapped 24m height limit. This was tested in the LEC; despite this minor overshadowing, the LEC refused the DA. In the ruling, Horton C concluded against the proponent's Clause 4.6 variation to vary the control despite the very minor overshadowing of the public open space.

Key aspects of the ruling are summarised below:

1. The Commissioner found, at [240], that “there is no warrant to read this objective [of Clause 8.2] down so as to protect only public open space identified as being within the Penrith City Centre and not public open space generally from overshadowing by development on land in the Penrith City Centre”.
2. At [245], Horton C found that the “nature of the public open space to which the control is directed” not to be a relevant consideration in the application of the development standard.
3. Horton C was unable to accept that the proponent's written request which, at [246], “adequately demonstrates that the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.” At [247], Horton C noted that, as “the objectives of cl 4.3 and 8.7 are not the objectives of the standard that is sought to be varied,” but, “rather, it is the objective at cl 8.2, which seeks to protect public space from overshadowing, that is the development standard that must be addressed.”
4. Finally, the Commissioner could not, at [251], “accept [...] that the burden of compliance with the standard is so disproportionate to the consequences attributable to the proposed development by its non-compliance that it should be regarded as manifestly unreasonable.” It was found, at [262], that “while there is certainly a statutory planning intent for intensification of development on key sites in the Penrith City Centre, the control at cl 8.2 is also a clear statement on the constraints to be applied to that intensification.” Further, Horton C noted, at [263], that “while cl 8.7(3) sets aside the provisions of cl 4.3, 4.4 and 8.4(5) in permitting a consent authority, or the Court, to grant consent to development that exceeds the height and FSR shown on the applicable maps, the provisions of cl 8.2 are not [set aside].”

1.3.2. The Toga development

In the case of *Toga Penrith Developments Pty Limited v Penrith City Council [2022] NSWLEC 1017*, Morris AC made the following findings:

1. At [139], “that the land in question is public open space [...] The fact that it does not contain seating or playground equipment or has not been developed as a ‘park’ does not prevent its use for passive recreation purposes.” Accordingly, the Acting Commissioner found that “the land is ‘public open space’ for the purposes of this contention.”
2. At [141], Morris AC concluded that there is a distinction between development within the Penrith City Centre (e.g., on key sites) and the broader impacts of development within the City Centre as governed by Clause 8.2, even if those impacts arise outside of the mapped boundaries of the City Centre.
3. It was acknowledged by both the applicant and the respondent that the development would result in some overshadowing over the public open space, by the portion of the development that exceeds the 24m height control, at 9am. However, Morris AC found, at [142], that “there is no provision in the clause

that provides for a minor impact, the fact that the impact occurs is all that is required and the operation of the clause prevents consent being granted.”

Toga appealed Morris AC’s decision to refuse development consent, in *Toga Penrith Developments Pty Limited v Penrith City Council [2022] NSWLEC 117*. The appeal was partly based on Toga’s contention that Morris AC erred in her interpretation of Clause 8.2. The appeal was dismissed by Preston CJ, and development consent was refused. In his ruling, Preston CJ found, at [35], that Toga “failed to acknowledge the structure and operation of cl 8.2.” Key points are summarised below:

1. At [38], the Chief Judge found that “subclause (3) [of Clause 8.2] draws a distinction between the land on which development is to be carried out and the land which is overshadowed by that development. For the subclause to apply, the land on which the development is to be carried out must be land identified as Penrith City Centre on the Clause Application Map, while the land which is overshadowed by development on that land must be public open space. But the subclause does not expressly specify that the public open space that is overshadowed must also be land identified as Penrith City Centre on the Clause Application Map.”
2. Further to this, at [44], it was found that “Clause 8.1’s application of the Part to land identified as Penrith City Centre in the Clause Application Map is explicable having regard to the structure and operation of cl 8.2(3). It is only land on which development is to be carried out that must be ‘land to which this Part applies’, which is the land identified in cl 8.1, and not public open space overshadowed by development on that land.”
3. At [43], Preston CJ concluded that: “The objective of cl 8.2 is broadly stated as being ‘to protect public open space from overshadowing’ (cl 8.2(1)). There is no warrant to read this objective down so as to protect only public open space identified as being within the Penrith City Centre and not public open space generally from overshadowing by development on land in the Penrith City Centre.”
4. The Chief Judge acknowledged, at [47], that the Penrith City Park Planning Proposal which resulted in the current wording of Clause 8.2, was “equivocal” in its explanation of the LEP amendment. Preston CJ found that “the Council’s statement [in the Planning Proposal] that the amendment to cl 8.2 ‘will protect all public open space in the Penrith City Centre’ from overshadowing did not mean that the amendment would not also protect public open space adjacent to the Penrith City Centre from overshadowing.” Preston CJ nonetheless concluded, also at [47], that “Clause 8.2 as originally made only applied to specified public open space in the Penrith City Centre. The amendment of cl 8.2, however, broadened the application of cl 8.2 to all public open space. The amendment did not limit the public open space to being within the Penrith City Centre.”

1.3.3. Consequence of LEC judgements

Clause 8.2, as amended by LEP Amendment No. 15, now effectively prohibits any overshadowing to public open spaces (whether within or outside the city centre) caused by development on sites with permitted height incentives above the LEP mapped height limit, at any time of year, meaning that proposals on the 12 nominated key sites cannot appropriately utilise their key site incentive provisions under Clause 8.7 of the LEP. The clause thereby does not feasibly permit the redevelopment of these key sites above the base mapped height control of 24 metres.

Accordingly, this Planning Proposal seeks a site-specific amendment to the provisions of Clause 8.2 in order to allow the orderly and economic development of Key Sites 3 and 10, allowing these sites to properly benefit from the key site height and floor space incentives in Clause 8.7 of the LEP and enable the provision of community infrastructure as anticipated by the incentives clause.

1.4. PRE-LODGE MENT CONSULTATION & SCOPING REPORT

Urbis, on behalf of the Proponents, issued a Scoping Report to Penrith City Council on 14 November 2023. The Scoping Report outlined:

- The background to the Planning Proposal (including the recent refusals for development consent on Key Sites 3 & 10).
- The background to Clause 8.2.
- A review of relevant strategic policy to demonstrate the merit of the proposed amendment.

- High-level findings of a benchmarking study (which compared Clause 8.2 to sun access provisions contained in other LEPs within Greater Sydney)
- The rationale for amending Clause 8.2 and the intended objectives of the proposed amendment.
- Two options for amending the clause.

As discussed at Section 4.5 of this report, Council advised that the proposed amendment to Clause 8.2 would not be supported.

1.5. REPORT STRUCTURE

The Planning Proposal request has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and the Department of Planning and Environment (DPE)² guidelines '*Local Environmental Plan Making Guidelines*' dated August 2023.

The relevant sections of the report are listed below:

- **Section 2:** Site description.
- **Section 3:** Overview of the regional and local strategic context of the site.
- **Section 4:** The proposed LEP amendment, including the background to the current clause and the results of a benchmarking study which compares the sun access clause in the Penrith LEP with sun access provisions contained in LEPs of other key urban centres in Greater Sydney.
- **Section 5:** Comprehensive assessment of the requested Planning Proposal in accordance with the DPHI guidelines.
- **Section 6:** Conclusion and justification.

² From 1 January 2024, the Department of Planning and Environment became the Department of Planning, Housing and Infrastructure (DPHI). The acronyms DPE and DPHI will be used interchangeably in this document, depending on the timing of relevant matters.

2. SITE CONTEXT

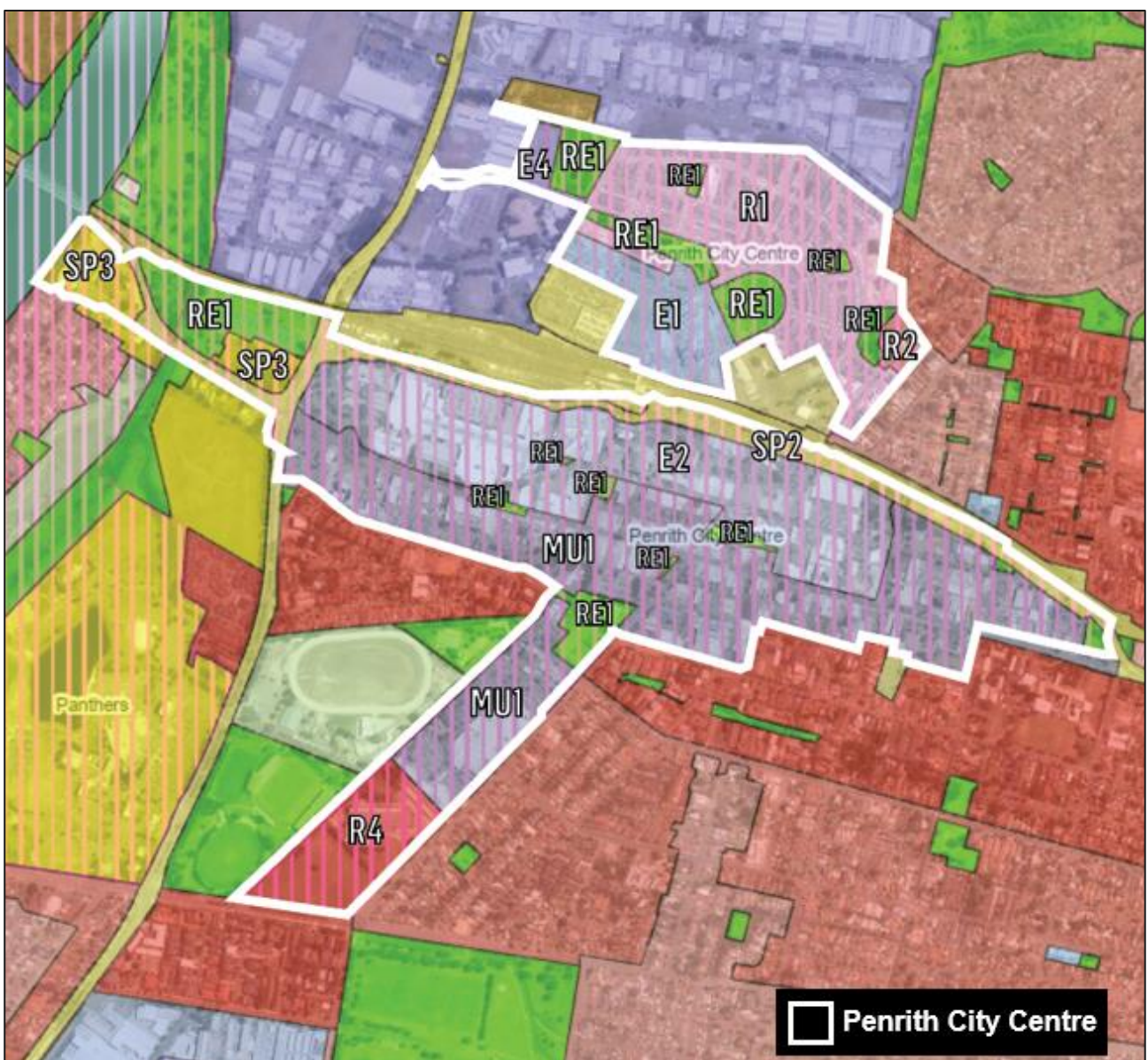
2.1. PENRITH CITY CENTRE

The land to which this Planning Proposal relates is located outside of the Penrith City Centre, however the amendments sought by this Planning Proposal will directly influence the ability to develop on Key Sites within the Penrith City Centre.

As an established regional metropolitan centre, the Penrith City Centre is the focus for commercial, civic, and high-density residential development. Commensurate with its position as a key metropolitan centre within Greater Sydney, the City Centre comprises a variety of land uses including E2 Commercial Centre, MU1 Mixed Use, and R4 High Density Residential zones. The City Centre also includes some areas of public open space, zoned RE1 Public Recreation.

The City Centre is well serviced by public transport, including buses and heavy rail, with the Great Western Highway – which bisects the Centre north-south – provides direct access to the Parramatta and Sydney CBDs to the east and the Blue Mountains to the west.

Figure 5 – Penrith City Centre



Source: NSW Planning Portal 2023, with Urbis overlay

2.2. THE PUBLIC OPEN SPACE

The public open space is located to the immediate south of Key Site 3, bounded by Mulgoa Road to the west, Union Road to the north, and John Tipping Grove to the east. It is roughly triangular in form. The land was residual to the establishment of Mulgoa Road and the resultant extension of Union Road in the c.1970s-80s (as opposed to being a formally planned public open space, such as a public park). Aside from a row of trees along the western alignment, the land does not appear to demonstrate any significant landscape qualities.

The site is effectively an 'island' with multiple frontages to busy roads, which diminish the amenity and safety of the open space for either active or passive recreation uses.

The public open space is identified as 10 Mulgoa Road (Lot 37 / DP731213), however also comprises a portion of land outside of the allotment with no legal identification or address. This is illustrated in the figure below. It is notable that the northern part of the open space is zoned RE1 Public Open Space with the southern part zoned R4 High Density Residential (refer to zoning plan, below).

Figure 6 – The public open space



Source: NSW Planning Portal, 2024, with Urbis overlay

Figure 7 – The public open space, viewed from Union Road facing south



Source: Google Maps, 2024

Figure 8 – Zoning plan, showing public open space (white outline) within RE1 and R4 zones

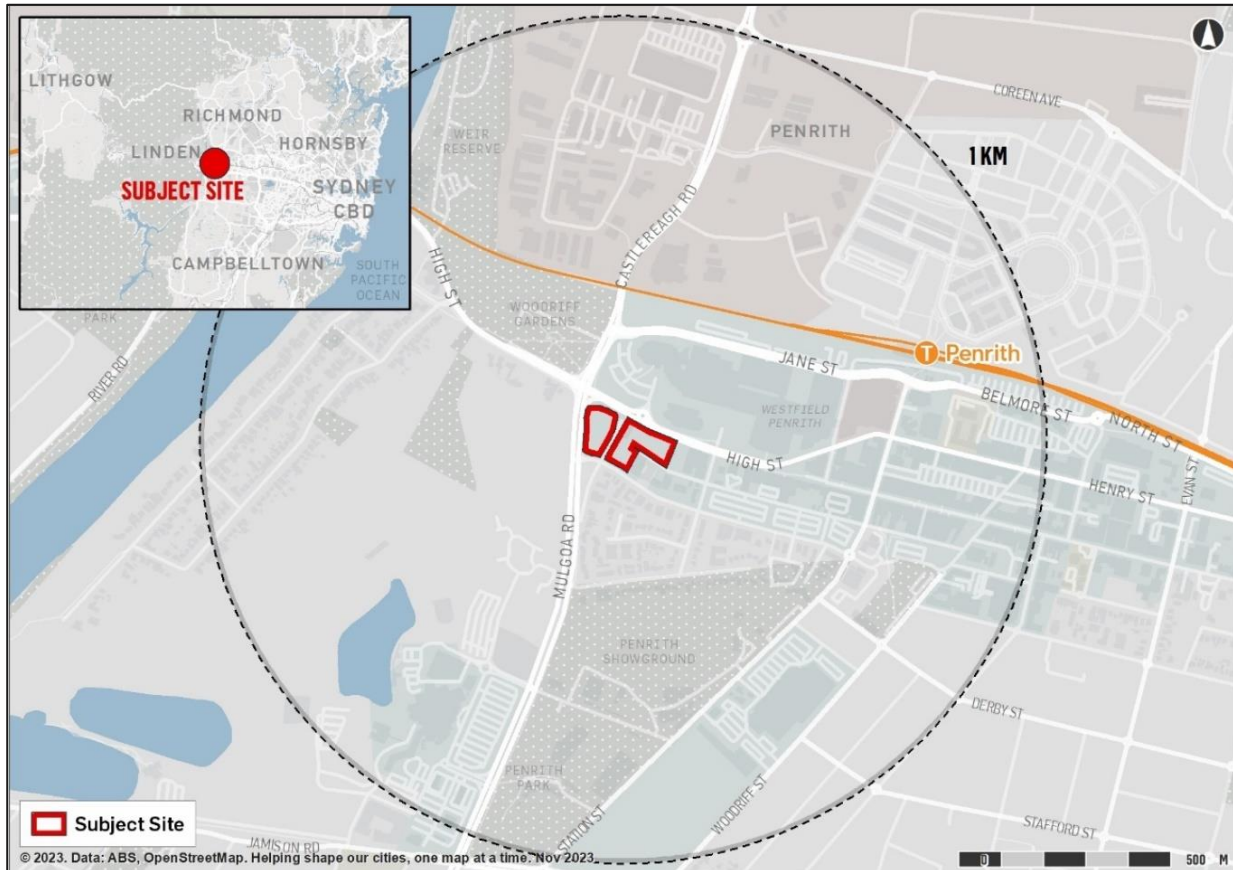


Source: NSW Planning Portal, 2024

2.3. KEY SITES 3 AND 10

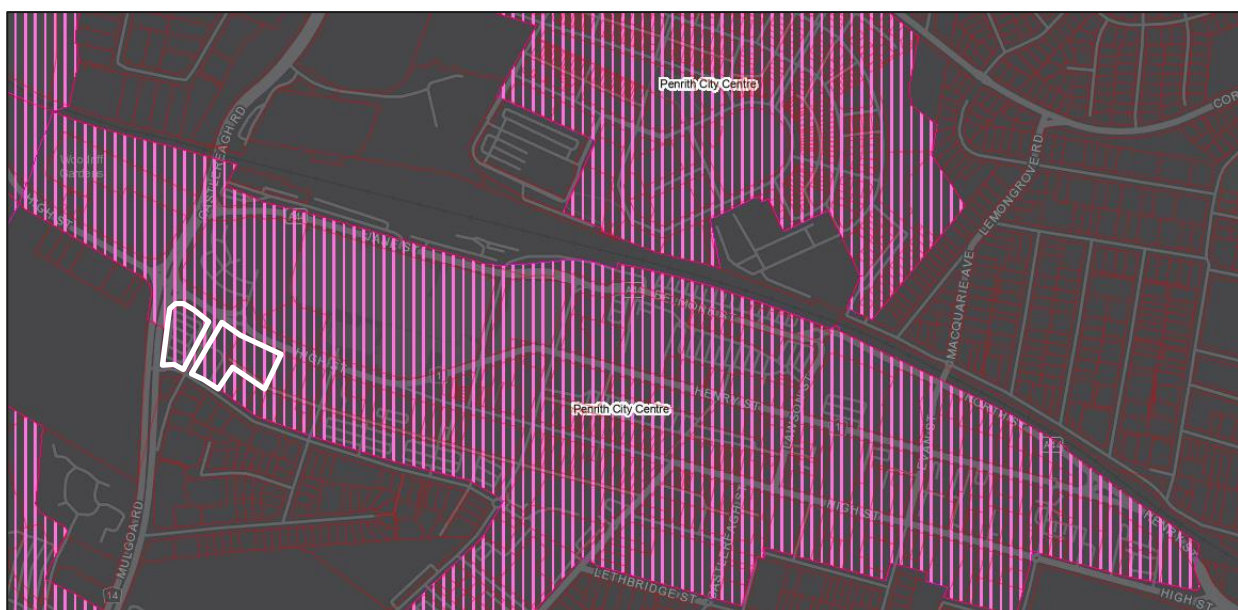
The key sites are located at 614-634 High Street, Penrith (UPG site – part Key Site 10) and 638-642 High Street and 87-97 Union Road, Penrith (Toga site – part Key Site 10, and Key Site 3). Both sites are situated within the boundaries of the Penrith City Centre, as mapped in the LEP, and located within a 1km catchment of Penrith Railway Station.

Figure 9 – Site location



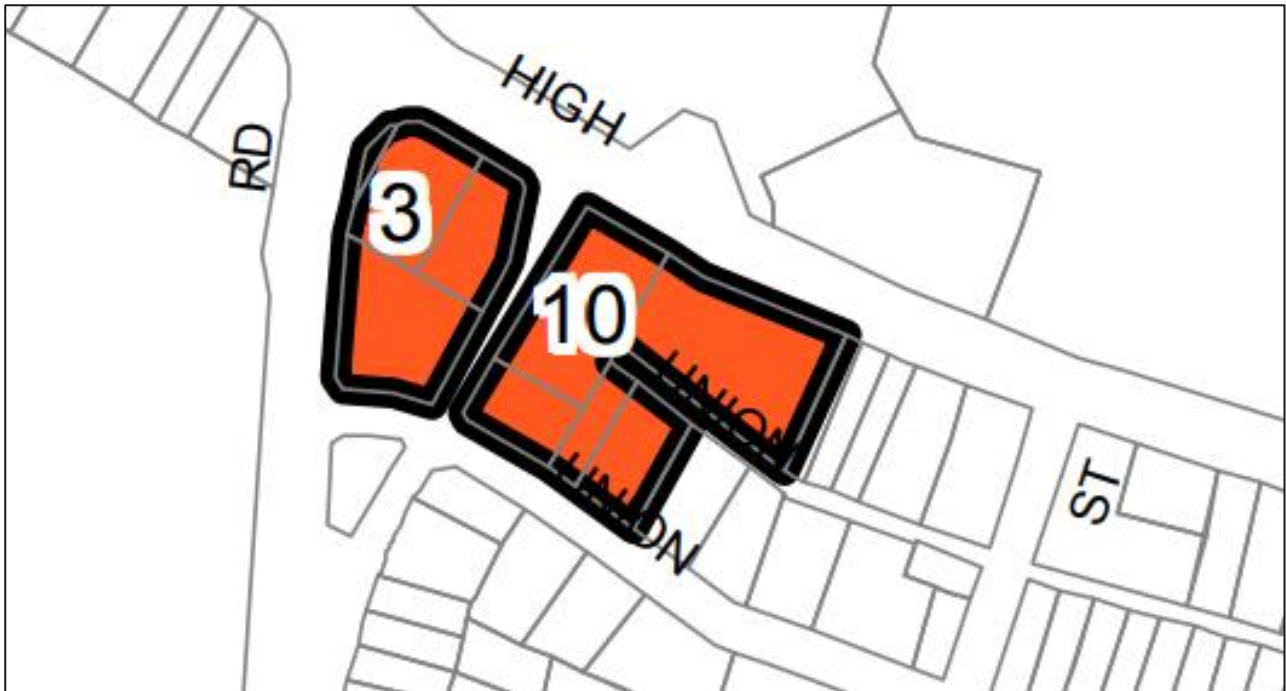
Source: Urbis, 2023

Figure 10 – Penrith City Centre (hatched pink), with Key Sites 3 & 10 outlined



Source: NSW Planning Portal, 2024

Figure 11 – Extract from LEP Key Sites map



Source: Penrith LEP 2010, Key Sites Map sheet 006

2.4. 614-632 HIGH STREET (PART KEY SITE 10)

2.4.1. Existing site

The site is currently vacant, and was vacant at the time UPG lodged their DA.

Figure 12 – 614-632 High Street, Penrith (part Key Site 10)



Source: Google Maps, 2024

2.4.2. Proposed UPG scheme

In April 2020, UPG lodged a DA to Penrith City Council (DA20/0167) for development on 614-632 High Street, Penrith (identified as part of Key Site 10 in the Penrith LEP). The DA proposed a 45-storey mixed-use building on the site, including a 5-storey podium with 4 levels of above-ground partially sleeved parking, and 1 level of basement car parking. The development proposed to deliver:

- 254 residential apartments and 40 serviced apartments.
- A total of 2,287m² of net lettable commercial space, comprising 976m² ground-floor retail and 1,311m² commercial (including 437m² of commercial floor space across levels 1, 2 & 3).
- Total of 305 car parking spaces across 4 storeys.
- FSR of 5.96:1 (under the maximum 6:1 permitted under Clause 8.7(4)(b) of the LEP).
- Provision of community infrastructure by way of a new north-south public road connecting High Street to Union Road, as envisioned by the Penrith Development Control Plan (**DCP**) and in accordance with the definition of “community infrastructure” given in Clause 8.7(6) of the LEP.

The scheme, by DKO Architects, was the subject of a Design Integrity Panel process. The Design Integrity Panel concluded that the scheme demonstrated design excellence, fulfilling the requirements of Clause 8.4 of the Penrith LEP.

The DA was refused by Penrith City Council. The refusal was upheld at the NSW Land and Environment Court (**LEC**), owing primarily to non-compliance with Clause 8.2 of the LEP in relation to the public open space to the south bound by Mulgoa Road and John Tipping Grove.

Figure 13 – Proposed UPG scheme



Source: DKO Architects, 2022

2.5. 634-638 HIGH STREET & 83-91 UNION ROAD (PART KEY SITE 10, AND KEY SITE 3)

2.5.1. Existing site

The site at 634-638 High Street currently accommodates a single-storey former industrial building, most recently in use as a commercial retail premises. This was the condition of the site at the time of Toga's DA lodgement.

Figure 14 – 634-638 High Street, Penrith (part Key Site 10), viewed from High Street facing south-west



Source: Google Maps, 2024

Figure 15 – 634-638 High Street, Penrith (part Key Site 10), viewed from Union Road facing north-east



Source: Google Maps, 2024

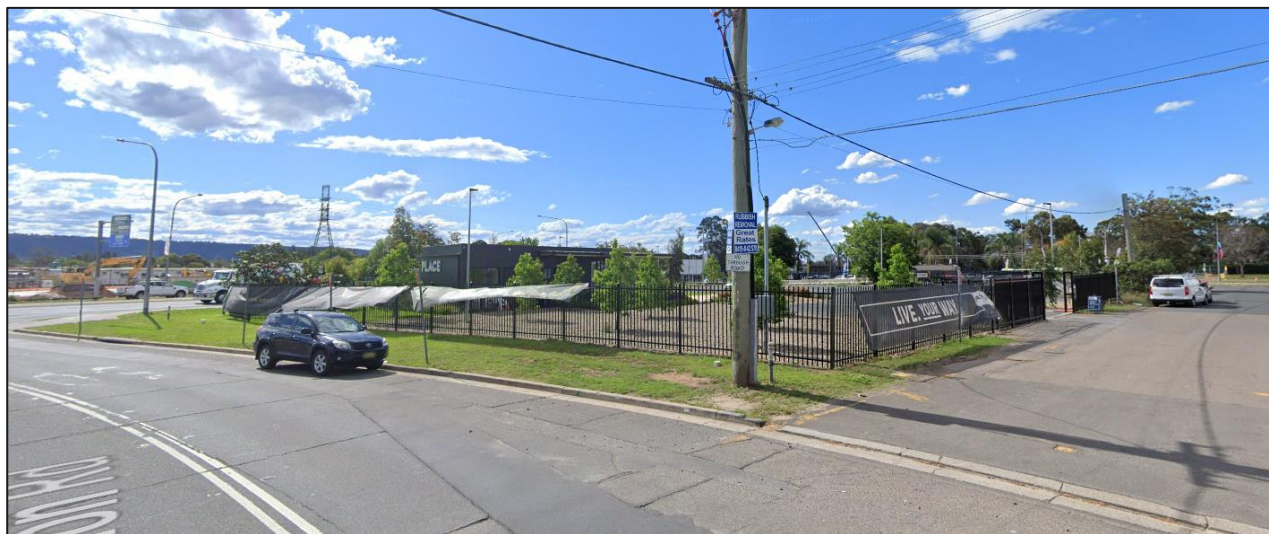
83-89 Union Road is currently dominated by a large expanse of open-air hardstand, which appears to be used for vehicle parking. The site also accommodates 2x single-storey demountable buildings, one in the centre and one at the southern which both appear to be in use as site offices.

Figure 16 – 83-89 Union Road, Penrith (Key Site 3), viewed from High Street facing south



Source: Google Maps, 2024

Figure 17 – 83-89 Union Road, Penrith (Key Site 3), viewed from Union Road facing north-west



Source: Google Maps, 2024

2.5.2. Approved Toga scheme (DA18/0264)

In March 2018, Toga lodged a DA to Penrith City Council (DA18/0264) for a part 12-, part 15-storey mixed use development including basement, podium level 1 & level 2 carparking, ground-floor business and commercial uses, 187 residential units, construction and dedication of a new public road, stormwater drainage, civil and public domain works, and landscaping. This DA only proposed development on the eastern part of the site.

This DA was lodged prior to the gazettal of the amendments to Clause 8.7 of the LEP which introduced the incentive FSR of 6:1 and removed the maximum height limit on the site, subject to the provision of community infrastructure. Although the maximum height limit of 24m was breached by the scheme, the DA relied on a 10% bonus FSR as it demonstrated design excellence in accordance with Clause 8.4(5) of the LEP (resulting in a proposed FSR of 3.29:1).

Consent was granted for this DA by the Sydney Western City Planning Panel in October 2019, following a recommendation for approval from Penrith City Council's development assessment team.

This scheme cast some shadows, primarily in the morning hours, over the public open space to the south bound by Mulgoa Road and John Tipping Grove. At the time the application was lodged and assessed, Clause 8.2 of the LEP did not apply to all public open space, as provided by the current control. Overshadowing impacts were, however, considered in the context of providing adequate solar access to neighbouring residential development, and these impacts were found to be acceptable given the City Centre context of the site and the level of solar access otherwise achieved to these neighbouring developments. Additionally, as the development was contained to the eastern portion of Key Site 10 only, overshadowing of the public open space at Mulgoa Road was limited to early morning in mid-winter.

Figure 18 – Approved Toga scheme (DA18/0264)



Source: SJB, 2018

2.5.3. Proposed Toga scheme (DA20/0148)

Following the LEP amendments in 2019 which introduced the Key Site incentives in Clause 8.7 of the LEP (increased FSR and removal of maximum height limit, subject to the provision of community infrastructure), in March 2020 Toga lodged a DA to Penrith City Council (DA20/0148) for development on 634-638 High Street (identified as part of Key Site 10 in the Penrith LEP) and 83-89 Union Road, Penrith (identified as Key Site 3 in the Penrith LEP). The DA proposed a part 14-, part 37-storey mixed use development including 1 level of basement car parking, 5-storey podium containing car parking, ground-floor commercial floor space, and residential apartments above. The development proposed to deliver:

- 356 residential apartments.
- A total of 1,011.1m² of commercial floor space at ground level.
- Total of 438 car parking spaces across 4 storeys.
- FSR of 5.98:1 (under the maximum 6:1 permitted under Clause 8.7(4)(b) of the LEP)
- Provision of community infrastructure by way of a new signalised intersection (also described as the “ultimate intersection”) at the intersection of the new north-south road between High Street and Union Road.

The scheme, by SJB, was selected through a competitive design process and was then subject to a Design Integrity Panel. The Design Integrity Panel concluded that the scheme demonstrated design excellence, fulfilling the requirements of Clause 8.4 of the Penrith LEP.

The DA was refused by the Sydney Western City Planning Panel. The refusal was upheld at the LEC, owing primarily to non-compliance with Clause 8.2 of the LEP in relation to the public open space to the south bound by Mulgoa Road and John Tipping Grove.

Figure 19 – Proposed Toga scheme (DA20/0148)



Source: SJB, 2020

3. STRATEGIC CONTEXT

3.1. REGIONAL CONTEXT

3.1.1. Greater Sydney Region Plan

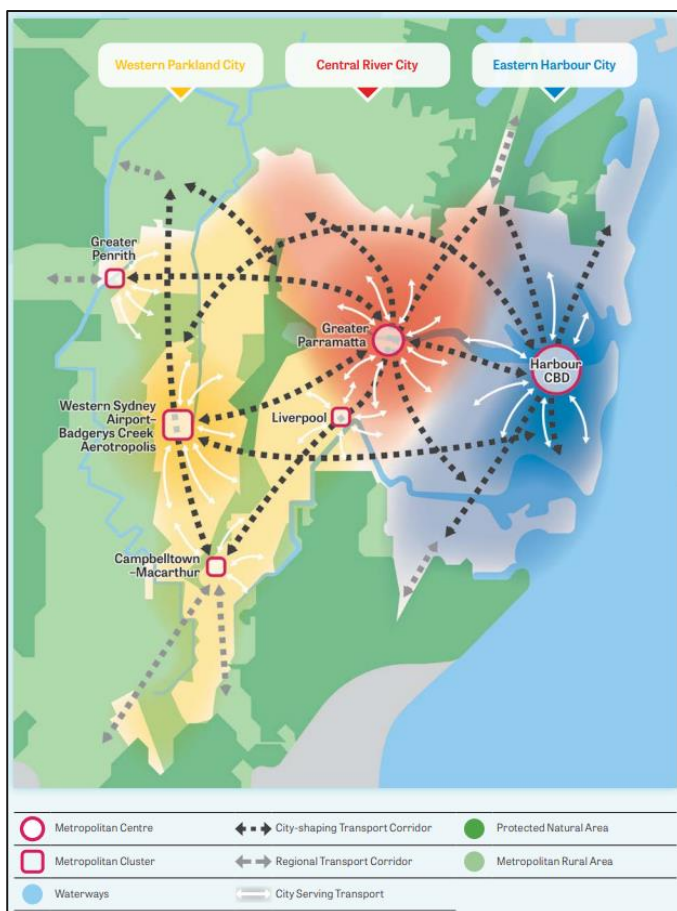
The *Greater Sydney Region Plan: A Metropolis of Three Cities – connecting people (GSRP)* provides the overarching strategic land use plan for the Greater Sydney Region. The GSRP identifies Penrith as one of four 'Metropolitan Clusters' which will drive growth in the Western Parkland City District.

The broad aims of the GSRP include:

- Strategic land use planning in the context of forecast population increases and increasing housing and unaffordability.
- Planning and development of the Greater Sydney Region which acknowledges its geographical limitations (being bound to the east by Sydney Harbour, to the west by the Blue Mountains, and to the north and south by protected natural areas).
- Delivery of improved transport connections (in particular, active and public modes of transport) within and between each of the 3 Cities, with a view to establish 30-minute cities where residents live within 30 minutes of jobs, healthcare, schools, and great places. This will also entail rebalancing the concentration of employment uses away from the Eastern Harbour City and closer to where new homes will be built, as well as establishing land use patterns which enable a shift away from dependency on private vehicles (a challenge which is noted particularly within the Western Parkland City).

As a Metropolitan Cluster at the western edge of the Region, it is envisioned that Greater Penrith will accommodate significant increases to residential and employment floorspace in order to help achieve the aims of the GSRP.

Figure 20 – Greater Sydney Region, with Penrith identified as a Metropolitan Cluster



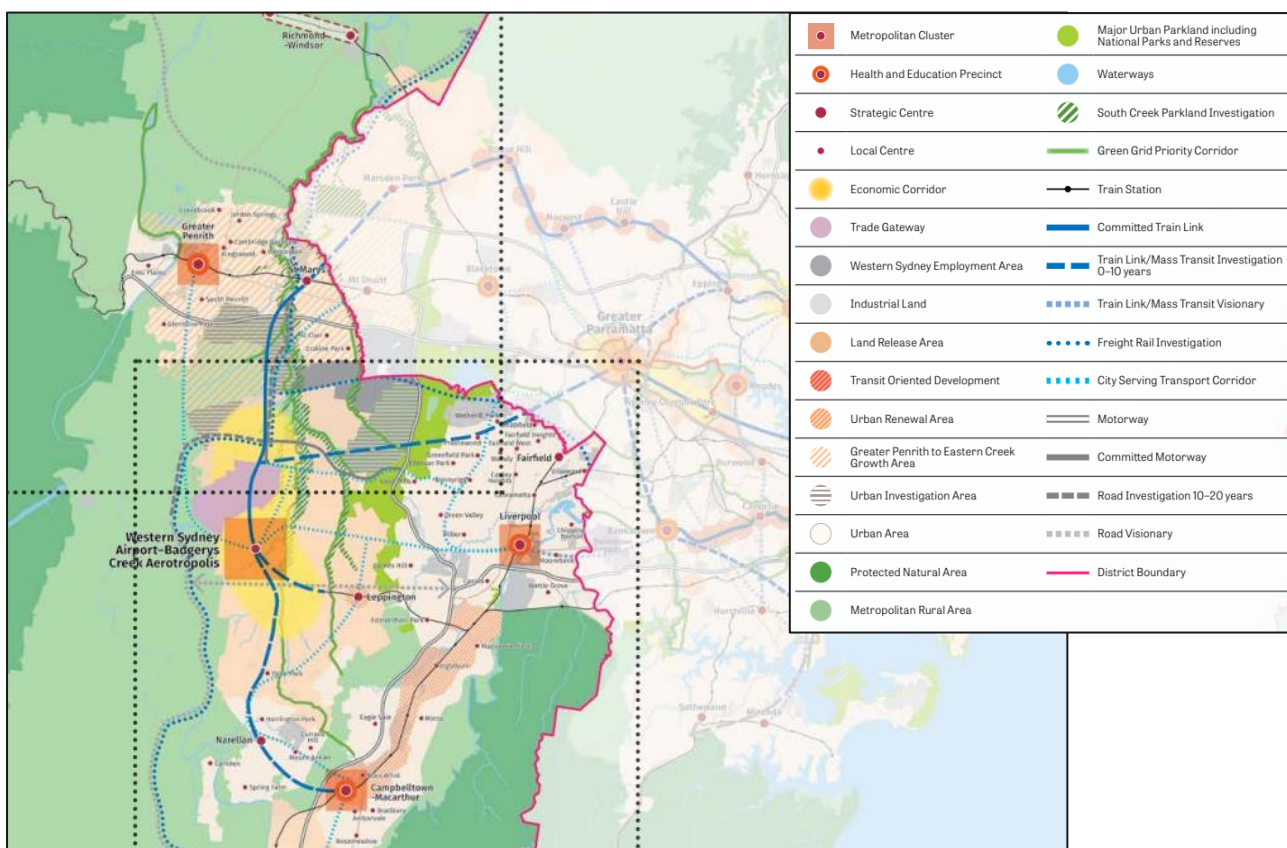
Source: Greater Sydney Commission, 2018

3.1.2. Western City District Plan

Our Greater Sydney 2056: Western City District Plan – connecting communities (WCDP) is the strategic planning document for the Western Parkland City, with its vision being to transform the District over the next 20 to 40 years to provide residents with quicker and easier access to housing, employment, commerce, and activities. The WCDP aims to provide a District with a greater choice of jobs, transport, housing, and services aligned with growth, while building on the natural and community assets that make the area unique.

The WCDP identifies Greater Penrith, together with the Greater Blue Mountains, as a ‘*housing demand area*’, anticipating significant growth in residential population as a result of this increased access to daily needs. The WCDP illustrates that the Penrith Local Government Area (LGA) will benefit significantly from future infrastructure investment by providing greater connection within the District and to the other Districts, the new Western Sydney International (Nancy-Bird Walton) Airport, and the broader Greater Sydney region and beyond.

Figure 21 – Western City District (urban area north) Structure Plan



Source: Greater Sydney Commission, 2018

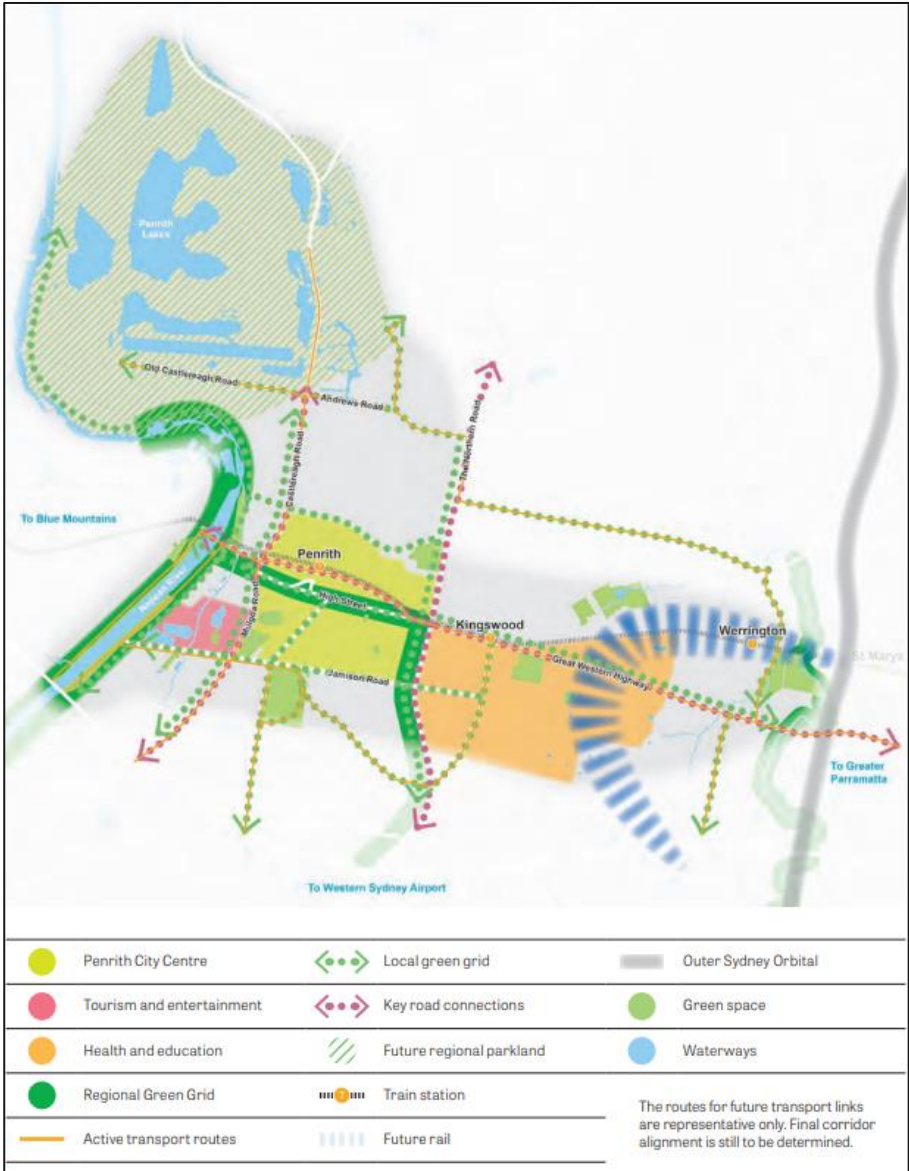
3.1.3. Greater Penrith Place Strategy

The Penrith City Centre forms part of the Greater Penrith Collaboration Area, as identified in the WCDP. The **Collaboration Area – Greater Penrith Place Strategy** is a key strategic planning document which aims to set out a roadmap for better planning and investment decisions that will use growth and change to enhance quality of life for residents in the area. The Strategy: establishes a vision and narrative for the Collaboration Area, which will guide its future growth and development; identifies impediments and opportunities for growth; sets priorities for the Collaboration Area; and identifies actions to deliver on the vision.

The Place Strategy identifies concrete actions to overcome complex challenges and sustainably develop the Collaboration Area. These include provision of key infrastructure and transport connections, development of a green grid, finding new opportunities for sustainable urban development, protecting valuable environmental lands, and actions which leverage and facilitate the ongoing growth of the area’s natural assets and economic activities. To this end, the Place Strategy identifies the Penrith City Centre as a place “with **multi-**

decade certainty on future residential development [...] including a collaborative approach to flood risk management and evacuation” (emphasis added).

Figure 22 – Greater Penrith Collaboration Area



Source: Collaboration Area – Greater Penrith Place Strategy, 2019

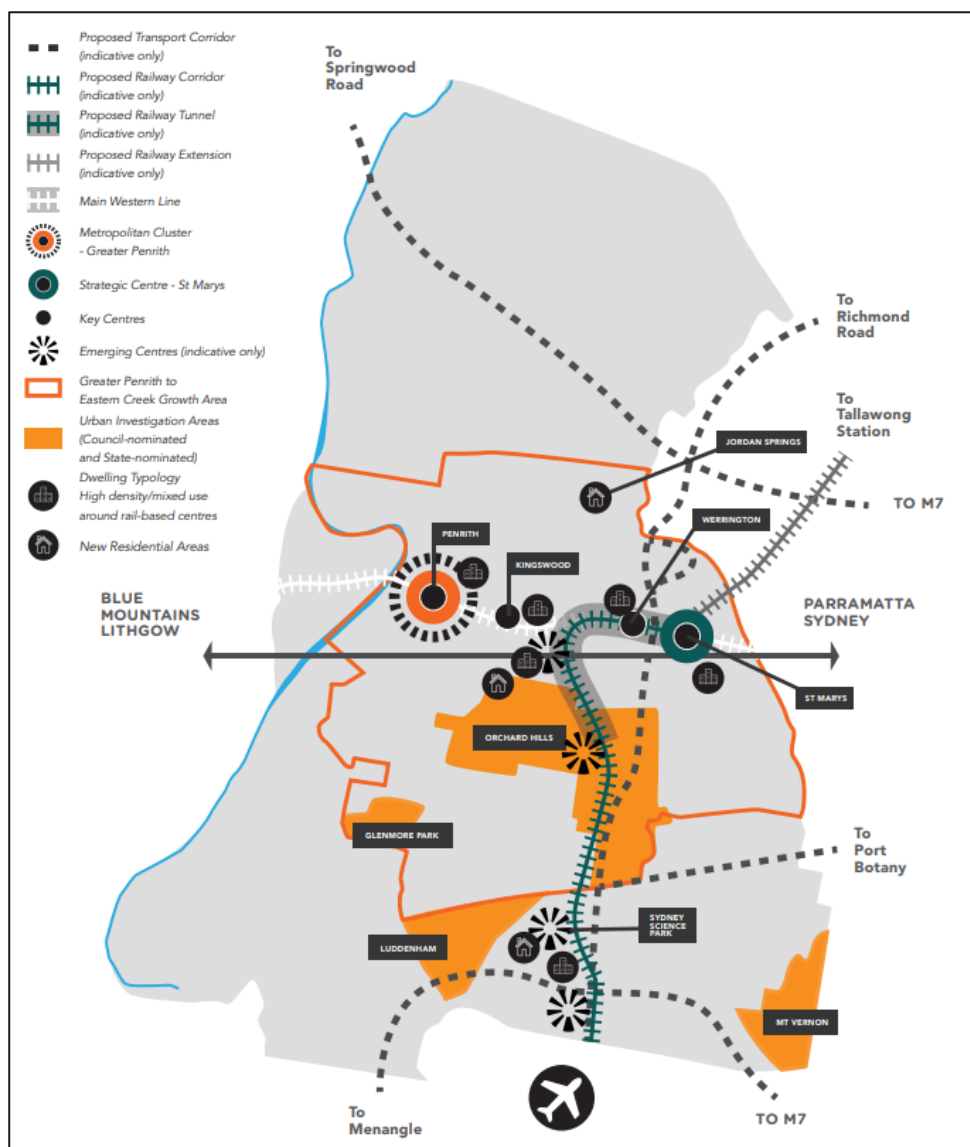
3.2. LOCAL CONTEXT

3.2.1. Local Strategic Planning Statement

In line with State-led strategic planning policies, the **Penrith Local Strategic Planning Statement (LSPS)** identifies Greater Penrith as the LGA’s Metropolitan Cluster and notes the LGA’s broader role as the northern gateway to the Western Sydney International Airport, as well as a central hub connecting western NSW and the south-west and north-west growth centres. The LGA – and, in particular, the growing Penrith City Centre – serves an important role in providing jobs, education, retail, and civic services for an economic catchment of over 1.5 million people.

The LSPS identifies that 24,000 new dwellings are needed in the LGA to 2036, in order to meet the needs of its growing and diverse community. The LSPS anticipates higher-density residential uses in the Penrith City Centre, which provides opportunity for smaller, more easily maintained homes close to jobs, shops, education, transport, and services. This, in turn, will help to make a walkable, connected, and high amenity urban centre, minimising the need for inappropriate development on greenfield land.

Figure 23 – Penrith LGA housing capacity and investigation areas



Source: Penrith LSPS, 2020

3.2.2. Local Housing Strategy

The **Penrith City Council Local Housing Strategy (LHS)** projects an estimated demand for up to 36,000 new dwellings within the LGA by 2036. The LHS identifies Penrith City Centre as a key location for new, compact, high-density urban forms to accommodate the LGA's rapidly growing population, citing the City Centre's proximity to employment, services, and public transport infrastructure.

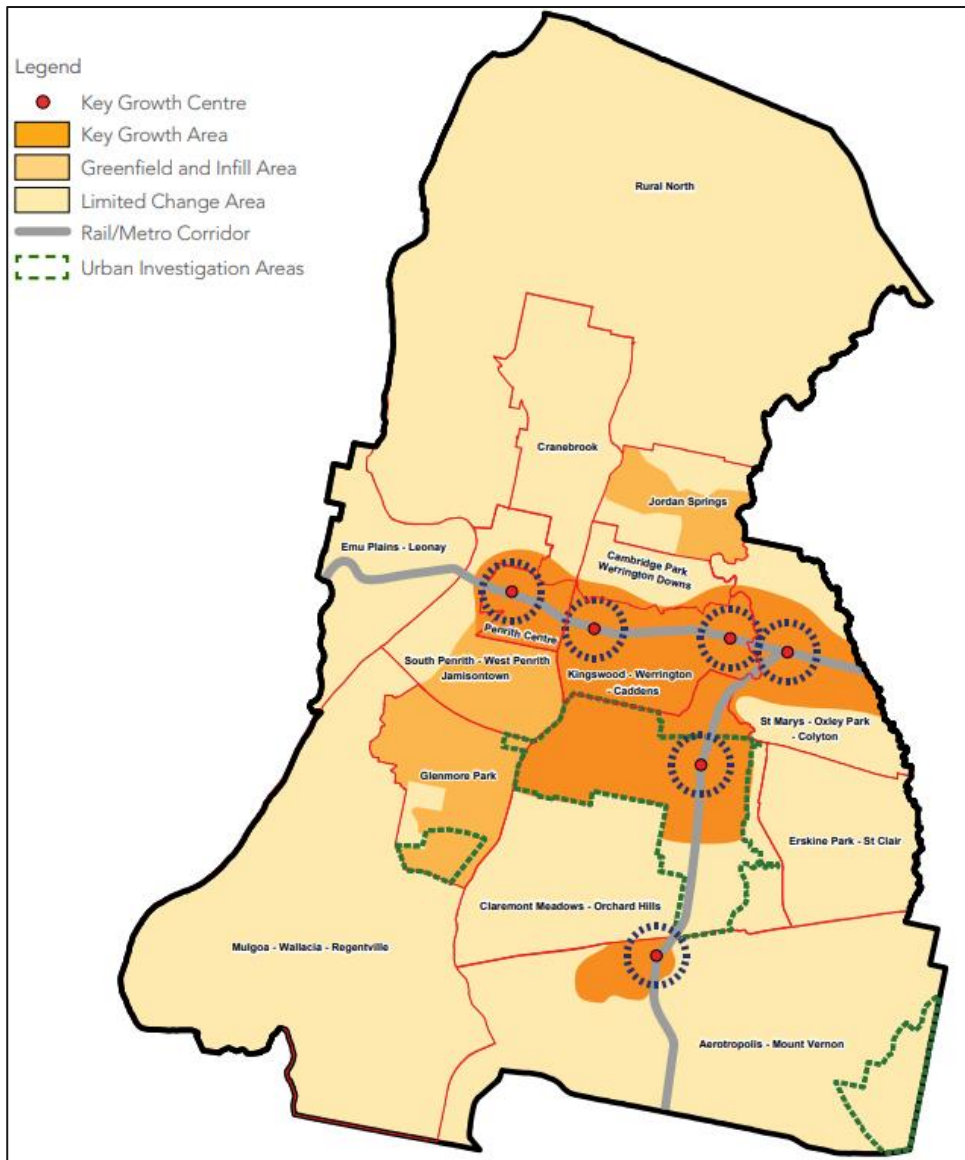
Historically, dwelling construction in the LGA has included a substantial proportion of low-density, detached dwellings which, if continued to be delivered, may result in an under-delivery against the targets. As such, new housing is intended to be concentrated within the current urban area and the locations identified in the WCDP, with a focus on transit-oriented neighbourhoods within walkable catchments of existing and proposed future rail stations in order to maximise access to jobs and services, and to minimise the environmental impacts of housing development. Penrith City Centre is anticipated to take the greatest proportion of new housing (18.1% of the LGA's projected dwelling growth), given its central role as the economic and civic centre.

The LHS supports the LSPS in its vision to co-locate residential and employment floorspace within the LGA, as anticipated by the '30-minute city' aim of the GSRP. The LHS notes that 20-25% of all flats, units, and apartments within the Penrith City Centre are overcrowded, suggesting immediate short-term pressures on housing supply within the locality. The LHS also illustrates that the Penrith City Centre is largely unencumbered by environmental constraints, with a relatively small amount of environmentally significant

land (including National Parks and Nature Reserves, Environmental Protection and Recreational spaces, and the like) within the locality as compared with the rest of the LGA.

The LHS further identifies Penrith City Centre as a primary location for additional housing, with capacity for between 4,050 – 12,600 new dwellings in the area as based on existing planning controls and having regard for environmental constraints (namely, flooding considerations, which are hoped to be resolved ahead of the 2036 target date).³

Figure 24 – Anticipated housing growth in the Penrith LGA



Source: Penrith City Council Local Housing Strategy, 2022

³ The 2019 *Hawkesbury-Nepean Valley Regional Flood Study* and the 2023 *Draft Hawkesbury-Nepean River Flood Study* both identify the Penrith City Centre as being subject to the Probable Maximum Flood level.

4. THE PLANNING PROPOSAL

The proposed amendments to the Penrith LEP 2010 which are sought by this Planning Proposal are explained and detailed below.

4.1. BACKGROUND

4.1.1. Development standards for Penrith City Centre (LEP, Part 8)

Part 8 of the Penrith LEP outlines provisions for development in the Penrith City Centre.

In anticipation of the future growth of the City Centre as a major Metropolitan Cluster within Greater Sydney, Clause 8.7 of the LEP (Community infrastructure on certain key sites) enables higher-density development on identified 'Key Sites' to be approved where the development includes community infrastructure. On Key Sites 3 & 10, Clause 8.7(4) increases the permissible FSR from 3:1 to 6:1 and Clause 8.7(3) removes the mapped 24m height limits, with the intent to permit the development of taller buildings to accommodate the increased density which is the subject of the incentive clause.

Clause 8.2 of the LEP (Sun access) states that development consent may not be granted to development on land to which Clause 8.7 applies, *"if the development would result in overshadowing of public open space to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map."*

On the basis of these provisions, Council has recently recommended refusals for, and the NSW LEC has refused, DAs seeking to utilise the incentive FSR and height provisions on Key Sites 3 and 10, owing to an apparent non-compliance with the sun access provisions contained in Clause 8.2 of the LEP. This has resulted in Key Sites 3 & 10 being unable to reach their development potential, notwithstanding both projects' provision of community infrastructure and the urgent need for new housing options for existing and future residents.

4.1.2. Background to Penrith City Centre LEP provisions

A summary of the historical development of the Penrith City Centre LEP provisions is provided in the table below:

Table 1 – Historical development of the Penrith City Centre LEP provisions

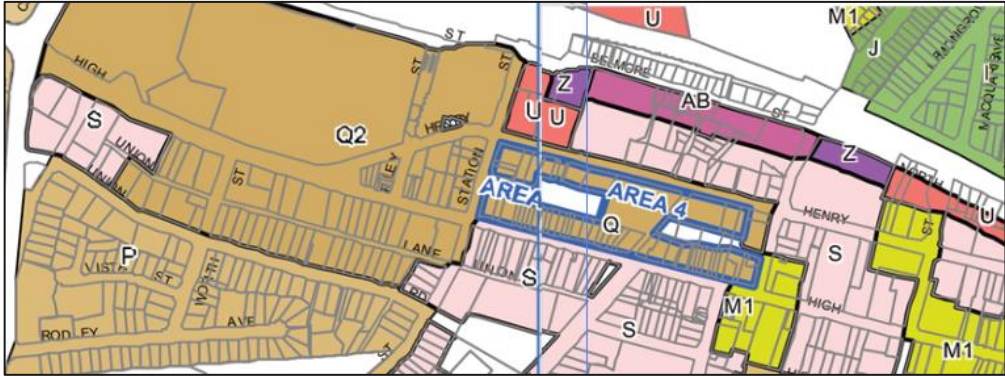
Date	Provision/s
22 September 2010	The Penrith LEP 2010 is published with the City Centre provisions remaining in the separate <i>Penrith City Centre LEP 2008</i> . No provisions related to the Penrith City Centre were referenced in the 2010 LEP at this time.
25 February 2015	Part 8 (Penrith City Centre) is introduced into the LEP (LEP Amendment No. 4), transferring the provisions from the <i>Penrith City Centre LEP 2008</i> .

Clause 8.1 (Application of Part) provides that:

"This Part only applies to land identified as "Penrith City Centre" on the Clause Application Map."

Clause 8.2 (Sun access) reads:

- (1) The objective of this clause is to protect specified public space from overshadowing.*
- (2) This clause applies to land in the vicinity of Allen Place, Memory Park and Judges Park and to High Street between Station Street and Lawson Street, identified as "Area 4" on the Height of Buildings Map, being part of the land to which this Part applies.*
- (3) Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land adjacent to land to which this clause applies if the development would result in overshadowing to a greater degree than*

Date	Provision/s
	would result from adherence to the controls indicated for the land on the Height of Buildings Map. (4) This clause does not prohibit development that does not alter the exterior of any existing building. An extract of the LEP Height of Buildings map from this LEP amendment, showing Area 4, is reproduced below: 
23 June 2017	Clause 8.7 (Community infrastructure on certain key sites) is introduced into Part 8 of the LEP, following approval of the “Incentive clause for key sites in Penrith City Centre” Planning Proposal (LEP Amendment No. 14). This Planning Proposal sought increased FSRs and the removal of height controls on certain key sites in the Penrith City Centre (including the Toga site) in order to facilitate the increased urbanisation of the City Centre as envisioned by various strategic planning policies. The Key Sites to which this incentives clause applied were Key Sites 4, 6, 7, 8, and 11, owing to their environmental capacity to accommodate significant height and density. The Planning Proposal notes that the intent of the incentives clause is to provide: <i>“a managed departure from existing building height and FSR provisions subject to the proposed development satisfying the existing design excellence provisions of the LEP and that an agreed material public benefit is provided in consideration of the additional FSR yield above the planned levels”</i> (emphasis in original). Development which makes use of the incentives clause would be subject to an increased FSR, and the mapped building height control would be removed. Clause 8.7(1)(b) allows for higher densities on the nominated key sites to <i>“reflect the desired character of the localities in which they are allowed and to minimise adverse impacts on these localities.”</i> The increased FSRs and heights are contingent on the demonstration of design excellence and the provision of community infrastructure within the Penrith City Centre. Clause 8.1 (Application of Part) and Clause 8.2 (Sun access) remain unchanged.
21 December 2018	Clause 8.7 is expanded to include Key Sites 1, 2, 3, 5, 9, and 10, each with various maximum permissible FSRs and the removal of height limits subject to the demonstration of design excellence and the provision of community infrastructure within the Penrith City Centre. Clause 8.1 (Application of Part) and Clause 8.2 (Sun access) remain unchanged.

Date	Provision/s
1 July 2019	Clause 8.2 is amended to remove the word “specified” from sub-clause (1), and to repeal sub-clause (2), following approval of the “Penrith City Park” Planning Proposal. While the primary purpose of the Planning Proposal was to rezone land surrounding Allen Place to Mixed Use, the Planning Proposal also included an amendment to Clause 8.2 (Sun Access). The Planning Proposal explained the intent of this amendment to the sun access clause as follows: <i>The objective of clause 8.2 is to protect specified public space from overshadowing impacts caused by development on adjoining land that wish to exceed the maximum building height. This clause currently applies only to land identified as “Area 4” on the Height of Buildings Map, which is located around the land currently zoned RE1, being the Allen Place Carpark. As a result of the proposed rezoning, the land to which this clause applies must be reassessed.</i> <i>There is merit in describing the outcome that the control should achieve rather than identifying a fixed area on a map to which this clause applies. In doing so, all public open space in the Penrith City Centre will be protected from overshadowing. Furthermore this allows the park to expand in the future and still be protected from overshadowing.</i> Clause 8.2 now reads: (1) <i>The objective of this clause is to protect public open space from overshadowing.</i> (2) <i>(Repealed)</i> (3) <i>Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land to which this Part applies if the development would result in overshadowing of public open space to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map.</i> (4) <i>This clause does not prohibit development that does not alter the exterior of any existing building.</i> Note that Clause 8.2 has not been amended since this revision to the LEP. Clause 8.1 (Application of Part), similarly, remains unchanged.

4.1.3. Discussion

Planning controls for development in the Penrith City Centre were transferred from the *Penrith City Centre LEP 2008* into the Penrith LEP 2010 via an amendment made in 2015. In accordance with Clause 8.1, these provisions have only ever applied to land mapped as the Penrith City Centre and, while other Clauses within Part 8 have been amended since 2015 (notably, Clauses 8.2 & 8.7), the land application specified in Clause 8.1 has not changed.

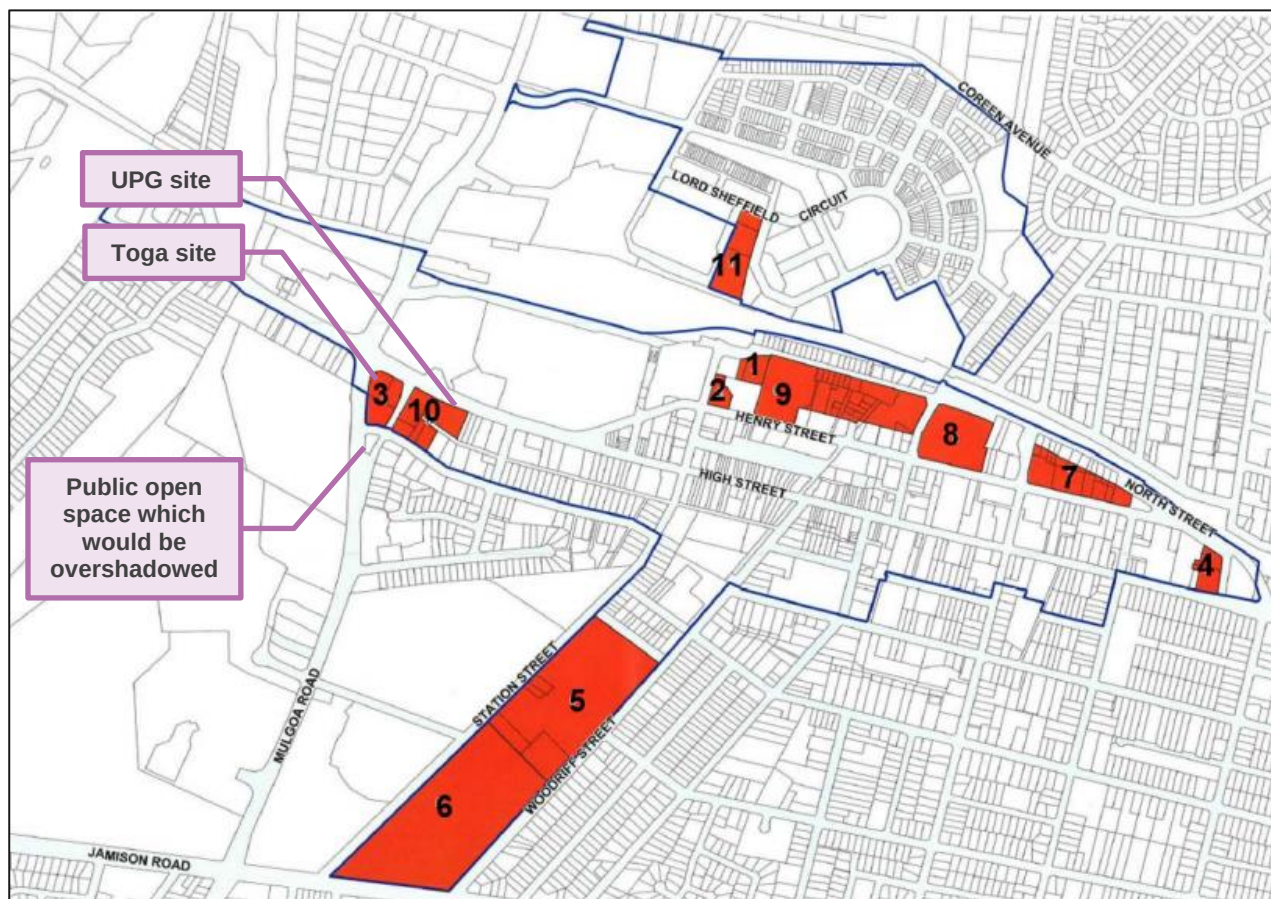
As noted above, Clause 8.2 was initially introduced in a 2015 LEP amendment to protect **specified public spaces within the Penrith City Centre** from overshadowing (together with other provisions related to development in the Penrith City Centre). The specific block was mapped land within the vicinity of Allen Place, Memory Park, Judges Park, and at High Street between Station Street and Lawson Street.

The Penrith City Park Planning Proposal resulted in the 2019 LEP amendment, in which Clause 8.2 was expanded to disallow any increased overshadowing to any public open spaces within the Penrith City Centre beyond the shadowing caused by a building complying with the base mapped LEP height controls. This directly contradicts the application of Clause 8.7, which operates to incentivise significantly increased

building heights on key sites, these being sites capable of accommodating significant height and FSR increases in exchange for public benefits in the form of community infrastructure.

The requirement in Clause 8.2(3) that development cannot be approved when overshadowing of public open space occurs, 'to a greater degree' than arising from adherence to the maximum building height controls, is excessively broad and restrictive. The prescribed maximum height control applying to both the UPG and Toga sites is 24 metres. Modelling of potential development on these sites confirms that development that complies with mapped height controls (without the additional FSR afforded by Clause 8.7), results in some additional shadow being cast onto the public open space located to the south of these sites, being the public open space described in Section 2.2 of this report. As illustrated below, this public open space is located outside the boundaries of the Penrith City Centre. The figure below outlines the Penrith City Centre in blue, and highlights Key Sites in red.

Figure 25 – Penrith City Centre Key Sites map



Source: DPE Plan finalisation report (IRF18/6389), 2018

Notwithstanding the relatively minor nature of additional shadow cast by these proposals, the wording of Clause 8.2(3) imposes a 'zero additional impact' requirement which is not possible to satisfy with virtually any form of development exceeding the 24-metre height control on Key Sites 3 & 10. As a result, this would render the FSR bonuses on certain Key Sites redundant, in turn compromising the ability of certain Key Sites to achieve their anticipated uplift and provide community infrastructure in the context of a rapidly urbanising city centre.

Notably, while Clause 8.7 provides for an exception to Clauses 4.3 (Height of buildings), 4.4 (Floor space ratio), and 8.4(5) (Design excellence) in order to achieve the increased densities with the provision of community infrastructure, no such exception is made for Clause 8.2 as relating to sun access. Historically, Clauses 8.2 & 8.7 have never referred to one another. Notably, in the original wording of Clause 8.2, which only applied to the Allen Place block, this would not have compromised the achievement of strategic uplift on Key Sites.

Following the repeal of sub-clause 8.2(2) in the 2019 LEP amendment to remove the specified sites from overshadowing protection and instead have the sun access provisions apply to all public open space within

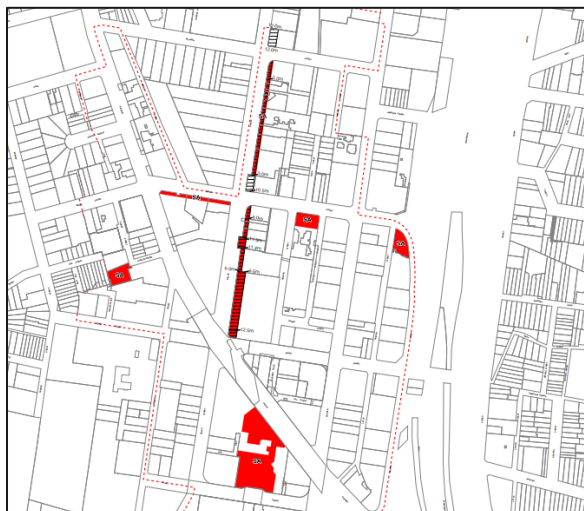
the Penrith City Centre, there is now a disconnect between the strategic intent of Clause 8.7 and the rigid, catch-all provisions of Clause 8.2.

4.2. BENCHMARKING WITH OTHER RELEVANT EPIS

To understand how the provisions of Clause 8.2 compare and contrast with sun access provisions in other environmental planning instruments, a benchmarking study was undertaken to ascertain how (if at all) other major centres within the Greater Sydney region manage solar access at a statutory level. The table below outlines findings of this study.

Table 2 – Benchmarking study

EPI	Comments
<i>Liverpool LEP 2008</i>	- The provision only applies to the Liverpool City Centre. - The clause limits building heights on specific areas (i.e., land within specified distances of specified public spaces) to protect solar access to important, specified public spaces.
<i>Parramatta LEP 2023</i>	- Sun access provisions only apply to development in the Parramatta City Centre - The provisions only apply to development that may impact solar access to specified public spaces of importance (including heritage-listed open spaces) - The provisions specify times of the day and / or specific times of the year where “additional” overshadowing (i.e., overshadowing above the existing condition) must be considered by the consent authority when determining a development application. - The specific exclusion of architectural roof elements (Clause 7.7(6)) indicates a pragmatic approach with regard to the design, detailing, and servicing of new development.
<i>Sydney LEP 2012</i>	- The approach taken in the Sydney LEP recognises that development will occur, with the provisions for sun access seeking to minimise overshadowing impacts on specified, significant public open spaces during specified periods at specified times of the year. - The places specified in Clause 6.17 detailed with specified sun access plane requirements (including geographic coordinates) at Schedule 6A of the LEP. - Clause 6.18 provides overshadowing standards for specified (“valued”) public places in Central Sydney. - Clause 6.18 includes specific exemptions for specified places and specified scales of development, commensurate with the highly urbanised character of the Sydney CBD.
<i>North Sydney LEP 2013</i>	- The North Sydney LEP recognises that development will occur which may impact amenity for nearby sensitive uses (including public open space and residential), however includes provisions which seek to minimise these impacts. - Clause 6.1 places a restriction on all development types which will result in increased overshadowing on specified site and / or specified portions of sites (refer to LEP Foreshore Building Line Map, North Sydney Centre Map, below, showing areas protected from overshadowing in red).



- Clause 6.1 requires that development enables land within a residential zone (outside the City Centre) to maintain a “reasonable” amount of solar access – this would likely be testable and merit-based.
- The objectives of Clause 6.3 require minimisation of overshadowing (and facilitation of “pedestrian comfort in relation to [...] solar access”) in residential and public recreation zones on land outside the North Sydney Centre. This clause does not prohibit new development in the North Sydney Centre, however seeks to nonetheless ensure amenity aspects on nearby sensitive uses form a consideration.
- Clause 6.3 restricts development which would increase overshadowing on specified areas in the North Sydney Centre, at specified times during specified periods (with the exception of Brett Whitely Plaza, which is permitted to have additional overshadowing during winter months).
- Clause 6.3(2) allows the possibility for building heights which exceed development standards, subject to private open spaces or habitable rooms outside the Centre are still able to maintain solar access.
- Clause 6.19B requires that new development adjacent to the forthcoming Crows Nest metro station enables “appropriate solar access” (“appropriate” is not defined) to specified places at specified times during specified periods.
- Clause 6.19B names solar access as one of a number of considerations in the determination of a development application.
- Clause 6.19C restricts development that results in a “net increase” in overshadowing at a specified place, on a specified time during a specified period. The requirement for no “net” overshadowing provides flexibility for surrounding developments.

Willoughby LEP 2012

- The LEP restricts development within certain zones (in the Chatswood CBD) which result in “additional” overshadowing in specified areas / on specified development types (namely, dwellings) during specified time periods at mid-winter. These restrictions are reflected in maximum building height controls as shown on the Sun Access Plane map in the LEP.

Blacktown LEP 2015

- Development in the Blacktown CBD is restricted where it will result in overshadowing across specified portions of specified places at specified times on a specified day (mid-winter).
 - The Blacktown DCP 2006 establishes additional solar access controls for specified areas at specified times during mid-winter (21 June). Clause 7.7A of the LEP requires that the consent authority considers these matters when determining if a development demonstrates design excellence.
-

The findings of the benchmarking study are summarised as follows:

- In other LGAs, not all areas of public open space are protected by overshadowing. Overshadowing controls are typically reserved for important areas of public open space of reasonable size and importance.
- Most instruments identify specified places that are not to be overshadowed by development.
- Most instruments specify particular durations of overshadowing (including times of day and periods of the year) that are acceptable / unacceptable.
- Some instruments specify acceptable amounts of overshadowing (as a proportion of the total area of the specified public open space).
- Some instruments specify particular days on which overshadowing impacts are to be considered.
- Some instruments specify general areas that are not to be overshadowed (or where overshadowing is to be minimised).
- Some instruments include solar access provisions as one of a number of environmental or design (including design excellence) considerations.

Based on the findings of the benchmarking study, it is evident that Clause 8.2 of the Penrith LEP is unique in its bluntness and rigidity. It is notable that the original wording of Clause 8.2 identified specified public places which were not to be subject to overshadowing – commensurate with comparable clauses in other LEPs as seen in the benchmarking exercise above – before the amendment in 2019 which removed sub-clause 2 and placed a blanket restriction on overshadowing of any public open spaces above shadows cast by compliant building heights, without nuance or specificity.

4.3. CURRENT CLAUSE 8.2

The current wording of Clause 8.2 of the Penrith LEP is provided below:

8.2 Sun access

- (1) *The objective of this clause is to protect public open space from overshadowing.*
- (2) *(Repealed)*
- (3) *Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land to which this Part applies if the development would result in overshadowing of public open space to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map.*
- (4) *This clause does not prohibit development that does not alter the exterior of any existing building.*

4.4. PROPOSED LEP AMENDMENT

This Planning Proposal seeks to amend the sun access provisions contained in Clause 8.2 of the Penrith LEP. The proposed clause is provided below, with proposed amendments in **red text**.

8.2 Sun access

- (1) *The objective of this clause is to protect public open space from overshadowing.*
- (2) *(Repealed)*
- (3) *Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land to which this Part applies if the development would result in overshadowing of public open space to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map.*

(4) *This clause does not prohibit development that does not alter the exterior of any existing building.*

(5) Despite subclause (3), this clause does not apply in relation to development on land identified as "Key Site 3" and "Key Site 10" on the Key Sites Map.

4.5. OTHER MATTERS

This Planning Proposal seeks an amendment to Clause 8.2 specifically in relation to public open space at 10 Mulgoa Road, Penrith (known as Lot 37 / DP 731213) and public open space to the immediate south, bounded by Mulgoa Road and John Tipping Grove, Penrith. The amendment is intended to facilitate the development of Key Sites 3 & 10 to reach their potential as envisioned by Penrith City Council's Key Sites Planning Proposal.

No amendments are sought to any Key Site controls for Key Sites 3 & 10. No changes are proposed to existing land use, infrastructure (including social infrastructure), landscape & open space provision, or road hierarchy & access. The Planning Proposal does not entail changes to any existing State or local planning strategies or masterplans. No amendments are sought to the *Penrith Development Control Plan 2014 (DCP)* as a result of this Planning Proposal. The nature of the Planning Proposal does not necessitate a site-specific DCP.

5. PLANNING PROPOSAL ASSESSMENT

The Planning Proposal request has been prepared in accordance with Section 3.33 of the EP&A Act and the DPE 'Local Environmental Plan Making Guideline' dated August 2023.

This section outlines the vision, objectives and intended outcomes and provides an explanation of provisions in order to achieve those outcomes. It is supported by justification and evaluation of environmental impacts associated with the proposed planning provisions, and outlines likely future community consultation and an indicative project timeline.

5.1. PART 1: OBJECTIVES AND INTENDED OUTCOMES

5.1.1. Objectives

The objective of this Planning Proposal is to amend Clause 8.2 of the Penrith LEP 2010 to enable the orderly and economic development and planned strategic uplift of Key Sites 3 and 10 as anticipated by Clause 8.7 of the LEP, by permitting the overshadowing of public open space to the south.

Pursuant to Clause 8.7 of the LEP, these Key Sites are afforded a significant FSR uplift above the mapped base FSR controls, and the removal of the mapped base maximum building height subject to the provision of community infrastructure. The present wording of Clause 8.2, which has a 'zero-impact' requirement for overshadowing on any public open space above the impact anticipated by development complying with the base mapped building height controls, conflicts with the height and FSR bonuses (and compromises the provision of community infrastructure) which are anticipated as part of development on Key Sites 3 & 10 by Clause 8.7.

The proposed amendment to Clause 8.2 is provided at Section 4.3 of this report.

5.1.2. Intended outcomes

The proposed amendments to Clause 8.2 of the Penrith LEP are intended to:

- Facilitate new development in the Penrith City Centre commensurate with its identification as 1 of 6 Metropolitan Clusters within the Greater Sydney region.
- Enable alignment between Clause 8.2 and Clause 8.7 with respect to increased FSR on Key Sites 3 & 10, resulting in the provision of new community infrastructure for the Penrith City Centre.
- Contribute to the urbanisation and densification of the Penrith City Centre, in line with State- and local-level strategic planning policy, by providing additional housing in a strategically significant location which provides a high concentration of employment opportunities, public transport access, educational facilities, services, and opportunities to participate in civic life.

5.2. PART 2: EXPLANATION OF PROVISIONS

5.2.1. The intended provision

The objectives and intended outcomes of the Planning Proposal will be achieved through an amendment to the sun access provisions of Clause 8.2 of the Penrith LEP 2010 as applied to Key Sites 3 & 10.

The effect of this amendment would be to permit the development of these sites to cast shadow to the public open space located outside the Penrith City Centre (known as 10 Mulgoa Road, Penrith – Lot 37 / DP 731213) and a portion of public open space to the immediate south, bounded by Mulgoa Road and John Tipping Grove, a departure from the 'zero impact' overshadowing restriction as required by sub-clause 8.2(3).

The proposed amendment to Clause 8.2 is provided at Section 4.3 of this report.

5.2.2. Rationale for proposed statutory amendment

This Planning Proposal makes the case for change to amend the sun access clause of the Penrith LEP in order to facilitate achievement of the strategic outcomes anticipated in the FSR incentives for Key Sites 3 & 10, as anticipated by Clause 8.7 of the LEP.

Clause 8.2, in its current form, inhibits the achievement of these intended development outcomes for these Key Sites. Under-development of these sites risks compromising the broader strategic intent for the Penrith City Centre as a result of:

- An inability to provide a significant proportion of new housing within a key metropolitan centre in proximity to employment, education, and services.
- The absence of an incentive for a landowner to provide the community infrastructure which will be needed to enhance the amenity and liveability of the Penrith City Centre as it continues to densify.

5.3. PART 3: JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT

The LEP Making Guideline identifies that the Minister (or their delegate) must be satisfied that the Planning Proposal has strategic and site-specific merit, and that the potential impacts can be readily addressed during the subsequent LEP making stages.

Consistent with the assessment criteria outlined in the LEP Making Guideline, an assessment is carried out below against the criteria for strategic and site-specific merit.

Table 3 – Strategic and site-specific merit assessment

Assessment criterion	Response	Consistent
Strategic merit – Does the proposal:		
<i>Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and / or corridor / precinct plans applying to the site?</i>	Refer to Section B Question 3, below, which explains how the Planning Proposal gives effect to the objectives of the: ▪ Greater Sydney Region Plan – A Metropolis of Three Cities ▪ Our Greater Sydney 2056: Western City District Plan	Yes.
<i>Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan?</i>	Refer to Section B Question 4, below, which explains how the Planning Proposal demonstrates consistency with the Penrith LSPS and other strategic planning policies prepared by Penrith City Council.	Yes.
<i>Respond to a change in circumstances that has not been recognised by the existing planning framework?</i>	The LEP Making Guideline notes that factors that lead to a response to a change in circumstances may include (but not exclusively relate to): ▪ Key infrastructure investment or opportunity to plan for future infrastructure anticipated by the existing strategic planning framework; ▪ Response to key Government priorities, including Premier's Priorities, climate change, or a shift in Government policy; and / or ▪ Changes to population and demographic trends and associated needs such as housing or jobs. The changes to the Penrith LEP sought by this Planning Proposal can be understood as responding to all three of the above factors, by way of: ▪ The ability to achieve the increased densities on Key Sites 3 & 10 and the resultant community infrastructure as required by Clause 8.7 of the LEP. ▪ The ability of these sites to achieve a planned increase to housing supply and choice in the Penrith City Centre,	Yes.

Assessment criterion	Response	Consistent
	noting in particular the Premier's Priority of "More and better homes" which focuses on supply, affordability, resilience, and diversity. The anticipated population growth in the Penrith LGA as a result of infrastructure investment (including new freight lines, roads, and the LGA's proximity to the Western Sydney International Airport), with both State- and local-level studies and strategic policies forecasting significant population growth within the Penrith City Centre.	

Site-specific merit – Does the proposal give regard and assess impacts to:

<i>The natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources, or hazards)?</i>	Refer to Section C Questions 8 & 9, below, for an assessment of the suitability of the natural environment.	
<i>Existing uses, approved uses, and likely future uses of the land in the vicinity of the land to which the proposal relates?</i>	Key sites 3 & 10, which would be directly related to the amendments sought in this Planning Proposal, are located on land zoned MU1 Mixed Use. The Penrith LEP permits residential uses on land zoned MU1 with development consent. Key Sites 3 & 10 adjoin land zoned R4 High Density Residential (to the south) and E2 Commercial Centre (to the north). Development of high-density new housing on these key sites, therefore, is commensurate with adjoining residential uses on R4 land, while also providing ready access to employment opportunities and commercial development in the E2 zone. The provision of housing on these Key Sites will, additionally, respond to the Premier's Priority for "More and better homes".	Yes.
<i>Services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision?</i>	Increasing development densities on Key Sites 3 & 10 pursuant to the FSR incentives provided by Clause 8.7 will result in new community infrastructure within the City Centre. This will be subject to future arrangements with Penrith City Council. Should these Key Sites not be able to take advantage of this incentive provision, it is not guaranteed that such community infrastructure would be provided.	Yes.

5.3.1. Section A – Need for the Planning Proposal

1. Is the planning proposal a result of an endorsed LSPS, strategic study, or report?

Yes.

The objective of the Planning Proposal is to give effect to a suite of local strategic planning policies including the Penrith LSPS, the Penrith Employment Lands Strategy, the Penrith LHS, and the East West Corridor Interim Centres Strategy. In broad terms, all of these strategic documents anticipate increased urban density within the Penrith City Centre, commensurate with its role as 1 of 6 Metropolitan Clusters as identified in the *Greater Sydney Region Plan*. These strategic policies all speak to the increasingly urgent need to unlock developable land to increase housing supply in the City Centre, given its location in proximity to employment, education, transport, commerce, and services.

A consistency assessment against the relevant objectives and actions of each of the abovementioned strategic planning documents is provided at the response to Section B Question 4, below.

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

Yes.

The Scoping Report prepared by Urbis and issued to Penrith City Council identified 2 other alternative options for amendments to Clause 8.2. For completeness, these alternative options are reproduced below, with proposed amendments in **red text**. Reasons for which these options were eventually discounted are also outlined below.

Alternative option 1

Amend Clause 8.2 to refer to clarify that it only applies to shadow impacts cast on public open space located in the **Penrith City Centre**.

This could be achieved by amending sub-clause (3), as follows:

8.2 Sun access

(1) *The objective of this clause is to protect public open space from overshadowing.*

(2) *(Repealed)*

(3) *Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land to which this Part applies if the development would result in overshadowing of public open space **located within the Penrith City Centre** to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map.*

(4) *This clause does not prohibit development that does not alter the exterior of any existing building.*

This approach:

- Ensures the provision reflects the intent of the 2019 amendment to Clause 8.2 to apply only to public open space within the Penrith City Centre.
- Otherwise maintains the sun access control as it currently applies.

However, this alternative option was discounted, as the amendment would be much more significant as it would technically apply to and / or impact all open space in the Penrith LGA surrounding the City Centre, and which would require significant further study. The Planning Proposal has therefore been focused in its scope to ensure the progression of two Key Sites (the subject of two refusals) as a result of the application of Clause 8.2 in its current form.

Alternative option 2

Amend Clause 8.2 to provide more quantified and qualified standards to apply to sun access.

This could be achieved by amending sub-clause (3), as follows:

8.2 Sun access

(1) *The objective of this clause is to protect public open space from overshadowing.*

(2) *(Repealed)*

(3) *Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land to which this Part applies if the development would result in overshadowing of public open space to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map **more than 50 percent of a public open space having less than 4 hours of sunlight access for a minimum of 4 hours between 9am and 3pm on 21 June.***

(4) *This clause does not prohibit development that does not alter the exterior of any existing building.*

This approach:

- Applies a 'best practice' development standard appropriate for a city centre within Greater Sydney.
- Ensures an appropriate level of sun access is maintained for public open space.

As the current Planning Proposal relates, in strict terms, to the development of Key Sites 3 & 10, this alternative option was also discounted as such a provision would apply not only to the land at 10 Mulgoa Road but, also, to all other areas of public open space in and around the Penrith City Centre. This would necessitate rigorous testing of all potentially impacted sites (both Key Sites and public open space) to determine the appropriateness of such a control, with particular regard for the development potential of Key Sites as anticipated by the FSR incentives clause of the LEP.

Key Sites 3 & 10 are in the ownership of major property developers, who are ready to begin planning and development on their sites to provide much-needed housing and community infrastructure in line with strategic policy and statutory controls. This second alternative option was, therefore, discounted, on the account of the need for further detailed studies which would only result in more uncertainty for owners of Key Sites in the Penrith City Centre. This, in turn, may impede achievement of the City Centre's strategic objectives.

5.3.2. Section B – Relationship to the strategic planning framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

Yes.

A consistency assessment against the relevant Directions and Planning Priorities of the *Greater Sydney Region Plan* and *Western City District Plan* is carried out below.

Greater Sydney Region Plan

Table 4 – Consistency with GSRP

Direction	Response	Consistent
1. A city supported by infrastructure – Infrastructure supporting new developments	Enabling some overshadowing on the public open space to the immediate south would enable achievement of the planned increased development density on Key Sites 3 & 10, in turn providing a significant boost to housing supply and choice in the Penrith City Centre. The City Centre has ready access to a range of public transport options, current and future employment and education facilities, and opportunities to participate in civic life. Amending the provisions of Clause 8.2 to allow for the development of new high-density housing in this area will help to facilitate the aim of the 30-minute city where housing, education, employment, and services are co-located with existing and future transport infrastructure.	Yes.
3. A city for people – Celebrating diversity and putting people at the heart of planning	Allowing some overshadowing on public open space to the immediate south will provide much-needed additional housing in the Penrith City Centre within the context of an emerging Metropolitan Cluster. The City Centre and its immediate surrounds provide a range of employment and educational opportunities, access to frequent public transport, and key civic services. This includes the nearby Health and Education Precinct, as well as the Western Sydney International Airport, both of which are and will be significant drivers of increased economic investment and activity. The amendment to Clause 8.2 will enable the development of new high-density housing on Key Sites 3 & 10 which, in conjunction with the community infrastructure required by the existing provisions of Clause	Yes.

Direction	Response	Consistent
	8.7 of the LEP, will assist in the development of Penrith City Centre as a physically and socially connected place.	
4. Housing the city – Giving people housing choices	The GSRP identifies an urgent need for additional housing supply and choice within the Greater Sydney Region, with a view to improve housing affordability. The Plan identifies that 725,000 additional homes will be needed across Greater Sydney by 2036 to meet demands based on current population projections, and also notes that <i>“Good strategic planning can link the delivery of new homes in the right locations with local infrastructure.”</i> As identified throughout this report, the Penrith City Centre benefits from existing and future employment and education opportunities, significant infrastructure (including public transport connections and a forthcoming international airport in close proximity), and access to civic services, making it a highly meritorious location for increased dwelling capacity. Amending Clause 8.2 to allow some overshadowing on public open space to the immediate south, which would result from increased development density to Key Sites 3 & 10 as anticipated by Clause 8.7, would play a critical role in increasing housing supply in the Penrith City Centre.	Yes.
6. A well-connected city – Developing a more accessible and walkable city	The proposed amendment to Clause 8.2 will enable increased densities on Key Sites 3 & 10, as anticipated by the FSR incentives provisions of Clause 8.7. Increased development density will result in a significant increase to housing stock in the Penrith City Centre which, as outlined throughout this report, is extremely well placed to take on higher-density residential development. The higher densities on Key Sites 3 & 10 which would be enabled by some overshadowing on public open space to the immediate south will help to facilitate the aim of the 30-minute city. Further, the provision of community infrastructure as required by Clause 8.7 will, subject to future agreements with Council, provide increased accessibility and walkability throughout the City Centre.	Yes.
8. A city in its landscape – Valuing green spaces and landscape	The amendment allows some overshadowing to a small area of relatively low quality open space facilitating the broader strategic aims of increasing housing supply on key sites in the city centre. The open space immediately to the south of Key Sites 3 & 10 is not proposed to be rezoned under this Planning Proposal and can easily remain in use as public open space.	Yes.
9. An efficient city – Using resources wisely	Increasing housing supply in close proximity to employment, education, services, and frequent & connected public transport will assist with reducing transport-related greenhouse gas emissions through higher uptake of active and public means of transport. High-density development in a key centre is an efficient way to use land within an already urbanised area. It will increase housing supply in a significantly more efficient manner than low-density housing, by capitalising on an extensive, existing services network including water, energy, and waste management systems for a higher proportion of residents. Higher-density development also plays an important role in reducing urban sprawl and its associated environmental impacts (including private vehicle dependency, encroachment on natural landscapes, etc.). The high-density housing which is envisioned for Penrith City Centre within the GSRP can only be achieved by loosening the restrictions of Clause 8.2, to enable some overshadowing on open public space. This	Yes.

Direction	Response	Consistent
	Planning Proposal relates only to overshadowing of the public open space to the immediate south, to enable increased development densities on Key Sites 3 & 10 which, together, will be able to provide hundreds of new homes.	

Western City District Plan

Table 5 – Consistency with WCDP

Planning Priority	Response	Consistent
W1. Planning for a city supported by infrastructure	Allowing some overshadowing on the public open space to the immediate south through the amendment to Clause 8.2 will enable higher-density development on Key Sites 3 & 10, in line with the FSR provisions provided in Clause 8.7. The Penrith City Centre has ready access to a range of public transport options, current and future employment and education facilities, and opportunities to participate in civic life. Amending the provisions of Clause 8.2 to allow for the development of new high-density housing in this area will help to facilitate the aim of the 30-minute city where housing, education, employment, and services are co-located with existing and future transport infrastructure. An outcome of this type of land use planning and development is the optimisation of infrastructure.	Yes.
W5. Providing housing supply, choice and affordability, with access to jobs, services, and public transport	Greater Penrith and the villages of the Blue Mountains are identified in the WCDP as 1 of 5 housing market demand areas within the Western Parkland City District. The WCDP calls for “more housing in the right areas” by way of urban renewal around existing transport nodes, close to jobs and other key services. While now outdated, the Plan set a target of 6,600 new homes in the Penrith LGA from 2016-2021 (representing 16.5% of the Western Parkland District’s total housing target), indicating the capacity for the LGA to accommodate new residential dwellings. Penrith City Centre is ideally placed within the LGA to take a majority of this new housing, and indeed such an objective is made evident in the other State and local strategic policies as well as in the statutory planning instrument, the LEP (in particular Clause 8.7). Amending Clause 8.2 to allow some overshadowing of public open space to the immediate south, which would result from increased development density to Key Sites 3 & 10 as anticipated by Clause 8.7, would play a critical role in increasing housing supply in the Penrith City Centre by unlocking the development potential of key sites.	Yes.
W6. Creating and renewing great places and local centres, and respecting the District’s heritage	Amending the LEP to allow for some overshadowing on the public open space to the immediate south will facilitate new high-density development on Key Sites 3 & 10 in the Penrith City Centre. This will assist with the establishing Penrith City Centre as a key urban node in the Western Parkland City and, more broadly, within Greater Sydney. In parallel, this would significantly boost housing supply in the LGA without impacting the established character of the peri-urban, lower-density areas, including heritage-listed former homesteads and the like. This approach demonstrates a due regard for place-based planning.	Yes.

Planning Priority	Response	Consistent
W7. Establishing the land use and transport structure to deliver a liveable, productive, and sustainable Western Parkland City	The proposed amendments to the LEP to enable some overshadowing to the public open space to the immediate south will unlock the development potential of Key Sites 3 & 10 within the Penrith City Centre. The increased densities on these sites will bring a significant number of new residents to an established (and growing) area which, together with existing and planned future infrastructure, will catalyse job creation and help to facilitate a well-connected, well-serviced 30-minute city.	Yes.
W9. Growing and strengthening the metropolitan cluster	The LEP amendment sought by this Planning Proposal will unlock the development potential of Key Sites 3 & 10 and provide a significant boost to housing supply in the Penrith City Centre. The WCDP notes that education is the largest export service industry in NSW. The City Centre's proximity to an established Health and Education Precinct, and its good servicing by public transport, make it an efficient location for higher density residential development. Increased population in the City Centre will, in turn, bring on economic growth and opportunity to participate in civic life. Enabling the high-density development on Key Sites 3 & 10, as anticipated by Clause 8.7 of the LEP, will serve to facilitate this growth and would also represent orderly and efficient use of land.	Yes.
W11. Growing investment, business opportunities, and jobs in strategic centres	Amending the LEP to enable some overshadowing to the land at 10 Mulgoa Road will enable the full development of Key Sites 3 & 10, as anticipated by Clause 8.7 of the LEP. This development is commensurate with the strategic importance of the Penrith City Centre as part of the Collaboration Area, and as an area which has been identified in all strategic planning documents as being a sensible location to take on a significant amount of new residential floorspace. Providing more housing in the City Centre would enable more residents to live closer to employment, education, services, and civic life. Increasing residential densities in an urban area brings vibrancy and economic opportunities. Such development would help to revitalise and grow the Penrith City Centre in line with the first aim of the Collaboration Area. It would improve housing diversity and choice and assist with addressing affordability pressures.	Yes.
W13. Creating a Parkland City urban structure and identity, with South Creek as a defining spatial element	The proposed LEP amendment, to enable some overshadowing on the public open space to the immediate south, will allow for the higher densities on Key Sites 3 & 10 as anticipated by Clause 8.7 of the LEP. Increasing development density within the Penrith City Centre will provide a significant boost to local housing supply without resorting to unsustainable urban sprawl. Such development would help to establish a clear urban structure within the LGA and, indeed, the broader Western Parkland City, while maintaining South Creek as a defining spatial element.	Yes.
W14. Protecting and enhancing bushland and biodiversity	Amending the LEP to enable some overshadowing on the public open space to the immediate south will result in higher density development within an established and growing urban centre. This, in turn, will enable natural bushland and biodiversity to be protected as it would significantly minimise the need to develop on undeveloped land.	Yes.

Planning Priority	Response	Consistent
W15. Increasing urban tree canopy cover and delivering Green Grid connections	The proposed LEP amendment will result in some overshadowing to the public open space to the immediate south, while also enabling higher density development on Key Sites 3 & 10. These higher densities, as anticipated in Clause 8.7 of the LEP, can only be achieved if community infrastructure is provided. Such infrastructure could include contributions to the Green Grid, subject to future arrangements with Council. On the contrary, keeping Clause 8.2 in its current form, and not enabling some overshadowing to the public open space to the immediate south, will result in these Key Sites not being developed to their fullest potential; that is, without triggering the additional FSR allowed for by Clause 8.7 and, as such, with no incentive (or, indeed, statutory obligation) on the part of the landowners to provide community infrastructure.	Yes.
W17. Better managing rural areas	The facilitation of increased development densities on Key Sites 3 & 10, which would be a direct result of the amendment to Clause 8.2 sought by this Planning Proposal, would result in a significant increase to local housing supply without the need to develop needlessly on greenfield land.	Yes.
W19. Reducing carbon emissions and managing energy, water, and waste more efficiently	Increasing housing supply in close proximity to employment, education, services, and frequent & connected public transport will assist with reducing transport-related carbon emissions through higher uptake of active and public means of transport. High-density development in a key centre is an efficient way to use land within an already urbanised area. It will increase housing supply in a significantly more efficient manner than low-density housing, by capitalising on an extensive, existing services network including water, energy, and waste management systems for a higher proportion of residents. Higher-density development also plays an important role in reducing urban sprawl and its associated environmental impacts (including private vehicle dependency, encroachment on natural landscapes, etc.). The high-density housing which is envisioned for Penrith City Centre within the GSRP can only be achieved by loosening the restrictions of Clause 8.2, to enable some overshadowing on open public space. This Planning Proposal relates only to overshadowing on the public open space to the immediate south, to enable increased development densities on Key Sites 3 & 10 which, together, will be able to provide hundreds of new homes.	Yes.

4. Is the planning proposal consistent with a Council LSPS that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy or strategic plan?

Yes.

A consistency assessment against the relevant Planning Priorities of the Penrith LSPS is carried out below.

Table 6 – Consistency with LSPS

Planning Priority	Response	Consistent
1. Align development, growth, and infrastructure	Allowing some overshadowing on the public open space to the immediate south through the amendment to Clause 8.2 will enable higher-density development on Key Sites 3 & 10, in line with the FSR provisions provided in Clause 8.7 and the associated provision of community infrastructure that would result from developments	Yes.

Planning Priority	Response	Consistent
	leveraging this density bonus. Subject to future arrangements, it is foreseeable that such infrastructure would align with any contributions or infrastructure framework / policy enacted by Council. Keeping Clause 8.2 in its current form, and not enabling some overshadowing, will result in these Key Sites not being developed to their fullest potential; that is, without triggering the additional FSR allowed for by Clause 8.7 and, as such, with no incentive (or, indeed, statutory obligation) on the part of the landowners to provide community infrastructure. Additionally, co-locating new high-density housing with existing and planned future transport and social infrastructure is a sensible, place-based approach to planning which will minimise the adverse environmental, social, and economic impacts which would otherwise result from low-density urban development.	
2. Work in partnership to unlock our opportunities	Allowing the uplift on Key Sites 3 & 10, which would be enabled through the proposed amendment to Clause 8.2 of the LEP, will help to achieve the aims of the <i>Greater Penrith Collaboration Area Place Strategy</i> by working with major landowners to provide much-needed new housing and community infrastructure within the Penrith City Centre.	Yes.
3. Provide new homes to meet the diverse needs of our growing community	The LSPS indicates that 24,000 new homes are needed across the LGA to meet the needs of the growing and diverse population. A significant proportion of these homes can, and should, be located within existing urban centres to minimise the negative effects of sprawl. Unlocking the full development potential of Key Sites 3 & 10 by amending Clause 8.2 of the LEP will help to achieve this target through the provision of new, high-density housing in a well-connected, well-serviced urban centre. Such development will allow for the enhancement of Penrith City Centre as a walkable and high amenity urban environment, while simultaneously protecting environmentally sensitive landscapes and rural areas which characterise much of the LGA.	Yes.
5. Facilitate sustainable housing	Allowing some overshadowing on the public open space to the immediate south through the proposed amendment to Clause 8.2 will enable high-density development on Key Sites 3 & 10. This will, in turn, represent an efficient and orderly use of land in the urban core, enable greater housing diversity and choice for existing and incoming residents, and support the delivery of community infrastructure pursuant to the provisions of Clause 8.7.	Yes.
6. Ensure our social infrastructure meets the changing needs of our communities	The ability for the landowners of Key Sites 3 & 10 to provide necessary community infrastructure is largely dependent on their ability to make use of the FSR bonuses provided by Clause 8.7 of the LEP for their respective sites. The proposed amendment to Clause 8.2 of the LEP will unlock the development potential of Key Sites 3 & 10 by removing the 'zero impact' overshadowing provision as related to the public open space to the immediate south, thereby providing an opportunity to these landowners to make use of the FSR incentives clause.	Yes.
7. Enrich our places	Allowing some overshadowing to the public open space to the immediate south, in line with the proposed LEP amendment, will enable high-density urban development in an established and growing strategic centre. Such development would provide a	Yes.

Planning Priority	Response	Consistent
	walkable and high amenity City Centre for future residents with opportunities for social interaction and civic participation. Concentrating higher densities in the City Centre would, additionally, help to protect established lower-density neighbourhoods from unsustainable growth to enable them to retain their own unique character.	
9. Support the North South Rail Link and emerging structure plan	The proposed amendment to Clause 8.2 of the LEP, and the resultant ability of Key Sites 3 & 10 to accommodate increased development densities, will enable alignment with the North South Rail Link by integrating new housing in an urbanised area with new transport infrastructure. This, in turn, will unlock easier access to new employment opportunities which will benefit from the North South Rail Link.	Yes.
10. Provide a safe, connected and efficient local network supported by frequent public transport options	The increased development densities on Key Sites 3 & 10 which would benefit from the proposed amendment to Clause 8.2 of the LEP, will result in a more urbanised City Centre and an increase in the proportion of the population who live in close proximity to employment, education, and services. This will, in turn, optimise active and public means of transport within the City Centre.	Yes.
11. Support the planning of the Western Sydney Aerotropolis	The NSW Government's <i>Western Sydney Aerotropolis Plan</i> identifies Penrith as the northern gateway to the new Western Sydney International Airport, with up to 10% of all new jobs to be delivered in the Aerotropolis being located within Penrith (approximately 19,000-21,000 out of a total projected 200,000 jobs). Increasing the housing stock within the well-connected City Centre will, therefore, result in efficient connections between where people work and where people live, without placing undue pressure on rural or low-density land. As outlined in Section 2 of this report, the NSW Government, in collaboration with Penrith City Council, is currently working towards improving connectivity between employment lands and the Penrith City Centre, making high-density housing in the City Centre an efficient use of land. The amendment to Clause 8.2 which is sought by this Planning Proposal will enable Key Sites 3 & 10 to maximise their development potential and provide much-needed new housing and community infrastructure for future populations.	Yes.
12. Enhance and grow Penrith's economic triangle	As 1 of the Metropolitan Clusters identified in the GSRP, and as the key gateway to Greater Sydney from Western NSW, the Penrith City Centre serves an exceptionally significant role in the provision of housing, education, employment, transport, and services. Accommodating an established commercial core, and when considered as part of the LGA's Economic Triangle, it is evident that the Penrith City Centre would benefit from increased housing supply. Amending Clause 8.2 of the LEP to allow for some overshadowing on the public open space to the immediate south would unlock the development potential of Key Sites 3 & 10 as anticipated by Clause 8.7 of the LEP, which would in turn enhance and grow Penrith's economic triangle by providing a greater opportunity for more people to live close to where they work.	Yes.
15. Boost our night-time economy	The Penrith City Centre currently benefits from an active night-time economy, including large-format venues such as the Dame Joan	Yes.

Planning Priority	Response	Consistent
	Sutherland Performing Arts Centre, the Penrith Panthers complex, and Penrith Westfield. The LSPS identifies further opportunities to enhance after-hours activity in the urban core by unlocking the potential for more active uses of certain streets and lanes. Night-time economies thrive when appropriately located in proximity to residential land uses. To this end, the proposed amendment to Clause 8.2, as sought by this Planning Proposal, seeks to ultimately unlock the development potential of Key Sites 3 & 10 in the Penrith City Centre for high-density residential uses. This, in turn, would serve to benefit Penrith's night-time economy through an increase in the locality's permanent resident population who will be attracted to a vibrant urban centre with diversity of choice in walking distance.	
16. Protect and enhance our high value environment lands	The amendment to the LEP sought in this Planning Proposal does not seek to allow overshadowing on land which is identified in any strategic policy or statutory plan as an area of environmental significance. It is acknowledged that open space – especially in urbanised environments – provides positive environmental and health benefits. This Planning Proposal does not seek to rezoning the land at 10 Mulgoa Road, nor are material impacts to this area of public open space proposed. However, it is equally acknowledged that providing increased density in urbanised areas where there is a broader imperative to provide additional housing decreases the need for undeveloped areas, including rural and environmental lands, to be developed. Amending Clause 8.2 to allow some overshadowing to the public open space to the immediate south, then, will enable Key Sites 3 & 10 to maximise their development potential in line with the provisions of Clause 8.7, thereby minimising pressure on high value environmental lands.	Yes.
19. Create an energy, water and waste efficient city	Increasing housing supply in close proximity to employment, education, services, and frequent & connected public transport will assist with reducing transport-related carbon emissions through higher uptake of active and public means of transport. High-density development in a key centre is an efficient way to use land within an already urbanised area. It will increase housing supply in a significantly more efficient manner than low-density housing, by capitalising on an extensive, existing services network including water, energy, and waste management systems for a higher proportion of residents. Higher-density development also plays an important role in reducing urban sprawl and its associated environmental impacts (including private vehicle dependency, encroachment on natural landscapes, etc.). The high-density housing which is envisioned for Penrith City Centre within the GSRP can only be achieved by loosening the restrictions of Clause 8.2, to enable some overshadowing on open public space. This Planning Proposal relates only to overshadowing on the public open space to the immediate south, to enable increased development densities on Key Sites 3 & 10 which, together, will be able to provide hundreds of new homes.	Yes.
21. Cool our city	In parallel with Planning Priority 16, higher density development can assist with protecting existing and planned future areas of environmental value, thereby maintaining urban greenery and remnant bushland by minimising the need for unsustainable, low-density sprawl.	Yes.

5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Yes.

Consistency with other applicable State and local strategies is outlined below.

State strategies

Table 7 – Consistency with other applicable State strategies

State strategy	Response	Consistent
<i>Collaboration Area – Greater Penrith Place Strategy</i>	The proposed amendment to Clause 8.2 is consistent with relevant Priorities of the Place Strategy, demonstrated as follows: Priority 1: Infrastructure provision - Amending Clause 8.2 to enable the anticipated densities on Key Sites 3 & 10 will result in a higher proportion of future residents utilising public and active means of transport in and around the Penrith City Centre, which benefits from existing and future employment opportunities, educational facilities, and civic services. Priority 2: Places for people - Amending Clause 8.2 to enable increased densities on Key Sites 3 & 10 will be an important factor in increasing housing supply in the Penrith LGA, without promoting urban creep on existing environmental lands. Priority 3: The health and education precinct - Increasing residential densities on Key Sites in the Penrith City Centre will enable future students and employees of the health and education precinct to live close to where they study and work. This will facilitate the sustainable growth and development of this highly significant precinct. Priority 4: Economic diversity and tourism - The proposed amendment to Clause 8.2 will, in future, enable Key Sites 3 & 10 to provide a strong supply of high-density housing in the Penrith City Centre. Accommodating more residents in this location will catalyse economic growth and enhance local tourism opportunities. - An increase to the number of residents in the Penrith City Centre will be key to developing a sustainable night-time economy. Priority 6: Resilience and sustainability - Amending Clause 8.2 of the LEP will result in the ability of Key Sites 3 & 10 to achieve significantly increased built form densities, providing a significant amount of new housing which is needed in the rapidly growing LGA. This represents a sustainable and efficient use of urbanised and well-serviced land to meet the urgent needs of the community, while minimising the potential for negative urban sprawl. - The increased residential densities which would be unlocked by the proposed amendment to Clause 8.2 will enable more future residents of the area to take up active and public means of transport, reducing dependence on private vehicles.	Yes.

Local strategies

Table 8 – Consistency with other applicable local strategies

Local strategy	Response	Consistent
<i>Employment Lands Strategy</i>	Penrith is poised to benefit from significant investments in infrastructure, including new freight links, and the growing employment lands of The Quarter health and education precinct and the future Aerotropolis. The proposed amendment to Clause 8.2 will unlock increased densities on Key Sites 3 & 10. This will, in turn, enable future workers in the rapidly growing area to live close to jobs, in support of a thriving and sustainable economy.	Yes.
<i>East West Corridor Interim Centres Strategy</i>	Enabling increased densities for residential development on Key Sites 3 & 10, which would be the result of amending Clause 8.2, is wholly consistent with the Community Indicator Framework themes of: ▪ Housing, through an increase to supply and diversity, and by locating housing in the right location. ▪ Communities, by providing new housing in a location which enables residents to participate in civic life. ▪ Education & Employment, by locating new housing in proximity to employment opportunities and educational facilities. ▪ Economy, which will benefit from an increase in the local resident population, facilitating a sustainable economic ecosystem for the local area. ▪ Natural environment, by increasing housing supply in an urbanised area and enabling the natural environment to be better protected against urban creep.	Yes.
<i>Local Housing Strategy</i>	The LHS projects an estimated demand for up to 36,000 new dwellings within the LGA by 2036. The Strategy identifies Penrith City Centre as a key location for new, compact, high-density urban forms to accommodate the LGA's rapidly growing population owing to its proximity to employment, services, and public transport infrastructure. Key Sites 3 & 10 are, therefore, ideally suited as land for new, high-density housing. The proposed amendment to Clause 8.2 will unlock the potential for Key Sites 3 & 10 to achieve high-density development as anticipated by Clause 8.7. These future developments will provide a significant amount of new housing in the City Centre which, in turn, will assist with achieving the ambitious housing targets which have been set in a way which minimises the need to develop on greenfield and significant environmental lands. Such development would also provide a greater diversity of housing in the LGA which, at present, is largely characterised by low-density, single-family homes, cited in the LHS as being an unsustainable way to expand housing options. Enabling the higher densities on Key Sites 3 & 10 will also trigger the community infrastructure requirements of Clause 8.7, resulting in positive benefits for existing and future residents.	Yes.
<i>Penrith Green Grid Strategy</i>	Enabling increased densities on Key Sites 3 & 10, which would be the result of amending Clause 8.2 of the LEP, will enable significant environmental assets in the LGA to be protected from unsustainable urban creep. Although the subject land is not identified within the Green Grid Strategy, it is nonetheless acknowledged to provide amenity value to local residents as an area of public open space. The proposed amendment to Clause 8.2 which is sought in this Planning Proposal will result in some overshadowing to this land, however its utility value and will not, on	Yes.

Local strategy	Response	Consistent
	balance, be unduly compromised. No land use or physical changes are proposed to this land and, as such, it will remain fully accessible to the public.	

6. Is the planning proposal consistent with applicable SEPPs?

Yes.

Consistency with applicable State Environmental Planning Policies (**SEPPs**) is demonstrated below.

Table 9 – Consistency with applicable SEPPs

SEPP	Response	Consistent
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	The Planning Proposal does not contain provisions that would hinder or contradict the application of this SEPP. The public open space to the immediate south of Key Sites 3 & 10 is not subject to a proposed change of zoning, change of use, or any other form of development. Future development on Key Sites 3 & 10 will be assessed against the relevant provisions of this SEPP with regard to suitability of use, however it is noted that both sites contain pre-existing development and are located in an urbanised locality.	Yes.
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	Chapter 2 of the SEPP provides provisions and controls for vegetation in non-rural areas. The LEP amendment sought in this Planning Proposal would not inhibit the application of this SEPP, nor would it contradict any of its relevant provisions.	Yes.

7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priorities?

Yes.

The Planning Proposal is consistent with applicable Section 9.1 Ministerial Directions, as outlined below.

Table 10 – Consistency with Section 9.1 Ministerial Directions

Direction	Response	Consistent
Focus area 1: Planning Systems		
1.1 Implementation of Regional Plans	As discussed at length at Section B, above, the amendment to the LEP which is sought by this Planning Proposal will give effect to the vision, land use strategy, and relevant goals, directions, and actions contained in the GSRP.	Yes.
1.2 Development of Aboriginal Land Council Land	Chapter 3 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i> does not apply to the land immediately to the south of Key Sites 3 & 10.	N/A
1.3 Approval and Referral Requirements	This direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development. The relevant requirements of this Planning Direction have been considered in the preparation of this Planning Proposal and proposed LEP amendment.	Yes.

Direction	Response	Consistent
1.4 Site Specific Provisions	This Planning Proposal seeks to alter a highly restrictive Clause in the Penrith LEP in order to maximise the development potential on 2 Key Sites located in the Penrith City Centre. This development potential is anticipated by the FSR incentive provision in Clause 8.7 of the LEP, with which the blanket restrictions of Clause 8.2 currently conflict.	Yes.
1.4A Exclusion of Development Standards from Variation	This Planning Proposal does not seek to introduce or alter and existing exclusion to Clause 4.6 of the LEP.	N/A
Focus Area 1: Planning Systems – Place-based		
1.5 Parramatta Road Corridor Urban Transformation Strategy	Not applicable to this Planning Proposal.	N/A
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable to this Planning Proposal.	N/A
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable to this Planning Proposal.	N/A
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable to this Planning Proposal.	N/A
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable to this Planning Proposal.	N/A
1.10 Implementation of the Western Sydney Aerotropolis Plan	Chapter 4 of the <i>State Environmental Planning Policy (Precincts—Western Parkland City) 2021</i> does not apply to the public open space to the immediate south of Key Sites 3 & 10.	N/A
1.11 Implementation of Bayside West Precincts 2036 Plan	Not applicable to this Planning Proposal.	N/A
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	Not applicable to this Planning Proposal.	N/A
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	Not applicable to this Planning Proposal.	N/A

Direction	Response	Consistent
1.14 Implementation of Greater Macarthur 2040	Not applicable to this Planning Proposal.	N/A
1.15 Implementation of the Pyrmont Peninsula Place Strategy	Not applicable to this Planning Proposal.	N/A
1.16 North West Rail Link Corridor Strategy	Not applicable to this Planning Proposal.	N/A
1.17 Implementation of the Bays West Place Strategy	Not applicable to this Planning Proposal.	N/A
1.18 Implementation of the Macquarie Park Innovation Precinct	Not applicable to this Planning Proposal.	N/A
1.19 Implementation of the Westmead Place Strategy	Not applicable to this Planning Proposal.	N/A
1.20 Implementation of the Camellia-Rosehill Place Strategy	Not applicable to this Planning Proposal.	N/A
1.21 Implementation of South West Growth Area Structure Plan	Not applicable to this Planning Proposal.	N/A
1.22 Implementation of the Cherrybrook Station Place Strategy	Not applicable to this Planning Proposal.	N/A
Focus area 3: Biodiversity and Conservation		
3.1 Conservation Zones	The public open space to the immediate south of Key Sites 3 & 10 is not identified as an environmentally sensitive area.	N/A
3.2 Heritage Conservation	The public open space to the immediate south of Key Sites 3 & 10 is not identified as a heritage item under any statutory instrument or non-statutory register or study. The public open space to the immediate south of Key Sites 3 & 10 is not identified as an Aboriginal object, area, place, or landscape under any statutory instrument or non-statutory register or study.	N/A
3.3 Sydney Drinking Water Catchments	Not applicable to this Planning Proposal.	N/A
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable to this Planning Proposal.	N/A
3.5 Recreation Vehicle Areas	Not applicable to this Planning Proposal.	N/A
3.6 Strategic Conservation Planning	The public open space to the immediate south of Key Sites 3 & 10 is not identified as avoided land or a strategic	N/A

Direction	Response	Consistent
	conservation area under the <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> .	
3.7 Public Bushland	Not applicable to this Planning Proposal.	N/A
3.8 Willandra Lakes Region	Not applicable to this Planning Proposal.	N/A
3.9 Sydney Harbour Foreshore and Waterways Area	Not applicable to this Planning Proposal.	N/A
3.10 Water Catchment Protection	Not applicable to this Planning Proposal.	N/A
Focus area 4: Resilience and Hazards		
4.1 Flooding	The public open space to the immediate south of Key Sites 3 & 10 is not identified as being flood prone.	N/A
4.2 Coastal Management	Not applicable to this Planning Proposal.	N/A
4.3 Planning for Bushfire Protection	Not applicable to this Planning Proposal.	N/A
4.4 Remediation of Contaminated Land	Not applicable to this Planning Proposal.	N/A
4.5 Acid Sulfate Soils	Not applicable to this Planning Proposal.	N/A
4.6 Mine Subsidence and Unstable Land	Not applicable to this Planning Proposal.	N/A
Focus area 5: Transport and Infrastructure		
5.1 Integrating Land Use and Transport	In its current form, the 'zero-impact' restriction imposed by Clause 8.2 of the LEP significantly inhibits the development potential of Key Sites 3 & 10 in the Penrith City Centre as anticipated by the FSR bonuses provided for in Clause 8.7. Amending Clause 8.2 to remove the restriction on the public open space to the immediate south of Key Sites 3 & 10 will result in increased densities on these Key Sites in accordance with strategic policies and Clause 8.7 of the LEP. Providing high-density housing on these Key Sites will achieve the objective of this Planning Direction by: - Improving access to housing, jobs and services in an existing urban environment which is accessible on foot, on cycle, and by public transport. - Increasing resident populations around a key public transport node in proximity to employment, education, and services, thereby reducing dependence on cars. - Optimise the uptake and use of public transport to and from the Penrith City Centre.	Yes.
5.2 Reserving Land for Public Purposes	The LEP amendment sought by this Planning Proposal entails the permissibility of some overshadowing on the public open space to the immediate south of Key Sites 3 & 10.	Yes.

Direction	Response	Consistent
	The proposed LEP amendment will not create, alter, or reduce the existing RE1 zoning of the land.	
5.3 Development Near Regulated Airports and Defence Airfields	Not applicable to this Planning Proposal.	N/A
5.4 Shooting Ranges	Not applicable to this Planning Proposal.	N/A
Focus area 6: Housing		
6.1 Residential Zones	The land which is the subject of this Planning Proposal is zoned part-RE1 Public Recreation and part-R4 High Density Residential. The portion of the land which is zoned R4 forms part of the public open space and does not accommodate any residential development. The proposed amendments to the LEP sought by this Planning Proposal will, however, directly impact the development potential of land zoned MU1 Mixed Use. In its current form, the 'zero-impact' requirement of Clause 8.2 reduces the permissible residential density of Key Sites 3 & 10, as they are at present unable to benefit from the FSR and height bonuses provided in Clause 8.7 due to overshadowing impacts on the public open space to the immediate south of Key Sites 3 & 10. The current Clause 8.2 is, therefore, inconsistent with this Planning Direction. Amending Clause 8.2 as proposed in this application will result in consistency with the Planning Direction. Consistent with Planning Direction 6.1, the proposed amendments to Clause 8.2 of the LEP will: ▪ Broaden the choice of building types and locations available in the housing market, by lifting the restrictive LEP provision which, at present, inhibits Key Sites 3 & 10 in the Penrith City Centre to maximise their development potential as anticipated by the FSR bonus provided in Clause 8.7 of the LEP. ▪ As a result, make more efficient use of existing infrastructure and services by providing high-density housing in a strategic urban centre. ▪ Reduce the consumption of land for housing and associated urban development on the urban fringe, by providing high-density housing on Key Sites 3 & 10.	Yes.
6.2 Caravan Parks and Manufactured Home Estates	Not applicable to this Planning Proposal.	N/A
Focus area 7: Industry and Employment		
7.1 Employment Zones	The land which is the subject of this Planning Proposal is zoned part-RE1 Public Recreation and part-R4 High Density Residential. The proposed amendments to the LEP sought by this Planning Proposal will, however, directly impact the development potential of land zoned MU1 Mixed Use. As discussed at Planning Direction 6.1, above, the current wording of Clause 8.2 of the LEP inhibits the ability of Key Sites 3 & 10 to achieve their respective densities as	Yes.

Direction	Response	Consistent
	anticipated by Clause 8.7, due to the 'zero-impact' restriction imposed by Clause 8.2. Amending Clause 8.2 to exclude the public open space to the immediate south of Key Sites 3 & 10 will, therefore, give effect to the objectives of Direction 7.1 by: - Retaining the areas and locations of Employment zones in the Penrith City Centre, including the MU1 zone. - Not reducing the total potential floor space area for employment uses and related public services in the MU1 zone.	
7.2 Reduction in non-hosted short-term rental accommodation period	Not applicable to this Planning Proposal.	N/A
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable to this Planning Proposal.	N/A
Focus area 8: Resources and Energy		
8.1 Mining, Petroleum Production and Extractive Industries	Not applicable to this Planning Proposal.	N/A
Focus area 9: Primary Production		
9.1 Rural Zones	Not applicable to this Planning Proposal.	N/A
9.2 Rural Lands	Not applicable to this Planning Proposal.	N/A
9.3 Oyster Aquaculture	Not applicable to this Planning Proposal.	N/A
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable to this Planning Proposal.	N/A

5.3.3. Section C – Environmental, social, and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

No.

The public open space to the immediate south of Key Sites 3 & 10 comprises a man-made road reserve, created following the establishment of Mulgoa Road in the c.1980s. It is not known to contain any significant population of critical habitat or threatened species. Notwithstanding, the amendments sought in this Planning Proposal do not seek to alter or destroy this portion of land; rather, it is simply sought to allow some overshadowing over it as a result of increased building density in its vicinity.

9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

The public open space to the immediate south of Key Sites 3 & 10 is not identified as an area of "Recreation & Open Space" in the Penrith Green Grid Strategy. Its relative significance as a public open space in the vicinity of the Penrith City Centre is, therefore, dubious. Notwithstanding, this Planning Proposal simply seeks to allow some overshadowing over this portion of land as a result of high-density development in the

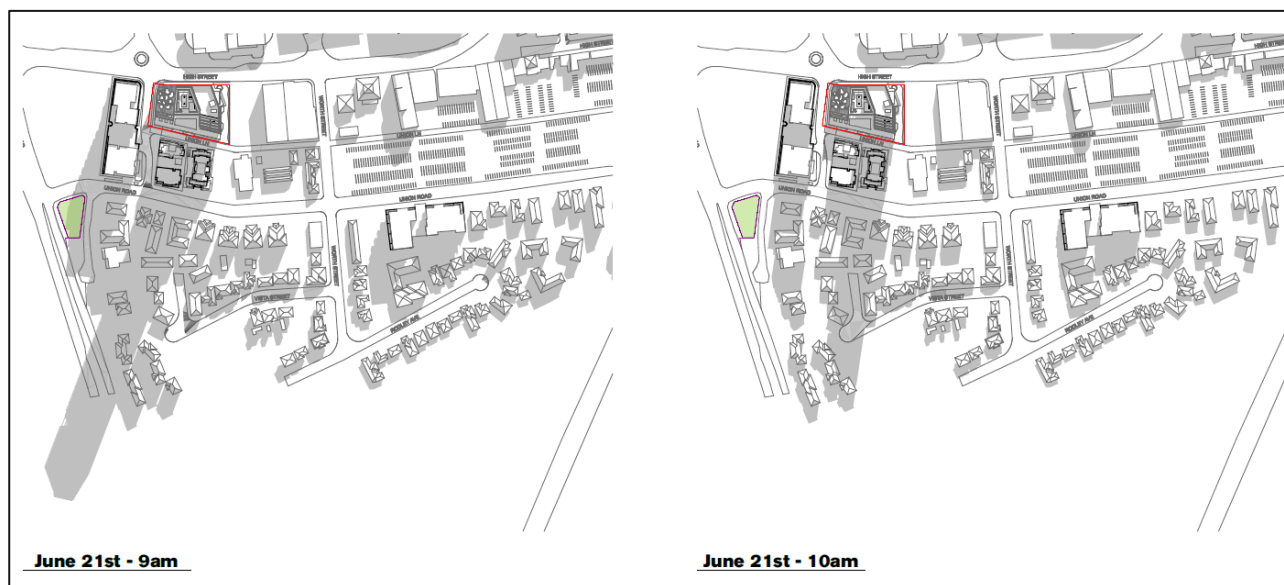
Penrith City Centre. It is not sought to alter or remove this space. Its utility value will, therefore, not be unreasonably impacted.

Overshadowing studies were undertaken as part of the refused UPG and Toga DAs, which examined potential solar access impacts on the public open space in question. These studies are included as **Appendix B** and **Appendix C** to this report. Results of the studies are summarised below:

The UPG development

- The UPG development was tested in conjunction with the approved Toga development (DA18/0264).
- The creation of no additional overshadowing at specified times would necessitate a significant yield loss. This is most evident at 8am on March 11, where the UPG development (presuming the footprint remained the same) would need to be reduced by 27 storeys in order to create no additional overshadowing, and at 7am on September 17 where the building would need to be reduced by 31 storeys in order to cast no additional shadow. These examples are shown in the figures below. Such substantial yield loss would translate directly to a significant loss of dwelling capacity on this part of Key Site 10.
- At the vernal equinox, the UPG scheme overshadows the public open space at 8am and 9am only. No shadows are cast onto the land after 9am at mid-summer.
- The UPG development does not cast any additional shadows over the public open space to the south after 9am on the autumn equinox. Similarly, by 9am on other specified days, the additional shadows cast by the UPG development would be relatively minimal.
- No shadows would be cast over the public open space after 10am on any of the specified days, including at mid-winter.

Figure 26 – Mid-winter overshadowing studies, showing no overshadowing on the public open space by the UPG development (outlined red) after 9am.



Source: DKO Architects, 2022

Figure 27 – Yield loss required for the UPG development to achieve no additional overshadowing to the public open space (March 11 at left, September 17 at right)

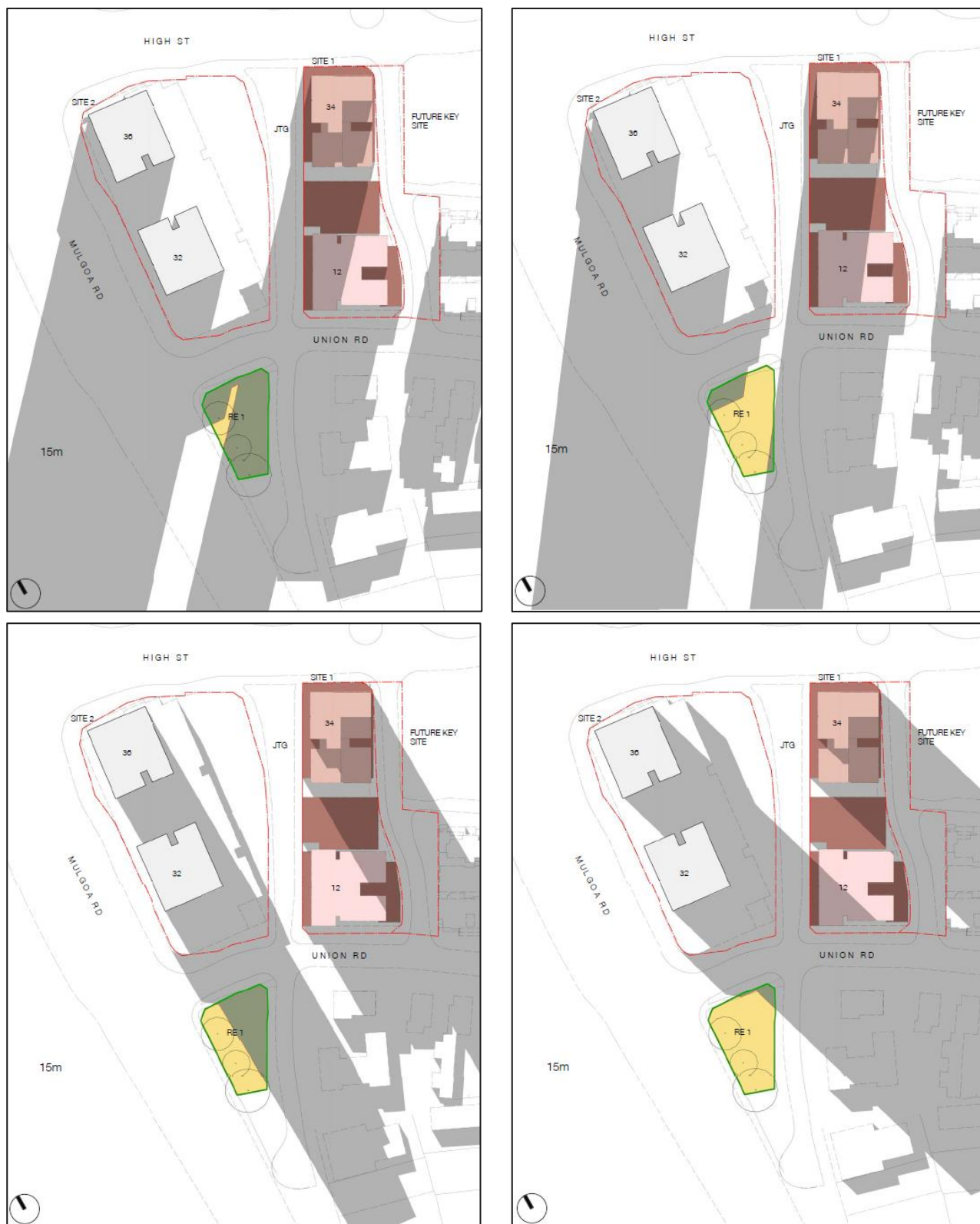


Source: DKO Architecture, April 2023

The proposed Toga development

- The proposed Toga development on Key Sites 3 & 10 overshadows the public open space to the south most significantly (i.e., by more than 50%) at 9am for 30 minutes, and between 11am-12.30pm at mid-winter (21 June).
- At 9.30am at mid-winter, the high-density building on part of Key Site 10 creates a small area of overshadowing to the south-east corner of the public open space. By 10am, there is no overshadowing to the public open space as a result of the development on part Key Site 10.
- By 1pm at mid-winter, the Toga development overshadows only a minor area of the public open space (at the north-east corner).
- By 1.30pm at mid-winter, the Toga development does not cast any shadows onto the public open space to the south.
- Given the location of Key Site 3 in relation to the public open space, it is submitted that virtually any form of development that sought to make use of the FSR uplift incentive in Clause 8.7 would overshadow the public open space to the south, essentially 'sterilising' this Key Site from being developed to its potential.

Figure 28 – Shadow impact of the proposed Toga development at 9am (top left), 9.30am (top right), 12pm (bottom left), and 1pm (bottom right) at mid-winter



Source: SJB, 2023

Overshadowing as a result of high-density development is an anticipated outcome of permitted uplift, such as that provided by Clause 8.7. In this regard, an important consideration is which land uses would be best able to accommodate overshadowing more than others. The Toga scheme on Key Sites 3 & 10 was designed to concentrate massing of the high-density forms to the western portion of the land. The UPG scheme was designed to concentrate massing of the high-density form to the eastern portion of the land.

Both schemes were designed to minimise overshadowing on the more sensitive residential land uses to the south of Union Road and, consequently, resulted in overshadowing over the public open space at Mulgoa Road. Additionally, both schemes were concluded by the independent Design Review Panel (and, in the case of the UPG scheme, the NSW Government Architect) to exhibit design excellence.

These assessments highlight the significant and unreasonable affect the rigid wording of Clause 8.2 has on the development potential of Key sites 3 and 10 relative to the quality and character of the area of open space.

10. Has the planning proposal adequately addressed any social and economic effects?

Yes.

The LEP amendment sought by this Planning Proposal aims to enable some overshadowing to the public open space to the immediate south of Key Sites 3 & 10.

The Planning Proposal does not seek changes to the zoning or use of the land, nor will the LEP amendment result in any physical changes or development of the subject land.

Rather, the Planning Proposal seeks to unlock the development potential of Key Sites 3 & 10 within the Penrith City Centre which, due to the highly restrictive 'zero-impact' requirement of Clause 8.2, is currently inhibited. This 'zero-impact' requirement presents a conflict with Clause 8.7 of the LEP, which provides for significantly increased maximum FSRs on Key Sites within the Penrith City Centre subject to the concurrent provision of community infrastructure.

Due to the current wording of Clause 8.2, the development potential of Key Sites 3 & 10 remains heavily restricted and, as such, the landowners are not able to realise the planned residential uplift on their sites (in line with the FSR and height bonuses provided in Clause 8.7(4)) and, subsequently, no ability or incentive to provide the community infrastructure required by Clause 8.7(5).

While the proposed amendment to Clause 8.2 will result in some overshadowing impacts to the public open space to the immediate south due to the high-density development on Key Sites 3 & 10, the nature and amenity value of the public open space will remain unimpacted. Previous development applications on Key Sites 3 & 10, which have been refused development consent by Penrith City Council on the basis of overshadowing impacts to this small area of public open space, have demonstrated that the overshadowing would largely be restricted to limited times of the day and that, for the most part, the open space would retain a high degree of solar access (refer to response at Question 9, above).

In the context of a growing City Centre, such impact is not considered unreasonable. This argument is reinforced by the benchmarking study discussed at Section 4.2 of this report, which has found that even in major urban centres (such as the City of Sydney, Parramatta, etc.), the sun access provisions are highly nuanced such that they readily acknowledge the need to balance the amenity value of public open space with the urgent needs of city dwellers and workers to be provided adequate access to well-designed, efficient housing and employment premises. The rigid and un-nuanced restriction imposed by the current Clause 8.2 of the Penrith LEP, on the other hand, serves only to inhibit the development potential of certain Key Sites which are otherwise earmarked for increased densification. Prior to its amendment in 2019, the original wording of Clause 8.2 specified certain public places which were subject to overshadowing restrictions and provided confidence to landowners in the Penrith City Centre.

In light of this, it is considered that the modest overshadowing impacts on the public open space to the immediate south of Key Sites 3 & 10 which would result from amending Clause 8.2 would not, on the whole, adversely affect the balance of public open space within the context of an urbanising and densifying City Centre.

The Planning Proposal will therefore have net positive social and economic benefits for the broader community, as a result of permitting future development on Key Sites 3 & 10 which will provide a significant increase to housing stock and type within the LGA, in a strategic location which is in close proximity to public transport, employment, education, and services. It is considered that the proposal has addressed social and economic impacts and is, on balance, in the public interest.

5.3.4. Section D – Infrastructure (Local, State and Commonwealth)

11. Is there adequate public infrastructure for the planning proposal?

Yes.

The Planning Proposal seeks to enable overshadowing onto a small area of reserved land to the immediate south of Key Sites 3 & 10. This would be achieved through increased building densities on certain Key Sites in the Penrith City Centre, namely Key Sites 3 & 10.

The overshadowing, itself, would not impact the existing provision of public infrastructure.

It is acknowledged that the overshadowing will be the result of increased building densities on Key Sites 3 & 10. Impacts on local infrastructure have been previously assessed for high-density developments on these sites (densities which are in accordance with the maximum FSRs afforded by Clause 8.7 of the LEP), and were found at the time to be acceptable and manageable. Future development on Key Sites 3 & 10 will, however, need to be re-assessed in future for their impacts on public infrastructure. It is nonetheless noted that the Penrith City Centre is very well serviced by public transport, is in proximity to a new international airport, and will benefit from increased investment in road infrastructure and public open space (in accordance with the actions outlined in the *Penrith Green Grid Strategy*).

5.3.5. Section E – State and Commonwealth interests

12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The Gateway Determination will advise the public authorities to be consulted as part of the Planning Proposal process. Any issues raised will be incorporated into this Planning Proposal following consultation in the public exhibition period.

5.4. PART 4: MAPS

No LEP maps are proposed to be amended as a result of this Planning Proposal.

5.5. PART 5: COMMUNITY CONSULTATION

5.5.1. Consultation with Penrith City Council

Preliminary consultation at this stage has been limited to correspondence with Penrith City Council in November and December 2023. This included, on 14 November 2023, the provision of a Scoping Report, as discussed at Section 1.2.2 of this report.

Following Council's review of the Scoping Report, it was indicated that the proposed amendments to Clause 8.2, the options for which were provided in the initial Scoping Report, would not be supported due to Council's forthcoming review of the provisions of Clause 8.2 & 8.7. A copy of Council's correspondence is attached at **Appendix A** of this report.

However, it is considered that this review – for which no indicative timings have been provided – will only cause significant delays to the ability of the Penrith LGA to meet its projected housing targets and community infrastructure needs, especially when considered that Key Sites 3 & 10 are 'shovel-ready' with well-established landowners who are motivated to see the City Centre grow and mature.

Several requests for an in-person meeting between the Proponent and Council were made following the issue of the Scoping Report and receipt of Council's preliminary comments, however no such meeting has yet eventuated.

5.5.2. Community consultation

Division 3.4 of the EP&A Act requires the relevant planning authority to consult with the community in accordance with the gateway determination. It is anticipated that the Planning Proposal will be publicly exhibited for at least 28 days in accordance with the requirements of the DPE guidelines '*A Guide to Preparing Local Environmental Plans*'.

It is anticipated that the public exhibition would be notified by way of:

- A public notice in the local newspaper(s).
- A notice on the Council website.
- Written correspondence to adjoining and surrounding landowners.

The gateway determination and Planning Proposal would be publicly exhibited at Council's offices and any other locations considered appropriate to provide interested parties with the opportunity to view the submitted documentation.

5.6. PROJECT TIMELINE

The following table sets out the anticipated project timeline in accordance with Department guidelines. The key milestones and overall timeframe will be subject to further detailed discussions with Council and the DPHI.

Table 11 – Anticipated project timeline

Process	Indicative timeframe
Registration and submission of PP to Council	February 2024
Consideration of PP by Council	February – May 2024
Council decision	May 2024
Gateway Determination	June 2024
Commence and complete public exhibition	6 weeks
Consideration of submissions	3 weeks
Proposal reported back to Council for endorsement	August 2024
Submission to DPHI for plan finalisation	September 2024
Gazettal of LEP amendment	November 2024

6. CONCLUSION

This Planning Proposal request has been prepared by Urbis Ltd on behalf of UPG and Toga to initiate the preparation of an amendment to Clause 8.2 of the Penrith LEP as it relates to sun access.

As has been highlighted throughout this report, the current wording of 8.2 contrasts with the broader strategic objectives of densifying the Penrith City Centre and providing greater housing supply and choice. The Penrith City Centre, as 1 of 6 Metropolitan Clusters within Greater Sydney, will soon benefit from the significant investment in infrastructure (including new freight lines and the Western Sydney International Airport / Bradfield Aerotropolis). As identified in a suite of State and local strategic planning policies, the Penrith City Centre is well placed to take on higher density development, noting its proximity to existing and future employment opportunities, educational facilities, and civic services.

The proposed LEP amendment entails an addition to Clause 8.2 to remove its application with respect to Key Sites 3 & 10 which would allow for some overshadowing on a small area of public open space to their immediate south. This, subsequently, would enable the achievement of the strategic density uplift on these Key Sites (land which is owned by the proponents) in accordance with the provisions of Clause 8.7 of the LEP. The rigid, 'zero-impact' overshadowing requirements of Clause 8.2, in their current form, are a major inhibitor to achieving the anticipated uplift on these Key Sites.

The proposed LEP amendment has been discussed in this report in relation to relevant strategic and statutory considerations. It is found that the proposed amendment demonstrates strategic and site-specific merit, for the following reasons:

- Penrith City Centre is identified in all relevant State- and local-level strategic planning policies as ideally suited to take on increased development density and, specifically, to accommodate high-density residential development.
- Clause 8.2, as currently worded, is found to be unreasonably rigid such that it inhibits the ability of landowners of Key Sites 3 & 10 to realise the planned, significant residential uplift on their sites as envisioned by Clause 8.7. This has resulted in refused DAs for high-density residential development on both Key Sites, which could have provided up to 1,500 new dwellings in a key metropolitan centre, in conjunction with new community infrastructure. The current wording and application of Clause 8.2, therefore, inhibits the application of Clause 8.7. Indeed, no proposals on any Key Sites have been delivered since the introduction of the Key Sites controls into the Penrith LEP.
- Amending Clause 8.2 will enable the strategic uplift on Key Sites 3 & 10 to provide a significant amount of new housing in proximity to employment opportunities, educational facilities, and civic and commercial services. An increase in the local resident population will serve as a catalyst for the future sustainable economic growth of the City Centre and, indeed, the broader LGA (including at the Aerotropolis, The Quarter health & education precinct, and emerging employment centres).
- Developing to higher densities within an already urbanised area, such as the Penrith City Centre, will minimise the need for new housing on greenfield or environmentally valuable areas and help facilitate the achievement of the LGA's housing targets. This is particularly important, given the large areas of protected natural land and flood-prone within the Penrith LGA.
- Previous modelling of increased densities on Key Sites 3 & 10 has shown relatively modest overshadowing impacts on Key Sites 3 & 10. Additionally, the LEP amendment sought by this Planning Proposal does not seek to change the zoning of, or physical nature of, the area of public open space to the immediate south of these Key Sites.
- The proposed amendment to Clause 8.2 will result in alignment with the objectives and provisions of Clause 8.7, to enable density uplift on Key Sites within the Penrith City Centre subject to the provision of community infrastructure.

The Planning Proposal request has been prepared in accordance with DPE guidelines and is considered appropriate, as it has significant strategic and site-specific merit as set out in this report and summarised above.

Accordingly, it is recommended the Planning Proposal is **endorsed** by Council to enable a Gateway Determination by the DPHI.

DISCLAIMER

This report is dated 13 February 2024 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Urban Property Group & Toga (**Instructing Party**) for the purpose of a Planning Proposal (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

APPENDIX A

RESPONSE TO SCOPING REPORT FROM PENRITH CITY COUNCIL, 29 NOVEMBER 2023



Our reference: InfoStore
Contact: Peter Failes
Telephone: 4732 7638

29 November 2023

Mr John Wayne
Director
Urbis
Angel Place, Level 8
123 Pitt Street
Sydney NSW 2000

Sent by email: jwynne@urbis.com.au

Dear John

**Pre-lodgement Planning Proposal to amend Clause 8.2 of Penrith
Local Environmental Plan 2010**

I am writing to respond to the Planning Proposal Scoping Report – November 2023 (Scoping Report), emailed to Council on 14 November 2023, and your request to meet with Council Officers for Pre-lodgement Planning Proposal feedback on a proposed amendment to Clause 8.2 of Penrith Local Environmental Plan (LEP) 2010, relating to sun access controls.

Council understands that the Scoping Report proposes amendments to Clause 8.2 in general, which would more broadly affect development within the Penrith City Centre. However, the impetus for this amendment is to remove or adjust the LEP controls currently requiring sun access to the neighbouring public open space (bounded by Union Road, Mulgoa Road and John Tipping Grove), which restricts development of Key Sites 3 and 10 at 614-632 High Street, Penrith owned by UPG and at 634-638 High Street and 87-89 Union Road, Penrith owned by Toga.

Penrith City Council
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Council is already undertaking a review of potential amendments to Clause 8.7 *Community infrastructure on certain key sites* and Clause 8.2 *Sun access* of Penrith LEP 2010. This involves considering

appropriate built form, the designated development controls for land identified as a key site on the Key Sites Map within the Penrith City Centre, provision of community infrastructure associated with key sites and appropriate protection of sun access to public open space from development within the Penrith City Centre.

We will not support the amendments to Clause 8.2, as outlined in the submitted Scoping Report, in isolation from this broader review. In view of this, we ask that you to consider withdrawing your request for a Pre-lodgement Planning Proposal.

We note that a Council-initiated Planning Proposal relating to Clause 8.2 and 8.7 would also allow opportunity for your input during future Council reporting, and, if a Gateway Determination is issued, during a public exhibition of the Planning Proposal. Council will notify you about these as they arise.

If you have any questions about this matter, please contact Peter Failes at Peter.Failes@penrith.city or on 02 4732 7838.

Yours sincerely



Abdul Cheema
A/ City Planning Manager