URBIS

PLANNING PROPOSAL

Penrith LEP 2010 | Clause 8.2
(Sun access)

Prepared for
URBAN PROPERTY GROUP & TOGA
28 August 2025

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1. INTRODUCTION

1.1. OBJECTIVES AND INTENDED OUTCOMES

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 3 and Key Site 10.

The proposed amendments to Clause 8.2 of the Penrith LEP 2010 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.

1.2. BACKGROUND TO THIS PLANNING PROPOSAL

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)

Figure 2 – Proposed UPG scheme (DA20/0148)

Source: SJB, 2020

Source: DKO Architects, 2022

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

Source: Google Maps, 2024

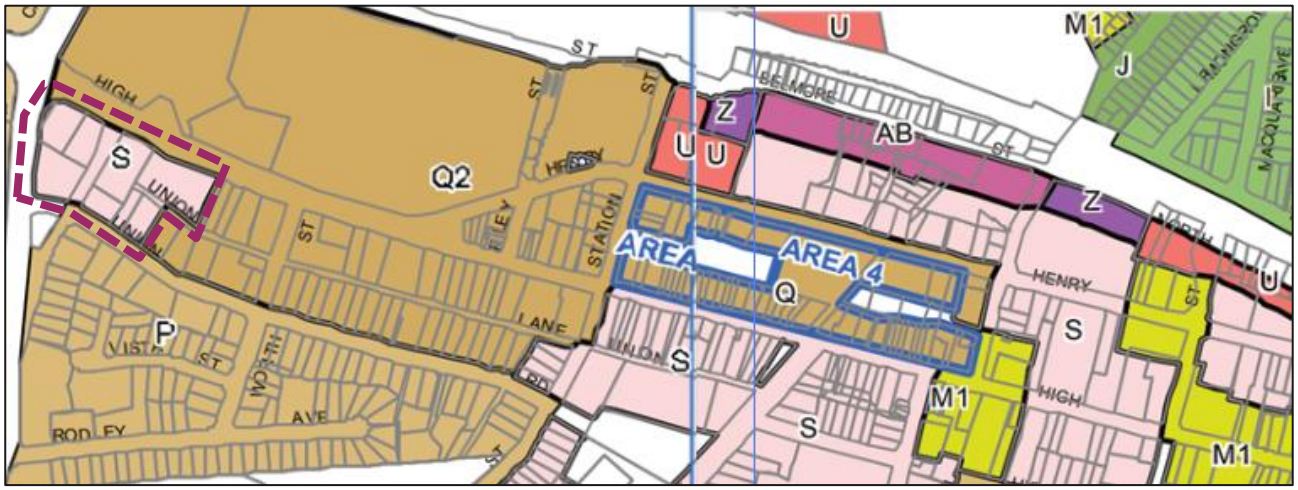
1.3. CLAUSES 8.2 AND 8.7 OF THE PENRITH LEP 2010

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.

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.

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 may be unable to appropriately utilise their key site incentive provisions under Clause 8.7 of the LEP. Specifically, the current sun access clause does not feasibly permit the redevelopment of Key Sites 3 and 10 above the base mapped height control of 24 metres, owing to their location to the north of a small area of open space.

[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.

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.

A detailed overview of the evolution of Clauses 8.2 and 8.7 is included at **Section 3** of this report.

1.4. 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:** Overview of site context.
- **Section 3:** Explanations of the proposed amendment to the Penrith LEP 2010 as sought by this Planning Proposal.
- **Section 4:** Justification of strategic and site-specific merit, outcomes, and the process for implementation of the proposed amendment to the Penrith LEP 2010.
- **Section 5:** Overview of consultation carried out as part of the preparation of this Planning Proposal.
- **Section 6:** Project timeline, detailing the anticipated timeframe for the proposed amendment to the Penrith LEP 2010.

[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

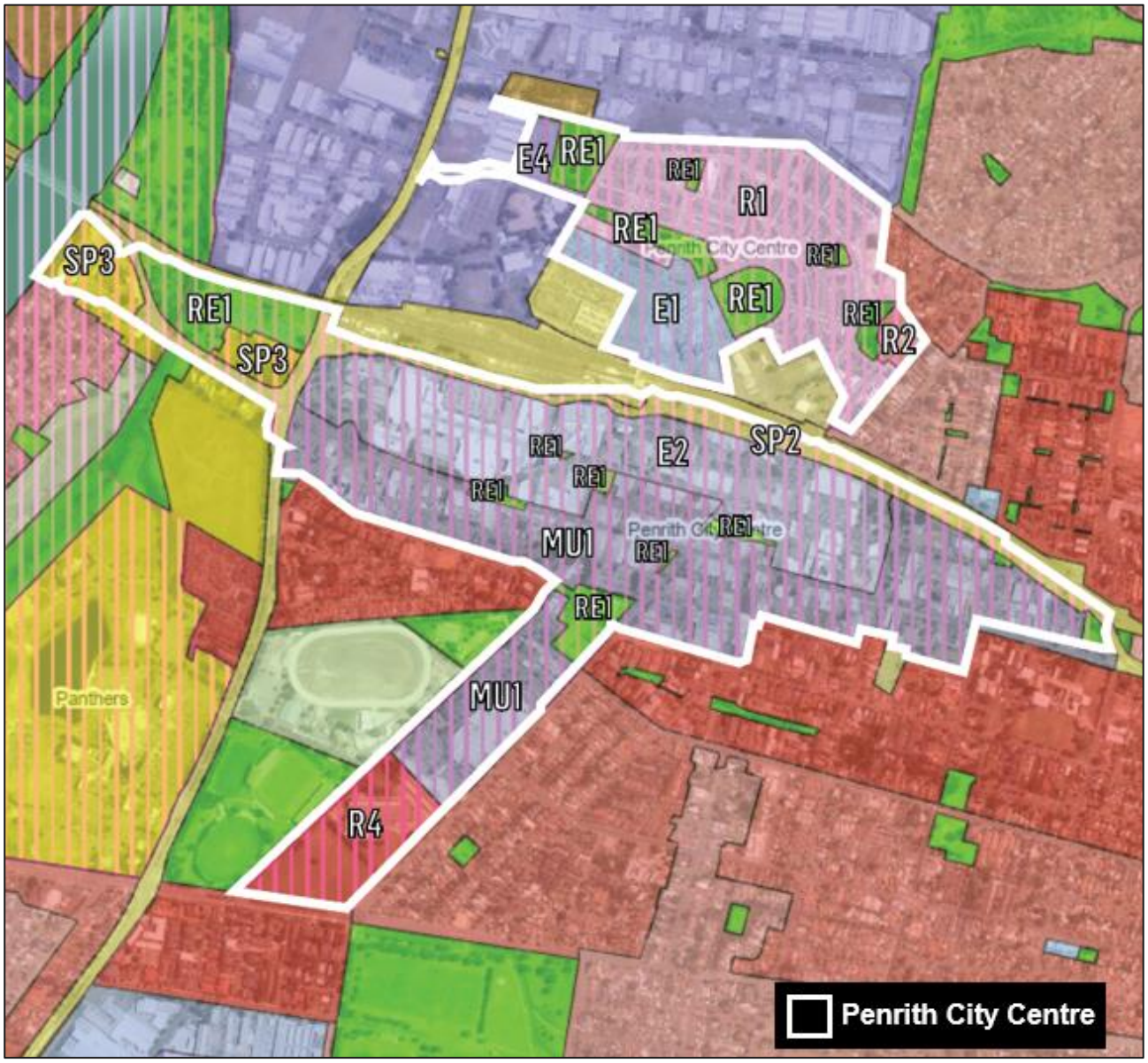
2.1. PENRITH CITY CENTRE

The land to which this Planning Proposal relates is in 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.

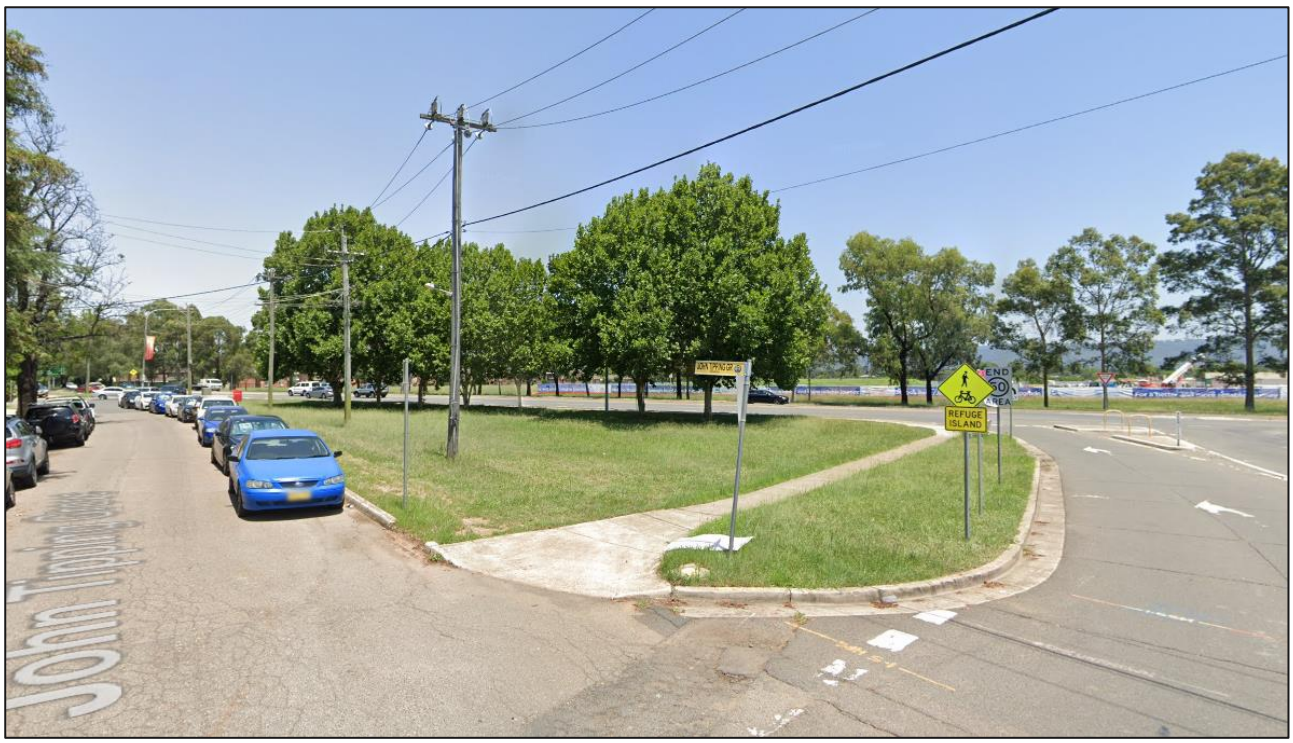
The site is effectively an 'island' with multiple frontages to busy roads, which diminish the amenity and safety of the open space for either active or passive recreation uses.

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

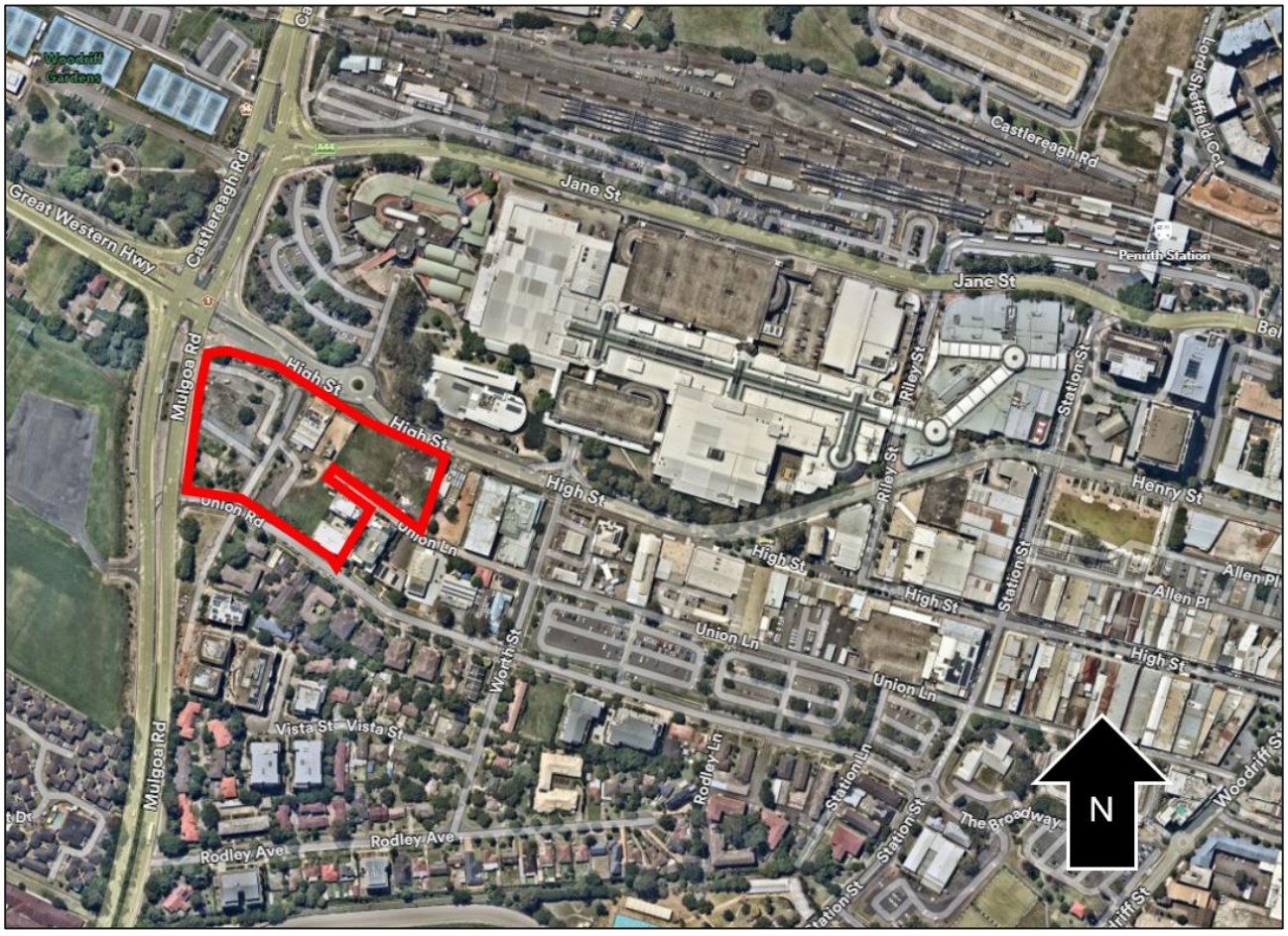
2.3. SITE DESCRIPTION - KEY SITES 3 AND 10

The Key Sites to which this Planning Proposal applies are:

- **Key Site 3**
  - Part of 87-93 Union Road, Penrith (west of John Tipping Grove) – owned by Toga
- **Key Site 10**
  - Part of 87-93 Union Road, Penrith (east of John Tipping Grove) – owned by Toga
  - 614-632 High Street, Penrith – owned by UPG
  - 83-85 Union Road, Penrith – landowners of Strata Plan 94936

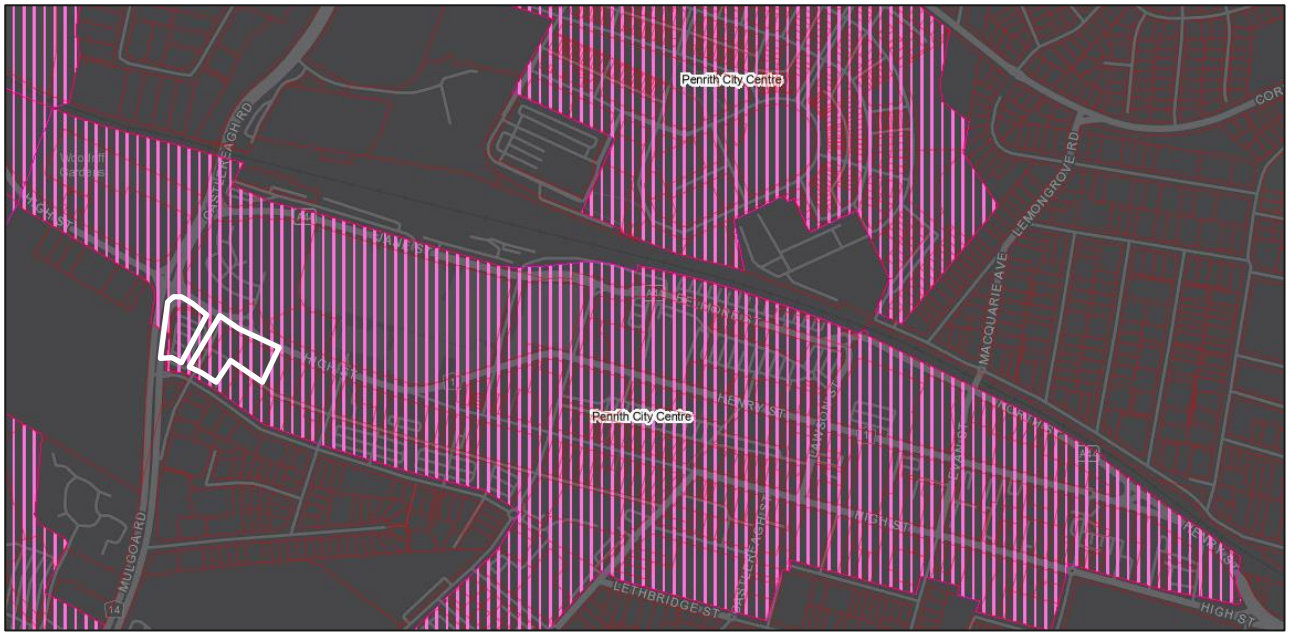
Both sites are situated within the boundaries of the Penrith City Centre, as mapped in the LEP, and located within a 1km catchment of Penrith Railway Station.

Figure 9 – Site location



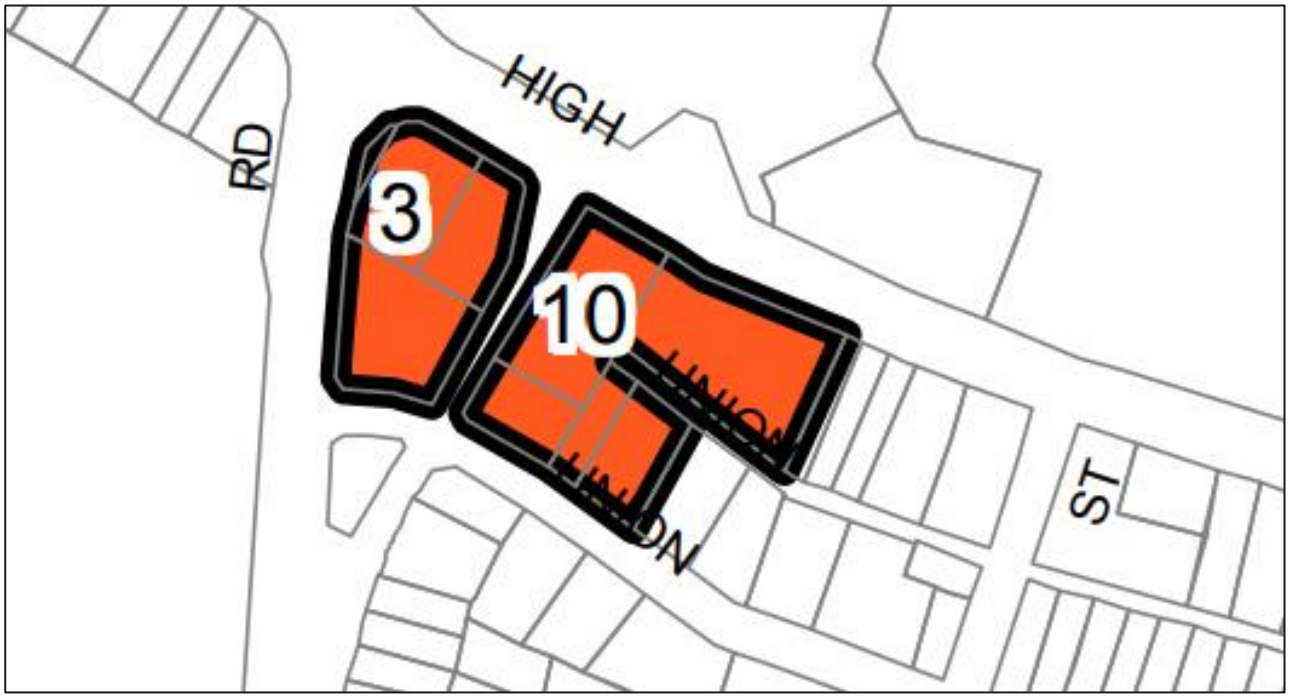
Source: Nearmaps, 2025 – the site highlighted red

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

3. EXPLANATION OF PROVISIONS

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

3.1. CURRENT CLAUSE 8.2

The current wording of Clause 8.2 of the Penrith LEP 2010 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.The Proposed Amendment*

3.2. PROPOSED AMENDED CLAUSE

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.

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.**

(Note: the final drafting of the provision is subject to Parliamentary Counsel's legal drafting process.)

The effect of this LEP 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).

3.3. OTHER MATTERS

No amendments are sought to any other 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 will not require any amendments to existing LEP maps.

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.

3.4. BACKGROUND

3.4.1. Development Standards for Penrith City Centre (Penrith LEP 2010, 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."*

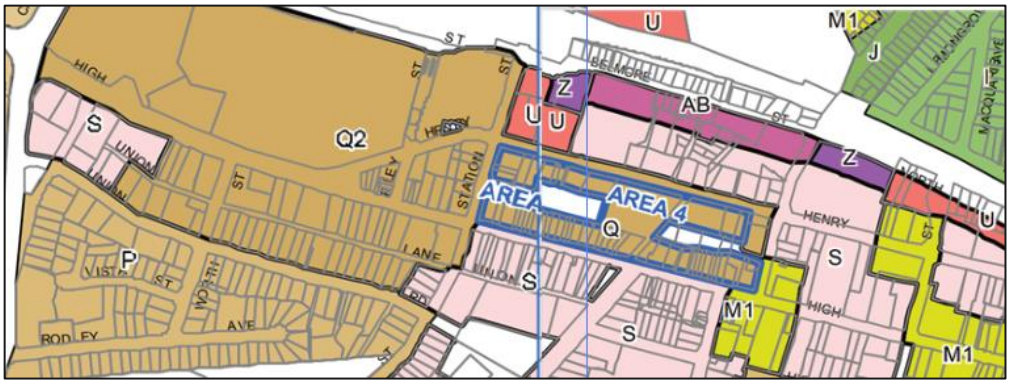
On the basis of these provisions, Council has recently recommended refusals for, and the NSW LEC has refused, DAs seeking to utilise the incentive FSR and height provisions on Key Sites 3 and 10, owing to non-compliance with the sun access provisions contained in Clause 8.2 of the LEP. This has resulted 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.

3.4.2. Background to LEP Part 8 Penrith City Centre 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 *Penrith City Centre LEP 2008*. 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 *Penrith City Centre LEP 2008*. **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.*

Date	Provision/s
	(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 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: *"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"* (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 *"reflect the desired character of the localities in which they are allowed and to minimise adverse impacts on these localities."* 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.

Date	Provision/s
	Clause 8.1 (Application of Part) and **Clause 8.2** (Sun access) remain unchanged.
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: *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.* *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.* Clause 8.2 now reads: *(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.* Note that Clause 8.2 has not been amended since this revision to the LEP. **Clause 8.1** (Application of Part), similarly, remains unchanged.

3.4.3. Discussion

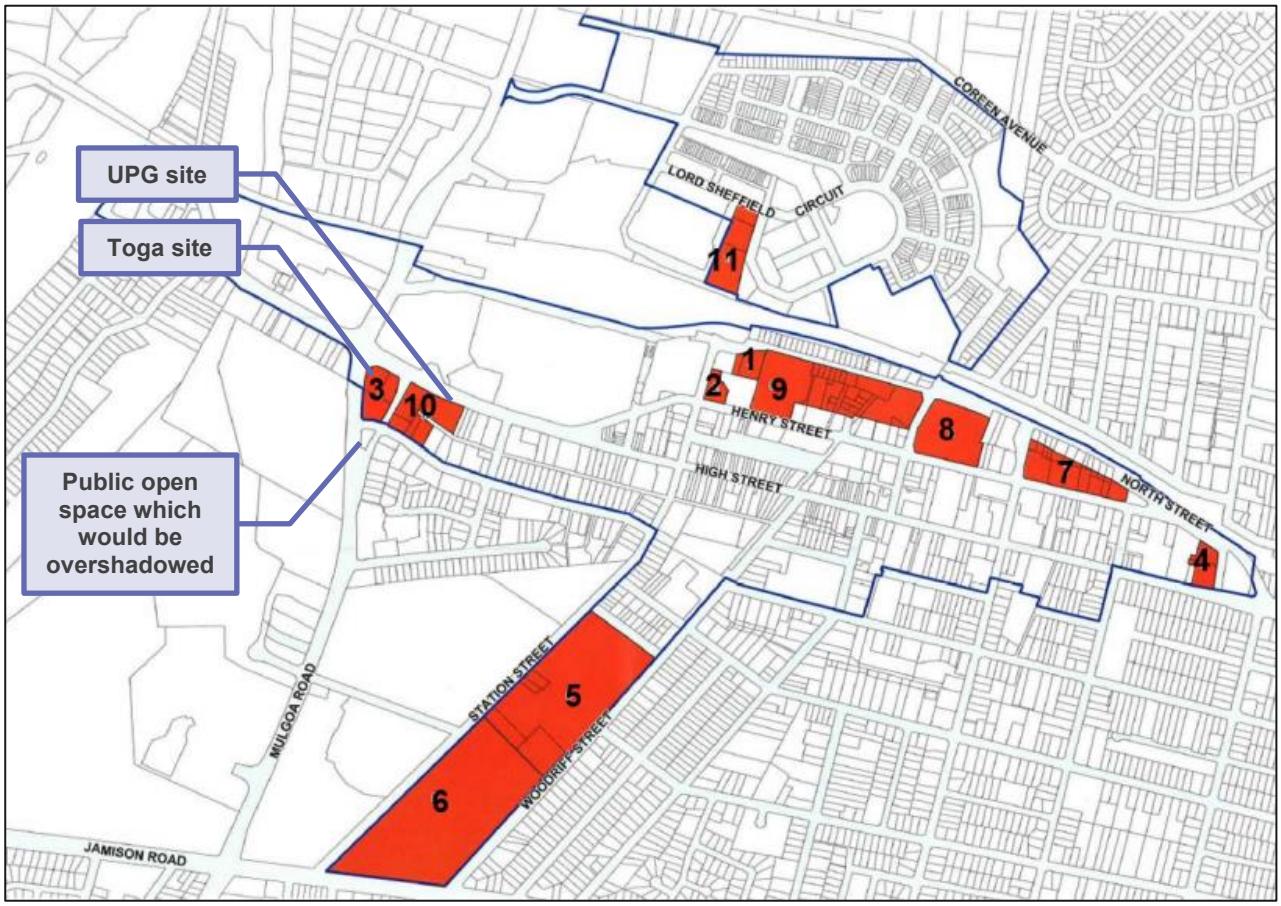
Planning controls for development in the Penrith City Centre were transferred from the *Penrith City Centre LEP 2008* into the Penrith LEP 2010 via an amendment made in 2015. In accordance with Clause 8.1, these provisions have only ever applied to land mapped as the Penrith City Centre and, while other 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 12 – Penrith City Centre Key Sites map



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

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.

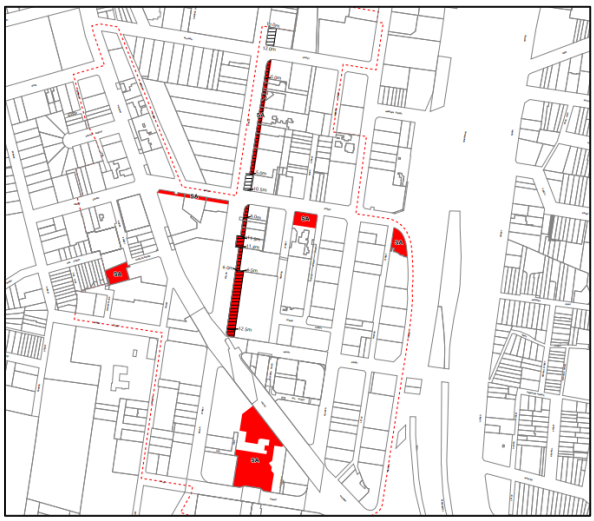
Following the repeal of sub-clause 8.2(2) in the 2019 LEP amendment to remove the specified sites from overshadowing protection and instead have the sun access provisions apply to all public open space within the Penrith City Centre, there is now a disconnect between the strategic intent of Clause 8.7 and the rigid, catch-all provisions of Clause 8.2.

3.5. BENCHMARKING WITH OTHER LEPS

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
Liverpool LEP 2008	▪ 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.
Parramatta LEP 2023	▪ 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.
Sydney LEP 2012	▪ 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.
North Sydney LEP 2013	▪ 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, overleaf, showing areas protected from overshadowing in red).

EPI	Comments
	 ▪ 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. JUSTIFICATION

This section assesses the strategic and site-specific merit of the Planning Proposal in accordance with relevant State- and local-level guidelines and policies. This includes justification and evaluation of potential environmental impacts associated with the proposed LEP amendment as sought by this Planning Proposal.

4.1. SUMMARY 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:*		
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?	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.**
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?	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.**
Respond to a change in circumstances that has not been recognised by the existing planning framework?	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, noting in particular the Premier's Priority of "More and better homes" which focuses on supply, affordability, resilience, and diversity.	**Yes.**

Assessment criterion	Response	Consistent
	▪ 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:*		
The natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources, or hazards)?	Refer to Section C Questions 8 & 9, below, for an assessment of the suitability of the natural environment.	
Existing uses, approved uses, and likely future uses of the land in the vicinity of the land to which the proposal relates?	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.**
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?	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.**

4.2. 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.

4.3. 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

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.

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 8.7 of the LEP, will assist in the development of Penrith City Centre as a physically and socially connected place.	**Yes.**
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 *"Good strategic planning can link the delivery of new homes in the right locations with local infrastructure."* 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	**Yes.**

Direction	Response	Consistent
	agreements with Council, provide increased accessibility and walkability throughout the City Centre.	
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 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.	**Yes.**

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 indicates 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.

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 live. Amending the	**Yes.**

Planning Priority	Response	Consistent
	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.	
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.**
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	**Yes.**

Planning Priority	Response	Consistent
	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.	
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.**
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 it is 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 be a would be a direct result of the amendment to Clause 8.2 sought by this Planning Proposal, would result in a significant	**Yes.**

Planning Priority	Response	Consistent
	increase to local housing supply without the need to develop needlessly on greenfield land.	
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.

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.

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 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.	**Yes.**

Planning Priority	Response	Consistent
	Keeping Clause 8.2 in it is 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 *Greater Penrith Collaboration Area Place Strategy* 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 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,	**Yes.**

Planning Priority	Response	Consistent
	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 *Western Sydney Aerotropolis Plan* 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 Sutherland Performing Arts Centre, the Penrith Panthers complex, and Penrith Westfield. The LSPS identifies further opportunities to	**Yes.**

Planning Priority	Response	Consistent
	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.**

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
Collaboration Area – Greater Penrith Place Strategy	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
Employment Lands Strategy	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.**
East West Corridor Interim Centres Strategy	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.**
Local Housing Strategy	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.**
Penrith Green Grid Strategy	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	**Yes.**

Local Strategy	Response	Consistent
	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 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 (**SEPP**s) is demonstrated below.

Table 9 – Consistency with applicable SEPPs

SEPP	Response	Consistent
State Environmental Planning Policy (Resilience and Hazards) 2021	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.**
State Environmental Planning Policy (Biodiversity and Conservation) 2021	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.**
1.3 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.**
1.4 Site Specific Provisions	This Planning Proposal seeks to alter a highly restrictive Clause in the Penrith LEP in order to maximise the	**Yes.**

Direction	Response	Consistent
	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.	
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. The proposed LEP amendment will not create, alter, or reduce the existing RE1 zoning of the land.	**Yes.**
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	**Yes.**

Direction	Response	Consistent
	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.	
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 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.	**Yes.**

4.4. 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?

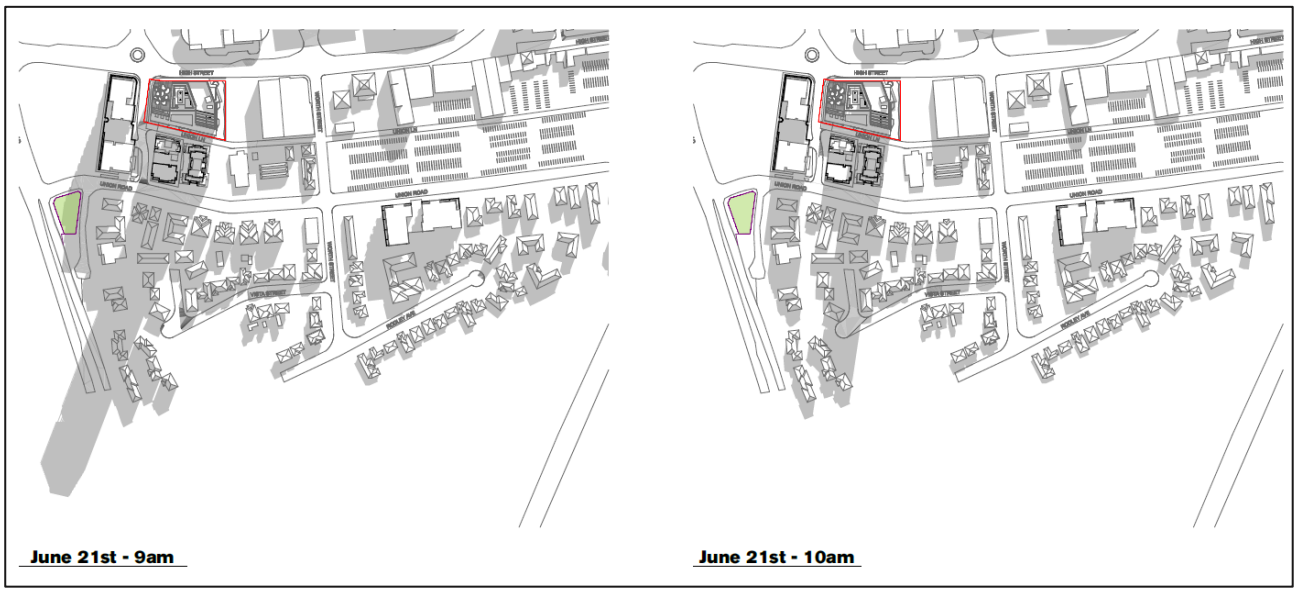
The public open space to the immediate south of Key Sites 3 & 10 is not identified as an area of "Recreation & Open Space" in the Penrith Green Grid Strategy. Its relative significance as a public open space in the vicinity of the Penrith City Centre is, therefore, dubious. Notwithstanding, this Planning 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 Proposed UPG development

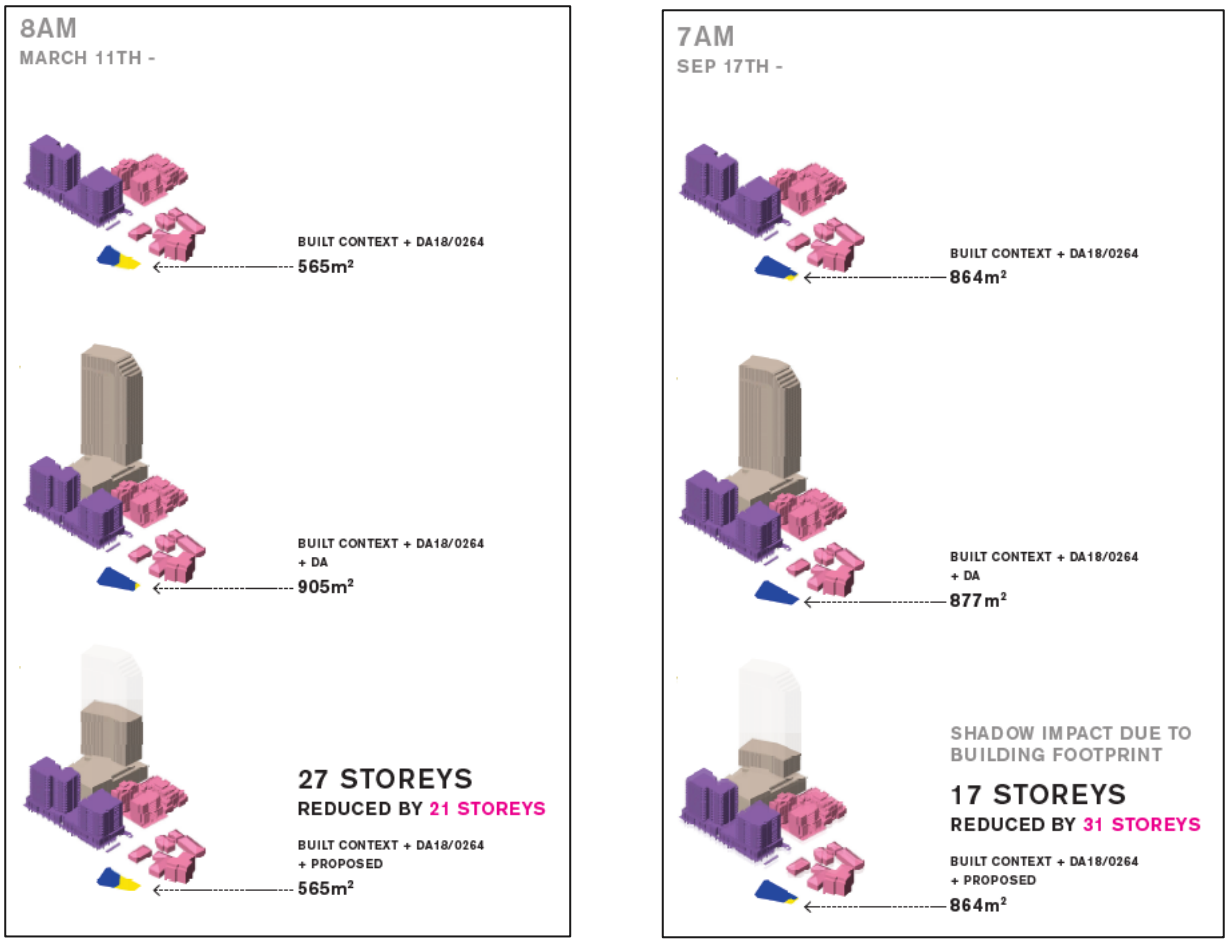
- The UPG development was tested in conjunction with the approved Toga development (DA18/0264).
- The creation of no additional overshadowing at specified times would necessitate a significant yield loss. This is most evident at 8am on March 11, where the UPG development (presuming the footprint remained 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 13 – 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 14 – 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)

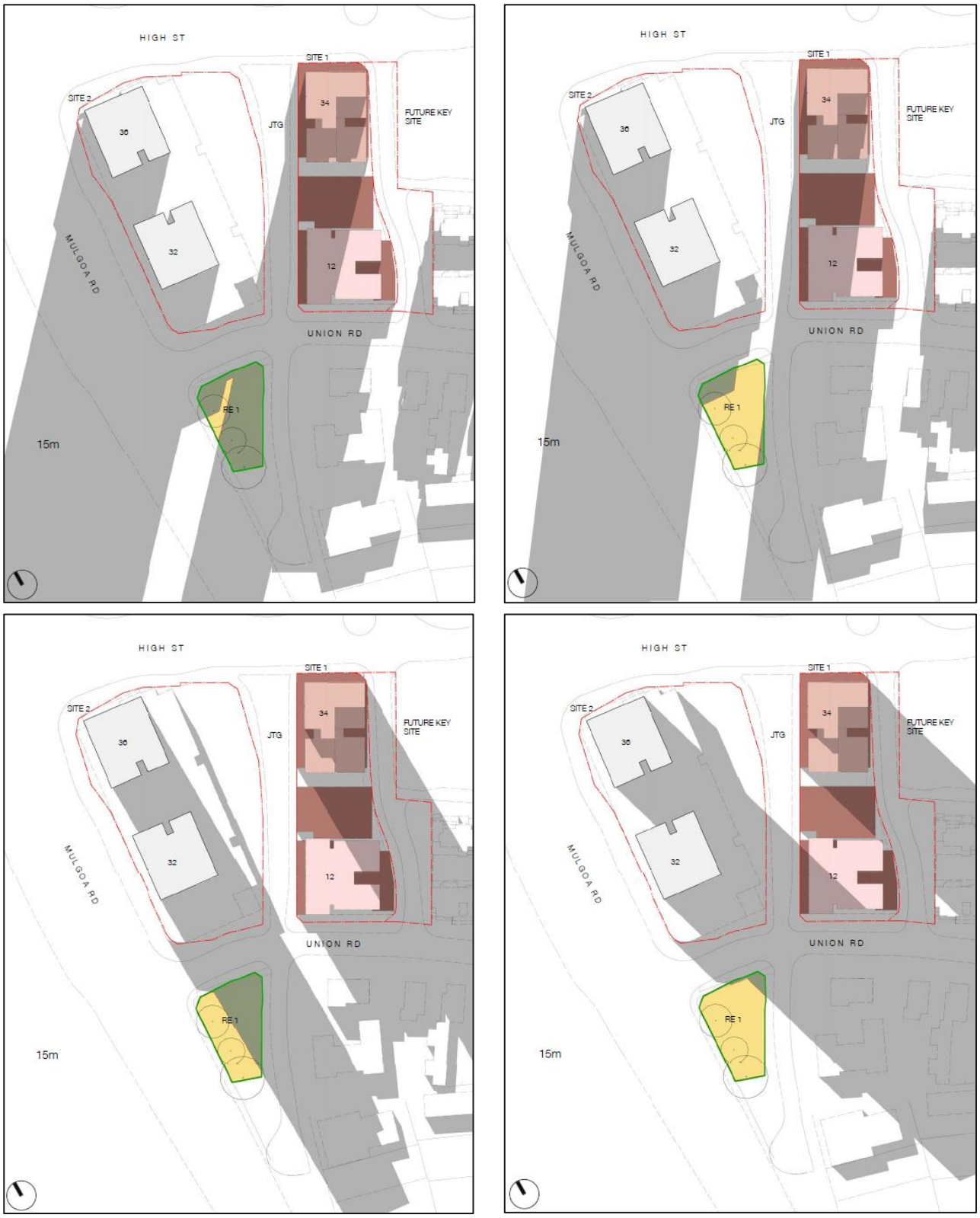


Source: DKO Architecture, April 2023

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 15 – 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.

4.5. SECTION D – INFRASTRUCTURE (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*).

4.6. 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. COMMUNITY CONSULTATION

5.1. CONSULTATION WITH PENRITH CITY COUNCIL

Urbis undertook preliminary consultation with Penrith City Council in November and December 2023.

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.

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.

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.

The Planning Proposal will be placed on public exhibition in accordance with the Gateway Determination and requirements of the LEP Making Guideline. The LEP Making Guideline indicates that consultation will be tailored to specific Proposals. The exhibition period for standard Planning Proposals is 20 days.

In accordance with the LEP Making Guideline, notification of the Planning Proposal at the public exhibition stage will occur:

- on the Planning Portal
- in writing to affected and adjoining landowners

6. PROJECT TIMELINE

The following table sets out the anticipated project timeline in accordance with Department guidelines for 'Standard' Planning Proposals. The key milestones and overall timeframe will be subject to further detailed discussions with Council and 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
Rezoning Review request	February 2025
Gateway Determination	July 2025
Post-Gateway	50 working days
Public Exhibition and Assessment	95 working days (including 20 days public exhibition)
Finalisation	55 working days

7. 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.

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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

APPENDIX B UPG OVERSHADOWING STUDIES

APPENDIX C TOGA OVERSHADOWING STUDIES

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