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28 January 2025

Murray Jay
Manager, Planning Proposal Authority
Department of Planning, Housing and Infrastructure

Sent by email to Ayva Hamed: ayva.hamed@planning.dpie.nsw.gov.au

Dear Murray

**Comment on Request for Rezoning Review – 634–638 High Street,
Penrith and 87–93 Union Road, Penrith (RR-2024-30)**

I am writing to provide comment on the Rezoning Review request, submitted to the Department of Planning, Housing and Infrastructure (DPHI) on 8 October 2024, made by Urbis, on behalf of Toga and Urban Property Group (UPG). We also provide a response detailing why the original Planning Proposal request to Council was not progressed. This Rezoning Review seeks to facilitate the development of Key Sites 3 and 10 by amending Clause 8.2 (Sun Access) of Penrith Local Environmental Plan (LEP) 2010, to exempt Key Sites 3 and 10 from the application of this Clause.

Firstly, I confirm that the proposal which has been submitted for a Rezoning Review is the same proposal, dated 13 February 2024, that was submitted to Council in the original Planning Proposal. Also, I confirm that if the Rezoning Review was supported, Council wishes to nominate itself as the Planning Proposal Authority.

Our concern with the progression of the planning proposal in the Rezoning Review is that it only addresses in isolation issues identified with Clause 8.2 relating to Key Site 3 and 10. This is the reason why Council did not progress the original Proponent-initiated Planning Proposal request to Council. Council instead has progressed a Planning Proposal to amend Part 8 of Penrith LEP 2010 (July 2024),

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which includes a holistic proposal to amend Clause 8.2 and facilitate development for all the Key Sites relating to the application of Clause 8.7 (Community infrastructure on certain key sites). The Council-initiated Part 8 Planning Proposal was submitted to the DPHI via the Planning Portal to seek a Gateway Determination on 26 August 2024 (PP-2024-1880) and a Gateway Determination has not yet been issued.

Clause 8.7 allows higher density development on Key Sites in the Penrith City Centre where the development includes community infrastructure, however this has been limited, in part, by the application of Clause 8.2. Other challenges with the existing planning framework associated with the delivery of Key Sites relates to the absence of a maximum height of building control and a lack of clarity around the community infrastructure requirements.

The Council-initiated Part 8 Planning Proposal modelled the maximum potential floor space ratio allowed under Clause 8.7 with the introduction of an appropriate height of building control for each Key Site, to provide greater certainty. This included testing of the solar access to public open spaces under Clause 8.2, to maintain acceptable solar access commensurate with the function and importance of the public open spaces within and near the Penrith City Centre. Under the Council-initiated Part 8 Planning Proposal, the amendments to Clause 8.2 are to:

- Clarify that the clause applies to public open space “zoned RE1 Public Recreation”;
- Include reference to the Bonus Height of Building Map (proposed to be introduced in Clause 8.7) in addition to the Height of Building Map to enable the maximum permissible height of building to be considered; and
- include reference to “21 June” when overshadowing is measured.

Accordingly, the Council-initiated Part 8 Planning Proposal will achieve the same outcome as the proponent-initiated proposal in the Rezoning Review, allowing Key Site 3 and 10 to shadow the adjoining public open space at 10 Mulgoa Road based on the generous 140m height being proposed for Key Sites 3 and 10, such that Clause 8.2

would no longer impede development of Key Site 3 and 10 to its potential.

Concern is raised that the proponent-initiated proposal in the Rezoning Review would create a precedent and that exemption may be sought for other Key Sites from Clause 8.2, which could undermine the integrity of the Clause 8.2 provision and the protection of solar access to other important public open spaces within and near the Penrith City Centre.

These comments and concerns raised are consistent with Council's position communicated to the proponent in pre Planning Proposal correspondence and in meetings held with the proponent, subsequent to the Planning Proposal being submitted to Council.

DPHI has communicated to Council that the reason the issuing of a Gateway Determination for the Council led planning proposal has been delayed is due to the inclusion of a request to amend Chapter 2 Affordable housing of the Housing SEPP, so that the 30% affordable housing bonus only applies to the base FSR and height, excluding the bonus FSR and height in Clause 8.7.

The Part 8 Planning Proposal justifies that the application of the Housing SEPP to the bonus height and FSR under Clause 8.7 contradicts the "Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre," as per Clause 61(6) of the Environmental Planning and Assessment Regulation 2021. Without the proposed amendment, the developers could possibly increase the number of dwellings on Key Sites to exceed the dwelling cap set by the State Government for the Penrith City Centre, for safe flood evacuation during regional flooding of the Hawkesbury Nepean Valley.

However, DPHI have communicated that their position is to not permit exemptions to the Housing SEPP. Accordingly, DPHI has discussed the option of a recommendation not proceeding and returning the Planning Proposal to council for further consideration. This is an ongoing discussion.

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If the Part 8 Planning Proposal cannot proceed in its current form, then Council will investigate the best way forward through preparing an amended Planning proposal to achieve the intended outcome in a holistic way for the Penrith City Centre.

If you have any questions about this matter, please contact Abdul Cheema, City Planning Coordinator at Abdul.Cheema@Penrith.City or on 02 4732 8120.

Yours sincerely

Christine Gough
Head of City Planning

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