

ANGEL PLACE  
LEVEL 8, 123 PITT STREET  
SYDNEY NSW 2000

URBIS.COM.AU  
Urbis Ltd  
ABN 50 105 256 228

30 October 2024

Murray Jay  
Manager, Planning Proposal Authority  
Planning, Land Use Strategy, Housing and Infrastructure | Planning Group  
Department of Planning, Housing and Infrastructure

Dear Murray,

## REQUEST FOR REZONING REVIEW | 614-632 HIGH STREET, PENRITH (RR-2024-30)

### 1. INTRODUCTION

On behalf of Urban Property Group (**UPG**) and Toga (**Toga**) (collectively, **the Proponents**), Urbis Ltd (**Urbis**) formally requests a Rezoning Review of a Planning Proposal submitted to Penrith City Council (**Council**) relating to land at 614-632 High Street, Penrith (**the site**). The Planning Proposal is identified as PP-2024-280 and was submitted to Penrith City Council on 19 February 2024. A copy of the Planning Proposal is attached to this request (**Attachment A**).

This Request for Rezoning Review has been prepared in accordance with the *Local Environment Plan Making Guideline* (August 2023).

### 2. PURPOSE OF THE PLANNING PROPOSAL

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

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

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

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

for either active or passive recreation uses. An image of this open space is shown at **Figure 3**, overleaf.

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

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

Figure 1 – Proposed Toga scheme (DA20/0148)



Source: SJB, 2020

Figure 2 – Proposed UPG scheme (DA20/0148)



Source: DKO Architects, 2022

Figure 3 – The public open space at 10 Mulgoa Road, viewed facing north along John Tipping Grove



Source: Google Maps, 2024

### 3. LEP AMENDMENTS SOUGHT BY THIS PLANNING PROPOSAL

The Planning Proposal seeks to amend Clause 8.2 of the *Penrith Local Environmental Plan 2010* (LEP) to enable additional overshadowing on public open space outside of the Penrith City Centre, by removing the existing barrier which restricts the orderly and economic development of two Key Sites within the Penrith City Centre.

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

#### 8.2 Sun access

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

(2) *(Repealed)*

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

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

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

## 4. SITE CONTEXT

The site and the surrounding area are located on Darug Land.

The LEP amendment sought by the Planning Proposal will directly influence the ability to develop on two Key Sites located within the Penrith City Centre, as identified and mapped under the Penrith LEP 2010, and will directly impact a small area of public open space to the south of those Key Sites which, itself, is located outside the Penrith City Centre.

The Key Sites affected by the Planning Proposal, respectively owned by UPG and Toga, comprise the following:

- **Key Site 10 (part)** – 614–632 High Street, Penrith (UPG landholding) (Lot 10 / DP1162271)
- **Key Site 10 (part) and Key Site 3** – 87–93 Union Road, Penrith (Toga landholding) (Lot 300 / DP1243401)

The public open space which will be directly impacted by the Planning Proposal is a small area of land zoned RE1 Public Recreation, located outside of the Penrith City Centre at 10 Mulgoa Road, Penrith (Lot 37 / DP731213).

The relationship of the Key Sites and the public open space is shown in the extract from the LEP map, below.

Figure 4 – Detail from Penrith LEP 2010 Key Sites Map



Source: Penrith LEP 2010, Key Sites Map sheet 006, with Urbis overlay



The location of the Key Sites within the Penrith City Centre, and 10 Mulgoa Road outside the Penrith City Centre, is shown below.

Figure 5 – Penrith City Centre (hatched pink), with Key Sites 3 & 10 and 10 Mulgoa Road indicated



Source: NSW Planning Portal, 2024, with Urbis overlay

## 5. THE NEED FOR THE PLANNING PROPOSAL

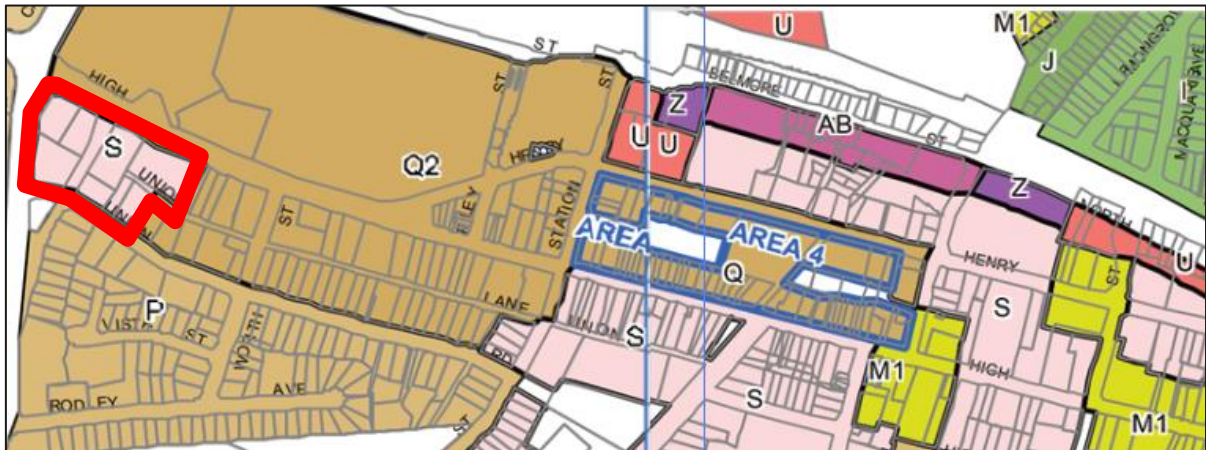
Part 8 of the Penrith LEP 2010 contains provisions relating to development within the Penrith City Centre. Although this Planning Proposal seeks amendments to a single clause within Part 8, there are two clauses which are of relevance for the purposes of this Planning Proposal. The background to, and a brief discussion of, these clauses is provided below

### 5.1. 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 6 – 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 in the red outline.



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

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

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

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.

Section 4.1 of the Planning Proposal report (refer to Attachment A) provides a detailed history of these clauses and the broader Penrith City Centre provisions contained in Part 8 of the Penrith LEP 2010.

<sup>1</sup> 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.

## 5.2. CLAUSE 8.2 SUN ACCESS

As currently worded, Clause 8.2 of the Penrith LEP 2010 provides 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.*

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

The sun access clause, as currently worded, prohibits development from overshadowing any public open space at any time for any amount that would be greater than overshadowing that would be caused by a building which complies with the 'base' building height maximum specified in Clause 4.3 of the Penrith LEP 2010.

## 5.3. CLAUSE 8.7 COMMUNITY INFRASTRUCTURE ON CERTAIN KEY SITES

As currently worded, Clause 8.7 of the Penrith LEP 2010 provides as follows:

### **8.7 Community infrastructure on certain key sites**

*(1) The objectives of this clause are—*

*(a) to allow higher density development on certain land in the City Centre where the development includes community infrastructure, and*

*(b) to ensure that the greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on those localities.*

*(2) This clause applies to land identified as a key site on the Key Sites Map.*

*(3) Despite clauses 4.3, 4.4 and 8.4 (5), the consent authority may consent to development on land to which this clause applies (including the erection of a new building or external alteration to an existing building) that exceeds the maximum height shown for the land on the Height of Buildings Map or the floor space ratio for the land shown on the Floor Space Ratio Map, or both, if the proposed development includes community infrastructure.*

*(4) The consent authority must not consent to the erection of a building on land to which this clause applies if the floor space ratio for the building exceeds the following floor space ratio— [...]*

*(b) in relation to development on land identified as “Key Site 3” or “Key Site 10”—  
6:1, [...]*

*(5) In deciding whether to grant development consent under this clause, the consent authority must have regard to the following—*

*(a) the objectives of this clause,*

*(b) whether the development exhibits design excellence,*

*(c) the nature and value of the community infrastructure to the City Centre.*

*(6) In this clause, community infrastructure means development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks or public roads.*

Sub-clause 8.7(3) provides that development that includes community infrastructure may (with consent) exceed the height and FSR limits found at Clauses 4.3 and 4.4, respectively, of the Penrith LEP 2010. Sub-clause 8.7(4) limits the FSR for Key Sites 3 and 10 to a maximum of 6.0:1, however there is currently no limit to building height other than that required under Clause 8.2 for solar access to public open space.

## **5.4. BENCHMARKING**

As part of the scoping stage for this Planning Proposal, Urbis undertook research on comparable sun access clauses contained in other environmental planning instruments pertaining to the Greater Sydney Region. A detailed analysis of this benchmarking study is contained in Section 4.2 of the Request for Planning Proposal report. The findings of this analysis are summarised below:

- 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 a prior version of Clause 8.2 (introduced following LEP amendments made in 2015) 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 a subsequent 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. Section 4.1 of the Request for Planning Proposal report provides a detailed overview of the history of the Penrith LEP sun access clause.

## **5.5. RELATIONSHIP OF THE EXISTING CLAUSES AND IMPLICATIONS FOR DEVELOPMENT**

The Request for Planning Proposal report (Attachment A) provides a detailed overview of the history of the sun access clause and its relationship with the Key Site provisions which are contained in Part 8 of the Penrith LEP 2010. In short, it has been established that the Key Sites provisions (in particular, those which afford additional development yield through the incentive FSR when community infrastructure is provided) restrict the ability of landowners to develop their sites in the manner anticipated by the community infrastructure clause, where any additional overshadowing impact occur on any public open space.

In the case of the Toga and UPG landholdings, this has resulted in 2 refused development applications where the Proponents have, individually, sought to develop their sites in accordance with the community infrastructure FSR bonus, on the grounds of additional overshadowing over the public open space at 10 Mulgoa Road. The applications were subsequently refused on appeal to the NSW Land and Environment Court, on the grounds of the additional overshadowing impacts.<sup>2,3</sup>

As currently written and interpreted, the sun access clause of the Penrith LEP 2010 is unduly restricting the ability of landowners to develop their sites in an orderly and economic manner. Noting the 'blunt' nature of the sun access clause – which provides no exceptions and does not provide for any additional overshadowing where the community infrastructure FSR bonus is utilised – the sun access clause is, similarly, impeding the ability for Penrith City Council to achieve its strategic vision for the Penrith City Centre as a high-density, mixed-use regional centre which provides the houses and jobs of the future.

The Planning Proposal is therefore needed in order to remove the restriction on the ability of Key Sites 3 and 10 to develop in the manner envisaged by the community infrastructure clause (and which is, equally, supported by a suite of strategic planning policies). Developing Key Sites 3 and 10 is crucial for unlocking the potential of the Penrith City Centre to achieve its potential as a key regional centre in the heart of the Western Parkland City.

## **6. MERIT ASSESSMENT**

### **6.1. STRATEGIC MERIT**

The Planning Proposal demonstrates strategic merit, as it:

- Gives effect to the relevant Directions and Planning Priorities of applicable strategic planning policies, including the *Greater Sydney Region Plan* and *Western City District Plan*, and is consistent with relevant Section 9.1 Ministerial Directions.
- Is consistent with local and regional strategic planning policies.

---

<sup>2</sup> The Court's ruling in the Toga matter can be viewed at: <https://www.caselaw.nsw.gov.au/decision/17e4b50205f90b774b84fa16>

<sup>3</sup> The Court's ruling in the UPG matter can be viewed at:  
<https://www.caselaw.nsw.gov.au/decision/1869aa04418e94f8e811bd66>

- Would unlock Key Sites 3 and 10 to provide greater housing supply and choice within an identified regional centre, with this housing to be situated in proximity to jobs (including an established Health and Education Precinct), transport, and key services. It is noted that the majority of housing stock in and around the Penrith City Centre is characterised by lower density / detached residences, which is becoming increasingly unsustainable in the context of the current housing crisis.
- Would result in the achievement of the densities anticipated for Key Sites 3 & 10 in accordance with relevant local planning policies.
- Would result in an environmentally and economically efficient use of land and resources, and result in sustainable new housing within the Penrith City Centre.
- Seeks to provide greater housing supply within the Penrith economic triangle and in proximity to the Western Sydney Aerotropolis.

## **6.2. SITE-SPECIFIC MERIT**

The Planning Proposal demonstrates site-specific merit, as it:

- Will enable Key Sites 3 & 10 to be developed in the manner anticipated by the incentive FSR controls provided under Clause 8.7 of the Penrith LEP 2010, thereby assisting Penrith City Council with meeting its housing targets.
- Capitalises on the Key Sites' proximity to jobs, transport, and key services by providing a significant increase to housing supply in the Penrith City Centre.
- Will provide additional community infrastructure in accordance with the requirements of Clause 8.7 of the Penrith LEP 2010.
- Will not result in unexpected adverse environmental, economic, or social impacts. Although overshadowing will occur to the public open space at 10 Mulgoa Street, it is agreed both by Council and the Proponents that this open space is small, of little amenity, and of little utility for public recreational purposes.
- It has been demonstrated in the original DAs lodged by Toga and UPG that development on the Key Sites 3 and 10 can make use of the FSR incentives and achieves compliance with relevant planning controls and development standards, including those found in the Penrith LEP 2010, the *Penrith Development Control Plan 2014*, and the *NSW Apartment Design Guide*.

## **7. ENGAGEMENT WITH PENRITH CITY COUNCIL AND PROJECT TIMELINE**

Prior to and following the lodgement of this Planning Proposal, the Proponents and representatives from the project team undertook engagement with Penrith City Council to discuss the issues with the existing wording of Clause 8.2 (and its implications for the achievement of the aims of Clause 8.7) and to discuss proposed amendments to the LEP. A summary of this engagement, as well as other key milestones, is provided in the table below.

Date	Engagement type	Summary
10 November 2023	Phone call between Urbis and Penrith City Council	<p>Urbis, on behalf of the Proponents, spoke with Penrith City Council's City Planning Coordinator about the purpose of the Planning Proposal and the intent to lodge a Scoping Report.</p> <p>Council indicated a willingness to meet once the Scoping Report was issued.</p> <p>Council also advised at this time that it was undertaking its own review of the Part 8 provisions of the LEP related to Penrith City Centre, but no timeframe was provided.</p>
29 November 2023	Written correspondence from Penrith City Council, following submission of the Scoping Report	<p>Council provided a written response to the Scoping Report, which was issued on 14 November 2023.</p> <p>Council indicated that it would not support the Planning Proposal in isolation from its own broader review of the Part 8 LEP provisions.</p> <p>Council's correspondence has been attached to this Request for a Rezoning Review (<b>Attachment B</b>).</p>
19 February 2024	Request for Planning Proposal submitted to Council on the NSW Planning Portal	<p>The Request for Planning Proposal report, prepared by Urbis and accompanying the Rezoning Review, provides a detailed overview of the history of the sun access clause and its relationship with the Key Site provisions which are contained in Part 8 of the Penrith LEP 2010, and describes the proposed amendments to the LEP provisions.</p>
5 March 2024	Written correspondence from Penrith City Council, following submission of the Planning Proposal report	<p>Council provided a written response to the Planning Proposal report, which was submitted on 19 February 2024 on the NSW Planning Portal.</p> <p>Council indicated its willingness to meet with the Proponents to discuss planning outcomes for the site, having regard for the work Council were separately undertaking to amend the Part 8 LEP provisions.</p> <p>Council's correspondence has been attached to this Request for a Rezoning Review (<b>Attachment C</b>).</p>
13 March 2024	Meeting with Penrith City Council to discuss the Proponent's Planning Proposal	<p>The Proponents and Urbis met with representatives from Penrith City Council following Council's review of the Planning Proposal request. A summary of the discussion is below:</p> <ul style="list-style-type: none"> <li>▪ Council reiterated that it was carrying out its own review of the Part 8 LEP provisions, noting that the existing controls were not achieving the intended outcomes. No timeframes were provided.</li> <li>▪ Council explained that the existing Key Sites provisions were implemented to encourage development on Key Sites in the City Centre, while flood studies were being undertaken at the State government level. The Government had since released Flood Evacuation Model 2, and Council was continuing to</li> </ul>

Date	Engagement type	Summary
		<p>engage with the Department to understand the potential implications of Flood Evacuation Model 2 (vis-à-vis the upzoning of Key Sites).</p> <ul style="list-style-type: none"> <li>▪ Council noted that the potential for the area's flooding constraints to limit development yield meant that it was necessary to reconsider where in the City Centre high-density development was located, and whether the existing Key Sites provisions were fit-for-purpose. Urbis reiterated that Key Sites 3 and 10 were ready to develop, with experienced and committed property developers in Toga and UPG.</li> <li>▪ Council indicated that it would not support the Planning Proposal brought forth by the Proponents while it was carrying out its own review of the Part 8 LEP provisions. Council invited the Proponents to meet to discuss their proposed amendments to Part 8 once these had been prepared.</li> </ul>
26 March 2024	Meeting between Proponents and Penrith City Council	<p>A meeting was held between the Proponents and Penrith City Council, serving as a forum for each party to further clarify the development outcomes being sought.</p> <p>Council requested that the Proponents prepare massing diagrams showing how the maximum permitted FSR of 6:1 could be feasibly achieved on their respective Key Sites.</p>
22 April 2024	Meeting between Proponents and Penrith City Council	<p>The Proponents presented Council with the 6:1 massing diagrams for Key Sites 3 and 10.</p> <p>In this meeting, Council advised the Proponents that a Council-initiated Planning Proposal (<b>the Council PP</b>) was being prepared to amend the Part 8 LEP provisions.</p>
20 May 2024	Meeting between the Proponents and Penrith City Council	<p>Meeting to discuss Key Sites 3 and 10 in relation to the Council PP.</p>
5 June 2024	Invoice for Planning Proposal issued to the Proponents by Penrith City Council.	
8 August 2024	Email from Penrith City Council to Urbis advising that the Council PP to amend the Part 8 LEP provisions and the Community Infrastructure Policy ( <b>CIP</b> ) had been prepared and would be reported to Council's Ordinary Meeting of 12 August 2024.	
9 October 2024	Meeting with Penrith City Council to discuss Council's Planning Proposal	<p>The Proponents and Urbis met with representatives from Penrith City Council as part of Council's engagement with landowners of Key Sites, to discuss the Councils PP and changes to the CIP. A summary of the discussion is below:</p> <ul style="list-style-type: none"> <li>▪ Council confirmed its desire to unlock the development potential of Key Sites.</li> </ul>



Date	Engagement type	Summary
		<ul style="list-style-type: none"> <li>▪ The draft Council PP had been endorsed by Councillors, and is awaiting Gateway Determination from DPHI.</li> <li>▪ The proposed Part 8 LEP amendments in the Council PP sought to introduce new maximum building heights for Key Sites (subject to the provision of community infrastructure as required by Clause 8.7) in alignment with the existing maximum FSR provisions. Council noted that the new maximum building heights had been based on massing modelling, resulting in proposed maximum building heights of 140m for Key Sites 3 &amp; 10. Council's modelling confirmed that there would be no additional overshadowing of RE1 zoned land on 21 June for development on Key Sites 3 and 10 that was 140m or less.</li> <li>▪ As part of the Council PP, Clause 8.2 is proposed to be amended to specify that June 21 would be taken as the benchmark day for assessing overshadowing impacts as a result of the Key Site uplifts.</li> <li>▪ Council's analysis identified impacted public spaces, including 10 Mulgoa Road and the Station Road swimming pool and park, which are sought to be protected by the amended sun access clause. Council agreed that the public open space at 10 Mulgoa Road is not of equal importance to other public open spaces (e.g., City Park).</li> <li>▪ Council confirmed that Clause 4.6 variations will not be able to be sought for Key Sites which leverage the incentives provisions provided under Part 8.</li> <li>▪ Council noted that flooding remains a key consideration in providing for increased densities within the City Centre, and that the proposed LEP amendments took this into consideration. The dwelling cap of 4,050 new dwellings within the City Centre will remain in place, until such time as new flood and evacuation modelling is released by DPHI.</li> <li>▪ Council's Planning Proposal also seeks to amend Chapter 2 of <i>State Environmental Planning Policy (Housing) 2021 (Housing SEPP)</i> to restrict Key Sites which leverage the increased yields under Part 8 could not also make use of the in-fill affordable housing height / floor space bonuses under the Housing SEPP.</li> <li>▪ It was noted by Council that, aside from the Housing SEPP amendments, DPHI has indicated in-principle support for Council's PP.</li> <li>▪ Urbis and the Proponents advised Council that the Proponent PP is now awaiting Rezoning Review, and that the intention is</li> </ul>

Date	Engagement type	Summary
		for this process to be allowed to occur in parallel to Council's Planning Proposal.

## 8. CONCLUSION

This letter has been prepared in support of a Rezoning Review request to DPHI in relation to the Proponent-initiated Planning Proposal, submitted to Penrith City Council on 19 February 2024, to amend Clause 8.2 of the Penrith LEP 2010.

The Planning Proposal seeks minor changes to the clause to enable overshadowing to occur to a small area of public open space at 10 Mulgoa Road, Penrith, as a result of Key Sites 3 & 10 being able to make use of incentive FSR (provided for under Clause 8.7 of the LEP) subject to the provision of community infrastructure. The proposed LEP amendment seeks to provide a 'relaxation' to Clause 8.2 of the LEP, which currently prohibits development from achieving anticipated uplifts if such development results in increased overshadowing to any public open space at any time of year.

The Planning Proposal has considerable planning merit and strategic alignment with State and local government policy, will facilitate the realisation of anticipated development outcomes for Key Sites 3 & 10, and will result in development which will provide crucial new housing stock within a key regional centre. It is therefore considered that there is clear strategic and site-specific merit as outlined in '*Local Environmental Plan Making Guidelines*' and, accordingly, warrants DPHIs' support to proceed to Gateway Determination.

We look forward to working with the Department on this important matter.

Yours faithfully,



Anthony Kiliass  
Consultant  
+61 2 8233 7643  
akiliass@urbis.com.au