

## Rezoning Review Briefing Report – RR-2024-30

*Proposed Amendment to Cl 8.2 (Sun Access) Penrith LEP 2010 at 614–638 High Street and 87–93 Union Road, Penrith*

Element	Description
Date of request	8 October 2024
Department ref. no	RR-2024-30 (PP-2024-280)
LGA	Penrith
LEP to be amended	Penrith Local Environmental Plan 2010 (Penrith LEP)
Address	Two subject sites: <ul style="list-style-type: none"><li>Key Site 10 (Part) - 634–638 High Street, Penrith (Lot 10 DP 1162271)</li><li>Key Site 3 and Key Site 10 (Part) - 87–93 Union Road Penrith (Lot 300 DP1243401)</li></ul>
Reason for review	<div><input type="checkbox"/> Council notified the proponent it will not support the proposed amendment</div> <div><input checked="" type="checkbox"/> Council failed to indicate support for the proposal within 90/115 days, or failed to submit the proposal after indicating its support</div>
Has council nominated PPA role	Yes as indicated in <b>Attachment C</b> .
Consultation	No
Brief overview of the timeframe/progress of the planning proposal	<p><b><u>Toga Site - Key Site 3 &amp; Key Site 10 (Part)</u></b></p> <p><b>March 2018:</b> Toga lodged a Development Application (DA18/0264) with Penrith City Council for a part 12-storey, part 15-storey mixed-use development. The proposal included 187 residential units, commercial spaces, and a new public road.</p> <p><b>October 2019:</b> The Sydney Western City Planning Panel granted development consent, following a recommendation for approval from Penrith City Council.</p> <p><b>March 2020:</b> Toga lodged DA20/0148 for a part 14-storey, part 37-storey mixed-use development, including 356 residential apartments and commercial floor space. The proposal relied on height of building and FSR bonuses under Clause 8.7 of the Penrith LEP 2010.</p> <p><b>2022:</b> The Sydney Western City Planning Panel refused DA20/0148 and the refusal was upheld by the NSW Land and Environment Court (LEC) due to non-compliance with Clause 8.2 (Sun Access) of the Penrith LEP 2010.</p>

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Element	Description
	<p><b><u>Urban Property Group (UPG) Site - Key Site 10 (Part)</u></b></p> <p><b>April 2020:</b> UPG lodged DA20/0167 for a 45-storey mixed-use development, including 254 residential apartments, 40 serviced apartments, and commercial spaces.</p> <p><b>2023:</b> The NSW LEC refused the DA, finding that the development did not comply with Clause 8.2 (Sun Access). This ruling reinforced that no additional overshadowing was permissible beyond what is allowed under the mapped height limit.</p> <p><b><u>Planning Proposal (PP-2024-280) and Rezoning Review (RR-2024-30)</u></b></p> <p><b>19 February 2024:</b> Planning Proposal (PP-2024-280) was submitted on the NSW Planning Portal by Urbis (Consultant), as engaged by UPG and Toga. The proposal sought to amend Clause 8.2 of the Penrith LEP 2010 to remove sun access restrictions for Key Sites 3 and 10.</p> <p><b>July–August 2024:</b> Discussions between Council and the proponent took place regarding the potential for a Council-led planning proposal (PP-2024-1880) to progress in place of the proponent-led proposal (PP-2024-280).</p> <p><b>12 August 2024:</b> Council resolved to submit a Council-led planning proposal (PP-2024-1880) to the Department for Gateway Determination. The proposal seeks to amend Clause 4.6, 8.2, 8.4, and 8.7 within the Penrith LEP 2010, and seeks an exclusion to Chapter 2 (Affordable Housing) of the SEPP (Housing) 2021.</p> <p><b>26 August 2024:</b> The Council-led planning proposal (PP-2024-1880) submitted to the Department for Gateway Determination.</p> <p><b>8 October 2024:</b> Rezoning review lodged with the Department for PP-2024-280 (RR-2024-30).</p>
Department contact:	Ayva Hamed, Para Planner, 9769 9907

## Planning Proposal

Table 1. Overview of planning proposal

Element	Description
Site Area	<p>The site area totals <b>16,750.22m<sup>2</sup></b> and is comprised of:</p> <ul style="list-style-type: none"><li>• Key Site 10 (Part) - <b>6,623.46m<sup>2</sup></b></li><li>• Key Site 3 &amp; Key Site 10 (Part) - <b>10,126.76m<sup>2</sup></b></li></ul>
Site Description	<p><b>Key Site 10 (Part) – 634-638 High Street, Penrith</b></p> <p>The site is zoned MU1 Mixed Use and forms part of Key Site 10 under the Penrith LEP 2010 (<b>Figure 2</b>). It is currently vacant and is located within the</p>

Element	Description
	<p>boundary of the Penrith City Centre, within a 1km catchment of Penrith Railway Station (<b>Figure 3</b>).</p> <p>The surrounding locality is highly urbanised, consisting of a mix of commercial, residential, and civic uses.</p> <p>To the south is the public open space at 10 Mulgoa Road, Penrith that is proposed to be impacted by the proposal (<b>Figure 1</b>). The open space is bounded by Mulgoa Road to the west, Union Road to the north, and John Tipping Grove to the east.</p> <p><b>Key Site 3 &amp; Key Site 10 (Part) – 83-91 Union Road Penrith</b></p> <p>The other portion of Key Site 10 currently accommodates a single-storey former industrial building, most recently used as a commercial retail premises (<b>Figure 1</b>). It is located adjacent to Union Road and High Street. The site is zoned MU1 Mixed Use under the Penrith LEP 2010 (<b>Figure 2</b>).</p> <p>Key Site 3 consists of an open-air hardstand, which appears to be used for vehicle parking. The site also contains two single-storey buildings, one centrally located and another toward the southern boundary, both of function as site offices.</p> <p>The immediate locality includes a mix of commercial, residential, and civic buildings. The site is positioned within the core of Penrith City Centre.</p> <p>Directly to the south of Key Site 3 is the aforementioned public open space at 10 Mulgoa Road, Penrith.</p>
<b>Proposal summary</b>	<p>The proposal seeks to amend Penrith LEP 2010 to exempt Key Sites 3 and 10 from Clause 8.2 (Sun Access).</p> <p>The proposed amendment to Clause 8.2 seeks to enable some overshadowing to the public open space at 10 Mulgoa Street, Penrith to unlock the full development potential of both subject sites as prescribed in Clause 8.7 of the Penrith LEP 2010.</p> <p>Clause 8.2, in its current form, restricts Key Sites 3 and 10 from utilising the floor space ratio (FSR) bonus prescribed in Clause 8.7 (subject to the concurrent provision of community infrastructure), due to “zero impact” overshadowing issues on public open space.</p> <p>The proposal is therefore seeking to remove this conflict between the two clauses to provide both Key Sites 3 and 10 with the opportunity to access to the FSR bonus, which will in turn allow both Key Sites to reach their full development potential.</p>
<b>Relevant State and Local Planning Policies, Instruments</b>	<p><b>Relevant State and Local Plans:</b></p> <ul style="list-style-type: none"> <li>Greater Sydney Region Plan: A Metropolis of Three Cities (GSRP)</li> <li>Western City District Plan (WCDP)</li> <li>Greater Penrith Place Strategy</li> <li>Penrith Local Strategic Planning Statement 2040 (LSPS)</li> </ul>

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Element	Description
	<ul style="list-style-type: none"><li>Penrith Local Housing Strategy (LHS)</li></ul> <p><b>Relevant State Environmental Planning Policies (SEPPs):</b></p> <ul style="list-style-type: none"><li>SEPP (Housing) 2021</li><li>SEPP (Transport and Infrastructure) 2021</li><li>SEPP (Resilience and Hazards) 2021</li></ul> <p><b>Relevant Section 9.1 Ministerial Directions:</b></p> <ul style="list-style-type: none"><li>1.1 Implementation of Regional Plans</li><li>1.4 Site-Specific Provisions</li><li>4.1 Flooding</li></ul>



**Figure 1 Subject area: Key Sites 3 and 10 and associated open space (source: Nearmap 2025)**



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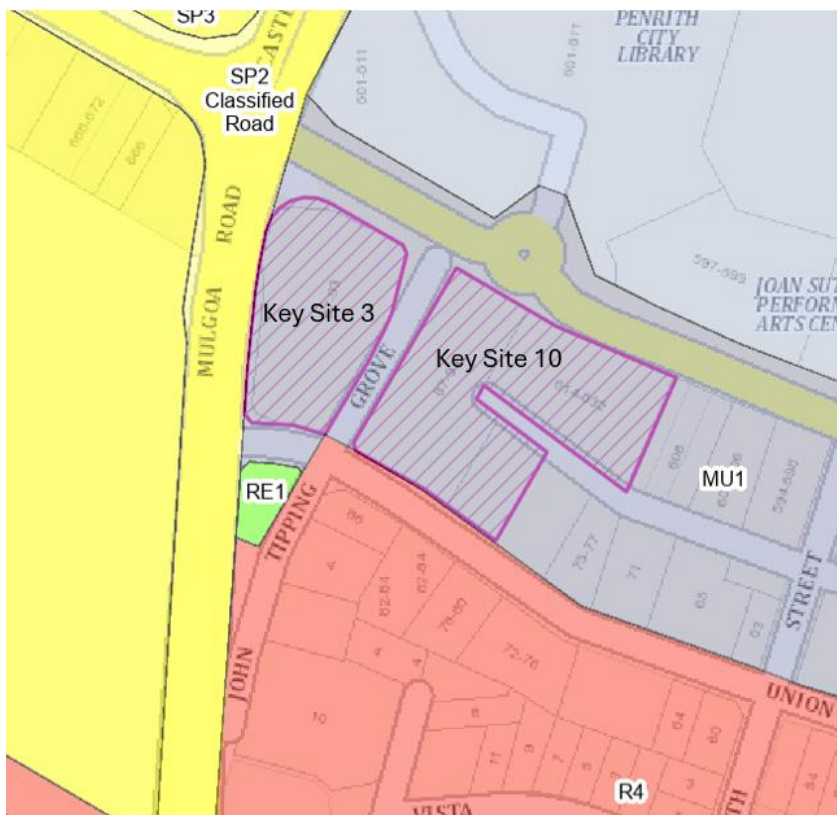


Figure 2 Land zoning map: Key Sites hatched in purple (source: NSW Spatial Viewer 2025)

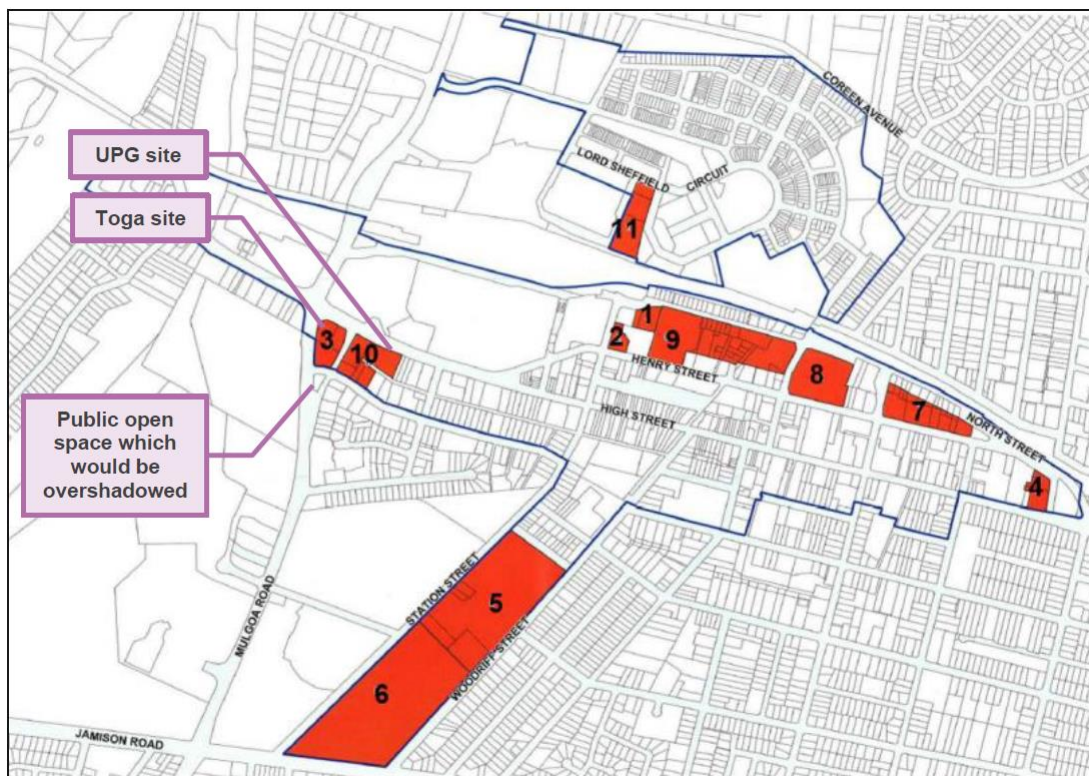


Figure 1 Penrith City Centre (blue outline) and Key Sites (source: Planning Proposal 2024)

The planning proposal seeks to amend the Penrith LEP 2010 per the changes below.

**Table 2. Current and proposed controls**

Control	Current	Proposed
Zone	MU1 Mixed Use	No change.
Maximum height of the building	24m	No change.
Floor space ratio	3:1	No change.  Note: The proposed changes will allow for the Clause 8.7 (4) FSR bonus of 6:1 to apply to both sites.
Sun access	Clause 8.2 (3) Sun Access states: “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.”	Proposed sub clause 8.2 (5) Sun Access to state: “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 amended clause is a matter for Parliamentary Counsel’s Office.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

No LEP maps are proposed to be amended as a result of this planning proposal.

## Key Issues

### STRATEGIC MERIT

#### Issue 1: Consistency with the Local and District Strategic Plans

##### Council view

- Council did not provide a comment on the consistency of this proposal with Local and District strategic plans.

##### Proponent view

- The proposal 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.

- The proposal is consistent with local and regional strategic planning policies.
- The proposal's outcomes would result in achieving the planned densities anticipated for Key Sites 3 and 10 in accordance with relevant local planning policies.

## **Issue 2: Precedent/ Isolation of Key Sites**

### **Council view**

- Council holds the view that the progression of the planning proposal (PP-2023-280) only addresses issues identified with Clause 8.2 relating to Key Sites 3 and 10 in isolation.
- Council raises concern that the proponent-initiated proposal would create a precedent, and that exemption from Clause 8.2 may be sought for other Key Sites. This may lead to undermining 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.
- The Council-initiated planning proposal (PP-2024-1880) to amend Part 8 of the Penrith LEP 2010 includes a provision that proposes to amend Clause 8.2 and facilitate development for all Key Sites relating to the application of Clause 8.7 (Community infrastructure on certain key sites).

### **Proponent view**

- The planning proposal (PP-2023-280) is a result of two DA refusals by the NSW LEC resulting from apparent non-compliance with the provisions of Clause 8.2 of the Penrith LEP 2010. Clause 8.2, in its current form, protects a small area of public open space at the expense of planned dwelling density and community infrastructure proposed for Key Sites 3 and 10.
- The proponent notes that the conflict between clauses 8.2 and 8.7 in the Penrith LEP 2010 are severely restricting the ability of landowners to develop their Key Sites to their full development potential, where any additional overshadowing impact occur on any public open space.

### **PPA Team Comment**

- On 26 August 2024, Council submitted a Council-initiated planning proposal (PP-2024-1880) to the Department for Gateway Determination. The Council-initiated Planning Proposal seeks to make amendments which affect all Key Sites within the Penrith City Centre including an amendment to the sun access restrictions. The Planning Proposal does not seek to remove the sun access restrictions all together but rather seeks to utilise the height of building and bonus height of building maps to determine appropriate solar access during the winter solstice (21 June). The Planning Proposal has been delayed due to the consideration of the Council's request to be excluded from Chapter 2 (Affordable Housing) of the SEPP (Housing) 2021.

## SITE SPECIFIC MERIT

### Issue 1: Overshadowing

#### **Council view**

- Council holds the view that their proposal (PP-2024-1880) will achieve the same outcome as the proponent's proposal (PP-2024-280).
- Council has completed solar access testing, in line with their planning proposal, 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.
- Council's proposal is also seeking the following amendments to Clause 8.2:
  - 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 included in Clause 8.7) in addition to the Height of Building Map to enable the maximum permissible height of building to be considered; and
  - Including a reference to "21 June" when overshadowing is measured.

#### **Proponent view**

- The proponent has conducted overshadowing modelling of proposed development on both sites. The modelling confirms proposed development that complies with the existing height of building planning control of 24m, will result in some additional shadow being cast onto the public open space at 10 Mulgoa Street (Attachments A1 & A2).
- Clause 8.2 provides no exceptions and does not provide for any additional overshadowing where the community infrastructure FSR bonus is utilised (in Clause 8.7), restricting the ability of landowners to develop their sites in an orderly and economic manner.
- The proponent holds the view that the public 10 Mulgoa Street is small, is of little amenity, and has little use for public recreational purposes.

### Issue 2: Density, height and floor space ratio

#### **Council view**

- The Council-initiated planning proposal (PP-2024-1880) has modelled the maximum potential FSR permissible under Clause 8.7 with the introduction of an appropriate height of building control for each Key Site, to provide greater certainty.
- 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.
- Council notes that 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.



## Proponent view

- The current wording of Clause 8.2(3) imposes a 'zero additional impact' requirement which is not possible to achieve with any form of development exceeding the 24m height control applicable to Key Sites 3 and 10.
- As a result, this has restricted the FSR bonuses (from Clause 8.7(4)) on certain Key Sites and has compromised the ability of these sites to achieve their anticipated uplift and provide essential community infrastructure.
- The original DAs lodged by Toga and UPG demonstrated that the proposed development on Key Sites 3 and 10 can make use of the FSR bonuses and achieve 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.

## Other Issues

### Flooding

- Penrith is on the edge of the Hawkesbury-Nepean floodplain, which affects the Penrith City Centre, including the subject sites (**Figure 4**).
- Council has noted 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, which has been proposed to be amended in their own proposal (PP-2024-1880).

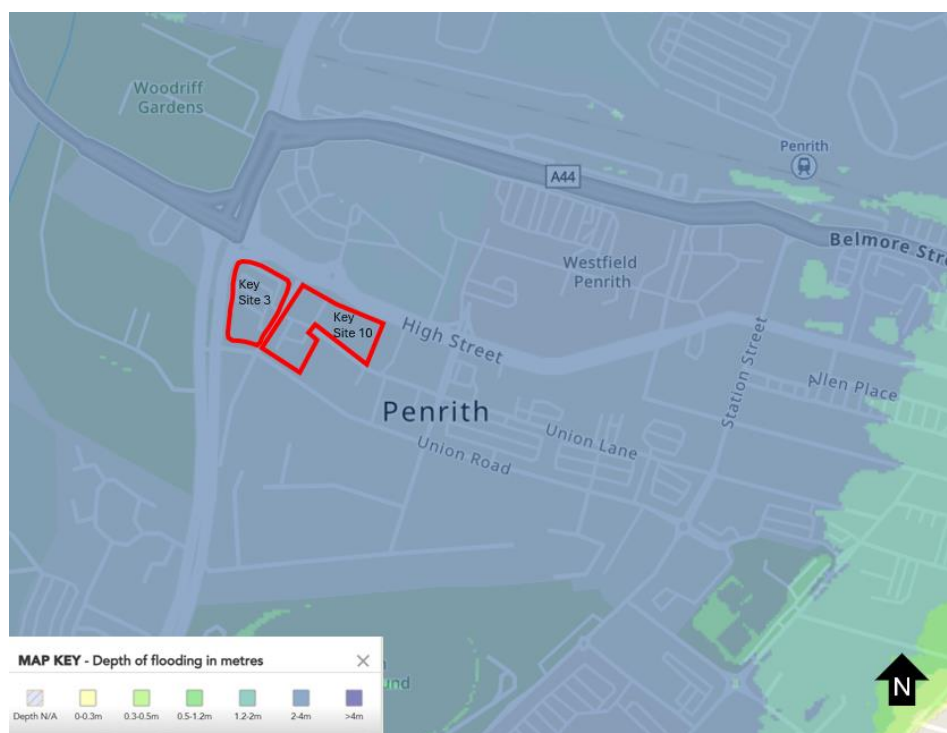


Figure 2 Hawkesbury-Nepean Valley PMF map, Key Sites outlined in red (source: SES 2025)

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## Attachments

- Attachment A -** Planning proposal report – 19 February 2024
- Attachment A1 -** UPG Overshadowing Studies – April 2023
- Attachment A2 -** Toga Overshadowing Studies – April 2023
- Attachment A3 -** Correspondence between Council and proponent regarding scoping report – 29 November 2023
- Attachment A4 -** Correspondence between Council and proponent regarding planning proposal – 5 March 2024
- Attachment B -** Letter requesting Rezoning Review – 30 October 2024
- Attachment C -** Council comments on Rezoning Review – 28 January 2025

13/02/2025

Murray Jay

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(Signature)

\_\_\_\_27/2/25

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