



Planning Proposal

Amend Part 8 Penrith City Centre of Penrith LEP 2010

July 2024

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Introduction

1. Purpose of the Planning Proposal

This council-initiated Planning Proposal is being initiated by Council to facilitate the development of Key Sites within the Penrith City Centre. The Planning Proposal seeks to:

- amend Clause 8.2, 8.4 and 8.7 within Part 8 Penrith City Centre (Part 8);
- amend Clause 4.6;
- apply a base FSR to Key Site 11 on the Floor Space Ratio Map; and
- Request an amendment to Chapter 2 Affordable housing of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

The Planning Proposal incorporates a separate site-specific planning proposal that has also been lodged by Urbis on behalf of TOGA and Urban Property Group (UPG) for Key Site 3 and 10. A Council-initiated Planning Proposal has been proposed as it is recognised that the matters raised in the lodged site-specific planning proposal are not confined to just Key Sites 3 and 10 and it is warranted to address matters at a broader scale across all the Key Sites.

The Department of Planning, Housing and Infrastructure (DPHI) process for making or amending Local Environmental Plans (LEPs) has several stages which are outlined in Table 1. The preparation of a Planning Proposal is the second stage in the DPHI process for amending LEP 2010.

Table 1: LEP Making Process

No.	Stage	Explanation
1	Pre-Lodgement	The proponent or Council undertakes early analysis of the development potential of the relevant land including key environmental or site constraints, reviews the strategic planning framework, obtains advice and consults with authorities and government agencies and identifies study requirements to underpin a planning proposal.
2	Planning Proposal	Where the planning proposal has been initiated by a proponent, Council reviews and assesses the planning proposal and decides whether to support and submit it to the DPHI for a Gateway determination.

		Where the planning proposal has been initiated by Council, Council prepares the planning proposal and submits it to the DPHI for a Gateway determination.
3	Gateway Determination	The DPHI assesses the strategic and site-specific merit of the planning proposal and issues a Gateway determination specifying if the planning proposal should proceed and whether consultation with authorities and government agencies is required.
4	Post-Gateway	Council reviews the Gateway determination and actions any required conditions prior to public exhibition.
5	Public Exhibition and Assessment	Council places the planning proposal on public exhibition to enable consultation with the community, key authorities and government agencies (as required). Council considers the submissions received in response to the public exhibition and varies the planning proposal if required.
6	Finalisation	The local plan making authority (the Minister/DPHI or Council) completes a final assessment of the planning proposal and works with Parliamentary Counsel to prepare the draft LEP amendment. Once finalised, the LEP is made and notified on the NSW legislation website, making it law.

2. Background

Clause 8.7 *Community infrastructure on certain key sites* was introduced in 2018. The incentive clause was intended to allow a managed departure from the existing height of building (HOB) and FSR provisions, subject to the proposed design satisfying the existing design excellence provisions in the LEP and an agreed material benefit (community infrastructure) being provided to enable consideration of the additional FSR above the planned levels. At the time, the planning proposal was specific in designating new maximum FSRs for each Key Site and identified that the maximum HOB on the Height of Buildings Map could be exceeded, however, did not designate a new maximum HOB for each of the Key Sites.

FIGURE 1 – Key Sites



Through the passage of time, it has become clear that further guidance regarding the application of a number of LEP clauses as they relate to the Key Sites is warranted, noting that this planning proposal does not intend to reduce or increase the current development potential (based on maximum FSR) that is currently in place, as there are economic feasibility, traffic and flood evacuation issues that would arise if Council was to take that action. A key difficulty with the application of the Key Sites has been managing expectations around building height.

Many of the original objectives of the original planning proposal are relevant in the context of the current proposal as they reflect the intent of the community infrastructure clause, as follows:

- Encourage investment in Penrith's City Centre
- Activate the City Centre by providing for residential development at a higher density than currently permitted
- Increase the development capacity of Key Sites while protecting the development potential of adjacent sites

- Provide for additional development capacity where appropriate, supported by Urban Design Analysis
- Avoid wide-scale uplift across the City Centre, which can impact on development feasibility and market expectation
- Provide an opportunity for proponents to access bonus FSR in return for a public benefit, to deliver improvements to the Penrith City Centre and across Penrith more broadly
- Provide a more balanced and equitable approach to growth and uplift in the Penrith City Centre

It is noted that at the time the community infrastructure planning proposal was prepared it was supported by multiple urban design reports for a number of separate Key Sites. Council also had an urban design report prepared by CM+ that looked at different development scenarios and outcomes across all of the Key Sites.

The urban design analysis in support of the current planning proposal takes account of the previous work undertaken, coupled with the premise of achieving the already approved maximum FSR control. It is also recognised that a number of key policies have evolved since the original planning proposal was made, in addition to the consideration of a number of site-specific development applications, which have highlighted some tension between the overall intent of the Key Sites and the operation of the individual clauses in the LEP.

Development Applications – Clause 8.2 Sun Access and Key Site 3 and 10

Clause 8.2 Sun Access states that despite provisions of the LEP which may enable increased development standards, development consent must not be granted on land in the Penrith City Centre if the development would result in overshadowing of public open space to a greater degree than would result from adherence to the controls in the Height of Buildings map.

While this is recognised as a benefit in some circumstances, particularly for important public open spaces, the way the clause is currently drafted it applies to all areas of public open space within the Penrith City Centre, which is taken to be all land zoned RE1 Public Recreation. As such, there is no ability to apply a merit-based assessment to the clause, consider alternative outcomes, or recognise the role and function of some public open spaces as more critical to city shaping outcomes, e.g. City Park.

By way of example, development applications for Key Sites 3 and 10 which sought to take advantage of the nominated incentive FSR under Clause 8.7 and a commensurate increase in height, have been refused by the NSW Land and Environment Court (LEC) because of non-compliance with the sun access provisions in Clause 8.2. This was due to the additional overshadowing of the small area of public open space to the immediate south of Key Sites 3 and 10 at 10 Mulgoa Road, Penrith (Lot 37 DP 731213).

The Court determined in DA's (Toga Penrith Developments Pty Limited vs Penrith City Council [2022] NSWLEC 1017 and Toga Penrith Developments Pty Limited vs Penrith City Council [2022] NSWLEC 117) that Clause 8.2 effectively prohibited any additional overshadowing to public open spaces (whether within or outside the Penrith City Centre) over the existing mapped HOB control.

It is noted that the architectural design competition required by Clause 8.4 resulted in significantly taller buildings (approximately 140m) than anticipated in the original planning proposal (approximately 80m) on Key Sites 3 and 10 as the taller, slender towers result in faster moving shadows, which also lessened the impact on existing residential property to the south.

The implication is that proposals on the nominated Key Sites may not be able to fully utilise the Key Site incentive provisions under Clause 8.7, if it cannot comply with Clause 8.2 and meet the design excellence requirements. As such, sun access control and HOB control needs to allow flexibility so that proponents have the ability to manipulate the built form to achieve the allowed FSR, while also ensuring that the proposed buildings do not have a negative impact on public open spaces and can meet the design excellence requirements.

Proponent Initiated Planning Proposal for Key Sites 3 and 10

A Proponent-initiated planning proposal was submitted for Key Sites 3 and 10 on 19 February 2024. This Planning Proposal sought to amend Clause 8.2 to remove the application of the clause to Key Sites 3 and 10. This Planning Proposal responded to the LEC decisions for the DA's proposed for the Key Sites 3 and 10.

Council Officers do not support the proposal to remove the application of Clause 8.2 to Key Sites 3 and 10. However, the intent of this Planning Proposal is supported, and it

has been merged into this Council-initiated Planning Proposal and appropriate sun access control applied to Key Sites 3 and 10.

Clause 8.7 and Proposed Building Heights

Clause 8.7 is drafted to enable a maximum bonus FSR but does not apply a maximum HOB. This creates uncertainty regarding how the FSR could be applied to the site, and there is also uncertainty regarding Council's overarching vision for building heights in the Penrith City Centre.

Building heights for some of the DA's that have been submitted for the Key Sites are significantly higher than the current maximum building height in the LEP. Currently the highest maximum HOB control is 80 metres (20 storeys). As previously identified, the DA submitted for Key Site 10 was for approximately 140 metres (45 Storeys).

Base FSR for Key Site 11

Currently there is no base FSR applying to Key Site 11, with a bonus FSR assigned under Clause 8.7.

A base FSR needs to be applied to allow Council to determine the value of a Community Infrastructure proposal as the value of a Community Infrastructure proposal is determined on the additional floor space created through the application of the bonus floor space assigned under Clause 8.7.

Part 1 – Objectives or Intended Outcomes

The objective of this Planning Proposal is to amend Part 8, as well as Clause 4.6, and apply a base FSR to Key Site 11 on the Floor Space Ratio Map of the Penrith LEP 2010.

The intended outcomes of the Planning Proposal are to:

1. Amend Clause 8.7 *Community infrastructure on certain key sites*, to:
 - apply maximum bonus height of building controls to Key Sites within the Penrith City Centre, through designation of heights on a Bonus Height of Buildings Map.
 - expand the objectives to better reflect the clause intent – that the intensity of development is commensurate with the capacity of the community infrastructure.
 - adjust the definition of community infrastructure, removing Recreation facility (indoor).
 - adjust the form that provision of community infrastructure is made as part of development, that:
 - community Infrastructure can be provided on Council land in a location that serves the Penrith City Centre if it is part of the Development Application.
 - the proposed community infrastructure may be delivered by the developer on behalf of Council.
 - where land or property is to be dedicated to Council for community infrastructure, it must be dedicated to Council in perpetuity.
 - community infrastructure that forms part of a development is calculated as part of the overall FSR of the site.
 - adjust the considerations for deciding whether to grant development consent to include that the community infrastructure is reasonably necessary for the Penrith City Centre.

2. Amend Clause 4.6 *Exceptions to development standards* by excluding Clause 8.2 and 8.7 to ensure that written requests are not used to vary the development standards.
3. Amend Clause 8.2 *Sun access* 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;
 - include reference to “21 June” when overshadowing is measured.
4. Amend Clause 8.4 *Design excellence*, to:
 - remove the \$1 million dollar threshold for development that needs to undertake an architectural design competition; and
 - remove the 10% HOB and/or FSR exceedance allowance for a proposal that has been through an architectural design competition and utilised the bonus FSR and height provisions in Clause 8.7.
5. Apply a base Floor Space Ratio control of 3.5:1 to Key Site 11.
6. Apply maximum bonus height of building controls to Key Sites via a Bonus Height of Building Map that will be added to Penrith LEP 2010.
7. 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.

Part 2 – Explanation of Provisions

The objective and intended outcomes of the Planning Proposal will be achieved by amending Clause 8.2, 8.4, 8.7 and 4.6 and apply a base FSR to Key Site 11 on the Floor Space Ratio Map and including a new 'Bonus Height of Building map' to Penrith LEP 2010. The proposed amendments and explanation for these are presented in this Part of the Planning Proposal.

1. Drafting of Clause 8.7

Clause 8.7 is proposed to be drafted to strengthen the relationship between the Community Infrastructure Policy and the LEP. Clause 8.7 will also be redrafted to allow for bonus height of building controls to be applied to the Key Sites.

The redrafting of Clause 8.7 will include the following:

- Additional objective: *1(c) to provide for an intensity of development that is commensurate with the capacity of planned infrastructure*
- Redrafting of subclause 3 to add: *if the proposed development includes satisfactory provision of community infrastructure, commensurate with the additional density of the development proposed.*
- Add a subclause (4) *or explanatory note that: Community Infrastructure can also be proposed on land owned by the local Council if landowners consent is issued. The form of community infrastructure must be satisfactory to Council.. The Community Infrastructure must be provided in a location that serves the City Centre..*
- Add subclause 5: *Land or property dedicated to Council for Community Infrastructure must be dedicated to Council in perpetuity.*
- Add subclause 6A: *The consent authority must not consent to the erection of a building on land to which this clause applies if the height for the building exceeds the height shown for the land on the Bonus Height of Buildings Map.*
- Add subclause 7(d): *be satisfied the community infrastructure is reasonably necessary for the City Centre.*
- Remove *recreation facilities (indoor)* from the current subclause 6

- Add new subclause (9) For **community infrastructure** that is located on or within a development site, the floors space of the community infrastructure is include in the overall floor space calculation.

It is also intended to amend the Community Infrastructure Policy to ensure that there is no ambiguity between the redrafted Clause 8.7 and the Council Policy. This will occur following the Gateway determination.

2. Amendment to Clause 4.6 (8)

It is proposed to amend Clause 4.6(8) by excluding Clause 8.2 and 8.7. Amendments to Clause 4.6 (8) will ensure that written requests are not used to vary the development standards which were introduced to protect certain aspects of the Penrith City Centre.

Clause 4.6(8) will be amended by adding the *clause 8.2 or 8.7*.

3. Amendments to Clause 8.2

It is proposed to amend Clause 8.2 to encourage development but also maintain appropriate levels of sun access to public space in a City Centre context. The primary objective is to enable development in the CBD and protect solar access to key public open spaces, such as City Park.

It is important to note that currently, the operation of Clause 8.2 would have an impact on the merit assessment of Development Applications on Key sites 3, 7, 9, 10 and 11 as no additional overshadowing would be enabled to certain public open spaces beyond the existing Height of Building map.

Officers have undertaken testing of shadows on 21 June to determine the impact on public open space. A key outcome sought is to maintain solar access to public open space commensurate with the function and importance of the public open space to the Penrith City Centre and at least three hours per day and during the lunch time period. This analysis is provided in the attached Planning Proposal.

This has been balanced with ensuring there can be practical building envelopes, the FSR development yield can be achieved so development is feasibility and realised, and Council's vision for the growth of the Penrith City Centre occurs. The modelling undertaken has informed that Clause 8.2 can be amended to not only refer to the

base Height of Building control, but also a 'bonus Height of Building' control linked to Clause 8.7, which would enable the Key Sites to be developed.

To facilitate development of the Key Sites in Penrith City Centre, it is proposed to amend Clause 8.2 to provide clear guidance on sun access to public open space. It is proposed to make the following amendments to the sun access controls for existing and future public open space within or adjacent to the Penrith City Centre:

- 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.

It is noted that the City Park property, Lot 1 DP1292057, is currently partially zoned RE1 Public Recreation, with the remaining area zoned MUI Mixed Use. Council is considering extending the RE1 Public Recreation zone across the entire City Park property as part of a future housekeeping amendment to Penrith LEP 2010. If the current MUI Mixed Use zone applying to the City Park property remains applying to the property when the amendment to Penrith LEP 2010 is being finalised for this Part 8 Planning Proposal, the amendment to Clause 8.2 can be drafted to reference the full City Park property, to ensure solar access is protected under Clause 8.2 for City Park.

As will be discussed below, the Bonus Height of Building Map has been determined to ensure that the impact of RE1 land in the CBD is acceptable.

4. Amendments to Clause 8.4

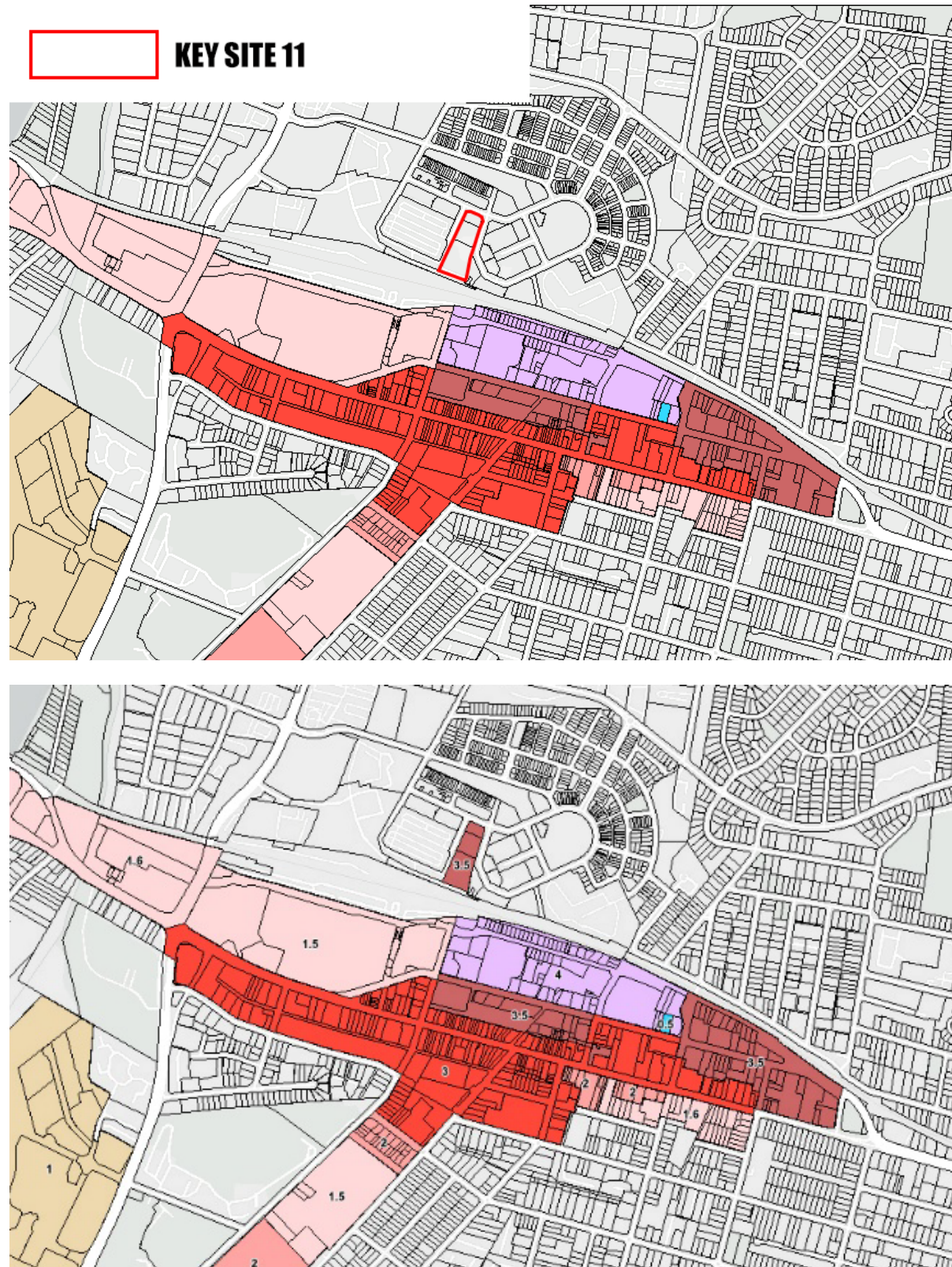
It is proposed to change the threshold trigger for when an architectural design competition is required for development in the Penrith City Centre. Clause 8.4 will:

- Remove the 10% HOB and / or FSR exceedance allowance for a proposal that has been through an architectural design competition where it is a Key Site and Clause 8.7 has been applied; and
- Remove the \$1 million dollar threshold for development that needs to undertake an architectural design competition.

5. Apply a base FSR for Key Site 11

It is proposed to apply a base FSR of 3.5:1 to Key Site 11. This FSR was determined by reviewing recent development approvals for neighbouring development.

Figure 2 – Floor Space Ratio Map Key Site 11



6. Apply maximum bonus height of building controls to Key Sites via a Bonus Height of Building Map that will be added to Penrith LEP 2010

As previously outlined, while Clause 8.7 includes a bonus FSR, there is no maximum building height control. It is intended to amend Clause 8.7 to include a mapped bonus HOB control for the Key Sites within the Penrith City Centre. Height of building controls for Key Sites have been determined utilising the following principles:

- Protect solar Access to public open space, commensurate with the function and importance of the public open space to the Penrith City Centre;
- Provide at least three hours solar access per day and during the lunch time period.
- Ensure the bonus FSR's for Key Sites can be achieved to meet Council's vision and desired development yields for each Key Site;
- Ensure the height control applied to the Key Site does not create additional capacity or yield.
- Provide flexibility for design, noting that the maximum height is considered more flexible than the maximum FSR and allows for design flexibility. It is Council's intent that the maximum FSR remain the primary development standard that cannot be varied;
- Promote the development of taller more slender buildings that cast a faster moving shadow to minimise the time a parcel of public open space or adjacent dwelling is overshadowed.
- Consider key elements of the Apartment Design Code such as cross ventilation and solar access; and
- Permit gateway or landmark development for key entry points to signify entry to the Penrith City Centre or for important prominent places.

The following bonus maximum HOB controls are proposed to be applied (also seen on below images). It is noted that on a number of sites the proposed building height does not change in order to protect solar access to City Park and built form massing has demonstrated that the bonus FSR can be achieved within the proposed height limit. It is also noted that on certain sites there is a significant difference between the existing base HOB and the maximum FSR that can be achieved, justifying further clarification regarding maximum building heights that are commensurate with bonus FSRs.

Existing Key Site Existing HOB Clause 8.7 bonus FSR	Proposed HOB	Justification and considerations
Key Site 1 56 metres 5.5:1	56 metres	<ul style="list-style-type: none"> • No increase above base HOB is proposed to protect solar access to City Park all day
Key Site 2 32 metres	32 metres	<ul style="list-style-type: none"> • No increase above base HOB is proposed to protect solar access to City Park all day

5.5:1		
Key Sites 3 and 10 24 metres 6:1	140 metres	<ul style="list-style-type: none"> • Considers planning proposal concept building envelope options submitted and previous DAs on the Key Sites • Maintains solar access to 10 Mulgoa Road in the afternoon, if building is massed towards High Street, however public open space in not high value, with limited amenity • Promotes the development of taller more slender buildings that cast narrower faster moving shadow to minimise the time a parcel of open space or dwelling is overshadowed • Provides flexibility for design to alleviate the need to seek further changes to the Penrith LEP 2010 in the future • Permits landmark / gateway development on key entry points to signify entry the Penrith City Centre
Key Site 4 24 metres 5:1	60 metres	<ul style="list-style-type: none"> • Maintains solar access to the entire area of Lawler Park from 9am to 12noon, but will be increasingly overshadowed after 12noon to a maximum of two thirds of the Park at 3pm (increased from one third shadowed under base HOB) • Permits landmark / gateway development on key entry points to signify entry the Penrith City Centre
Key Site 5 20 metres 2:1	60 metres	<ul style="list-style-type: none"> • Permits landmark / gateway development on key entry points to signify entry the Penrith City Centre
Key Site 6 20/24 metres 2:5:1	60 metres	<ul style="list-style-type: none"> • Permits landmark / gateway development on key entry points to signify entry the Penrith City Centre
Key Site 7 24/32 metres 5:1	80 metres	<ul style="list-style-type: none"> • Maintains solar access to public open space at 13 Henry Street from 9am-2pm • Maintains reasonable solar access to future mixed-use development to the south • Promotes the development of taller more slender buildings that cast narrower faster moving shadow to minimise the

		time a parcel of open space or dwelling is overshadowed
Key Site 8 24/56 metres 5.5:1	120 & 130 metres	<ul style="list-style-type: none"> Promotes the development of taller more slender buildings that cast narrower faster moving shadow to minimise the time a parcel of open space or dwelling is overshadowed Provides flexibility for design to alleviate the need to seek further changes to the Penrith LEP 2010 in the future
Key Site 9 80/24 metres 5.5:1	24 metres, 80 metres & 120 metres	<ul style="list-style-type: none"> Protect solar access to City Park, Memory Park and the future Edwards Place open space all day by having no increase above base HOB for the western part of the site
Key Site 11 32 metres No base FSR	140 metres, 50 metres and 32 metres	<ul style="list-style-type: none"> Considers the current DA for the site Maintains the consistency of built form for the northern part of the site with surrounding development to minimise the visual impact on existing residences
Key Site 12 24/32 metres 6:1	120 metres	<ul style="list-style-type: none"> Maintains reasonable solar access to future mixed-use development to the south Promotes the development of taller more slender buildings that cast narrower faster moving shadow to minimise the time a dwelling is overshadowed Provides flexibility for design to alleviate the need to seek further changes to the Penrith LEP 2010 in the future
Key Site 13 12/32 metres 6:5:1	120 metres	<ul style="list-style-type: none"> Maintains reasonable solar access to future mixed-use development to the south Promotes the development of taller more slender buildings that cast narrower faster moving shadow to minimise the time a dwelling is overshadowed Provides flexibility for design to alleviate the need to seek further changes to the Penrith LEP 2010 in the future

Bonus height of building controls will be administered via a Bonus Height of Building Map that will be added to Penrith LEP 2010. The reason a bonus Height of Building Map

is preferred is that it allows building heights to be modulated across sites in a methodology that is easily explained and understood.

The heights designated have been determined through modelling building envelopes using the Giraffe Build software (enabling 2D drawing; 3D modelling and urban analytics), particularly to test different building envelopes to potential FSR controls and checking solar access outcomes of these. The images below show the maximum bonus height of building overall and for the different Key Sites also showing indicative building envelopes, which have been modelled to these heights and achieving the maximum bonus FSR. Also below are images showing solar access at 21 June for the base HOB and the proposed bonus HOB at 10am, 12 noon and 2pm.

FIGURE 3 – Maximum Bonus HOB Map



Figure 4 – Maximum Bonus HOB – 3D visualisation



Bonus Height of Building Controls for Key Sites 3 and 10

FIGURE 5 – Key Sites 3 & 10 – Max. Bonus HOB and indicative building envelopes



FIGURE 6 – Key Sites 3 & 10 – Solar access at 21 June – Base & Proposed HOB – 10am



FIGURE 7 – Key Sites 3 & 10 – Solar access at 21 June – Base & Proposed HOB – 12noon

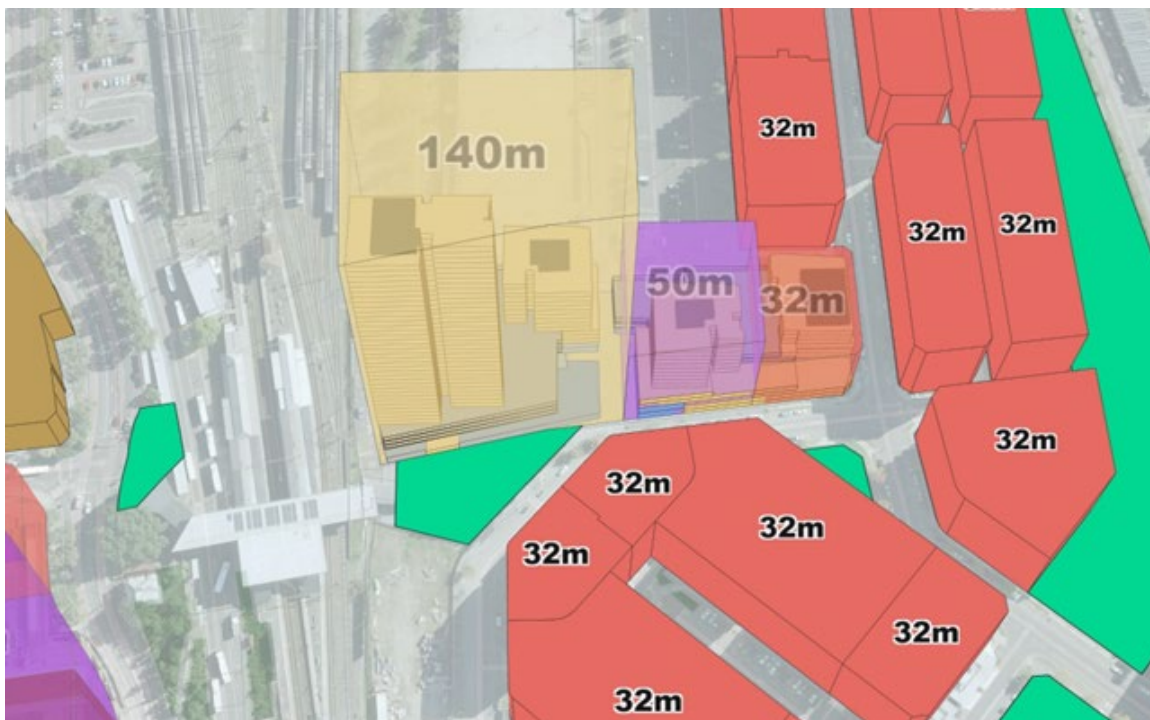


FIGURE 8 – Key Sites 3 & 10 – Solar access at 21 June – Base & Proposed HOB – 2pm



Bonus Height of Building Controls for Key Sites 11

FIGURE 9 – Key Site 11 – Max. Bonus HOB and indicative building envelopes



Bonus Height of Building Controls for Key Sites 8,9 and 13

FIGURE 10 – Key Sites 9, 8 & 13 – Max. Bonus HOB and indicative building envelopes

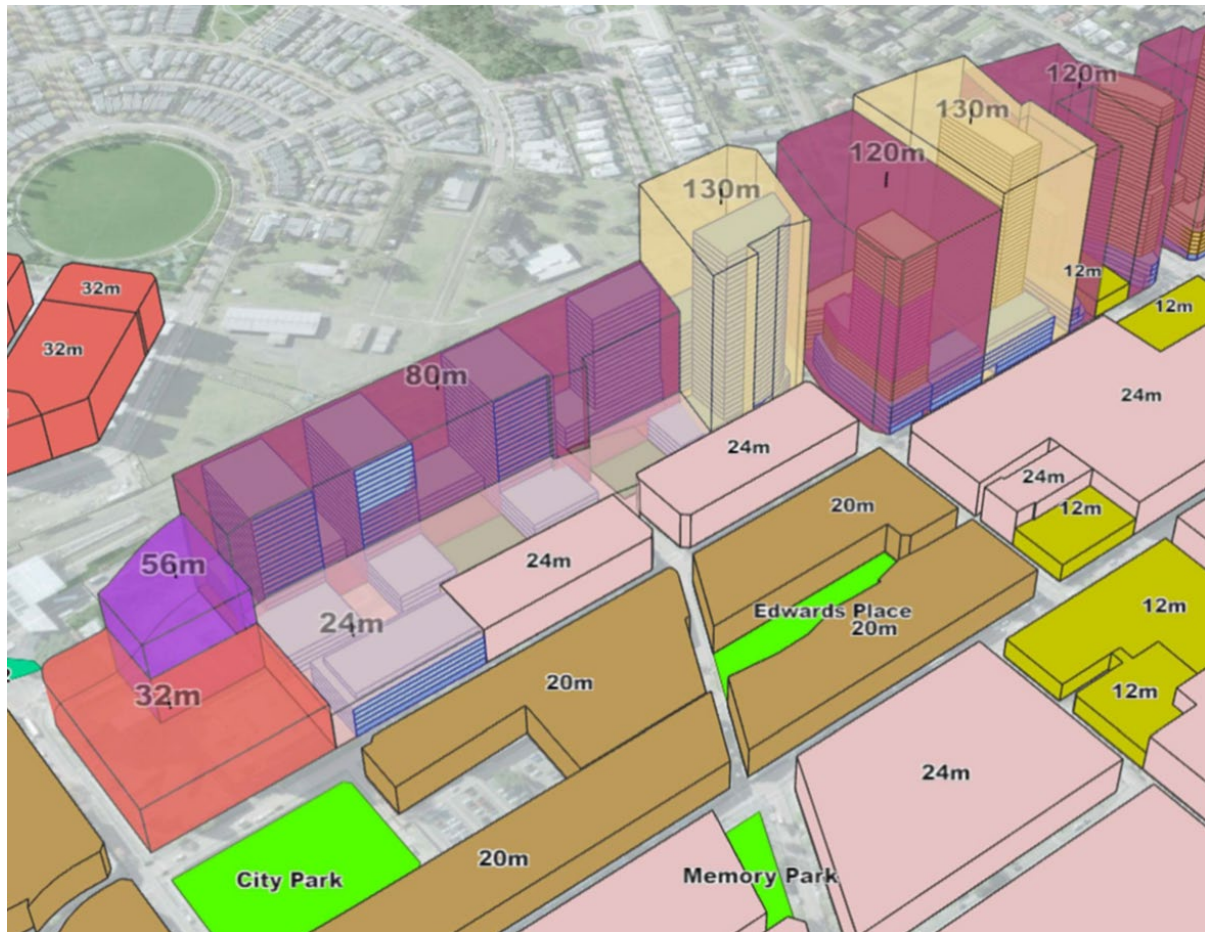


FIGURE 11 – Key Sites 11, 9, 8 & 13 – Solar access at 21 June – Base & Proposed HOB – 10am

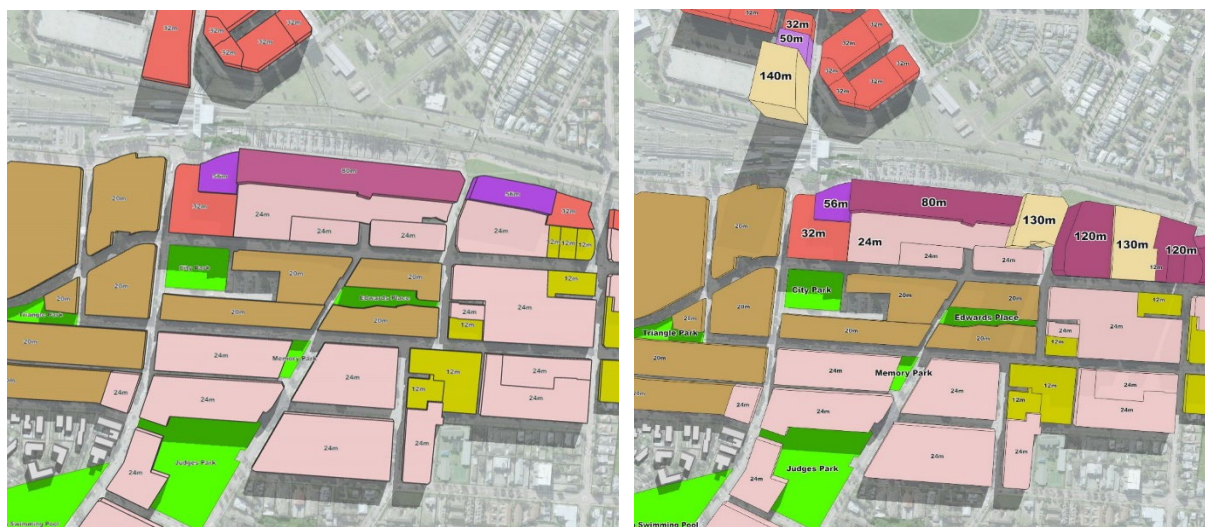


FIGURE 12 – Key Sites 11, 9, 8 & 13 – Solar access at 21 June – Base & Proposed HOB – 12noon

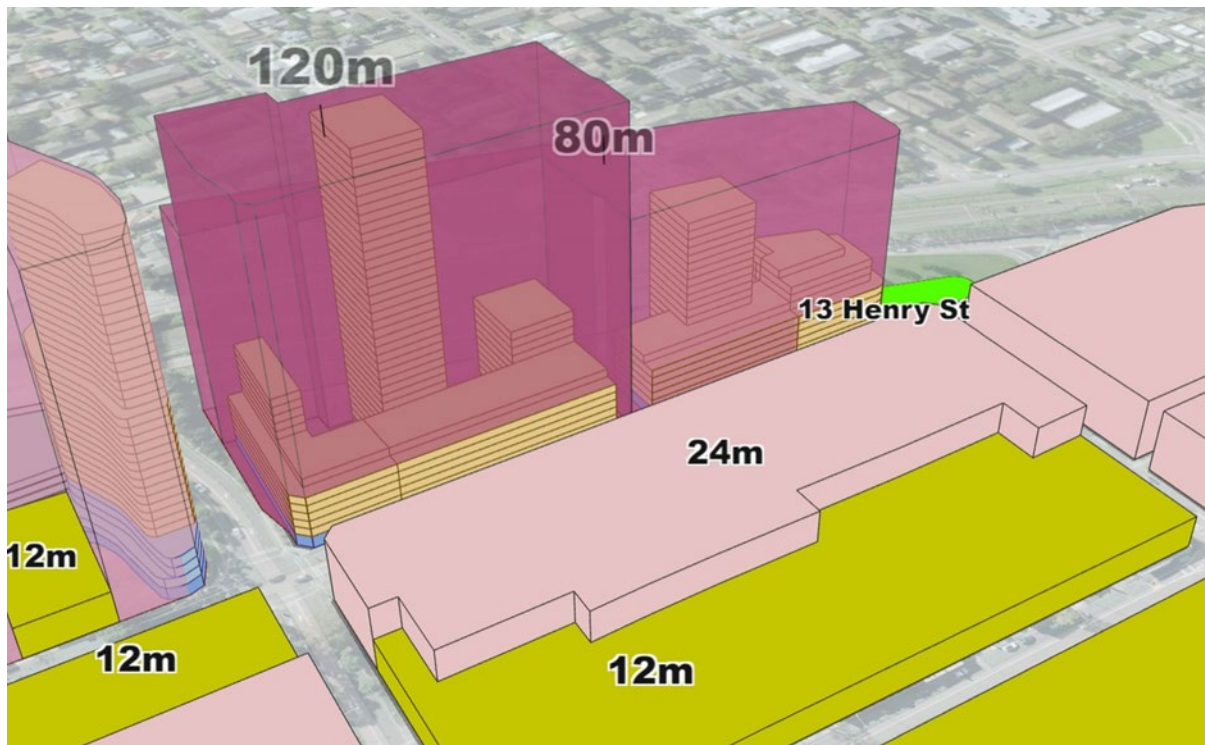


FIGURE 13 – Key Sites 11, 9, 8 & 13 – Solar access at 21 June – Base & Proposed HOB – 2pm



Bonus Height of Building Controls for Key Sites 7 and 12

FIGURE 14 – Key Sites 7 & 12 – Max. Bonus HOB and indicative building envelopes



Bonus Height of Building Controls for Key Site 4

FIGURE 15 – Key Site 4 – Max. Bonus HOB and indicative building envelopes

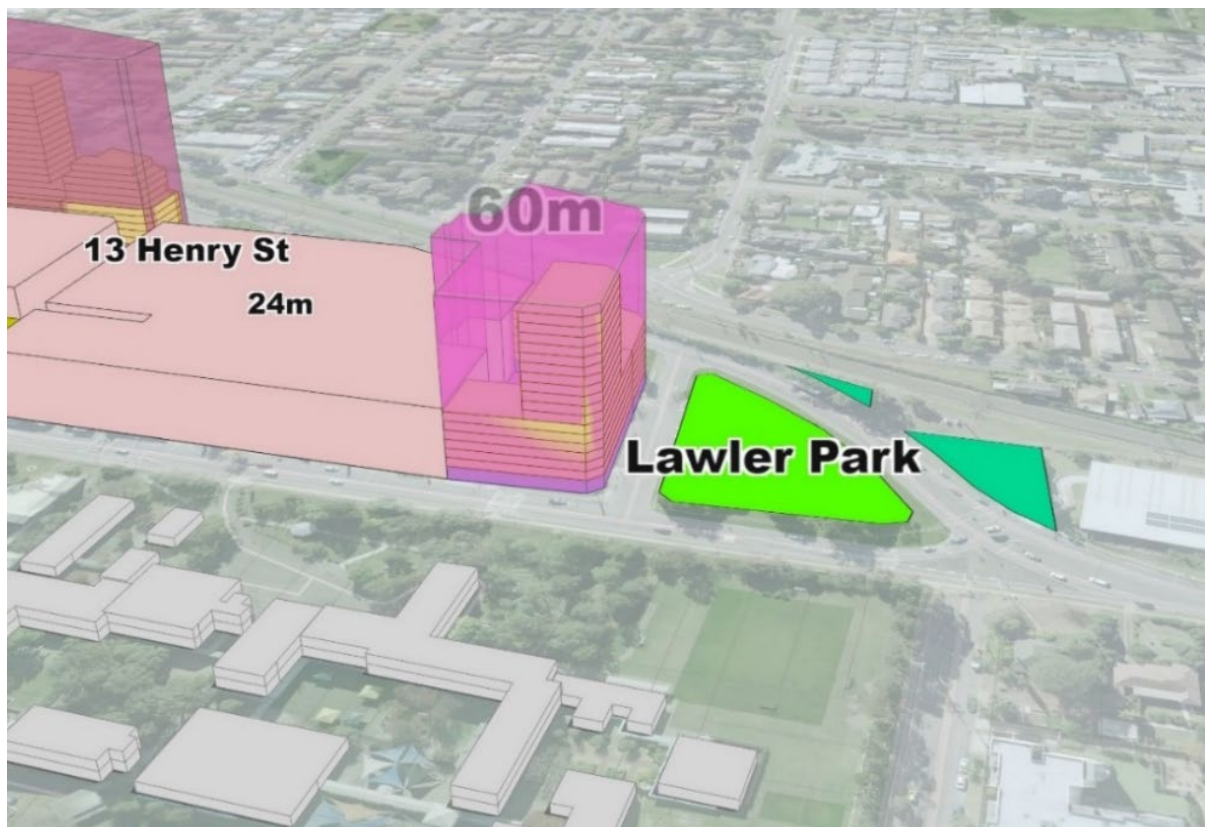


FIGURE 16 – Key Sites 7 & 4 – Solar access at 21 June – Base & Proposed HOB – 10am



FIGURE 17 – Key Sites 7 & 4 – Solar access at 21 June – Base & Proposed HOB – 12noon



FIGURE 18 – Key Sites 7 & 4 – Solar access at 21 June – Base & Proposed HOB – 2pm



7. Amend Chapter 2 Affordable housing of the Housing SEPP

It is requested that an amendment to Chapter 2 Affordable housing of the Housing SEPP be made as part of the Planning Proposal. While the provision of affordable housing is supported, in the Penrith City Centre context, where there is a dwelling cap in place, it is important to manage the overall density.

The requested amendment would apply the 30% Affordable Housing provisions to the base mapped Height of Building and FSR control. Without this amendment, developers could increase the height by an additional 30% on top of the bonus height under Clause 8.7, which would have unacceptable consequences.

In enabling the opportunity to apply Chapter 2 of the Housing SEPP to the base height of building and FSR, this would enable developers to consider an alternative outcome where affordable housing is provided instead of utilising the provisions of Clause 8.7.

Part 3 – Justification

This part of the Planning Proposal provides details on the need for the proposed amendment to the Penrith LEP 2010, the relationship with the strategic planning framework, the impacts of the proposed amendment, and State and Commonwealth interests.

Section A – Need for the Planning Proposal

Q1. Is the Planning Proposal a result of an endorsed local strategic planning statement, strategic study or report?

The *Penrith Local Strategic Planning Statement* (LSPS), adopted by Council on 23 March 2020, sets out the 20-year vision for land use in the Penrith Local Government Area (LGA) taking into consideration the economic, social and environmental needs of the community. It recognises the special characteristics that contribute to Penrith's local identity and outlines how growth and change will be managed into the future.

The LSPS planning priorities and applicable associated actions relevant to this Planning Proposal are:

- *PLANNING PRIORITY 1: Align development, growth and infrastructure*
- *PLANNING PRIORITY 3: Provide new homes to meet the diverse needs of our growing community*
 - *ACTION 3.3: Review and update planning and development controls to encourage the delivery of mixed-use and high-density residential development in Penrith City Centre, St Marys Town Centre, and Kingswood*
- *PLANNING PRIORITY 5: Facilitate sustainable housing*
 - *ACTION 5.3 – Update planning and development controls to improve the design, durability and sustainability of new dwellings and release areas*
- *PLANNING PRIORITY 7: Enrich our places*
 - *ACTION 7.2 Investigate ways to better encourage, support and enable innovative design and architectural excellence*

This Planning Proposal is a result of a review of the issues associated with the current provisions in Part 8 of Penrith LEP 2010, applying to the development of key sites within

the Penrith City Centre. The current controls have raised issues about providing certainty in relation to building height to be able to develop Key Sites to their potential density, acceptable provision of community infrastructure, solar access protection of public open space and appropriate design excellence processes.

It has also been identified that a base FSR needs to be applied to Key Site 11, to allow Council to determine the value of a community infrastructure proposal for the future development of Key Site 11 that utilises the bonus FSR under Clause 8.7.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is the only means of achieving the objectives and intended outcomes, as the intent of the Planning Proposal is to amend Clauses 4.6, 8.2, 8.4 and 8.7 and add a base FSR on the Floor Space Ratio Map and introduce a bonus Height of Building Map to the Penrith LEP 2010, which requires the preparation of a Planning Proposal.

The only other pathway to amend Penrith LEP 2010 would be via a Clause 3.22 amendment, however, the nature of the amendments proposed in the Planning do not meet the criteria for a clause 3.22 amendment as the amendments do not:

- correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,
- address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature,
- deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land

Amendments to Clause 8.7 – Removing Recreation Facility Indoor as a type of Community Infrastructure

Removing Recreation facility (indoor) from Clause 8.7 is the best means of ensuring inappropriate proposal for community infrastructure such as private gymnasiums will not be submitted in the future.

This change responds to recent proposals to provide gymnasiums as community infrastructure. While Council's Sport and Recreation Strategy identifies the need for indoor recreation facilities, especially indoor courts, the primary function of these gymnasiums would be for profit (gain) with additional access for the community. These gymnasiums would have limited accessibility to the broader community, providing no benefit for the community or the Penrith City Centre. There was also concern that a proposal only sought to provide community access for a 20-year period.

As a gymnasium is a type of recreation facility (indoor) whether or not operated for the purpose of gain and Clause 8.7 currently lists recreation facility (indoor) as a type of community infrastructure that can be provided, Council is required to consider such proposals. Council would not have to consider such proposals if recreation facility (indoor) was not listed as a type of community infrastructure in Clause 8.7. It is also noted that the CI Policy clearly articulates the requirements around community infrastructure and as such these type of uses have not been supported through the Development Assessment process, however, for the purpose of clarity it is proposed to remove this use as a form of community infrastructure.

Amendments to Clause 8.7 – Community Infrastructure proposals that do not dedicate land to Council in perpetuity

Amendments to Clause 8.7 to clearly state that land or property must be dedicated to Council in perpetuity is the best means to ensure community infrastructure proposals that seek to dedicate land to Council will be dedicated in perpetuity. These amendments will also provide statutory weight to Council's CI Policy.

The inclusion of this subclause responds to proposals where a community infrastructure facility has proposed to be operated for a 20-year lease, with the facility returning to the landowner after 20 years. Temporary community infrastructure lacks security and certainty for Council and complicates Council's planning and accounting of required community infrastructure to serve a growing population..

Amendments to Clause 8.7 – Changes to strengthen provisions relating to community infrastructure and bonus floor space provision

Adding the subclauses 1(c) and 7(d) and the redrafting of subclause 3 is the best means to provide a strengthened statutory framework to be relied on in relation to DA assessments and determinations.

Subclause 1(c) makes it clear that Council expects the proposed community infrastructure will be of greater value and benefit for the public as greater yield above the base development standards is realised. It conversely provides Council with an additional tool to determine if a proposal is an appropriate scale, given the community infrastructure being proposed.

Redrafted subclause 3 to include that there is “satisfactory provision” of community infrastructure and that it is “commensurate with the additional intensity of the development proposed”, will imbed that simply providing any type of community infrastructure, regardless of the value and benefit of it to the public associated with the Penrith City Centre, will not automatically enable access to the increased development standards under Clause 8.7.

Subclause 7(d) provides greater clarity to enable Council to reject any proposed community infrastructure under Clause 8.7 and accordingly a development application that has increased density relying on Clause 8.7, where Council decides that a specific community infrastructure proposal is not required to serve the public . It could be not a priority at that time, could have limited benefit, serves limited population, does not represent good value for Council, is not aligned with the community infrastructure policy or other strategies.

These added provisions will provide an additional tool in the assessment of inappropriate community infrastructure proposals. This is particularly important as while Council has a CI Policy, this is not a statutory document. It will also make clear that there is a nexus between the value of the community infrastructure provided and the level of uplift sought under Clause 8.7 above the base development standards. It will enable Council to reject the application of Clause 8.7 and accordingly a development application that has increased density relying on Clause 8.7, where Council decides unsatisfactory community infrastructure will be provided as part of the application.

Amendments to Clause 8.7 – Clarification on the calculation of FSR

Adding a subclause to Clause 8.7 that will clearly outline that a proposal for community infrastructure that forms part of a development is calculated as part of the overall FSR for the site, and a credit will not be given for the floor space provided for community infrastructure, is the best means of ensuring applicants do not gain additional floorspace when the community infrastructure is required to satisfy the granting of additional floorspace under Clause 8.7.

The inclusion of this subclause responds to proposal where applicants are seeking a credit for the floor space assigned to the community infrastructure to be utilised elsewhere in the development.

Amendments to Clause 8.7 – Allow community infrastructure to be provided not as part of the development but elsewhere in the Penrith City Centre

Adding subclause 4, or an explanatory note, makes it clear the ability to provide community infrastructure within the Penrith City Centre as long as it is part of the development site and landowners consent has been granted. This will allow flexibility for items listed as preferred community infrastructure to be provided as part of the development of a Key Site.

Amendments to Clause 8.2 – Solar protection being for RE1 zoned public open space, at 21 June and based on combined base HOB and bonus HOB

In determining appropriate bonus HOB controls in Clause 8.7, the heights have been set to ensure there is an appropriate level of sun access at 21 June to public open space zoned RE1, within or adjacent to the Penrith City Centre, commensurate with the function and importance of the public open space to the Penrith City Centre. This has been balanced with:

- ensuring there can be practical building envelopes;
- that the FSR development yield can be achieved so development is feasibility and realised; and
- Council's vision for the growth of the Penrith City Centre occurs.

For example, Penrith City Park is one of the most important public open spaces and HOB envelopes have been set to ensure a high level of sun access is maintained throughout the day in mid-winter to the majority of the area, whereas some other

public open spaces have some overshadowing during part of the day and/or part of the area, most having only minor overshadowing.

These changes also respond to the LEC decisions and the Proponent-initiated Planning Proposal for Key Sites 3 and 10, while balancing development outcomes. The amendment to Clause 8.2, that overshadowing of public open space zoned REI is now based on combination of the Height of Buildings Map and the Bonus Height of Building Map at 21 June, will allow the scale of development able to achieve the bonus FSR. Clause 8.2 will no longer impact on the ability to develop Key Sites 3 and 10, which is the intention sought by the Proponent-initiated Planning Proposal.

The amendment now clarifies that the public open space protected is the land zoned REI Public Recreation, as Clause 8.2 is currently ambiguous – technically all roads, road reserves, footpaths, more transitory paved spaces and even car parks could be considered as public open space. Including this amendment will make clear the exact space that warrants solar protection under this control. However, as noted above, if the current MUI Mixed Use zone applying to the City Park property remains applying to the property when the amendment to Penrith LEP 2010 is being finalised for this Part 8 Planning Proposal, the amendment to Clause 8.2 can be drafted to reference the full City Park property, to ensure solar access is protected under Clause 8.2 for City Park.

The amendment also clarifies that the solar protection is considered at mid-winter when solar access is highly desired but challenging to achieve due to low sun angles. Clause 8.2 is currently ambiguous – technically it would require consideration even in mid-summer, when maintaining solar is not a priority or even is undesirable and may unduly and unnecessarily restrict development.

Amendments to Clause 4.6 – Excluding Clause 8.2 and 8.7 that written requests can be used to contravene a development standard

It is proposed to amend Clause 4.6(8) by excluding Clause 8.2 and 8.7. Amendments to Clause 4.6 (8) will ensure that written requests cannot be not used to contravene the development standards, which were introduced to protect certain aspects of the Penrith City Centre. The bonus HOB and FSR in Clause 8.7 is already a substantial incentive. Accordingly, further increase to HOB or FSR contravening Clause 8.7 or variation to solar determined by this and through contravening Clause 8.2 is not appropriate.

Amendments to Clause 8.4 – Remove \$1 million threshold for architectural design competition and 10% HOB/FSR exceedance allowance where Clause 8.7 is applied

Currently, Clause 8.4 requires an architectural design competition to be held for any development proposal in the Penrith City Centre greater than 24 metres or 6 Storeys in height, or with a development cost of more than \$1 million and on a Key Site. Clause 8.4 Design Excellence is being revised to remove the \$1 million dollar threshold for development that needs to undertake an architectural design competition.

Clause 8.4 also provides an incentive for development that undertakes an architectural design competition. Clause 8.4(5) is being revised to remove the 10% HOB and / or FSR exceedance allowance for a proposal that has been through an architectural design competition where it is a Key Site and the bonus HOB and / or FSR provisions in Clause 8.7 have been utilised.

Applying a base FSR to Key Site 11 on the Floor Space Ratio Map

Applying a base FSR to Key Site 11 is the best means to allow Council to determine the value of a community infrastructure proposal for the future development of Key Site 11 that utilises the bonus FSR of Clause 8.7.

Without a base FSR, Council is unable to assign a value to a community infrastructure proposal and is unable to determine the public benefit of a community infrastructure proposal for Key Site 11.

The proposed FSR of 3.5:1 has been determined by reviewing recent development approvals for neighbouring development, which have a base height of building control of 32 metres, which also applies to Key Site 11. This FSR ensures any development of the site that does not utilise the bonus FSR of Clause 8.7 (5:1) can achieve development yields equivalent to neighbouring development. This ensures the application of a base FSR does not impact development feasibility, should the landowner choose not to utilise the bonus FSR.

Request an amendment to Chapter 2 Affordable housing of the Housing SEPP

During discussions on the PP, the Local Planning Panel raised concerns about the impact of Chapter 2 Affordable housing of the Housing SEPP as this enables a 30% additional height bonus if Affordable Housing is provided. While the provision of

affordable housing is supported, in the Penrith City Centre context where there is a dwelling cap in place, it is important to manage the overall density. Consequently, it has been proposed to request an amendment to Chapter 2 Affordable housing of the Housing SEPP so that it only applies to the mapped base FSR and height in the Penrith LEP. Without this amendment, developers could increase the height by an additional 30% on top of the bonus height under Clause 8.7, which would have unacceptable consequences.

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, affecting flood evacuation capacity and exceeding the dwelling cap set by the State Government for the Penrith City Centre.

In enabling the opportunity to apply the Housing SEPP to the base height and FSR, this would also allow developers to consider an alternative outcome where affordable housing is provided instead of utilising the provisions of Clause 8.7.

Section B – Relationship to Strategic Planning Framework

Q3. 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)?

Greater Sydney Region Plan

In March 2018, the Greater Sydney Commission published the *Greater Sydney Region Plan – A Metropolis of Three Cities*. The Plan sets a 40-year vision (to 2056) of three cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. The Plan also establishes a 20-year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters, and guide the delivery of infrastructure. It also informs district and local plans and the assessment of planning proposals.

Objective 10: Greater Housing Choice and Objective 11 Housing is more diverse and affordable.	The amendments proposed in this proposal is consistent with this objective as the amendments will facilitate development of Key Sites that will lead to
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	considerable supply of housing within the Penrith City Centre.
Objective 14: A Metropolis of Three Cities integrated land use and transport creates walkable and 30-minute cities	This Planning Proposal is consistent with this objective as the amendments will facilitate development of Key Sites within the Penrith City Centre. Development of the Key Sites within the Penrith City Centre integrates land use and transport by provide housing and employment within walking distance of the Penrith Railway Station and Bus Interchange.

Western City District Plan

In March 2018, the Greater Sydney Commission published the *Western City District Plan*. This is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. It guides the implementation of the Greater Sydney Region Plan at a district level and provides the link between regional and local planning. The District Plan informs local strategic planning statements, like the Penrith LSPS, and local environmental plans, like Penrith LEP 2010. It also informs the assessment of planning proposals.

Planning Priority W5: Providing housing supply, choice and affordability with access to jobs, services and public transport.	<p>This Planning Proposal is consistent with this Planning Priority as the amendments will facilitate development of Key Sites within the Penrith City Centre. Development of the Key Sites within the Penrith City Centre provide much need housing supply for both the Penrith City Centre and the Penrith LGA as a whole.</p> <p>All key sites are within walking distance of the Penrith Railway Station and Bus Interchange, Westfield's Penrith, Penrith TAFE and the other retail activities, employment opportunities and community facilities within the Penrith City Centre, as well as access to employment opportunities in Parramatta and Sydney CBD's.</p>
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Q4. Is the planning proposal consistent with a council local strategic planning statement that has been endorsed by the Planning Secretary or Greater Cities Commission, or another endorsed local strategy or strategic plan?

Penrith Local Strategic Planning Statement

The following section outlines the strategic merit of the Planning Proposal against key actions within the Penrith LSPS.

<p>ACTION 3.3: Review and update planning and development controls to encourage the delivery of mixed-use and high-density residential development in Penrith City Centre, St Marys Town Centre, and Kingswood</p>	<p>This Planning Proposal is an action of the LSPS as the proposed amendments have been formulated from a review of existing planning controls of Part 8 of Penrith LEP. The proposed amendments will encourage this delivery of mixed-use residential development within the Penrith City Centre by facilitating development of Key Sites. Most of the Key Sites are zoned MUI and permit mixed-use residential development.</p>
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Penrith Local Housing Strategy

The following section outlines the strategic merit of the Planning Proposal with key priorities of the Penrith Local Housing Strategy (LHS).

<p>PRIORITY A 1.1: Stage the supply of housing, in the right locations, to ensure that housing and infrastructure align.</p> <p>PRIORITY A 3.1: Support housing diversity and density within a walkable catchment of centres, particularly Penrith, St Marys, Kingswood, Werrington and the new Sydney Metro station locations</p>	<p>The Planning Proposal is consistent with PRIORITY A1.1 and A 3.1 of the Penrith LHS as the proposed amendments seek to facilitate the development of the Key Sites within the Penrith City Centre. The proposed amendments will encourage this delivery of mixed-use residential development within the Penrith City Centre by facilitating development of Key Sites.</p> <p>All Key Sites are within walking distance of the Penrith Railway Station and Bus Interchange, Westfield's Penrith, Penrith TAFE and the other retail activities, employment opportunities and community facilities within the Penrith City Centre.</p>
<p>Priority D 7.2: Support the revitalisation of existing centres and neighbourhoods in a manner that will deliver high-quality built form outcomes, enhance the public domain, and provide community benefit</p>	<p>The Planning Proposal is consistent with PRIORITY D7.2 of the Penrith LHS as the proposed amendment seeks to facility the development of the Key Sites within the Penrith City Centre. The objective of the Key Sites was to activate the Penrith City Centre by providing for residential and commercial development at a higher density than currently permitted and support this additional density with community infrastructure that enhance the public domain and provides other community benefit consistent with Council's Community Infrastructure Policy</p>

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The NSW Government publishes State Environmental Planning Policies (SEPPs), which deal with matters of State or regional planning significance. The Planning Proposal is consistent with applicable SEPPs, as demonstrated in Table 1.

Table 1: State Environmental Planning Policies

SEPP	Applicable	Comment
SEPP (Biodiversity and Conservation) 2021		
Chapter 2 – Vegetation in Non-rural Areas	Yes	<p>The proposal does not seek any clearing of vegetation under this SEPP.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
Chapter 6 – Water Catchments	Yes	<p>The proposal does not incorporate any land within the Sydney Drinking Water Catchment.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
Chapter 13 – Strategic Conservation Planning	Yes	<p>The proposal does not incorporate any land to which this SEPP Applies.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
SEPP (Exempt and Complying Development Codes) 2008		
	Yes	<p>The proposal does not propose to alter exempt or complying provisions, nor would the proposal impede the application of the SEPP.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
SEPP (Housing) 2021		
Chapter 2 – Affordable Housing	Yes	<p>It has been proposed to request an amendment to Chapter 2 Affordable housing of the Housing SEPP so that it only</p>

SEPP	Applicable	Comment
		<p>applies to the mapped base FSR and height in the Penrith LEP on Key Sites. Without this amendment, developers could increase the height by an additional 30% on top of the bonus height under Clause 8.7, which would have unacceptable consequences.</p> <p>This 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 number of dwellings on key sites would be increased, affecting flood evacuation capacity and exceeding the dwelling cap set by the State Government for the Penrith City Centre.</p> <p>In enabling the opportunity to apply the Housing SEPP to the base height and FSR, this would also allow land owners and developers to consider an alternative outcome where affordable housing is provided instead of utilising the provisions of Clause 8.7.</p>
Chapter 3 – Diverse Housing	Yes	<p>The proposal does not seek to make changes that would impede the application of this chapter of the SEPP.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
Chapter 4 Design of Residential Apartment Development	Yes	<p>The proposal will not impede the ongoing assessment of development under SEPP (Housing) 2021.</p> <p>It is also important to note that the bonus Height of Building controls being proposed</p>

SEPP	Applicable	Comment
		<p>seek to promote the development of taller more slender buildings that cast a faster moving shadow to reduce the time a parcel of open space or dwelling is overshadowed.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
Chapter 5 Transit Orientated Development	Yes	<p>The proposal will not impede the ongoing application of this chapter.</p> <p>Whilst several of the Key Sites are located within 400m of a Railway Station, the Penrith City Centre is not located in a Transit Oriented Development Area.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
SEPP (Industry and Employment) 2021		
Chapter 3 – Advertising and Signage	Yes	<p>The proposal does not seek to make any changes that would impact the ongoing assessment of signage applications under SEPP 64.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
SEPP (Planning Systems) 2021		
Chapter 2 – State and Regional Development	Yes	<p>The subject site does not incorporate State or Regionally significant development. Notwithstanding, the proposal will not impede the assessment or delivery of development under this SEPP.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
SEPP (Precincts – Western Parkland City) 2021		

SEPP	Applicable	Comment
Chapter 2 – State Significant Precincts	No	<p>The subject site does not incorporate land to which this SEPP applies.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
Chapter 4 – Western Sydney Aerotropolis	No	<p>The proposal does not incorporate any land to which this SEPP Applies.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
Chapter 5 – Penrith Lakes Scheme	No	The subject site is not located within the Penrith Lakes Scheme.
Chapter 6 – St Marys	No	The proposal does not incorporate any land to which this chapter Applies.
SEPP (Primary Production) 2021		
Chapter 2 – Primary Production and Rural Development	No	<p>The proposal will not impede the assessment or delivery of development under this SEPP.</p> <p>The proposal is therefore consistent with the objectives and provisions of the SEPP.</p>
SEPP (Resilience and Hazards) 2021		
Chapter 2 – Coastal Management	N/A	
Chapter 3 – Hazardous and Offensive Development	N/A	
Chapter 4 – Remediation of Land	Yes	Consistent – Nothing in the Planning Proposal will prevent the application of this SEPP.
SEPP (Resources and Energy) 2021		

SEPP	Applicable	Comment
Chapter 2 – Mining, Petroleum Production and Extractive Industries	Yes	<p>The subject site does not incorporate any mining or petroleum industries or identified resources.</p> <p>Notwithstanding, the proposal will not impede the assessment or delivery of development under this SEPP.</p>
Chapter 3 – Extractive Industries in Sydney Area	Yes	<p>The subject site does not incorporate any extractive industries.</p> <p>Notwithstanding, the proposal will not impede the assessment or delivery of development under this SEPP.</p>
SEPP (Sustainable Buildings) 2022		
Chapter 2 – Standards for Residential Development – BASIX	Yes	Any future residential development that may result of this Planning Proposal will need to comply with this SEPP.
Chapter 3 – Standards for Non-residential Development	Yes	Any future non-residential development that may result of this Planning Proposal will need to comply with this SEPP.
SEPP (Transport and Infrastructure) 2021		
Chapter 2 – Infrastructure	Yes	<p>The subject site does not incorporate any identified infrastructure projects.</p> <p>Notwithstanding, the proposal will not impede the assessment or delivery of development under this SEPP.</p>
Chapter 3 – Educational Establishments and Child Care Facilities	Yes	The Planning Proposal will not affect implementation of this SEPP

SEPP	Applicable	Comment
Chapter 4 – Major Infrastructure Corridors	N/A	The proposal does not incorporate any land to which this SEPP applies or land which is identified as a transport corridor.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 directions)?

The Minister for Planning issues Local Planning Directions that councils must follow when preparing planning proposals. The directions cover the following focus areas:

- Planning systems;
- Planning systems – place-based;
- Biodiversity and conservation;
- Resilience and hazards;
- Transport and infrastructure;
- Housing;
- Industry and employment;
- Resources and energy; and
- Primary production.

The Planning Proposal is considered to be consistent with all applicable Section 9.1 Local Planning Directions, as demonstrated in Table 2.

Table 2: Section 9.1 Ministerial Directions – Local Planning Directions

Direction	Applicable	Consistent	Comment
Focus Area 1: Planning Systems			
1.1 Implementation of Region Plans	Yes	Yes	<p>This proposal includes a detailed assessment of the planning outcomes under the Western City District Plan and Greater Sydney Region Plan.</p> <p>The assessment demonstrates that the proposal is consistent with the regional strategies.</p>

Direction	Applicable	Consistent	Comment
1.2 Development of Aboriginal Land Council land	No	N/A	
1.3 Approval and Referral Requirements	Yes	Consistent	The proposal does not introduce any provisions that require concurrence or referral of Development Applications.
1.4 Site Specific Provisions	Yes	Consistent	The Planning Proposal does not propose a provision allowing a particular development to be carried out.
Focus Area 1: Planning Systems – Place-based			
1.5 Parramatta Road Corridor Urban Transformation Strategy	No	N/A	
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A	
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A	
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A	
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	N/A	
1.10 Implementation of the Western Sydney Aerotropolis Plan	Yes	Consistent	The Planning Proposal does not apply to land shown on the Aerotropolis SEPP's Land Application Map. It also does not apply to the additional land shown on the Aerotropolis Boundary Map, as that land is zoned for rural purposes.

Direction	Applicable	Consistent	Comment
			The Planning Proposal is consistent with the Western Sydney Aerotropolis Plan as it will not prevent the application of the airport safeguards provisions in the SEPP.
Focus Area 2: Design and Place (No directions)			
Focus Area 3: Biodiversity and Conservation			
3.1 Conservation Zones	Yes	Consistent	The Planning Proposal does not apply to land within a conservation zone or land otherwise identified for environment conservation/ protection purposes in the Penrith LEP 2010.
3.2 Heritage Conservation	Yes	Consistent	The Planning Proposal will not affect existing heritage conservation provisions in Penrith LEP 2010.
3.3 Sydney Drinking Water Catchments	N/A to LGA		
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	N/A to LGA		
3.5 Recreation Vehicle Areas	Yes	Consistent	The Planning Proposal does not propose a provision allowing land to be developed for the purpose of a recreation vehicle area.
3.6 Strategic Conservation Planning	No	N/A	

Direction	Applicable	Consistent	Comment
3.7 Public Bushland	Yes	Consistent	The Planning Proposal does not apply to land that is classified as Public Bushland.
<i>Note: all other directions do not apply to Penrith LGA</i>			
Focus Area 4: Resilience and Hazards			
4.1 Flooding	Yes		The Planning Proposal will not affect existing provisions in Penrith LEP 2010 relating to flood planning and the flood planning area. The Planning Proposal does not propose to rezone any land or increase development densities.
4.2 Coastal Management	N/A to LGA		
4.3 Planning for Bushfire Protection			<p>The Planning Proposal applies to some land that is mapped as bushfire prone land or in proximity to land mapped as bushfire prone land.</p> <p>The Planning Proposal does not propose to rezone any land or increase development densities.</p> <p>In accordance with this direction, consultation with the NSW Rural Fire Service will be undertaken, following receipt of a Gateway Determination and prior to community consultation, and any comments made considered.</p>
4.4 Remediation of Contaminated Land	Yes	Consistent	The Planning Proposal does not propose a change of use of land.

Direction	Applicable	Consistent	Comment
4.5 Acid Sulfate Soils	No	N/A	
4.6 Mine Subsidence and Unstable Land	No	N/A	
Focus Area 5: Transport and Infrastructure			
5.1 Integrating Land Use and Transport	Yes	Consistent	This Planning Proposal will facilitate development of Key Sites within the Penrith City Centre. Development of the Key Sites within the Penrith City Centre integrates land use and transport by provide housing and employment within walking distance of the Penrith Railway Station and Bus Interchange.
5.2 Reserving Land for Public Purposes	Yes	Consistent	This Planning Proposal does not create, alter, reduce, rezone existing zonings or reservations of land for public purposes.
5.3 Development Near Regulated Airports and Defence Airfields	Yes	Consistent	The Planning Proposal will not affect any provisions relating to residential development within the 20 ANEC/ANEF contour for Western Sydney Airport.
5.4 Shooting Ranges	No	N/A	
Focus Area 6: Housing			
6.1 Residential Zones	Yes	Consistent	The Planning Proposal does not seek to reduce the permissible residential density of land within the Penrith City Centre
6.2 Caravan Parks and Manufactured Home Estates	No	N/A	
Focus Area 7: Industry and Employment			

Direction	Applicable	Consistent	Comment
7.1 Business and Industrial Zones	No	N/A	
7.2 Reduction in non-hosted short-term rental accommodation period	N/A to LGA	N/A	
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	N/A to LGA	N/A	
Focus Area 8: Resources and Energy			
8.1 Mining, Petroleum Production and Extractive Industries	No	N/A	
Focus Area 9: Primary Production			
9.1 Rural Zones	Yes	Consistent	This Planning Proposal does not rezone land or increase the density of development.
9.2 Rural Lands	N/A to LGA	N/A	
9.3 Oyster Aquaculture	NO	N/A	
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	N/A to LGA	N/A	

Section C – Environmental, Social and Economic Impacts

Q7. 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?

The Planning Proposal will not adversely affect the critical habitat or threatened species, populations or ecological communities or their habitats.

Q8. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

The primary environmental consideration of the planning proposal is sun access to key public open spaces within, or adjacent to the Penrith City Centre and solar access to neighbouring residential development.

The proposed maximum height of buildings have been tested to ensure future development provide an acceptable level of sun access to public open space.

The proposed maximum height of building controls have been determined to allow for taller more slender buildings to ensure any shadow cast over neighbouring residential is a fast moving shadow that minimises the time a property is in shadow. Any future DA would be subject to a merit assessment and this planning proposal does not change this requirement.

Given the planning proposal does not impact the overall density already enabled within the CBD, it is not considered necessary to consider environmental matters such as flooding or traffic as there is no additional impact.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal should have positive social and economic effects as Planning Proposal seeks to facilitate development within the Penrith City Centre by allowing development proposals for the Key Sites to activate the bonus FSR's of Clause 8.7.

Development utilising the bonus FSRs will have a positive social effect or impacts through the provision of important community infrastructure with the Penrith City Centre which will be accessible to all residents within the Penrith LGA. The development of the Key Sites will facilitate much needed housing supply and diversity with the Penrith City Centre. The application of a base FSR to Key Site 11 will allow Council to set a value of a community infrastructure proposal. This allows Council to determine the public benefit of a community infrastructure proposal.

Amendments to Clause 8.2 and the proposed bonus height of building controls ensure there will be an appropriate level of solar access at mid-winter to key public open space zoned RE1 within or adjacent to the Penrith City Centre, providing both residents and workers in the Penrith City Centre access to sunlit public open spaces in

the winter months. Height of building controls have also been determined to allow for taller more slender buildings to ensure any shadow cast over neighbouring residential is a fast moving shadow that minimises the time a property is in shadow.

Positive economic effects will be delivered by the redevelopment of Key Sites as well as the jobs created from the construction activity from development. Increased housing supply created from the development of the Key Sites will also have positive economic effects.

Section D – Infrastructure (Local, State and Commonwealth)

Q10. Is there adequate public infrastructure for the planning proposal?

Yes. The Planning Proposal applies to the Penrith City Centre which is an established centre which is already serviced by the full range of public infrastructure.

The Planning Proposal also does not seek to increase the density of development within the Penrith City Centre.

Section E – State and Commonwealth Interests

Q11. 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 provide details on the consultation to be undertaken with State and Commonwealth public authorities.

Part 4 – Mapping

The following map tiles are proposed to be amended as part of the Planning Proposal.

Map	Tile Number
New Bonus Height of Buildings Map	BHOB_005, BHOB_006, BHOB_012 and BHOB_013
Floor Space Ratio Map	FSR_005 and FSR_012

Part 5 – Community Consultation

The Gateway Determination will outline the community consultation to be undertaken.

The public exhibition will be undertaken in accordance with the Gateway Determination, the community consultation requirements of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*, and Council's Community Participation Plan.

Notice of the public exhibition will be given in the local newspaper and on Council's website. Notice of the public exhibition will also be provided by a letter to the landowners and occupiers of adjoining and affected properties.

Exhibition material will be made available on Council's Your Say webpage and the NSW Planning Portal.

Consultation with public authorities will be undertaken in accordance with the requirements of the Gateway Determination.

Part 6 – Project Timeline

Milestone	Timeframe
Local Planning Panel's advice on the Planning Proposal	July 2024
Council's endorsement to send the Planning Proposal to the Department of Planning and Environment	August 2024
Submission to the Department of Planning and Environment	August 2024
Gateway Determination issued	October 2024
Public exhibition and public authority consultation	October/November 2024
Consideration of submissions	November/December 2024
Reporting of the Planning Proposal to Council	January 2025
Finalise draft Penrith LEP and Opinion with Parliamentary Counsel's Office	February 2025
Submission to the Department of Planning and Environment	March 2025
Publication of LEP amendment	March 2025

These timeframes are estimates only and subject to change due, in part, to factors beyond Council's control.