

**7 Planning Proposal to amend Penrith LEP 2010 - Glenmore Park Stage 3 - draft Development Control Plan and draft Contributions Plan**

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<b>Outcome</b>	<i>We plan and shape our growing City</i>
<b>Strategy</b>	<i>Undertake strategic planning that will ensure balanced growth and liveability</i>
<b>Principal Activity</b>	<i>Facilitate appropriate land use outcomes for our city that are consistent with our Local Strategic Planning Statement</i>

**Previous Items:** Accelerated Housing Delivery Program for New Release Areas - Policy Review Committee - 14 Aug 2017  
Accelerated Housing Delivery Program update - Councillor Briefing - 23 Apr 2018  
Glenmore Park Stage 3 Planning Proposal (Accelerated Housing Delivery Program site) - Councillor Briefing - 05 Aug 2019  
Planning Proposal - Glenmore Park Stage 3 (Accelerated Housing Delivery Program site) - Councillor Briefing - 30 Sep 2019  
Glenmore Park Stage 3 Planning Proposal (Accelerated Housing Delivery Program site) - Councillor Briefing - 02 Mar 2020  
Planning Proposal - Glenmore Park Stage 3 - Ordinary Meeting - 25 May 2020  
Glenmore Park Stage 3 Development Control Plan and Contribution Plan - Councillor Briefing - 06 Jun 2022  
Glenmore Park Stage 3 Draft Development Control Plan and Draft Contributions Plan - Councillor Briefing - 18 Jul 2022

**Current References:** Affordable Rental Housing Contribution Scheme Planning Proposal

**Procedural note:** Section 375A of the Local Government Act 1993 requires that a division be called in relation to this matter.

**Proponent:** Mirvac Homes (NSW) Pty Ltd

**Land:** Located south of the existing suburb of Glenmore Park, bounded by The Northern Road, Chain O Ponds Road, Mulgoa Nature Reserve and Lot 18 DP 244610 Chain O Ponds Road (the most westerly lot).

### **Executive Summary**

The purpose of this report is to make recommendations regarding progressing the Planning Proposal to amend the Penrith Local Environmental Plan (LEP) 2010 for Glenmore Park Stage 3 to a public exhibition. Assessment of the recently submitted Development Control Plan (DCP) provided as an Enclosure 1, draft Section 7.11 Development Contributions Plan (draft GP3 CP) provided as an Enclosure 2, and two draft Letters of Offer to enter into a Voluntary Planning Agreement (VPA) provided in Attachment 1 and 2, has enabled Council

to consider that the matter can be progressed to a public exhibition. The report identifies risks to Council and the community, and how these risks are intended to be mitigated prior to future consideration to adopt the proposed plans.

The following Councillor memos have been provided to Councillors related to this report:

1. 15 May 2018 – Accelerated Housing Development Program (AHDP) and Glenmore Park South topography, how the development will relate to Mulgoa Valley and examples of similar development by Mirvac,
2. 23 May 2018 – Advising of lodgement of Planning Proposal,
3. 17 August 2018 – AHDP – Update on Planning Proposal,
4. 18 October 2018 - Enquiry from Lisa Harrold of Mulgoa Landcare Group, Independent peer review of ecological assessment for Planning Proposal commissioned,
5. 5 June 2020 – Response to matters raised by Councillors at Ordinary Meeting of 25 May 2020, being Fonzie flats, sports fields, and mapping, and
6. 25 June 2020 – Update on Planning Proposal.
7. 18 July 2022 – Information to assist new Councillors in their consideration of upcoming reports.

In May 2018, the Planning Proposal was lodged with Council to rezone the subject land to allow urban development. At the Ordinary Meeting of 25 May 2020, Council resolved to prepare and forward the Planning Proposal to the Minister for Planning to request the issuing of a Gateway Determination to publicly exhibit the Planning Proposal. A Gateway Determination was issued by the Department of Planning and Environment (DPE) in September 2020.

Since the Gateway Determination was received, several changes have occurred to the Planning Proposal. The most significant change has been DPE's direction requiring the Planning Proposal to align with the draft *Cumberland Plain Conservation Plan (CPCP)*. This change has necessitated updates and revisions to the masterplan and associated supporting documents including the draft DCP and draft GP3 CP. These revised documents were submitted by the proponent in April 2022, and it is not until this time Council officers have been able to commence their review. Whilst a comprehensive review of the draft DCP and draft GP3 CP has commenced, further amendments to these documents are likely post-exhibition alongside any community and State agency submissions. These anticipated amendments are outlined in this report.

In addition to the above, certain Gateway Determination conditions required action and/or DPE endorsement prior to public exhibition. These conditions have mostly been addressed. Noting that, consultation with the NSW Rural Fire Service (RFS) is required prior to public exhibition. As RFS comments are pending following issue of a second referral due to the updated masterplan and updated Bushfire Report, RFS comments will be placed on public exhibition alongside the Planning Proposal and any amendments made to the Planning Proposal or associated plans post-exhibition, alongside other agency submissions.

An alteration to the Gateway Determination was received from DPE on 9 June 2022. DPE included updated milestone dates within which Council is required to progress and complete the Planning Proposal process, including a LEP finalisation date of 23 December 2022, with advice that further timeframe extensions are unlikely to be granted.

This report identifies risks to Council and the community, how these risks are intended to be mitigated, and outstanding matters that need to be resolved prior to future consideration to adopt the proposed plans and finalise the LEP. Given the DPE timeframes, this report recommends that the Planning Proposal and supporting plans proceed to public exhibition, and that Council and the proponent continue to work collaboratively to progress any

outstanding matters. If outstanding matters are not resolved prior to future consideration by council post-exhibition for adoption of the proposed plans, it may be recommended that the rezoning does not proceed.

## Background

The Glenmore Park Stage 3 rezoning area is one of two sites selected by Council (in November 2017) to pursue as part of the Accelerated Housing Development Program, which investigated potential sites for new release housing delivery to supplement Penrith's currently planned and established residential areas.

In May 2018, Council received a Planning Proposal from Mirvac which seeks to amend the Penrith Local Environmental Plan (LEP) 2010 for a 206 hectare site south of the existing suburb of Glenmore Park. The rezoning area contains a total of 25 lots that are currently utilised for residual grazing; rural residential properties; equipment storage and equestrian uses; and one lot used for crop production. The Planning Proposal is seeking to amend the existing rural and environmental management zoning and planning controls to allow for urban development. The Planning Proposal seeks to rezone the land to facilitate the delivery of up to 2,300 dwellings and some shop top housing. Large lots are proposed on the periphery of the rezoning to respond to the sites' location on the urban/rural edge. The masterplan includes a network of open space and environmental corridors that links with the local centre and future school site. A summary of the key features of the Planning Proposal and the proposed zoning plan is provided in Attachment 3.

A complexity of matters had arisen pre-Gateway submission, that during the preliminary assessment stage of the Planning Proposal, Council officers and the proponents have worked together to address including:

- Results from an independent peer review of the Planning Proposal's Ecological Issues and Assessment Report,
- Dwelling density and yield, minimum lot sizes and building separation,
- Interfaces with The Northern Road and Chain O Ponds Road, and
- Mechanisms to provide certainty of outcome for the development including built form and urban heat responses.

The Planning Proposal was presented to Council's Local Planning Panel (LPP) on 13 May 2020. The LPP generally supported the Planning Proposal in terms of strategic consistency and site-specific considerations.

At the Ordinary Meeting of 25 May 2020, Council considered a report on the Planning Proposal and resolved to endorse the Planning Proposal, and that it be forwarded to the Minister for Planning with a request to issue a Gateway Determination. The resolution also requires that following receipt of the Gateway Determination, a report be presented to Council seeking a resolution to publicly exhibit a DCP and Contributions Plan with the Planning Proposal.

On 23 September 2020, DPE issued a Gateway Determination that enables the Planning Proposal to proceed to public exhibition and provides certain conditions to be addressed throughout the Gateway process. All conditions have been addressed or have substantially commenced. Certain conditions required action and/or DPE endorsement prior to public exhibition including additional analysis of the proposed dwelling yield, cap, and the resultant urban design outcome; preparation of a Public Domain and Open Space Strategy; landowner consultation; and consultation with the Rural Fire Service (RFS). The Planning Proposal was referred to RFS in May 2021 and again in July 2022. The most recent referral has resulted from the amended masterplan, due to the draft Cumberland Plain Conservation

Plan (CPCP) matter, outlined below. If RFS raise concerns that require the Planning Proposal and draft DCP to be updated, RFS comments will be placed on public exhibition alongside the Planning Proposal and any amendments made to the Planning Proposal or associated plans post-exhibition, alongside other State agency submissions.

Since the issue of the original Gateway Determination in September 2020, Council has been working closely with the proponent, DPE and State agencies to prepare the Planning Proposal for public exhibition. As a result of the work undertaken post-Gateway to address the conditions and other matters that have arisen, further revisions to the Planning Proposal have been necessary. Notwithstanding these revisions, the Planning Proposal has remained substantially the same. The reasons for these changes are outlined below.

### **Key Changes to the Planning Proposal**

The changes made to the Planning Proposal since its original endorsement in September 2020 are outlined below.

#### *Alignment with the draft Cumberland Plain Conservation Plan (CPCP)*

The Gateway Determination required that a Public Domain and Open Space Strategy (PDOSS) be prepared that addresses:

- The principles and performance indicators in the NSW Government's Draft Greener Places Design Guide 2020,
- How the precinct will achieve the 40% tree canopy target for Greater Sydney,
- How existing large trees can be incorporated into the public domain wherever possible,
- How riparian corridors will be incorporated into the open space network, and
- The suitability of the south-east open space on land with fragmented ownership.

The condition also requires that the PDOSS receive endorsement by DPE prior to exhibition. As part of Council's review process, the draft PDOSS was forwarded to DPE for endorsement in November 2021. In meetings held in January 2022, DPE provided advice that the Planning Proposal must align with the draft CPCP.

The draft CPCP was developed by DPE for Western Sydney to support the delivery of housing, jobs and infrastructure while protecting important local and regional biodiversity to 2056. It was publicly exhibited from August to October 2020. The draft CPCP contains commitments and actions designed to improve ecological resilience and function and offset the biodiversity impacts of housing and infrastructure development. The draft CPCP also identifies land within the rezoning area as urban capable land (biodiversity certified under the CPCP), and avoided land (land with high biodiversity value, riparian corridors and/or steep slopes).

To action DPE's direction that the Planning Proposal is to align with the draft CPCP, Mirvac entered into a confidentiality agreement with DPE to access CPCP mapping not currently available publicly. This CPCP mapping has been used to inform amendments to the PDOSS and the Planning Proposal masterplan.

A further version of the PDOSS was prepared and forwarded to Council mid-April 2022. This version resulted in an additional 6.16 ha of land contributing to the quantum of open space in the C2 Environmental Conservation zone across the rezoning area. The overall provision of land for open space satisfies the minimum outcome performance measures for greenfield open space (for local parks, district parks, sporting spaces and linear parks) provided in the Penrith Sport and Recreation Strategy.

On 2 March 2022, DPE provided written advice that they have reviewed the draft PDOSS and support the PDOSS proceeding to exhibition, noting that prior to finalisation of the Planning Proposal, the PDOSS is to be reviewed in the context of the CPCP, and if the Planning Proposal results in the removal of biodiversity in the 'avoided lands', the Planning Proposal may need to be amended. This indicates that once the draft CPCP is finalised, further review of the Planning Proposal may be required. Nevertheless, Council will seek DPE's verification that the CPCP has been appropriately incorporated into the Planning Proposal prior to finalisation of the LEP, should the finalisation of the CPCP remain outstanding.

*Reduction in overall dwelling yield*

The expansion of the C2 Environmental Conservation zone has resulted in amendments to the amount of R2 Low Density Residential and R3 Medium Density Residential land available, resulting in a reduction in dwelling yield. The original Planning Proposal that was submitted to DPE seeking a Gateway Determination provided 2,558 dwellings and the provision of up to 100 shop top housing dwellings. The revised Planning Proposal now provides for up to 2,300 dwellings and up to 100 shop top housing dwellings.

*Large lot at the northern end of Lot 18 Chain O Ponds Road (the most westerly lot)*

The original Planning Proposal submitted to DPE seeking a Gateway Determination, identified that a large lot (approx. 1.25 ha) would be created at the northern end of Lot 18 Chain O Ponds Road, being the most westerly lot. This would include a dual zone of C2 Environmental Conservation and C4 Environmental Living and a dwelling entitlement. The long-term ownership and management of this lot would be held in private ownership so that Council would not be burdened with the ongoing maintenance of any C2 Environmental Conservation zoned land.

The Water Cycle Management Report was revised to support the updated Planning Proposal masterplan and included an updated approach to the management of stormwater, and that a number of additional permanent water bodies are now proposed including a detention basin at the northern end of Lot 18 (MB1).

Consultants engaged on behalf of the proponents provided justification for this updated approach as follows:

*The reason for the addition of basin MB1 to the strategy is due to the shift from ARR 1987 to ARR 2019 modelling methodologies. The XP-RAFTS modelling in the 2020 report was undertaken using ARR 1987 methodologies and the modelling outcomes showed that flow targets would be achieved in the MB1 catchment without the need for a detention device. When the strategy was updated in 2022, the modelling was also updated to the new ARR 2019 methodologies given that Council required flood modelling to also be undertaken and advised ARR 2019 should be used. The updated XP-RAFTS modelling showed that a no detention approach was no longer achievable for the catchment and detention was required.*

The need for MB1 basin in this location now requires the long-term ownership and management of this large lot to be reassessed, as it is normally the case that stormwater treatment assets delivered as part of residential developments are dedicated to Council after the initial establishment and maintenance periods, and not held in private ownership. Other water infrastructure is located within RE1 Public Recreation or C2 Environmental Conservation zoned land within the rezoning area and integrated within the open space network. The MB1 basin is located away from these areas with no other connections to public land within the rezoning area.

Options to manage this area long term include:

- Dedication of the basin area and broader works area to Council, or
- The entire lot retained in private ownership with the existing dam within the C2 and C4 zones being used for stormwater management with public easement for access to enable maintenance.

Council officers and the proponents will continue to work together to assess the merits of these options and others to finalise how this area will be managed. There are no changes proposed to the planning controls within the Planning Proposal as originally endorsed by Council. At this stage, the land required for the basin is included in the draft GP3 CP for land dedication.

*Relocation of parts of R2 Low Density Residential and R3 Medium Density Residential zones in proximity to the local centre with no resulting change in yield*

In March 2022, as changes were being made to the masterplan to align with the draft CPCP, Mirvac requested a further change to the masterplan, that would:

- remove the R3 zone in Area 7 and replace this area with an R2 zone, and
- expand the R3 zone in Area 6, the same size that was removed from Area 7, with a stipulation that this would result in no change in yield.

Although this change did not result from amendments to the masterplan as a result of the CPCP, it did provide a logical consolidation of the R3 zone, west of the B2 zone.

#### *Land Reserved for Acquisition*

To correct an omission in the Planning Proposal that was submitted for a Gateway Determination and upon review of the draft GP3 CP, the Planning Proposal will need to be updated to identify land on the Land Reservation Acquisition (LRA) map and may require an amendment to *Clause 5.1 Relevant acquisition authority* of the Penrith LEP 2010.

#### **Landowner Consultation**

The Gateway Determination required consultation with eight individual landowners (not part of the Mirvac developer consortia, whose land is to remain in private ownership), prior to public exhibition. The purpose of the consultation sessions was, to provide landowners the opportunity to engage with Council officers, ask questions and raise their concerns. Landowners were advised that attendance at the consultation session did not negate the need to lodge a formal submission, and all submissions would be assessed post-exhibition to inform any potential amendments to the Planning Proposal.

This consultation occurred in August 2021. Key matters that were raised included the extent of, and reasoning for, a significant portion of one of the lots fronting Chain O Ponds Rd being zoned as C2 Environmental Conservation; the large C4 zoned 4,000m<sup>2</sup> lots proposed on land fronting The Northern Road; the size and location of open space known as L2 (local park) on the privately owned lots.

An outcomes report for this consultation has been forwarded to DPE and will form part of the exhibition package. The consultation sessions held are the first of many opportunities for these landowners (and others) to consult and engage with Council on this project. Noting the Gateway Determination also requires Council to send correspondence to all landowners which form part of the Planning Proposal with an offer to directly meet with Council officers

to discuss the Planning Proposal, this additional consultation will be carried out during the formal public exhibition.

### Department of Planning and Environment timeframes

The Gateway Determination issued on 23 September 2020 included a timeframe to complete the LEP within 12 months from the date of issue (being September 2021). Various matters have arisen that have resulted in this timeframe not being achieved including consultation with DPE and State agencies.

Delays which impacted achieving the finalisation milestone included:

- The delay in receiving advice from Schools Infrastructure NSW (SINSW). Council wrote to SINSW in August 2021, to gain certainty on the need for a school site within the release area, including the type, size, and catchment area. Advice was provided in February 2022,
- Commencing the Stage 2 transport analysis. Advice on the school site was a critical input into the methodology for the Comprehensive Transport and Traffic Impact Assessment (CT&TIA), that Transport for NSW (TfNSW), Council and Mirvac all reviewed and provided input on. Mirvac have forwarded a revised CT&TIA to all parties. TfNSW have no concerns in terms of proceeding with the Planning Proposal to exhibition and will provide a formal submission during the exhibition. Council's review is in progress, and
- Amending the Planning Proposal to align with the CPCP as discussed above.

Under planning reforms led by the State Government, DPE introduced a new 'Cohort' Planning Proposal program, where Planning Proposals that had been in the system and were experiencing challenges, were assisted by DPE's Planning Delivery Unit to assist in unlocking any obstacles and working towards a resolution. Councillors were briefed on these proposals at the Councillor Briefing of 14 February 2021. These Planning Proposals were issued timeframes for completion by DPE and if these timeframes were not achieved, the Minister for Planning has the ability to 'call in' the Planning Proposal to be refused or made. Council's open dialogue and regular discussions with DPE has likely contributed positively to the project, and the Minister has not yet called in the Planning Proposal.

An altered Gateway Determination was issued by DPE on 2 March 2022, that provided a LEP completion date of 30 August 2022. Council wrote to DPE requesting that these timeframes be amended to enable sufficient time for completion of necessary work required for public exhibition.

On 7 April 2022, DPE responded to Council's letter and acknowledged that Planning Proposals with significant challenges, including the Glenmore Park Stage 3 Planning Proposal, face greater challenges in meeting the timeframes. Notwithstanding the above, DPE encouraged Council to place the Planning Proposal on public exhibition as soon as possible without amending the milestones imposed.

DPE then issued a second altered Gateway Determination on 8 June 2022 granting an extension of time to finalise the Planning Proposal and complete the amendments to the LEP as follows:

- Reporting to Council for consideration to proceed to public exhibition by 31 July 2022,
- Public exhibition by 31 August 2022,
- Reporting to Council for finalisation of the LEP by 31 October 2022, and
- LEP finalised by 23 December 2022.

DPE stated that it is unlikely a further extension of time will be supported unless there are extenuating circumstances and encouraged Council to finalise the plan-making process as soon as possible.

### **Draft Development Control Plan**

The proponent has prepared a draft site-specific DCP (provided in Enclosure 1) to form a chapter of Penrith DCP 2014 that when finalised, will provide detailed planning and development controls and guidelines for specific types of development.

The draft DCP was recently revised to align with the draft CPCP and updated masterplan and was submitted to Council in mid-April 2022. Council officers have commenced a comprehensive review of the DCP to ensure when exhibited, the DCP provides an accurate and appropriate standard of detail. A further review post-exhibition will occur, alongside submissions received from State agencies and the public.

Since the Councillor Briefing of 6 June 2022, Council officers facilitated a DCP workshop with the proponents to collaboratively address certain matters that has resulted in further refinements to the draft DCP. Given DPE's timeframes for public exhibition and when the revised draft DCP was submitted to Council there are some outstanding matters needing additional time to finalise. These matters are provided below:

- Section and clear controls relating to lot grading, cut and fill, retaining walls, benching and development on excessively steep areas to guide setup of residential development,
- Controls and profiles for roads within the proposed development, including Chain O Ponds and The Northern Road treatments,
- Controls to achieve tree canopy targets in open space areas, street planting and private lots to align with commitments in the PDOSS,
- A review of the subdivision and residential controls,
- Further refinement of biodiversity controls in the draft DCP given the uncertainty regarding the status of the draft CPCP, timing of finalisation and proposed planning controls to be introduced, and
- Other general matters including Asset Protection Zones.

This report recommends that Council and the proponent continue to work collaboratively to progress these outstanding matters, and that Council does not consider adoption of the proposed plans for finalisation until such time that the matters are resolved.

Post-exhibition and in accordance with the *Environmental Planning and Assessment Regulations 2021*, Council may approve a Contributions Plan or DCP with any alterations the Council considers appropriate, however should the Planning Proposal, draft GP3 CP or draft DCP require amendments that result in a significant change or increase in an impact, re-exhibition may be required.

### **Draft Section 7.11 Development Contributions Plan**

A draft GP3 CP (provided in Enclosure 2) has been prepared in order to deliver the infrastructure required to support future development within the rezoning area. The draft GP3 CP has been informed by specialist studies such as the Transport and Traffic Impact Assessment, PDOSS and Stormwater and Flood Management Strategy.

Council officers have engaged consultants to provide a peer review of the draft GP3 CP given the limited timeframes to finalise the Planning Proposal and the need to understand any financial implications for Council and the community. Subsequently, an amended draft GP3 CP was submitted in June.



The draft GP3 CP facilitates the delivery of the following infrastructure items:

Infrastructure Items	Costs (approximate)
<ul style="list-style-type: none"> <li>Collector roads</li> <li>Certain local roads adjacent to public infrastructure or riparian corridors</li> <li>Off-site road upgrades (The Northern Road and Chain O Ponds Road)</li> </ul>	\$84,020,020
<ul style="list-style-type: none"> <li>Active and passive open space, including playgrounds and sporting fields</li> </ul>	\$94,854,328
<ul style="list-style-type: none"> <li>Detentions Basins</li> <li>Raingarden</li> <li>Gross Pollutant Traps</li> </ul>	\$26,673,063

#### *Works Apportioned to other development*

All works within draft GP3 CP are apportioned to the proposed development and do not require additional funding.

#### *Essential Works List and IPART Approval*

The total cost per dwelling/lot under draft GP3 CP is \$92,253 for a single dwelling, with lower rates for smaller dwelling types. This cost exceeds the cap on development contributions set through a Direction by the Minister for Planning which is \$30,000 for Greenfield areas. In order for Council to be able to charge the full rate of contributions under the draft GP3 CP, it must only fund 'Essential works' and be reviewed by IPART. Recommendations from IPART are provided to the Minister for Planning, where Council may be directed to make amendments to the draft GP3 CP before it is approved.

While this process is common for development contribution plans for release areas, it carries the risk that works items may be amended or removed if not accepted by IPART. This may result in changes to what items are delivered, costs of land and works and the apportionment of these costs. This risk may result in changes to the draft GP3 CP that could lead to a shortfall in funding for local infrastructure.

In order to manage the potential risks, draft GP3 CP has been prepared to comply with the essential works list. It is proposed that the costs of the works in the plan are also to be peer reviewed. It is also proposed that the rezoning of the land is not finalised until such time as the development contributions plan is IPART reviewed so that Council can understand the impact of any changes to the draft GP3 CP.

Should IPART not accept the full contribution amount, the financial risk to Council would be that there could be a funding gap of up to \$62,250 per lot. With Glenmore Park Stage 3, potentially delivering 2,400 dwellings, this equates to an approximate **\$135+m gap**. The proponents have been made aware of Council's unwillingness to accept any financial risk, should IPART not accept the full contribution amount. Discussions with the proponent on mechanisms to avoid any risk to Council are ongoing and as a result, Mirvac has sought to minimise this risk by committing to deliver works within Voluntary Planning Agreement (VPA). This will be worked through during public exhibition and reported to Council before the plan and LEP is finalised.

#### *Outstanding Matters*

Whilst Council has been working with the proponent in preparing the draft GP3 CP, due to the timeframes set by DPE in finalising the Planning Proposal, the draft GP3 CP has been peer reviewed to understand the financial implications and it is unlikely that the list of infrastructure items will change. The draft GP3 CP will be refined in preparation for public exhibition to address matters including:

- Review of proposed land values and cost of works,
- Assurance of compliance with the essential works list,
- Review of staging and sequencing,
- Requirements of works proposed on the Northern Road,
- Review of works specifications, and
- Review of population projections and dwelling occupancy assumptions.

Given the need to progress the Planning Proposal to exhibition to meet the DPE timeframes, should Council resolve to exhibit the draft GP3 CP, it is recommended that the public exhibition commence with the information submitted to date. Throughout the exhibition period, Council officers, State agencies and the public would have the opportunity to provide feedback, which may result in changes to the documentation post-exhibition. The draft GP3 CP will be reviewed again following the public exhibition, alongside any public submissions. Future Council briefings and reporting post-exhibition will outline any amendments made to the draft GP3 CP.

It is noted that any significant changes may result in the documents requiring re-exhibition. Therefore, as part of the exhibition material, Council officers could include a fact sheet which will explain the factors that may result in the draft GP3 CP and associated financial implications being revised at a future date.

### **Offer to enter into a Voluntary Planning Agreement (Local)**

Two Letters of Offer (the Offers) (provided in Attachment 1 and 2) to enter into a VPA with Council have been received from the proponent Mirvac and secondary major landowner Vianello, and these will form part of the public exhibition package. Discussions on the Offers are ongoing, with the details of each still to be refined. A further report will be presented to Council on a future draft VPA. The Offers make provision for affordable housing, the dedication of C2 Environmental Conservation land and the delivery of works proposed within the draft GP3 CP located on land owned or in control of Mirvac and Vianello.

### ***Affordable Housing***

The *Penrith Sustainability Blueprint for Urban Release Areas* was adopted by Council in 2005. This policy requires affordable housing opportunities to be provided across new urban release areas and provides a minimum performance criterion to achieve this as follows:

- At least 3% of residential allotments are provided for the purpose of affordable housing, or
- An appropriate monetary contribution to provide affordable housing units elsewhere with the Penrith Local Government Area (LGA) may be provided.

This Blueprint represents Council's long held policy position and provides a benchmark for negotiations on the quantum and delivery of affordable housing for specific developments.

A report is being presented at tonight's Ordinary Meeting with respect to a Planning Proposal to have a formal Affordable Housing Scheme for Orchard Hills North and Glenmore Park Stage 3. The Scheme aims to contemporise the current policy position within the statutory

framework and provide more transparency and certainty to developers and the community. This is an additional contribution applied and is also developed with consideration of feasibility and the ability to pay. This work will be used to assess the suitability of the Offers and address affordable housing more broadly. Council officers have met with the proponent and shared the draft rates for Glenmore Park Stage 3, the methodology and the evidence base used to inform this work.

Mirvac have communicated that they are committed to providing a contribution, however, would like to complete their review of the draft rates for Glenmore Park Stage 3, and commit to those rates once those rates have undergone the necessary exhibition and review processes. Mirvac and Vianello, through their Offers, have proposed to provide an affordable housing contribution representing 3% of the forecast dwelling yield (consistent with the *Penrith Sustainability Blueprint for Urban Release Areas*), to be delivered outside of the Glenmore Park Stage 3 area, but within the Penrith LGA in partnership with a registered Community Housing Provider. Alternatively, this may be provided by monetary contribution to Council based on a future rate to be determined in accordance with an Affordable Housing Contributions Plan implemented under s 7.32 of the *Environmental Planning and Assessment Act 1979*.

#### *Dedication of C2 Environmental Conservation Land*

Land under Mirvac and Vianello's control identified as CPCP with a proposed zoning of C2 Environmental Conservation is proposed to be dedicated to Council through a future VPA. This land (excluding water management infrastructure) cannot be included in the draft GP3 CP as it is not listed on the Essential Works List. It is considered generally acceptable for this land to be dedicated to Council, however further dialogue during the VPA process is needed to ensure the proponents fulfil Council's expectations in relation to the condition of the land at handover.

#### *Section 7.11 Contributions*

The Offers also propose to deliver, embellish, and dedicate land in accordance with the draft GP3 CP for their land holdings. This part of the Offer seeks to minimise any potential financial risk to Council should IPART not approve or amend the draft GP3 CP.

Further review of the Offer is required to ensure all works are included, specifications established, staging of works is agreed and to ensure that the Offer does not have any other unintended impacts on the draft GP3 CP.

#### *Community Facility*

Whilst not listed in the Offer, Mirvac has offered to provide a community facility over and above the s7.11 Contributions required to be delivered. Key elements of the current offer are as follows:

- The inclusion of a café and several multi-use spaces, one of which will be used as Mirvac's sales office,
- The centre will be located within District Park 4 (D4), situated centrally in the southern half of the release area,
- Delivery of the centre is intended to be part of Stage 1 of the development and in time for the arrival of the first residents,
- Any amenities for the centre will be provided in addition to those required by the sports fields at D4,
- Mirvac propose to lease the building from Council under a 5-year lease term (with a 3-year extension option) and take care of maintenance obligations during this time,

- Mirvac propose to sub-lease the café operations and community service management to a third-party social enterprise group, and
- Mirvac (if directed by Council) will demolish the community centre upon expiry and convert the area to open space, as originally intended.

Mirvac's vision for the community facility is that it will initially be used as a sales office, provide a space for a café, and spaces to facilitate welcome programs and other community events. Mirvac has proposed that potential rent proceeds (from café operations or a social enterprise group) can provide ongoing funding for maintenance and upkeep of the building once the development is completed.

Council's initial advice to the proponent was that any contribution to be made towards the delivery of a community facility would be best directed towards the delivery of a facility at a location outside the release area at a more central position in the Penrith LGA. That is, a monetary contribution towards a district level facility.

This offer could provide an opportunity to trial this model as a pathway to create social cohesion and connection in the release area, and as a result Council officers are reviewing this offer and are considering matters such as:

- The benefits to the community,
- The use of land zoned for public purposes for commercial uses,
- Location and scale, and
- Ownership and leasing arrangements.

There will be further opportunities throughout the Planning Proposal and VPA processes to work closely with the proponents to refine the offer and terms of agreement.

### **Offer to enter into a Voluntary Planning Agreement (State)**

The Gateway Determination states that Council is to request the proponent to initiate discussions with DPE regarding State infrastructure needs generated by the proposal. State infrastructure needs are likely to include land for the school site and further upgrades to external roads and intersections.

The masterplan identifies a school site north of the sports fields and opposite the B2 Local Centre. Land required for the school site will likely be delivered through a State VPA at no cost to the government. DPE will investigate this in further detail in consultation with the relevant parties.

The revised CT&TIA has identified the need for external upgrades on roads external to the release area. TfNSW has requested modelling of Glenmore Parkway and the M4 Motorway to be prepared prior to finalisation of the LEP. The mechanism to secure funding for State road upgrades generated by the proposal will be negotiated by the proponent and the NSW Government further post-exhibition.

### **Public Exhibition**

Should Council endorse the draft DCP, draft GP3 CP and two Letters of Offer to proceed to public exhibition, the following information will be exhibited for a period of 28 days in accordance with the requirements outlined in the *Environmental Planning and Assessment Act 1979*:

- The Planning Proposal and associated technical studies,
- Draft site-specific amendment to Penrith Development Control Plan 2014 relating to Glenmore Park Stage 3,

- Draft Glenmore Park Stage 3 Contributions Plan,
- Letters of Offer,
- Gateway Determination issued by DPE, and
- Any other relevant plans and strategies.

The package of information will be publicly exhibited via various methods including on Council's website, through newspaper advertisements and notices at Penrith and St Marys libraries.

As outlined in this report above, the Gateway Determination states that in addition to Council's standard consultation during public exhibition, Council should send correspondence to all landowners which form part of the rezoning with the offer to directly meet with Council officers to discuss the Planning Proposal. This will be undertaken during the 28-day public exhibition period.

Given the need to progress the Planning Proposal to exhibition to meet the DPE timeframes, should Council resolve to exhibit, it is recommended that the public exhibition commence with the information submitted to date. Throughout the exhibition period, Council officers, State agencies and the public would have the opportunity to provide feedback, which may result in changes to the documentation post-exhibition. It is noted that any significant changes may result in the documents requiring re-exhibition.

### **Financial Implications**

There are financial implications for Council's consideration, relating to the draft GP3 CP and infrastructure delivery.

#### *Independent Pricing and Regulatory Tribunal (IPART) review and potential funding gap*

The draft GP3 CP needs to be referred to IPART as it exceeds the cap of \$30,000. Although we are developing the draft GP3 CP with the essential works list in mind, there is still a risk that IPART will not support the draft GP3 CP over the cap and a funding gap in the plan may occur. In this regard and based on an approximate contribution rate of \$92,253 per dwelling, this would leave up to a \$62,250 per lot shortfall equating to **a potential \$135m shortfall** (based on 2400 dwellings).

Council officers have sought to work with the proponent to determine a contingency, such as Mirvac committing to the full funding of items if IPART fails to approve or amends the draft GP3 CP. At this time, a contingency has not been agreed, however there is still an opportunity to work with the proponent and the relevant stakeholders to reduce the financial risk. It is also noted that the risk is not realised until the Planning Proposal is actually made, and the land is rezoned. There is also an opportunity to not proceed with the Planning Proposal after it is exhibited should the financial risk not be fully mitigated to Council's satisfaction.

### **Risk Implications**

There are several risk implications for Councils' consideration, and these are detailed below:

#### *Community expectation*

The public exhibition of the Planning Proposal will place a draft LEP on the subject land, thereby raising community and developer expectations that the Glenmore Park Stage 3 development project is progressing to a state where development applications for subdivision and development of the land may soon commence. The risk is that there will be impetus to Gazette the LEP soon after completion of the public exhibition, to achieve DPE's

timeframes. Should Gazettal occur without having in place the supporting draft DCP, draft GP3 CP, local VPA and State VPA, the outcome would be that the rezoning would not be supported by the necessary infrastructure or quality planning controls required.

To address the risk of potentially enabling completion and Gazettal of the draft LEP post-exhibition without first having in place a supporting draft DCP, draft GP3 CP, local VPA and State VPA, it's imperative that Council does not provide its endorsement to the Planning Proposal post-exhibition until:

- The IPART review process for the draft GP3 CP has been completed,
- The supporting draft DCP, draft GP3 CP (after IPART review), and local VPA have been considered and endorsed by Council post-exhibition, and
- The State VPA has been drafted, publicly notified and executed.

An alternative solution may be suggested by DPE, where the LEP is allowed to be Gazetted but with an attached delayed commencement timeframe. This is not recommended to be pursued, because such a solution guarantees that the LEP and rezoning will occur, but does not guarantee that the supporting draft DCP, draft GP3 CP, local VPA and State VPA will also occur/take effect.

## Conclusion

The Planning Proposal seeks to amend the planning controls prescribed by Penrith LEP 2010 for a 206ha site located at Chain O Ponds Road and The Northern Road, south of the existing suburb of Glenmore Park to allow urban development.

DPE's direction requiring the Planning Proposal to align with the CPCP, has resulted in revisions to the Planning Proposal masterplan and supporting technical documents (including the draft DCP, draft GP3 CP and draft PDOSS). The intent of the Planning Proposal has not substantially changed due to these amendments.

Council officers have commenced their comprehensive review of the draft DCP, draft CP, draft Letters of Offer to enter a VPA, and other supporting documents that has enabled Council to consider that the matter can be progressed to a public exhibition. This report identifies risks to Council and the community; how these risks are intended to be mitigated; and outstanding matters that need to be resolved prior to future consideration to adopt the proposed plans and finalise the LEP.

Given the DPE timeframes, this report recommends that the Planning Proposal proceeds to public exhibition, seek the community's feedback on the proposal, and that Council and the proponent continue to work collaboratively to progress any outstanding matters prior to finalisation of the LEP and other plans.

## RECOMMENDATION

That:

1. The information contained in the report on Planning Proposal to amend Penrith LEP 2010 - Glenmore Park Stage 3 - draft Development Control Plan and draft Contributions Plan be received.
2. The Planning Proposal for Glenmore Park Stage 3 (RZ18/0006) be placed on public exhibition and agency consultation as soon as practical, concurrently with the draft Section 7.11 Contributions Plan, draft

Development Control Plan, and VPA Letters of Offer which are attached or enclosed to this report.

3. A report be prepared for Council to present the outcomes of the public exhibition and agency consultation.
4. After exhibition of the Letters of Offer, a draft Voluntary Planning Agreement be reported to Council for endorsement for public notification.
5. The Department of Planning and Environment be provided with an update on Council's decision.

#### **ATTACHMENTS/APPENDICES**

- |   |          |                      |
|---|----------|----------------------|
| 1. VPA Letter of Offer from Mirvac              | 15 Pages | Attachments Included |
| 2. VPA Letter of Offer from Vianello            | 7 Pages  | Attachments Included |
| 3. Summary of key features of Planning Proposal | 3 Pages  | Attachments Included |

**CONFIRMED MINUTES  
OF THE ORDINARY MEETING OF PENRITH CITY COUNCIL HELD REMOTELY USING  
AUDIO VISUAL LINKS AND AUDIO STREAMED ON THE COUNCIL WEBSITE ON  
MONDAY 25 MAY 2020 AT 7:05PM**

**2 Planning Proposal - Glenmore Park Stage 3**

96 RESOLVED on the MOTION of Councillor Tricia Hitchen seconded Councillor Todd Carney

That:

1. The information contained in the report on Planning Proposal - Glenmore Park Stage 3 be received.
2. Council endorses the Planning Proposal (provided under separate cover and tabled tonight), which is subject to further changes as referred to in resolution 5.
3. Council officers forward the Planning Proposal to the Minister for Planning with a request to issue a Gateway Determination. The submission will include a request to issue Council with Delegation for plan making authority.
4. A report be presented to Council following receipt of the Gateway Determination seeking resolution to publicly exhibit a Development Control Plan and Contributions Plan with the Planning Proposal.
5. Noise attenuation measures along The Northern Road be in place prior to the balance of the subdivision of land and this be further explored during the Gateway process.
6. The General Manager be granted delegation to make any necessary changes to the Planning Proposal referred to in resolution 2:
  - a. prior to Council's submission of the Planning Proposal to the Minister for Planning.
  - b. as a result of negotiated changes sought by DPE in the lead up to the Gateway Determination.
  - c. prior to public exhibition in response to the conditions of the Gateway Determination or negotiations with public authorities and other stakeholders.
  - d. prior to public exhibition, should there be any major changes with respect to the planning proposal, a further report be presented to Council with the General Manager to advise of those changes.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

**For**

Councillor Greg Davies  
Councillor Todd Carney  
Councillor Aaron Duke  
Councillor John Thain  
Councillor Brian Cartwright  
Councillor Tricia Hitchen  
Councillor Bernard Bratusa

**Against**

Councillor Kath Presdee  
Councillor Robin Cook  
Councillor Karen McKeown OAM  
Councillor Kevin Crameri OAM  
Councillor Mark Davies



Councillor Ross Fowler OAM