

APPENDIX 8

Council Report and Minutes

**3 Planning Proposal to amend Penrith Local Environmental Plan
2010 - 57 Henry Street, Penrith****Compiled by:** Nicole Dukinfield, Senior Planner**Authorised by:** Natasha Baker, City Planning Manager

Outcome	<i>We plan for our future growth</i>
Strategy	<i>Facilitate quality development in the City that considers the current and future needs of our community</i>
Service Activity	<i>Plan for and facilitate development in the City</i>

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

Owner: By The Park Pty Ltd**Proponent:** Dickson Rothschild**Executive Summary**

Council is in receipt of a Planning Proposal to amend the Penrith Local Environmental Plan (LEP) 2010. The Planning Proposal relates to land at 57 Henry Street, Penrith. The purpose of this report is to seek Council's endorsement to amend the Penrith LEP 2010 and commence the NSW Department of Planning and Environment's (DP&E) Gateway process for land at 57 Henry Street, Penrith.

The Planning Proposal seeks to access bonus Floor Space Ratio (FSR) provisions in return for additional community infrastructure.

Council staff have been in ongoing discussions with the proponents since the lodgement of the Planning Proposal to achieve an innovative and appropriate outcome for the site. As a result, it is considered that the Planning Proposal has demonstrated sufficient merit and it is recommended a Planning Proposal be endorsed and submitted to the DP&E for a Gateway Determination seeking the following amendments:

1. Amend the Key Sites map to identify 57 Henry Street, Penrith as a Key Site, enabling the site to access bonus FSR in return for community infrastructure in line with the incentives clause provisions
2. Amend clause 8.7 to identify a maximum bonus FSR of 6.5:1 for the subject land
3. Amend Schedule 1 – Additional Permitted Uses to:
 - a. permit residential flat buildings and shop-top housing, if the development includes a minimum non-residential floor area of 0.75:1 FSR, and
 - b. specify that the permissibility of residential development ceases to apply three (3) years after the date the LEP amendment is made.

The proposed amendments respond to issues regarding feasibility, loss of employment land and the deliverability of the development, but also as an opportunity to activate the eastern part of the Penrith City Centre and ensure employment floor area is provided as part of any future development on the subject land.

The submission of a planning proposal to the Greater Sydney Commission / DP&E under the Gateway process will allow Council to undertake community and agency consultation on the Planning Proposal, consider submissions received in response to such an exhibition, and determine whether or not to proceed with the planning proposal and amend the current planning controls.

Background

The subject land has previously been under the ownership of the NSW Government. However in 2015, the current owners purchased the subject land.

In September 2016, a Planning Proposal to amend the planning controls for the subject land was submitted to Council seeking the following amendments:

- To rezone the land from B3 Commercial Core to B4 Mixed Use
- Identify the subject land as a Key Site to access bonus floor space incentives in return for additional community infrastructure
- Identify a bonus FSR of 6.5:1 under the provisions of clause 8.7, including a FSR of 1:1 for hotel and tourist related accommodation

Based on the proposed controls, the Planning Proposal sought to facilitate approximately 454 residential units, tourist-related floor area of approximately 7,730 sqm and retail/commercial floor area of approximately 1,571 sqm. The development would be captured within two residential towers (one at 25 storeys or 82 metres, and one at 38 storeys or 121 metres) and several podium levels. The Planning Proposal is provided in Appendix 1.

An assessment of the Planning Proposal was undertaken and further information was requested regarding flooding, feasibility, the proposed hotel component, urban design and heritage, density and contamination. This additional information was submitted to Council in May 2017.

The additional information was considered by Council staff and Councillors were briefed on the Planning Proposal in August and October 2017. Since this time Council staff have continued to work through these issues with the proponents in order to reach an appropriate outcome.

Key considerations

Ongoing discussions have been held with the proponents since the lodgement of the Planning Proposal to work through some key considerations relating to the proposed FSR, the potential loss of employment land, feasibility (particularly around a hotel forming part of the development) and flooding. A summary of these key considerations is provided below.

Nomination of the subject land as a Key Site

The Planning Proposal seeks to identify the subject land as a Key Site to access bonus FSR in return for additional community infrastructure. The identification of the subject land as a Key Site is considered appropriate given that it aligns with the height spine along the railway line under the existing incentives clause provisions and other Key Sites, and essentially 'fills the gap' between the two Key Sites on either side of the subject land.

It is assumed the site was not originally identified as a Key Site due to the site being owned by the NSW Government prior to the current ownership when this analysis was undertaken.

Proposed height and FSR

In line with the LEP incentives clause provisions under clause 8.7 of the Penrith LEP 2010, the proposal seeks a bonus FSR of 6.5:1 with no maximum building height applicable. The Planning Proposal states that the justification for the proposed density is that the site is considered a 'gateway' location at the eastern portion of the City Centre and provides a landmark development along a key intersection that warrants a taller building.

For this reason, the Planning Proposal provides for a slightly higher bonus FSR than other Key Sites on either side of the subject land. To the west of the subject land, Key Site 8 has a bonus FSR of 5.5:1 and to the east, Key Site 7 has a bonus FSR of 5:1.

Consistent with the other Key Sites, if no community infrastructure offer is provided, the existing height and FSR controls remain.

Heritage significance of the site

The subject land has a heritage item listing being the Penrith Infants Department. The significance of the heritage item relates to the school being representative of a model suburban school building of its era and demonstrates the consolidation of public education within the Local Government Area following the Public Instruction Act of 1880.

The Planning Proposal was referred to Council's Heritage Advisor and Urban Design Review Panel with concerns raised regarding the limited curtilage around the heritage item and impact of the podium levels. In response to the issues raised, the revised Urban Design Analysis Report (prepared by Dickson Rothschild) and the Heritage Impact Statement (prepared by Weir Phillips Heritage) identifies that these issues can be mitigated for by lowering the podium height and by substantially enlarging and enhancing the curtilage of the heritage item.

It is anticipated that a Conservation Management Plan will be submitted with a future Development Application, outlining the proposed uses and management of the heritage item and integration with the overall development of the site.

Traffic and access

A Traffic and Parking Assessment (prepared by Traffic and Parking Consultants) proposed direct vehicular access to and from North Street. Due to challenges with this proposed access in terms of future road widening and the subject land being located adjacent to Lemongrove Bridge, the proponents were requested to revise their development concepts and the proposed access arrangements. Revised development concepts submitted reflect access off Henry Street only.

Modelling has not been undertaken for the traffic generation of the proposed development in the context of the existing road network, and the existing network capacity and operation of the Evan Street/Henry Street signalled intersection. The Planning Proposal states that the traffic modelling for the development will be undertaken at Development Application stage, when Council's traffic study will be available to provide a more accurate reflection of the traffic activity in Penrith City Centre at the completion of the development. As Council's traffic study is expected to be finalised by the end of 2018, these timeframes are likely to align.

However, it is recommended that Council be guided by the NSW Department of Planning and Environment and Roads and Maritime Services on this matter as part of the Gateway process to determine whether further traffic modelling should be carried out prior to the

finalisation of the Planning Proposal, or deferred to when a Development Application is submitted and Council's traffic modelling is finalised.

Reduction in employment land and feasibility of development

The Planning Proposal seeks to rezone land from B3 Commercial Core to B4 Mixed Use to facilitate residential development on the subject land, which will result in a reduction of land zoned within the Penrith City Centre that was otherwise zoned solely for employment purposes. The B4 Mixed Use zone does facilitate the development of employment uses such as retail and commercial floor area, however there is no minimum requirement to do so as residential flat buildings are also permissible within the B4 Mixed Use zone.

The Planning Proposal justifies the proposed reduction of employment land and introduction of residential land uses for the subject land as being necessary to facilitate the provision of a smaller amount of floor area for employment uses on the site. It should be noted that no analysis to justify the proposed reduction of the commercial core zone in regard to size, shape and cumulative impact on employment land within the City Centre was provided. The submitted Economic Impact Assessment and Supplementary Economic Assessment and Feasibility Report (both prepared by Hill PDA) identifies that the proposed development of the subject land would not be feasible unless a significant residential component is provided. Council engaged economic consultants AEC Group to carry out a Peer Review of these reports and the following observations were made:

- Confirmed that commercial-only development under current market conditions is unlikely to be feasible due to lower commercial rent values
- The proposed development is marginally feasible given the larger quantum of residential floorspace however delivery would carry significant risk for the developer and is dependent on apartment sales values
- Given the marginal feasibility of the proposed development, the potential to provide a community benefit may be difficult

Given the outcomes of the Peer Review of development feasibility, concerns are raised regarding the deliverability of the proposal and Council staff have been discussing how the planning controls could seek to mitigate this issue.

Notwithstanding the above, in late 2017 Council begun a review of planning controls for the Penrith City Centre which also included a review of feasibility. Council is in receipt of the initial findings of this work and this will be presented to Council in due course. However, there are several initial findings from this work which influence the assessment of the planning proposal including:

- That the capacity for employment land under the current controls is adequate for the projected demand and no reduction or expansion of B3 Commercial Core zoned land is recommended
- That opportunities to activate the land within the eastern part of the City Centre should be considered, including key gateway development sites
- With regard to feasibility, the construction costs utilised under feasibility testing are based on a standardised set of assumptions and may not reflect practices local to Penrith, or reduced build qualities.

These initial findings create an obvious challenge when applied to the subject Planning Proposal in the context of issues relating to feasibility and the loss of employment land, however the Planning Proposal provides an opportunity to deliver a component of commercial and/or retail floor area, additional dwellings within the City Centre, and would contribute to the activation of the eastern part of the City Centre.

It is considered that a flexible and innovative response to 'incentivise' the delivery of the proposed development in the short term is required in this case and therefore the Planning Proposal should be facilitated but restricted on its permissibility to within a specified timeframe.

Further explanation on the recommended LEP provisions in response to these issues are provided under the proposed LEP amendment section below.

Hotel and tourist related uses

During initial discussions with the proponents regarding the likelihood of a hotel forming part of the development, the proponents were confident that an end-user would be identified therefore proposed that as part of the provisions for the subject land, sought a 1:1 FSR for hotel and tourist-related uses. As discussions progressed, the proponents advised that the hotel component could no longer result in a feasible development outcome and requested the 1:1 FSR provision for hotel and tourist-related uses be removed. The proponents also advised that they had not secured a hotel provider as an end user.

Council staff raised concerns that, should the land be rezoned, there would be no certainty that the proposed development would result in the deliverability of any employment-related uses as part of a future development. In response to this issue, Council staff proposed that a minimum FSR for non-residential uses would be considered more appropriate in lieu of a FSR of 1:1 for hotel uses only. This would ensure that any development of the land would be required to provide a minimum quantity of floor area for uses that are not residential. This approach could also facilitate a wider variety of employment related uses including a hotel, office premises, a supermarket, or cafes and restaurants.

During discussions with the proponents and Council staff, both parties agreed to a minimum FSR for non-residential uses of 0.75:1 as an appropriate amount that balances feasibility, an appropriate floor area for future employment uses and the ability to deliver community infrastructure under the incentives clause provisions.

Flooding

The subject land is identified as being affected from local overland flooding. Flooding was not addressed in the Planning Proposal as originally submitted and the proponents were requested to prepare a Flood Impact Assessment.

A report on the diversion of stormwater pipe and overland flow (prepared by Woolacotts) was submitted and generally addressed Council's requirements in addressing overland flow. No objections were made in regard to the proposed mitigation of overland flow however there are a number of matters that the proponents will be required to address as part of any future development application with regard to local overland flooding.

Community Infrastructure offer

The Planning Proposal does not detail the offer of community infrastructure under the incentives clause provisions, although as part of ongoing discussions with the proponents, the proponents are considering a range of community infrastructure options including a cash contribution in accordance with the Community Infrastructure Policy.

In accordance with the provisions of the Community Infrastructure Policy, future development will be required to contribute a value of \$150 per sqm of any bonus floor space accessed under the provisions of the incentives clause.

Although ideally it is preferred that further information be provided regarding an offer of community infrastructure as part of the development proposal, it is not a necessary component of the Planning Proposal.

Proposed LEP amendment

In response to the key issues identified above, the following amendments to the Penrith LEP 2010 are recommended for the subject land:

1. *Amend the Key Sites map to identify 57 Henry Street, Penrith as a Key Site, enabling the site to access bonus FSR in return for community infrastructure in line with the incentives clause provisions*
2. *Amend clause 8.7 to identify a maximum bonus FSR of 6.5:1 for the subject land*
3. *Amend Schedule 1 – Additional Permitted Uses to:*
 - a. *permit residential flat buildings and shop-top housing, if the development includes a minimum non-residential floor area of 0.75:1 FSR, and*
 - b. *specify that the permissibility of residential development ceases to apply three (3) years after the date the LEP amendment is made.*

In response to the issues regarding the loss of employment land and feasibility, and deliverability of the development proposal, it is recommended that instead of rezoning the land from B3 Commercial Core to B4 Mixed Use, the subject land be permitted to facilitate residential flat buildings and shop-top housing but only for a period of time of up to three years after the LEP amendment is made.

This approach considers the preliminary outcomes of the City Centre Review with regard to the adequacy of the Commercial Core zoned land, by offering an incentive to develop the site in the short term and activate this area of the City Centre with more certainty the development outcome proposed will be realised.

Under these provisions, the proponents will have three (3) years to seek development consent should they wish to include residential uses as part of their development, from the time the LEP amendment is made. If development consent has not been granted within the three year timeframe, then the ability to develop residential uses on the land will cease to apply. Given the Western Sydney Airport's opening in 2026, and most recently the Western Sydney City Deal announcement with significant initiatives for Penrith, a timeframe of 3 years is considered appropriate with regard to the issues relating to feasibility and market conditions. A review of the planning controls applicable to the subject land will be carried out after this time. It should be noted that the site will retain its identification as a Key Site irrespective of the 3 year residential development timeframe.

By submitting a Planning Proposal to the Greater Sydney Commission / DP&E, the Gateway process will allow Council to consult with the DP&E on this approach.

Next steps

The Planning Proposal is largely consistent with the Local Planning Directions issued by the Minister for Planning. Any inconsistencies are considered to be minor or can be justified.

Should Council endorse the proposed amendments, the submitted Planning Proposal will be amended in accordance with the changes outlined in this report and submitted to the Greater

Sydney Commission / DP&E with a request for a Gateway Determination to proceed to public exhibition.

Should the Planning Proposal be granted approval to proceed under the Gateway Determination, the Planning Proposal will be placed on public exhibition for the specified period of time as required by the Gateway Determination. A further report to Council will be provided advising of the outcomes of the public exhibition.

Delegation is recommended to be sought for the General Manager to update and finalise the Planning Proposal for the making of the LEP amendment.

Conclusion

Council staff have held ongoing discussions with the proponents of the subject land to provide an innovative and appropriate development outcome. The Planning Proposal has the potential to facilitate over 5,500 sqm of employment related uses, approximately 549 dwellings, and activate the eastern part of the City Centre whilst delivering additional community infrastructure.

It is recommended a Planning Proposal to amend the Penrith LEP 2010 be forwarded to the Greater Sydney Commission / DP&E to commence the Gateway process.

RECOMMENDATION

That:

1. The information contained in the report on Planning Proposal to amend Penrith Local Environmental Plan 2010 - 57 Henry Street, Penrith be received
2. In accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, Council forward a Planning Proposal to amend the Penrith Local Environmental Plan 2010 to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination
3. The General Manager be granted delegation to update and finalise the Planning Proposal, written instrument and associated maps before submitting it to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination
4. The Minister for Planning be requested to delegate his authority for Council to finalise and make the proposed amendment to Penrith Local Environmental Plan 2010
5. Council undertake community consultation as outlined within any approved Gateway Determination

ATTACHMENTS/APPENDICES

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|--|-------------|---|
| 1. Planning Proposal - 57 Henry Street Penrith | 54
Pages | Attachments Included
<i>Under Separate Cover
(Website)</i> |
|--|-------------|---|

2. Planning Proposal - Additional Information - 57 Henry Street Penrith	96 Pages	Attachments Included <i>Under Separate Cover (Website)</i>
3. Urban Design Report - 57 Henry Street Penrith	61 Pages	Attachments Included <i>Under Separate Cover (Website)</i>
4. Economic Impact Assessment - 57 Henry Street Penrith	36 Pages	Attachments Included <i>Under Separate Cover (Website)</i>
5. Contamination Report - 57 Henry Street Penrith	99 Pages	Attachments Included <i>Under Separate Cover (Website)</i>
6. Traffic Assessment Report - 57 Henry Street Penrith	31 Pages	Attachments Included <i>Under Separate Cover (Website)</i>
7. Heritage Impact Statement - 57 Henry Street Penrith	25 Pages	Attachments Included <i>Under Separate Cover (Website)</i>

Councillor Todd Carney
Councillor Brian Cartwright
Councillor Robin Cook

**2 Report and Recommendations of the Policy Review Committee
meeting held on 14 May 2018 - Item 3 - Planning Proposal to amend
Penrith Local Environmental Plan 2010 - 57 Henry Street, Penrith**

101 RESOLVED on the MOTION of Councillor Aaron Duke seconded Councillor Karen McKeown

That:

1. The information contained in the report on Planning Proposal to amend Penrith Local Environmental Plan 2010 - 57 Henry Street, Penrith be received.
2. In accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, Council forward a Planning Proposal to amend the Penrith Local Environmental Plan 2010 to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.
3. The General Manager be granted delegation to update and finalise the Planning Proposal, written instrument and associated maps before submitting it to the Greater Sydney Commission / Department of Planning and Environment seeking a Gateway Determination.
4. The Minister for Planning be requested to delegate his authority for Council to finalise and make the proposed amendment to Penrith Local Environmental Plan 2010.
5. Council undertake community consultation as outlined within any approved Gateway Determination.

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

For

Councillor Kath Presdee
Councillor John Thain
Councillor Mark Davies
Councillor Aaron Duke
Councillor Todd Carney
Councillor Brian Cartwright
Councillor Robin Cook

Against

Councillor Bernard Bratusa
Councillor Kevin Crameri OAM
Councillor Karen McKeown
Councillor Jim Aitken OAM
Councillor Tricia Hitchen
Councillor Marcus Cornish

**2 Report and Recommendations of the Policy Review Committee
meeting held on 14 May 2018**

Councillor Ross Fowler OAM returned to the meeting, the time being 7:33pm.

102 RESOLVED on the MOTION of Councillor Aaron Duke seconded Councillor Kevin Crameri OAM that the recommendations contained in the Report and Recommendations of the Policy Review Committee meeting held on 14 May, 2018, with the exception of Items 1, 2 and 3 be adopted.