

16 October 2009

Dear Councillor,

In pursuance of the provisions of the Local Government Act, 1993 and the Regulations thereunder, notice is hereby given that a **POLICY REVIEW COMMITTEE MEETING** of Penrith City Council is to be held in the Council Chambers, Civic Centre, 601 High Street, Penrith on Wednesday 21 October 2009 at 7:30PM.

Attention is directed to the statement accompanying this notice of the business proposed to be transacted at the meeting.

Yours faithfully

Alan Stoneham
General Manager

BUSINESS

1. LEAVE OF ABSENCE

Leave of absence has been granted to:

Councillor Kaylene Allison - 29 September 2009 to 1 November 2009 inclusive.

2. APOLOGIES

3. CONFIRMATION OF MINUTES

Minutes of the Policy Review Committee Meeting – 19 October 2009 will be confirmed at the next Policy Review Committee Meeting on Monday 16 November 2009.

4. DECLARATIONS OF INTEREST

Pecuniary Interest (The Act requires Councillors who declare a pecuniary interest in an item to leave the meeting during discussion of that item)

Non-Pecuniary Conflict of Interest – Significant and Less than Significant (The Code of Conduct requires Councillors who declare a significant non-pecuniary conflict of interest in an item to leave the meeting during discussion of that item)

5. ADDRESSING THE MEETING

6. MAYORAL MINUTES

7. NOTICES OF MOTION

8. DELIVERY PROGRAM REPORTS

9. URGENT REPORTS (to be dealt with in the delivery program to which the item relates)

10. CONFIDENTIAL BUSINESS

POLICY REVIEW COMMITTEE MEETING

WEDNESDAY 21 OCTOBER 2009

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CONFIRMATION OF MINUTES

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2009 MEETING CALENDAR
February 2009 - December 2009
(adopted by Council 8/09/08 and amended by Council 6/4/09)

	TIME	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
		Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon
Ordinary Council Meetings	7.30 pm	2		6	4❖		20	3	7✓	12	9	14
		23	23		25	29*		24	28^		30	
Policy Review Committee	7.30 pm		9			15	13		14@	19		7
		16#+	30@	27	18#		27	17		21	16#	

Meetings at which the Management Plan 1/4ly reviews are presented
 < Briefing to consider Draft Management Plan for 2009/2010
 ❖ Meeting at which the Draft Management Plan is adopted for exhibition
 * Meeting at which the Management Plan for 2009/2010 is adopted.

^ Election of Mayor/Deputy Mayor (meeting to commence at 7:00 pm)
 @ Strategic Program progress reports [only business]
 ✓ Meeting at which the 2008/2009 Annual Statements are presented
 ☆ Management Plan Councillor Briefings/Public Forum (June)

- Council's Ordinary Meetings are held on a three-week cycle where practicable.
- Extraordinary Meetings are held as required.
- Policy Review Meetings are held on a three-week cycle where practicable.
- Members of the public are invited to observe meetings of the Council (Ordinary and Policy Review Committee). Should you wish to address Council, please contact the Public Officer, Glenn McCarthy on 4732 7649.

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A LEADING CITY

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1 Amendments to draft Penrith Local Environmental Plan 2008 in response to public exhibition

Compiled by: Allegra Zakis, Local Plan Team Leader

Authorised by: Ruth Goldsmith, Group Manager - Leadership

Strategic Objective: *We demonstrate leadership, and plan responsibly for now and the future*

Strategic Direction: *We build our future on the principles of sustainability, and understand and respond to the effects of climate change on our region*

Executive Summary:

This report provides information on the results of the public exhibition of draft Penrith Local Environmental Plan 2008. Council has prepared this plan in response to the State Government's planning reform agenda, which requires that all Councils prepare a comprehensive Local Environmental Plan based on the standard template.

The draft plan was exhibited as part of the Stage 1 Planning Documents from 28 October 2008, with submissions received until 30 January 2009. Over 650 submissions were received for both plans (draft Penrith Local Environmental Plan 2008 and draft Amendment No. 1 to Penrith Local Environmental Plan 1991). The issues raised in the submissions were first reported to Council on 13 July 2009. At that meeting, Council resolved to defer consideration of the plan to allow for further consultation. This secondary consultation process is now complete and the results are outlined in the Addendum (provided in the Attachment Folder). The original Discussion Paper (also provided in the Attachment Folder) and the Addendum contain the proposed recommendations which respond to the issues raised in the submissions. Recommendations include some changes to the plan and deferral of some areas to allow for further work. Changes to the plan are generally only recommended where they can be justified in the context of Council's adopted strategies.

Consideration of the submissions and a resolution on the proposed changes is the next step in this process. This report recommends that the changes outlined in the Discussion Paper and Addendum are adopted, which will allow an amended plan to be prepared. The revised draft Penrith LEP 2008 must then be forwarded to the Department of Planning with a request that it be made by the Minister. The amended plan will be the subject of a separate report to Council.

Background

Council has been undertaking a strategic program aimed at consolidating its planning instruments into one document for some time now. Documents prepared as part of this program include the Rural Lands Study and Strategy, the Employment Lands Study and Strategy, the St Marys Town Centre and Penrith City Centre strategies, and the Penrith Heritage Study. All of these strategies have been previously adopted or endorsed by Council. Planning instruments – Local Environmental Plans (LEP) and Development Control Plans (DCP) – are part of the tool kit for implementing these strategies. Accordingly, Council has prepared draft Penrith LEP 2008 to assist in the implementation of these strategies.

The State Government's planning reform process requires that Penrith Council have a comprehensive LEP, which is based on the Standard LEP Template, gazetted by the end of June 2011. Due to the complexity and magnitude of the task, Council has prepared the plan in two stages – Stage 1 (draft LEP 2008) generally covering the rural lands, industrial lands and St Marys Town Centre, and Stage 2 (draft LEP 2010) generally covering the residential and commercial areas.

In October 2007, Council resolved to forward draft Penrith LEP 2008 to the Department of Planning for a section 65 certificate to enable the plan to be publicly exhibited. A certificate was finally issued in October 2008, and the plan was placed on public exhibition.

Public exhibition process

The public exhibition of the Stage 1 Planning Documents commenced on 28 October 2008 and formally concluded on 19 December 2008. Initially, an extension of time for submissions was granted until 24 December 2008 and this was subsequently extended until 30 January 2009. The exhibition material included:

- draft Penrith LEP 2008 (written instrument and maps)
- draft Penrith DCP 2008
- draft Amendment No. 1 to Penrith LEP 1991 Environmental Heritage Conservation (discussed in a separate report to this meeting)
- draft Amendment Nos. 5 and 6 to Penrith DCP 2006, and
- the Penrith Heritage Study.

Supporting information also available included:

- fact sheets on background, rural land, employment land, heritage, environmentally sensitive land, reclassification of public land and the draft DCP
- plain English version of draft LEP 2008
- City wide maps
- the Penrith Planning Strategy, and
- a list of Frequently Asked Questions, updated throughout the exhibition period.

Within the first week of the exhibition, a letter was sent to all property owners affected either by draft LEP 2008 or Amendment No. 1 to LEP 1991 (approximately 7000). This letter included a copy of the fact sheet most relevant to that particular property. Displays were placed in the foyer at the Penrith Civic Centre and the Queen St Centre, St Marys, and all information was available on Council's website. A dedicated phone line and email address was set up to answer enquiries, and in addition to the phone and email, at least one member of the Local Plan Team was available to answer questions at the counter every day throughout the exhibition period. An estimated 1500 phone calls and 600 counter enquiries were answered during the exhibition period.

During the formal exhibition period, 3 evening information sessions were held as follows:

- Wednesday 12 November (Penrith)
- Wednesday 19 November (St Marys)
- Tuesday 25 November (Penrith).

At each of the above sessions a brief presentation was made to provide an overview of the draft plans. Following this presentation, attendees were invited to ask general questions in an open forum. They also had the opportunity to look in more detail at particular aspects of the draft plans (heritage, zoning, other affectations, etc.) and ask more specific questions of individual Local Plan Team members. Approximately 550 people (in total) attended the information sessions. The phone calls, counter enquiries and information session attendance combined means that around 38% of the landowners affected by the plans contacted Council for more information.

Following the deferral of the draft plans at the Policy Review Committee Meeting of 13 July 2009, Council officers undertook a secondary round of consultation with those people who either spoke at that meeting or indicated that they still had outstanding concerns they wished to discuss. This secondary consultation process included meeting or contacting the 23 people who addressed the Policy Review Committee. In addition to those people, 19 others contacted Council officers and requested either additional information or a meeting. As part of this process, approximately 10 additional or supplementary submissions were made, which have also been assessed as part of preparing the Addendum.

Although submissions were received on all of the Stage 1 Planning Documents, proposed amendments to draft Penrith DCP 2008 and draft Penrith DCP 2006 are not covered by this report. The final form of the DCPs will depend on the final form of draft Penrith LEP 2008 and, as they are endorsed and adopted by Council, they do not need to go the Department of Planning. Accordingly, it is proposed to present the changes to the DCPs to Council when the changes to draft LEP 2008 have been submitted to the Department.

Summary of submissions received

Draft LEP 2008 and draft Amendment No. 1 to Penrith LEP 1991 together affected over 7000 property owners. The format and the requirements of the Standard Instrument are unfamiliar to most, and this issue alone created confusion even when the controls themselves essentially replicated the current planning situation. In this context, it is hardly surprising that the exhibition generated such a large response from the community.

Five hundred and sixty six (566) submissions were received within the exhibition period, with over 100 more received after the exhibition closed, making close to 670 submissions. This represents approximately 25% of the people who made enquiries. The majority of submissions related to the provisions of draft LEP 2008 (approximately 480). Less than 15 submissions were received which exclusively addressed issues contained in draft DCP 2008 and only two related to the amendments to Penrith DCP 2006.

The submissions subject to additional consultation which occurred after the Policy Review Committee Meeting of 13 July (and therefore included in the Addendum) represent 5.5% of those who originally made submissions, or less than 1% of the 7000 landowners originally notified.

Submissions received in response to the exhibition of draft Penrith LEP 2008 covered a wide range of issues and viewpoints. Submissions were received both objecting to and supporting particular provisions of the plan, and on issues that were City wide or related only to individual sites. Approximately 15 issues attracted more than 5 submissions. These included environmentally sensitive land, use of the E2 Environmental Conservation zone, minimum lot sizes for dual occupancy, further subdivision opportunities in Orchard Hills, use of the scenic and landscape values map and flood planning land. Major site-specific issues included

the property at 1-4 Old Bathurst Road, Emu Plains and Twin Creeks. Approximately 65 submissions were received which related only to one lot, and 5 which raised issues that related to the entire City.

Submissions were received relating to 14 of the proposed 34 new heritage items identified as part of Schedule 5 of draft LEP 2008.

A table which provides a summary of every submission received is provided as Attachment 1 in the Attachment Folder. (Note: Attachment 1 includes submissions to both draft LEP 2008 and draft Amendment No. 1 to Penrith LEP 1991). Those submissions which are also included in the Addendum are marked with an asterisk (*). This table lists submissions sequentially and provides information on the property which was the subject of the submission, a very brief summary of the issue raised, the chapter of the Discussion Paper in which it appears and whether or not the submission was supported (in full or in part). It is intended that this table be used as a guide only to assist interested parties locate the detailed discussion on the issues raised within the Discussion Paper and associated Addendum. Attachment 2 in the Attachment Folder summarises the recommendations for each submission in the order in which they appear in the Discussion Paper and Addendum. (Note: Attachment 2 includes proposed recommendations to both draft LEP 2008 and draft Amendment No. 1 to Penrith LEP 1991).

The final Discussion Paper and the subsequent Addendum are provided as enclosures in the Attachment Folder. In both documents, submissions are discussed in 6 chapters, as follows:-

- Chapter 1** – Rural Land Use Zones (covering requests to either change the zone applying to land, or change the permissible land uses within a zone)
- Chapter 2** – Rural Subdivision (covering requests for additional subdivision potential and submissions opposing additional subdivision potential)
- Chapter 3** – Rural Land Other Issues (covering issues which do not neatly fit within either Chapter 1 or Chapter 2)
- Chapter 4** – Industrial and St Marys
- Chapter 5** – Heritage (both draft LEP 2008 and draft Amendment No. 1 to LEP 1991)
- Chapter 6** – Submissions from Government Departments and other authorities or organisations.

In general, the Addendum provides a record of additional consultation on submissions previously received. There are, however, four matters (listed below) relating to draft LEP 2008 which appear in the Addendum but do not appear in the Discussion Paper. These are either late submissions or issues that have evolved as part of the consultation process.

1. Landcom – The Knoll, Caddens Road, Kingswood – Chapter 1, Page 27
2. 11-29 Torkington Road, Londonderry – Chapter 1, Page 30
3. Ninth Avenue, Llandilo – Chapter 3, Page 60
4. Non-conforming uses in rural areas – Chapter 3, Page 61

Key changes to draft LEP 2008

The purpose of a public exhibition is to gain input from the community on a draft plan to ensure that it reflects both Council's vision and the aspirations of residents, employees and

businesses in Penrith. The volume of submissions received demonstrates the success of the exhibition process.

In general, changes to the plan have not been recommended where a submission makes a request that is clearly inconsistent with Council's adopted strategies. The additional information obtained through the secondary consultation process has, however, resulted in a change to the proposed recommendation in some circumstances. This is clearly outlined in the Addendum. Recommendations in the Addendum should be regarded as overriding those in the Discussion Paper where there is an inconsistency between the two.

The key changes are:

1. Retain 'bulky goods retailing' as a permissible use for land currently zoned 4(b) Light Industrial (where this use is currently permissible),
2. Schedule additional uses for the villages of Londonderry, Luddenham and Kemps Creek,
3. Change the application of clause 6.12 Mulgoa Valley to only apply to land which is currently within Sydney Regional Environmental Plan No. 13 Mulgoa Valley,
4. Include provisions in Schedule 3 Exempt Development which will allow the keeping of up to two trucks on a rural property without consent, provided certain conditions are met, and
5. Delete of a number of properties from Schedule 5 and amend the St Marys High Explosives Heritage Conservation Area.

In addition to the above, there are a number of other changes proposed which range from correction of mapping errors to scheduling of additional uses for certain sites. These are outlined in detail in the Discussion Paper.

Deferred areas

Where issues have been raised which either require additional consideration or further consultation, it is recommended that they be deferred from the draft plan to allow the bulk of the plan to proceed to gazettal. This will provide certainty to residents, landowners and investors in the City. Sections 68(5) and (6) of the Environmental Planning and Assessment Act, 1979 are reproduced below for Council's information:

- “(5) In submitting the draft local environmental plan, the council may exclude certain provisions of the draft plan or exclude part of the land from the draft plan, or both (in this section referred to as **the deferred matter**) which, in its opinion, require or requires further consideration but which should not prejudice the consideration by the Director-General and the Minister of the draft plan as submitted.*
- (6) The council may subsequently take action under this section in respect of the deferred matter, without having to publicly re-exhibit that deferred matter, as if it were a draft local environmental plan.”*

Essentially, these sections allow Council to undertake more detailed investigation into certain areas, while allowing the remainder of the plan to continue. Once the investigation is complete, Council can either proceed with the deferred matter without re-exhibition, or choose to re-exhibit the provisions for that land. Re-exhibition would be required if the change was a substantial deviation from the exhibited plan. In most cases, planning

provisions for the deferred areas listed below will be re-exhibited as part of the public consultation process for draft LEP 2010.

As indicated in the Discussion Paper, it is recommended that the following areas be deferred from the plan:

1. *Land proposed to be zoned E4 Environmental Living in parts of Castlereagh and Cranebrook, as shown on the maps included in the Discussion Paper.*

This area is in the north of the City and is currently a mix of rural and rural residential properties. Landowners in the area have expressed concern about the application of the E4 Environmental Living zone, as it does not permit agriculture. There are a number of existing agricultural operations in the area and submissions indicated that more landowners would like to preserve the opportunity to carry out agriculture in the future. It is proposed to exhibit this area as RU4 Rural Small Holdings as part of the preparation and exhibition of draft LEP 2010.

In addition to the issue of agriculture, the community also expressed concern about the application and extent of the Environmentally Sensitive Land Hatching in this area. Deferral of the area will also result in deferral of the ESL Hatching, providing time for it to be reviewed having regard to the impact on landowners and its relationship to vegetation on the land claimed by the Deerubbin Local Aboriginal Land Council.

2. *Land proposed to be zoned E2 Environmental Conservation which is the subject of a land claim by the Deerubbin Local Aboriginal Land Council*

There is a large area of land in the north of the City which is currently Crown Land, but which has been the subject of a successful land claim by the Deerubbin Local Aboriginal Land Council. This land is currently zoned Rural 1(a) under LEP 201, but is proposed to be zoned E2 Environmental Conservation under draft LEP 2008. The E2 zone is highly restrictive and has been applied to recognise the site's natural values. Generally, the E2 zone applied in this area is consistent with land identified by the Department of Environment, Climate Change and Water (DECCW) as a Priority Conservation Area as part of the Cumberland Plain Recovery Plan.

Although applied to recognise the area's natural values, there are substantially fewer uses permissible under the E2 zone than under the current zoning. Critically, both dwellings and agriculture are prohibited in the E2 zone. The Deerubbin Local Aboriginal Land Council has objected to the proposed E2 zone as it limits the potential uses for this land once ownership has been transferred. Meetings have been held between Council officers and representatives of the Land Council, Department of Planning and DECCW in late June 2009 and late September, 2009, and it is recommended that this area be deferred from the plan to allow negotiations on appropriate future uses to continue.

It is likely that the change resulting from further consideration will be significant enough to require re-exhibition. It is anticipated this will occur as part of the exhibition of draft LEP 2010.

3. *Land within the area known as the Riverlink precinct*

Detailed information is contained in Chapter 3 of the Discussion Paper under the heading of 'Riverlink'. The Riverlink Precinct Plan was adopted in May 2008, which did not allow time for new zones to be developed and the precinct to be included in draft LEP 2008. Consequently, draft LEP 2008 applied controls that maintain the status quo. A number of residents and landowners objected to this on the grounds that Council needed to show commitment to the adopted Precinct Plan. It is recommended that this area be deferred from draft LEP 2008 to allow the development of detailed controls as part of draft LEP 2010, which implement Council's adopted Riverlink Precinct Plan.

It is likely that the change resulting from further consideration will be significant enough to require re-exhibition. It is anticipated this will occur as part of the exhibition of draft LEP 2010.

4. *Land owned by Landcom known as 'The Knoll' Caddens Rd*

This land is proposed to be zoned RU4 under draft Penrith LEP 2008. It is owned by Landcom and is surrounded by the urban areas of Kingswood. This land has been the subject of significant controversy and it is proposed to defer it to prevent the zone generating possibly incorrect assumptions as to its future use. Landcom has indicated an intent to consult with the community in detail as to the most appropriate use of this land and this will occur as part of the preparation of draft LEP 2010.

5. *Land owned by NERGL Developments, The Northern Road, Glenmore Park*

This site is currently the subject of a site compatibility certificate issued by the Department of Planning which allows a Development Application for seniors living to be lodged. This certificate was issued in April 2009 and will be valid until April 2011. Deferral of this site will allow the landowner to prepare and lodge a Development Application (DA) in accordance with the certificate, and have that DA assessed under the current planning regime. This site will be included in draft LEP 2010 with the same zoning as previously exhibited.

6. *Land owned by the Department of Planning in Market St and the South Creek Corridor.*

There are several blocks in this area which are currently part of a larger investigation into the most appropriate zoning. The Department has requested that these blocks be deferred from draft LEP 2008 to allow the entire investigation area to be considered as a whole. Re-exhibition of controls for this area will occur as part of the exhibition of draft LEP 2010.

7. *Land on the corner of Old Bathurst Road and Russell St, Emu Plains*

This parcel was exhibited in draft LEP 2008 as part IN1 General Industrial and part E4 Environmental Living. It was the subject of a number of submissions, of which the majority opposed any form of industrial development on the site.

The land is subject to flooding from the Nepean River and is not fully suitable for development. Flood studies have been undertaken to determine how much of the site may be safely occupied, without impacting on other areas or presenting a risk to life

and property on site. Deferral will allow these studies to be finalised and checked, and additional consultation to occur on the future zoning for the site.

Outstanding matters

There are three matters in the Addendum where the proposed recommendation is that further advice be received at the Policy Review Committee meeting of 21 October 2009. These matters relate to:

- the Llandilo fruit and vegetable store (submissions 336, 337, 338, 469 & 485, pages 44- 47 of Addendum);
- further information on the location of the proposed E2 and E3 zones on certain land within the Fernhill estate (submission 470, pages 64-68 of Addendum); and
- progress on the alternative clause to clause 6.4 'Development on environmentally sensitive land' of the draft LEP (submission 482, pages 68-69 and page 61).

These matters are discussed below. In addition, Council has received an additional six submissions regarding the listing of the proposed St Marys High Explosives Heritage Conservation Area. This is also discussed below.

Llandilo Fruit and Vegetable Store

In discussions with the Department of Planning, it was confirmed that the Department would not support the site's inclusion in Schedule 1 of the draft LEP as a 'fruit and vegetable store', as this is not a standard definition. Therefore, little would be achieved in deferring the site from Stage 1.

Accordingly, the Addendum identified three further options for Council's consideration:

1. Retain the site in Schedule 1 of the LEP as a neighbourhood shop, with a maximum retail floor space of 200 square metres (required for all neighbourhood shops);
2. Retain the site in Schedule 1 of the LEP as a neighbourhood shop, but limit the floor space of this store to a maximum of 150 square metres; or
3. Delete the site from Schedule 1 of the LEP, in which case, the existing fruit and vegetable store would become a prohibited use in the proposed RU4 Rural Small Holdings zone and rely on existing use rights.

If option 1 is adopted, the existing store would be recognised as a permissible use and would have some potential for expansion in retail floor space and significant potential for expansion in terms of the type of goods sold. This would not be consistent with what Council had intended for the site under the original site specific rezoning and with the current provisions of Penrith LEP 201.

If option 3 is adopted, the store would not be recognised as a permissible use, as it currently is under Penrith LEP 201. However, it could continue to operate under existing use rights (i.e. as a fruit and vegetable store with a maximum floor space of 150 square metres and, as an ancillary use only, the selling of bread, milk, cigarettes, confectionary, soft drinks, fruit juice, flowers, potted plants, pasta, eggs and honey). The Environmental Planning and Assessment Regulation 2000 includes provisions to allow for some expansion or intensification of an existing use. While there are limitations on increasing the floor space to no more than 10% of the existing floor space and on not significantly intensifying the existing use, these limitations only apply in certain circumstances. In relation to the existing store, the extent of the expansion or intensification, both in terms of floor space and type of

goods sold, is open to interpretation and is likely to be the subject of legal argument. This may lead to the owner seeking approval to expand both the floor space and the range of goods that can be sold and further litigation.

If option 2 is adopted, the store would be recognised as a permissible use, as it currently is under Penrith LEP 201. It would, however, have no potential to expand its retail floor space, consistent with the intent of the original site specific zoning and previous decisions of the Land and Environment Court, which have upheld Council's position that the floor space is a prohibition and cannot be varied under SEPP 1. In this regard, if option 2 is adopted, it is proposed that a requirement also be included in Schedule 1 excluding the floor space from the operation of clause 4.6 (the clause that will replace SEPP 1). This would be consistent with the approach taken to other sites listed in Schedule 1 that contain requirements relating to floor space. Option 2, however, would allow some potential to expand the type of goods sold. Although it is acknowledged that this option may result in competition with the Llandilo general store, it is considered to be the preferred option, given the constraints of the Standard LEP Template. It is preferred because:

- It provides clearer boundaries on what is permissible on the site with consent than option 3 (relying on existing use rights), ultimately making enforcement simpler;
- It is consistent in terms of floor space with the intent of the original site specific zoning and the current provisions in Penrith LEP 201 than option 1 (neighbourhood shop with 200 square metres).

Should the landowner make a further submission to increase the floor area of the store, this would need to be considered as a spot rezoning and, if supported, as a future amendment to the LEP beyond Stages 1 and 2.

It is anticipated that the current application to the Court of Appeal seeking leave to appeal the decision of the Land and Environment Court will be heard in February 2010. DA 08/0885, which sought to increase the gross floor space of the fruit and vegetable store from 150 square metres to 765 square metres (with a net retail floor space of 600 square metres), will be assessed having regard to the relevant planning controls at the time the application was submitted, including Penrith LEP 201. The savings clause in Penrith LEP 2008 requires that the LEP be considered in the assessment of the DA as if it had been exhibited, but not commenced.

The ***proposed amended recommendation*** for this matter, at the time of writing this report, is therefore that this site (312 Third Avenue, Llandilo) be retained in Schedule 1 of the LEP as a neighbourhood shop, with a maximum floor space of 150 square metres and a requirement excluding the floor space from the operation of clause 4.6 of the draft LEP. This recommendation is included in Attachment 2. However, Council is pursuing legal advice and further information will be provided when it is available.

Fernhill Estate

In response to concerns regarding the retention of dwelling rights on certain lots in the Fernhill estate, Council officers have determined a proposed boundary between the E2 Environmental Conservation and E3 Environmental Management zone for the relevant lots. Figure 1 in Attachment 4 (provided in the Attachment Folder) shows the proposed zoning of the lots as exhibited in the draft LEP. Figures 2 and 3 show the proposed amended boundary between the E2 and E3 zones on these lots. (Colour copies of Attachment 4 are enclosed separately for Councillors). It is recommended that this amended boundary be adopted.

The ***proposed amended recommendation*** for this matter is therefore that the boundary between the E2 and E3 zones on Lot 2 DP 211795, Lot 12 DP 610186, Lots 1-4 DP 260373 and Lot 31 DP 237163 be amended as shown in Figures 2 and 3 of Attachment 4 to this report. This recommendation is included in Attachment 2. Proposed recommendations 2-4 in the Addendum remain unchanged.

Clause 6.4 Development on environmentally sensitive land

The Department of Planning has recently drafted an alternative clause to clause 6.4 of the draft LEP. This clause is understood to take into account the latest advice on a model clause being developed by the Department of Planning and the Department of Environment, Climate Change and Water (DECCW) on biodiversity, the concerns of the Deerubbin Local Aboriginal Land Council (DLALC), which owns lots that are entirely hatched, and the intent of Council's original clause 6.4.

In particular, the alternative clause includes specific provisions for lots that are entirely hatched to allow a more practicable approach yet still encourage development to locate in the area of a lot that is least likely to be affected by that development. DLALC's planning and legal advisors have indicated to the Department of Planning that the alternative clause is acceptable to the DLALC.

While Council officers have provided feedback to the Department on the alternative clause, particularly to address the protection and management of watercourses and riparian land as intended in the original clause 6.4 and to exempt certain clearing, for example, for pest and weed management, the intent of the alternative clause is supported. Accordingly, Council officers will continue to work with the Department of Planning, DECCW and DLALC on refining the wording of this clause. The alternative clause will not affect any proposed recommendations to remove or review the hatching. It will also not require any changes to the hatching where it is proposed to be retained or amended.

St Marys High Explosives Heritage Conservation Area

Council has received an additional six submissions regarding the listing of the proposed St Marys High Explosives Heritage Conservation Area in Schedule 5: Environmental Heritage of draft LEP 2008. The submissions indicate that the Penrith Valley Chamber of Commerce is seeking to prepare a master plan to revitalise the Dunheved Industrial Estate, raising concerns that the listing of the heritage conservation area will impose constraints on the master plan and, subsequently, on employment growth or new business opportunities in the Estate.

If Council resolves to list the heritage conservation area in draft LEP 2008, it will become a matter for consideration when any master plan is prepared for the Estate. Information on the heritage significance of the conservation area should inform any master plan in much the same way as information on environmental, infrastructure and social considerations would.

The listing of the heritage conservation area would not preclude the future removal of any significant features (including the removal of any asbestos cement in existing buildings) or the demolition, redevelopment or adaptive re-use of any of the sites or buildings contained within the conservation area. The listing will require that development applications to demolish, redevelop or re-use a building or feature in the conservation area are supported by an assessment of heritage significance of that building or feature and, in the event that such

work is approved, that proper interpretation of the building or feature and its contribution to the significance of the conservation area occurs.

The other issues raised in the additional six submissions, including the effect on property values and increased maintenance costs, are addressed in the Discussion Paper and Addendum.

Reclassification of public land

All land owned by Council or within its care, control and management must be classified as either 'community land' or 'operational land' under the Local Government Act, 1993. LEPs are the means by which land can be classified or reclassified, and under the standard template developed by the State Government, clause 27 and Schedule 4 replace stand alone classification LEPs.

Schedule 4 of draft LEP 2008 proposes to reclassify 6 lots within the Dunheved Industrial Estate and 5 lots in Carinya Ave, St Marys from 'community' to 'operational'. Additional information on the history of these parcels and purpose of reclassification is provided in the introduction to the Discussion Paper. A public hearing into the reclassification was held on 25 November 2008, as required by section 68 of the Environmental Planning and Assessment Act. The report regarding that hearing is provided as Attachment 3 in the Attachment Folder. In summary, no objections were raised to the proposed reclassification and no changes to the listings in Schedule 4 are proposed.

Next steps

The next stage in this process is for Council to consider the recommendations contained in the Discussion Paper and Addendum and resolve to make some or all of the recommended changes to the plan. Once this has occurred, an amended plan can be prepared and presented to Council for submission to the Department of Planning, with a request that the Minister make the plan. It is anticipated that a report recommending the plan be forwarded to the Department will be presented on 9 November 2009, however, this cannot be finalised until the recommended changes to the plan are known.

The Department of Planning has set a deadline for completion of the entire Local Plan process – draft LEP 2008 and draft LEP 2010 – of July 2011. This timeframe had been amended from the original completion date of March 2010 to recognise that the resourcing issues within Councils and the Department means that the March 2010 deadline could not be met.

The Department has indicated that the process between submitting the plan for gazettal and it being signed by the Minister will take at least 2 months and that any non-standard clauses, objectives or other provisions will create additional delays. There are a number of such clauses and provisions within the draft plan which have been developed to adapt the Standard Template to respond to issues unique to Penrith, both as part of the exhibited plan and in response to the submissions. It is likely, therefore, that gazettal of draft LEP 2008 will not occur until early 2010.

Conclusion

Consideration of the submissions made in response to the exhibition of the Stage 1 Planning documents, particularly draft LEP 2008, is a key part in the process of preparing a

comprehensive Local Plan for the City. The volume of submissions received and the variety of issues raised demonstrate the success of the exhibition process, which is aimed at getting community input into the draft plans. The secondary round of consultation provided the opportunity for a better understanding both by staff and the community of key issues with the plan.

The Discussion Paper and Addendum recommend a number of changes to the plan to respond to those issues raised by the community. When Council has resolved to support some or all of these changes, an amended plan can be prepared. The plan will be presented to Council as soon as possible, with a recommendation that it be forwarded to the Department of Planning with a request that it be gazetted.

RECOMMENDATION

That:

1. The information contained in the report on Amendments to draft Penrith Local Environmental Plan 2008 in response to public exhibition be received.
2. That Council adopt the recommendation in the Introduction to the Discussion paper as provided as Attachment 2.
3. That Council adopt the recommendations contained in Chapter 1 of the Discussion Paper and the Addendum provided as Attachment 2.
4. That Council adopt the recommendations contained in Chapter 2 of the Discussion Paper and the Addendum provided as Attachment 2.
5. That Council adopt the recommendations contained in Chapter 3 of the Discussion Paper and the Addendum provided as Attachment 2.
6. That Council adopt the recommendations contained in Chapter 4 of the Discussion Paper and the Addendum provided as Attachment 2.
7. That Council adopt the recommendations relating to draft Penrith LEP 2008 contained in Chapter 5 of the Discussion Paper and the Addendum provided as Attachment 2.
8. That Council adopt the recommendations contained in Chapter 6 of the Discussion Paper provided as Attachment 2.
9. That Council adopt the recommendations contained in multiple chapters in the Addendum provided as Attachment 2.
10. That Council adopt the recommendations relating to the Llandilo fruit and vegetable store and the Fernhill estate contained in this report and in Attachment 2.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

2 Amendments to draft Amendment No. 1 to Penrith Local Environmental Plan 1991 Environmental Heritage Conservation in response to public exhibition

Compiled by: Allegra Zakis, Local Plan Team Leader

Authorised by: Ruth Goldsmith, Group Manager - Leadership

Strategic Objective: *We demonstrate leadership, and plan responsibly for now and the future*

Strategic Direction: *We build our future on the principles of sustainability, and understand and respond to the effects of climate change on our region*

Executive Summary

Council has prepared this plan in response to the State Government's planning reform agenda and is based on the standard template. The draft Amendment No. 1 to Penrith Local Environmental Plan 1991 Environmental Heritage Conservation was exhibited as part of the Stage 1 Planning Documents from 28 October 2008, with submissions received until 30 January 2009.

Over 650 submissions were received for both plans (draft Penrith Local Environmental Plan 2008 and draft Amendment No. 1 to Penrith Local Environmental Plan 1991). The issues raised in the submissions were first reported to Council on 13 July 2009, where Council resolved to defer consideration of the plan to allow for further consultation. This further consultation process is now complete and the results are outlined in the enclosed Addendum. The original Discussion Paper and the Addendum (provided in the Attachment Folder) contain the proposed recommendations which respond to the issues raised in the submissions. Recommendations include some changes to the plan.

Consideration of the submissions and a resolution on the proposed changes is the next step in this process. This report recommends that the changes outlined in the Discussion Paper and Addendum be adopted, which will allow an amended plan to be prepared. The revised draft Amendment No. 1 to Penrith LEP 1991 will be the subject of a separate report to Council, prior to forwarding to the Department of Planning with a request that it be made by the Minister.

Background

Council commissioned the Penrith Heritage Study in 2007. To assist in implementing the recommendations of this study, Council has prepared draft Amendment No. 1 to Penrith LEP 1991 Environmental Heritage Conservation.

Penrith LEP 1991 is also being amended to ensure that the provisions relating to heritage conservation are consistent across the City. Draft Amendment No.1 to Penrith LEP 1991 changes requirements in that LEP to match those in draft Penrith LEP 2008, and updates the list of heritage items to reflect the findings of the Heritage Study.

Public exhibition process

Draft Amendment No. 1 to Penrith LEP 1991 was publicly exhibited as part of the Stage 1 Planning Documents. The public exhibition commenced on 28 October 2008 and formally concluded on 19 December 2008. Initially, an extension of time for submissions was granted until 24 December 2008, and this was subsequently extended until 30 January 2009. The relevant exhibition material included:

- draft Amendment No. 1 to Penrith LEP 1991 Environmental Heritage Conservation
- the Penrith Heritage Study.

Supporting information also available included:

- a fact sheet on heritage
- plain English version of the draft amendment
- maps
- the Penrith Planning Strategy, and
- a list of Frequently Asked Questions, updated throughout the exhibition period.

Within the first week of the exhibition, a letter was sent to all property owners affected by draft Amendment No. 1 to LEP 1991. This letter included a copy of the heritage fact sheet. Displays were placed in the foyer at the Penrith Civic Centre and the Queen St Centre, St Marys, and all information was available on Council's website. A dedicated phone line and email address was set up to answer enquiries, and in addition to the phone and email, at least one member of the Local Plan Team was available to answer questions at the counter every day throughout the exhibition period.

During the formal exhibition period for the Stage 1 Planning Documents, 3 evening information sessions were held as follows:

- Wednesday 12 November (Penrith)
- Wednesday 19 November (St Marys)
- Tuesday 25 November (Penrith).

At each of the above sessions, attendees had the opportunity to look in more detail at the draft amendment and ask more specific questions of individual Local Plan Team members.

Following the deferral of draft Penrith LEP 2008 and draft Amendment No. 1 at the Policy Review Committee Meeting of 13 July 2009, Council officers undertook a further round of consultation with those people who either spoke at that meeting or indicated that they still had outstanding concerns that they wished to discuss. This further consultation process included meeting or contacting the 23 people who addressed the Policy Review Committee. In addition to those people, 19 others contacted Council and requested either additional information or a meeting with Council officers. As part of this process, approximately 10 additional or supplementary submissions were made, which have also been assessed as part of preparing the Addendum.

Summary of submissions received

While the majority of submissions received related to the provisions of draft LEP 2008, approximately 185 submissions related to heritage matters in draft Amendment No. 1 of LEP 1991. The main issues raised in submissions were objections to the proposed listings (either

full or partial). 56 new items were proposed to be added under the draft Amendment. The 185 submissions received related to 20 properties. The majority of submissions (165) were received in response to the listing of St Mary Magdalene Church.

A table which provides a summary of every submission received is provided as Attachment 1 in the Attachment Folder. (Note: Attachment 1 includes submissions to both draft LEP 2008 and draft Amendment No. 1 to Penrith LEP 1991). Those submissions which are also included in the Addendum are marked with an asterisk (*). This table lists submissions sequentially and provides information on the property which was the subject of the submission, a very brief summary of the issue raised, the chapter of the Discussion Paper in which it appears and whether or not the submission was supported (in full or in part). It is intended that this table be used as a guide only to assist interested parties locate the detailed discussion on the issues raised within the Discussion Paper and associated Addendum. Attachment 2 in the Attachment Folder summarises the recommendations for each submission in the order in which they appear in the Discussion Paper and Addendum. (Note: Attachment 2 includes proposed recommendations to both draft LEP 2008 and draft Amendment No. 1 to Penrith LEP 1991).

The final Discussion Paper and the subsequent Addendum are provided as enclosures in the Attachment Folder. In both documents, submissions relating to the listing of proposed heritage items in draft Amendment No. 1 of LEP1991 are discussed in Chapter 5.

In general, the Addendum provides a record of the additional consultation on submissions previously received. There is, however, one matter, 108 Forbes Street, Emu Plains – Chapter 5, Page 84, which appears in the Addendum but not in the Discussion Paper. This is a late submission.

Key changes to draft Amendment No. 1 to LEP 1991

The key changes proposed to draft Amendment No. 1 to Penrith LEP 1991 are:

- Revision of the listing of St Mary Magdalene Church, which will no longer be listed as having ‘state’ significance.
- Deletion of 12 Vista Street, Penrith
- Deletion of 108 Forbes Street, Emu Plains
- Deletion of 40 River Road, Emu Plains
- Deletion of the Crushing Plant in Penrith Lakes, Castlereagh.

Other changes are predominantly minor, correcting errors in spelling and lot descriptions.

Next steps

The next stage in this process is for Council to consider the recommendations contained in the Discussion Paper and Addendum and to resolve accordingly. Once this has occurred, an amended plan will be prepared and presented to Council for endorsement and submission to the Department of Planning, with a request that the Minister make the plan. It is anticipated that a report recommending the plan be forwarded to the Department will be presented on 9 November 2009, however, this cannot be finalised until the recommended changes to the plan are known.

Council was issued delegation to prepare the section 69 report for draft Amendment No. 1 to Penrith LEP 1991. Accordingly, when Council has resolved to proceed with all or some of the recommendations of the Discussion Paper and Addendum, the plan will be submitted to the Department with a request that the Minister make the plan. No estimated timeframe has been provided for gazettal of this plan.

Conclusion

Consideration of the submissions made in response to the exhibition of draft Amendment No. 1 to Penrith LEP 1991 is a key part in the process of preparing the draft Amendment. The volume of submissions received demonstrates the success of the exhibition process, which is aimed at getting community input into the draft amendment. The second round of consultation provided the opportunity for a better understanding both by staff and the community of key issues with the plan.

The Discussion Paper and Addendum recommend a number of changes to the plan to respond to the issues raised by the community. When Council has resolved to support some or all of these changes, an amended plan can be prepared. This plan will be presented to Council as soon as possible, recommending that it is forwarded to the Department of Planning with a request that it be gazetted.

RECOMMENDATION

That:

1. The information contained in the report on Amendments to draft Amendment No. 1 to Penrith Local Environmental Plan 1991 Environmental Heritage Conservation in response to public exhibition be received; and
2. Council adopt the recommendations relating to LEP 1991 Environmental Heritage Conservation contained in Chapter 5 of the Discussion Paper and the Addendum, provided as Attachment 2 in the Attachment Folder.
3. A further report be brought back to Council detailing the revised LEP 1991 Environmental Heritage Conservation.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

A CITY OF OPPORTUNITIES

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A GREEN CITY

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A LIVEABLE CITY

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A VIBRANT CITY

There were no reports under this Delivery Program when the Business Paper was compiled

CONFIDENTIAL BUSINESS
DELIVERY PROGRAM REPORTS
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1 Presence of the Public

Everyone is entitled to attend a meeting of the Council and those of its Committees of which all members are Councillors, except as provided by Section 10 of the Local Government Act, 1993.

A Council, or a Committee of the Council of which all the members are Councillors, may close to the public so much of its meeting as comprises:

- (a) the discussion of any of the matters listed below; or
- (b) the receipt or discussion of any of the information so listed.

The matters and information are the following:

- (a) personnel matters concerning particular individuals;
- (b) the personal hardship of any resident or ratepayers;
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business;
- (d) commercial information of a confidential nature that would, if disclosed:
 - prejudice the commercial position of the person who supplied it; or
 - confer a commercial advantage on a competitor of the Council; or
 - reveal a trade secret.
- (e) information that would, if disclosed, prejudice the maintenance of the law;
- (f) matters affecting the security of the Council, Councillors, Council staff or Council property;
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.

The grounds must specify the following:

- (a) the relevant provision of section 10A(2);
- (b) the matter that is to be discussed during the closed part of the meeting;
- (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a

trade secret) an explanation of the way in which discussion of the matter in open meeting would be, on balance, contrary to the public interest.

Members of the public may make representations at a Council or Committee Meeting as to whether a part of a meeting should be closed to the public

The process which should be followed is:

- a motion, based on the recommendation below, is moved and seconded
- the Chairperson then asks if any member/s of the public would like to make representations as to whether a part of the meeting is closed to the public
- if a member/s of the public wish to make representations, the Chairperson invites them to speak before the Committee makes its decision on whether to close the part of the meeting or not to the public.
- if no member/s of the public wish to make representations the Chairperson can then put the motion to close the meeting to the public.

The first action is for a motion to be moved and seconded based on the recommendation below.

RECOMMENDATION

That:

A Liveable City

2 Penrith Commuter Carpark

This item has been referred to Committee of the Whole as the report refers to commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret and discussion of the matter in open meeting would be, on balance, contrary to the public interest.

A Leading City

3 Legal Matter - Class 4 Legal Proceedings - Development Application 08/1288 Chemist Warehouse - Shop 230 Patty's Place, Jamisontown

This item has been referred to Committee of the Whole as the report refers to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and discussion of the matter in open meeting would be, on balance, contrary to the public interest.



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