

**5 Outcomes of Public Exhibition - Matters Deferred from Penrith Local Environmental Plan 2010 (Amendment 4)**

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<b>Outcome</b>	<i>We plan for our future growth</i>
<b>Strategy</b>	<i>Protect the City's natural areas, heritage and character</i>
<b>Service Activity</b>	<i>Maintain a contemporary framework of land use and contribution policies, strategies and statutory plans</i>

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

**Executive Summary**

Council’s City-wide Local Environmental Plan, known as *Penrith Local Environmental Plan 2010* sets the land use and planning controls for most of the Penrith Local Government Area. The making of this plan has been a lengthy and complex exercise involving a number of stages. During this process a number of areas or matters have been deferred or removed from the plan by the Minister for Planning to allow Council to undertake further community consultation on the proposed planning controls for these deferred areas or matters.

The additional consultation on the deferred matters or areas is now complete. A Planning Proposal setting out the proposed planning controls was publicly exhibited in July and August 2015. Council received 29 submissions from the community and public authorities in response. This report provides the outcomes from that consultation, including a review of the submissions. It also identifies the changes required to the Planning Proposal that respond, where possible, to the issues raised in the submissions.

This matter was initially reported to Council in May 2016. A decision on the matter was postponed to allow for further consideration of the submission concerning minimum lot size controls for the part of the Werrington Signals site proposed to be *zoned R3 Medium Density Residential*. This report outlines the additional considerations before recommending the removal of the proposed minimum lot size controls from this site.

This report concludes by seeking Council’s endorsement for the Planning Proposal to proceed to the next stage in the NSW Government’s Gateway Process (the process for making and amending local environmental plans). This involves sending the Planning Proposal to the Greater Sydney Commission with a request that LEP 2010 is amended as necessary.

**Background**

The latest amendment to Council’s City-wide Local Environmental Plan, known as *Penrith LEP 2010* (LEP 2010), was published on 28 January 2015 and set the land use and planning controls for Penrith’s residential and commercial areas. However, in considering some of Council’s proposed post-exhibition changes to the planning controls, the Minister for Planning deferred the following areas or matters to allow for further community consultation:

- Land in Werrington Business Park, Werrington,
- Land in French Street, Werrington (known as the Werrington Signals Site),

- Land in Glossop Street, St Marys (east of Glossop Street and south of Chapel Street),
- Land in Castlereagh Street, Penrith (in the Hornseywood Conservation Area), and
- Land required by the Roads and Maritime Services (RMS) in Claremont Meadows and Orchard Hills.

On 18 May 2015, the Minister for Planning issued a Gateway Determination that set out the process for resolving the deferred matters, namely the public exhibition of a Planning Proposal. The Gateway Determination required Council to:

- provide a further assessment of the change in the proposed controls for the Werrington Signals Site, and
- undertake further community consultation on the proposed controls for all of the deferred matters or areas.

A Planning Proposal was subsequently prepared and publicly exhibited from 27 July until 24 August 2015 (28 days). Notification of the exhibition was delivered by newspaper advertisements and a mail out. The exhibition material was available at the Civic Centre, St Marys Office, Council's libraries and on Council's website.

### Submissions

In response to the public exhibition, Council received 29 submissions from the community and public authorities. Table 1 provides a breakdown of the submissions, identifying which matters generated the greatest response. 16 of the submissions were received from the community and 13 from public authorities. A summary of the submissions is included in *Attachment 1*.

Deferred Matter	No. of Submissions
Glossop Street Precinct	<ul style="list-style-type: none"> <li>• 1 public authority submission</li> <li>• 13 community submissions (including 7 pro forma letters)</li> </ul>
Werrington Business Park & Werrington Signals site	<ul style="list-style-type: none"> <li>• 6 public authority submissions</li> <li>• 3 community submissions</li> </ul>
Castlereagh Street	<ul style="list-style-type: none"> <li>• 1 public authority submission</li> </ul>
Claremont Meadows and Orchard Hills	<ul style="list-style-type: none"> <li>• no submissions</li> </ul>

*Table 1: Breakdown of submissions*

This report provides a summary of, and a response to, the key submissions received for the Glossop Street Precinct, the Werrington Business Park and the Werrington Signals site. A detailed consideration of the issues raised in the submissions is provided in *Attachment 2*.

### 1. Glossop Street Precinct, St Marys

The deferred part of the Glossop Street Precinct (i.e. the area east of Glossop Street and South of Chapel Street) was originally exhibited as part of Stage 2 of Penrith LEP 2010 (May – July 2013) with a R4 High Density Residential zone and maximum building heights of 12 to 15 metres. In response to significant community concerns about the potential development outcomes facilitated by these controls, Council resolved (in November 2013) to amend the

proposed zone to R3 Medium Density Residential and support it with a maximum building height of 8.5 metres. These were the proposed controls contained in the publicly exhibited Planning Proposal.

The majority of the submissions supported the R3 Medium Density Residential zone and maximum building height of 8.5 metres. Seven of the 13 submissions were pro forma or standard letters that incorrectly interpreted the exhibition material as proposing the original R4 High Density Residential zone. These submissions subsequently objected to the application of the R4 High Density Residential zone and expressed a preference for the R3 Medium Density Residential zone.

One submission requested that the originally proposed planning controls for the Precinct (high density residential) be reinstated, noting that the Precinct is within walking distance (800 metres) of St Marys Town Centre and Train Station.

The proposed planning controls in the Planning Proposal (R3 Medium Density Residential zone and maximum building height of 8.5 metres) respond to the community's concerns. The request to adopt the higher density residential controls is not consistent with Council's resolution of November 2013 for this area and is, therefore, not supported.

One submission was also received for a specific site located within this Precinct: 26-28 Gidley Street and 42 Chapel Street. This site currently contains two 2-storey office blocks and a single storey detached dwelling. This submission stated a preference for the originally proposed R4 High Density Residential zone or, alternatively, the application of the B4 Mixed Use zone. The submission also requested that the current additional permitted use of *office premises* for 26 and 28 Gidley Street be retained in LEP 2010.

The additional permitted use provisions do not need to be included in LEP 2010 as the site is already developed with office buildings. The *Standard Instrument Template for Local Environmental Plans* aims to minimise the listing of additional permitted uses, particularly when that use already exists. The existing use right provisions of the *Environmental Planning and Assessment Act 1979* allow that use to continue, be altered or expanded.

## **2. Werrington Business Park and Werrington Signals site**

This area, which comprises the Western Sydney University's Werrington Campus and part of the Werrington Signals site, was initially exhibited (in May-July 2013) with a B7 Business Park zone. In response to the submissions received, Council deferred its decision on the planning controls for these sites (in November 2013) to allow for the investigation and testing of an alternative selection of land use zones with the landowners, the former Penrith Business Alliance and representatives of the (then) Department of Planning and Infrastructure. The landowners included the University and the owners of the Werrington Signals site.

This subsequent review resulted in Council resolving in April 2014 to apply the R3 Medium Density zone to the western part of the Werrington Signals site and maintain the B7 Business Park zone for the remainder of the site and the University's campus. This was exhibited in the Planning Proposal. The key submissions on these proposed planning controls were made by the University and the planning consultant representing the owners of the Werrington Signals site.

### **(a) Western Sydney University's submission**

The University's submission related to the controls proposed for the part of the campus known as the Werrington Business Park (the Business Park). The submission supported the proposed B7 Business Park Zone but raised concerns with the proposed additional local

clause restricting the size of *warehouse and distribution centres*, and the mapping of the heritage-listed Werrington Park House.

The University did not object to the current heritage listing for Werrington Park House (653-729 Great Western Highway, Werrington), but rather the way it is identified on the Heritage Map. The University is concerned with the identification of the entire lot that Werrington Park House is located on, rather than its specific location or curtilage.

*Comment – Warehouses and distribution centres*

The Standard Instrument Template for LEPs mandates the permissibility of 'warehouse and distribution centres' in the B7 Business Park zone. These uses generally have low employment densities and are not considered to align with the higher order and higher density employment outcomes sought for the Business Park. The intention of the proposed clause is to prevent the proliferation of warehouse and distribution centres throughout the Business Park to support the desired employment outcomes by:

- limiting warehouse and distribution centres to 50% of the gross floor area of a development, and
- requiring that these uses are ancillary to higher order health, cultural and technology industries.

The University is concerned that the proposed clause will be too restrictive and has asked Council to instead consider a standard for the size of the warehouse or distribution centre that is linked to the number of jobs generated by a development. However, Council does not generally require developments in business zones to provide a minimum number of jobs, as this control would be difficult to draft or implement, particularly as uses change over time. The proposed additional local clause is considered to be a balanced approach that supports the delivery of higher order employment uses and any storage or transport functions that such uses may require.

*Comment – Heritage listing of Werrington Park House*

The Department of Planning and Environment's (the Department) current *Standard technical requirements for LEP maps* (the Mapping Guidelines) requires the entire lot(s) that a heritage item or place is located on to be identified on the Heritage Map. There is no discretion to identify the location or curtilage of a heritage item within a lot even if the lot is significantly larger than the heritage item. The Department has recently advised that it is seeking to introduce some flexibility into the identification of heritage items located on large lots, but has not at this time updated its Mapping Guidelines.

It is important to note that the purpose of the Heritage Map is to only identify the presence of a heritage item. A more detailed assessment would be required for development proposals for, or close to, the heritage item. Such assessments identify the location of the heritage item, its curtilage and its setting and propose measures to manage the item and any identified impact from the proposed development.

(b) Werrington Signals Site submission

A submission was made by the landowner's planning consultant which requested the following amendments:

1. The realignment of the E2 Environmental Conservation zone applied to the watercourse located on the site,
2. The amendment of the proposed planning controls for minimum lot sizes for subdivision and height of buildings for the part of the site proposed to be zoned R3 Medium Density Residential, and

3. The listing of a *service station* as an additional permitted use on the part of the site proposed to be zoned B7 Business Park.

An independent peer review of this submission and the recommended response was organised to ensure that the submission was fairly considered, that the proposed response is sound on planning grounds, and to maintain probity and transparency of the process. The review concluded that an appropriate analysis of the key issues raised in the submission had been undertaken, and concurred with the recommendations made. *Attachment 3* provides a full copy of the report from the peer review. A summary of the response to each of these issues is set out below.

*Comment – E2 Environmental Conservation Corridor*

The submission requested that the E2 Environmental Conservation zone be amended to align with the existing watercourse running north to south through the site. This zone was published as part of Amendment No. 4 to LEP 2010 (January 2015). Investigation revealed that the E2 Environmental Conservation does not accurately align with the watercourse due to a mapping error. It is recommended that the alignment of the E2 Environmental Conservation corridor is corrected.

*Comment – Changes to the Planning Controls for Minimum Lot Sizes and Building Heights*

For the part of the site proposed to be zoned R3 Medium Density Residential, the submission requested that the minimum lot sizes for subdivision be removed and that the maximum building height be increased from 8.5 metres to 12.5 metres.

Given that the adjoining residential areas to the immediate north and west of the site have a maximum building height of 8.5 metres, increasing the building height of the site would permit development outcomes that are significantly different from the characteristics of the adjoining residential areas.

With regard to the request to remove the minimum lot sizes, it is noted that the land to the north of the Site is zoned R1 General Residential with no minimum lot size. Whilst the R1 zone may be more appropriate for the site (as it allows for a continuation of the R1 zone that applies to the north), a change in the exhibited zoning is likely to trigger re-exhibition of the Planning Proposal.

Alternatively, the R3 Medium Density Residential zone could be retained and the minimum lot size requirement (400m<sup>2</sup>) removed. This would provide opportunities to develop small lot housing, which are single dwelling houses on lots ranging from 200m<sup>2</sup> to 450m<sup>2</sup> with frontages between 6 – 12 metres. Allowing small lot housing on the site would provide opportunities to deliver more affordable housing, would integrate with the surrounding two-storey residential development and is consistent with Council's strategy of providing greater housing densities close to existing and planned employment centres. There is also a growing demand for residential housing in Penrith. The Penrith Housing Demand Analysis (prepared by SGS Economics and Planning in 2015) found that there is a greater preference for denser forms of residential housing across Penrith.

On this basis, it is recommended that the R3 Medium Density Residential zone is retained for the site and the minimum lot size for this land (400m<sup>2</sup>) removed. It is recommended, however, that the exhibited 8.5 metre building height be retained. This would not prevent the owners from pursuing a site specific planning proposal to amend the building height controls.

*Comment – Additional Permitted Use of a Service Station*

The submission requested that *service station* be listed as an additional permitted use on 731-739 Great Western Highway and part of Lot 50 French Street, Werrington (Lots 50 & 56 DP 1069025). These properties are proposed to be zoned B7 Business Park, a zone that prohibits service stations. The submission argued that such a use would provide a catalyst for the development of the intended Business Park and provide a local retail service for future residents and workers.

However, the submission did not provide sufficient information to assess the impacts of permitting such a use on these properties. An assessment of traffic movements, location of entrances and exits, and whether such a use would have ancillary operations such as a car wash, convenience store and a café or restaurant would be required. This level of detail would also be required to consult with the Roads and Maritime Services, because of the properties' location on the Great Western Highway. In the absence of this information, the current prohibition of service stations on the site should be retained. Further, a service station is not considered to be a use that advances the objectives of the B7 Business Park zone relating to encouraging higher order job opportunities associated with health, cultural and higher technology industries. This would not prevent the owners from pursuing a site specific planning proposal, supported by the necessary studies and information, to permit a service station as an additional use on the site.

Council officers concluded review of this submission with a meeting with the owners of the Werrington Signals site and their planning consultant. This meeting explored the development outcomes being pursued for the site, the constraints in delivering them as part of this Planning Proposal and the opportunities available to pursue the desired development outcomes through a site-specific planning proposal. Agreement was reached that a site-specific planning proposal was the appropriate course of action.

### **Post-exhibition changes to the Planning Proposal**

A fundamental consideration in the Gateway process is the nature and extent of any changes made to the Planning Proposal in response to the public exhibition, and whether such changes are material to the operation and outcomes of the LEP. Where potential changes are deemed to be material to the operation and outcomes of the LEP, it needs to be re-exhibited to ensure that the community can comment on the amended Planning Proposal.

On this occasion, it is considered that the removal of the minimum lot size for the R3 Medium Density Residential component of the Werrington Signals Site would not alter the operation and outcome of the LEP and, therefore, would not warrant re-exhibition. However, Council's correspondence to the Greater Sydney Commission will clarify that should removal of the minimum lot size result in re-exhibition, that the Planning Proposal should proceed with the exhibited minimum lot size of 400m<sup>2</sup>. Rather, a site-specific proposal would to be encouraged, as re-exhibition of the entire Planning Proposal would further delay inclusion of the deferred areas into LEP 2010.

Review of the submissions received in response to the exhibition of the Planning Proposal is complete. The Discussion Paper in *Attachment 2* sets out the proposed changes to the Planning Proposal that are considered to respond to the submissions and fall within the flexibility of the Gateway Process. *Attachment 4* summarises the proposed changes to the Planning Proposal. The revised Planning Proposal is included in *Attachment 5*.

### **Amendments to Penrith Development Control Plan 2014**

Should Council resolve to remove the 400m<sup>2</sup> lot size for the site, amendments to Penrith Development Control Plan (DCP) 2014 will be required. Additional guidelines and controls in the DCP are necessary to ensure that development on smaller lots is undertaken in a coordinated manner and constructed to an acceptable standard. In particular, additional

guidelines are required on landscaped areas, outdoor areas, solar access, privacy and provision of car spaces. A further report would be presented to Council when draft amendments to the DCP are prepared.

**Conclusion and next steps**

The review indicates that there are no constraints to progressing the Planning Proposal to the next stage of the Gateway Process. Council was not delegated plan making powers for this Proposal.

Should Council endorse the amended Planning Proposal, it will be updated with the policy directions endorsed by Council tonight, and sent to the Greater Sydney Commission for consideration. Officers will liaise with the Greater Sydney Commission and Parliamentary Counsel’s Office to ensure that the proposed amendments to LEP 2010 are accurate.

**RECOMMENDATION**

That:

1. The information contained in the report on Outcomes of Public Exhibition - Matters Deferred from Penrith Local Environmental Plan 2010 (Amendment 4) be received.
2. Council endorse the changes made to the Planning Proposal, as shown in *Attachment 4*.
3. Council endorse the revised Planning Proposal for Deferred Matters from Penrith Local Environmental Plan 2010, as shown in *Attachment 5*, and forward it to the Greater Sydney Commission with a request that the Commission make the plan in accordance with the Environmental Planning and Assessment Act 1979.
4. The General Manager be granted delegation to make any necessary minor changes required to the Planning Proposal prior to its submission.
5. Council endorse the preparation of a draft amendment to Penrith Development Control Plan 2014 to review the relevant controls to ensure consistency with the removal of the minimum lot size requirements for the Werrington Signals site.
6. A further report be presented to Council following the preparation of the draft amendments to Penrith Development Control Plan 2014.

**ATTACHMENTS/APPENDICES**

1. Summary of Submissions and Recommendations	6 Pages	Attachments Included
2. Discussion Paper	35 Pages	Attachments Included
3. Report from Peer Review	14 Pages	Attachments Included
4. Summary of Proposed Changes to Planning Proposal	4 Pages	Attachments Included
5. Amended Planning Proposal	52 Pages	Attachments Included