

13 November 2008

Mr Alan Stoneham
General Manager,
Penrith City Council
P O Box 60
Penrith NSW 2750

Attention: Anthony Milanoli

By email: pencit@penrithcity.nsw.gov.au

Dear Mr Stoneham,

Re: Penrith Draft Local Environmental Plan 2008 – Caddens

The Urban Taskforce is an industry organisation representing Australia's most prominent property developers and equity financiers. Our membership also includes key infrastructure providers, economists, planners, architects and lawyers involved in responsible and sustainable property development. We are pleased to provide the following comments for your consideration.

1. Aims of the draft LEP

The Urban Taskforce is concerned with the language used by Council while articulating the aims of Penrith Draft Local Environmental Plan 2008 – Caddens (PDLEP 2008 Caddens).

Section 25(3) of the *Environmental Planning and Assessment Act* makes clear that if a provision of a local environment plan is genuinely capable of different interpretations, that interpretation which best meets the aims stated in plan is preferred.¹ For this reason, it's important that the aims of the PDLEP are rational, well written and understandable.

The wording used is vague and subjective, and the aims also seek to deal with matters that are not appropriate for inclusion in a local environmental plan. Furthermore, the aims of the plan restate matters that are already requirements of other applicable legislation.

We ask council to use expressions that already exist in law where there are well established legal interpretations. For instance, Council must not use the term "sustainable development" if it means "ecologically sustainable development". The Local Environmental Plan is a legal document and Council must ensure that it is drafted to reflect this.

The table below provides a summary of Urban Taskforce Concerns with Part 1 of PDLEP 2008 Caddens.

1.2 Aims of Plan	Urban Taskforce Comment
This Plan aims to make local environmental planning provisions for land in Caddens.	<ul style="list-style-type: none">• Wording not consistent with the mandatory provisions of the Standard Instrument.• Redraft for consistency required.

¹ See, for example, *Jim Rannard & Associates Pty Ltd v North Sydney Municipal Council* (1992) 75 LGR 274.

1.2 Aims of Plan	Urban Taskforce Comment
2 (b) To promote development which is consistent with Council's vision for the City of Penrith, namely, one of a sustainable and prosperous region with a harmony of urban and rural qualities with a strong commitment to environmental protection and enhancement;	<ul style="list-style-type: none"> If a provision of this kind is necessary, it would be preferable to simply promote the ecologically sustainable development of the City of Penrith.
2 (c) To ensure development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes;	<ul style="list-style-type: none"> This introduces a new term "sustainable development", rather than "ecologically sustainable development" which is already defined under the <i>Environmental Planning and Assessment Act</i>. The Act already defines the phrase "ecologically sustainable development" to mean all of the things set out in section 6(2) of the <i>Protection of the Environment Administration Act 1991</i>. This includes concepts such as the integration of social, economic and environmental decision-making. "To promote ecologically sustainable development" is sufficient.
2 (d) To encourage development to be designed in a way which assists in the mitigation of and adaptation to the likely impacts of climate change;	<ul style="list-style-type: none"> Climate change and appropriate responses by development is a matter that does not need to be included as an aim of an LEP. It is already covered by the concept of "ecologically sustainable development" which is dealt with, in the Act. The need to consider climate change has recently been considered in the Land and Environment Court and the Court of Appeal (see <i>Minister for Planning v Walker</i> [2008] NSWCA 224). The Court has made it clear that climate change is an important consideration under the Act as it stands. The LEP does not need to embellish on this point. <i>This aim should be deleted altogether.</i>
2 (i) To promote development which observes responsible, and environmentally sound, management practices and resource use, and which is sustainable in the long term;	<ul style="list-style-type: none"> This aim adds nothing and replicates clause 2(c). If anything it further confuses the aims of the LEP. In reality, "development which observes responsible, and environmentally sound, management practices and resource use, and which is sustainable in the long term" is ecologically sustainable development, which, as stated above is well defined in legislation. Council should redraft clause 2 (c) as suggested above and delete clause 2 (i) altogether.

2. Land use table

The Urban Taskforce is troubled by a number of zone objectives added by Council to the PDLEP 2008 Caddens. As demonstrated below, the objectives conflict with the intention of the zone and in some cases do not reflect uses permitted in the zone. Furthermore, it is noted that not all additions to the Standard Instrument made by Council have been identified as coloured text in the exhibited material.

Zone	Urban Taskforce Comment
Zone R1 General Residential Objectives of zone added by Council include: <ul style="list-style-type: none">• Traditional detached houses that are surrounded by private gardens.• To enhance the essential character and identity of established residential areas.• To encourage development that will ensure that a variety of housing forms address the street frontage and open spaces where possible.• To promote development which safeguards the residential amenity of the area.• To provide for high levels of residential amenity, particularly acoustic and visual privacy, accessibility to services, climatic comfort of the indoor environment, and safety and security.	<ul style="list-style-type: none">• Council's objectives are not consistent with the mandatory permitted uses for Zone R1 of the Standard Instrument.• A variety of housing is encouraged and permitted in the General Residential zone, while Council's objectives strongly reflect a desire to create and protect "traditional" low density residential environments. Review of the complementary DCP amendment confirms this. Development controls would favour lower density residential development.• Council must review its objectives so that they properly reflect the intended objectives for Zone R1. Council should review the permitted uses and zone objectives as stated in the standard instrument and ensure that additions to these are consistent with the intent of this zone.

3. Part 6 Local Provisions

Sustainable development

Council is able to add local clauses that address specific local circumstances. The local provisions 6.1 *Sustainable development* of PDLEP 2008 Caddens are not specific to local circumstances, are poorly worded, confusing and make little sense.

It seems that Council is seeking to ensure that the principles of ecologically sustainable development (ESD) are given due regard when making a determination of a development proposal, but the wording and punctuation confuses the matter. If the intention of the clause is to ensure that ESD is properly considered, then this clause is superfluous. The encouragement of ESD is an objective of the *Environmental Planning and Assessment Act* and the meaning of ESD is provided in the *Protection of The Environment Administration Act*. Council is obliged to have regard to the Act objectives and section 79C of the *Environmental Planning and Assessment Act* when making a determination of a development application. Therefore there is no need for Council to seek to add to these objectives, restate or reword them in a local environmental plan.

Clause 6.1(2) also refers to State Environmental Planning Policy (Building Sustainability Index: BASIX). Drafting concerns aside, the requirement that BASIX be referred to when making a determination is also unnecessary. Council would be well aware of the fact that BASIX is a state planning policy and that its application and force do not depend on a local environmental plan.

Clause 6.1 Sustainable development should be deleted from the PDLEP 2008 Caddens.

Salinity

Areas affected by salinity must be developed appropriately and it is a legitimate issue for consideration as part of the development approval process. PDLEP 2008 Caddens introduce local provisions dealing with salinity (6.2 Salinity), however it is unclear where the risk of salinity exists, for what type of development and at which stage of the development process.

If read without the benefit of the complementary DCP, clause 6.2 says there is a need to demonstrate that salinity has been considered for every development proposal. However, the DCP indicates that salinity risk is generally limited to areas adjacent to a watercourse and zoned E2-Environmental Conservation. Furthermore, the DCP indicates that salinity is to be considered when making a determination to subdivide land or carryout road works in such locations. This matter requires clarification.

At the very least, a map indicating the area to which this clause applies should be included with this local environmental plan.

Caddens Precinct Centre

Similar to clause 6.2, clause 6.6 Caddens Precinct Centre requires that specific matters be considered when determining a development application. Many matters for consideration are those that can only be properly considered at subdivision stage, however this clause does not make this clear. Further clarification of this matter must be provided.

Furthermore, clause 6.6 (4) introduces maximum floor areas for retail and commercial development in the "Precinct Centre". It is unclear exactly what is the "precinct centre".

Clause 6.6 (1) suggests that the Caddens Precinct Centre is the entire area subject to this Plan, while in the context of clause 6.6 (4) it is assumed that the restriction on floor space refers to the B2-local centre zone. This matter requires clarification.

However, limiting retail floor space is a significant issue of concern and the Urban Taskforce strongly objects to such regulation. Retail activity is widely recognised as a key element of successful localities. Retail is the foundation upon which a vibrant and active local community can evolve and prosper. Retail is an attractor of investment and vital for the success of centres.²

The Urban Taskforce commissioned property economics and urban planning consultancy, Hill PDA to calculate the additional retail space that Sydney will need if the population goals predicted by the NSW Government are met. A detailed analysis has already been submitted to Government. However it is worth reflecting on some of the key issues that this research raises.

Hill PDA suggests that the Sydney metropolitan area will need an additional four million square metres of occupied retail space by 2031. Currently, supply in Sydney is eight million square metres. Hence we are in need of about a 50 per cent increase over the next twenty-five years.

Furthermore, Hill PDA found that a further 500,000 square metres of non-retail space will be required by 2031 for the provision of commercial services. A total of 4.5 million square metres of shopfront space will be required by 2031. It should be noted that these calculations were completed prior to the release of the most recent population projections for NSW and the Sydney region. The most recent figures confirm that our population is to drastically exceed previous projections, meaning that provision of adequate retail space has become critical.

We must ensure that there is enough land available and floor space capacity to enable retail premises to be developed to meet the needs of local markets. Our most recent research confirms that there's an undersupply of supermarkets in NSW and that has come about because of constraints imposed by the planning system. This undersupply of retail space favours market domination by a select few "players", which has been the primary cause of inflated grocery prices.

If Australian households are to have access to lower cost groceries we must question any policy that seeks to limit retail floor space. The Urban Taskforce objects to the 10,000 square metre and 4,000 square metre floor space limitations suggested in PDLEP 2008 Caddens.

This kind of clause denies the community sites that could offer sites for low-cost larger format stores retailing bulky goods, food, clothing or other household items at a lower per-unit cost. Such retail formats have proven very effective at delivering cost-effective household goods to families on limited budgets.

Questions about the bulk and scale of a particular development should be determined by reference to its compliance with height limits and floor space ratios, and should not be dependent on a building's use. Its visual appearance to the outside world is what is important, not whether retailing is taking place inside. Questions about the vehicle traffic generated by a particular development are best determined at the merit assessment stage in the light of a particular development proposal.

The following table provides a summary of Urban Taskforce concerns with Part 6 of PDLEP 2008 Caddens.

² Robertson, J. & Fennell, J. 2007. The Economic Effects of Regional Shopping Centres. *Journal of Retail and Leisure Property*. Vol. 6. PP. 149-170.

Clause	Urban Taskforce Comment
<p>6.1 Sustainable development</p> <p>(1) The objective of this clause is to ensure that sustainability principles are incorporated into the design and construction processes for all development, to provide well designed, comfortable homes and workplaces that minimise use of resources throughout their lifecycle and meet the needs of the community,</p>	<ul style="list-style-type: none"> • The local provisions 6.1 Sustainable development of PDLEP 2008 Caddens <u>are not specific to local circumstances.</u> • The need to consider ESD is an objective of the <i>Environmental Planning and Assessment Act, 1979</i> and the meaning of ESD is provided in the <i>Protection of the Environment Administration Act 1991.</i> • Superfluous clause should be deleted.
<p>(2) Before granting consent to development the consent authority must have regard to the principles of sustainable development as they relate to the proposed development based on a 'whole of building approach' by considering each of the following for consistency with the provisions of SEPP (Building Sustainability Index BASIX):</p> <ul style="list-style-type: none"> (a) Conserving energy and reducing carbon dioxide emissions; (b) Embodied energy in materials and building processes; (c) Building design and orientation; (d) Passive solar design and day lighting; (e) Natural ventilation; (f) Energy efficiency and conservation; (g) Water conservation and water reuse; (h) Waste minimisation and recycling; (i) Reduction of car dependence; (j) Potential for adaptive reuse. 	<ul style="list-style-type: none"> • Poorly worded and confusing clause. • The encouragement of ESD is an objective of the <i>Environmental Planning and Assessment Act 1979</i> and the meaning of ESD is provided in the <i>Protection of the Environment Administration Act 1991.</i> • Council is obliged to have regard to the Act objectives and Sec. 79C of the <i>Environmental Planning and Assessment Act</i> when making a determination of a development application. • Superfluous clause should be deleted.
<p>6.2 Salinity</p> <p>(2) This clause applies to development that may affect the process of salinisation or where the land is affected by groundwater salinity.</p> <p>(3) Consent must not be granted for development to which this clause applies unless the consent authority has considered whether the applicant has demonstrated that:</p> <ul style="list-style-type: none"> (a) The impact of the proposed development on salinity processes has been considered; (b) The impact of salinity on the development has been considered; and (c) Appropriate measures have been adopted to avoid or mitigate the impacts identified in (a) and (b). 	<ul style="list-style-type: none"> • Where the risk of salinity exists, for what type of development and at which stage of the development process such a matter is to be considered is unclear. • A map indicating the area to which this clause applies must be included with this local environmental plan

Clause	Urban Taskforce Comment
<p>6.6 Caddens Precinct Centre</p> <p>(1) This clause applies to land shown edged heavy black on the Land Application Map marked Penrith Local Environmental Plan 2008 (Caddens). Objectives</p>	<ul style="list-style-type: none"> • It is unclear what the "precinct centre" is. • Clause 6.6 (1) suggests that the Caddens Precinct Centre is the entire area subject to this Plan, while in the context of clause 6.6 (4) it is assumed that the precinct centre is the B2-local centre zone and the restriction on floor space refers to this zone. • <i>This clause requires redrafting for clarity.</i>
<p>(2) The objectives for development occurring on land referred to in subclause (1) include:</p> <p>(a) To provide a diverse range of housing forms and densities which respond to community needs for traditional detached dwellings, seniors housing, and multi dwelling and attached housing;</p> <p>(b) To promote housing choice through the provision of a range of dwelling types to meet the needs of diverse age groups and family types;</p> <p>(c) To provide a Precinct Centre serving residents, employees, students and visitors of Caddens, the Werrington Enterprise Living and Learning Precinct and surrounding areas;</p> <p>(d) To protect existing vegetation, especially along creek lines; and</p> <p>(e) To protect views to and from hill tops and ridges;</p> <p>(f) To promote the use of riparian corridors and drainage facilities for passive recreational purposes; and</p> <p>(g) To ensure development is sensitive to, and facilitates, a permeable interface with land and development adjoining the Caddens Release Area.</p>	<ul style="list-style-type: none"> • If this clause applies to the whole of the land subject to this plan, much of this clause is not necessary as the objectives of the LEP and zone objectives provide the same direction. • <i>Bolster zone objectives appropriately</i> • <i>Superfluous clause should be deleted.</i>

Clause	Urban Taskforce Comment
<p>Development consent considerations</p> <p>(3) Prior to granting consent to development occurring on land referred to in subclause (1), Council must consider whether the applicant has demonstrated that:</p> <p>(a) Development to be carried out on or near ridge lines does not significantly obstruct scenic views and enables views to be shared;</p> <p>(b) Allotments and associated building works are compatible in size and shape with the physical nature of the land and adjoining land uses;</p> <p>(c) The scenic and ecological values of Werrington Creek are protected;</p> <p>(d) Development for the purposes of drainage integrates passive recreational uses;</p> <p>(e) Opportunities for walking, cycling and other passive recreation are provided in riparian corridors and other areas of open space;</p> <p>(f) Subdivision provides the opportunity for a range of housing forms;</p> <p>(g) Residential development provides for a diverse range of household types, income levels and ages;</p> <p>(h) Development achieves a high standard of urban design and environmental and social sustainability;</p> <p>(i) The scale and proposed uses of the Precinct Centre are compatible with the surrounding land uses; and</p> <p>(j) Development for the purposes of the Precinct Centre facilitates a range of uses including employment, retail and housing.</p>	<ul style="list-style-type: none"> Many matters for consideration are those that can only be properly considered at subdivision stage, however this clause does not always make this clear. <i>This clause requires redrafting for clarity.</i> Much of this clause is not necessary as the objectives of the LEP and zone objectives provide the same direction. <i>Bolster zone objectives appropriately</i> <i>Superfluous parts of clause should be deleted.</i>
<p>Maximum floor area of the Precinct Centre</p> <p>(4) On land referred to in subclause (1), the total maximum gross floor area for retail and commercial development in the Precinct Centre must not exceed 10,000 square metres and no one shop is to exceed 4,000 square metres.</p>	<ul style="list-style-type: none"> Limiting total retail floor space in an area zoned for retail is not logical. Council should focus its attention on the protection of amenity and guiding built form outcomes, not limiting total retail floor space to arbitrary levels. <i>Clause should be deleted.</i>

4. Part 7 Urban Release Areas

The reliance on levies, fees and taxes imposed on the developer to fund the provision of infrastructure is always a matter of great concern. The Urban Taskforce has made numerous submissions to Government on this matter and the impact of unreasonable fees has recently been considered by IPART in their investigation into local government revenue frameworks.

Council has identified land that is to be rezoned for urban development and a review of Part 7 of the PDLEP 2008 Caddens indicates that most, if not all infrastructure, will be funded by way of developer contributions to the local and state governments. The level of contribution must be closely monitored to ensure that unrealistically high contributions do not stifle development altogether.

Evidence has clearly shown that local council and State Government levies are a major contributor to the chronic shortage of land for urban development. The real and most concerning impact of this is that land available for residential development is becoming more expensive, which in the end is making housing in NSW less affordable.

Experience with the South West Growth Centre has proved that when the charges on the developer increase, the selling price of each lot to a level that it is above the market value of land, no new lots are produced. The developer is unable to recover the cost of producing land and putting lots on the market, which in reality means no new housing in the areas where demand is at its highest.

Housing affordability cannot be addressed in an environment where demand is high, but supply is constrained. It is for this reason that Council and state government contributions must be reasonable and reflect market realities.

The Urban Taskforce asks that you carefully consider the contents of this correspondence and ensure that the appropriate amendments to the Penrith Draft Local Environmental Plan 2008–Caddens are made.

Thank you for providing us with the opportunity to offer our comments and should you require any further clarification of the content of this correspondence, please feel free to contact me.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Aaron Gadiel
Chief Executive Officer