

# **Report to Penrith City Council**

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## **Proposed Reclassification of Public Land**

### **St Marys Town Centre Environs**

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Report on Public Hearing - Held 21 October 2015

Prepared by:

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Chairperson of Public Hearing

**4 November 2015**

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# Section 1 Introduction

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## 1.1 Context

This is a report on a public hearing held into a proposal before Penrith City Council (Council) to reclassify centre land in the St Marys Town Centre environs from “community land” to “operational land” classification. According to accompanying documentation<sup>1</sup>, a total of some 26 individual allotments are proposed to be reclassified. See Figure 1 and Table 1 over page. But the subject land is better understood as comprising six areas: Lang Park, Kokoda Park, 8-10 Carinya Ave, the West Lane Carpark off Carinya Ave, the Station Street Carpark and the walkway at 100A Queen Street which links through to the east.

Under the regime for *classification* of public land introduced with the Local Government Act 1993 (LG Act), all public land must be classified as either community or operational land. Public land comprises all land “vested in or under the control of the council”<sup>2</sup>. As such, both land which a council may have under its control for use by the community, and land which a council may hold, say, for investment purposes or for storage of plant and equipment, are all designated as public land. The principal effect of the classification of public land is to “restrict the alienation and use of the land”<sup>3</sup>.

*Operational land has no special restrictions other than those that may apply to any piece of land.*

*Community land is different. Classification as community land reflects the importance of the land to the community because of its use or special features. Generally it is land intended for public access and use.... This gives rise to the restrictions in (the LG Act), intended to preserve the qualities of the land. Community land:*

- *Cannot be sold*
- *Cannot be leased, licensed or any other estate granted over the land for more than (30 years)*<sup>4</sup>
- *Must have a plan of management prepared for it.*

(Department of Local Government, 2000)<sup>5</sup>

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<sup>1</sup> Penrith City Council (2015), *Planning Proposal St Marys Town Centre Reclassification of Certain Public Lands, August 2015*, Appendix 3

<sup>2</sup> There are some exceptions noted in the Dictionary to the LG Act (eg public roads, and lands subject to Crown Lands Act).

<sup>3</sup> Department of Local Government, *Public Land Management – Practice Note 1 Revised May 2000*. Source: <https://www.olg.nsw.gov.au/sites/default/files/Practice-Note-1-Public-Land-Management.pdf>. Accessed 31/10/2015.

<sup>4</sup> Note the maximum lease period has been extended from 25 years to 30 years since the source publication.

<sup>5</sup> DLG (2000) op cit.



Figure 1 - Land subject to reclassification proposal (source: Council submission to public hearing)

Table 1- Subject land details

| Photo Ref | Description                        | Lot/DP   |
|-----------|------------------------------------|--|
| 1         | Lang Park                          | Lots 1-6 DP26908, Lot 5 DP 609430, Lot 301 DP 609746 |
| 2         | Kokoda Park                        | Lot 2 DP115169                                       |
| 3         | 8-10 Carinya Ave                   | Lots 203-204 DP 26908                                |
| 4         | West Lane Car Park,<br>Carinya Ave | Lots 195-202 & 208 DP 26908<br>Lots 205-207 DP 26908 |
| 5         | Station Street Car Park            | Lot 8 DP 734738 & 9 DP 8407174                       |
| 6         | Walkway 100A Queen St              | Lot A DP 164781                                      |

## 1.2 Statutory Provisions for Public Hearings

There are inter-dependent provisions within the Environmental Planning and Assessment Act 1979 (EPA Act) and LG Act which set up the statutory requirements for public hearings relating to land reclassification proposals. Whenever there is a proposal to reclassify community land to operational land, section (s) 29 of the LG Act provides that the council must arrange a public hearing under s57 of the Environmental Planning and Assessment Act 1979 (EPA Act). Among other things, s 57(7) of the EPA Act provides that at the conclusion of a public hearing:

*... (a) report of any public hearing is to be furnished to the (council) and may be made publicly available by that (council).*

Section 47G(2) of the LG Act provides as follows:

*The person presiding at a public hearing must not be:*

- a) a councillor or employee of the council holding the public hearing, or*
- b) a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.*

In accordance with the above provisions I was appointed to preside over the hearing and prepare a report. This document is intended to comprise the report of the public hearing.

### **1.3 Introductory Remarks on Hearing and This Report**

The public hearing was held on the evening of 21 October 2015 at St Marys Corner Community and Cultural Precinct. Thirty five persons signed attendance sheets at the hearing and six persons presented oral submissions (including one Council staff member).

Council also requested that this hearing report consider written submissions made to the public notification of the proposed land reclassification. There were sixteen written submissions considered.

This report provides a synthesis of the views expressed at the hearing and within written submissions. It also provides conclusions as drawn by the writer mindful of the proposal and the submissions. The overall purpose of the hearing report would be to sit as a part of the bundle of matters before Council as it makes decisions on proposed reclassification.

The structure of the remainder of the report can then be summarised as follows:

Section 2 - Outline of submissions

Section 3 - Consideration of procedural issues raised in submissions

Section 4 - Assessment of merits of reclassification in light of submissions

Section 5 - Summary and conclusions.

## Section 2 SUBMISSIONS

### 2.1 Council administration's submission

Council's administration's submission to the hearing was provided by Mr Matthew Rose.

#### *Recent History*

This submission worked through the recent history of Council's actions associated with St Marys Town Centre. It was indicated that following various community consultation activities between 2002 and 2006 the St Marys Town Centre Strategy (the Strategy) was prepared in 2006 aimed at capturing the community's vision for the centre. It also established a set of actions to "create attractive public places, increase the Town Centre's population, attract investment, generate jobs and deliver new infrastructure".

#### *Implementing St Marys Town Centre Strategy*

A set of significant implementation steps were outlined. Steps include:

- St Marys Town Centre Revised Masterplan 2007 (the Masterplan)
- Rezoning of entire town centre to a B4 Mixed Use zone (Figure 2)
- Zoning of Glossop Street precinct to high density residential
- Establish the St Marys Community and Cultural Precinct
- Construction of two-storey government office building in Queen Street
- Provision of a 500 carspace commuter carpark
- Upgrading of facilities in Bennet and Victoria Parks and Jack Jewry and Adelaide Street Reserves.

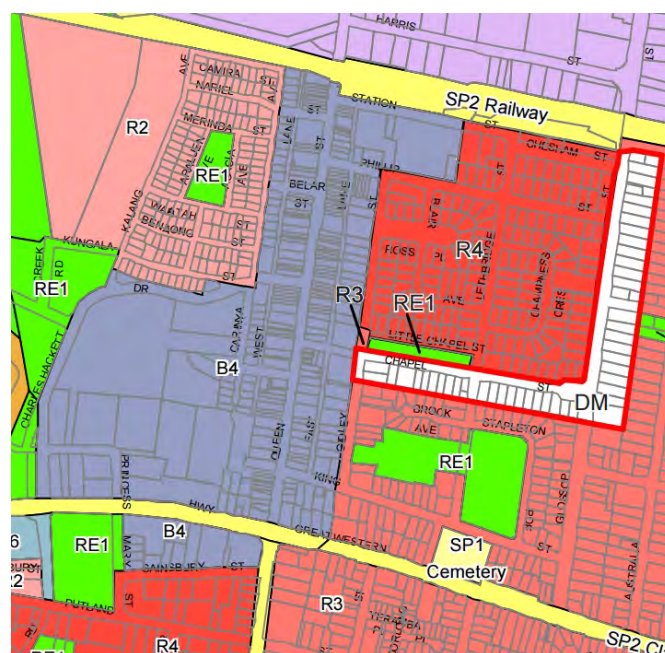


Figure 2 - Zoning plan (Source Penrith LEP 201X)

Current works include:

- Queen Street streetscape improvement plan
- Queen Street Special Places Program - involving community engagement on the particulars of new and improved public spaces
- South Creek Sports Hub (Ripples, Blair Oval athletics, BMX tracks, Kingsway Sporting Grounds, Troy Adams Archery Field)
- Upgrading of facilities in Cook Park, Collins Street, Adams Cr and Dunheved Circuit.

The submission suggested that this coordinated effort (which I take as culminating in both the public domain and facilities/infrastructure improvements and the specific changes to planning controls<sup>6</sup>) was seeing some “return” in the town centre. This was evidenced by: reduced vacancy rates in Queen Street, 111 apartments now under construction, 290 further units approved at the former bowling club site, proposed mixed use development in Queen Street in accordance with the zoning change, development proposals from owners of both of the existing enclosed “satellite” shopping centres (Station Plaza and St Marys Village).

Areas indicated as warranting further attention were:

- attracting more shoppers to the centre itself
- how to better link the existing enclosed shopping centres and Queen Street itself (currently separated by under-used open space and degraded service areas)
- Need for a contemporary urban space that provides opportunities for community events or just informal areas to sit and relax.

The 2007 Masterplan was prepared to indicate how such matters might be best addressed<sup>7</sup>. The Masterplan came up with certain design principles, aiming for improved east-west physical and visual connectivity through the centre (along the alignment of Chapel Street), and identified the location of a town square at the south-west corner of what would be the key intersection of Chapel Street and Queen Street<sup>8</sup>. This plan showed block patterns for residential development in the precinct, but importantly also indicated an expansion of both the enclosed shopping centres, aimed at better integrating each with Queen Street itself.

### ***Land reclassification as a contributing element***

Where all of this links with the reclassification proposal is that implementation of certain Masterplan components would involve change to the use of certain public land currently classified for community purposes. That is, according to the Masterplan, and Council’s submission to the hearing, the public lands shown in Figure 1 (including Lang Park and most of Kokoda Park) are seen to have the potential to be instrumental to the further delivery of the planned improvements to St Marys Town Centre. A block figure from the Masterplan was used in the Council administration’s submission as a means to generalise a possible future scenario. The block plan suggests mixed use development of increased intensity (following on from the zoning changes to the town centre environs), including taller residential towers near the station, apartment buildings along Queen Street and expanded areas adjacent to each of the enclosed shopping centres which bring each closer to Queen Street (see Figure 3).

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<sup>6</sup> See Appendix A for an outline of the provisions for height and floor space controls in the town centre precinct.

<sup>7</sup> St Marys Town Centre Revised Masterplan, 2007. Prepared for Council by Here Architects in collaboration with Jane Irwin Landscape Architect.

<sup>8</sup> See p11 of St Marys Town Centre Revised Masterplan



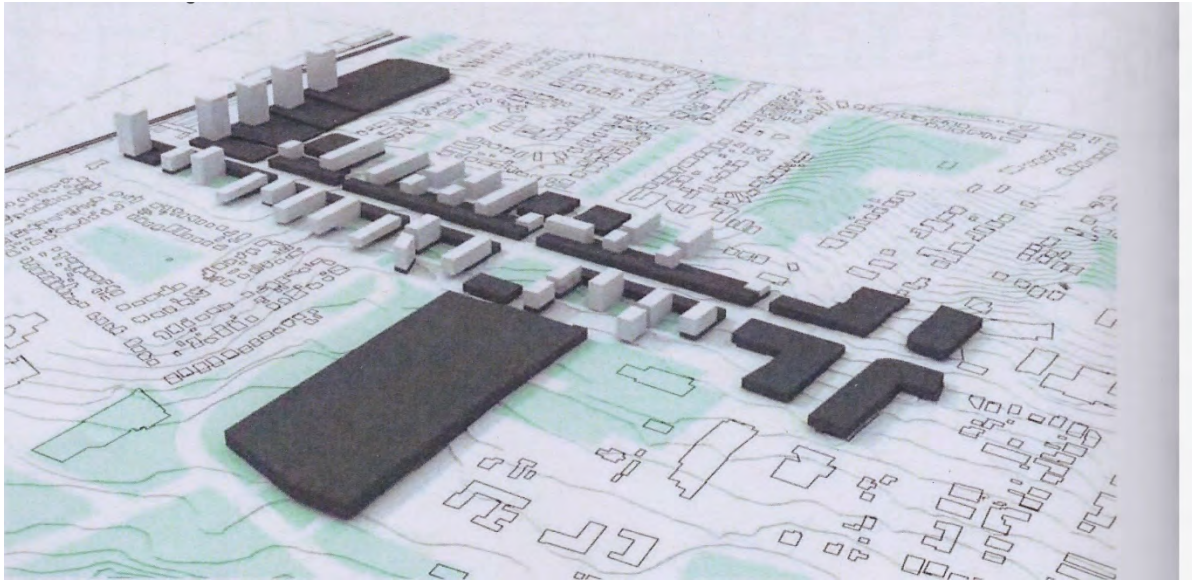


Figure 3 - Indicative block plan viewing St Marys Town Centre from the south-west - included in Council administration submission (Source: St Marys Town Centre Revised Masterplan 2007, Figure 80).

The Council administration's submission indicated that the reclassification would allow Council to "consider opportunities to use the land (sale, lease or develop it) in a manner consistent with the adopted strategy:

*The reclassification of the land does not commit Council to the sale or development of the land, nor does it remove the land from Council's ownership or prevent the current use of the land from continuing - these are all subject to separate considerations.*

A set of issues were suggested as requiring "careful consideration" if the strategy were to be implemented, and as such the land reclassified and current open space and carparking land were to be used for residential and commercial purposes. These were:

- Car parking: it was indicated that it would use its development controls to ensure there would be "no net loss".
- Open space: it was indicated that the suburb of St Marys and the town centre were both "well serviced" by open space now, but there was a need for a "contemporary town square or urban space" for such things as "water features, outdoor seating, public art, outdoor dining and places for performances, market, exhibitions, festivals and events".
- Connectivity: the potential for better links between the Town Centre and Ripples and the South Creek sports hub and natural areas were mentioned.
- Retail trade: modelling by SGS Economics and Planning<sup>9</sup> (SGS Report) was referenced which suggested that the town centre as a whole was "performing poorly" and that overall economic performance would improve with an expansion of one or both of the existing enclosed shopping centres, and that spillover effects into Queen Street retailing would improve if these centres were more "integrated" with Queen Street itself

<sup>9</sup> SGS Economics and Planning (2013) *St Marys Village EIA - Final Report - Penrith City Council, December 2013*. The SGS report was part of the exhibition material for the reclassification, although certain figures were not included in the exhibition copies. It was indicated the figures had been "superseded".



- Urban heat: light colours and reflective roofs, as well as street planting and “introduction of water”, would be required to “help cool the town centre”.
- Community facilities, public spaces and infrastructure: it was indicated that there would be a “commitment of funds” to such items, but specific uses for the proceeds of any sale of the land had not been decided.

In Council’s submission it was indicated that due to subsequent developments some of the principles of the 2007 Masterplan were no longer able to be implemented. In particular the configuration of the town square would need to be reconceived. It was indicated that a Draft Concept Plan had been prepared and was included in the exhibition material for the proposed reclassification. Figure 4 provides an excerpt from the draft plan<sup>10</sup>.

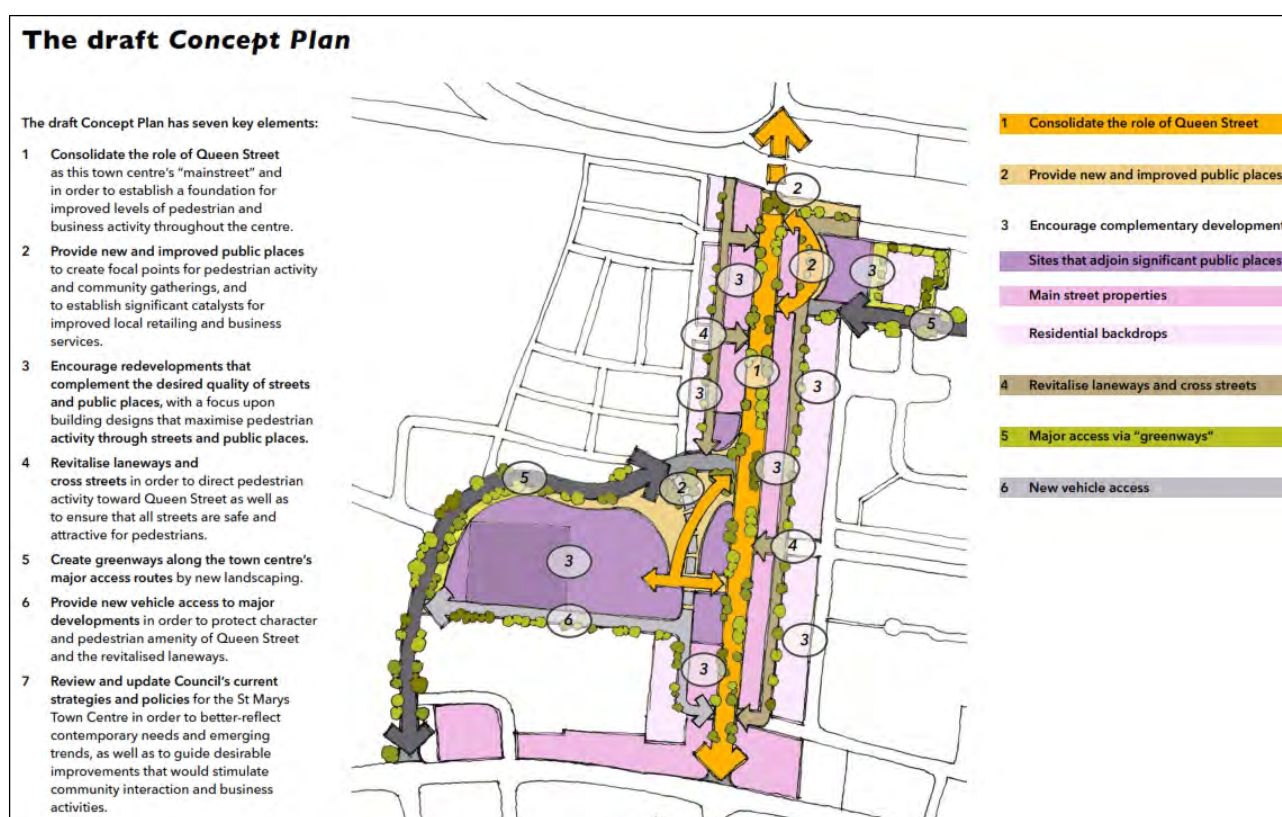


Figure 4 - Excerpt from Draft Concept Plan included in exhibition material (Source: Brett Newbold Urban Design August 2015)

## 2.2 Submissions from Members of the Public and Other Parties

The following persons/organisations made oral submissions to the second hearing:

- Mr B Greenow
- Mr N Ingham of Ingham Planning - indicating his client as the owners of Penrith Plaza and Westfield Mt Druitt.
- Mr A Karavas
- Ms N Thornburn

<sup>10</sup> Figure 4 only represents one plan from the overall document (13 pages in total).

- Ms C Volkiene - on behalf of the St Marys Historical Society.

An outline of the key points from each of these submissions is provided below.

### ***Mr B Greenow***

Mr Greenow indicated what he believed to be about 25 years of attempts to integrate the enclosed shopping centres with the Queen Street retail strip, but that all attempts had failed. The concern was that this current exercise would be another failed attempt, this time involving the loss of a “beautiful park”. It was seen that there was opportunity for Queen Street to “stand alone” with the increased housing now occurring adjacent to it and that things had already improved significantly since the SGS Report. There was also potential for St Marys Village shopping centre to increase its floor space but by “going up” rather than outwards to encompass the parklands. Mr Greenow was unhappy with a number of aspects of the Draft Concept Plan including the idea of a new road between St Marys Public School and the St Marys Village shopping centre. He queried whether this was to improve loading facilities for an upgraded shopping centre.

The loss of open space (in particular Lang Park and Kokoda Park) was seen as unnecessary for the future development in St Marys and inappropriate given the additional population which was being drawn to the town centre, who would need space like this. The idea of a corridor of open space in parallel to Charles Hackett Drive was not seen as a particularly useful addition to the current pathway available to those wishing to walk to Ripples and the other activity areas to the west.

The loss of open space was also suggested to be inconsistent with other policy directions Council was following. The St Marys Hotspot pilot study was mentioned<sup>11</sup>. This work undertaken by Council in a partnership with the Institute for Sustainable Futures at UTS, identified the town centre as a “hotspot”<sup>12</sup>. So needing this greenspace.

Mr Greenow indicated that Council had recently spent a large sum *acquiring* land for open space purposes in the Penrith town centre, and were now building “pop-up parks”. This pointed to the value of open space lands in centres. There was also a concern mentioned to ensure that funds from the sale of land in St Marys be reasonably allocated in this centre rather than elsewhere. Overall Mr Greenow believed that local St Marys’ citizens could not see how this reclassification and the potential future loss of open space was “good value”. In written correspondence<sup>13</sup> Mr Greenow also made the point that as development was already revitalising St Marys it was better to wait and see the outcome, after which a call could be made on the community land. This submission objected to the reclassification of any of the community land in the current proposal.

### ***Mr N Ingham of Ingham Planning***

Mr Ingham is a town planning consultant, and Ingham Planning’s clients in this matter are Scentre Group and GPT RE Limited (owners and operators of Penrith Plaza); and Stonehenge Pty Ltd and Scentre Group (owners and operators of Westfield Mt Druitt). Mr Ingham’s oral submission covered seven points:

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<sup>11</sup> Institute for Sustainable Futures - UTS (2014), St Marys Hotspot Study: Pilot.

<sup>12</sup> See p 13-14 and 18 of the study which would seem to confirm this.

<sup>13</sup> Email to Council dated 20/9/2015 from Brett and Scott Greenow.

*Council does not provide a level playing field for all retailers in the LGA*

The concern was that Council would be here supporting reclassification of land in its ownership for the expansion of retail sites in St Marys when Council has opposed expansion of Penrith Plaza. Mr Ingham quotes an unreferenced ICAC document which he suggests requires councils (when involved in commercial development, or prospective commercial development) to be able to demonstrate to other developers that “the same rules apply to all”. There is also a suggestion that Council’s support for rezoning of Penrith Panthers land had also unreasonable disadvantaged the Penrith Plaza site.

*St Marys already has enough land developed for retail uses*

The submission references the SGS Report (in particular Tables 16 and 17 and p11 of the report summary). Mr Ingham indicates the conclusion can be drawn that the expansion of St Marys Village, as quantified in the SGS report, would bring about “a massive and unacceptable impact upon the Queen Street shops and also upon Station Plaza”. It is suggested that there is an appearance that the beneficiaries of a reclassification would be limited to Council and St Marys Village.

Council’s position that the move to expand the retail floor space within St Mary’s is in accordance with its adopted strategy is queried here as other elements of the strategy are no longer able to be implemented. Mr Ingham references more recent “unadopted strategies” which “don’t have a ‘town square’ and don’t have an extension of Chapel Street through to Charles Hackett Drive”.

*Council has not placed on exhibition the management plans for the current community land nor identified the issues or attitudes of the current users*

This point is self-explanatory.

*Council has not divulged the content of current negotiations with the owners of St Marys Village*

The submission references the very precise floor space areas (for an expanded St Marys Village shopping centre) adopted in the SGS Report. For example: 29788m<sup>2</sup> new floor space of which 22728m<sup>2</sup> is retail floor space which is in turn divided into speciality shopping, mini major floor space etc. The suggestion is that there must be “a very specific and detailed proposal (*behind these precise figures*) of which Council has provided no information”. The concern is whether Council has already negotiated a use of the community land, with St Marys Village owners, which has not been disclosed, and that it has already committed to a position on this reclassification proposal. The submission again references ICAC guidance on the action of local government in such commercial matters. There is a submission that if the land is reclassified sale should be subject to public tender.

*Council has not divulged the potential financial benefit to itself from the reclassification and sale of the properties*

This point is self-explanatory.

*The adopted strategy of Council is not capable of implementation*

Mr Ingham refers to the five Council-suggested reasons or opportunities for the proposed reclassifications:

- Integration of the two satellite shopping centres with the Town Centre
- A central town square
- Gateway entrances into the Town centre when arriving by car or train
- A new library and community hub
- A new east-west links between Queen Street and Charles Hackett Drive.

The submission indicates that three of the five opportunities are “not capable of implementation” in that:

- The two satellite shopping centres are too far apart at about 700m
- The “square” shown in the more recent drawings is very different from the original town square conception and is “more a separating element than one of integration”.
- The essence of the east-west cross link has also been lost in the more recent drawings.

The suggestion is that together these developments warrant a “total re-evaluation of the adopted strategy” and that the reclassification not take place until this and other issues raised have been resolved”.

Mr Ingham’s submission also references a suggested set of “losers” with the reclassification: users of Land and Kokoda Parks, owners of Queen St shops and Station Plaza, retailers in Penrith CBD, Mt Druitt and St Clair and smaller retail centres. The submission acknowledges that some shoppers might like larger shopping malls in St Marys but queries whether the community might not be better served by:

*... promoting redevelopment of Queen Street properties. This might be done by implementing a higher height control and floor space ratio control for residential apartment development.*

#### *Submission conclusion*

The submission concludes with the submission that “the reclassification should not proceed until and unless full disclosure of matters is made public and the opportunity exists to fully discuss the issues”.

#### **Mr A Karavas**

Mr Karavas indicated that both Council and media reports have already “earmarked (*the major part of the land subject to reclassification*) as part of the St Marys Village expansion”. The SGS report accompanying the exhibition material, directly investigating an expansion of St Marys Village, was in line with this conclusion (and provided some material to investigate the implications).

#### *Loss of easily accessible (and free) public parking*

The submission acknowledges the intended parking replacement strategy, but suggests that replacement of the *quantum* of parking spaces could occur while still placing significant distress and disadvantage on Queen Street retailers. Restrictions might be created based on fees or time restrictions, or, through the location at a greater distance from Queen Street parking than existing or through design of especially underground parking which directs customers towards some retailers over others.

#### *Loss of greenspace which should be integral to the future of St Mary’s town centre*

The expected population increase in St Marys Town Centre is seen to need these important local parks, especially with the “battle” ahead associated with the “problem of adult and child obesity”. With increased housing development, Lang and Kokoda Parks could “uplift activity” in the space between St Marys Village and Queen Street and thus help commercial activity in both areas. The parks are also seen as important as a carbon sink and to help address urban heat problems. The retention of open space would help differentiate St Marys from other local retailing precincts. Mr Karavas also commented that the Fairy Martin, a bird which was the emblem of St Marys Public School, would be put at risk by the loss of Lang and Kokoda Parks.

*Increased retail floor space would be inconsistent with Sydney's Metropolitan Strategy and Council's own retail hierarchy*

This submission raises a number of economic concerns. The SGS Report provides the empirical data for many of the arguments put. The first point is that with an expansion of floor area as indicated in the SGS Report the St Marys centre would exceed its status in Sydney's Metropolitan Strategy and other State government planning documents. The Metro Strategy categorises St Marys as a Town Centre, as does the Draft North West Subregional Strategy. Mr Karavas suggests, with its three supermarkets, St Marys is already exceeding "Town Centre" status under these strategies. The reclassification, and what seems to be an intention to increase the commercial floor space further, would bring about an even greater inconsistency.

*Oversupply of retail floorspace will adversely affect Queen Street retailing*

The suggestion that Queen Street and the enclosed shopping centres provide for different markets is refuted and examples of direct competition are cited ("newsagents, florist, pharmacies, dry cleaning services, variety stores, bottle shop, nail salon, cafes and takeaways, bakery, cake shop, fashion retailers, beauty salons, hair dressers, barbers and tobacconists"). The SGS studies' calculations are "frightening" for local retailers with "best case scenario (showing) a loss of 16% of turnover and the worst case scenario showing a loss of 21% of turnover to traders on Queen Street and a 14 year recover time". This would have a "catastrophic effect". Reference is made to the late 1980s-early 1990s when wider economic problems saw St Marys experiencing social and crime problems associated with a failing Queen Street retail strip.

*Retail analysis does not paint an adequate picture of current dynamics or future risks and opportunities for Queen Street retailing itself*

Mr Karavas suggests the SGS Report was prepared before what has been an agreed resurgence in retail activity in St Marys and does not account for the now planned population increase within St Marys. There is already evidence of a new form of mixed use development (example cited is DA15/1022 for 159 Queen Street "which will almost double its retail and commercial floor space"). This trend is likely to continue with underground parking and mixed use development providing an improved capacity for major retailers/mini majors in Queen Street itself according to Mr Karavas. The SGS report is criticised for not considering the adverse effects of the internet on "bricks and mortar" retailing which have already been significant.

*St Marys Village expansion does not provide a response to all Town Centre Strategy requirements and brings its own opportunities and risks*

The expansion of St Marys Village in line with the proposed reclassification would still not link the enclosed shopping area and Queen Street ("the ultimate goal"). Even with a very large increase in the floor area of St Marys Village there is no guarantee it will attract another major retailer. This scenario (ie more floor space without more anchor tenants) would make for a worse effect again in terms of retail floor space oversupply. Mr Karavas concludes that the changing development scenario in St Marys should be "beneficial to all not just a select minority".

**Ms N Thornburn**

This submission raised concerns about the loss of greenspace which would be expected to come about with the land reclassification. There were two implications raised. The first was in regard to expected future population growth in the immediate area with the "290 units on the old Bowling Club site" once again cited as an example. This was the point of

encouraging rather than discouraging outdoor activity (“where will the children play”). Ms Thornburn indicated that there *were* younger children playing cricket at Lang Park on a recent Saturday. When asked why they were playing there it was indicated there were no other areas for younger children to play cricket on Saturdays. The second implication was related to urban heat effects (“On 6<sup>th</sup> October 2015 Penrith was the hottest place in New South Wales at 38.9 degrees”). Ms Thornburn conducts heritage tours of St Marys and indicated visitors comment on “wonderful green space” in the area, lamenting loss in their suburbs. A historical story was outlined concerning Victoria Park in St Marys which was suggested as warranting close reflection on the part of Council. According to the submission, at one point in time Victoria Park was sold off to private ownership, but after court action initiated by members of the public, the judge ruled that it be returned to the public.

### ***Ms C Volkiene on behalf of the St Marys & District Historical Society***

Ms Volkiene indicated the Historical Society welcomed change that would benefit and enhance St Marys, but the present position is to not support the proposed reclassification for two reasons. First, there is insufficient certainty whether existing memorials will be retained at present locations in the parkland. Reference was made to Lang Park’s association with well-known identity Alexander (Sandy) Lang, and Kokoda Park’s link to the St Marys Munitions Factory and the Kokoda Campaign of WW2, but also the Robin Wiles Walkway within the park which honoured another important local figure. While Council had given certain undertakings that any future development would “be required to address (retain or interpret) these historic associations”, these undertakings needed “further clarification”. The second reason was in regard to open space needs associated with population growth in the centre itself. The former St Marys Bowling Club site (discussed above) and a mixed use proposal in Crena Street were mentioned, which were indicated to just themselves bring potential for “1296+ people in this one area”. It was this combined idea of retaining local character especially through evoking the historical story of St Marys, and the need to provide greenspace for public health and local microclimate reason that suggested that “the retaining of significant parks in the town centre is necessary”. The quest was to “bring (St Marys) into modernity without losing its heart”.

### ***Other Submissions***

There were also 16 written submissions to the land reclassification’s public exhibition and a petition. I have read each of these written submissions and the detail of the petition. The names of the persons and organisations making written submissions are provided in the table at Annexure A, where I also provide a snapshot of the key points raised in their letters. The submissions, with the exception of two, were clear in their objections to the proposal, offering consistent arguments and some variations on the points raised above. In the analysis below I call on these variations where appropriate. One written submission expressed “conditional support” for Council to work with the private sector in the revitalisation of St Marys, seeing the private sector’s capacity to access funds as important to delivering this revitalisation. But this submission indicated it was principally concerned with loss of existing open space. Another written submission expressed the view that the reclassification seemed “a good idea” but without providing any reasons. There was one further submission from the floor at the public hearing raising concerns about loss of carparking. Ms Lu Szuhya expressed the view that there were unrealistic predictions in parking estimates for both residential and commercial development in St Marys and that this was evidenced by the fact that commuter parking at the station was already full and surrounding streets also filled with commuter parking.



## Section 3      Procedural issues

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### 3.1      **Reclassification of community land as a contingency step**

Council administration's submission is that the proposed reclassification does not commit Council to sell or develop any of the land subject to the reclassification proposal, and is concerned moreso with positioning Council to be consider opportunities as they arise. Submissions raise concerns that reclassification positions Council to sell current community lands without any commitment to other features of the Strategy (funding or otherwise)<sup>14</sup>.

On the one hand, the position that Council is taking here seems to be at odds with the State government's intentions behind the introduction of the land reclassification regime. The whole point of this "regime" is concerned with placing restrictions on the alienation of land of special importance to the community "because of its use or special features"<sup>15</sup>. On the other hand, in this particular situation in St Marys, where there is a long term strategy (and some considerable effort already mobilised by Council) directly concerned with improving community experiences and economic vitality in the town centre, it makes sense that Council be in a position to be creative and flexible to help bring about ongoing desirable improvements.

Two points arise in considering how to best manage this contradiction. First, in the interpretation of this factor characterised as "special importance to the community". That is to say the community's association with car parking areas or walkways and perhaps even council-owned buildings, are different from that of prominent open space areas. That is, and evidenced in submissions, there is a considerably higher level of concern about reclassification Lang and Kokoda Parks than the other public land. The second point is to suggest that use of the formal "reclassification step" as a means of improving prospects for desirable outcomes should have a dependency on what other safeguards or guarantees there might be to deliver the sought after community outcome in the end.

#### ***Conclusion on use of reclassification as a contingency step***

Reclassification should be seen as a critical juncture for community land. However, it also seems reasonable to conclude, in alignment with the submissions, that there is less concern in regard to reclassification of parking areas, laneways and community building. This is because replacement strategies can be built-in relatively easily. But the reclassification of Lang and Kokoda Parks has a higher test and would need to be "earned" through evidence of complementary actions which create momentum and give reasonable assurances to deliver the sought after community outcome in the end. This test is considered in Section 4 when the merits submissions are assessed.

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<sup>14</sup> See for example submissions from St Marys Town Centre Ltd and Ingham Planning.

<sup>15</sup> DLG (2000), op cit p2.

### 3.2 Adequacy of public exhibition material

Submissions<sup>16</sup> questioned whether exhibition material met State guidelines. The Gateway Determination outlines the “(specification) for material that must be made publicly available”<sup>17</sup> with the proposal’s exhibition. The material can be placed in two categories. The first category is the general information which needs to be made available for any LEP amendment. It is specified that the following information must be made available for inspection:

- (i) the planning proposal, in the form approved for community consultation by the Gateway determination
- (ii) the Gateway determination
- (iii) any information or technical information relied upon by the planning proposal.

In regard to items (ii), and (iii), the Gateway Determination was in the exhibition bundle. Council administration will need to respond itself whether all the information “relied upon by the planning proposal” was placed on exhibition. But it is clear to me that a set of major documents were available, including the Strategy, Masterplan and the SGS Report each of which were well referenced in the hearing.

Item (i) above then picks up any specific requirements for exhibition of the subject Planning Proposal and in this case includes the second category of information: that which relates particularly to land reclassifications. There is a list of thirteen items which it is indicated are to be covered in a “written statement”<sup>18</sup>.

The four issues of concern raised in submissions seemed to be: (i) no Plans of Management for the existing community land on exhibition, (ii) insufficient information on when and why the existing community land was acquired by Council, (iii) referenced strategic planning documents have not been endorsed by the Director General of Planning and (iv) inadequate information on the financial gain or loss to Council from the reclassification. It is my opinion that there are no material concerns in regard to the first three points raised above, in that: (i) current Plans of Management for the land proposed to be reclassified are not on the list of requirements for exhibition, (ii) Appendix 6 to the Planning Proposal provides information on acquisition (how, when, why acquired), and (iii) there is no need for the St Marys Town Centre Strategy to be endorsed for it to be included in exhibition material<sup>19</sup>.

There is a more substantive issue in regard to the availability of financial material in the exhibition. Table 2 compares the Gateway requirement for information relating to financial gain associated with land reclassification and that provided in the exhibition.

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<sup>16</sup> Oral and written submissions from Mr Neil Ingham of Ingham Planning.

<sup>17</sup> The Gateway Determination references as its source: Department of Planning and Infrastructure (2013) *A Guide to Preparing Local Environmental Plans*, Section 5.5.2.

<sup>18</sup> The Gateway Determination references as its source: Department of Planning LEP Practice Note PN 09-003 - Attachment 2.

<sup>19</sup> The Ingham Planning Submission (21/9/2015) referenced p13 of the 2012 version of *A guide to preparing planning proposals*, suggesting that “where a planning proposal is made and said to be consistent with the strategic planning documents, those strategic planning documents must have been endorsed by the Director General (of Planning)”. This reference is in regard to the preparation of a local council’s justification of a Planning Proposal. It not related to requirements for public exhibition once the Department has issued the Gateway Determination.

Table 2 - Financial information and exhibition of reclassification proposal<sup>20</sup>

| Department of Planning Specification   | Response in Exhibition Material   |
|--|---|
| – <i>An indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites, such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre.</i> | There will be no financial gain or loss as a consequence of the reclassification. The type of benefit that would arise would occur if the land were sold to another party. In addition no change to the current zoning or development standards are proposed. |
| – <i>The asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially.</i>  | Throughout Planning Proposal.   |

In my opinion the request for inclusion of this information in the exhibition material is concerned with opening up to public knowledge the approximate magnitude of the financial interests involved in the reclassification. This kind of transparency can assist the community in having an awareness of whether there might be the release of capital for some other St Marys community-based projects as a consequence of any future sale which might offset the loss of the current community asset. This is not to suggest final positions but to assist in the discourse on how there might be other benefits associated with the loss of the public lands. Further, it is a suggestion from a recent ICAC report that it is “lack of transparency in the planning system (which) fuels adverse perceptions”<sup>21</sup>. See below.

### **Conclusion on adequacy of exhibition material**

The key concern is in regard to the financial information. While Council’s response to this requirement may have met a strict interpretation, it seems to me to have not accommodated the intent of the Gateway specification. In my view, more material on the changes to the value of the land if it were to become available to the market for commercial and/or residential use should be made available to the public. This is explained further in the conclusion to this report.

## **3.3 Probity**

The Ingham Planning submissions<sup>22</sup> suggested Council had a conflict of interest in this matter. Part of the evidence proffered was that with this reclassification Council was acting in support of increased shopping centre floor space *on its own land* in St Marys, whereas Council had not supported a recent proposal to allow an extension to Penrith Plaza *on privately owned land*. It was also indicated that Council had supported the rezoning of land to allow retailing on Penrith Panthers’ land close to Penrith CBD, which I assume was seen to be unfair to Penrith Plaza owners and other retailers within the CBD. The suggestion from submissions was that there was evidence that proposals for development on Lang Park and/or Kokoda Park, as an extension to the St Marys Village shopping centre were quite advanced because of the precise floor space information which was adopted in the SGS Study. Mr Ingham’s oral submission asked “whether Council have already negotiated a use

<sup>20</sup> Gateway Determination reference is: Department of Planning LEP Practice Note PN 09-003 - Attachment 2

<sup>21</sup> ICAC (2012) *Anti-corruption safeguards and the NSW Planning System*, p15.

<sup>22</sup> Ingham Planning’s letters to Council dated 18/9/2015 and 21/9/2015 and Mr Ingham oral submission to the hearing

of the community land with St Marys Village owners”. He suggested that there were “a number of issues raised in (his) submission which could justify this matter being referred to ICAC”, and requested Council make a “full disclosure”. On the basis of the material before the hearing, I don’t see any evidence to suggest any probity questions arising which might link a decision of Council to not support an expansion of Penrith Plaza with the current proposal in St Marys. There is no material presented to suggest anything beyond a default expectation that Council has made decisions in regard to the expansion of retailing within Penrith Plaza and Penrith Panthers on the merits of the respective cases. The merits arguments of the proposed reclassification are considered in the next section of the report.

Turning to the probity involved in procedures in regard to the current reclassification proposal, the suggestion which seems to be being put is that Council may have been prejudiced in the making of its planning decision as a consequence of a (future) financial interest. What is presenting here is the common dilemma associated with the conflicting roles of councils as both planning authorities and property owners. While more concerned with councils’ consent authority role than LEPs, ICAC has released a useful Position Paper which covers this dual role of councils<sup>23</sup>. In an excerpt from ICAC’s Position Paper, Figure 5 provides a summary of potential methodologies for councils to “consider adopting” (p56) to help them attend to this role conflict. It suggests that the extent of outside scrutiny should depend on the risks associated with the development. For this Planning Proposal there is considerable risk. But for the land reclassification process, there is already considerable built-in scrutiny to help manage this very issue. This public hearing report is one element of this scrutiny. But there is also the State government scrutiny at the Gateway stage and, in this instance, the Council has not been delegated the Minister’s plan making function<sup>24</sup>. This means any Council support for the reclassification would be subject to further State government scrutiny at the end stage.

| Type of development  | Method   |
|--|--|
| <b>Category 1</b> <ul style="list-style-type: none"> <li>Non-controversial small-scale developments</li> <li>Routine operational developments</li> </ul>         | <ul style="list-style-type: none"> <li>Assessment by council staff not involved in preparing the application.</li> <li>Determination under delegated authority or by full council</li> </ul>   |
| <b>Category 2</b> <ul style="list-style-type: none"> <li>Certain entrepreneurial developments valued within a specified range</li> </ul>                         | <ul style="list-style-type: none"> <li>Use of appropriate external consultants or officers from another council to undertake development assessment.</li> <li>Consider referral to an IHAP (if established)</li> <li>Determination by full council</li> </ul>  |
| <b>Category 3</b> <ul style="list-style-type: none"> <li>Certain entrepreneurial developments with a value above that specified in Category 2 (above)</li> </ul> | <ul style="list-style-type: none"> <li>Same as for Category 2 above</li> <li>Segregation of duties within council</li> <li>Provision of independent financial advice where appropriate</li> <li>Key project decisions not made unilaterally. Consider establishment of a project steering committee</li> <li>Consider whether notifications process should be expanded</li> <li>Determination by full council</li> </ul> |

Figure 5- Approaches to dealing with councils' conflicting roles as consent authority and developer  
(Source ICAC, 2007)<sup>25</sup>

<sup>23</sup> ICAC (2007) Corruption Risks in NSW Development Approval Processes: Position Paper

<sup>24</sup> See Gateway Determination accompanying letter to Council dated (Gateway Determination dated 10/6/2015)

<sup>25</sup> ICAC (2007) Corruption Risks in NSW Development Approval Processes: Position Paper, p57.

### ***Conclusions on probity questions***

I see no evidence of probity concerns in regard to the steps taken to date. As indicated above I believe Council should be more open in its exposure of the financial potentialities of the reclassification. But the fact that both of the enclosed shopping centre operators had expressed interest in expansion has not been hidden<sup>26</sup>. There has also been an openness to the possibilities of the increased floorspace through the exhibition of the SGS Report. The preparation of the SGS Report does not, in my view, indicate a commitment on the part of Council to any agreement with the landowners. The SGS Report argues some benefits from an expansion to retail floorspace within the enclosed shopping centres in St Marys, but is also strong on the risks. There remains a capacity to not agree with the merits argument which is discussed later.

The fact that this hearing report does not identify any probity issues does not mean there are none. It should be mentioned that Ingham Planning's submissions suggested the need for the reclassification process to be scrutinised by someone with legal expertise, which I do not have. I do not see evidence of a need for this, but the submission warrants Council's own consideration. I do believe it is important that Council exercise safeguards against probity failings in this reclassification. In regard to its final decisions on this matter, and having regard to the ICAC Position Paper, there is certainly merit in ensuring there is a "segregation of duties" within Council in the preparation of the report to Council on this matter<sup>27</sup>. That is, Council's planning team should prepare the final report to Council assessing the reclassification proposal on planning merits, and unfettered by Council financial or property interests.

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<sup>26</sup> Report to Policy Review Committee Meeting 10/11/2014 included in Appendix 10 to the Planning Proposal documentation.

<sup>27</sup> One of the assertions in Ingham Planning's submission is that the proposed reclassification was being driven by the Property Development arm of Penrith Council rather than through planning channels (Ingham Planning letter to Council dated 18/9/2015).

## Section 4 Merits of Reclassification in Light of Submissions

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As documented in Section 2, the submissions raised a number of objections to the merits of the proposed reclassification. For the purposes of this report they have been broken down to three core questions:

- Does the proposed reclassification satisfactorily link to the earlier agreed vision and strategies for St Marys Town Centre?
- How has the passage of time since the completion of the 2006-7 work been factored in?
- What risks of unintended consequences are there, and how have they been managed?

### 4.1 Link to earlier agreed Strategy for St Marys Town Centre?

#### **Context**

One of the central issues raised in submissions is the *alignment* of the proposed reclassification with the longstanding goals for St Marys Town Centre. A number of submissions raised concerns about misalignment, and that the proposed reclassification could be counter-productive to commonly understood aspirations for St Marys. The thinking here seemed to be that the reclassification was overly concerned with increasing the retailing offer available in St Marys through expansion and increased trading at the two major (enclosed) shopping centres. Submissions were acknowledging that there may indeed be some significant expansion to the *quantum* of retail activity in St Marys as a consequence of adding floorspace to enclosed shopping centres with convenient parking. But this strategic move was not appropriately linked to the underpinning community-derived vision and strategy for the St Marys Town Centre. In particular, there was seen to be a lack of a convincing response to the obvious direct community losses of Lang Park and Kokoda Park. On top of this there was the risk of local retailing outlets being swamped by the additional retail floor area in the enclosed shopping centres, and the potential loss of convenient parking.

That is, the “line of sight” between the reclassification and the underlying objective or vision for a more vibrant Town Centre was not strong enough. Below I outline some of the key points to this question. The interest here is not to get bogged down on process but about untangling the steps to give coherence to a setting with some complexity around it.

#### ***Justification for reclassification is based on alignment with strategy***

It is Council itself which links the reclassification to the earlier strategy work. According to Council’s formal Planning Proposal (p7) the “objective” of this reclassification is to:

*...prepare Council’s landholdings to allow (Council) to be able to consider opportunities to grow the Town Centre that are consistent with and help implement the adopted Strategy and Masterplan.*



The Planning Proposal then immediately lists more specific or concrete opportunities which might come about as a consequence of the reclassification as including:

- *The integration of the two “satellite” shopping centres into the Town Centre.*
- *A central town square*
- *Gateway entrances into the Town Centre when arriving by car or train*
- *A new library and community hub*
- *New east-west links between Queen Street and Charles Hackett Drive.*

### **What is the Strategy?**

Underneath these five “opportunities” are the deeper conceptions from the St Marys Town Centre Strategy (2006). The Strategy’s community consultation process came up with the following vision for St Marys Town Centre

*St Marys is the vibrant heart of the district, providing diverse experiences and services in a friendly atmosphere.*

The Strategy (p18-19) provides much detailed comment, nominating various “values”, “principles” and “objectives” developed in the community dialogue for the work. Just by way of an incomplete snapshot there is an image represented of a safe and inclusive place, respecting and celebrating St Marys friendly local character, economically vibrant with improvements to the retail shopping experience, a community hub day and night, better connecting up activity points themselves and with the natural surrounds, attractive place to live for a diverse variety of lifestyles, sustainable development and more. As indicated in Council’s submission to the hearing, the Strategy (p3) presents an image of this vision by way of a contrast between an appealing and unappealing town centre (Table 3).

*Table 3 - Contrasting characteristics of Town Centre*

| <b>Unappealing</b>  | <b>Appealing</b>   |
|---|--|
| <ul style="list-style-type: none"> <li>– Feeling unsafe</li> <li>– A lack of quality open space</li> <li>– Empty buildings</li> <li>– Vacant land</li> <li>– Vast tracts of surface car parking</li> <li>– Lack of variety and interest</li> <li>– Little pedestrian activity between areas.</li> </ul> | <ul style="list-style-type: none"> <li>– Mix and concentration of different uses attracting pedestrians and creating a lively social environment</li> <li>– Attractive, inviting and safe public spaces that make people want to visit, generate a sense of community ownership and commitment to these places.</li> </ul> |

The Strategy is an extensive document with many suggested actions. It *did* include recommendations for a central park/town square (p33-34):

*Given the concentration of cultural services within St Marys there is considerable potential to build upon this existing situation and focus on the creation of a community/cultural precinct as the heart and defining component of the Town Centre. Council is a significant land owner within the centre, and there is a unique opportunity to take advantage of these landholdings, along with potential additional acquisitions, to focus community-oriented services around a central park/town square at the existing location of Coachman’s Park. There are a number of community and cultural facilities located south of the Great Western Highway which could provide the opportunity through, for example, performance and exhibition space to activate this new ‘heart’ of St Marys, such as the youth centre*

*and the arts centre. Consideration could also be given to relocating the St Marys library to around Coachman's Park, creating a critical mass of community services and facilities.*

This was represented in a “Public Domain Plan”. See Figure 6.



Figure 6 - “Town Centre Public Domain Plan” indicated in St Marys Town Centre Strategy 2006 (p54)<sup>28</sup>

The Strategy was also concerned with better linking the enclosed shopping centres and Queen Street, but it was the Masterplan, exhibited in 2007<sup>29</sup> (rather than the formal Strategy), which showed the idea of the large expansions to both of the enclosed shopping centres and thus the extension of building footprints across Lang Park. See Figure 7. Then the current Planning Proposal goes on to suggest the reclassification include both Lang and Kokoda Parks.

The point I seek to make here is that the adopted Strategy has a multifaceted intention which is a linking of ideas around social, environmental and economic vibrancy.

<sup>28</sup> The St Marys Town Centre Revised Masterplan (2007) then gave more detail on a physical form.

<sup>29</sup> I understand from Council’s officers that the Masterplan has been exhibited but not formally adopted by Council.



Figure 7 - Public domain framework from St Marys Town Centre Revised Masterplan (2007)

### Steps to date in achieving the Strategy

Council has already taken some steps which evidence a capacity to mobilise positive change in St Marys Town Centre. But it has also seen the extent of the challenge. Council's submission outlined a history of ongoing work (by Council and others) on the

implementation of the Strategy (see p4). It seems clear that noticeable improvements to the Town Centre have followed, much of it directly associated. But the problems with implementation have also come into view, mostly in regard to the Masterplan suggestions. The idea of better east-west connectivity (a major cross street) was to have come about through an extension of Chapel Street through to Carinya Ave, according to the Masterplan. Then the Town Square would have fronted Queen Street between Chapel and Crana Streets, in the centre of considerable potential pedestrian activity. This would have involved significant land acquisition, which Council has not managed to achieve to date (in a setting of competing claims for funding, one would assume). More recently a number of the relevant parcels have become subject to development proposals. So as time has passed there seems to have been a lack of capacity to implement some of the bolder changes which were originally envisaged. The Strategy acknowledged this (p49):

*Where centres have developed which exhibit a strong sense of place, this has generally been accidental rather than as a result of a clearly articulated and implemented plan. To transform town centres it is therefore essential to move from a system of segregated land uses to a focus on mixed-use development and place making.*

Council has introduced planning controls for the bulk of the St Marys Town Centre precinct to permit “mixed-use development”, and been working away at the other implementation aspects mentioned above. Then this year a new urban design scheme was prepared (Draft Concept Plan by Brett Newbold Urban Design August 2015) and included in the exhibition material. This seems to be a significant document in outlining one (prescriptive) means of linking the proposed expansion of the enclosed shopping centres with Queen Street. Among many other initiatives, it shows (at p11) a new main entrance to St Marys Village Shopping Centre, and pedestrian paths between Queen Street and the entrance to St Marys Village as reducing from “250m to approximately 50m”. See Figure 8. In the drawing, it reintroduces the idea of community “attractors” around a form of “town square” centred on an expanded Coachmans Park, but specifying how the library might link with retailing and food offers as seen in centres like Rouse Hill. It suggests how pedestrian priority might be achieved around it (without necessarily reconciling traffic flows).

Council’s administration does not overstate this Draft Concept Plan, indicating it as “an example of how the Town Centre might look once the Strategy is implemented” and “only one of the many potential outcomes for the Town Centre”, and it provides as many questions as answers. However the Draft Concept Plan might help in the identification of the kinds of factors which might need to be factored into a Council decision in support of a proposed reclassification which would put at risk significant areas of public open space.



## The Draft Concept: 03 - complementary development around the Town Square

At present, the St Marys Village shopping centre is the town centre's major commercial destination.

Substantial redevelopment and extension of St Marys Village is being planned.

Economic impact analysis has confirmed that redevelopment of St Marys Village could contribute to revitalisation of the town centre as a whole - provided that redevelopment is designed to distribute pedestrian traffic throughout the town centre.

This illustration depicts the eastern end of a potential redevelopment, and represents one viable solution which incorporates the following features:

- 1 The existing building is extended toward Queen Street and has a shape which responds to pedestrian "desire lines";  
Extension would significantly reduce pedestrian paths between Queen Street and the existing building from 250m to approximately 50m, and would eliminate current barriers that discourage pedestrians (open carparks and underutilised parks without casual surveillance).  
Pedestrian desire lines extend primarily toward the future Town Square and the heart of Queen Street and, secondly, along Crana Street.
- 2 The extended building has a size and shape which complement a future Town Square:  
Building forms retain a series of publicly-accessible outdoor areas which would extend the existing Coachman's Park (2a - 2d).  
The primary mall entrance provides a direct pedestrian link to the Town Square (2a, 2c).



- 3 The extended building has a perimeter which encourages maximum pedestrian activity within the Town Square:  
A continuous band of ground level shops provide an active backdrop to the Town Square and the revitalised West Lane, and would be complemented by upper storey activity such as cafes or cinema lobbies (3a).  
In locations where retail uses would not be viable, community activities such as child care centres present an active backdrop to the Town Square and Charles Hackett Drive, and encourage pedestrian traffic to a secondary mall entrance (3b, 4b).  
"Big box" tenants such as supermarkets are screened behind active uses, and are not visible from the Plaza.  
The extended building has mall entrances which direct pedestrian traffic toward the Town Square and Queen Street:  
The main entrance (4a) is at the eastern end of the building, and faces the Forecourt (2c) as well as Crana Street (2d).  
A secondary entrance (4b) faces the Western Plaza (2b) and Charles Hackett Drive, and provides convenient access to potential community facilities (3b).  
Vehicle access is located away from pedestrian routes:  
Delivery access and shopper parking would be via Charles Hackett Drive and a new service road.
- 4 Adjoining St Marys Village and the Town Square, redevelopment of mainstreet properties would complement pedestrian activity in the central town square:  
The ground and first floors could accommodate a mix of retail (6a) and community uses such as a library (6b) which generate daytime and evening activity.

Brett Newbold Urban Design - August 2015 - Page Ten

Figure 8 - Excerpt from Draft Concept Plan by Brett Newbold Urban Design (included among documents supporting public exhibition)

### ***Concluding remarks on alignment with Strategy***

The Strategy for St Marys Town Centre is a nuanced document, rather than a prescriptive blueprint. It engaged with the complexity of the challenge to achieve the town centre vision which I believe is quite neatly captured in one of the submissions as how to “bring (St Marys) into modernity without losing its heart”<sup>30</sup>. Actions in alignment with the Strategy seem to be well underway. Some of the most difficult questions remain though.

There is no (formal) strategy (yet) to significantly decrease the amount of open space or significantly increase the retail floor area in the enclosed shopping centres. While the reclassification of the suggested land *could* be aligned with the implementation of the adopted Strategy (eg if it becomes the catalyst for generating new potentials for the kind of economic and community life outlined above), it could also be a departure from the Strategy (eg if the idea of bigger enclosed shopping centres sweeps all before it). It would seem to depend on the bundle of steps which are taken in synchronisation with the reclassification decision. There was not so much information available on this at the hearing on in public domain background documentation.

## **4.2 Have more recent events been adequately considered?**

Two significant socio-economic shifts were raised in submissions which were suggested to be at odds with the reclassification proposal. These were: (1) the residential growth in St Marys Town Centre, (2) the turnaround in commercial activity.

### ***Reducing the Town Centre open space at a time of increasing population growth***

Submissions were acknowledging the significant recent higher density housing proposals in St Marys in suggesting it may be short-sighted to set aside the potential benefits of Lang and Kokoda Park in light of this. The suggestion was that even a decade into the future the St Marys Town Centre may be a different place, and that the large number of children in units will need a place to play<sup>31</sup>. The example of how units around Victoria Park had worked out positively was cited<sup>32</sup>. That is, this park had been enlivened due to relatively high levels of use by those living in the apartments overlooking, and otherwise nearby, who had a need for this recreation space. There were a number of references to childhood obesity and how availability of well-designed open space might act as a preventative device in areas where families were more inclined to be living in apartments. So there seemed to be some levels of acceptance about the higher density occurring in the Town Centre<sup>33</sup>. The idea was that if St Marys Town Centre was to achieve a modern village atmosphere it would need not just higher density housing but greenspace and parkland “to allow all our future families to enjoy”<sup>34</sup>. It was suggested hardly any account of this had been evidenced in the reclassification proposal.

### ***Recent turnaround in commercial activity***

Submissions indicated that some of the retail analysis in the SGS Report is now out of date, and that now local agents were indicating that Queen Street was now experiencing “only

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<sup>30</sup> Caroline Volkiene’s oral submission on behalf of the St Marys and District Historical Society.

<sup>31</sup> For example see David Trist written submission to Council (undated).

<sup>32</sup> For example oral and written submission from Norma Thornburn (dated 20/9/2015).

<sup>33</sup> Although not unanimous, for example with Mrs K Sherwood’s written submission (21/9/2015) concerned about “soulless canyons” of high rise as evidenced in some other nearby town centres.

<sup>34</sup> Caroline Volkiene written submission dated 21/9/2015.



normal levels of vacancies”<sup>35</sup>. The concern now was that the loss of convenient parking near Queen Street, and an oversupply of retail floor area may be a direct setback to other efforts which have assisted in this turnaround in local economic vitality, and in the increased community activity along Queen Street<sup>36</sup>.

### ***Conclusions on consideration of more recent events***

It is agreed that there is a missing, more fine-grained, analysis of the relationships involved in what looks possible to be a significant increase in higher density housing in St Marys (and stronger potential again if desired long term rail link improvement are achieved) and the loss of the quite central open space at Lang and Kokoda Parks. The submissions present the image of perhaps either Lang or Kokoda Parks, or a share of either/both, being more likely to be used by incoming residents than the peripheral parks. The image of apartment housing overlooking a central open space area, as part of a lively and “vibrant heart”, helping with urban heat island effects, rings true to the St Marys Town Centre Strategy. It is acknowledged that St Marys district has an oversupply of open space<sup>37</sup>. The area at the periphery of the Town Centre shows many, what seem to be, underutilised areas. But this is a measure of *quantity*, whereas as indicated in Council’s *Open Space Action Plan*,<sup>38</sup> quality of open space experience warrants at least equal attention. Town centre land should reasonably be considered as a premium resource, and mistakes can be made when anticipating what might be attractive to a future community. But there seems to be some potential for a successful town park (indeed one was indicated in the Strategy itself (Figure 6)). It could act as a community attractor, based not just on convenience (ie close walkability to high density housing), but also its interface with other land use, and its design and facilities perhaps more possible from the access to capital becoming available in part through intensified development (eg via reclassification). There are possibilities that an intended town square or a variation on it can play a similar function. But particulars are missing at this stage.

## **4.3 How has the risks of unintended consequences been managed?**

The key risks of unintended consequences identified in submissions also relate to the question of open space and Queen Street retailing. The risk of loss of an open space asset today which would be in demand at some future point has been covered above sufficiently. The SGS Report has already identified the key risk of the large scale increase in retail floor area within the enclosed shopping areas dominating and having a detrimental effect on smaller scale retailing. In considering economic effects, government’s planning function is concerned with the community benefit or disbenefit associated with a particular economic action. That would mean that “private economics”, or the effect of an action on individual commercial interests, is not a direct planning concern, unless it is related to the question of wider community benefit. While more than difficult for the people involved, this can mean even a 20% downturn in trade for some retailers<sup>39</sup> might be an acceptable planning decision, provided that there is strong evidence of significant community benefits (“for the many not the few”) down the track, which would seem likely to have as a prerequisite an uplift in trade in Queen Street if the 2006 Strategy is to be followed. Delivering a more (not less)

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<sup>35</sup> David Trist submission.

<sup>36</sup> For example Greenow written submissions dated 20/9/2015.

<sup>37</sup> Planning Proposal, p17.

<sup>38</sup> Appendix 9 to Planning Proposal, p1.

<sup>39</sup> As suggested in the SGS Report may occur with the scale of floor space increase to enclosed shopping centres modelled in the report.

active and vibrant Queen Street is identified as of central community interest in the Strategy. This concern is picked up in the SGS Report (p42):

*Any expansions of the Village Centre and Station Plaza need to be highly integrated to Queen Street to optimise the amount of spillover shopping associated with increased visitor numbers. The importance of integration cannot be understated and if the Council is seeking to divest any of its assets, then it needs to ensure that the benefits to the community are going to be maximised as a result.*

When this point is combined with potential demand for greenspace in a higher density St Marys Town Centre, the value to the community of “asset divestment” (loss of Lang and Kokoda Parks), goes to the next step, and *comes into question altogether*, unless, it would seem, there is improved vitality in Queen Street and other areas of the public domain. The SGS Report, in this section supported by *Simpson and Wilson Architects and Urban Design*, provides a quite detailed set of design principles as points of differentiation between (1) an enclosed shopping centre consistent with the “dominant orthodoxy” (ie purpose-designed internally, with its entrance, movement systems and carparking arrangements etc designed to capture trade) and (2) expansions to enclosed centres which are purpose-designed to “integrate” with Queen Street activity (p42):

*So the question becomes not simply whether there will be an acceptable negative impact, as for the design of a single mall, but whether the proposed layout and design will be optimal for the whole (in this case St Marys) centre or main street.*

Examples are cited of more and less successful efforts at major enclosed shopping centre off main streets in local centres (Lane Cove and Balgowlah respectively). The design principles need not be produced in full here but include: parking maximised near Queen Street, enclosed shopping centres food court adjacent to shared zone in Carinya Ave/nearest Queen Street, if possible a travelator or similar direct connection to Queen Street, etc (p42-51), and include responses to the risk of “wildly excessive supply of retail floorspace” by moderating supply (p59).

A final point in regard to unintended consequences is that the increased scale of retail activity which may occur as a consequence of the reclassification may have an unreasonable effect on other retail centres, both larger and smaller<sup>40</sup>. In my view this question is adequately covered in the SGS Report. It indicates low impact on major centres, with impacts more significant to local convenience centres which are suggested to be “already operating robustly and therefore unlikely to be materially affected” (p ii). I also have regard to the Department of Planning’s role in overseeing this reclassification proposal, and its role in metropolitan planning strategy.

### ***Conclusions on unintended consequences***

If it is accepted that the land reclassification stage is a key juncture which opens up Lang and Kokoda Parks towards commercial or residential development, then it seems necessary to set up clearer parameters and pre-requisites to minimise risk of effects which are inconsistent with the Strategy.

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<sup>40</sup> For example the Ingham Planning submissions and that of Mr Karavas.

## Section 5 Summary and Conclusions

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### 5.1 Summary

The submissions to the hearing and other written submissions raise significant questions about whether this reclassification proposal should be supported by Council. The main *substantive* concerns are in regard to whether the loss of Lang and Kokoda Parks are warranted. There are also concerns about a swamping of retail floor space to the detriment of Queen St and that existing carparking areas will not be appropriately substituted. There are also procedural concerns (addressed in Section 3). In my opinion the substantive and the procedural concerns in the end link together, and this link can be summarised as follows:

- St Marys Town Centre seems to be moving in a positive direction with increased residential and commercial development and investment responding to recent initiatives, and also wider societal shifts towards higher density housing. This seems to be aligned with the previously agreed St Marys Town Centre Strategy.
- Among other individuals and groups, Council has been influential here through zoning changes, its own capital investment and other hands-on activity.
- The release of Council community land for development purposes provide some considerable potential to add further momentum to St Marys Town Centre activity.
- There is potential for the capital generated from expansion of the existing enclosed shopping centres, and more people being attracted to St Marys, to be a significant positive for the town centre. But there is also potential for the idea of expanded retail floor space to “sweep all before it” (eg the opportunity for Lang and Kokoda Parks (or parts of them) to play an expanded role as population increases in the town centre over time, and/or a swamping of retailing activity in Queen St).
- Whether or not the release of the community land (in particular Lang and Kokoda Park) will help improve the qualities of St Marys Town Centre, helping it become more economically vibrant and socially rewarding, remains to be seen.
- This will depend on what happens *in association with* any statutory change to classification, such as: design creativity, collaborations and negotiations with private sector investor and community members, political decisions, etc, and the quality of interactions between such matters. The further playing out of other emergent changes in St Marys, such as any improved transport connections and the take-up of housing density opportunities, will also be key.
- Council administration’s submission to the hearing is that the reclassification of the community land should be the next step. Reclassification will position Council to “consider opportunities to grow the Town Centre (consistent with the Strategy)”<sup>41</sup>. This would be the view that attending to the matters raised in the above point, is the bread and butter work of a council like Penrith in its strategic endeavours to shape local places for the better.

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<sup>41</sup> Planning Proposal, p7.

- A procedural concern is that the reclassification process itself seems to have been designed to act as the critical juncture for community land. There is a concern that once community land is classified to operational land, it has already fundamentally changed.
- It should depend on the circumstances of the case whether community land reclassification should be able to go ahead without particulars on future use being resolved. Here, the reclassification of existing carparking areas, buildings and public walkway areas are relatively low risk, and appropriate replacement strategies can be factored in.
- But the release of Lang and Kokoda Parks is not the same as releasing parking areas. They are in a different category to, even, various other underutilised areas of open space outside the town centre. Loss of Lang and Kokoda Parks have significant potential to play a future role in St Marys and it is not clear yet whether their reclassification would be consistent with the nuanced vision for the St Marys Town Centre in the agreed Strategy.

## 5.2 Conclusions

Based on the submissions to the hearing and the assessment above, the walkway at 100A Queen St, the West Lane Car Park and 8-10 Carinya Avenue (items 3, 4 and 6 in Figure 1) are seen as appropriate for reclassification, subject to the condition that appropriate substitution strategies are in place. The submissions (Section 2 of this report) and their assessment (Sections 3 and 4) suggest to me that it is inappropriate to support the reclassification of Lang and Kokoda Parks at this point. It can be acknowledged that both areas are underutilised today<sup>42</sup>, but at the same time, reclassification of these parklands is a significant step because of their potential future role in what might be a different St Marys, 10 and 20 years ahead.

The fact that Queen Street trading, and community life in the town centre, has on all accounts<sup>43</sup> improved *without* the expanded retail floor areas within the enclosed shopping centres, seems to be a reminder of the complexity of the question before Council and the community in regard to St Marys Town Centre. That is, the “long march” of smaller and medium scale changes seems to have been working. Big increases to floor space in the enclosed shopping centres through use of community land is more of a “bold stroke”, and the potential for adverse consequences has not yet been appropriately addressed.

But, the reclassification of these parklands to allow mixed use development also has the potential to be a significant positive for the St Marys Town Centre. It seems important for Council to continue to work on collaborations and partnerships with private sector and community interests with a view to the potential for Lang and Kokoda Parks to help St Marys Town Centre become a more economically vibrant and socially rewarding place to visit, live and work. It seems timely now to establish or re-affirm the framing principles which should be adopted as to how this might occur. In one sense this is just an expansion of the points suggested as needing “further attention” in Council’s submission (p5) and Council administration may already have many of these steps in train, or other more useful steps. Suggestions on what these framing points might include are provided below:

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<sup>42</sup> SGS Report, Appendix 1.

<sup>43</sup> Submissions from Council’s administration and members of the public concurred on this.

1. Can the underlying purpose of the reclassification be re-affirmed? *For example:* is it to allow development on these lands almost only for the *purpose* of enlivening Queen Street and the rest of the public domain, or to what extent is it concerned with increasing local employment and retail trade more generally, can an indication of where more weight should be given be confirmed?
2. If enlivening the St Marys public domain is the priority, what conditional parameters would be needed for the expansion of enclosed shopping centres and how would apparent conflicting priorities be managed? *For example:* would the “retail design principles”, “general urban design principles” and other principles contained in the SGS Report be adopted (p42-51), or a variation to it; would someone with direct expertise<sup>44</sup> be involved in negotiations and creative collaborations.
3. If there were to be significant expansion to retail floor space in the enclosed shopping centres is it also time to consider the “crimping” of the existing supply? *For example:* this includes the idea of acknowledging the length of Queen Street and considering a different role and different uses for the naturally weakest retailing areas<sup>45</sup>.
4. How would the ideas of better pedestrian connectivity and a town square be advanced? *For example:* the Strategy outlines an expanded Coachmans Park and town park, then the current Draft Concept Plan presents an update. How serious are the references to a library off a future town square etc.
5. The Strategy notes the importance of partnerships with both private sector (ie investors) and community sector in the transition process for St Marys. *For example:* what dialogue processes would be initiated to build these partnerships. Can innovative approaches be adopted which encourage openness to possibilities rather than position taking by those with fixed interests.
6. How is the best way to provide increased clarity on the financial parameters involved in the potential future sale of the land? *For example:* can more clarity on this assist in building community support.
7. How is council managing questions of probity and conflicts of interest? *For example:* see ICAC guidelines referenced in this report.
8. How can the process both be welcoming of investment interest and also establish “stop points”, such that when the risk to the original purpose is too high, and loss of the open space seems a false step, then the process is set aside. *For example:* a “stop point” might be a temporary step to watch the continuing emergence of change in St Marys (Council driven and otherwise), before use of the parklands is reconsidered.

It is important not to be too bound up by strict procedural specifications, and that there be scope to allow for innovation and new insights to emerge. But Council would be in a better position to consider the reclassification of the Lang and Kokoda Park lands after further attention is given to the above questions, and reasonable ground rules are established.

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<sup>44</sup> Simpson + Wilson Architects and Urban Designers seemed to be the authors of this quite detailed material on shopping centre intricacies.

<sup>45</sup> For example, in his oral submission to the hearing Mr Ingham a Life Fellow of the Planning Institute of Australia suggested the idea of acknowledging two distinct retail nodes in St Marys (the two enclosed shopping centres and Queen St as adjacent) and encouraging further higher density residential development (than retail) in Queen St in the area between the two.

The reclassification of Station Street Car Park opens up potential to expand the Station Street Plaza significantly. There is a need for further attention to the consequences of the reclassification of this car park if there is *not* a balanced release of the area around St Marys Village Plaza. That is, at present (and consistent with the Strategy) it seems that the key public domain activity node for St Marys Town Centre will be in the central area of Queen Street (at or near the Coachmans Park corner). It would be inappropriate for a shift of gravity in local retailing to act against planning ambitions and investment opportunities at this node. Should Council decide against reclassifying Lang and Kokoda Parks, the relationship between the release of Station Street Car Park and ambitions for St Marys Town Centre warrants further attention from Council planners.

This report is provided to assist Council's deliberations on this reclassification proposal, and should be considered with the assessment of Council's own planning specialists.

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Peter Walsh  
Fellow of the Planning Institute of Australia  
**Appointed Chairperson**

4 November 2015



## Annexure: Written Submissions

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| Submission                  | Snapshot of concerns   |
|-----------------------------|--|
| 1                           | <ul style="list-style-type: none"> <li>– Effect on Mr Joseph’s own business and other businesses in Queen St</li> <li>– Removal of parking</li> <li>– Removal of green areas</li> <li>– No one wants to live in a Concrete jungle</li> <li>– Take account of people who live and work in the area that are expressing their concern</li> </ul>   |
| 2                           | <ul style="list-style-type: none"> <li>– St Marys Village should go up not out if expansion intended</li> <li>– Newbould Concept Plan shows Kokoda Park as part of Mirvac development</li> <li>– Retail strategy out of date</li> <li>– Many high rise buildings done give away parks - in 5-10 years St Marys will be a different place</li> </ul>  |
| 3                           | <ul style="list-style-type: none"> <li>– Inconvenience with loss of parking</li> <li>– Site specific parking needed ie near Post Office, banking etc</li> </ul>  |
| St Marys Town Centre (Assn) | <ul style="list-style-type: none"> <li>– Lists challenges of St Marys town centre: how to remain viable how to compete with others more advantaged, greenspace as an advantage.</li> <li>– What guarantee money from sale of reclassified land put back into town centre</li> <li>– What strategy for temporary parking ie not kill off business during transition stages</li> <li>– Keep loss of greenspace to a minimum</li> </ul> |
| 4                           | <ul style="list-style-type: none"> <li>– Concern about urban heat effects and hot cities</li> <li>– Where will children play - Victorial Park a good example</li> </ul>  |
| 5                           | <ul style="list-style-type: none"> <li>– 2000 more people over next 10 years in Queen St area</li> <li>– Current land in OS is the asset Council will need to make this pleasant rather than a concrete jungle</li> <li>– Lets not jump in too deep - unsure so wait and see</li> </ul>  |
| 6                           | <ul style="list-style-type: none"> <li>– Supportive “think it’s a good idea” - no reasons</li> </ul>   |
| 7                           | <ul style="list-style-type: none"> <li>– Historical outline of St Marys</li> <li>– Flats will continue and increase</li> <li>– Modern village atmosphere will need greenspace and parkland</li> </ul>  |

|                                    |  |
|------------------------------------|--|
| <b>8</b>                           | <ul style="list-style-type: none"> <li>– Carparking and parks are business and community assets</li> <li>– Replacement parking is not enough - could design parkign to suit their businesses and reduce competition</li> <li>– Time limits will make things worse.</li> <li>– Everyone aware of greenspace benefits eg obesity kids - but car dependence also contributes (linked to enclosed shopping centres)</li> <li>– Hot cities model, carbon sink, open space as a point of mitigation</li> <li>– Many economic concerns see body of report</li> </ul>  |
| <b>9</b>                           | <ul style="list-style-type: none"> <li>– A considered change is necessary</li> <li>– Need greenspace for new people</li> <li>– Body of report lists historical concerns</li> </ul>   |
| <b>10</b>                          | <ul style="list-style-type: none"> <li>–Shortsighted to lose this open space, insufficient for small children</li> <li>– High rise needed “soulless canyon like Blacktown, Mt Druit Parra”</li> </ul>  |
| <b>11</b>                          | <ul style="list-style-type: none"> <li>– Council should work with private sector</li> <li>– Problem is loss of greenspace ie both Kokoda and Lang Parks</li> <li>– Unique opportunity:eg with bikeways etc, connections to other parts of St Marys.</li> <li>– Loss parking potentially , problematic.</li> </ul>  |
| <b>Ingham Planning Submissions</b> | <ul style="list-style-type: none"> <li>– See body of report</li> <li>– Reclassification allows expansion of Village Square without commitment to other features</li> <li>– Inappropriatae and premature</li> <li>– Fully independent planning inquiry due to council commercial interest</li> <li>– Refer to Minister</li> <li>– No detail on existing use of parkland</li> <li>– No calculations of loss of parkland</li> <li>– Net community benefit test unsatisfactory on non-existent</li> <li>– Inconsistent with Strategy 2006</li> <li>– St Marys becomes beyond a “town centre” in strategy terms and thus unfair to Mt Druitt and Penrith</li> </ul> |