

APPENDIX 11

Penrith City Council Policy Review Committee Meeting 9 December 2019 Report and Minutes

1 Planning Proposal to reclassify land on Reynolds Road and The Driftway, Londonderry

Compiled by: Breannan Dent, Planner

Authorised by: Natasha Borgia, City Planning Manager

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

Executive Summary

Council is in receipt of a Planning Proposal to amend the Penrith Local Environmental Plan (PLEP) 2010 to reclassify seven (7) lots of land owned by Hawkesbury City Council (HCC) located on the corner of The Driftway and Reynolds Road in Londonderry from “Community” to “Operational”.

Hawkesbury City Council (HCC) is seeking the reclassification to enable the sites to become self-sustaining by leasing them for purposes which suit their function as a buffer to the Hawkesbury City Council Waste Management Facility. The reclassification will also allow consideration of future sale or residential leasing of the sites. HCC have indicated that this will take place when the waste facility ceases to operate as a landfill site.

This is not permitted under the existing “Community” classification, as the *Local Government Act* 1993 sets limitations on the lease of Community Land.

No other zones or planning controls are proposed to be amended. The Planning Proposal is aligned with local and regional plans and strategies.

Under the requirements of Section 2.19 of the *Environmental Planning and Assessment Act* 1979 (EP&A Act), this Planning Proposal was referred to the Local Planning Panel for advice. The Local Planning Panel (LPP) generally supported the Planning Proposal. The LPP’s advice has been considered in the assessment of the Planning Proposal.

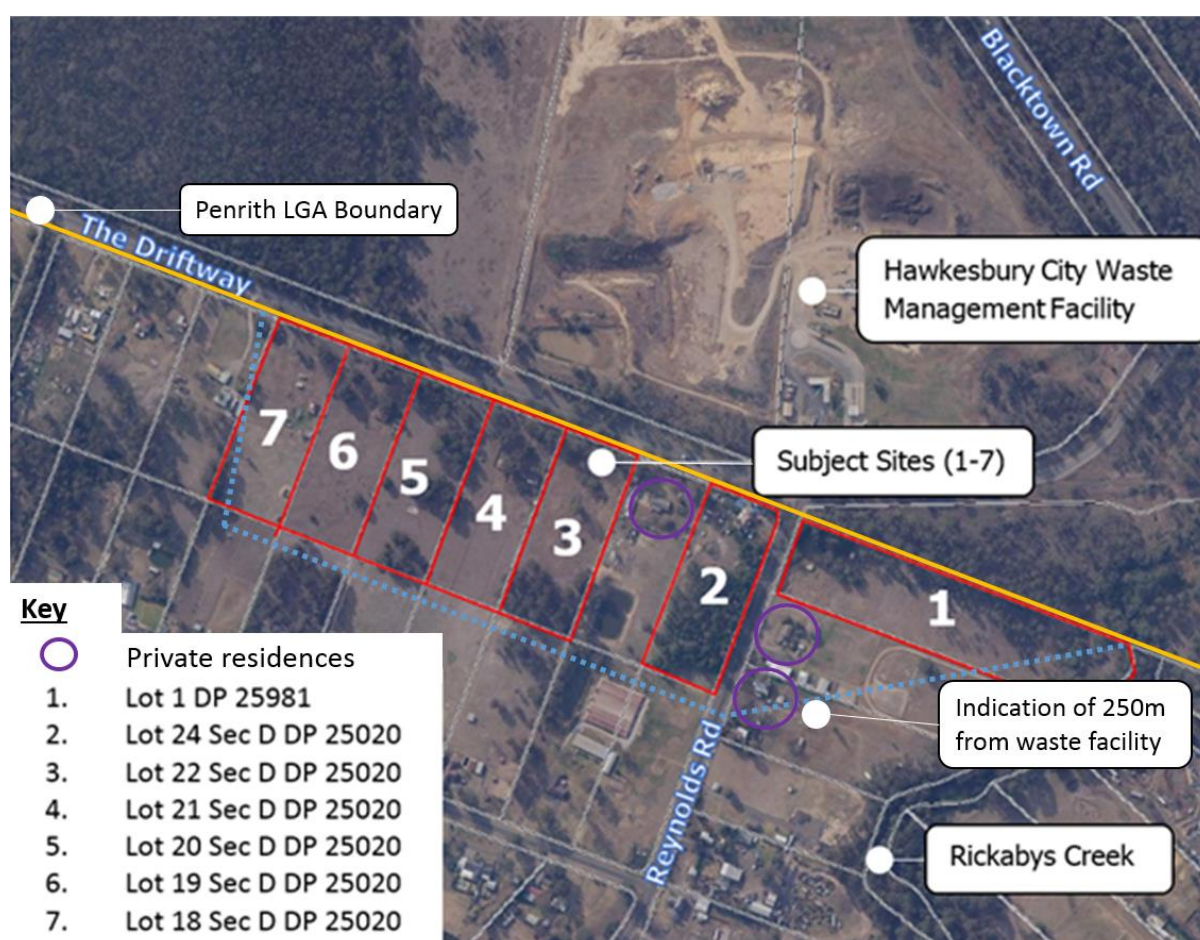
This process requires a Gateway Determination, the preparation and public exhibition of a Planning Proposal and an independently chaired public hearing. This report seeks Council’s endorsement to forward the Planning Proposal to the Department of Planning, Industry and Environment (DPIE) seeking a Gateway Determination to enable the Planning Proposal to proceed through the Gateway process. The Gateway will set conditions for public authority referrals, public exhibition and an independently chaired public hearing.

Site Description

The Planning Proposal relates to the HCC owned properties identified in Table 1 and Figure 1 and referred to as “subject sites”:

Site	Legal Description	Street Address	PLEP 2010 Zoning
1	Lot 1 DP 25981	2-6 Reynolds Road, Londonderry	RU4 Primary Production Small Lots And E2 Environmental

			Conservation
2	Lot 24 Sec D DP 25020	2-8 The Driftway, Londonderry	RU4 Primary Production Small Lots
3	Lot 22 Sec D DP 25020	18-24 The Driftway, Londonderry	RU4 Primary Production Small Lots
4	Lot 21 Sec D DP 25020	26-32 The Driftway, Londonderry	RU4 Primary Production Small Lots
5	Lot 20 Sec D DP 25020	34-40 The Driftway, Londonderry	RU4 Primary Production Small Lots
6	Lot 19 Sec D DP 25020	42-48 The Driftway, Londonderry	RU4 Primary Production Small Lots
7	Lot 18 Sec D DP 25020	50-56 The Driftway, Londonderry	RU4 Primary Production Small Lots

Table 1 – Subject sites and Zoning**Figure 1 – Aerial view of the Subject Sites**

Further information on the subject sites is provided as Attachment 1. The sites have a combined area of 12.71ha. The sites are classified by default as 'Community' land under the *Local Government Act 1993*, as HCC did not seek operational classification when the sites were purchased.

The sites have a 2 Hectare Minimum Lot Size control under PLEP 2010. The sites northern boundaries are on the edge of the Penrith Local Government Area. The Hawkesbury City Waste Management Facility is located on the Northern side of The Driftway in Hawkesbury Local Government Area.

The sites are bushfire prone and all except Site 2 are flood prone (identified by the *Penrith City Council Overland Flow Flood Overview Study* 2006 and on the SES Hawkesbury-Nepean flood risk website). Site 1 is partly affected by an 'easement for transmission line' (W168632), this interest is not proposed to be discharged by the Planning Proposal.

Background

The subject sites were purchased by HCC between 1997 and 2001 to form a 250m buffer between residential dwellings and HCC's Waste Management Facility to comply with the NSW Environment Protection Authority (EPA) "*Environmental Guidelines, Solid Waste Landfills, Second Edition*".

At the time of purchase, no action was taken by HCC to reclassify the subject sites as 'Operational' land' under the *Local Government Act* 1993, and therefore by default they are classified as 'Community' land.

The subject sites have previously been leased out by HCC, with some of the sites leased as dwellings, however all leases have now ended and there are no known leases or agreements applying to the subject sites at this time.

Conditions under the *Local Government Act* 1993 and the *Local Government Regulations* 2005, prevent the sale and restrict leasing of 'Community' land. The conditions restrict the maximum lease term and require categorisation of the sites with concurrent uses and plans of management. These conditions have restricted HCC's ability to lease the subject sites for agricultural and residential purposes in a manner which would allow the sites to be self-sustaining.

The Waste Facility has a projected lifespan under its current operational model of 15-20 years, beyond which it is likely to transition into a waste transfer facility and may not require a buffer.

The Planning Proposal

The Planning Proposal seeks to change the classification of the sites from "Community" to "Operational" in *Penrith Local Environmental Plan* 2010. Reclassification of this land under PLEP 2010 is required as the land is located in Penrith Local Government Area, though it is classified as "Community" because HCC own the site. The Planning Proposal is provided as a separate Enclosure to this report.

The intended outcome of the Planning Proposal is to enable HCC provide an opportunity to lease the land for uses permissible under PLEP 2010 whilst maintaining a buffer to the waste facility. This is the reason the sites were acquired by HCC. No trusts or interests in the land are proposed to be discharged by the Planning Proposal.

Reclassification Process

Public land is managed under the *Local Government Act* 1993, based on its classification. All public land must be classified as either 'Community land or 'Operational' land.

- Community land – is land council makes available for use by the public, for example, parks, reserves or sports grounds.
- Operational land – is land which facilitates the functions of council, and may not be open to the public, for example, a works depot or council garage. Operational land may be sold or leased.

Land that is classified as Community land must not be sold, exchanged or otherwise disposed of by a council. Specific restrictions apply under the *Local Government Act* 1993

and the *Local Government Regulations* 2005 for the lease of Community land which restricts the duration and types of leases that are permissible. There is no special restriction on Council powers to manage, develop, dispose, or change the nature and use of Operational land. The reclassification of public land does not commit HCC to the sale or development of the land. HCC can still retain ownership and maintain the current use of the land.

Reclassification through an LEP (by the preparation of a planning proposal) is the mechanism with which Council can remove any public reserve status applying to land, as well as any interests affecting all or part of public land. It is critical that all trusts are identified upfront as part of any planning proposal. If public land is reclassified from Community to Operational, without relevant interests being identified and specified to be retained or discharged, then the land may need to be reclassified back to 'Community land'.

The effect of this process is that the land in question is no longer protected under the *Local Government Act* 1993 from potential future sale once it has been reclassified to operational. A reclassification proposal may not necessarily result in the immediate sale or disposal of the land.

An independently chaired public hearing is required to be held under the *Local Government Act* 1993 for reclassification of land. It is intended that this would take place after a Gateway Determination has been received.

Assessment

Assessment of the Planning Proposal has identified that the sites can be used to provide a buffer for Penrith residents from the Hawkesbury City Waste Management Facility under EPA guidelines and the existing RU4 zone in PLEP 2010, until a buffer is no longer necessary. Future development or lease of the sites will deliver outcomes that are more consistent with the intentions of the zone than the outcomes of the current community classification.

Further considerations in the assessment of this Planning Proposal are summarised below:

Property information

The Planning Proposal must identify any reservations, trusts or interests applying to the subject sites, or risk being invalid. The title searches included in the Planning Proposal reveal that a Crown Grant applies to the land, with Reservations and Conditions. These reservations and conditions will not be extinguished by the Planning Proposal under *Local Government Act* 1993 s.30(1)(a). An electrical easement is also identified on Site 1 and the Planning Proposal identifies that this interest will not be discharged.

Local Planning Panel

Under the requirements of Section 2.19 of the *Environmental Planning and Assessment Act* 1979, this Planning Proposal was referred to the Local Planning Panel for advice on 22 May 2019. The panel were briefed on the Planning proposal by Council officers. The Local Planning Panel's advice is provided as Attachment 2.

The Local Planning Panel generally supported the Planning Proposal, provided that further information including property information, information on the impacts of the Waste Facility and alignment with local and regional plan was received from HCC. This information was provided by HCC and has been incorporated into the Planning Proposal.

The LPP also requested that the Planning Proposal not facilitate operation of the Waste Facility closer to residential neighbours. In response to this consideration, the Planning Proposal now identifies that if any changes to the use of the subject sites are planned,

additional approvals, development applications or a new or amended EPA License and LEMP may be required. These ensure that any future uses of the sites are appropriate to the local context and that plans consider existing and future planning and environmental controls.

Impacts of the operation of the Hawkesbury City Waste Management Facility

The proponent has indicated that the operation of the Hawkesbury City Waste Management Facility is not planned to impact on the subject sites being used as a buffer to residential dwellings as required by the EPA *Environmental Guidelines, Solid Waste Landfills, Second Edition*.

The Environmental Planning and Assessment Act 1979 sets out several project assessment processes, and the applicable process will depend on the scale of the project, the nature of the waste, and the location. The NSW Department of Planning and Environment and the relevant local council should be consulted for more information on the applicable assessment process in each case.

Regardless of the planning assessment process, the EPA *Environmental Guidelines, Solid Waste Landfills, Second Edition* forms the basis of the EPA's input at the planning stage of waste facility licencing and operation.

The Hawkesbury City Waste Management Facility *EPA License and Landfill Environmental Management Plan* (LEMP) provided in the Planning Proposal provides environmental management responses for the Waste Facility site. A new LEMP will be prepared within the next 2 years. HCC will also complete a new Waste Management Strategy that identifies potential future directions for the waste facility site, which may reduce its impact or reduce the need for a buffer.

At this time, no further studies identifying the impacts of the operation of the waste facility on the subject sites have been requested, as the planning proposal does not seek to change the permissible land uses for the sites and there are no relevant requirements under the existing planning controls. The proposed future uses of the sites are permissible under the existing and historical zoning that applies to these and other properties not owned by HCC within 250m of the waste facility. Further studies on odour, contamination, noise and dust may be requested from the proponent by the Gateway Determination.

Future uses of subject sites

HCC have indicated their intention for the future use of the land is to provide temporary leases for the sites until the landfill use of the waste facility ends, then sell or lease the properties for residential accommodation. Once the properties are reclassified, there is no legislation which would prevent the properties from being sold or leased for potential residential purposes or as an extension to the operations of the waste facility. Any future development would be subject to an approvals process, including a DA for residential development or and EPA license or LEMP amendment to existing approvals may also be required for any future proposed operational uses of the site to support the waste facility. This would ensure that future uses of the site are compatible.

Any future development would have regard to bush fire and flooding controls in PLEP 2010 in order to manage risks relating to flooding and bushfire affectation.

Alignment with local and regional plans

The Planning Proposal aligns HCC's Strategic objectives, as well as the following key plans:

- the Greater Sydney Region Plan,
- Western City District Plan,

- Penrith City Strategy (to be superseded by the Local Strategic Planning Statement on its adoption),
- Community Plan, and
- Other controls in PLEP 2010.

Next Steps

Should Council endorse the Planning Proposal, it will be submitted to the DPIE with a request for a Gateway Determination. A copy of this report and meeting minutes will be attached to the Planning Proposal before it is submitted for a Gateway Determination. Upon receipt of a Gateway Determination, public exhibition and agency consultation will occur, followed by an independently chaired public hearing. A further report to Council will be provided advising of the outcomes of the public exhibition and public hearing.

Conclusion

The intention to reclassify the subject sites is generally supported. Suitable conditions exist under existing state and local planning and environmental controls to ensure that all relevant considerations are addressed. The Planning Proposal will receive comment from the community and key stakeholders through the Gateway determination, public authority referrals, public exhibition and public hearing processes. If the proposed amendments are made, suitable controls will also be considered through any future development applications.

The Planning Proposal will not extinguish any trusts, reserves or interests in the subject land. It is recommended that Council sponsor the Planning Proposal and commence the Gateway process to reclassify the land from 'Community' to 'Operational'. A Gateway Determination will enable public exhibition and agency consultation of the Planning Proposal. It is also recommended that Council seek delegation through the Gateway Determination to make the Planning Proposal.

RECOMMENDATION

That:

1. The information contained in the report on Planning Proposal to reclassify land on Reynolds Road and The Driftway, Londonderry be received.
2. Council endorse the Planning Proposal provided as a separate enclosure to this report, that seeks to reclassify seven sites owned by Hawkesbury City Council on Reynolds Road and The Driftway, Londonderry and submit it to the Department of Planning, Industry and Environment seeking a Gateway Determination.
3. The General Manager be granted delegation to update and finalise the Planning Proposal before submission to the Department of Planning, Industry and Environment for a Gateway Determination.
4. Consultation with the community and public agencies be undertaken in accordance with any Gateway Determination issued by the Department of Planning, Industry and Environment.
5. An independently chaired public hearing be held in accordance with the requirements of the Environmental Planning and Assessment Act and Regulations.
6. A suitably qualified consultant be engaged to independently chair the public

hearing.

7. A report be presented to Council on submissions received during the public exhibition and the results of the public hearing.
8. Council seek delegation through the Gateway Determination to make the amendment to *Penrith Local Environmental Plan 2010* identified in the Planning Proposal.

ATTACHMENTS/APPENDICES

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| 1. Details of the Subject Sites | 2 Pages | Appendix |
| 2. Local Planning Panel Advice - 22 May 2019 | 1 Page | Appendix |

Attachment 1

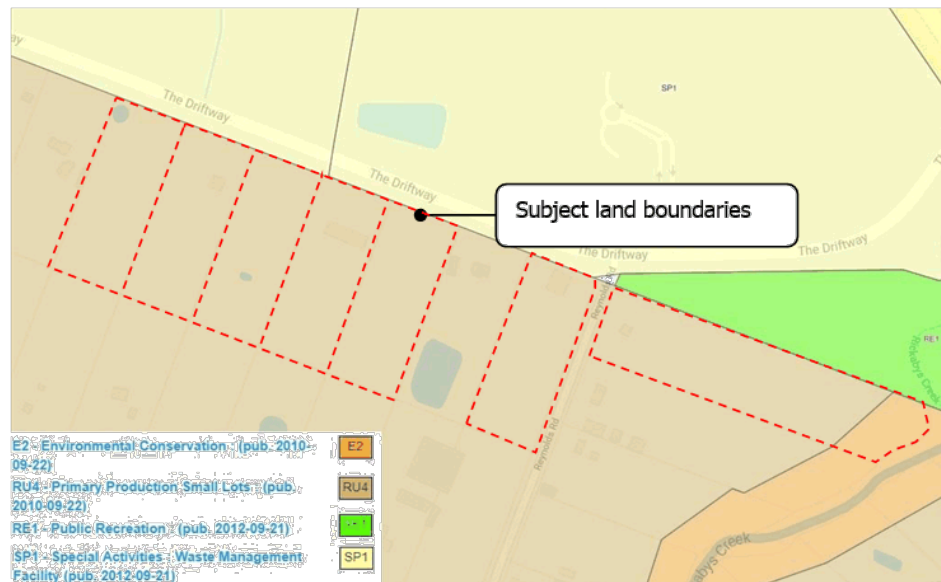
Details of the Subject Sites

Below is a table summarising details of the subject sites. The details identified in this table are supported by aerial and zoning maps provided as Figures 1 and 2.

Table 2 – Subject Sites indicating respective site areas

Site	Legal Description	Street Address	Zoning	Area	Current Land Use
1	Lot 1 DP 25981	2-6 Reynolds Road, Londonderry	RU4 Primary Production Small Lots And E2 Environmental Conservation	2.986ha	Vacant land
2	Lot 24 Sec D DP 25020	2-8 The Driftway, Londonderry	RU4 Primary Production Small Lots	1.588ha	Vacant land
3	Lot 22 Sec D DP 25020	18-24 The Driftway, Londonderry	RU4 Primary Production Small Lots	1.618ha	Vacant land
4	Lot 21 Sec D DP 25020	26-32 The Driftway, Londonderry	RU4 Primary Production Small Lots	1.618ha	Residential Dwelling
5	Lot 20 Sec D DP 25020	34-40 The Driftway, Londonderry	RU4 Primary Production Small Lots	1.618ha	Vacant land
6	Lot 19 Sec D DP 25020	42-48 The Driftway, Londonderry	RU4 Primary Production Small Lots	1.618ha	Vacant land
7	Lot 18 Sec D DP 25020	50-56 The Driftway, Londonderry	RU4 Primary Production Small Lots	1.618ha	Residential Dwelling

Figure 2 – Current Zoning Map (extract from Planning Portal website)




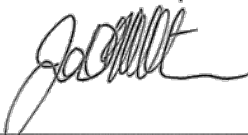

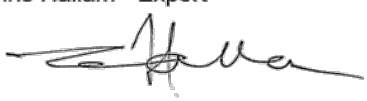
Penrith Local Planning Panel Advice

22 May 2019

Panel Advice provided pursuant to Section 2.19 of the EP&A Act 1979

The Panel has considered the Planning Proposal and the preliminary assessment prepared by Council officers and provides the following advice:

1. The Planning Proposal is generally supported, subject to further information referred to in this report being received from the proponent.
2. That appropriate mechanisms, if necessary, be considered to ensure the proposal does not facilitate operation of the waste facility closer to residential neighbours.

Jason Perica - Chair Person 	John Brunton - Expert 
Geoff Martin - Community Representative 	Chris Hallam - Expert 

**CONFIRMED MINUTES
OF THE POLICY REVIEW COMMITTEE MEETING OF PENRITH CITY COUNCIL HELD
IN THE PASSADENA ROOM, PENRITH
ON MONDAY 9 DECEMBER 2019 AT 7:00PM**

PRESENT

His Worship the Mayor, Councillor Ross Fowler OAM, Deputy Mayor, Councillor Karen McKeown OAM, and Councillors Jim Aitken OAM, Bernard Bratusa, Todd Carney, Brian Cartwright, Robin Cook, Marcus Cornish, Kevin Crameri OAM, Greg Davies, Aaron Duke, Tricia Hitchen, Kath Presdee and John Thain.

APOLOGIES

PRC40 RESOLVED on the MOTION of Councillor Brian Cartwright seconded Councillor Bernard Bratusa that the apology from Councillor Mark Davies be accepted.

CONFIRMATION OF MINUTES - Policy Review Committee Meeting - 11 November 2019

PRC41 RESOLVED on the MOTION of Councillor Marcus Cornish seconded Councillor John Thain that the minutes of the Policy Review Committee Meeting of 11 November 2019 be confirmed.

DECLARATIONS OF INTEREST

Councillor Bernard Bratusa declared a Non-Pecuniary Conflict of Interest – Less than Significant in *Item 4 – Penrith Whitewater Annual Report 2018-2019*, as he works for the Office of the Minister for Sport. Councillor Bratusa stated that he would leave the meeting during consideration of this Item.

DELIVERY PROGRAM REPORTS

Councillor Bernard Bratusa left the meeting, the time being 7:04pm.

OUTCOME 6 - WE ARE HEALTHY AND SHARE STRONG COMMUNITY SPIRIT

4 Penrith Whitewater Annual Report 2018-2019

PRC42 RESOLVED on the MOTION of Councillor Kevin Crameri OAM seconded Councillor Marcus Cornish

That:

1. The information contained in the report on Penrith Whitewater Annual Report 2018-2019 be received
2. Council agree to underwrite the operation of the Penrith Whitewater Stadium Limited until the presentation to Council of the Penrith Whitewater Stadium Limited Annual Report for 2020-21.
3. Council note and support the appointment and re-appointment of the persons named in the report to the Board of Directors of Penrith Whitewater Stadium Ltd.

Councillor Bernard Bratusa returned to the meeting, the time being 7:16pm.

OUTCOME 4 - WE HAVE SAFE, VIBRANT PLACES

2 Managing Abandoned Shopping Trolleys - Draft Policy

PRC43 RESOLVED on the MOTION of Councillor Bernard Bratusa seconded Councillor Kevin Crameri OAM

That:

1. The information contained in the report on Managing Abandoned Shopping Trolleys - Draft Policy be received
2. Council adopt the attached draft Managing Abandoned Shopping Trolleys - Draft Policy

Councillor Todd Carney left the meeting, the time being 7:33pm.

Councillor Todd Carney returned to the meeting, the time being 7:35pm.

OUTCOME 2 - WE PLAN FOR OUR FUTURE GROWTH

1 Planning Proposal to reclassify land on Reynolds Road and The Driftway, Londonderry

PRC44 RESOLVED on the MOTION of Councillor Kevin Crameri OAM seconded Councillor Robin Cook

That:

1. The information contained in the report on Planning Proposal to reclassify land on Reynolds Road and The Driftway, Londonderry be received.
2. Council endorse the Planning Proposal provided as a separate enclosure to this report, that seeks to reclassify seven sites owned by Hawkesbury City Council on Reynolds Road and The Driftway, Londonderry and submit it to the Department of Planning, Industry and Environment seeking a Gateway Determination.
3. The General Manger be granted delegation to update and finalise the Planning Proposal before submission to the Department of Planning, Industry and Environment for a Gateway Determination.
4. Consultation with the community and public agencies be undertaken in accordance with any Gateway Determination issued by the Department of Planning, Industry and Environment.
5. An independently chaired public hearing be held in accordance with the requirements of the Environmental Planning and Assessment Act and Regulations.
6. A suitably qualified consultant be engaged to independently chair the public hearing.
7. A report be presented to Council on submissions received during the public exhibition and the results of the public hearing.
8. Council seek delegation through the Gateway Determination to make the amendment to *Penrith Local Environmental Plan 2010* identified in the Planning Proposal.

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

called with the following result:

For

Councillor Kath Presdee
Councillor Karen McKeown OAM
Councillor Robin Cook
Councillor Brian Cartwright
Councillor Bernard Bratusa
Councillor Ross Fowler OAM
Councillor Todd Carney
Councillor Aaron Duke
Councillor Kevin Crameri OAM
Councillor Tricia Hitchen
Councillor Greg Davies
Councillor Jim Aitken OAM
Councillor Marcus Cornish
Councillor John Thain

Against**OUTCOME 5 - WE CARE ABOUT OUR ENVIRONMENT****3 Local Government NSW Recycling Initiative**

PRC45 RESOLVED on the MOTION of Councillor Karen McKeown OAM seconded Councillor Greg Davies

That:

1. The information contained in the report on Local Government NSW Recycling Initiative be received.
2. Council acknowledges the growing imperative to manage waste and recycling within NSW and calls for urgent action from the State Government to help build a circular economy in NSW.
3. Council endorses Local Government NSW's sector-wide 'Save Our Recycling' Campaign, and asks the State Government to reinvest the Waste Levy in:
 - a) Funding councils to collaboratively develop regional –scale plans for the future of waste and recycling in their regions
 - b) The delivery of the priority infrastructure and other local government projects needed to deliver regional-scale plans, particularly where a market failure has been identified
 - c) Support for the purchase of recycled content by all levels of government to help create new markets
 - d) Funding and delivery of a state-wide education campaign on the importance of recycling, including the right way to recycle, the purchase of products with recycled content and the importance of waste avoidance
4. Council continues to recognise initiatives and projects taken within the Penrith City local government area contributing to a circular economy, including; crushed glass in road making and compost made from reprocessed organic waste in parks and gardens.
5. Council writes to the local State Member Stuart Ayres MP, Minister for Energy

and Environment the Hon Matthew Kean MP, Local Government Minister the Hon Shelley Hancock MP, NSW Treasurer the Hon Dominic Perrotter MP, Premier the Hon Gladys Berejiklian MP, Opposition Leader Jodi McKay MP, Shadow Minister for Local Government Greg Warren MP to confirm their support for recycling and outline the urgent need to educate, innovate and invest in local waste and recycling services via the Waste Levy.

6. Council advises Local Government NSW President Linda Scott of the outcome of this report.

There being no further business the Chairperson declared the meeting closed the time being 7:38pm.

I certify that these 4 pages are the Confirmed Minutes of the Policy Review Committee Meeting of Penrith City Council held on 9 December 2019.

Chairperson

Date