



INDEPENDENT PUBLIC HEARING REPORT

Planning Proposal to reclassify land owned by Hawkesbury City Council amending the Penrith Local Environmental Plan 2010 to reclassify sites from 'community' land to 'operational' land with proposed clause to maintain buffer to waste facility

Reynolds Road and The Driftway, Londonderry

Prepared for: Penrith City Council

REF: M200041

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1. Introduction

1.1 PURPOSE OF THIS REPORT

This Report is prepared on behalf of Penrith City Council by Planning Ingenuity Pty Ltd following an Independent Public Hearing. This Report is prepared to provide a record of the issues raised during the Public Hearing relating to a Planning Proposal for land at Reynolds Road and The Driftway, Londonderry. The Planning Proposal seeks to reclassify land (seven properties) owned by Hawkesbury City Council, amending the Penrith Local Environmental Plan 2010 to reclassify sites from 'community' land to 'operational' land, including a proposed clause to maintain a buffer between the residential properties and neighbouring Waste Management Facility.

Planning Ingenuity was engaged by Council to undertake the following:

1. Conduct and chair a public hearing in relation to the Planning Proposal;
2. Review submissions received in response to the public exhibition of the Planning Proposal and made directly at the public hearing; and
3. Prepare this Independent Public Hearing Report in response to the issues raised at the public hearing.

The brief has been fulfilled in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Local Government Act 1993* (LG Act 1993).

1.2 THE SITE

The site is owned by Hawkesbury City Council, located on Reynolds Road and The Driftway, Londonderry within the Penrith Local Government Area (LGA). The site is comprised of seven (7) allotments which are identified as follows:

- **Site 1** 2-6 Reynolds Road, Londonderry NSW 2753 (Lot 1 DP 25981)
- **Site 2** 2-8 The Driftway, Londonderry NSW 2753 (Lot 24 Sec D DP 25020)
- **Site 3** 18-24 The Driftway, Londonderry NSW 2753 (Lot 22 Sec D DP 25020)
- **Site 4** 26-32 The Driftway, Londonderry NSW 2753 (Lot 21 Sec D DP 25020)
- **Site 5** 34-40 The Driftway, Londonderry NSW 2753 (Lot 20 Sec D DP 25020)
- **Site 6** 42-48 The Driftway, Londonderry NSW 2753 (Lot 19 Sec D DP 25020)
- **Site 7** 50-56 The Driftway, Londonderry NSW 2753 (Lot 18 Sec D DP 25020)

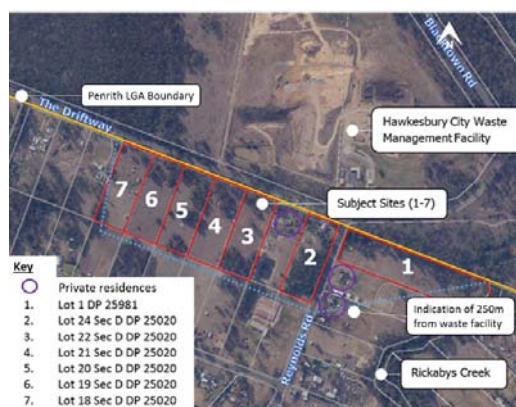


Figure 1 Subject Allotments (Source: Penrith Council Planning Proposal)



The sites are situated to the south of the Hawkesbury City Waste Management Facility which is located within the Hawkesbury LGA and owned by Hawkesbury Council.

1.3 BACKGROUND

Penrith City Council has endorsed a Planning Proposal that seeks to amend Penrith Local Environmental Plan 2010 (PLEP 2010) to reclassify seven sites, owned by Hawkesbury City Council (HCC), from 'Community' to 'Operational' Land at The Driftway and Reynolds Road, Londonderry. In addition, the planning proposal seeks to amend PLEP 2010 to ensure a buffer is maintained between residential dwellings and Hawkesbury City Council's Waste Management Facility located north of the subject sites in Hawkesbury Local Government Area. This amendment will restrict development on these sites for new, renovated or intensified residential accommodation, whilst there is a waste or resource management facility located adjacent to these sites.

The Planning Proposal would enable the subject sites to continue to be used for the purpose for which HCC acquired them, which is to provide a buffer of 250m between the Hawkesbury City Waste Management Facility and surrounding residential dwellings, as per the siting restrictions in the NSW Environment Protection Authority's *Solid Waste Landfill Guidelines*, while also being self-sustaining through leases or potential future sale.

Hawkesbury City Waste Management Facility is located on the northern side of The Driftway, which forms the boundary between Penrith LGA and Hawkesbury LGA.

It is noted that the subject sites were purchased by HCC between 1997 and 2001 to form the abovementioned buffer between residential dwellings and HCC's Waste Management Facility. 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 properties have historically been leased for rural and residential purposes by HCC.

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. The current "Community" classification also prevents the sites from being used by HCC for operational purposes that would otherwise be permissible with development consent under PLEP 2010. These conditions have restricted HCC's ability to lease the subject sites for agricultural and residential purposes or use the sites in a manner which would allow them to be self-sustaining. This Planning Proposal will enable HCC to utilize, lease and manage the subject sites whilst the Waste Management Facility is in operation and as the facility evolves in the future.

At its meeting of 11 March 2008, Hawkesbury City Council resolved to reclassify the subject site to optimise its use in accordance with s.27(2) of the LG Act 1993.

At its Policy Review Committee Meeting of 9 December 2019, Penrith City Council resolved to commence a Gateway process for the consideration of this Planning Proposal, in accordance with the requirements of the EP&A Act, 1979.

Penrith Council received Gateway Determination from the Department of Planning, Industry and Environment (DPIE) dated 10 March 2020. The NSW DPIE has not issued an authorisation for Council to exercise delegation to make this plan.

Penrith Council exhibited the Planning Proposal from Thursday 3 September 2020 to Thursday 1 October 2020.

Planning Ingenuity was appointed by Council to conduct an Independent Public Hearing in relation to this Planning proposal. The hearing was held on 10 March 2021, chaired by Mr Jeff Mead, Managing Director of Planning Ingenuity Pty Ltd. This Independent Public Hearing Report, prepared in accordance with Section 29 of the *Local Government Act* 1993, contains a record of the Public Hearing. This report will be considered by a further meeting of Council before



being presented back to the Department of Planning, Industry and Environment as part of the submission for determination by the Minister for Planning and Public Spaces.

This Report has been prepared by Mr Jeff Mead, Managing Director of Planning Ingenuity.



2. Site Analysis and Context

2.1 THE SITE AND GENERAL SURROUNDS

The subject site is made up of seven lots located on the southern edge of the Hawkesbury City Waste Facility along The Driftway. Five of the lots are adjoining with the other two being separated. The subject site has an area of 12.71ha.

The general land use that surrounds the subject sites includes rural residential properties with a mix of grazing, hobby farming, residential living and the like. To the north is a waste facility owned by HCC. The subject site contains derelict buildings with some remaining evidence of previous habitation. Two of the sites contain dwellings in various states of disrepair and a number contain removable storage as well as other miscellaneous items.

The subject land is generally flat and low lying, with a gentle slope to the east and west, with Site 2 being the high point. Low points are located in the western portion of Site 7, where two dams and a detention basin have been constructed to take advantage of a natural watercourse. These dams and the one located at the southern end of Site 5 are currently dry and silted up. The other low point at the eastern end of Site 1 adjoins Rickabys Creek.

The majority of the subject site has been previously cleared and disturbed from past rural and rural-residential uses. Vegetation is concentrated adjacent to the road frontage (along The Driftway) or as clumps of scattered and disturbed Shale Plains Woodland throughout the site. The area is dominated by exotic groundcover species with 2-6 Reynolds Road being the only site to contain other vegetation types, being an area of Alluvial Woodland in the eastern part of that land. Nos. 2-8 The Driftway is also dominated by exotic vegetation in the form of introduced pine trees.

The lots (that make up the subject site) are highlighted in **Figure 1** within Section 1.2 of this Report. The lot between subject sites 2 and 3 (Lot 23 Sec D DP 25020) is not included in the subject sites as it remains in private ownership and contains a dwelling and associated outbuildings. Site photographs are included in **Figure 2** below.



View north-east from Lot 18 frontage to Waste Facility



View east from Lot 18 frontage along The Driftway



View to Waste Facility Entrance from Lot 24 frontage



View of Lot 21 from The Driftway.



View south along boundary of Lot 18 & 19



Lot 24 from corner of Reynolds Road & The Driftway





View south from The Driftway along boundary of Lot 24

Waste Facility Entry Signage indicating hours of operation

Figure 2 Site photographs (Source: Penrith Council Planning Proposal)

2.2 OWNERSHIP

As detailed, the subject site is owned by Hawkesbury City Council, however is located within the Penrith City Council Local Government Area. To the north of the subject site is the Hawkesbury City Waste Management Facility which is owned by Hawkesbury City Council and located within the Hawkesbury LGA.

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. This was proposed to comply with the NSW Environment Protection Authority (EPA) "Environmental Guidelines, Solid Waste Landfills, Second Edition".

It is noted that Sites 1-2 are separated from Sites 3-7 by a privately owned allotment as demonstrated in **Figure 1**.

2.3 ZONING

The majority of the subject site is zoned RU4 Primary Production Small Lots under the Penrith LEP 2010, with a small section of E2 Environmental Conservation land to the east. This land is currently classified as 'community' land under the LG Act 1993. The current zoning of the site is shown in **Figure 3** below.

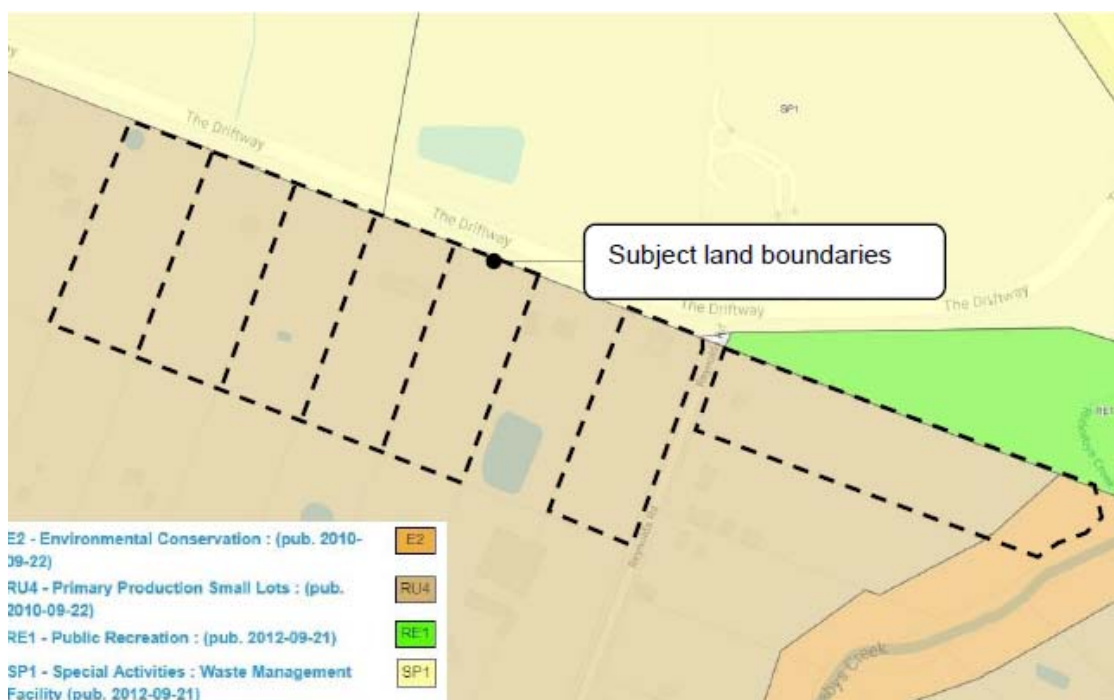


Figure 3 Land Zoning and Subject Sites (Source: Penrith Council Planning Proposal)

3. Statutory Context for the Public Hearing

The Planning Proposal involves the reclassification of land from Community to Operational land and the provision of an additional LEP Clause which prohibits the use of the sites for renovated, new or intensified residential accommodation while the Waste Facility is in operation and sites are required as a buffer.

The relevant statutory provisions governing the process of reclassification are provided in Division 3.4 of the EP&A Act 1979 (in the context of the making of LEPs) and Sections 25 to 34 and 47G of the LG Act 1993.

Specifically, Section 29 of the LG Act 1993 stipulates the following regarding Public Hearings:

29 Public hearing into reclassification

(1) A council must arrange a public hearing under section 57 of the Environmental Planning and Assessment Act 1979 in respect of a planning proposal under Part 3 of that Act to reclassify community land as operational land, unless a public hearing has already been held in respect of the same matter as a result of a determination under section 56(2)(e) of that Act.

(2) A council must, before making any resolution under section 32, arrange a public hearing in respect of any proposal to reclassify land as operational land by such a resolution.

In accordance with the above, an Independent Public Hearing was held and this Report has been prepared to satisfy Section 29. Section 47G of the LG Act 1993 also stipulates the following:

(1) In this section, public hearing means any public hearing required to be arranged under this Part.

(2) 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.

(3) Not later than 4 days after it has received a report from the person presiding at the public hearing as to the result of the hearing, the council must make a copy of the report available for inspection by the public at a location within the area of the council.

In response to Section 47G of the LG Act 1993 and EP&A Act 1979, it is noted that Mr Jeff Mead is not a councillor or employee of Penrith City Council and has not been employed at that Council at any time.

4. Public Exhibition

4.1 THE PLANNING PROPOSAL

The Planning Proposal is to amend the Penrith Local Environmental Plan 2010 to reclassify the seven (7) subject sites from Community to Operational Land and include the provision of an additional LEP Clause which prohibits the use of the sites for renovated, new or intensified residential accommodation while the waste facility is in operation and sites are required as a buffer.

The Planning Proposal was publicly exhibited from 3 September 2020 to 1 October 2020 as required by Condition 5 of the Gateway Determination. Council has stipulated that advertising and notification of the Planning Proposal was undertaken in accordance with the relevant legislative requirements and Gateway Determination.

The exhibition was arranged and proceeded in the following manner:

- Notice on *Yoursaypenrith* website including relevant information, contact details and opportunity for comment;
- The local newspaper, *The Western Weekender*;
- Notification and writing to adjoining land owners; and
- The Planning proposal was not physically exhibited but was instead made available on the NSW Planning Portal pursuant to s10.18 of the *Environmental Planning and Assessment Act, 1979*.

The advertisement in *The Western Weekender* within the Penrith City Council section on 3rd, 10th, 17th and 24th September 2020 advised of the Planning Proposal and relevant methods for comment. A sample of the advertisements is provided in **Figure 4** below.



Figure 4 Extracts from *The Western Weekender*



A total of four (4) written submissions were received from members of the community. A summary of the issues raised in these submissions is contained in Section 5 of this Report, specifically, **Table 1**.

Condition 3 of the Gateway Determination also required Council to undertake consultation with the NSW Rural Fire Service prior to public exhibition, in accordance with *Section 9.1 Direction – 4.4 Planning for Bushfire Protection*, and address any comments provided from this agency.

Condition 6 of the Gateway Determination required consultation with Hawkesbury City Council under Section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant Section 9.1 Directions.

4.2 LAND RECLASSIFICATION

In accordance with the reclassification process under Chapter 6, Part 2, Division 1 of the LG Act, Council is required by Section 29 to convene a Public Hearing and this Public Hearing must be held after the close of the statutory exhibition period for the LEP. The public exhibition of the Planning Proposal concluded on the 1 October 2020.

Notice of the Public hearing was posted on Council's *YourSay* webpage, in the *Western Weekender* and, submitters and HCC were notified in writing.





5. Public Hearing and Community Submissions

5.1 PUBLIC HEARING

Council arranged a Public Hearing for the proposed reclassification of the subject land. This was held on Wednesday 10 March 2021, between 7pm and 8pm in the Nepean Room at the Penrith Civic Centre, 601 High Street, Penrith. The Public Hearing was conducted in accordance with the Gateway Determination, Clause 29 of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979.

The hearing was chaired by Mr Jeff Mead, Managing Director of Planning Ingenuity Pty Ltd. Three (3) members of the community attended. Two people registered to speak prior to the Public Hearing with one person registering on arrival.

The Public Hearing was also attended by the following Council officers as observers:

- Madison Foster - Planner
- Natalie Stanowski – Principal Planner

The Public Hearing commenced at 7pm and concluded at 7.35pm.

5.2 COMMUNITY SUBMISSIONS

A summary of all submissions received by Council, as part of the formal community engagement process and Public Hearing are provided in **Tables 1** and **2** respectively. The submissions are recorded in the same manner they were received. As there is no statutory requirement to undertake a merit assessment of any submissions by the Independent Chair of the Public Hearing, this report provides only a record of those submissions for consideration by Council and ultimately, the Minister.

Table 1 Submission Summary – Formal Notification Period

Person	Submission Summary
Robert and Mary Dane	<ul style="list-style-type: none">• Concern regarding rezoning of properties that back onto current acreage homes;• Devaluation of properties;• Acquisition of the properties by HCC already serves the need as an additional buffer;• Rezoning would allow HCC to use land other than current zoning rules and is not in keeping with current rural aspect of the community; and• Leasing the land for uses permissible within proposed rezoning may impact landscape and vegetation of rural and private acreage.
Herbert Weller (Solicitor) on behalf of Mr Szyfer	<ul style="list-style-type: none">• Client property situated between Sites 2 and 3 of the Planning Proposal;• Reclassification will have an impact on the value and future development of client's property;• Concern that Council will not grant consent to future development on client's property for any renovations, additions or new residential accommodation;• Reclassification of land will give Council the ability to lease or sell land; and



Table 1 Submission Summary – Formal Notification Period

	<ul style="list-style-type: none">• Rural landscape character and environmental capabilities of the land will be compromised if the land is leased.
Julie Buttigieg	<ul style="list-style-type: none">• Do not support reclassification from Community to Operational;• Will change the rural lifestyle;• Impact of the existing Hawkesbury Waste Management Facility in terms of smell and noise; and• Concern regarding potential development of extra land owned by HCC.
Michelle and Ray Gruber	<ul style="list-style-type: none">• Concerns regarding noise and smell;• Impacts of trucks and heavy plant machinery;• Concerns regarding pollutants impacting local creeks and river systems;• Impacts to trading hours; and• The sites should be retained as a Buffer Zone.

Table 2 Submission Summary – Public Hearing (Oral)

Person	Submission Summary
Mr Ray Gruber	<ul style="list-style-type: none">• Serious concerns regarding the current operation of the waste disposal facility in terms of noise, hours or operation, impacts on nearby creek, pollution;• Waste facility does not follow legislation or conditions of its approval. Council should look at CCTV to see breaches;• Audit should be undertaken on current operations, including samples of soil and water;• Don't want to see the reclassified land redeveloped;• Does not trust Hawkesbury Council or its intent for the land;• Don't want mountain of waste in Londonderry, waste facility is an eyesore with limited landscape;• Better option would be for the waste facility to relocate;• The area has a strong history with proud heritage in sport and historic people;• Don't want to see these sites developed and wants to know HCCs intent for development; and• HCC can relocate and sell the blocks and make a huge profit.
Mr Ben Sammut	<ul style="list-style-type: none">• What is the proposal about?• Who owns the land – Penrith or Hawkesbury Council? Why do they own it?• Why is the subject land being used? Why use land across the road from the site?• There is potential for 'creep' in the future to further land being acquired by Hawkesbury Council;• There is potential for future subdivision of the land;• What will stop Council redeveloping the land.
Mr Barry Price	<ul style="list-style-type: none">• Will the owner at No. 2 be kicked out?• The site is currently in poor state of maintenance;• Residents have been left in the dark for 30 years in relation to the tip;• Hawkesbury Council has paid money to keep people quiet;

Table 2 Submission Summary – Public Hearing (Oral)

- When the tip extended they bought all the properties and HCC were paying PCC to maintain it.
- No one was told that HCC bought the land.

5.3 KEY ISSUES

The key issues arising from the Notification Period and Public Hearing are summarised as follows:

- The community are concerned about the capability of HCC to redevelop the subject land and the potential impacts of future uses which may be associated with the reclassification from Community to Operational.
- The community is concerned that the land will be sold or leased and will be developed and/or utilised not keeping with the anticipated character of the locality, which is identified by a rural landscaped setting.
- Surrounding residents are concerned that the reclassification will have an impact on the value of their land. There is a perception that the land will be redeveloped which will impact their value. Residents are also uncertain of the intentions of HCC and there is a high level of mistrust evident.
- There is a view that the reclassification will impact the rural lifestyle of the locality and that the environmental capabilities of the land will be impacted by the reclassification.
- There are numerous concerns raised regarding the current operation of the Hawkesbury Waste Management Facility. Residents raise issue regarding the potential intensification of this use in accordance with the reclassification of the land. The surrounding residents have stipulated that the existing Waste Management Facility and Planning Proposal is/will have the adverse impacts on community, including:
 - Noise generation;
 - Alteration to trading hours;
 - Impact to rural landscaped setting; and
 - Pollution to surrounding environment, including waterways.

At the Public Hearing, the attendees were advised that the Planning Proposal for reclassification of the subject land was not directly related to the operational aspects of the waste facility.

6. Recommendations

It is considered that the Public Hearing and associated practices have been undertaken in accordance with the provisions of the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*.

As identified in this Independent Public Hearing Report, there are no matters arising from the Public Hearing that prevent Council from continuing with the processes involved in the reclassification and rezoning of the land, subject to meeting all statutory provisions, the Conditions of the Gateway Determination and the requirements of the Minister.

It is understood that Council will, upon the receipt of this report, undertake the following:

- notify the community of and publish this report for public viewing;
- prepare a report for consideration at the next available meeting of Council to advise of the outcome of the Public Hearing and the issues raised in the submissions received; and
- make a further submission to the Department of Planning and Environment advising of the actions undertaken to satisfy the conditions of the Gateway Determination, including the Public Hearing.

Having regard to the proposal, the process undertaken by Council and the submissions received in writing and presented verbally at the Public Hearing, the following recommendations are made in respect of the proposed reclassification of land and provision of additional Clause in the Penrith LEP:

- That Council consider the concerns raised by the community as part of any rezoning and land classification processes moving forward, including the key issues identified in section 5.3 of this report.
- That, within four (4) days of receiving the final version of this report, Council make available a copy for inspection by the public via the following means:
- Publishing an electronic copy on Council's website; and
 - Ensuring a hard copy is available for inspection at Council's administration building and libraries.
 - That Council write to each person or organisation that made a written submission, advising them of the availability of this report (or providing a copy of the report to them) and thanking them for their participation.
- That a report be prepared and presented to Council on the submissions received during the public exhibition and the results of the Public Hearing.
- That this report be included in any further submissions and/ or documentation submitted to the Department of Planning and Environment in its final review and determination of the Planning Proposal and Reclassification of Land for the Site



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Registered Planner PIA

MANAGING DIRECTOR – PLANNING INGENUITY PTY LTD