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Plan Finalisation Report – PP-2020-3292 (PP_2020_PENRI_001_00)

Penrith Local Environmental Plan 2010 (Amendment
No. 34) – Reclassification of Land at The Driftway and
Reynolds Road, Londonderry

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Penrith Local Environmental Plan 2010 (Amendment No. 34).

The planning proposal involves amending the *Penrith Local Environmental Plan 2010* (Penrith LEP 2010) to reclassify seven lots owned by Hawkesbury City Council from ‘community land’ to ‘operational land’ and to restrict their use to maintain an environmental buffer between residential properties and the Hawkesbury City Waste Management Facility to the north.

1.1.2 Site description

Table 1: Site description

Site Description	<p>The planning proposal (Attachment A) applies to land in Londonderry, south of the Hawkesbury City Waste Management Facility. This land is made up of seven individual allotments, which are legally described in Table 2 (the Site).</p> <p>All of the allotments forming part of the site are located in the Penrith Local Government Area (LGA). No land forming part of the site is located in the adjoining Hawkesbury LGA.</p> <p>The site as legally described in Table 2 is highlighted red in Figure 1 and Figure 2.</p>
Type	Site.
Council	Penrith City Council (Council).
LGA	Penrith LGA.

Table 2: Legal description of the site

No.	Lot	Section	Deposited Plan	Address
1	Lot 1	N/A	DP 25981	2-6 Reynolds Road, Londonderry
2	Lot 24	Sec D	DP 25020	2-8 The Driftway, Londonderry
3	Lot 22	Sec D	DP 25020	18-24 The Driftway, Londonderry
4	Lot 21	Sec D	DP 25020	26-32 The Driftway, Londonderry
5	Lot 20	Sec D	DP 25020	34-40 The Driftway, Londonderry
6	Lot 19	Sec D	DP 25020	42-48 The Driftway, Londonderry
7	Lot 18	Sec D	DP 25020	50-56 The Driftway, Londonderry



Figure 1: The Site outlined red (Source: Google Maps 2021, amended by the Department)



Figure 2: Subject Site (Source: Penrith City Council 2021)

The seven lots forming the site are located on the boundary of the Penrith and Hawkesbury LGAs and have the following characteristics:

- Lot 1: The lot is irregular in shape and fronts Reynolds Road. It is vacant land containing scattered trees and vegetation.
- Lot 24: The lot is rectangular in shape and fronts The Driftway. It contains abandoned buildings, as well as scattered trees and vegetation.
- Lot 22: The lot is rectangular in shape and fronts The Driftway. It is vacant land containing scattered trees and vegetation.
- Lot 21: The lot is rectangular in shape and fronts The Driftway. It contains abandoned buildings, as well as scattered trees and vegetation.
- Lot 20: The lot is rectangular in shape and fronts The Driftway. It is vacant land containing scattered trees and vegetation.
- Lot 19: The lot is rectangular in shape and fronts The Driftway. It is vacant land containing scattered trees and vegetation.
- Lot 18: The lot is rectangular in shape and fronts The Driftway. It contains abandoned buildings, as well as scattered trees and vegetation.

Lot 23 Sec D DP 25020, which is located between Lot 1 and Lot 24, is in private ownership and does not form part of the site. It contains a rural dwelling and associated outbuildings. The Hawkesbury City Waste Management Facility (the Waste Facility) is located to the north of the site, on The Driftway in the Hawkesbury LGA.

1.1.3 Purpose of plan

Each of the lots forming part of the site were purchased by Hawkesbury City Council (HCC) between 1997 and 2001 to establish a buffer between the waste facility and adjacent residential dwellings. At the time these sites were purchased by HCC, action was not taken to reclassify them from their default 'community land' classification.

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 Penrith LEP 2010. These conditions have restricted HCC's ability to lease the subject sites for agricultural and rural purposes or use the sites in a manner which would allow them to be self-sustaining, whilst maintaining a buffer between existing residential properties and the existing waste facility located to the north. A buffer between the waste facility and adjacent residential dwellings continues to be required in accordance with the siting restrictions contained to the NSW Environmental Protection Authority's (EPA) 'Environmental Guidelines, Solid Waste Landfills, second edition, 2016'.

To achieve this outcome, the draft LEP seeks to amend the Penrith LEP 2010 as it applies to the site by reclassifying it and restricting the uses. The LEP would be amended as follows:

1. Amend Part 1 of Schedule 4 to insert the site, as follows:

Column 1	Column 2
Locality	Description
2-6 Reynolds Road, Londonderry	Lot 1 DP 25981
2-8 The Driftway, Londonderry	Lot 24 Sec D DP 25020
18-24 The Driftway, Londonderry	Lot 22 Sec D DP 25020

Column 1	Column 2
26-32 The Driftway, Londonderry	Lot 21 Sec D DP 25020
34-40 The Driftway, Londonderry	Lot 20 Sec D DP 25020
42-48 The Driftway, Londonderry	Lot 19 Sec D DP 25020
50-56 The Driftway, Londonderry	Lot 18 Sec D DP 25020

2. Introduce a site-specific provision which restricts specified land uses* from undertaking the following development at the site until the waste management facility to the north has permanently ceased to operate:

- a. The erection of a new building.
- b. A change of use of an existing building.
- c. Development that will increase the gross floor area of an existing building.

*Note: For the purposes of this amendment, the specified land uses are:

- a. Dual occupancies.
- b. Dwelling houses.
- c. Home-based childcare.
- d. Home businesses.
- e. Home industries.
- f. Schools.
- g. Secondary dwellings.
- h. Tourist and visitor accommodation.

No other changes are proposed as part of the planning proposal, as shown in **Table 3**.

Table 3: Current and proposed controls

Control	Current	Proposed
Land Classification	Community Land	Operational Land (proposed change)
Land-Use Zone	<ul style="list-style-type: none"> 'RU4 – Primary Production Small Lots' (all lots). 'E2 – Environmental Conservation' (part of Lot 1 DP 25981). 	<ul style="list-style-type: none"> 'RU4 – Primary Production Small Lots' (all lots). 'E2 – Environmental Conservation' (part of Lot 1 DP 25981). (no change)
Maximum Height of Building	None	None (no change)
Floor Space Ratio	None	None (no change)
Minimum Lot Size	2ha	2ha (no change)
Heritage	None	None (no change)
Acid Sulfate Soils	None	None (no change)
Number of Dwellings	N/A	N/A

Control	Current	Proposed
Number of Jobs	N/A	N/A

1.1.4 State electorate and local member

The site falls within the Londonderry State electorate. Ms Prue Car MP is the State Member.

The site falls within the Lindsay Federal electorate. Mrs Melissa McIntosh MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the planning proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this planning proposal.

2 Gateway determination and alterations

The Gateway determination issued on 10 March 2020 (**Attachment B**) determined that the planning proposal should proceed, subject to conditions. Council has responded to each of the conditions contained to the Gateway determination, as follows:

- In accordance with condition 1 and condition 2, Council consulted with HCC and amended the planning proposal prior to exhibition. The amended planning proposal included additional information which outlined that the final LEP will include a provision to ensure that intensification of the site is restricted until the waste facility permanently ceases operation (**Attachment A**).
- In accordance with condition 3, Council consulted with the NSW Rural Fire Service (RFS) prior to exhibition. RFS did not raise any concerns.
- In accordance with condition 4, Council revised the planning proposal prior to exhibition, responding to conditions 1 to 3. On 30 July 2020, the Department wrote to Council, acknowledging that the planning proposal may proceed to exhibition.
- In accordance with condition 5, Council exhibited the planning proposal for 28 days from 3 September 2020 to 1 October 2020.
- In accordance with condition 6, Council consulted with HCC on the planning proposal.
- In accordance with condition 7, the LEP was to be made 12 months from the date of the Gateway Determination (this being 10 March 2021). This date wasn't met due to the various complexities that were required to be resolved for this planning proposal, as well as delays in proceeding with a public hearing. Non-compliance with this condition is therefore considered to be acceptable with this instance.
- In accordance with condition 8, Council forwarded the planning proposal to the Department for finalisation, as Council is not the local plan-making authority for this planning proposal.
- In accordance with condition 9, an independently chaired public hearing was conducted for the planning proposal on 10 March 2021. This is outlined in further detail in section 3.2.

3 Public exhibition and post-exhibition changes

3.1 Community submissions during exhibition

In accordance with the Gateway Determination, the planning proposal was publicly exhibited by Council from 3 September 2020 to 1 October 2020, a period of 28 days. A total of four submissions were received, all of which objected to the planning proposal. **Table 4** outlines the key issues raised in the community submissions, Council's response and the Department's response.

Table 4: Key community submission issues and response

Issues raised	Council response and Department response
Reclassification and proposed LEP clause impact on neighbouring lots	<p><u>Council Response:</u></p> <p>"The Gateway determination requires the planning proposal to include a proposed LEP clause that prohibits the use of the seven sites for new or intensified residential uses whilst the Waste Facility is in operation and the seven sites are required as a buffer. This clause ensures the subject sites continue to be used for the purpose for which HCC acquired them, which is to provide a buffer of 250m between the Waste Management Facility and surrounding residential dwellings. As per the Siting Restrictions in the EPA Solid Waste Landfill Guidelines. Development consent for residential uses will not be granted to development on land to which this clause applies, being the seven sites subject to this planning proposal. As such, the proposed clause and reclassification only applies to the seven subject sites owned by HCC and does not extend to other privately owned lots in this area. This will allow HCC to consider the future use of all sites to realise the objectives of the existing zones.</p> <p>There are many factors that influence property values and decisions to buy and sell property. While zoning and planning controls are one factor, there are other considerations such as the area's demographics, its proximity to services and amenities, other sales in the area, current and predicted investment in the area, and whether property is affected by factors such as traffic noise. The assessment of property values is the responsibility of the NSW Government's Valuer General. The reclassification of these sites and introducing a new clause is unlikely to influence property values."</p> <p><u>Department Response:</u></p> <p>Whilst Council's response is considered adequate, the site-specific provision has been strengthened post-exhibition to minimise the risk of land use conflict, in consultation with Council. This is outlined in section 3.4.2.</p>
Future acquisition of additional lots	<p><u>Council Response:</u></p> <p>"The planning proposal facilitates the reclassification of the land and introduces a LEP clause to enable it to be used for the purpose it was acquired by HCC. The seven subject sites were acquired as a 250m buffer to residential dwellings as required under the EPA Environmental Guidelines, Solid Waste Landfills, Second Edition 2016. As such, acquisition of additional lots is not required for the operation of HCC Waste Facility and not proposed as part of this planning proposal."</p> <p><u>Department Response:</u></p>

Issues raised	Council response and Department response
	Council response is considered adequate. No further action is required to address this submission.
Future use, rural landscape character and environmental capabilities	<p><u>Council Response:</u></p> <p>“The planning proposal does not propose to rezone the rural zoned land, but rather reclassifies rural land that is not being utilised for agricultural or other rural related purposes. The planning proposal will not alter any other development controls in a manner such that there would be adverse impacts on critical habitat or threatened species, populations or ecological communities. Use of the subject sites, consistent with the zoning, will enable the desired rural vision and, improve the maintenance and amenity of the subject sites.</p> <p>Any future lease arrangements or changes to uses of the subject lands will address potential land use conflicts via the statutory planning process. Future development would be subject to existing controls and assessed through a separate approvals process, including a Development Application (DA) or/and EPA license or Landfill Environmental Management Plan (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 any future use and development of the subject sites are compatible with existing zone objectives and is of an appropriate scale, sensitive to the rural character and environmental capabilities of the area.”</p> <p><u>Department Response:</u></p> <p>Whilst Council’s response is considered adequate, the site-specific provision has been strengthened post-exhibition to minimise the risk of land use conflict, in consultation with Council. This is outlined in section 3.4.2.</p>
Waste Facility	<p><u>Council Response:</u></p> <p>“The current Hawkesbury City Waste Management Facility EPA License and LEMP, provided as Appendix 8 to the planning proposal, provide environmental management responses for the Waste Facility site. If any changes to the current use of the subject sites is planned, additional approvals, development applications or a new or amended EPA License and LEMP may be required.</p> <p>Whilst HCC is not currently considering disposing of the subject lands due to the nature of their acquisition, the reclassification to operational would allow HCC to generate an income from the sites and will continue to be used as a buffer to the Waste Facility. Any future use will be compatible with applicable planning controls and the 250m buffer. The current operation of the Waste Facility is carried out under an EPA licence and HCC’s LEMP.”</p> <p><u>Department Response:</u></p> <p>Whilst Council’s response is considered adequate, the site-specific provision has been strengthened post-exhibition to minimise the risk of land use conflict, in consultation with Council. This is outlined in section 3.4.2.</p>

3.2 Public hearing

In accordance with condition 9 of the Gateway determination and the requirements of the *Local Government Act 1993*, a public hearing was held on 10 March 2021 for the planning proposal at the Penrith Civic Centre, which three people attended.

An Independent Public Hearing Report dated 29 March 2021 (**Attachment F**) was prepared following the public hearing, which concluded the following:

“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.”

3.3 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with HCC and RFS. The authorities and their responses are outlined below in **Table 5**.

Table 5: Advice from public authorities

Agency	Advice raised	Response
Hawkesbury City Council	The Gateway determination required the planning proposal to be amended to include written consent from HCC, prior to public exhibition. HCC provided written consent for the planning proposal and supported its progression.	<p><u>Council Response:</u></p> <p>Council noted that HCC raised no matters requiring changes the planning proposal.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate. No further action is required to address this submission.</p>
NSW Rural Fire Service	The planning proposal was referred to RFS to satisfy the requirements of Section 9.1 Ministerial Direction '4.4 - Planning for Bushfire Protection'. RFS did not provide any objections to the progression of the planning proposal. However, future development of the site will be required to comply with the relevant provisions of 'Planning for Bushfire Protection 2019'.	<p><u>Council Response:</u></p> <p>Council noted that RFS raised no matters requiring changes the planning proposal.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate. No further action is required to address this submission.</p>

3.4 Post-exhibition changes

3.4.1 Council resolved changes

At Council's Ordinary Meeting on 26 April 2021, Council resolved to proceed with the planning proposal with no post-exhibition changes (**Attachment C**).

3.4.2 The Department's recommended changes

Following receipt of the planning proposal from Council, the Department has strengthened the proposed site specific provision that forms part of the planning proposal to outline the specific land uses and types of development prohibited at the site until the waste management facility to the north has permanently ceased to operate. This change reduces the potential of a land use conflict arising from the development of sensitive uses that could be affected by the continued operation of the facility. The proposed site specific clause now outlines:

1. The specific types of development prohibited at the site until the waste management facility to the north has permanently ceased to operate, which comprises:
 - a. The erection of a new building.

- b. A change of use of an existing building.
 - c. Development that will increase the gross floor area of an existing building.
- 2. The specific land uses prohibited at the site until the waste management facility to the north has permanently ceased to operate, which comprises:
 - a. Dual occupancies.
 - b. Dwelling houses.
 - c. Home-based childcare.
 - d. Home businesses.
 - e. Home industries.
 - f. Schools (note: this is an additional land use proposed to be included in this clause).
 - g. Secondary dwellings.
 - h. Tourist and visitor accommodation.

3.4.3 Justification for post-exhibition changes

The Department notes that the post-exhibition changes made to the planning proposal are justified and do not require the planning proposal to be re-exhibited, as they are in line with the Gateway determination and intent of the planning proposal. It is considered that the post-exhibition changes:

- Further strengthen the proposed site specific clause;
- Ensure that schools, which are also considered a sensitive land-use currently permitted with consent at the site, cannot be development at the site whilst the waste facility is in operation; and
- Do not alter the overall intent of the planning proposal.

4 Department's assessment

The planning proposal has been subject to a detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the planning proposal against relevant Section 9.1 Ministerial Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the planning proposal.

The planning proposal submitted to the Department for finalisation:

- Is consistent with the Regional and District Plans relating to the planning proposal.
- Is consistent with the Local Strategic Planning Statement relating to the planning proposal.
- Is consistent with all relevant Section 9.1 Ministerial Directions relating to the planning proposal, excluding Direction 6.3, which is justified.
- Is consistent with all relevant SEPPs relating to the planning proposal.

Table 6 and **Table 7** identify whether the planning proposal is consistent with the assessment undertaken at the Gateway determination stage as outlined in the Gateway determination report on the planning proposal (**Attachment G**). Where the planning proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these are addressed in section 4.1 of this report.

Table 6: Summary of strategic assessment

Strategic assessment	Consistent with Gateway determination report assessment	
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 7: Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environment impacts	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides an assessment of the matters relating to the planning proposal that are marked as inconsistent in **Table 6** and **Table 7** with the previous Gateway determination report for the planning proposal dated 10 March 2020.

4.1.1 Local Strategic Planning Statement

The Penrith Local Strategic Planning Statement (Penrith LSPS) was adopted on 23 March 2020 and is now applicable to the planning proposal. The Penrith LSPS contains planning priorities to guide the future growth and development of the Penrith LGA.

The following planning priorities are applicable to the planning proposal:

- *Planning Priority 2: Work in partnership to unlock opportunities*
 - This planning proposal involved working with HCC to reclassify the site to unlock further opportunities at the site, whilst maintaining the required buffer.
- *Planning Priority 19: Create an energy, water and waste efficient city*
 - The proposed site specific provision which manages development of the site will ensure the existing capacity of the waste facility to the north is not compromised.

The Department considers the planning proposal to be generally consistent with these applicable Penrith LSPS planning priorities and is acceptable.

4.1.2 Section 9.1 Ministerial Directions

The planning proposal is assessed against Section 9.1 Ministerial Directions that weren't previously considered in the Gateway determination report on the planning proposal (**Attachment G**) or require further assessment in **Table 8**.

Table 8: Section 9.1 Ministerial Directions assessment

Directions	Consistent/ Inconsistent	Reasons for consistency or inconsistency
Direction 2.6: Remediation of Contaminated Land	Consistent	The planning proposal is consistent with this Direction, as the planning proposal does not seek to amend the existing zoning applying to the site or introduce any additional land uses. Detailed site/contamination studies will be required to support any future DA for the site to ensure the development satisfies <i>State Environmental Planning Policy No 55 – Remediation of Land</i> .
Direction 6.3: Site Specific Provisions	Inconsistent (but justified)	<p>The planning proposal is inconsistent with this Direction, as the planning proposal seeks to add a site-specific clause to restrict the following development at the site for the purpose of residential accommodation currently permitted in the zone and schools:</p> <ul style="list-style-type: none"> a) The erection of a new building. b) A change of use of an existing building. c) Development that will increase the gross floor area of an existing building. <p>These restrictions will cease when the waste facility to the north of the site has permanently ceased to operate.</p> <p>Inconsistency with this Direction is justified, as the proposed site-specific clause ensures that HCC (which owns the land at the site) can better manage the land whilst continuing to maintain a buffer between residential properties and the waste facility.</p>

4.1.3 Environmental impacts

The planning proposal includes a site specific provision that will restrict residential accommodation currently permitted in the zone and schools at the site until the waste facility to the north permanently ceases operations. The provision will prevent any conflict between land uses that could compromise the operations of the waste facility. It will also ensure that uses are not introduced to the site that could be impacted by odour, noise or any other environmental impacts that may be generated by the waste facility.

5 Post assessment consultation

The Department has consulted the following stakeholders after the assessment (shown in **Table 9**).

Table 9: Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	An amended 'Clause Application Map – Sheet CAP_001' has been prepared by Council and checked by the Department's ePlanning team. The amended map meets the technical requirements (Attachment Map).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment D).</p> <p>Council confirmed on 6/07/2021 that it was agreeable with the draft and that the plan should be made (Attachment E).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	<p>On 13/07/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The planning proposal has strategic merit, being consistent with the following plans and strategies:
 - Greater Sydney Region Plan – A Metropolis of Three Cities.
 - Western City District Plan.
 - Penrith 2040 - Local Strategic Planning Statement.
 - Hawkesbury Community Strategic Plan – The Hawkesbury 2036.... It's Our Future.
 - Penrith Community Plan 2017.
- The planning proposal has site-specific merit, as it will allow HCC (which owns the land at the site) to better manage the land whilst maintaining a buffer between existing residential properties and the existing waste facility located to the north.
- The planning proposal is generally consistent with the Gateway determination.
- The planning proposal is consistent with all relevant Section 9.1 Ministerial Directions relating to the planning proposal, excluding Direction 6.3, which is justified.
- The planning proposal is consistent with all relevant SEPPs relating to the planning proposal.
- The planning proposal will not generate adverse social, environmental or economic impacts on the surrounding locality.



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Attachments

Attachment	Document
PC	PC Opinion dated 13 July 2021
LEP	Draft LEP
Map	Draft Map
A	Planning Proposal dated April 2021
B	Gateway Determination dated 10 March 2020
C	Council Meeting Report dated 26 April 2021
D	Council Consultation under S3.36(1) of the Act dated 28 June 2021
E	Council Comments on Draft LEP dated 6 July 2021
F	Public Hearing Report dated 29 March 2021
G	Gateway Determination Report dated 10 March 2020