



City of
LAUNCESTON

MINUTES COUNCIL COMMITTEE

**COUNCIL COMMITTEE
HEARING TO AMEND SEALED PLAN
21 APRIL 2022**

**11.00AM
TOWN HALL RECEPTION ROOM, ST JOHN STREET, LAUNCESTON**

A Council Committee Hearing - Petition to Amend Sealed Plans 16325 and 19533, 304 and 308 Penquite Road, Norwood was held at Town Hall Reception Room, St John Street, Launceston:

Date: 21 April 2022

Time: 11.00am

Certificate of Qualified Advice

Background

To comply with section 65 of the *Local Government Act 1993* (Tas):

1. A general manager must ensure that any advice, information or recommendation given to the council or a council committee is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.
2. A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless -
 - (a) the general manager certifies, in writing -
 - (i) that such advice was obtained; and
 - (ii) the general manager took the advice into account in providing general advice to the council or council committee; and
 - (b) a copy of that advice or, if the advice was given orally, a written transcript or summary of that advice is provided to the council or council committee with the general manager's certificate.

Certification

I certify that:

- (i) the advice of a qualified person has been sought where required;
- (ii) this advice was taken into account in providing general advice to the council or council committee; and
- (iii) a copy of the advice, or a written transcript or summary of advice provided orally, is included with the agenda item.



Shane Eberhardt
Acting Chief Executive Officer

ORDER OF BUSINESS

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1 BRIEFING

A briefing was provided by Kelsey Hartland (Team Leader Governance). The briefing explained the approach to be adopted for the meeting and identified the following points:

- (a) the Meeting will be conducted in line with Council Meeting procedures and as such, open to the public as a Hearing unless the Committee decides to move into a Closed Session by absolute majority, whereby members of the public will be asked to leave the room.
- (b) at the Council Meeting of 24 March 2022, the Committee was delegated the authority to make a decision on the petition to amend the Sealed Plan. A decision can be made at today's meeting or the Committee can reconvene at a later date if further review, discussion or advice is required. If a decision is made, the decision will be reported back to Council at a future Meeting.
- (c) if a definitive decision is not made and the Committee forms the view that a Recommendation needs to be forwarded to Council for adoption, then an appropriate Agenda Item will be prepared.
- (d) at hearings such as this it has been established practice to allow representors to speak untimed. Speakers may not ask questions or enter into debate with others present at the hearing. Statements are not to be defamatory, inappropriate or abusive, or intended to embarrass any other attendees. The Chair may direct Speakers to stop speaking if these rules are not observed or if a statement is repetitive.

2. ELECTION OF THE CHAIR

Prior to opening the Meeting, election of the Chair occurred.

DECISION: 21 April 2022

MOTION

Moved Councillor P S Spencer, seconded Councillor K M Preece.

That Councillor A G Harris be elected as Chair.

CARRIED 3:0

3. OPENING OF MEETING - ATTENDANCE and APOLOGIES

The Chair of the Meeting, Councillor A G Harris, opened the Meeting at 11.00am and noted apologies from Councillor J G Cox and Councillor N D Daking. The Chair welcomed those attending. Councillor A G Harris provided those in attendance with a summary of the process to be undertaken during the Meeting, as noted above and outlined by Kelsey Hartland.

Those in attendance were:

Committee:

Councillor P S Spencer, Councillor A G Harris (Chair) and Councillor K M Preece

City of Launceston:

Glynn Williams (Legal Counsel), Craig Johns (Statutory Services Officer), Kelsey Hartland (Team Leader Governance), Robert Bujnowski (Properties and Legal Officer) and Anthea Rooney (Council and Committees Officer)

Proponents and Representors:

Roz Daly (Representor), Roger Daly (Representor), Ron Schaeche (Representor), Margaret Smith (Representor), Geoff Smith (Representor), Irene Duckett (Proponent's Planner), Peter Woolson (Proponent), Jim Woolston (Proponent), Nicky Bigham (Representor) and Alex Bigham (Representor).

4 DECLARATION OF INTERESTS

There were no declaration of interests for this Meeting.

5 HEARING - PETITION TO AMEND SEALED PLANS- 16325 and 19533 - 304 and 308 Penquite Road, Norwood, Section 103 - *Local Government (Building and Miscellaneous Provisions) Act 1993*

The following representations/discussions were made and occurred at the Committee Meeting:

Irene Duckett (Proponent's Planner), on behalf of the proponent, spoke for the item and provided the following submission (and photographs) for consideration:

- the subject land is Lot 1 on Sealed Plan Number 16325 and is land contained in the Certificate of Title Volume 165249 Folio 1 and Lots 3 and 4 on Sealed Plan Number 19533.
 - the Schedule of Easements in both SP16325 and SP19533 created restrictive covenants on those titles with the following restrictions:
 - (b) the main building erected on such lot shall not be used for any purpose other than a private dwelling house;
 - (d) that not more than one main building shall be erected on such lot;
 - (f) that there shall not be erected any building or outbuilding (excluding carport) on such lot with outer walls other than of masonry brick or brick veneer construction; and
 - (h) not to subdivide the said lot into smaller lots nor alter nor amend subdivision plan as it relates to such lot in any way without the vendor's consent.
 - the amendments sought by the proponent are to delete clauses b, d, f and h.
 - explanation, via distributed aerial photographs, was provided to give some context to the land use since registration of the title on 2 February 1983.
 - explanation was provided with context to the State's land use strategies, with particular reference to the Northern Tasmania Regional Land Use Strategy, in the context of land use patterns and application.
 - it was suggested that there was no land use planning merit in retaining or enforcing the current covenants as the land has a combined size of 1.16ha, which has never had a single dwelling on it.
 - it was claimed that the land has a greater value in providing much needed housing.
 - in 2014 a planning application was lodged and approved by the Launceston City Council for the amalgamation of titles and construction of 24 dwellings and that permit remains valid today.
 - vehicles from the approved development would have direct access to Penquite Road, with no adverse issues revealed in traffic studies.
 - it was stated that there would be no direct impact on the amenity of neighbouring properties, other than the impact on the perceived status of their own houses.
-

Rob Schaeche (Representor), spoke against the item and provided the following information:

- both the proponent's property and his property were purchased knowing that the covenant was in place.
- concerns were raised about traffic issues, with particular reference to the roundabout, with a claim that traffic accidents will increase as a result of increased housing density.
- the proposed development is claimed to affect housing prices and amenity of the area.
- infrastructure and sewage issues are claimed to be prevalent and will increase with more housing.
- It was also noted that it felt surprising to be back in front of the Committee as this issue was dealt with seven years ago.

Roger and Roz Daly, spoke against the item and provided the following information:

- live next door to the proposed development and purchased the current property to engage in a different style of living in the area - semi-rural, gardens, etc.
- were very aware of the covenant of allowing only one house per block when property was purchased and that was one of the prime reasons for purchasing.
- Council's previous ruling appeared to protect the covenant.
- the developers have approached neighbours citing their proposal.

Alex and Nicky Bigham, spoke against the item and provided the following information:

- covenants were applied to develop a certain living style and purchase of their current property was made in the knowledge of applicable covenants as were the proponents.
- Council approved covenants and, therefore, should be upholding them.
- no multiple dwelling allotments were to be allowed and the covenants were a positive incentive to purchase the property.

Peter Woolston, Proponent, spoke for the item and provided the following information:

- noted that this has been a very long process and the first planning permit application was for 28 dwellings - the current application is for 24 dwellings.
- some properties in the area are not covered by the existing covenants and are claimed to be excluded from operation of the covenant or relying on them.

Irene Duckett responded and summarised discussions saying that amenity of surrounding lots will not be affected by the proposed development and the current conditions will not be impacted. It was submitted by her that the Council has already assessed this development site as being appropriate for development.

Glynn Williams (Legal Counsel) provided a view as to the interpretation of the Schedule of Easements in response to the view raised by Peter Woolston that some properties are not covered by the existing covenant. Glynn noted that the starting point of negotiations should be the words initially proposed by the original developer, Mr Wilkes. Claims advanced application or non-application of the covenants to certain land were not raised in the Petition to the Council. Historically, restrictive covenants have been applied by private developers and these covenants were first applied in 1982. A person who has an interest in any Council decision has a right to appeal under the auspices of the *Judicial Review Act*.

6 DECISION

As the evidence presented by the proponent does not sufficiently address how the proposed development may impact on the proprietary rights of the adjoining property owners, the application does not provide the Council with a basis upon which it may justify exercising its discretion to overturn the relevant clauses of the restrictive covenant. The petition should, therefore, be rejected.

7 CLOSE OF MEETING

The Chair, Councillor A G Harris closed the Meeting at 11.48am thanking those in attendance for their conduct during the Hearing. Councillor Harris indicated to all that a decision would be provided as soon as possible, initially via advice from the Council and more formally via a Council Agenda Item in an upcoming Meeting.

Summary from Legal Counsel:

Glynn Williams summarised the key points of the Hearing, noting the following legal considerations:

- A restrictive covenant is a type of contract between neighbouring land owners that gives those owners proprietary rights.
 - The extinguishment of a restrictive covenant may constitute the deprivation of a proprietary right.
 - The relevant landowners were aware of the restrictive covenant at the time of purchasing their property.
 - In this instance the wording of the restrictive covenant is very tightly drafted.
 - Representations made at the hearing indicate that the original purposes of the restrictive covenants have not become obsolete.
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- Council has the discretion to accept or reject a petition to amend the clauses of restrictive covenant that are contained within a sealed plan pursuant to section 104 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (Tas).
- The application in this instance provides opinion evidence regarding planning considerations that may support the removal of the relevant clauses from the restrictive covenant.
- The application is not supported by evidence as to how the proposed development may impact on the proprietary rights of the adjoining property owners by detracting from the very tightly written restrictive covenants that the proponent seeks to have removed.
- Council is, overall, lacking evidence to justify exercising its discretion to overturn the relevant clauses of the restrictive covenant.

Summary from the Chair:

Following further discussion, Councillor A G Harris noted the following:

- that proponents and representors had been able to state their cases openly and clearly.
- the Committee understood and were comfortable accepting the legal advice provided.
- the effect of the covenants were understood by those purchasing the land.

Following the completion of the Hearing, the Committee recommended the following be forwarded to Council for decision:

- The evidence presented by the proponent does not sufficiently address how the proposed development may impact on the proprietary rights of the adjoining property owners. As a result, the application does not provide the Council with a basis upon which it may justify exercising its discretion to overturn the relevant clauses of the restrictive covenant. The petition should, therefore, be rejected.

The Committee, having finalised its recommendation, indicated there was no need to reconvene prior to documentation being forwarded to the 19 May 2022 Council Meeting for decision.

8 ATTACHMENTS

In addition to the Attachments distributed with the Agenda, the following additional Attachment was presented at the Meeting:

8.7 Aerial Photographs (Irene Duckett, Proponent's Planner)

Attachment 8.7 - Aerial Photographs (Irene Duckett, Proponent)

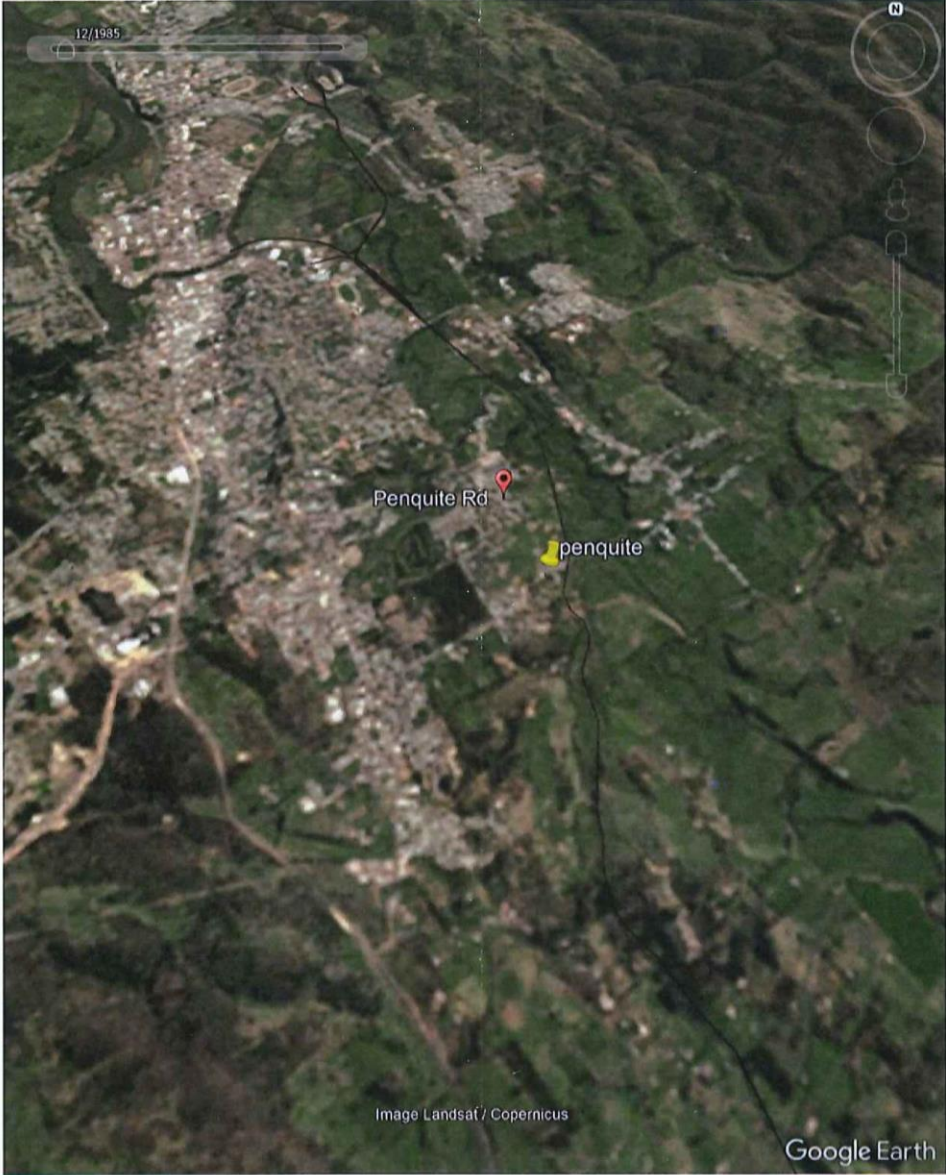


Figure 1 Image taken 1985, subject site shown with yellow marker (source Google earth)

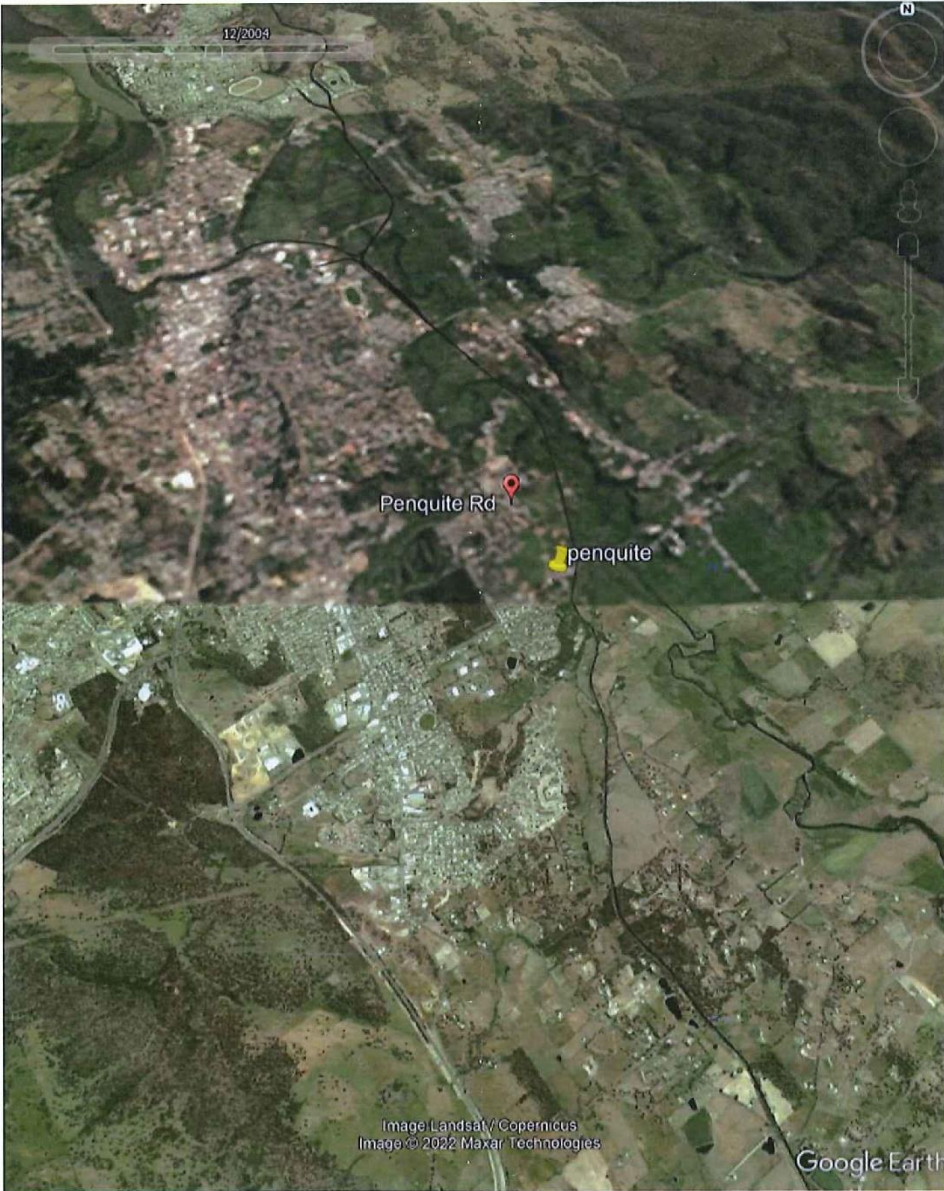


Figure 2 Image taken 2004 (source: Google earth)

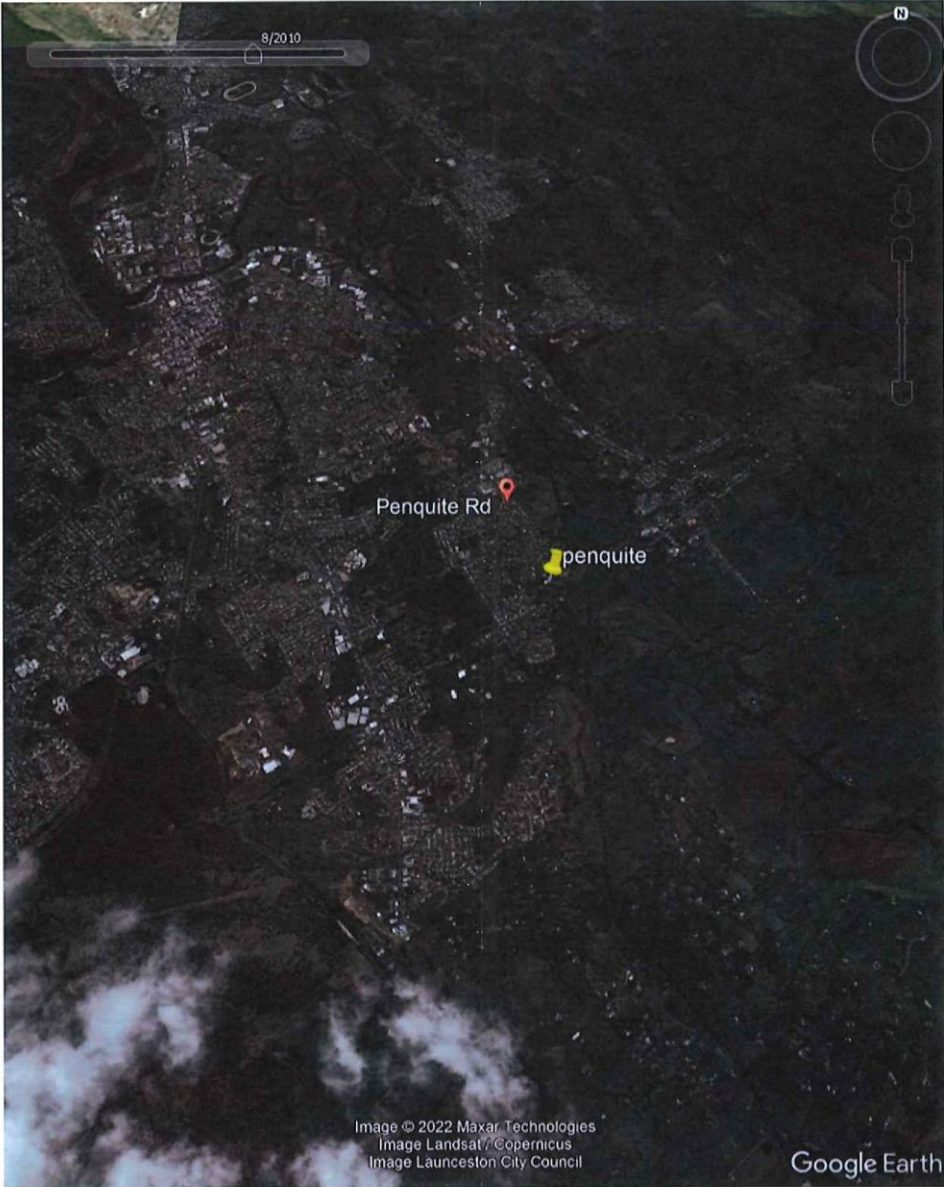


Figure 3 Image taken 2010 (source: Google earth)

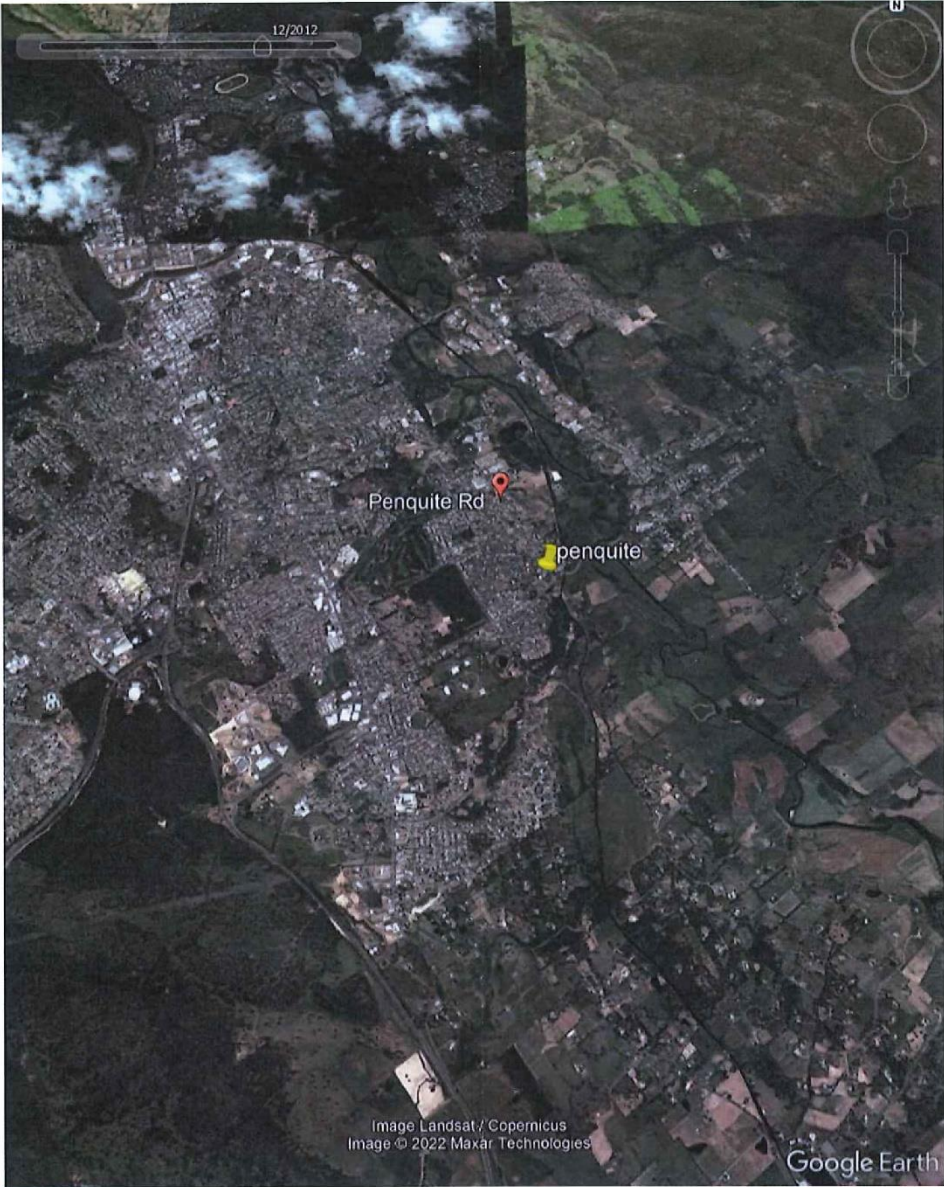


Figure 4 Image taken 2012 (source: Google earth)

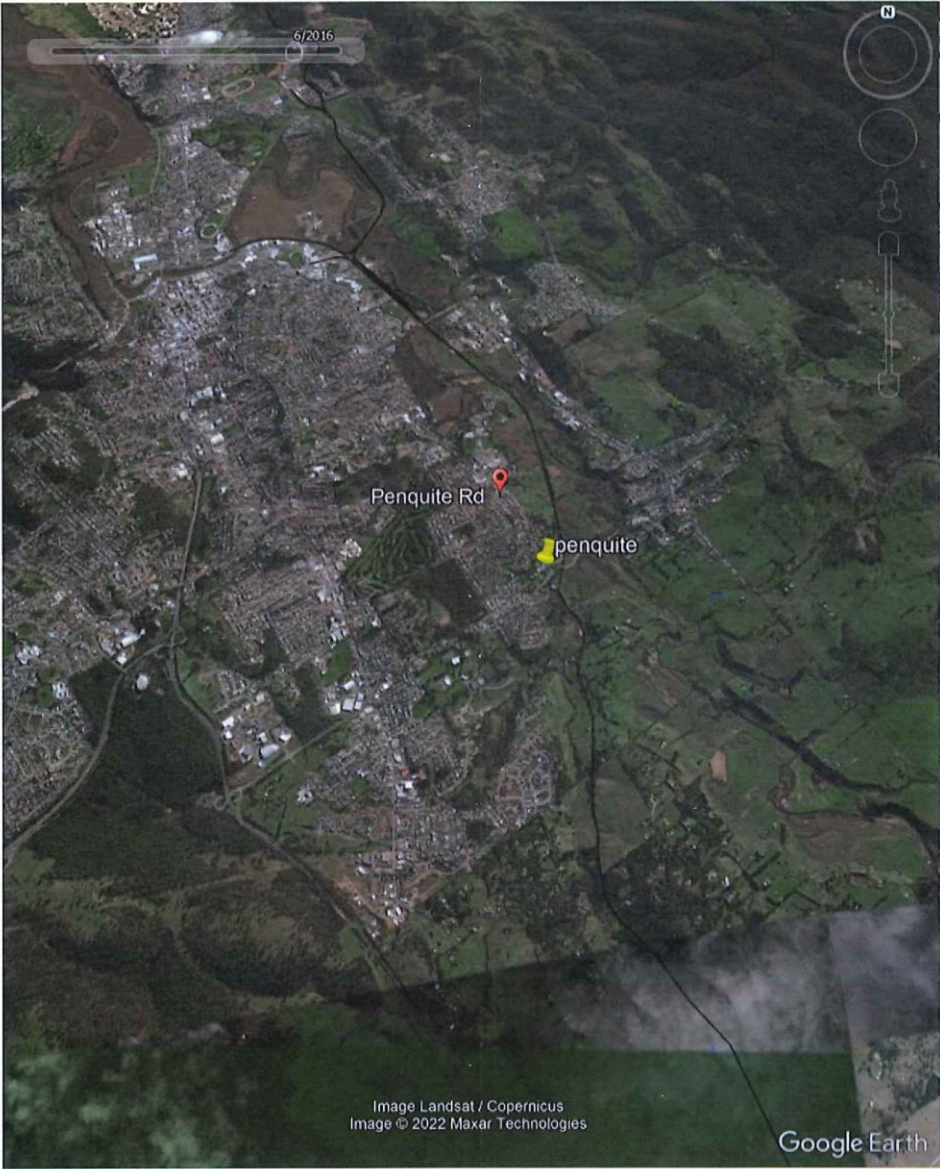


Figure 5 Image taken 2016 (source Google earth)

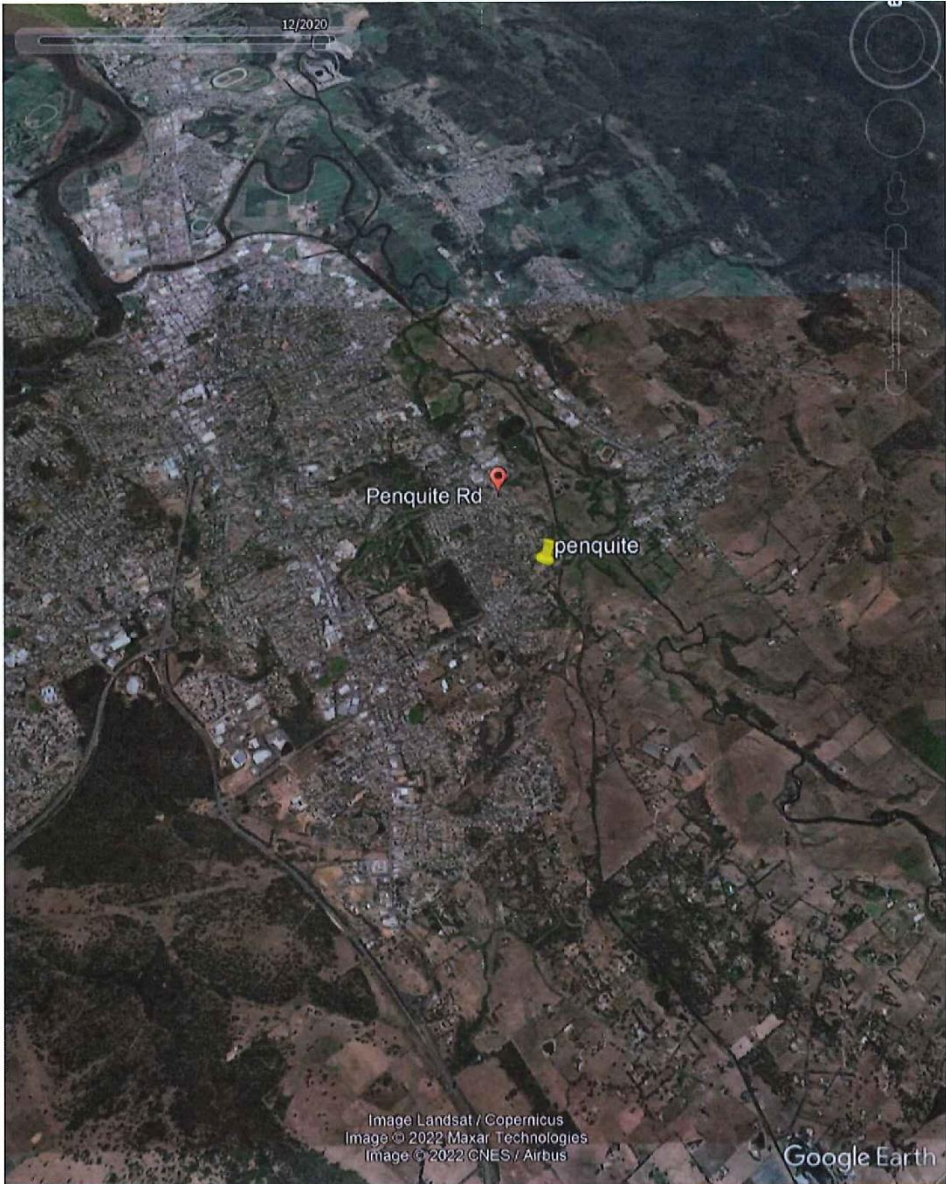


Figure 6 Image taken 2020 (source Google earth)

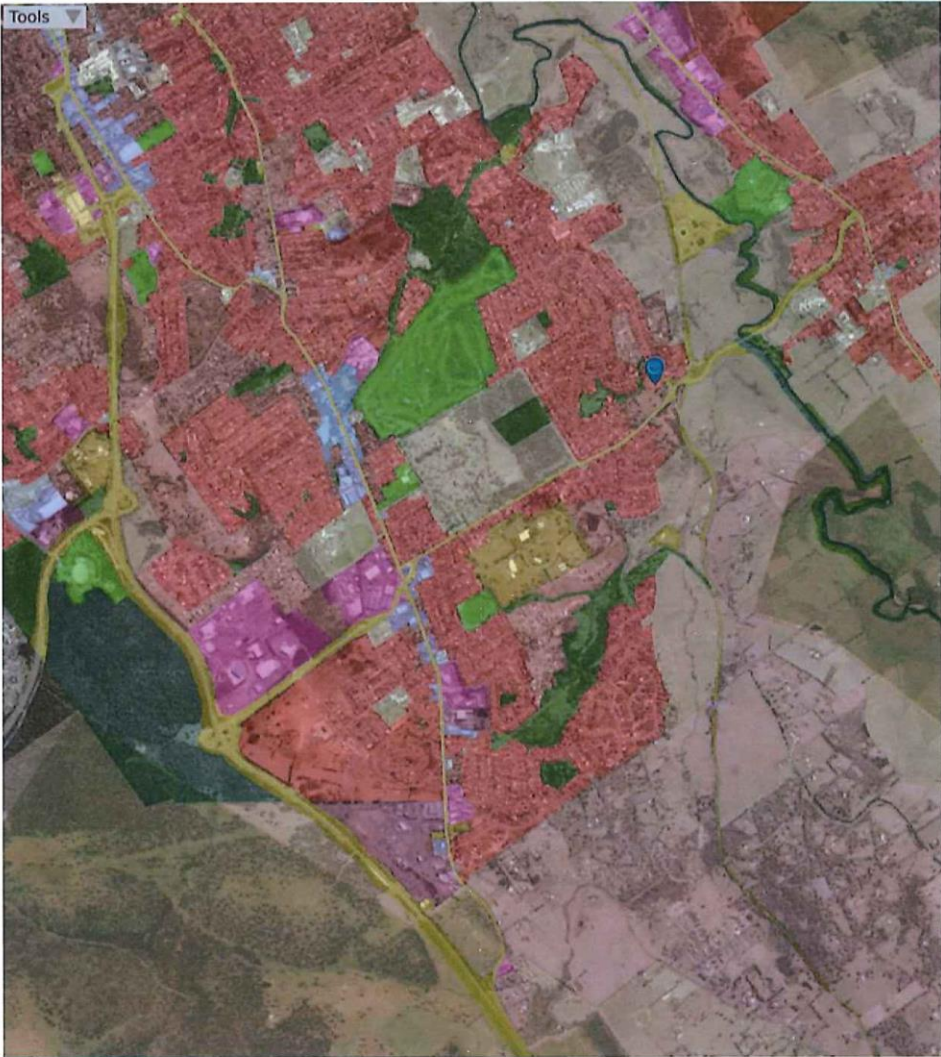


Figure 7 Extent of General Residential zoning, over image 6 . Site shown with blue marker (source The LIST)