

COUNCIL RESOLUTION EXTRACT FROM MINUTES 29 JULY 2013

DISCLOSURES OF INTEREST

Councillor Martin declared a non-significant, non-pecuniary interest in all Items on the basis of her employment at the Department of Planning and Infrastructure. She advised that she does not work on Wollongong local government matters and she would remain in the Chambers during debate and voting on all Items.

Councillor Merrin declared a non-significant, non-pecuniary conflict of interest due to the fact that she has a number of acquaintances and friends who live in the area. Councillor Merrin advised that she would remain in the Chambers during debate and voting on all Items.

Councillor Curran advised that she had associates living in the Helensburgh area.

ATTENDANCE OF COUNCILLOR

During debate on Item 12, Councillor Colacino returned to the meeting, the time being 8.39 pm.

ITEM 12 - REVIEW OF 7(D) LANDS - LLOYD PLACE PRECINCT

155 COUNCIL'S RESOLUTION – MOVED by Councillor Kershaw seconded Councillor Takacs that -

- 1 The part of the Planning Proposal for the Lloyd Place precinct which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the precinct (excluding part of Lot 500 DP788539) to the E2 Environmental Conservation zone, be progressed to finalisation;
- 2 The part of the Planning Proposal for part of Lot 500 DP 788539 Otford Road, not proceed and the E3 Environmental Management zone be retained around the existing dwelling house and buffer area. The rezoning of the remainder of the property to the E2 Environmental

Minute No

Conservation zone, be progressed to finalisation;

- 3 A new draft Planning Proposal be prepared to identify the 21 lots within the Lloyd Place precinct which do not contain a dwelling house for acquisition, by identifying the lots on the Land Reservation Acquisition Map as being required for Local Open Space purposes (Attachment 2 of the report). The draft Planning Proposal be submitted to the NSW Department of Planning and Infrastructure for a Gateway determination and requesting authorisation for the General Manager to exercise plan making delegations in accordance with Council's resolution of 26 November 2012. If approved, the draft Planning Proposal be placed on public exhibition for a minimum period of 28 days; and
- 4 As part of the draft Annual Plan / Budget process for 2014-15, consideration be given to a land purchase scheme for the 21 lots in the Lloyd Place precinct, including the consideration of a rates refund.

An AMENDMENT was MOVED by Councillor Merrin seconded Councillor Curran that -

- 1 The part of the Planning Proposal for the Lloyd Place precinct which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the precinct (excluding part of Lot 500 DP788539) to the E2 Environmental Conservation zone, be progressed to finalisation;
- 2 The part of the Planning Proposal for part of Lot 500 DP 788539 Otford Road not proceed. The rezoning of the remainder of the property to the E2 Environmental Conservation zone, be progressed to finalisation;
- 3 A new draft Planning Proposal be prepared to identify the 21 lots within the Lloyd Place precinct which do not contain a dwelling house for acquisition, by identifying the lots on the Land Reservation Acquisition Map as being required for Local Open Space purposes (Attachment 2 of the report). The draft Planning Proposal be submitted to the NSW Department of Planning and Infrastructure for a Gateway determination and requesting authorisation for the General Manager to exercise plan making delegations in accordance with Council's resolution of 26 November 2012. If approved, the draft Planning Proposal be placed on public exhibition for a minimum period of 28 days; and
- 4 As part of the draft Annual Plan / Budget process for 2014-15, consideration be given to a land purchase scheme for the 21 lots in the Lloyd Place precinct, including the consideration of a rates refund.

Minute No

Councillor Merrin's AMENDMENT on being PUT to the VOTE was LOST.

In favour Councillors Merrin and Curran

Against Councillors Kershaw, Connor, Brown, Martin, Takacs, Blicavs, Dorahy, Colacino, Crasnich, Petty and Bradbery

Councillor Kershaw's MOTION on being PUT to the VOTE was CARRIED UNANIMOUSLY.

ITEM 12 REVIEW OF 7(D) LANDS - LLOYD PLACE PRECINCT

Council at its meeting on 28 November 2011, resolved to prepare a draft Planning Proposal for a number of precincts formerly zoned 7(d) Hacking River Environmental Protection at Helensburgh, Otford and Stanwell Tops. The draft Planning Proposal has been exhibited. This report is one of a series of reports addressing the submissions received during the exhibition and addresses the Lloyd Place precinct.

A review of the land capability of the precinct has found that there is not land suitable for the erection of a dwelling house, let alone a cluster of houses, without substantial clearing and environmental impact.

It is recommended that the majority this precinct be zoned E2 Environmental Conservation and progressed to finalisation. It is recommended that an E3 Environmental Management zone be retained around the existing dwelling house and buffer area on Lot 500 DP 788539 Otford Road. It is further recommended that Council consider the provision of an exit strategy for the land owners as part of the draft Annual Plan/Budget process for 2014-15.

Recommendation

- 1 The part of the Planning Proposal for the Lloyd Place precinct which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the precinct (excluding part of Lot 500 DP788539) to the E2 Environmental Conservation zone, be progressed to finalisation;
- 2 The part of the Planning Proposal for part of Lot 500 DP 788539 Otford Road, not proceed and the E3 Environmental Management zone be retained around the existing dwelling house and buffer area. The rezoning of the remainder of the property be E2 Environmental Conservation zone, be progressed to finalisation; ;
- 3 A new draft Planning Proposal be prepared to identify the 21 lots within the Lloyd Place precinct which do not contain a dwelling house for acquisition, by identifying the lots on the Land Reservation Acquisition Map as being required for Local Open Space purposes (Attachment 2). The draft Planning Proposal be submitted to the NSW Department of Planning and Infrastructure for a Gateway determination and requesting authorisation for the General Manager to exercise plan making delegations in accordance with Council's resolution of 26 November 2012. If approved, the draft Planning Proposal be placed on public exhibition for a minimum period of 28 days; and
- 4 As part of the draft Annual Plan/Budget process for 2014-15, consideration be given to a land purchase scheme for the 21 lots in Lloyd Place precinct, including the consideration of a rates refund.

Attachments

- 1 SJB Lloyd Place Cluster Housing Review Report.
- 2 Proposed Land Acquisition Reservation Map.

Report Authorisations

Report of: David Green, Land Use Planning Manager
Authorised by: Andrew Carfield, Director Environment and Planning – Future, City and Neighbourhoods

Background

A separate report Review of 7(d) lands Background Summary Report, provides the history of the 7(d) lands, the background of the review, and the community consultation undertaken to date.

As part of Council's review of the issues associated with the lands formerly zoned 7(d) Hacking River Environmental Protection, at Helensburgh, Otford and Stanwell Tops, this report addresses the Lloyd Place precinct.

The Lots in Lloyd Place/Otford Road subdivision were created in two 1970 subdivisions which complied with the 2 hectare "county dwelling" standard. The lots were sold with a dwelling entitlement and at least one owner has a certificate from Council indicating that they can build a dwelling. In 1971, the "county dwelling" standard was increased by the State Government to 20 hectares which meant that dwellings were no longer permissible. Landowners and Council made representations over the years seeking a change to the standard, all of which were unsuccessful.

The owner of Lot 22 DP 241582 (created as part of the Otford Rd subdivision) purchased part of the adjoining property within Otford village (now zoned E4 Environmental Living), to create Lot 251 DP 80600 (in 1990), and constructed a dwelling on the E4 Environmental Living part of the lot.

The precinct also includes the rear parts of Lot 32 DP 791215 (No.12) George St, Lot 2 DP 22284 (No. 6) George St, Lot 12 DP 816709 (No. 108) Otford Road and Lot 1 DP 33693 (No.111) Otford Road which are part zoned E3 Environmental Management and part E4 Environmental Living, a dwelling house is located in the E4 part of each property.

Lot 23 DP 241582 which was part of the Otford Road subdivision has been excluded as it is owned by Ensile Pty Ltd and is addressed in the Central Bushland precinct.

The precinct was expanded to include Lot 500 DP 788539 Otford Road (western edge of the precinct), which is a 19.86 hectare property and contains a dwelling house. Part of this property was included in the original subdivision, as a 2 hectare lot. In 1987 Council approved the consolidation of three parcels to create a lot large enough to

satisfy the minimum dwelling standard, and approved a dwelling house. A dwelling house was approved in 1997.

Lloyd Place precinct location map 1



The lots contain steep bushland and the construction of dwellings would require extensive clearing or the dwelling to be built at the bottom of the valleys and a new access road constructed. The area also forms part of the important north-south habitat linkage.

As development has not been allowed to occur on the Otford Road / Lloyd Place lots, the bushland has been conserved and it has remained an important part of the Moist Forest Corridor and linkage between the Royal National Park, Illawarra Escarpment and the Drinking Water Catchment Area.

The majority of the precinct has slopes of 18-25%, with some areas having slopes of >25% and other areas with slopes of 8-18%. Land with slopes greater than 18% is constrained and generally not recommended for urban development.

Lloyd Place precinct slope analysis (source SJB report) map 2



Council at its meeting on 28 November 2011 considered a report which recommended that the Lloyd Place Precinct be zoned E2 Environmental Conservation. Council resolved that:

- 1 A new draft Planning Proposal be prepared to rezone the enlarged Lloyd Place precinct from E3 Environmental Management to E2 Environmental Conservation.
- 2 The draft Planning Proposal be referred to the NSW Department of Planning and Infrastructure for review, and if approved be exhibited for a minimum period of twenty eight (28) days.
- 3 Council Officers prepare a further report exploring Options (a), (e) and (f) of this report following consultation with the landowners.

The draft Planning Proposal was exhibited from 6 August to 26 October 2012. This report addresses the issues raised in the submissions for this precinct.

Proposal

As a consequence of the exhibition the following registered submissions were received commenting on the draft Planning Proposal for the precinct:

Landowner submissions:

Property	Submission	Comment
Lot 18 DP 241582 Otford Road (part owner)	Oppose E2 Environmental Conservation. Parents purchased 2 ha lot when dwelling was permissible, then saved to build a house, only to be told they couldn't. Request land be zoned E3 Environmental Management or E4 Environmental Living. Options: 1. Building at top of block. 2. Building at bottom of block. 3. Exit strategy 1 – Council purchase land based on residential value and cover costs of taxes, rates, capital gains, GST. Exit strategy 2 – land exchange – would want 2-3, 450m2 blocks (not 1). 4. Rezone to E2 Environmental Conservation and do nothing. Lead to on-going battle. Submits arguments against environmental group claims. Submits RNP bushfire history maps, water quality and bushfire reports.	Objection noted
Lot 18 DP 241582 Otford Road (part owner)	Oppose the proposed E2 Environmental Conservation for this precinct. Request E4 Environmental Living or E3 Environmental Management and ability to build a dwelling.	Objection noted

Property	Submission	Comment
	If E2 Environmental Conservation, then support the rezoning of the Land Pooling/Lady Carrington Estate South precincts to enable a land exchange exit strategy. Submits arguments about various claims on biodiversity, Illawarra Regional Strategy, lack of due diligence, false claims, form letter factories.	
Lots 1,2,3,6,&8 DP 242135 Lloyd Place (part owner)	Lloyds have owned land for over 40 years. Oppose E2 Environmental Conservation, support E3 Environmental Management in cleared areas. A dwelling should be permitted on each lot. Family has enjoyed and cared for the land. If E2 Environmental Conservation than Council should compensate owners for reduced use of land.	Objection noted
Lots 1,2,3,6,&8 DP 242135 Lloyd Place (part owner)	Oppose rezoning family land from E3 Environmental Management to E2 Environmental Conservation. Owned for 40 years. Through family farming and tourist operations have been able to manage care and maintain land & rivers. E2 Environmental Conservation is inconsistent with the New Planning system Green paper. A dwelling should be permitted on each lot. If E2 Environmental Conservation than Council should compensate owners for reduced use of land. Support E3 Environmental Management.	Objection noted
Lots 1,2,3,6,&8 DP 242135 Lloyd Place	Consultant report – copy of 2010 submission proposing Lots 1-3 be zoned E3 Environmental Management or E4 Environmental Living and a dwelling permitted. While lots 6 & 8 can be zoned E2 Environmental Conservation with an exit strategy. Lots 1-3 could	Objection noted

Property	Submission	Comment
	be used for eco-tourism. At minimum lot 2 provides access to the riding school and Otford Farm. Copy of 2010 Biophysical constraints and opportunities study attached.	
Lot 13 Otford Road (part owner)	Family bought land in 1970 when a country dwelling was permitted. Paid rates for 40 years. Land should either be rezoned to permit a dwelling, or swapped for another site, or purchased by Council/State. The purchase price should be assessed at the current market value for residential land.	Objection noted
Lot 13 Otford Road (part owner)	Been waiting to build a home for years. There is a housing shortage in NSW. Support a change to allow a dwelling house.	Objection noted
Lot 13 Otford Road (part owner)	Land purchased by parents when residential. Then changed to rural and 7d. At some point Helensburgh will expand. Rezone the land so we can build.	Objection noted
Lot 500 DP 788539 (70 Otford Road)	Oppose the blanket zoning of the property to E2 Environmental Conservation. Would reluctantly support a split E2 Environmental Conservation/E3 Environmental Management zone. Property contains a dwelling and cleared APZ (2ha).	Objection noted. Lot 500 Otford Road contains a dwelling house. It is recommended that the part of the lot containing the dwelling house be zoned E3 Environmental Management.

Other submissions:

Submitter	Submission
Resident Helensburgh	Lloyd Place precinct – agree.
Resident Helensburgh	Lloyd Place – support.
Email Suburb unknown	Lloyd Place - should be zoned E2 Environmental Conservation.

Form letter/email submissions:

Group / property	Submission
Offord Protection Society	One form letter submitted by 253 persons supporting the proposed rezoning of the precinct. (refer Attachment 5 of Background report)
OffordEco	- One form letter submitted by 43 persons supporting the proposed rezoning of the precinct. - One form letter submitted by 136, persons making a conservation based submission on all precincts - Two form letters submitted by 79 and 123 persons supporting E2 Environmental Conservation for all 23/24 precincts, respectively. - One form letter submitted by 10 persons supporting E2 Environmental Conservation for all bushland precincts. (refer Attachment 5 of Background report)
Helensburgh Business Owner Group	- One form letter submitted by 190 persons supporting Councils knowledge and ability to correctly deal with the rezoning without being swayed by lobbyist groups, but should rely on the experience and the recommendations of qualified experts such as the Willana Report and Council staff. - One form letter submitted by 185 persons supporting the comments in all 56 letters. (refer Attachment 5 of Background report)
Helensburgh Land Pooling Group	One form letter submitted by 837 persons opposing the proposed rezoning from E3 Environmental Management to E2 Environmental Conservation, and supporting a rezoning to E4 Environmental Living. (refer Attachment 5 of Background report)

Review of issues

As previously noted, twenty of the lots in this precinct were created in 1970-71 based on the 2 hectare (5 acre) Country dwelling standard of the day. In April 1971, the standard increased to 20 hectares (50 acres), by which time the lots had been sold to persons planning to build dwelling houses. The Council at the time did not seek an exemption for the precinct, to the increase in the standard. It appears that at least 6 lots are still owned by the original owners or their descendants, while the others have been on-sold.

As noted, owners of 2 of the lots acquired adjoining land to increase their holding to make a dwelling house permissible.

However, the change of standard has conserved the bushland of the precinct and it is an important part of the Moist Forest Corridor and linkage between the Royal National Park – Illawarra Escarpment – Drinking Water Catchment Area.

The land capability of the precinct has been reviewed by consultants SJB, as part of the consideration of an exit strategy (discussed later in this report). SJB noted that the precinct had limited opportunity for development, based on steep slopes, riparian and bushfire constraints.

An E2 Environmental Conservation zone remains appropriate.

As noted the precinct was expanded to include Lot 500 DP 788539 Otford Road (western edge of the precinct), which is a 19.86 hectare property and contains a dwelling house. An earlier version of the draft Planning Proposal proposed that the E3 Environmental Management zone be retained on the land containing the dwelling house, and a buffer area, and the balance of the property be zoned E2 Environmental Conservation. The rezoning of the lot from E3 Environmental Management to E2 Environmental Conservation will change the land uses permitted on the property, notably dwelling houses will no longer be permitted and alterations/rebuilding would rely on existing use rights. In this instance, the rezoning of the part of the property containing the dwelling house to E2 Environmental Conservation is considered to be inconsistent with the zone objectives and it is proposed that an E3 Environmental Management zone be retained for that part of the property.

Exit strategy

If Council resolves to proceed with the E2 Environmental Conservation zone, dwelling houses will not be permitted. The NSW Environmental Planning and Assessment Act 1979, does not provide for compensation if planning controls are made more restrictive, nor require the payment of a betterment tax if planning controls up-zone land. Consequently, there is no statutory obligation for Council to compensate owners as a result of the 1971 decision or a more recent decision. However, it could be argued that Council has a moral obligation to compensate owners, as on the one hand it approved the subdivision of the land, and on another changed the development standard, and removed the dwelling entitlement. While some lots have been sold, some landowners have been waiting since 1971 to build a house or for compensation.

There is a level of community sympathy for the owners in this precinct, as the lots were purchased when dwelling houses were permissible and the entitlement was removed. This is unlike other precincts, where land was purchased in the hope that the planning controls would be amended to permit dwelling houses.

Council at its meeting on 28 November 2011 resolved (in part) that:

- 3 *Council Officers prepare a further report exploring Options (a), (e) and (f) of this report following consultation with the landowners.*

The three nominated options were:

- a Retain the current E3 Environmental Management zone and current planning controls (no change). The retention of a minimum lot size of 40 hectares per dwelling would not permit the erection of any new dwelling houses.
- e Rezone the majority of the precinct to E2 Environmental Conservation and permit a cluster of dwelling houses on the eastern side adjacent to Otford. This option proposes that the owners be permitted to “pool” their land and re-subdivide to create 20 small lots on the western edge of Otford near the intersection with Lloyd Place. The larger balance of the land would be transferred to public ownership. This option would preserve the balance of the bushland in the precinct, but allow the owners to build a dwelling house in close proximity to their current holding. It would require the co-operation of all landowners and the identification of a suitable area.
- f Rezone the precinct to E2 Environmental Conservation, and not permit a dwelling house on the land and transfer the lots into public ownership. To estimate possible acquisition costs, in 2010 Council engaged a Valuer to review the land values within the Lloyd Place precinct. The Valuer estimated the land to be worth \$30,000 per lot based on its unimproved standard and dwelling houses not being allowed. If dwellings were allowed the value would increase substantially and be in the order of \$225,000 - \$320,000 depending on location, size, ability to service, and constraints.

In terms of option (e), consultants SJB were engaged to undertake an independent review of the land capability of the precinct to determine if there is land suitable for a cluster housing/land pooling option.

SJB undertook a land capability review, concentrating on slope and riparian corridor constraints and found that the majority of the precinct was not capable of residential development. However, there were two small areas that were capable, one on lot 3 DP 242135 (0.4ha) and the other on Lot 251 DP 80600 (0.67ha – noting the lot already contains a dwelling in the E4 Environmental Living part of the property). However, once bushfire constraints and the need to clear land for Asset Protection Zones (APZs), these sites were also not suitable. SJB concluded that finding a site in the precinct capable of supporting 20 dwellings was not achievable (Attachment 1). Accordingly, it is considered that option (e) is not possible. Option (e) would also require the support of the majority of owners, which may be difficult to achieve.

In terms of option (f), as noted, a number of the owners indicated that they would be prepared for the land to be acquired, based on a value that recognised the permissibility of a dwelling house, and they also wanted their rates repaid. A more recent valuation has not been obtained. A smaller vacant lot (approximately 800m²) within the Land Pooling precinct is currently on the market for \$46,700. If the lots permitted a dwelling house, the value could be in the order of \$250,000 – \$300,000.

As the lots are not capable of a dwelling house, the full value should not be paid. Council could offer a non-residential value plus an additional amount to provide an exit strategy and encourage owners to sell. For example the Foundation for National Parks

and Wildlife is currently offering to buy land in Heritage Estates for \$5,000 per lot. The Heritage Estate is a 180 hectare paper subdivision of approximately 1,200 lots located in the Shoalhaven Council area. The Foundation's website indicates that recent sales and valuations put the price of a standard lot at around \$1,000 and they have received offers to purchase over 500 of the lots.

A review of rates paid for one lot in the precinct indicates that between 1973 and 1993 some \$6754 was paid, which equates to \$22,563 in today's dollars. In 1993, the Local Government Act 1993 was introduced and the rate category change. Between 1993 and 2012 a further \$2,500 in rates was paid on that property. Consequently a rates refund may be in the order of \$25,000-\$28,000 per property, but would require a detailed analysis of each property.

As a guide, the acquisition of the twenty one vacant lots could cost:

Acquisition value per lot	Rate refund per lot	Total cost
\$30,000 (2010 estimate)	\$25,000 (lower est.)	\$1.155 million
\$30,000 (2010 estimate)	\$28,000 (higher est.)	\$1.218 million
\$50,000 (includes low token value)	\$28,000	\$1.638 million
\$100,000 (includes higher token value)	\$28,000	\$2.688 million
\$250,000 (low dwelling entitlement value)	\$28,000	\$5.838 million
\$300,000 (high dwelling entitlement value)	\$28,000	\$6.888 million

Council would need to budget for the acquisitions as part of the preparation of future Annual Plans/Budgets. Council would need to determine whether acquisitions should be funded from general rates revenue, or through the introduction of a special rate, or try to secure a grant from State/Federal Government or through Section 94A Contributions or a combination of approaches. If a special rate was introduced, consideration would need to be given as to what area it should be applied and for how many years. The cost per rateable property would be lower over a larger number of properties and over a longer timeframe. It is unlikely that many ratepayers would want a rate increase to fund the acquisition, and those living further away less likely. Additionally, if ratepayers were asked whether they would support a rate increase and for what purpose, it is unlikely that land acquisition in Helensburgh/Otford would be their highest priority, when compared to competing issues such as the need for infrastructure renewal and improvements.

It is noted that the rezoning proposal, submitted on behalf of Ensile Pty Ltd proposed to offer the landholders lots within the Lady Carrington Estate South precinct if Council resolved to support the rezoning of that precinct to permit residential development (option (d) in the Council report of 28 November 2011). As Council did not support the rezoning of the Lady Carrington Estate South precinct this option could not proceed. Consultants for Ensile Pty Ltd have recently re-submitted the rezoning proposal and it contains the same offer for the Lloyd Place/Otford Road landowners.

Options

Zoning:

1. Proceed with the rezoning of the precinct to E2 Environmental Conservation as exhibited in the draft Planning Proposal.
2. Proceed with the rezoning of the precinct to E2 Environmental Conservation, except for part of Lot 500 DP 788539 Otford Road where the land around the dwelling house is to retain an E3 Environmental Management zone.
3. Not proceed with the rezoning to E2 Environmental Conservation and retain the current E3 Environmental Management zone.
4. Resolve to prepare a new Planning Proposal to rezone the precinct to another zone, and undertake further community consultation.

Exit strategy:

- 1 Not provide an exit strategy.
- 2 Identify the 21 lots without a dwelling house for acquisition, by resolving to prepare a new Planning Proposal that identifies the lots on the Land Reservation Acquisition Map for acquisition for Local Open Space purposes (Attachment 2). This will require further community consultation, and if progressed would enable the owners to request Council to acquire their land when their circumstances warrant.

Recommendation: *It is recommended that the rezoning of Lloyd Place precinct to the E2 Environmental Conservation zone be progressed as part of the final Planning Proposal, except for part of Lot 500 DP788539 Otford Road which will retain an E3 Environmental Management zone around the existing dwelling house.*

It is recommended that the 21 lots without a dwelling house be identified by resolving to prepare a new Planning Proposal that identifies the lots on the Land Reservation Acquisition Map for acquisition for Local Open Space purposes (Attachment 2), and seek Gateway approval prior to exhibition.

Conclusion

This report is one of a series of reports to assist Council in reviewing the previous decisions on the lands formerly zoned 7(d) Hacking River Environmental Protection. It is recommended that the rezoning of Lloyd Place precinct to the E2 Environmental Conservation zone be progressed as part of the final Planning Proposal, except for part of Lot 500 DP 788539 Otford Road. It is recommended that a new draft Planning Proposal be prepared to rezone land within the Lloyd Place precinct. This new draft Planning Proposal will require referral to the NSW Department of Planning and Infrastructure for Gateway approval, prior to exhibition.

