

ITEM 11**REVIEW OF 7(D) LANDS - LADY CARRINGTON ESTATE, LILYVALE, CENTRAL BUSHLAND AND OTFORD VALLEY FARM PRECINCTS**

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 Lady Carrington Estate, Lilyvale, Central Bushland and Otford Valley Farm precincts.

It is recommended that the Planning Proposal for these precincts be finalised.

On 21 June 2013, a new rezoning submission for these precincts and other land was lodged by Smyth Planning. It is recommended that the proposal not be supported.

Recommendation

- 1 The part of the Planning Proposal for Lot 1 DP 616229 (Lady Carrington Estate precinct) which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the precinct to the E2 Environmental Conservation zone be progressed to finalisation;
- 2 The part of the Planning Proposal for the Lilyvale precinct which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the precinct to the E2 Environmental Conservation zone be progressed to finalisation;
- 3 The part of the Planning Proposal for the Central Bushland precinct which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the precinct to the E2 Environmental Conservation zone be progressed to finalisation;
- 4 The part of the Planning Proposal for the Otford Valley Farm precinct which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the part of the precinct to the E2 Environmental Conservation and retaining part of the site as E3 Environmental Management zones, as exhibited, be progressed to finalisation; and
- 5 The preparation of a new draft Planning Proposal to rezone the Land Pooling and Lady Carrington Estate South precincts to permit residential development, in exchange for the transfer of the Ensile Pty Ltd holdings within Lady Carrington Estate, Lilyvale, Central Bushland and Otford Valley Farm precincts to Council or the State, via a draft Planning agreement, as requested by Smyth Planning on 21 June 2013, not be supported.

Attachments

There are no attachments for this report.

Report Authorisations

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

Background

The 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.

Ensile Pty Ltd and Cambalong Pty Ltd own two hundred and seventy seven (277) lots which range in size from 367m² to 98 hectares, with a total area of 357 hectares. It is understood that the companies purchased the land in the 1970s and 1980s. The holding extends between Helensburgh and Otford and forms most of the eastern side of Helensburgh, and includes most of Lilyvale. Within the Otford Valley Farm, land is used for an equestrian centre and contains two dwelling houses. The majority of the land is bushland, although it does contain riding and fire trails.

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 four precincts largely owned by Ensile Pty Ltd, namely the Lady Carrington Estate, Lilyvale, Central Bushland and Otford Valley Farm precincts. One lot within both the Lilyvale and Central Bushland precincts are owned by other persons.

The company's holdings in the Camp Gully Creek, Lady Carrington Estate South and Land Pooling precincts are discussed in separate reports.

Council at its meeting on 28 November 2011 considered a report which recommended that the Lady Carrington Estate, Lilyvale, Central Bushland, and Otford Valley Farm precincts be largely zoned E2 Environmental Conservation, with part of Otford Valley Farm being zoned E3 Environmental Management. Council resolved that:

- 1 *A new draft Planning Proposal be prepared to rezone the Lady Carrington Estate, Lilyvale, Central Bushland and part of the Otford Valley Farm precinct from E3 Environmental Management to E2 Environmental Conservation. The part of Otford Valley Farm containing the dwellings and equestrian centre is to remain E3 Environmental Management.*
- 2 *The draft Planning Proposal be referred to the NSW Department of Planning and Infrastructure for Gateway determination, and if approved be exhibited for a minimum period of twenty eight (28) days.*

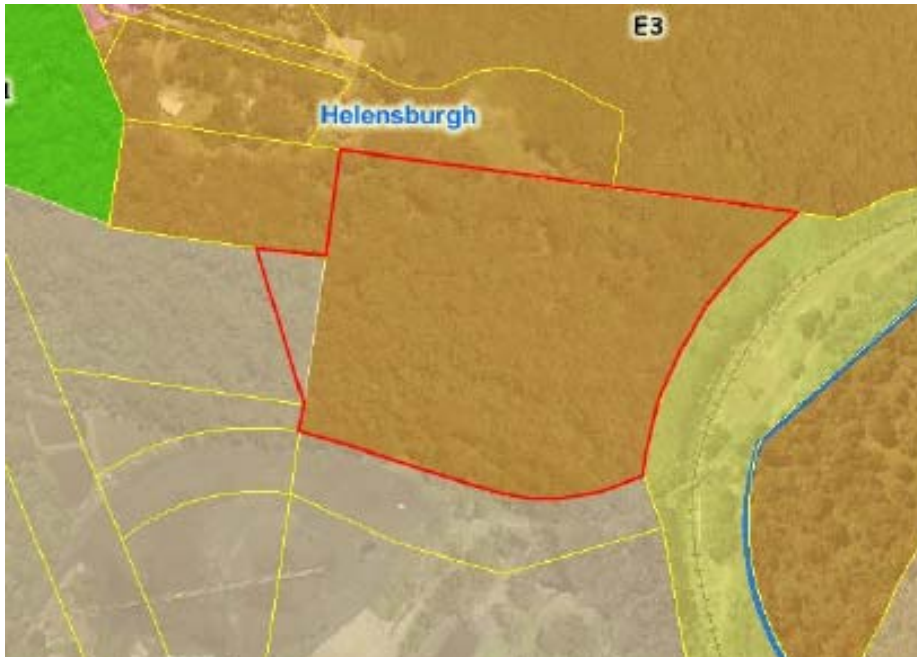
The draft Planning Proposal was exhibited from 6 August to 26 October 2012. This report addresses the issues raised in the submissions for these precincts.

Proposal

Lady Carrington Estate

The Lady Carrington Estate precinct consists of one lot - Lot 1 DP 616229 (6.5 hectares) which is located to the south of the Old Farm Road precinct and was referred in the Helensburgh Commission of Inquiry report as “Lady Carrington Estate”. This site contains significant bushland, does not contain a dwelling house.

Lady Carrington Estate location and current zoning map 1



The majority of Lot 1 DP 616229 (Lady Carrington Estate) is zoned E3 Environmental Management, and part of the lot is incorrectly zoned RU1 Primary Production, similar to the adjacent Metropolitan Colliery.

Ensile Pty Ltd had previously offered to transfer this lot to Council or the State, as part of the draft Planning Agreement, in exchange for development in the Land Pooling and Lady Carrington Estate South precincts. Council at its meeting on 28 November 2011 did not support the development in those precincts or the draft Planning Agreement. A new draft Planning Agreement and rezoning proposal has recently been lodged by consultants for the company, as noted later in this report.

The Council report on 28 November 2011 recommended that the entire lot, be zoned E2 Environmental Conservation, including the part that is zoned RU1 Primary Production. Council endorsed the recommendation.

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
Ensile Pty Ltd holdings	Consultant submission objecting to all land being zoned E2 Environmental Conservation and requesting residential development within the Land Pooling and Lady Carrington Estate South precincts. Request deferral of the precincts until Council has done a proper study to identify appropriate zonings. Attach copy of Helensburgh Land Capacity Council report 2006 and Ecological review.	Objection noted

Other submissions:

Submitter	Submission
Resident Helensburgh	Support the rezoning of Lady Carrington Estate to E2 Environmental Conservation.
Resident Helensburgh	Lady Carrington Estate – support rezoning.
Email Suburb unknown	Ensile holdings – should all be zoned E2 Environmental Conservation.

Form letter/email submissions:

Group / property	Submission
Oxford Protection Society	One form letter submitted by 238 persons supporting the proposed rezoning of the precinct (refer Attachment 5 of Background report)
OxfordEco	<ul style="list-style-type: none"> One form letter submitted by 41 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; and One form letter submitted by 10 persons supporting E2 Environmental Conservation for all bushland precincts. (refer Attachment 5 of Background report)

There are no significant issues with this precinct. The land is constrained and is not suitable for development.

Options

- 1 Proceed with the rezoning of the Lady Carrington Estate precinct to E2 Environmental Conservation as exhibited in the draft Planning Proposal.
- 2 Not proceed with the rezoning to E2 Environmental Conservation and retain the current E3 Environmental Management zone.
- 3 Resolve to prepare a new Planning Proposal to rezone the precinct to another zone, and undertake further community consultation.

Recommendation: *It is recommended that the rezoning of Lady Carrington Estate precinct (Lot 1 DP 616229) to the E2 Environmental Conservation zone be progressed as part of the final Planning Proposal.*

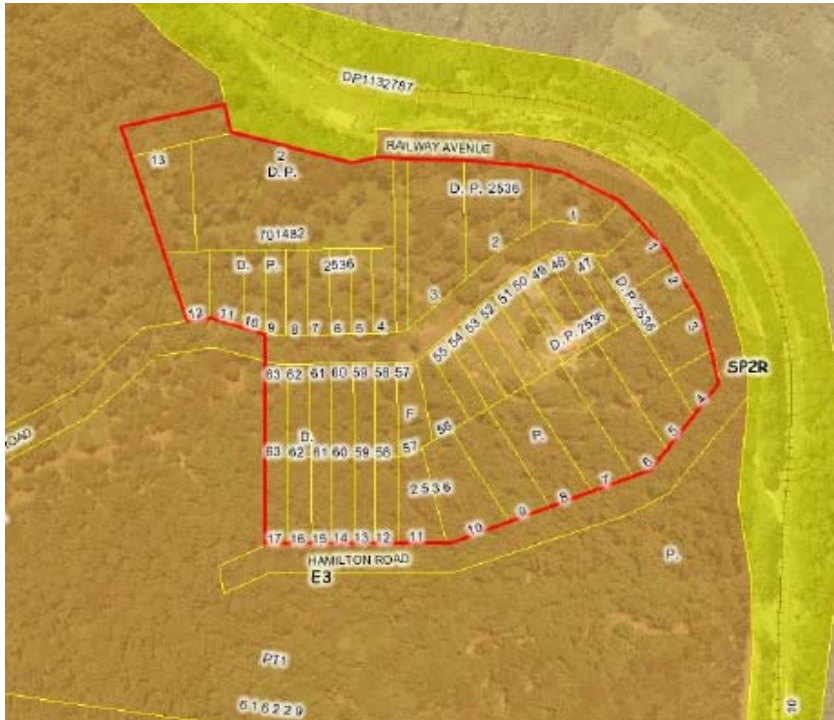
Lilyvale Precinct

Lilyvale is an isolated paper subdivision, consisting of 49 lots. Ensile Pty Ltd owns 48 of the lots, and one lot is owned by another party. Access is via a track following Lilyvale Road from Helensburgh, although part of the road reserve has been closed. There is one dwelling at Lilyvale, on the lot not owned by Ensile Pty Ltd. The majority of the lots are bushland and there are no services. Originally there was a rail platform at Lilyvale.

Ensile Pty Ltd had previously offered to transfer its holdings at Lilyvale to Council or the State, as part of the draft Planning Agreement, in exchange for development in the Land Pooling and Lady Carrington Estate South precincts. Council at its meeting on 28 November 2011 did not support the development in those precincts or the draft Planning Agreement. The draft Planning Agreement and rezoning proposal has recently been re-lodged by consultants for the company.

The Council report on 28 November 2011 recommended that the precinct be zoned E2 Environmental Conservation. Council endorsed the recommendation.

Lilyvale precinct location and current zoning map 2



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
Ensile Pty Ltd holdings	Consultant submission objecting to all land being zoned E2 and requesting residential development within the Land Pooling and Lady Carrington Estate South precincts. Request deferral of the precincts until Council has done a proper study to identify appropriate zonings. Attach copy of Helensburgh Land Capacity Council report 2006 and Ecological review.	Objection noted

Other submissions:

Submitter	Submission
Resident Helensburgh	Lilyvale precinct - strongly agree, close to National Park.
Resident Helensburgh	Lilyvale – support proposal.
Email Suburb unknown	<ul style="list-style-type: none"> Ensile holdings – should all be zoned E2 Environmental Conservation. Lilyvale – support E2 Environmental Conservation proposal.

Form letter/email submissions:

Group / property	Submission
Otford Protection Society	One form letter submitted by 233 persons supporting the proposed rezoning of the precinct. (refer Attachment 5 of Background report)
OtfordEco	<ul style="list-style-type: none"> One form letter submitted by 41 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)

There are no significant issues with this precinct. No development at Lilyvale has been proposed or supported, and it is proposed that the area remain bushland. The land is constrained and is not suitable for development.

Options

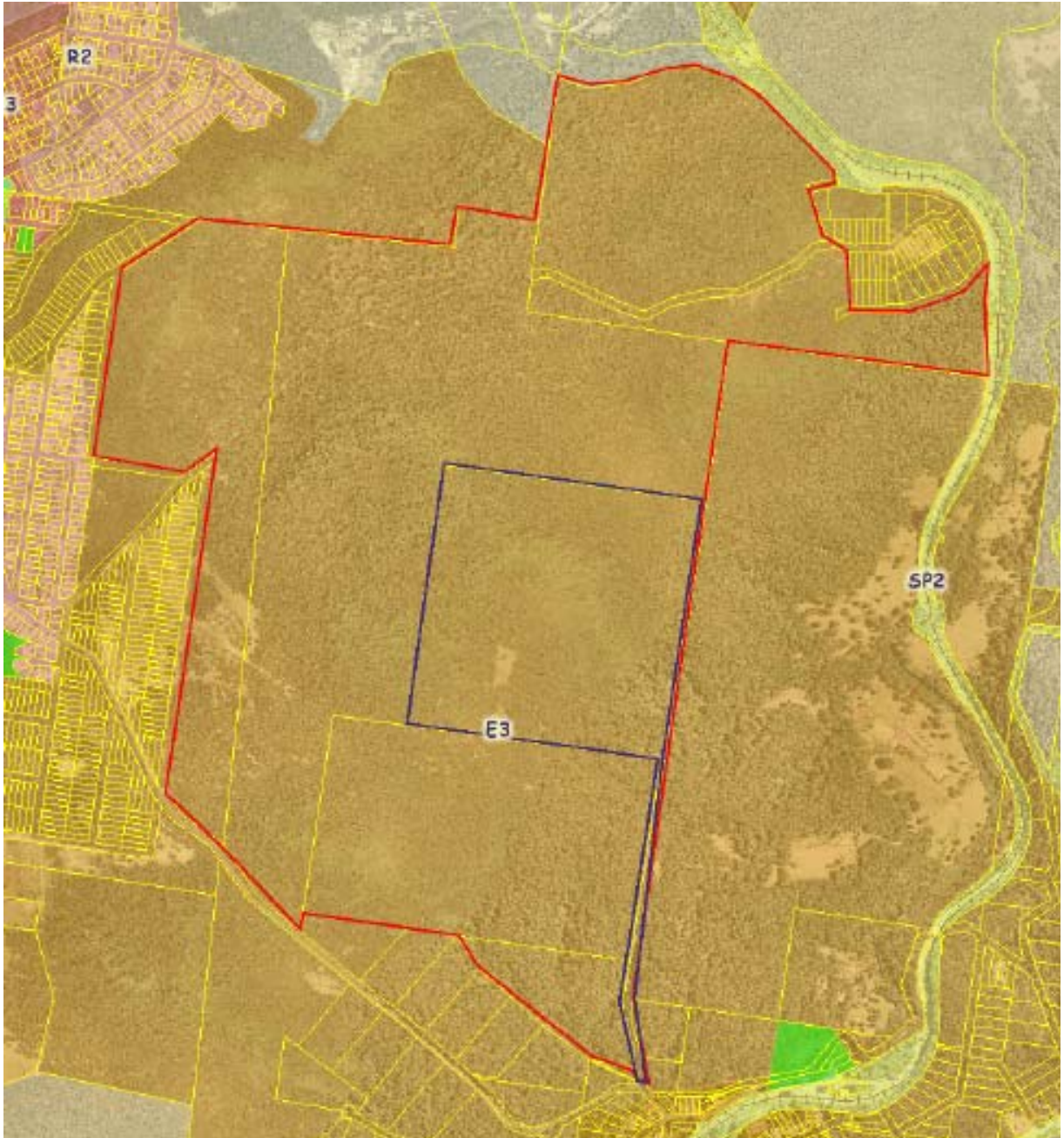
- 1 Proceed with the rezoning of the Lilyvale precinct to E2 Environmental Conservation as exhibited in the draft Planning Proposal.
- 2 Not proceed with the rezoning to E2 Environmental Conservation and retain the current E3 Environmental Management zone.
- 3 Resolve to prepare a new Planning Proposal to rezone the precinct to another zone, and undertake further community consultation.

Recommendation: *It is recommended that the rezoning of Lilyvale precinct to the E2 Environmental Conservation zone be progressed as part of the final Planning Proposal.*

Central Bushland Area

The area between Lady Carrington Estate South, Lloyd Place, Otford and Metropolitan Colliery is contained within six large lots. Ensile Pty Ltd owns five of the lots. Lot 23 DP 752033 (40 hectares) in the centre is owned by another owner (map 3 outlined in blue). The area contains a number of riding and fire trails and a telecommunications tower. There are no dwellings in the precinct.

Central Bushland Area location and current zoning map 3



This precinct has the land with the highest biodiversity value in the study area and forms an important part of the fauna movement corridor. No development in the precinct has been proposed or supported, and it is proposed that the area remain bushland.

Lot 23 DP 752033 and three of the lots owned by Ensile Pty Ltd do currently meet the minimum lot size for a dwelling house. However, the erection of dwellings on these lands is not supported, as it would impact on the bushland, through clearing for the dwelling and Asset Protection Zone, have poor access and no access to services.

Ensile Pty Ltd had previously offered to transfer its holdings to Council or the State, as part of the draft Planning Agreement, in exchange for development in the Land Pooling and Lady Carrington Estate South precincts. Council at its meeting on 28 November 2011 did not support the development in those precincts or the draft Planning Agreement. The draft Planning Agreement and rezoning proposal has recently been re-lodged by consultants for the company.

The Council report on 28 November 2011 recommended that the precinct be zoned E2 Environmental Conservation. Council endorsed the recommendation.

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 23 DP 752033 – within Central bushland precinct	Strongly oppose rezoning from E3 Environmental Management to E2 Environmental Conservation. 40.47 ha property in family for over 50 years. Originally zoned Rural A and had a dwelling entitlement. Have paid rates. If you want my property, purchase it! Property is not part of the Ensile proposal.	Objection noted
Ensile Pty Ltd holdings	Consultant submission objecting to all land being zoned E2 Environmental Conservation and requesting residential development with the Land Pooling and Lady Carrington Estate South precincts. Request deferral of the precincts until Council has done a proper study to identify appropriate zonings. Attach copy of Helensburgh Land Capacity Council report 2006 and Ecological review.	Objection noted

Other submissions:

Submitter	Submission
Resident Helensburgh	Central Bushland precinct - strongly agree, close to National Park.
Resident Helensburgh	Central Bushland – support proposal.
Email Suburb unknown	<ul style="list-style-type: none"> Ensile holdings – should all be zoned E2 Environmental Conservation; and Central bushland – support E2 Environmental Conservation. The track and road system be reinstated.
Resident Helensburgh	Support the rezoning of Central Bushland to E2 Environmental Conservation.

Form letter/email submissions:

Group / property	Submission
Otford Protection Society	One form letter submitted by 247 persons supporting the proposed rezoning of the precinct. (refer Attachment 5 of Background report)
OtfordEco	<ul style="list-style-type: none"> One form letter submitted by 42 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)

Review of issues

As indicated previously, the Central Bushland area contains some of the most sensitive and significant bushland in the study area. It forms an important part of the fauna movement corridor. No development in the precinct has been proposed or supported, and it is proposed that the area remain bushland.

In terms of planning controls, it is recommended that the precinct be zoned E2 Environmental Conservation. The location of the eastern boundary of the E2 Environmental Conservation zone, may be dependent by the review of the Lady Carrington Estate South precinct.

As noted, Lot 23 DP 752033 has an area greater than 40 hectares, and is one of the few lots on which a dwelling house is permissible with development consent under the previous 7(d) zone and current E3 Environmental Management zone. The draft Planning Proposal proposes to rezone the lot to E2 Environmental Conservation, which will remove the permissibility of a dwelling house. 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 the owner of Lot 23 DP 752033 for the rezoning to E2 Environmental Conservation.

Options

- 1 Proceed with the rezoning of the Central Bushland precinct to E2 Environmental Conservation as exhibited in the draft Planning Proposal.
- 2 Not proceed with the rezoning to E2 Environmental Conservation and retain the current E3 Environmental Management zone.

- 3 Resolve to prepare a new Planning Proposal to rezone the precinct to another zone, and undertake further community consultation.

Recommendation: *It is recommended that the rezoning of the Central Bushland precinct to the E2 Environmental Conservation zone be progressed as part of the final Planning Proposal.*

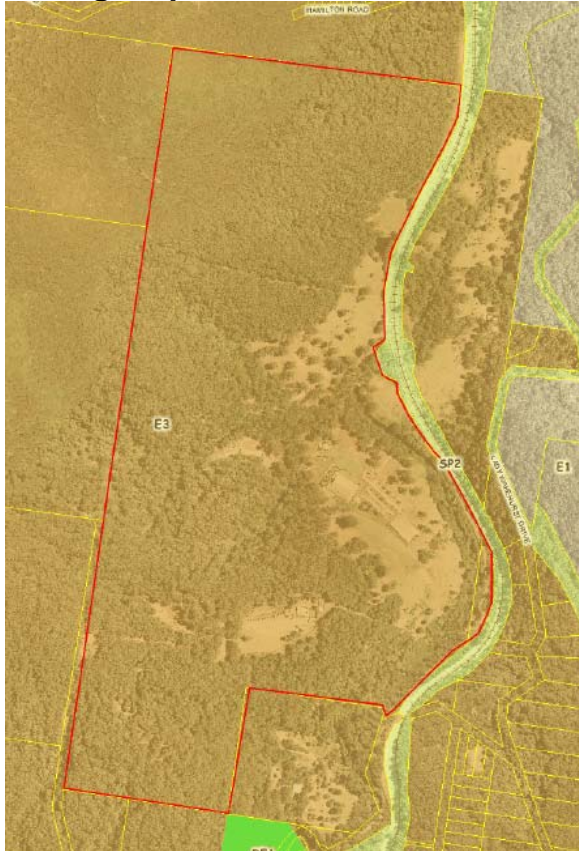
Otford Valley Farm

The eastern part of the Ensile Pty Ltd holding is Lot 3 DP 223554 which has an area of 96.95 hectares. The lot contains Otford Valley Farm which consists of an equestrian centre and two dwelling houses. The northern, western and southern parts of the lot contain significant bushland.

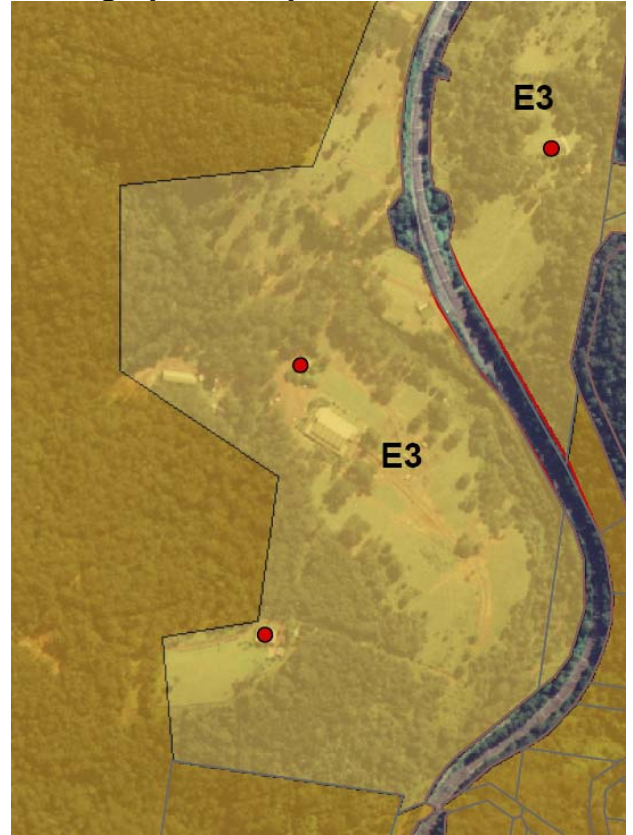
Ensile Pty Ltd had previously offered to transfer its holdings to Council or the State, with a lease back period of 25 years to allow for the continued operation of the equestrian centre, as part of the draft Planning Agreement, in exchange for development in the Land Pooling and Lady Carrington Estate South precincts. Council at its meeting on 28 November 2011 did not support the development in those precincts or the draft Planning Agreement. The draft Planning Agreement and rezoning proposal has recently been re-lodged by consultants for the company.

The Council report on 28 November 2011 recommended that the precinct be zoned part E3 Environmental Management (the land containing the dwelling houses and the equestrian centre) and part E2 Environmental Conservation. Council endorsed the recommendation.

Otford Valley Farm location and current zoning map 4



Otford Valley Farm – Draft Review zoning option map 5



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
Ensile Pty Ltd holdings	Consultant submission objecting to all land being zoned E2 and requesting residential development within the Land Pooling and Lady Carrington Estate South precincts. Request deferral of the precincts until Council has done a proper study to identify appropriate zonings. Attach copy of Helensburgh Land Capacity Council report 2006 and Ecological review.	Objection noted

Other submissions:

Submitter	Submission
Resident Helensburgh	Otford Valley Farm – support proposal.
Email Suburb unknown	<ul style="list-style-type: none"> • Ensile holdings – should all be zoned E2 Environmental Conservation; and • Otford Valley Farm – should be zoned E2 Environmental Conservation.

Form letter/email submissions:

Group / property	Submission
Otford Protection Society	<p>One form letter submitted by 237 persons supporting the proposed rezoning of the precinct.</p> <p>(refer Attachment 5 of Background report)</p>
OtfordEco	<ul style="list-style-type: none"> • One form letter submitted by 40 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; and • One form letter submitted by 10 persons supporting E2 Environmental Conservation for all bushland precincts. <p>(refer Attachment 5 of Background report)</p>

Review of issues

The E3 Environmental Management zone is appropriate and would allow the on-going use of the site for an “animal boarding or training establishment. The northern, western and southern parts of the lot contain steep bushland areas where an E2 Environmental Conservation zone is appropriate.

Options

- 1 Proceed with the rezoning of the Otford Valley Farm precinct to part E2 Environmental Conservation and part E3 Environmental Management as exhibited in the draft Planning Proposal.
- 2 Not proceed with the rezoning to part E2 Environmental Conservation and retain the current E3 Environmental Management zone.
- 3 Resolve to prepare a new Planning Proposal to rezone the precinct to another zone, and undertake further community consultation.

Recommendation: *It is recommended that the rezoning of the Otford Valley Farm precinct to part E2 Environmental Conservation and part E3 Environmental Management zones be progressed as part of the final Planning Proposal.*

New rezoning proposal

On 21 June 2013, a new rezoning submission was lodged by Smyth Planning on behalf of Ensile Pty Ltd and a number of owners within the Helensburgh Land Pooling precinct. The submission re-presented previous submissions and requests that a draft Planning Proposal be prepared to:

- Rezone the Lady Carrington Estate South precinct to permit low-medium density residential development;
- Rezone the Helensburgh Land Pooling precinct to permit low-medium density residential development;
- Retain an E3 Environmental Management zone on Otford Valley Farm;
- Rezone the balance of the Ensile Pty Ltd holdings in the Lady Carrington Estate, Lilyvale, Camp Gully Creek, Central Bushland precincts to E2 Environmental Conservation;
- Endorse a Voluntary Planning Agreement, prepared by Minter Ellison Solicitors, to facilitate the transfer of the E2 Environmental Conservation holdings within the Lady Carrington Estate, Lilyvale, Camp Gully Creek, Central Bushland precincts to the National Parks and Wildlife Service; and
- Resolve the Lloyd Place precinct by enabling owners transfer their lot for a new entitlement to within one of the new residential estates.

The rezoning proposal contained a copy of the 2009 rezoning request and concept plans previously considered by Council. It does not contain any new environmental, social or economic studies or information.

It should be acknowledged that the “gateway appeal” provisions can be applied if Council does not support or determine the request within 90 days. The Gateway appeal enables the proponent to bypass Council and seek the Department of Planning and Infrastructure’s support for the rezoning.

It is recommended that Council not resolve to prepare a new draft Planning Proposal to progress the submission.

Conclusion

This report is one of a series of reports to assist Council in reviewing the issues raised in submissions following the exhibition of a draft Planning Proposal on the lands formerly zoned 7(d) Hacking River Environmental Protection. It is recommended that the Planning Proposal for the Lady Carrington Estate, Lilyvale and Central Bushland and part of Otford Valley Farm precincts be progressed to finalisation.