

ITEM 2

PRE-GATEWAY APPEAL - LADY CARRINGTON ESTATE SOUTH,
HELENSBURGH

As part of the review of former 7(d) lands at Helensburgh, Otford and Stanwell Tops, on 29 July 2013 Council resolved that the Lady Carrington Estate and Land Pooling precincts be zoned E2 Environmental Conservation. Council did not support a request to zone these precincts to permit residential development and the proponent subsequently lodged a pre-Gateway appeal to the NSW Department of Planning and Environment (the Department).

The Department referred the Council Planning Proposal and the pre-Gateway Appeal to the Southern Joint Regional Planning Panel (JRPP) for review. In July 2014, the JRPP recommended that further studies be undertaken for the Lady Carrington Estate South precinct to guide the preparation of a Planning Proposal to permit residential development. The JRPP did not support the pre-Gateway Appeal on the Land Pooling precinct, instead supporting Council's position, that the area should be zoned E2 Environmental Conservation (apart from the existing uses).

The Department has recently advised that it has accepted the recommendations of the JRPP and determined that an amended proposal for the Lady Carrington Estate South precinct should proceed to Gateway determination. The boundary of the rezoning being determined by additional studies. The Department also accepted the recommendation that the Land Pooling precinct be zoned E2 Environmental Conservation.

RECOMMENDATION

- 1 The decision of the NSW Department of Planning and Environment to support the preparation of a draft Planning Proposal for the Lady Carrington Estate South precinct be noted.
- 2 The NSW Department of Planning and Environment be advised that Council is willing to be the Relevant Planning Authority.
- 3 Council officers be authorised to be involved in the preparation of the additional studies by the proponent, review the submitted reports and work on the Planning Proposal and reports to Council.
- 4 Based on the 2012-13 Fees and Charges (applicable at the time of lodgement of the Planning Proposal request) an invoice of \$11,040 be sent to the proponent for the second stage of the rezoning fee.

ATTACHMENTS

- 1 Letter from NSW Department of Planning and Environment
- 2 Lady Carrington Estate South precinct

REPORT AUTHORISATIONS

Report of: Renee Campbell, Manager Environmental Strategy and Planning
Authorised by: Andrew Carfield, Director Planning and Environment – Future, City and Neighbourhoods

BACKGROUND

The planning and zoning issues of the non-urban lands surrounding the residential areas of Helensburgh, Otford and Stanwell Tops has a long history dating back to the introduction of the County of Cumberland Planning Scheme Ordinance in 1951. The minimum land area required for a dwelling has increased a number of times and the zoning changed from non-urban to 7(h) Hacking River – Environmental Protection, 7(d) Hacking River Environmental Protection and in 2010 to E3 Environmental Management. A more detailed history of the area and planning controls is contained in the Item 1 report considered by Council on 29 July 2013.

On 28 November 2011, Council considered 12 reports on the former 7(d) lands and endorsed a draft Planning Proposal for exhibition. The draft Planning Proposal was exhibited from 6 August to 26 October 2012. Council received over 58,000 submissions, the majority of which were form emails generated by various websites of community groups.

On 29 July 2013, Council considered 13 reports addressing the issues raised in the submissions. Council resolved to make a number of amendments to the exhibited Planning Proposal and submit the revised Planning Proposal to the (then) Department of Planning and Infrastructure for finalisation. Specifically, Council resolved that the Lady Carrington Estate South and Land Pooling precincts (except for existing uses) be zoned E2 Environmental Conservation.

On 5 February 2014, the Department referred the Planning Proposal to the Southern Joint Regional Planning Panel (JRPP) for review and recommendations. The Department also referred to the JRPP a Pre-Gateway appeal lodged by Smyth Planning Pty Ltd against Council's refusal to support the rezoning of the Lady Carrington Estate South and the Land Pooling precincts to permit urban development. Council had resolved that the majority of these precincts be zoned E2 Environmental Conservation.

In July 2014, the JRPP recommended that further studies be undertaken for the Lady Carrington Estate South precinct to guide the preparation of a Planning Proposal to permit residential development. The JRPP did not support the pre-Gateway Appeal on the Land Pooling precinct, instead supporting Council's position, that the area should be zoned E2 Environmental Conservation (apart from the existing uses).

For the Lady Carrington Estate South precinct, the JRPP recommended that:

- 3 *Further investigations be carried out by or on behalf of the owners of the Lady Carrington Estate South precinct to validate the presence, location and characteristics of threatened species, endangered ecological communities and*

fauna habitat linkages, and to determine the current water quality of natural watercourses within and in the vicinity of the precinct. These investigations are to evaluate potential impacts of urban development on ecological attributes in this precinct and the water quality of the Hacking River catchment. Reports of these investigations are to take into account submissions from state agencies and, once finalised, are to be peer reviewed by relevant state agencies.

- 4 *A concept plan of subdivision be prepared by Smyth Planning and submitted to Wollongong City Council for the cleared land at the Lady Carrington Estate South precinct, including the vegetated land located between the existing urban settlement of Helensburgh and the cleared land. The plan of subdivision should be based on the application of the sustainability criteria contained in Appendix 1 to the Illawarra Regional Strategy to ascertain areas suitable for development, appropriate environmental safeguards having regard to the findings of investigations carried out in response to Recommendation 3, and proposed housing types and densities. The vegetation offsets tool developed by the Office of Environment and Heritage is to be applied to ensure that an adequate area of vegetated land can be set aside to offset clearing of the area of land located at the north west of the precinct between the existing urban area and cleared land.*
- 5 *Subject to recommendations 2, 3 and 4, a planning proposal be submitted to the Department of Planning and Environment for determination under section 56 of the Environmental Planning and Assessment Act 1979. The proposal is to amend Wollongong Local Environmental Plan 2009 by prescribing appropriate land zones and lot sizes for the Central Otford, Otford North and Lady Carrington Estate South precincts, and include the developable land at the Lady Carrington Estate South precinct as an Urban Release Area.*

On 25 August 2014, Council considered a report on the JRPP recommendations and resolved (in part) to advise the Department that Council:

objects to the JRPP's recommendation on the Lady Carrington Estate South precinct and emphasising Council's desire to review any additional information that may lead to a Gateway determination and exhibition. If the Department is supportive of the proposal, the additional ecological and water quality investigations and concept subdivision plan recommended by the JRPP should occur prior to any Gateway determination, and Council be given the opportunity to review the documentation.

The Department has recently advised that it has accepted the recommendations of the JRPP and determined that an amended proposal should proceed to Gateway determination (Attachment 1). The boundary of the rezoning being determined by additional studies.

This position is contrary to Council's proposed rezoning to E2 Environmental Conservation and objection to the JRPP recommendation.

The Department has asked Council to prepare a Planning Proposal for Gateway determination, following the completion of the required additional studies, to be

prepared by the proponent. The Department has indicated that if Council does not wish to progress the matter an alternate Relevant Planning Authority (RPA) may be appointed.

In terms of the Land Pooling precinct, the Department advised that it supported the JRPP recommendation and that it not be part of the new Planning Proposal. This is consistent with Council's resolution.

PROPOSAL

The Lady Carrington Estate South precinct is located on the eastern side of Helensburgh and is bounded by Otford Road and Lilyvale Road (Attachment 2). The precinct covers an area of 10.3 hectares and contains 108 lots, of which 107 are paper subdivision residential sized lots (1,000m²) and the other lot is 3.3 hectares in size.

The land is currently zoned E3 Environmental Management under the Wollongong LEP 2009. On 29 July 2013, Council resolved that the precinct be zoned E2 Environmental Conservation as part of the draft Planning Proposal for the former 7(d) lands at Helensburgh, Otford and Stanwell Tops.

A large part of the precinct has been cleared, although parts of the precinct are covered in bushland (including the 3.3 hectare lot).

The JRPP did not support the expansion of the cleared area to permit additional residential development as suggested by the proponents' submission and concept plan, apart from the clearing of a small bushland area in the western part near Werrong and Lilyvale Roads. The cleared land covers an area of approximately 9.2 hectares (or 89% of the precinct).

The Department of Planning and Environment, based on the recommendations of the JRPP, have indicated support for further studies to be prepared to guide the development of a Planning Proposal for a residential zoning, on the cleared areas.

The Council report of 25 August 2014 included a suggested process, if the Department supported the pre-Gateway appeal. This process has been updated:

Action			Responsibility
1	a	Threatened species and fauna habitat investigations;	Proponent
	b	Water quality investigation;	
	c	Aboriginal cultural heritage;	
	d	Contaminated lands assessment;	
	e	Bushfire impact assessment; and	
	f	Traffic impact assessment.	

Action	Responsibility
2 Evaluation of potential impacts of urban development on ecological attributes and water quality, including input from State agencies.	Proponent
3 Preparation of concept subdivision plan.	Proponent
4 Submission of reports and plans from Actions 1-3 to Council.	Proponent
5 Review of reports, plans and Planning Proposal.	Council officers, including referrals to State agencies
6 Report to Council.	Council (Relevant Planning Authority)
7 Advise the Department of Planning and Environment of Council's determination. [Note: if Council does not support the Planning Proposal the Department may request the JRPP to review and make recommendations].	Council officers
8 The Department reviews the documentation and Council's report/resolution and determines whether the proposal proceeds to Gateway.	Department of Planning and Environment
9 Gateway determination.	Department of Planning and Environment
10 a If supported, the Planning Proposal will be exhibited. b If not supported no further action.	Council officers
11 If exhibited, Council officers review submissions, and prepare a report to Council.	Council officers
12 Report to Council.	Council (Relevant Planning Authority)
13 Advise the Department of Planning and Environment of Council's determination. [Note: if Council does not support the Planning Proposal the Department may request the JRPP to review and make recommendations].	Council officers
14 If supported, preparation of a draft amending LEP and finalisation/notification.	Department of Planning and Environment

Depending on the findings of the additional studies, the precinct could be developed to contain some additional 110-140 dwellings (at 15 dwellings per hectare). The JRPP has nominated the precinct to have Urban Release Area status. The development of the precinct could increase Helensburgh's population by 338-431 persons (at 3.08 persons per household). This will have an additional impact on the road network and facilities. The increase would not likely be sufficient to justify the establishment of a public high school by the State.

Council has for many years opposed the development of this precinct. This position has been overruled by the State, and Council now needs to determine what involvement it wishes to take in the future process.

Council can participate in the process or request that the Department appoint another Relevant Planning Authority to progress the Planning Proposal. If the later, Council could then consider making submissions during the exhibition period.

It is considered that Council should retain its role as the local Relevant Planning Authority rather than requesting the Department to appoint another organisation. Despite Council's contradictory zoning decision for the precinct, Council is best placed to consult with the local community, and consider the issues holistically.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 under the objective *There is an increase in the physical fitness, mental health and emotional wellbeing of our residents* Community Goal *We are a healthy community in a liveable city*.

It specifically addresses the Annual Plan 2014-15 Key Deliverables *assess rezoning submissions on a priority basis and progress supported planning proposals* which forms part of the Five Year Action *Continue to undertake social, land use and environmental planning activities that assists in service planning* contained within the Revised Delivery Program 2012-17.

FINANCIAL IMPLICATIONS

The project will require the allocation of staff resources to review the submitted reports, prepare the reports to Council and manage the exhibition process. It is likely that Council resources would also be required if the JRPP or another body was appointed as the Relevant Planning Authority.

The Planning Proposal request by Smyth Planning for the Lady Carrington Estate South and Land Pooling Precinct was lodged in June 2013. At the time an initial rezoning fee of \$5,685 was paid. At the time, the 2012-13 Fees and Charges required an initial fee of \$5,685 and a second fee of \$11,040 for major rezoning proposals, where they were supported by Council. As the Department has indicated support for the preparation of a Planning Proposal, it is appropriate that Council invoice the proponent for the second stage rezoning fee of \$11,040. It is noted that the rezoning fee has now increased to \$20,000 in the 2014-15 Fees and Charges (of which \$5,000 is refundable if the request is not supported by Council).

Both the current and historic fees represent a subsidy to the cost of assessing rezoning proposals and do not provide cost recovery. This issue is being reviewed as part of the draft 2015-16 Fees and Charges.

CONCLUSION

The Southern Joint Regional Planning Panel and the NSW Department of Planning and Environment have not supported Council's resolution to rezone the Lady Carrington Estate South precinct to E2 Environmental Conservation. Instead the organisations have recommended that additional studies be prepared by the proponent and reviewed by Council to progress the rezoning of the precinct to permit urban development. It is recommended that Council note the decision and advise the Department that Council is willing to be the Relevant Planning Authority for the draft Planning Proposal.



Planning & Environment

Mr David Farmer
General Manager
Wollongong City Council
Locked Bag 8821
Wollongong NSW 2500

Dear Mr Farmer

**Pre-Gateway review – Lady Carrington Estate South and Land Pooling
(PGR_2013_WOLLG_002_00)**

I refer to a pre-Gateway review request for a proposal to amend the Wollongong Local Environmental Plan 2009 to zone the above land to permit 400 residential lots.

I have considered the request for review, the recommendations of the Southern Joint Regional Planning Panel (JRPP), advice provided by Council and other relevant considerations.

I have determined that the proposal should be amended and proceed to Gateway determination consistent with JRPP recommendations. The amended proposal should apply only to the cleared areas of the Lady Carrington Estate South and not the Land Pooling site, with the precise boundary of the urban footprint to be determined through additional environmental studies and identified in a concept plan of subdivision as described in JRPP recommendations (3) and (4). The JRPP recommendations and report are attached for your information.

Council is asked to prepare a planning proposal under section 55 of the *Environmental Planning and Assessment Act 1979*, and submit it for a Gateway determination, following completion and review of the additional studies. The proponent has been advised to contact Council to discuss the preparation of the studies. If Council advises that it does not wish to progress this matter, an alternate Relevant Planning Authority (RPA) may be appointed.

The Department is still considering the JRPP's recommendations in relation to Council's broader planning proposal for environmental zonings in the Helensburgh and Otford areas. The Department will write to Council separately regarding the finalisation of the planning proposal.

If you would like to discuss this matter, please contact Mr Graham Towers of the Department's Southern Region, on (02) 4224 9467.

Yours sincerely

Marcus Ray
Acting Deputy Secretary, Planning Services

18/12/14
Encl: Panel report



- Subject site - Lady Carrington Precinct
- Land interpreted as being subject to further investigation for possible urban development.

Drawn By: J Lewis		
Date: 06.08.14		
Aerial Photography 2012		
Gis ref: SubjectSite_LadyCarringtonSthl.mxd		
<div style="display: flex; align-items: center; justify-content: center;"> 0 120 </div> <p style="margin: 0;">Meters</p>		