

ITEM 8**REVIEW OF 7(D) LANDS - 159 TO 169 WALKER STREET
"BLACKWELL'S"**

Council at its meeting on 28 November 2011, resolved to include in the draft Planning Proposal for the lands formerly zoned 7(d) Hacking River Environmental Protection at Helensburgh, Otford and Stanwell Tops, the rezoning of Lot 1 DP 112876, Lot 1 DP 342364, Lot 1 DP 375642 and Lot 16 DP 255197 (159 to 169 Walker Street, Helensburgh) from E3 Environmental Management to part IN2 Light Industrial and part E2 Environmental Conservation. 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 159 to 169 Walker Street – Blackwell's site.

It is recommended that the Planning Proposal to rezone the front part of the site to IN2 Light Industrial not be progressed to finalisation, and the site retain an E3 Environmental Management zone. It is recommended that the draft Planning Proposal for the rezoning of the rear part of the Walker Street – Blackwell's site to E2 Environmental Conservation be progressed to finalisation.

Recommendation

- 1 The part of the Planning Proposal for 159 to 169 Walker Street – Blackwell's site which proposed to amend the Wollongong Local Environmental Plan 2009 by rezoning the land to IN2 Light Industrial, not be progressed, instead the land retain an E3 Environmental Management zone.
- 2 The part of the Planning Proposal for 159 to 169 Walker Street – Blackwell's site which seeks to amend the Wollongong Local Environmental Plan 2009 by rezoning the rear of Lot 16 DP 255197 and Lot 1 DP 112876 land to E2 Environmental Conservation be progressed to finalisation.

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.

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 159-169 Walker Street – Blackwell's site. This site was part of the Walker Street precinct, but has been separated due to the proposed rezoning to IN2 Light Industrial.

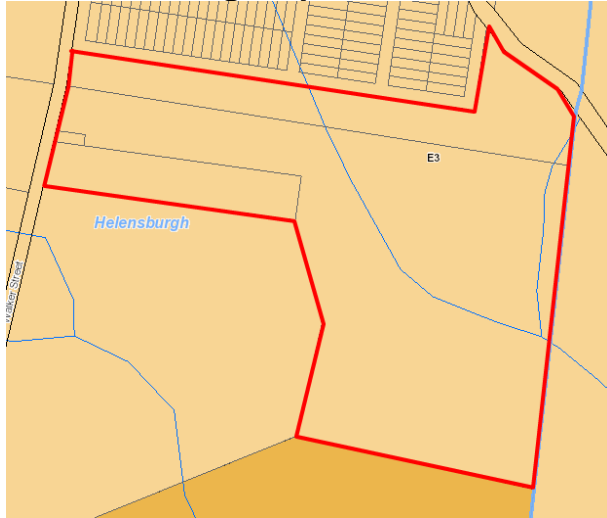
The 159-169 Walker Street – Blackwell site consists of four lots:

Location	Area	Current zone	Exhibited zone
Lot 1 DP 112876 (No.159)	6.073ha	E3 Environmental Management	Part IN2 Light Industrial (front portion – approx. 2.1ha) and part E2 Environmental Conservation (rear portion)
Lot 1 DP 342364 (No. 169)	2.795ha	E3 Environmental Management	IN2 Light Industrial
Lot 1 DP 375642 (No. 165)	0.0847ha	E3 Environmental Management	IN2 Light Industrial
Lot 16 DP 255197 (No. 161)	23.05ha	E3 Environmental Management	Part IN2 Light Industrial (front portion – approx. 3.3ha) and part E2 Environmental Conservation (rear portion)

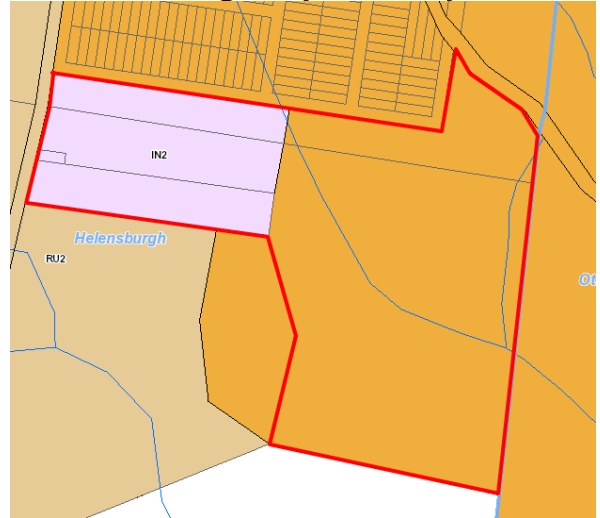
Between 1951 and 1988 the land was zoned Rural or Non-urban under different planning instruments. In 1988, Wollongong Local Environment Plan (LEP) No. 126 rezoned the rear part of Lot 16 DP 255197 to 7(h) Hacking River Environmental Protection (later renamed 7(d)). In 1997, the remainder of the land (fronting Walker Street) was rezoned 7(d) through Wollongong LEP 1990 (Amendment No. 148). In 2009, the 7(d) zone was replaced by the E3 Environmental Management zone with the introduction of the Wollongong LEP 2009.

A submission on behalf of the owners indicates that the land has been used for commercial purposes since the 1940s and the land is currently being used as a landscape and builders supplies, earth moving and some waste resource recovery business. The submission indicates that the business currently employs 30 persons.

Current zoning map 1



Draft Planning Proposal map 2



Council's records indicate that part of the Blackwell site was used as a poultry shed in 1965 and an earth moving business was approved on part of the Blackwell's holdings in 1984. It appears that over the years the business has expanded to its current operation. The expansion and motor bike trails has also resulted in the removal of bushland.

Council at its meeting on 28 November 2011 considered a report which recommended that the site be zoned RU2 Rural Landscape. Council resolved as part of the Walker Street precinct report (in part) that:

- 5 *Lot 1 DP 112876, Lot 1 DP 342364, Lot 1 DP 375642 and the western part of Lot 16 DP 255197 (aligning with the rear of Lot 1 DP 342364) [Blackwell Holdings site] be rezoned to IN2 Light Industrial and the eastern portion of the property be zoned E2 Environmental Conservation.*

Subsequent to the Council meeting, the proponents lodged a rezoning submission and documentation supporting Council's resolution. The documentation included:

- Rezoning submission (JBA, December 2011);
- Flora and Fauna Assessment Report (Conacher, September 2011);
- Bushfire Assessment Report (Conacher, October 2011); and
- Environmental Management Plan (Aargus, May 2010).

This documentation was formally not evaluated by Council as it was received after Council's determination. The documentation was forwarded to the NSW Department of Planning and Infrastructure for consideration as part of the Gateway Review and was subsequently included in the draft Planning Proposal exhibition material.

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

The property is also subject to on-going assessment of development applications and enforcement proceedings. The following information is provided for additional background, although it does not form part of the planning proposal assessment.

Development applications

In 1984 Council approved DA-1983/668 on Lots 1&2 DP 112876 for "Clearing land for fence lines and fire breaks. Use for earth-moving business, erection of storage bins and identification sign". At that time the land was zoned Non-urban A under the Illawarra Planning Scheme Ordinance (1968). In 2009, Council approved DA-2009/266 for the "Construction of a Machinery shed" on Lot 16 DP 255197. Council has also approved development applications for dwellings, garages and sheds on the various lots.

As noted, over the years the business expanded to cover four lots. In 2012, to regularise the operation, consultants for the owner lodged:

- DA-2012/847 for Environmental protection works;
- DA-2012/893 for Erection of two buildings (office and staff facilities) ancillary to the existing use of land; and
- BC-2012/146 for Industrial land use - dwelling and shed located approximately 234 metres east of Walker Street (front) property boundary as indicated on survey plan by Dennis Smith Surveys.

These applications are still under assessment and may be referred to Independent Hearing and Assessment Panel (IHAP) for determination. The assessment of applications is separate to the draft Planning Proposal and the information is provided for background purposes.

A related company owns land at Wyllie Road Kembla Grange, and Council has approved DA-2009/1153 for Building material storage and recycling facility and DA-2013/435 for Industrial- expansion of footprint of storage areas to material storage and recycling facilities on the site. This site is zoned IN2 Light Industrial and RE2 Private Recreation. It is understood that the proponents have relocated some of their operations to this site

Enforcement action

In 2012, Council considered a number of reports and Notices of Motion concerning enforcement action on the property, in summary Council resolved that:

14 May 2012	<ol style="list-style-type: none"> 1 <i>If operations and activities that are outside the approved development conditions do not cease within eight weeks, Council recommence enforcement action.</i> 2 <i>Council staff report to Council on site inspections, regulation and enforcement actions and on comparable orders to cease operations for similar activities at other sites, and the outcomes of those orders.</i> 3 <i>Council continue to liaise with the EPA in relation to any current and future actions.</i>
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23 July 2012	Enforcement action <i>be deferred until 13 August 2012 when adequate background information across all the detail relating to the matter can be considered by Council.</i>	
13 August 2012	1	<i>Council recommence enforcement proceedings on any continuing unlawful activities including building structures.</i>
	2	<i>A Councillor Briefing Report be provided at the determination of any Modification Application, Development Application and/or Building Certificate Application seeking to regularise any unlawful activity, advising of the outcome and of any proposed enforcement action.</i>
27 August 2012	1	<i>Council write to the Environment Protection Authority requesting they immediately undertake independent scientific testing for health and environmental impacts of all development activities conducted in Helensburgh at the properties numbered 159, 161, 165 and 169 Walker Street, also known as Lot 1 DP112876 and Lot 16 DP255197.</i>
	2	<i>The EPA provide Council with a copy of their report.</i>

It is understood that the Environmental Protection Authority's (EPA) investigations are on-going. In response to Council's resolution of 27 August 2012, the EPA advised on 24 September 2012, that:

"it is not in a position to complete a health and environmental assessment as requested by Council. The EPA has undertaken sampling for analysis as part of its ongoing investigation into the alleged unlawful use of part of the Premises as a waste facility. The EPA is not able to provide this information to Council at this time.

As the EPA is not the appropriate regulatory authority under section 6 of the Protection of the Environment Operations Act 1997 ("POEO Act") for the Premises, combined with limited resources available, the EPA considers that the responsibility for an independent environmental assessment of the development activities conducted at the Premises rests with Council.

Council should seek advice from the New South Wales Department of Health in relation to requests for independent health impact assessments."

An informal mediation conference was held on 20 June 2013, and a Land and Environmental Court set down for 2-5 September 2013. The Enforcement Action is separate to the draft Planning Proposal and the information is provided for background purposes.

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
159-169 Walker Street	Consultant for owner. Supports IN2 Light Industrial, to enable existing activities to be formalised, allow the existing resource recovery facility to continue operating, providing benefit to the community.	Noted
159-169 Walker Street	<p>Part of the land was degraded when purchased, with industrial rubbish, scrap steel, fuel tanks. If the zoning didn't change to 7d we would have been able to continue. We followed Council's directions. Bought the land to run a business. Helensburgh needs land for services, jobs to create sustainability. EPA have sign-off the clean-up. The Council professional staff should have the final say. Port Hacking isn't polluted although it does have weed problems. The whole of Sutherland drains into it, they didn't stop development at Menai tip, hazardous waste, nuclear reactors, multiple units and development. Helensburgh needs a waste alternative, turning waste into useable supplies. Saving the environment and money through the EPAs resource recovery.</p> <p>Support rezoning to IN2 Light Industrial.</p>	Noted
159-169 Walker Street	Support the rezoning to IN2 Light Industrial. Building and Landscape Supply business been operating for over 20 years with Council knowledge. Providing local employment and servicing the needs of Helensburgh and surrounds.	Noted

Other submissions:

Submitter	Submission
Resident Helensburgh	Support IN2 Light Industrial to let the company keep servicing Helensburgh. Three generation company which supports the local community. We need jobs, community support and good people for the town to survive.
Consultant for Helensburgh resident	No valid planning reason for the rezoning to IN2 Light Industrial. The use has expanded beyond that approved for an earth moving business in 1984. Seven times larger. It is now a resource recovery facility, which is prohibited. Unlawfully constructed motocross tracks. A house, weighbridge and site buildings built without approval. Council officers reports did not recommend IN2 Rural Landscape. The JBA supporting documentation was submitted after the Council resolution. The JBA report reiterates the plea for continuation and growth of the existing use. JBA seeks for Council to regularize the existing unlawful use. Is the site capable of accommodating such a facility. In there a need for 8.3ha of additional industrial land. If the Landpooling develops, there is no point in having 8.3ha industrial land next door. There are major environmental risks with the facility. The proposal is inconsistent with Section 117 Directions, SEPPs and guidelines. The unlawful use does not justify the rezoning to IN2 Light Industrial. Recommend the land be rezoned to RU2 Rural Landscape.
Resident Stanwell Tops (2 submissions)	Oppose IN2 Light Industrial at 159-169 Walker Street. The business has degraded the site and expanded outside the site. Access is not on their land. No development approval or EPS approval. An IN2 Light Industrial zone would further degrade the land, endanger downstream and neighbours health through vehicle and heavy machinery dust and fume emissions. The land outside the original 1983 DA approval for landscaping business should be zoned E2 Environmental Conservation and restored to bushland.
	Object to site being listed as "Blackwell's" as it is unfair for other zoning applicants. Should be advertised as a separate DA. Council must abide by the Local Government Act and recommendations of ICAC for full transparency.
Resident Stanwell Tops	Object to Blackwell's being zoned IN2 Light Industrial as it is bad for people living in this residential and conservation area. The business has not protected the environment and caused substantial destruction of the quality of the water catchment land without development or EPA approval. The heavy machinery causes dust and fumes, lowers the quality of life and devalues nearby businesses.

Submitter	Submission
Resident Warialda	Oppose the rezoning of Blackwell's to IN2 Light Industrial, but it should be zoned to accommodate the existing use.
Resident Otford	Opposed to the rezoning to Light Industrial. The land is in the catchment area for the Hacking River and the rezoning is inconsistent with other properties in the vicinity.
Email Suburb unknown	Blackwell's was a simple landscaping business, since expanded to a large scale demolition and recycling operation which is inappropriate for this site.
Resident Helensburgh	Blackwell's – should be zoned part RU2 Rural Landscape and E2 Environmental Conservation.
Resident Stanwell Tops	Blackwell's – no industrial zoning.
Resident Otford	Blackwell's – strongly oppose IN2 Light Industrial.

Form letter/email submissions:

Group / property	Submission
Blackwells	Form letter submitted by 327 persons in support of the proposed rezoning of the precinct from E3 Environmental Management to IN2 Light Industrial, and the continuance of Blackwell Bros Building and Landscape Supplies business. From the Handyman to Builders and Developers, the Blackwell Bros Building and Landscape Supplies business provides a much needed service to our community while also contributing to local employment. We have been customers of this business for many years and do not want it to close.
Otford Protection Society	One form letter submitted by 245 persons opposing the proposed rezoning of the site. (refer Attachment 5 of Background report)
OtfordEco	<ul style="list-style-type: none"> One form letter submitted by 38 persons opposing the proposed rezoning of the site, as part of its Walker Street precinct submission; 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 zone for all bushland precincts. (refer Attachment 5 of Background report)

Group / property	Submission
Helensburgh Business Owner Group	<ul style="list-style-type: none"> 11 form letters submitted by 183-191 persons (total 2059) supporting the proposed rezoning; and One form letter submitted by 185 persons supporting the comments in all 56 letters. <p>(refer Attachment 5 of Background report)</p>

Separate to the assessment of Development Applications and the Enforcement Action, Council needs to determine whether to proceed with the Planning Proposal to rezone the land to IN2 Light Industrial and E2 Environmental Conservation (the rear portion).

There is mixed community views on the proposal.

Arguments in support:

- Encouraged by Council to relocate to the site, when the land was zoned Non-urban A;
- Existing operation, providing local employment for some 30 persons;
- The existing operation supports the local community and sporting groups;
- Operation provides a needed recycling facility;
- No other land suitably zoned for a facility at Helensburgh; and
- Council was a customer of the facility.

Arguments opposed:

- The business has expanded from an earth moving business on one lot to a large waste recycling business occupying four lots, without approval;
- Waste disposal and land filling has occurred without approval;
- Motor bike tracks have been created without approval;
- Land clearing and environmental damage has occurred; and
- Rezoning to IN2 Light Industrial will enable other industrial uses to establish, creating additional development, traffic, noise and environmental impacts.

The rezoning to IN2 Light Industrial is largely to enable the regularisation of the existing business. The use has expanded from an approved earth moving business on part of the site to a larger waste recycling operation. The recycling and reuse of building materials is important, to reduce waste going to landfill, or being illegally dumped.

However, an IN2 Light Industrial zone would permit a wider range of industrial uses and buildings. The land use table for the IN2 Light Industrial has the following zone objectives and permitted uses:

Objectives of zone

- To provide a wide range of light industrial, warehouse and related land uses;
- To encourage employment opportunities and to support the viability of centres;
- To minimise any adverse effect of industry on other land uses;
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area;
- To support and protect industrial land for industrial uses; and
- To encourage appropriate forms of industrial development which will contribute to the economic and employment growth of Wollongong.

Permitted without consent

Building identification signs; Business identification signs.

Permitted with consent

Advertising structures; Agricultural produce industries; Animal boarding or training establishments; Aquaculture; Boat building and repair facilities; Community facilities; Crematoria; Depots; Freight transport facilities; Hardware and building supplies; Helipads; Industrial retail outlets; Industrial training facilities; Kiosks; Landscaping material supplies; Light industries; Mortuaries; Neighbourhood shops; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Roads; Self-storage units; Service stations; Sex services premises; Take away food and drink premises; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water treatment facilities.

The definitions of the highlighted uses are as follows:

landscaping material supplies means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like.

waste or resource management facility means any of the following:

- a resource recovery facility,
- a waste disposal facility,
- a waste or resource transfer station,
- a building or place that is a combination of any of the things referred to in paragraphs (a)–(c).

resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting,

processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration.

waste disposal facility means a building or place used for the disposal of waste by landfill, incineration or other means, including such works or activities as recycling, resource recovery and other resource management activities, energy generation from gases, leachate management, odour control and the winning of extractive material to generate a void for disposal of waste or to cover waste after its disposal.

waste or resource transfer station means a building or place used for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and distribution of waste or resources and the loading or unloading of waste or resources onto or from road or rail transport.

Consideration needs to be given as to whether this is the most suitable location for a light Industry zoning and whether there are any alternatives. There are currently 24 lots zoned, or partially zoned, IN2 Light Industry in Helensburgh with an average size of 3319m² and total area of 7.9ha. With the recent development of the Cemetery Road Light Industrial area, the majority of the lots are now occupied. The proposed rezoning of some lots in the Gateway precinct to the B6 Enterprise Corridor zone will also permit light industrial uses. The rezoning of 159-169 Walker Street would add an additional 8.45ha of industrial land, and more than double the existing area.

An expansion of industrial uses on the site, could result in traffic and amenity issues. These impacts would need to be assessed as part of any future Development Application.

A landowner in the Gills Creek - Baines Place precinct has suggested that land in that precinct could be zoned IN2 Light Industrial, as it is flat, already contains a concrete batching plant and is close to the Highway/F6. Conversely, it is also close to Symbio and industrial uses could impact on the animals and tourist facility.

As an alternate to an IN2 Light Industrial zone, the following have been considered:

- Retain the E3 Environmental Management and permit the additional use(s) of **landscaping material supplies** and/or **resource recovery facility** and/or **waste or resource management facility (this would exclude a 'waste disposal facility')**.
- It is noted that these uses are not consistent with the E3 Environmental Management zone objectives. This option may be able to be achieved as an amendment to the current Planning Proposal, as the inclusion of additional use(s) is less change than the proposed IN2 Light Industrial zone.

Resolve to prepare new planning proposal to rezone the site to RU2 Rural Landscape and permit an additional use of **landscaping material supplies** or **resource recovery facility** or **waste or resource management facility**.

Options

1. Proceed with the rezoning of the precinct to IN2 Light Industrial and E2 Environmental Conservation as exhibited in the draft Planning Proposal.
2. Not proceed with the rezoning IN2 Light Industrial and retain the current E3 Environmental Management zone.
3. Proceed with a new planning proposal to rezone the site to RU2 Rural Landscape and permit an additional use of **landscaping material supplies** or **resource recovery facility** or **waste or resource management facility**.
4. Proceed with the E3 Environmental Management and permit the additional use(s) of **landscaping material supplies** and/or **resource recovery facility** and/or **waste or resource management facility (this would exclude a 'waste disposal facility')**.

Recommendation: *It is recommended that the rezoning of the front part of 159 to 169 Walker Street to the IN2 Light Industrial zone not be progressed as part of the final Planning Proposal. It is recommended that the rezoning of the rear part of 159 to 169 Walker Street to E2 Environmental Conservation be proposed as part of the final Planning Proposal.*

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 draft Planning Proposal for the rezoning of the front part of the Walker Street – Blackwell's site not be finalised and the site retain an E3 Environmental Management zone. . It is recommended that the draft Planning Proposal for the rezoning of the rear part of the Walker Street – Blackwell's site to E2 Environmental Conservation be progressed to finalisation.