

ITEM 1 PUBLIC EXHIBITION - PLANNING PROPOSAL - 21 BARHAM PLACE, HORSLEY

A Planning Proposal request has been received for 21 Barham Place, Horsley (Lot 203 in DP 1290802) which has a total area of approximately 32.94 hectares and is zoned part R2 Low Density Residential, part RE2 Private Recreation and part C3 Environmental Management. The Planning Proposal request seeks to rezone part of the property from RE2 Private Recreation to R2 Low Density Residential Development, with associated changes to the Floor Space Ratio and Minimum Lot Size Maps, to enable 3-4 additional lots and residential housing.

Council officers recommend that the remaining RE2 Private Recreation zoned portion of the land be rezoned to C3 Environmental Management to better reflect the flood constraints associated with the Mullet Creek Floodplain. A proposed minimum lot size of 9.99 hectares is proposed to apply over the entire property which would enable the creation of 3 lots, each with a portion of R2 Low Density Residential and C3 Environmental Management, to ensure the C3 zoned land is attached to a parcel of land zoned for residential purposes.

It is recommended that a Planning Proposal be prepared to amend the planning controls for 21 Barham Place, Horsley to enable additional residential development.

RECOMMENDATION

- 1 A Planning Proposal be prepared to amend the Wollongong Local Environmental Plan 2009 for 21 Barham Place, Horsley by -
 - a Amending the controls for the upper part of the site, by rezoning the land from part R2 Low Density Residential and RE2 Private Recreation to the R2 Low Density Residential zone with a Floor Space Ratio of 0.5:1, Minimum Lot Size of 9.99 hectares.
 - b Amending the controls for the lower (floodplain) part of the site, by rezoning the land from part RE2 Private Recreation and C3 Environmental Management to the C3 Environmental Management zone with a Minimum Lot Size of 9.99 hectares.
- 2 The Planning Proposal be referred to the NSW Department of Planning, Housing and Infrastructure for Gateway determination and the preparation of an amendment to the Wollongong Local Environmental Plan (LEP) 2009.
- 3 The NSW Department of Planning, Housing and Infrastructure be requested to authorise a minimum exhibition period of 28 days, as part of Gateway determination.
- 4 The NSW Department of Planning, Housing and Infrastructure be advised that Council wishes to use its delegations to finalise the Planning Proposal.

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Location Plan
- 2 Existing Zoning
- 3 Submitted Planning Proposal Requested Zoning Map
- 4 Recommended Planning Proposal Maps

BACKGROUND

The site at 21 Barham Place, Horsley (Lot 203 in DP 1290802) has a total area of approximately 32.94 hectares (Attachment 1). The property is located at the northern end of Barham Place and is accessible at the turning head.

The property is currently vacant and is zoned part R2 Low Density Residential (approximately 573m²), part RE2 Private Recreation (28.4 ha) and part C3 Environmental Management (4.5ha) adjacent to Mullet Creek (Attachment 2). The property consists of -

- The upper part of the property has been filled and forms part of the Horsley Park estate. The land is at the same elevation as the adjoining properties. This filled part of the property is zoned R2 Low Density Residential (approximately 573m²) and RE2 Private Recreation (approximately 1,670m²). The Planning Proposal request submitted by the landowner seeks to rezone the filled portion of RE2 Private Recreation zoned land to R2 Low Density Residential with corresponding changes to floor space ratio, minimum lot size and height of buildings maps. This would result in approximately 2,243m² of R2 Low Density Residential zoned land upon the site.
- The lower part of property, the Mullet Creek floodplain, is zoned mainly RE2 Private Recreation and C3 Environmental Management (30m wide strip adjacent to Mullet Creek) and has been used for grazing. The vegetation is mainly grassland, with more dense vegetation and weeds along Mullet Creek. The land has encumbrances in the form of electricity transmission lines, the Eastern Gas Pipeline and stormwater drainage. The submitted Planning Proposal request proposes no change to the planning controls for this part of the property.

The site has a slight slope from west to east with Barham Place at the 10m contour and Mullet Creek at the 6m contour. Barham Place is part of the Horsley Park Estate that was developed in the 1990's and was filled to be above the Mullet Creek floodplain.

In the 1990s, the property was part of Lot 1 DP 230057 which was rezoned, on 11 December 1992 by Wollongong LEP 1990 (Amendment No. 37), from 1 Non-Urban to part 2(a) Low Density Residential, 6(a) Public Recreation and 6(b) Private Recreation. The rezoning was part of the Horsley Urban Release Area.

On 26 July 1996, Wollongong LEP 1990 (Amendment No. 129) slightly amended the 2(a) / 6(b) zone boundary along the boundary of the estate.

On 28 February 1996, Development Application No. 1995/714 was approved which created 22 lots in Barham Place and a residual lot (Lot 412 DP873616) zoned part 6(b) Private Recreation and part 6(a) Public Recreation. Lot 412 was subsequently merged with the adjoining Lot 413 which was zoned 2(a) Low Density Residential. The merged lot was subsequently subdivided into two lots, then three lots, then in 2022 the boundaries were amended to create the current Lot 203 DP 1290802.

In 1996, Wollongong LEP 1990 permitted a dwelling house on land zoned 6(b) Private Recreation in conjunction with another permissible uses. In 2006 the land use table was amended to no longer permit dwelling houses in the 6(b) zone.

In 2010, the planning controls were translated into the Wollongong (West Dapto) LEP 2010, with slightly different zone names in accordance with the Standard LEP instrument. In addition, the 6(a) Public Recreation zone was changed to C3 Environmental Management to reflect the private ownership. Consistent with the previous 6(b) zone, dwelling houses remain a prohibited land use in the RE2 Private Recreation zone.

In 2014 the West Dapto LEP was merged into the Wollongong LEP 2009. Attachment 2 shows the current zoning.

In February 2024, a Scoping Proposal was submitted seeking advice on a possible Planning Proposal request. The following feedback was provided by Council officers -

- Identify how stewardship of flood prone land would be achieved. Please clarify the minimum lot size of one created lot that will be responsible for the stewardship of the flood prone area.
- The proposed concept layout in Figure 9 of the scoping report does not show all lots with public road frontage and would result in a layout which will require more than two lots to share a battleaxe corridor, contrary to Clause 6.4 (4) of Chapter B2 of the Wollongong DCP 2009.
- The location of where the possible additional 12 waste bins required for the new lots will be placed to allow collection by Council's side-loading waste truck. The location of the bins must be practical, safe and not impact on adjacent neighbours' amenity etc.

PROPOSAL

In July 2024 a Planning Proposal request was submitted seeking to amend the Wollongong LEP 2009 to rezone a portion of the upper part of the property to the R2 Low Density Residential zone, consistent with the adjoining residential properties. The proposal also seeks an amended floor space ratio of 0.5:1, minimum lot size of 449m² and maximum height of buildings of 9m, consistent with adjoining properties. No change was proposed for the lower part of the site which forms part of the Mullet Creek floodplain.

If progressed to finalisation the land zoned R2 Low Density Residential would increase from 573m² to approximately 2,243m² upon the site. The appropriate minimum lot size to effectively manage all residual land on the site is discussed below.

Assessment

The key issues for consideration are -

Flooding

The Mullet Creek Floodplain Risk Management Study and Plan (2023) indicates that the upper part of the site proposed to be rezoned R2 Low Density Residential, is above the Probable Maximum Flood (PMF) level. While the lower part of the site, zoned RE2 Private Recreation and C3 Environmental Management is part of the Mullet Creek Floodplain and is subject to flooding. The land proposed to be zoned R2 Low Density Residential could be developed for housing, consistent with the requirements of Ministerial Direction 4.1 Flooding.

Contamination

The site is mapped as Fill Affected due to the 1990's filling of the land to create the housing estate, and accordingly, a Preliminary Site Investigation (PSI) is required to facilitate the assessment.

On 7 January 2025, a PSI was submitted which confirmed the filling and found no contamination.

The PSI satisfies the requirements of the Ministerial Directions, *Contaminated Land Management Act* 1997, State Environmental Planning Policy (Resilience & Hazards) 2021, Wollongong Development Control Plan (DCP) 2009 Chapter E20 – Contaminated Land Management and the Guidelines for Consultants Reporting on Contaminated Sites (NSW EPA, 2011).

Bushfire

At the time of lodgement, based on Council's Bushfire Prone Lands Mapping (2016), the lower part of the site (floodplain) was mapped as Vegetation Category 2 (grasslands and pasture) and the batter and eastern section of the upper part of the site is mapped as bushfire Buffer area. The remainder of the upper part of the site and adjoining lots were not mapped as bush fire prone lands.

On 17 July 2024, new Bush Fire Prone Land (BFPL) Mapping was certified by the Commissioner of the NSW Rural Fire Service (RFS) and Council's DCP mapping updated. The mapping was updated to include Vegetation Category 3 (Grasslands, freshwater wetlands, semi-arid woodlands, alpine complex and arid shrublands). Apart from the change in categories, the mapped boundaries have not changed. The lower part of the site (floodplain) is now mapped as Category 3 and the batter and eastern section of the upper part of the site is mapped as Buffer. The remainder of the upper part of the site and adjoining lots are not mapped as bush fire prone lands.

A Bushfire Impact Assessment has not been submitted with the proposal. The NSW RFS raised no objection to the Planning Proposal request provided the future development complied with Planning for Bushfire Protection (2019).

Acid Sulfate Soils

The lower part of the site is mapped as containing class 2 Acid Sulfate Soils and the upper part of the property is mapped as class 5 buffer (within 500m of class 1,2,3 or 4). As the proposed residential zoning is on the upper part of the site, acid sulfate soils are not a constraint to future development.

Zoning

The property is currently vacant and is zoned part R2 Low Density Residential (approximately 573m²), part RE2 Private Recreation (28.4 ha) and part C3 Environmental Management (4.5ha) adjacent to Mullet Creek (Attachment 2 and Table 1).

The submitted Planning Proposal proposed to rezone the filled portion of RE2 Private Recreation zoned land to R2 Low Density Residential. This would result in approximately 2,243m² of R2 Low Density Residential zoned land on the site (Table 1). The submitted Planning Proposal request did not propose a change to the RE2 Private Recreation zoned land on the floodplain.

The rezoning of the non-flood prone land to R2 Low Density Residential is supported and is consistent with the adjoining residential properties. The rezoning would enable future development applications for subdivision and dwellings.

The RE2 Private Recreation zone for this site and the two lots to the south, is a remnant from the 1990s, when a golf course or similar use was considered for the flood plain. Despite the previous considerations, the land has remained grazing land. Land adjacent to the site, Lot 2 DP 1280810 (34 Bong Bong Road) is owned by Greyhound Racing NSW.

As part of the rezoning of the West Dapto Urban Release Area, the floodplain was generally zoned C3 Environmental Management. To be consistent with the West Dapto Urban Release Area, and recent flood guidance from State Government Agencies, it would be appropriate for the remaining RE2 Private Recreation land to be zoned C3 Environmental Management in recognition of the flood constraint.

Council officers proposed that the RE2 portion of the land be rezoned C3 Environmental Management to reflect the floodplain and to enable Clause 4.1A of the Wollongong LEP 2009 to apply to any further subdivision of the site. The recommended amendment to the proposal would prevent the C3 zoned land from being separated from the R2 zoned land. Extensive agriculture (grazing) would remain a permissible land use. The Wollongong Local Planning Panel supported this approach.

Table 1 provides a comparison of the existing, requested and recommended zone areas.

Table 1: Existing and Proposed Zone Areas

Zone	Existing Area (ha)	Submitted Request Area (ha)	Council Officers Proposal Area (ha)
R2	0.0573	0.2251	0.2251
RE2	28.4	28.23	0
C3	4.5	4.5	32.73
Total	32.95	32.95	32.95

Minimum Lot Size

The submitted Planning Proposal request proposes that the R2 Low Density Residential portion of the site have a Minimum Lot Size of 449m². The adjacent residential lots in Barham Place were subdivided in the 1990s at a larger minimum lot size of 500m² and range in size from 540m² to 818m².

The submitted Planning Proposal request did not propose a change to the RE2 Private Recreation zoned land and sought to separate the R2 Low Density Residential land from the RE2 Private Recreation zoned land, by having three residential lots and one private recreation lot. This would leave the RE2 land without a suitable location for a dwelling house. This could result in the need for an additional Planning Proposal, to be submitted at a later date, seeking to enable a dwelling house and filling of the floodplain.

If the Planning Proposal progresses as submitted, smaller lots based on the current minimum lot size standard will create housing with a higher density compared to the rest of the street. To maintain the existing street character, Council could consider a larger minimum lot size for the proposed R2 zoned land.

It is important that the land currently zoned RE2 forms part of at least one lot that is zoned R2 to enable a dwelling house site and ongoing maintenance and management of the residual land. All lots need to have access to a public road. Council officers proposed that the RE2 portion of the land be rezoned C3 Environmental Management.

Following the meeting of the Wollongong Local Planning Panel the applicant initially objected to the proposed C3 Environmental Management zoning. The applicant proposed that the R2 Low Density

Residential and the RE2 Private Recreation zoned land be subdivided into three portions. This would require a minimum lot size of 9.99 hectares to apply over both the R2 and C3 zoned land.

As a result of further discussions, the applicant has agreed to the proposed C3 Environmental Management zoning to most of the property (32.7ha), and 9.99 hectare minimum lot size applying to the whole property. This change would limit the number of future lots across both the R2 and C3 lands to three.

Rights of Access

The applicant has indicated that the site has only one access point from Barham Place, but “the site can be accessed by way of Easements V and S by public authorities”. It is noted that the discussed Easements for access are shown on the registered Deposited Plan. Any future development consent for subdivision of the land will ensure the lots are not land locked.

Waste Collection

In response to the request to identify the possible location of bin collection, the Planning Proposal request indicates that bins could be collected from the opposite side of Barham Place or within the turning head. This second location would require a three-point turn from the trucks to reverse into the narrow turning head. The turning head may require widening. This is a matter for consideration at Development Application stage.

Affordable Housing Policy

On 12 August 2024, Council adopted the Affordable Housing Policy, following on from the adoption of the Wollongong Housing Strategy (2023). The Policy does not apply to the first rezoning of land to the R2 Low Density Residential zone within the West Dapto Urban Release Area. Hence no affordable housing contribution is sought. Under Council's Policy, any further rezoning uplift sought by the landowner will attract an affordable housing outcome.

Strategic Context

The Planning Proposal request is generally consistent with the intent of -

- The Ministerial Directions under 9.1 of the *Environmental Planning and Assessment Act (1979)*.
- Illawarra Shoalhaven Regional Plan 2041 (2021) -
 - Objective 18: by providing housing supply in the right locations.
- Our Wollongong Our Future 2032 - Wollongong Community Strategic Plan (2022) – The proposal aligns with Goal 1 - We value and protect our environment, specifically through Objective 1.5 - Maintain the unique character of the Wollongong Local Government Area, whilst balancing development, population growth and housing needs.
- Wollongong Local Strategic Planning Statement (LSPS) 2020 – the proposal aligns with the LSPS Vision and key actions by ensuring planning provisions for new housing results in appropriate residential densities within locations that are guided by the housing outcomes within the Housing Strategy. The proposal will make a minor contribution to additional housing supply.
- Wollongong Housing Strategy (2023) – the proposal aligns with the strategy, aiming to facilitate additional housing that is well-located and therefore the proposal is considered consistent with the desired outcomes of the Housing Strategy. The proposal will make a minor contribution to additional housing supply.
- Council's West Dapto Vision 2018 – the site is located in Horsley which was the first stage of the West Dapto Release Area development in the 1980s and 1990s. The site is located adjacent to existing residential development.

The Planning Proposal request is inconsistent with Council's Planning Proposal Policy (2022). Council's preference is to review the planning controls for precincts, rather than site-by-site requests. However, as the adjoining sites are zoned for residential purposes, there is no opportunity for a broader precinct approach.

Site-Specific Merit

The western part of the site is subject to fill emplacement which occurred in the 1990s as part of the development of Barham Place. The Mullet Creek Flood Plain Risk Management Study and Plan confirms that the filled area is above the flood planning level.

The proposed residential development would make use of serviced land to increase housing supply. The rezoning of the site could enable 3-4 residential lots, and possibly 3-4 dwelling houses or 6-8 dual occupancy dwellings.

Consideration by Wollongong Local Planning Panel

The Planning Proposal request was considered by the Wollongong Local Planning Panel on 28 October 2024. The Panel advised -

- 1 *The Panel agrees with Council's assessment report and supports the preparation of a Planning Proposal to rezone 21 Barham Place, Horsley to part R2 Low Density Residential and part C3 Environmental Management, and amend the other controls, as outlined in the report.*
- 2 *The spot rezoning is consistent with Council's future rezoning and management of floodplain land. The Panel agrees that floodplain land should not be separated from a residential area.*
- 3 *The rezoning has site specific merit and facilitates efficient use of the land and allows for additional residential development, albeit a small number.*

Options

There are two options for Council to consider -

- 1 Resolve not to prepare a Planning Proposal and the existing planning controls will remain. The applicant could request a rezoning review from the NSW Department of Planning, Housing and infrastructure.
- 2 Resolve to prepare a Planning Proposal based on the officers' recommendation and discussions with the landowner -
 - rezoning the upper part of the property to R2 Low Density Residential with a floor space ratio of 0.5:1 and building height of 9 metres, and
 - rezoning the lower part of the property to entirely C3 Environmental Management, and
 - apply a minimum lot size of 9.99 hectares over the whole property.

Option 2 would allow the creation of 3 large lots zoned partially R2 and C3. RECOMMENDED

CONSULTATION AND COMMUNICATION

The Planning Proposal was preliminary notified from 22 July 2024 to 19 August 2024 which involved adjoining landowners to the site, applicable State Agencies, and Neighbourhood Forum 8. The draft Planning Proposal request was also notified on Council's engagement website.

The exhibition page on Council's website received 100 views and 42 documents downloaded. One comment was made on the engagement webpage from an adjoining landowner objecting to the proposal and raised the concerns detailed in Table 3.

Submissions were also received from the NSW RFS and NSW Environment Protection Authority (EPA) raising no objection to the proposal. The NSW Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group (DCCEEW - BCS) suggested that a Flood Impact Assessment report be prepared. As the land proposed to be rezoned is above the Probable Maximum Flood level, a Flood Impact Assessment is not required.

Table 3: Summary of Submissions

Submitter	Submission summary	Comment
Adjoining landowner	1 The building of residential homes will seriously impact on our home and reduce our property value. Who will compensate us for the loss in value of our property? Will Council reimburse us the difference or will the landowners?	There is no compensation associated with rezoning
	2 The proposed low-density zoning will allow buildings to completely block our nature view, remove our privacy and reduce our backyard to a darkened abyss where we will receive no sun for our garden. It will create a need for higher fencing along our back boundary and this in turn causes further issues for us.	Any future dwellings will be subject to the same height limit. The revised proposed Minimum Lot Size would enable 3 dwelling houses
	3 It will have a significant impact on the mental health of myself and my wife with losing the most valued thing we own (privacy and peace and quiet). We will be hemmed in by buildings all around us.	Noted
	4 We were informed when we purchased our home 20 years ago that the vacant lots surrounding us would not be sold as they needed the access from Barham Place to the grazing land out back. How will they access the floodplain in the proposal should this rezoning proceed?	Noted. The 'grazing land' will form part of the newly created lots which include R2 zoned land. Access will be provided via Barham Place.
	5 It's been stated that the floodplain will not be rezoned, and it should not be. This area constantly floods in heavy rain. Mullet Creek overflows, the causeways around the area get blocked with garbage and due to a lack of maintenance, this exacerbates the problem.	One or more of the proposed lots will need to access the floodplain The floodplain is not proposed to be rezoned to enable development
	6 At present when it rains heavily, the runoff from behind us flows into our backyard and the water has been as high as our back patio. Thankfully at this stage the water has not entered our home. What will happen with the runoff when there are buildings behind us? Will we suffer flooding of our property because the land will be raised higher? This is not acceptable!	The land to be rezoned to R2 Low Density Residential is located above the flood planning area.
	7 The homes in Barham place have at least two cars, many have three or more vehicles which require parking spaces. With more homes being proposed in our small cul-de-sac, where will their vehicles be parked if they cannot be garaged? It is already heavily congested with vehicles, and this is why the neighbours use the vacant block as car parking.	Any future development of the land will need to provide the minimum provision for on-site car parking.

Submitter	Submission summary	Comment
	8 What other infrastructure will be put in place to accommodate the extra buildings? Where will their garbage bins be placed so they do not impact on us, how will the water runoff be dealt with so that we do not get flooded?	Garbage would be collected from the kerb
NSW Rural Fire Service (RFS)	No objection subject to a requirement that the future subdivision complies with Planning for Bushfire Protection 2019.	Noted
NSW Department of Climate Change, Energy, the Environment and Water - Biodiversity, Conservation and Science Group (BCS)	As the Planning Proposal involves the rezoning of flood prone land, it should be considered in accordance with Section 9.1 (2) Local Planning Direction - Focus Area 4: Resilience and Hazards 4.1 Flooding and the NSW Government's Flood Prone Land Policy as set out in the Flood Risk Management Manual, 2023. A Planning Proposal should be supported by a fit for purpose Flood Impact and Risk Assessment (FIRA) to address the requirements of the flood related local planning direction over the range of floods up to the Probable Maximum Flood (PMF) including issues relating to flood risk, impacts and public safety.	The Mullet Creek Floodplain Risk Management Study and Plan (2023) indicates that the upper part of the site (Barham Place) is above the Probable Maximum Flood (PMF) level As the land proposed to be rezoned to residential is above the PMF and is not mapped flood prone, the Ministerial Direction does not apply
Environment Protection Authority	No comment	Noted

If Council resolves to progress the Planning Proposal, and Gateway determination issued by the Department of Planning, Housing and Infrastructure, the Planning Proposal will undergo formal exhibition period. Consistent with the NSW LEP Making Guideline, the proposal will be reported to Council detailing the outcomes of the exhibition process with recommendations regarding finalisation of the Planning Proposal.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 1. It specifically delivers on the following –

Community Strategic Plan 2032	Delivery Program 2022-2026
Strategy	Service
1.5 Maintain the unique character of the Wollongong Local Government Area, whilst balancing development, population growth and housing needs.	Land Use Planning

FINANCIAL IMPLICATIONS

The Planning Proposal request was lodged with the applicable assessment fee in accordance with Council's adopted Fees and Charges. The impact upon resourcing has been managed through the Land Use Planning operational budget.

CONCLUSION

It is recommended that Council resolve to prepare a Planning Proposal for land at 21 Barham Place, Horsley and it be forwarded to the NSW Department of Planning, Housing and Infrastructure seeking Gateway determination to allow public exhibition.











