

PP12 - Yellow Rock Road Tullimbar

Proposal Title : **PP12 - Yellow Rock Road Tullimbar**

Proposal Summary : **This proposal will rezone rural land at Lot 2 DP 1191252 Yellow Rock Road, Tullimbar to permit up to 119 residential lots.**

This land was deferred from the Shellharbour LEP 2013 so is currently zoned under the Shellharbour Rural LEP 2004. This proposal will introduce standard instrument zones and controls including floor space ratio, maximum building height, minimum lot sizes, and biodiversity mapping.

PP Number : **PP_2014_SHELL_004_00**

Dop File No : **14/13696**

Proposal Details

Date Planning
Proposal Received : **14-Aug-2014**

LGA covered : **Shellharbour**

Region : **Southern**

RPA : **Shellharbour City Council**

State Electorate : **KIAMA**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **Yellow Rock Road**

Suburb : **Tullimbar**

City :

Postcode : **2527**

Land Parcel : **Lot 2 DP 1191252**

DoP Planning Officer Contact Details

Contact Name : **Louise Wells**

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RPA Contact Details

Contact Name : **Cheryl Lappin**

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DoP Project Manager Contact Details

Contact Name : **Graham Towers**

Contact Number : **0242249467**

Contact Email : **graham.towers@planning.nsw.gov.au**

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Illawarra Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	119
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :			
Have there been meetings or communications with registered lobbyists? : No			
If Yes, comment :			

Supporting notes

Internal Supporting Notes : **The subject land adjoins existing and proposed residential development on three sides.**

External Supporting Notes :

Adequacy Assessment**Statement of the objectives - s55(2)(a)**

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives adequately explains the intended outcome of the planning proposal.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The proposal introduces standard instrument controls to land deferred when Shellharbour LEP 2013 was notified. The proposal involves mapping changes only. There are no changes to the written Local Environmental Plan.**

The following maps will be introduced for the subject land:

- Land zoning map;
- height of building map;
- floor space ratio map;
- lot size map; and
- biodiversity map.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

1.2 Rural Zones

* May need the Director General's agreement

2.3 Heritage Conservation

3.1 Residential Zones

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)

SEPP No 55—Remediation of Land

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Section 117 Directions

Council has identified applicable Section 117 Directions and has noted that there are inconsistencies with the following directions:

1.2 Rural Zones

The Planning Proposal rezones rural zoned land to a mix of R2 Low Density Residential, R5 Large Lot Residential, and E3 Environmental Management. It also increases the potential density of development on rural zoned land by permitting the subdivision and construction of dwelling houses.

The Urban Fringe Local Environmental Study (LES) recommended large lot residential development over parts of the subject land - but did not propose more traditional low density residential housing. So, while the proposal is a more intense form of development than proposed under the LES, the residential use of the site is justified in the LES.

The Tullimbar locality is undergoing significant change, with the residential development of Tullimbar Village and the future development of Calderwood.

The subject land adjoins existing or proposed residential development on three sides. The proximity of the land to urban development provides a constraint on the agricultural use of the land. The rezoning for residential purposes is considered reasonable.

The Secretary's delegate can be satisfied that the inconsistency is justified by a study and/or is of minor significance.

2.3 Heritage Conservation

Council has identified that the proposal is inconsistent with this direction as an aboriginal heritage study to determine whether there are Aboriginal areas, objects, places or landscapes has not been undertaken on the subject land.

This Direction states that a planning proposal must include provisions to conserve heritage, including Aboriginal heritage - and specifically 'Aboriginal objects or Aboriginal places protected under the National Parks and Wildlife Act 1974,' and 'Aboriginal areas, Aboriginal objects, Aboriginal places or Aboriginal landscapes identified by an Aboriginal heritage survey ...as being of heritage significance to Aboriginal culture and people.'

It could be argued that the Direction does not require the carrying out of such a study but, instead, requires the protection of heritage that has previously been identified in such a study. The direction can also be interpreted as requiring a study into Aboriginal heritage for every planning proposal.

It could also be argued that the mandatory heritage provisions in the Shellharbour LEP 2013 satisfy the Direction.

In any case, discussions with the Office of Environment and Heritage have indicated that the desired outcome, namely the identification and protection of Aboriginal heritage items, are achieved under the National Parks and Wildlife Act 1974 prior to the land being developed.

It is noted that a Cultural Heritage assessment was undertaken as part of the Urban Fringe LES. The assessment identified potential archaeological deposits on the site and recommended further investigations. It is appropriate that these investigations are carried out prior to any subdivision.

On this basis, the Secretary's delegate may be satisfied that any inconsistency with this Direction is justified as there is sufficient protection provided by existing legislation and/or is of minor significance.

3.1 Residential Zones

This Direction aims to provide housing choice, make efficient use of infrastructure and to minimise the impact of residential development on environmental and resource lands.

The proposal is considered consistent with the objectives of this Direction.

The Secretary's delegate may be satisfied that any inconsistency with this Direction is of minor significance.

4.3 Flood Prone Land

This Direction requires development in flood prone areas to be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual. It states that a planning proposal must not rezone land in a flood planning area from a rural zone to a residential zone.

Council has indicated that the proposal is inconsistent with this Direction as there has been no study to determine whether the land is in a flood planning area.

Council has proposed that a flood study be carried out prior to exhibition of the proposal.

It is recommended that the Gateway Determination include a requirement for a flood study to satisfy this Direction.

4.4 Planning for Bushfire Protection

This Direction requires consultation with the Commissioner of the NSW Rural Fire Service prior to undertaking community consultation, and must take any comments made by the Commissioner into account.

The Secretary's delegate may be satisfied that the Gateway Determination requirement for consultation with the RFS prior to exhibition will ensure consistency with this Direction.

5.1 Implementation of Regional Strategies

The Illawarra Regional Strategy (IRS) applies to the subject land and this Direction requires that planning proposal must be consistent with the IRS.

The IRS identifies that land in the Urban Fringe (which includes the subject land) is being investigated to determine appropriate zones and controls.

The Urban Fringe LES identified that the subject land was suitable for large lot residential development and, while this proposal includes a more intense form of residential development, the urban use of the site is justified through the LES.

The Secretary's delegate may be satisfied that any inconsistency with this Direction is justified and/or is of minor significance as the proposal does not undermine the overall principles and outcomes in the IRS.

RECOMMENDATION

It is recommended that the Secretary's delegate be satisfied that any inconsistencies with the following s117 Directions are justified by a study and/or are of minor significance:

1.2 Rural Zones

2.3 Heritage Conservation

3.1 Residential Zones

5.1 Implementation of Regional Strategies

It is recommended that the Secretary's delegate be satisfied that the proposal will be consistent with 4.4 Planning for Bushfire Protection following consultation with the NSW Rural Fire Service.

It is recommended that additional information be provided to demonstrate consistency with 4.3 Flood Prone Land.

State Environmental Planning Policies (SEPPs)

The Planning Proposal is not inconsistent with relevant SEPPs.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Mapping is adequate to describe the proposal.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has not identified a period. 28 days is considered reasonable.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Shellharbour Local Environmental Plan 2013 was notified in August 2013.

Assessment Criteria

Need for planning
proposal :

The investigation of this land for residential development is justified on the basis that:

- the character of this formerly rural area is undergoing significant change with the development of Tullimbar Village and the future development of Calderwood;
- the use of the land for agricultural purposes is limited by its proximity to existing and future residential development; and
- the site adjoins existing and proposed residential development.

A planning proposal is the only way to introduce new zones and controls for the property.

Consistency with
strategic planning
framework :

The Illawarra Regional Strategy (IRS), at page 22, notes that Council is investigating urban fringe lands to determine appropriate land uses and zonings, taking into account its urban, biodiversity and natural resource values. This Planning Proposal forms part of those investigations.

Council has identified that the Proposal is consistent with Council's Community Strategic Plan 2013 - 2023.

The Proposal is consistent with relevant State Environmental Planning Policies.

See previous section for consideration of the Proposal's consistency with relevant s117 Directions.

Environmental social
economic impacts :

Council has identified that the proposal will not adversely affect critical habitats, threatened species, populations or ecological communities or their habitats.

The proposal will provide additional housing choice in the LGA, offering a large lot residential housing option, along with more traditional low density housing. Council has identified the need for additional studies into flooding, bushfire, and visual impacts.

Assessment Process

Proposal type :	Consistent	Community Consultation Period :	28 Days
Timeframe to make LEP :	18 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage Integral Energy NSW Rural Fire Service Sydney Water		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	Yes		
If no, provide reasons :			

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Resubmission - s56(2)(b) : **Yes**

If Yes, reasons : **Council is required to demonstrate consistency with s117 Direction 4.3 Flood Prone Land, following additional investigations into flooding, prior to the plan being made.**

Identify any additional studies, if required. :

Flooding

If Other, provide reasons :

Council has identified that there is a need for a visual analysis to demonstrate that the proposed residential use of the land will not have an unacceptable visual impact.

Council has also identified that investigations into bushfire are required, however, it is considered that consultation with the RFS will appropriately determine whether further studies into bushfire are required.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal No 12.doc	Proposal	Yes
Attachment 2 Site Identification Map.pdf	Map	Yes
Attachment 3 Existing zoning under SRLEP 2004.pdf	Map	Yes
Attachment 4 Land Zoning Map.pdf	Map	Yes
Attachment 5 Floor Space Ratio Map.pdf	Map	Yes
Attachment 6 Height of Building Map.pdf	Map	Yes
Attachment 7 Lot Size Map.pdf	Map	Yes
Attachment 8 Terrestrial Biodiversity Map .pdf	Map	Yes
Attachment 9 - PP 12 planning control checklist.pdf	Proposal	Yes
PP12 - Council report & resolution.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.2 Rural Zones
2.3 Heritage Conservation
3.1 Residential Zones
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies**

Additional Information : **It is RECOMMENDED that the Acting General Manager, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Shellharbour Local Environmental Plan 2013 to introduce standard instrument zones (R2, R5 and E3) and development controls for Lot 2 DP 1191252 (120) Yellow Rock Road, Tullimbar to facilitate the development of up to 119 residential lots should proceed subject to the following conditions:**

1. Council is to update the planning proposal to include sufficient additional information to adequately demonstrate consistency (or to justify any inconsistency) with S117 Direction 4.3 Flood Prone Land.

The revised planning proposal should be re-submitted to obtain the Secretary's agreement prior to the plan being made.

2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

(a) the planning proposal is to be made publicly available for 28 days; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing local environmental plans (Department of Planning and Infrastructure 2013).

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

*Office of Environment and Heritage

*Sydney Water

*Integral Energy

*NSW Rural Fire Service

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that it will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

Consultation is required with the NSW Rural Fire Service prior to undertaking community consultation in order to satisfy the requirements of s117 Direction 4.4 Planning for Bushfire Protection.

4. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 18 months from the week following the date of the Gateway determination.

SECTION 117 DIRECTIONS

6. The Secretary's delegate can be satisfied that inconsistencies with the following s117 Directions are of minor significance and/or are justified:

1.2 Rural Zones

2.3 Heritage Conservation

3.1 Residential Zones

5.1 Implementation of Regional Strategies

7. The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection following consultation with the NSW Rural Fire Service.

8. The Secretary's delegate can be satisfied that the planning proposal is consistent with other relevant s117 Directions, or that any inconsistencies are of minor significance.

Supporting Reasons :

The investigation of this land for residential development is considered reasonable given the changing character of the area from rural to residential; the suitability of the land for some form of residential development as identified in the Urban Fringe LES; and the fact that the site adjoins existing or proposed residential development on 3 sides.

Signature:



Printed Name:

Graham Towers

Date:

21/8/14.