

**Subject 11.2.3 Planning Proposal No. 12 - Lot 2, DP 1191252,
Yellow Rock Road, Tullimbar (10203942)**

To the General Manager

Directorate: **City Outcomes**

Department: **City Strategy**

Manager: Geoff Hoynes - Group Manager City Strategy

Author: Cheryl Lappin - Senior Strategic Planner

Summary

The purpose of this report is to recommend that Council prepare a Planning Proposal for Lot 2, DP1191252, 120 Yellow Rock Road, Tullimbar to facilitate the development of up to 119 residential lots of varying lot sizes. The report recommends that Council Prepare a planning proposal to:

- amend the zoning of the land from 1A Agriculture under Shellharbour Rural Local Environmental Plan (LEP) 2004 to part R2 Low Density Residential, part R5 Large Lot Residential and part E3 Environmental Management;
- develop the following mapping layers for the site:
 - a. Lot size map
 - b. Building height map
 - c. Floor space ratio map
 - d. Biodiversity map

This report also recommends that the Planning Proposal be submitted to the NSW Department of Planning & Infrastructure for their consideration, and enable the planning proposal to go on exhibition.

Background

Council at its Extraordinary Meetings of 29 May, 6 June and 3 July 2012 resolved:

'That the land identified in Map 1.4 in the Urban Fringe Local Environmental Study be deferred from the *Draft Shellharbour Local Environmental Plan 2011* so that potential increases in residential densities can be studied/assessed.'

The subject land is identified in Map 1.4 and was deferred. As a result the land has now been included in a Planning Proposal submitted by a consultant on behalf of the landowners. The location of this land is shown in **Attachment 1**.

The subject land is deferred under Shellharbour LEP 2013 and is currently zoned 1A Agriculture under Shellharbour Rural LEP 2004. Under Shellharbour Rural LEP 2004 the land has no development potential. The current zoning of this property is shown in **Attachment 2**.

It should be noted that an area to the east of the subject land fronting Yellow Rock Road has recently been severed from the subject land and approved for a 22 lot residential subdivision. Also, land directly south of the subject land is currently under development assessment for 36 residential lots. These adjoining areas were also deferred from LEP 2013 and are currently zoned 2e Mixed Residential 'E'.

Local Environmental Study (LES)/Draft Shellharbour LEP

This property is in the Urban Fringe LES. This LES was co-ordinated and prepared by Council and the owners made a financial contribution to the cost of the consultant's reports. Five specialist consultants contributed studies on Flora and Fauna, Geotechnical advice (land stability and on-site waste water disposal), Cultural heritage (Aboriginal and European), Bushfire and Visual assessment.

The Cultural heritage assessment identified part of the property as having Potential Archaeological Deposits. The LES did not recommend development in the vicinity of this area and therefore stated no further investigation was required.

The LES recommended that the land subject land west to Cooby Road be zoned R5 Large Lot Residential with minimum lot size 10,000m² and 6m height limit to provide a transition between residential development to the East and Rural land to the West. The remainder of the site was recommended to be zoned RU1 Primary Production. It was also recommended that a Biodiversity layer be placed on the site along the Riparian Corridor.

The Draft Shellharbour LEP 2011 was exhibited with these recommendations. Council at its Extraordinary Meetings in May, June and July 2012 considered the submissions made during the exhibition period and resolved:

'That the land identified in Map 1.4 in the Urban Fringe Local Environmental Study be deferred from the Draft Shellharbour Local Environmental Plan 2011 so that potential increases in residential densities can be studied/assessed.'

This report addresses the subsequent Planning Proposal submitted by a consultant on behalf of the landowners. Refer to **Attachment 3** Concept Plan.

What is a Planning Proposal?

A Planning Proposal is a document that explains the intended effect of a proposed LEP, in this case an amendment to Shellharbour LEP 2013, and sets out the justification for making the amendment. This is known as the Gateway Process.

The Gateway Process has the following five key steps:

1. *Planning Proposal* - Council is responsible for the preparation of a Planning Proposal, which explains the effect of and justification for the plan.
2. *Gateway* - The Minister (or delegate) determines whether the Planning Proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.
3. *Community consultation* - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held.

4. *Assessment* - Council will consider public submissions and the proposal is varied as necessary prior to adoption. Parliamentary Counsel then prepares a draft local environmental plan — the legal instrument.
5. *Decision* - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW legislation website.

The final decision on whether the plan becomes law and in what form it becomes law, rests with the Minister for Planning.

This Planning Proposal is currently at step 1.

Financial Implications

The applicant has paid the first component of the rezoning fee in accordance with Council's Fees and Charges Policy.

Legal and Policy Implications

The Planning Proposal is required to be assessed in accordance with the requirements of the *Environmental Planning & Assessment Act* and *Regulations* and the Guide to Preparing Planning Proposals and the Guide to Preparing Local Environmental Plans prepared by the NSW Department of Planning & Infrastructure.

Council and the Department of Planning have to make an assessment of the Planning Proposal against the Local Planning Directions (*S117(2) Environmental Planning & Assessment Act*). Under the Gateway system these assessments can occur at different stages in the process. Based on the information submitted to date, there are a number of inconsistencies with the Directions. Ultimately it is the Department of Planning that decides whether an inconsistency can be justified or not. On this basis:

- the proponent will have to adequately justify these inconsistencies if the Department of Planning agrees to proceed to the next stage with the Planning Proposal and requires the inconsistencies to be justified; or
- the Department of Planning will determine that the inconsistencies are not of a nature to warrant further investigation and the Planning Proposal may proceed; or
- the Department of Planning decides that the inconsistencies are such that the Planning Proposal should not proceed.

Council's preliminary planning assessment of relevant *Environmental Planning & Assessment Act* issues can be found in **Attachment 9**.

Zoning and Planning Control Recommendations

The submitted Planning Proposal identifies a change in zone from 1A Agriculture to mainly Residential and an area of Environmental Management along the Riparian Corridor. It is considered that a number of additional studies are required to support the change in zone. These studies include:

- Flood Study to determine if the land is flood prone;
- Bushfire Report;
- Visual Assessment.

- Infrastructure Provision Strategy

Subject to the proposal being supported by Council and the NSW Department of Planning, and the required studies being satisfactory, it is recommended that a change to urban zoning is appropriate.

The recommended controls are outlined in **Attachments 4-8** and are:

- Zone Part R2 Low Density Residential, Part R5 Large Lot Residential and Part E3 Environmental management;
- Minimum Lot Size 450m² for the R2 zoned land, 1000m² and 2000m² for the R5 zoned land.
- Building Height 9.0 metres;
- Floor Space Ratio max 0.5:1
- Biodiversity Map (along riparian corridor)

Public/Social Impacts

The immediate local area surrounding the site is undergoing significant change, with both the Tullimbar Village Project and Calderwood Project currently under development. This Planning proposal promotes a transition from the approved standard residential development along Yellow Rock Road, through to semi-rural land holdings along Yellow Rock Creek. The proposal will deliver a natural gradation of housing product along Yellow Rock road to ensure an appropriate transition from residential to rural land holding. The proposed Residential zoning for this land will also assist in providing additional housing affordability and diversity within the LGA.

The impact this will have on our community can be partly determined by the submissions we receive during public exhibition.

Link to Community Strategic Plan

This Planning Proposal supports the following objectives and strategies of the Community Strategic Plan:

Objective: 2.1 - Protects and promotes its natural environment.

Strategy: 2.1.1 - Manage catchments effectively to improve the cleanliness, health, and biodiversity of creeks, waterways and oceans.

Objective: 2.3 - A liveable City that is connected through places and spaces.

Strategy: 2.3.2 - Undertake all land use planning addressing social, economic and environmental principles whilst reflecting the current and future community's needs.

Strategy: 2.3.4 - Facilitate the provision of development that meets the changing needs and expectations of the community.

Consultations

Internal

Nil

External

If the Council resolves to endorse the preparation of this Planning Proposal it will be referred to the NSW Department of Planning & Infrastructure for review and Gateway determination. If endorsed, the Planning Proposal will be put on public exhibition. To coincide with the public exhibition, Council will write to the adjoining land owners and also place an advertisement in the Lake Times.

The Gateway process will identify any further consultation that will need to be undertaken. Following the exhibition period, submissions will be reviewed and reported back to Council.

Political Donations Disclosure

Under Section 147(4) of the *Environmental Planning and Assessment Act 1979* (the Act) a person who makes a relevant planning application to Council is required to disclose any reportable political donations and gifts made by any person with a financial interest in the application within the period commencing two years before the application is made and ending when the application is determined, including:

- a. all reportable political donations made to any Councillor of this Council
- b. all gifts made to any Councillor or employee of this Council.

Under Section 147(5) of the Act, these disclosure requirements also apply to a person, or any associate of a person, who makes a relevant public submission to Council in relation to a relevant planning application.

Note: Section 147(1) of the Act states: 'political donations or gifts are not relevant to the determination of any such planning application, and the making of political donations or gifts does not provide grounds for challenging the determination on any such planning application'.

The Disclosure Statements received by Council indicate that no reportable donations or gifts have been made.

Recommendation

That Council:

1. prepare a Planning Proposal (No 12) for Lot 2, DP 1191252, Yellow Rock Road, Tullimbar and adjoining roads to amend *Shellharbour Local Environmental Plan 2013* to incorporate the proposed Zoning and Planning Controls in Attachments 4-8.
2. authorise the General Manager to submit the Planning Proposal (Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 12) to the NSW Department of Planning & Infrastructure in accordance with section 56 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.

3. delegate to the General Manager authority to make minor mapping and Local Environmental Plan instrument changes to Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 12 if and as required by the NSW Department of Planning & Infrastructure's LEP Review Panel and gateway determination.
4. publicly exhibit the Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 12 in accordance with the gateway determination.
5. A report be submitted to the Council on the public exhibition of the Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 12 detailing the outcomes of the community and government agency engagement.
6. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 12 be reported back to the Council for final consideration and with further recommendations regarding adoption.

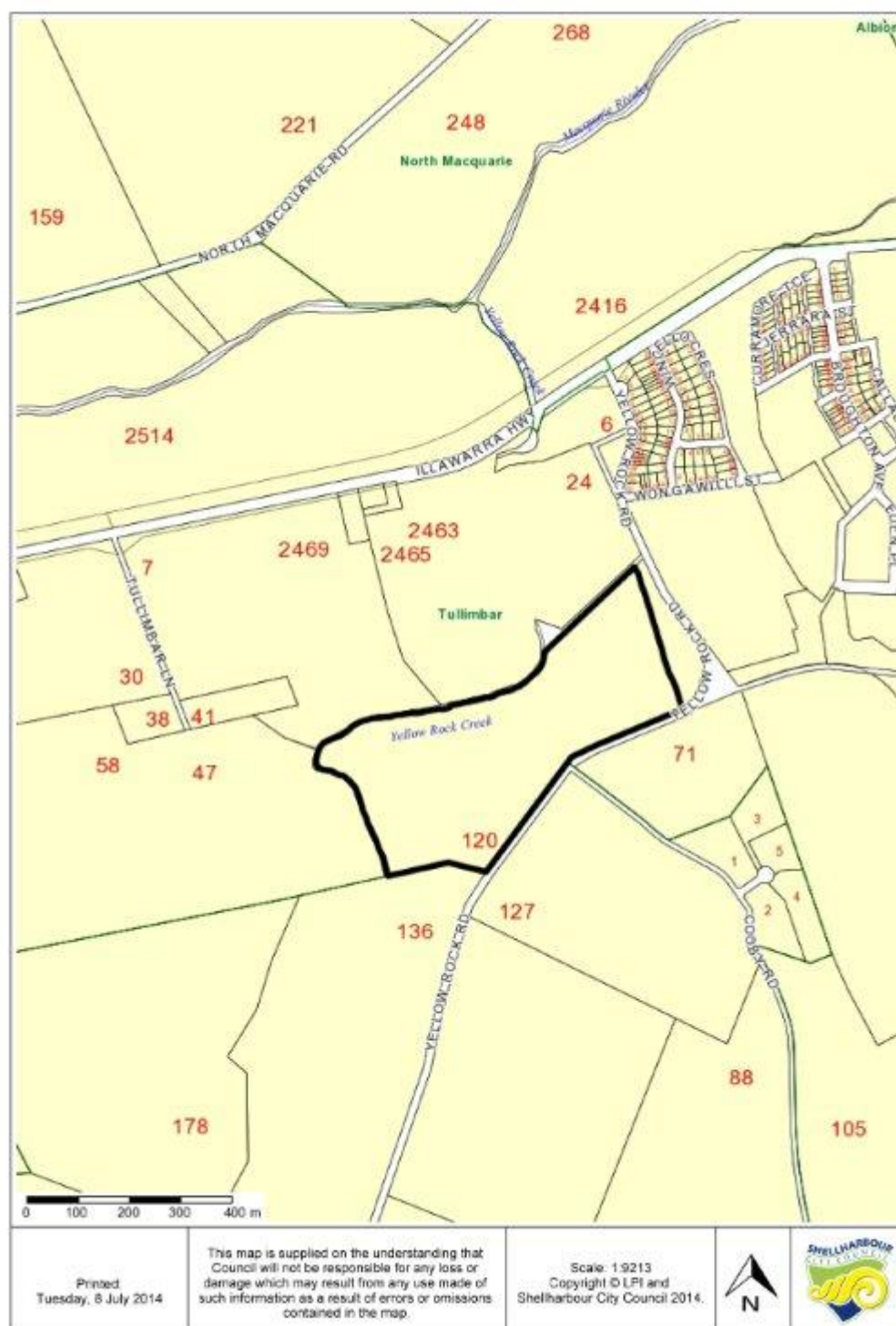


Approved for Council's consideration: _____

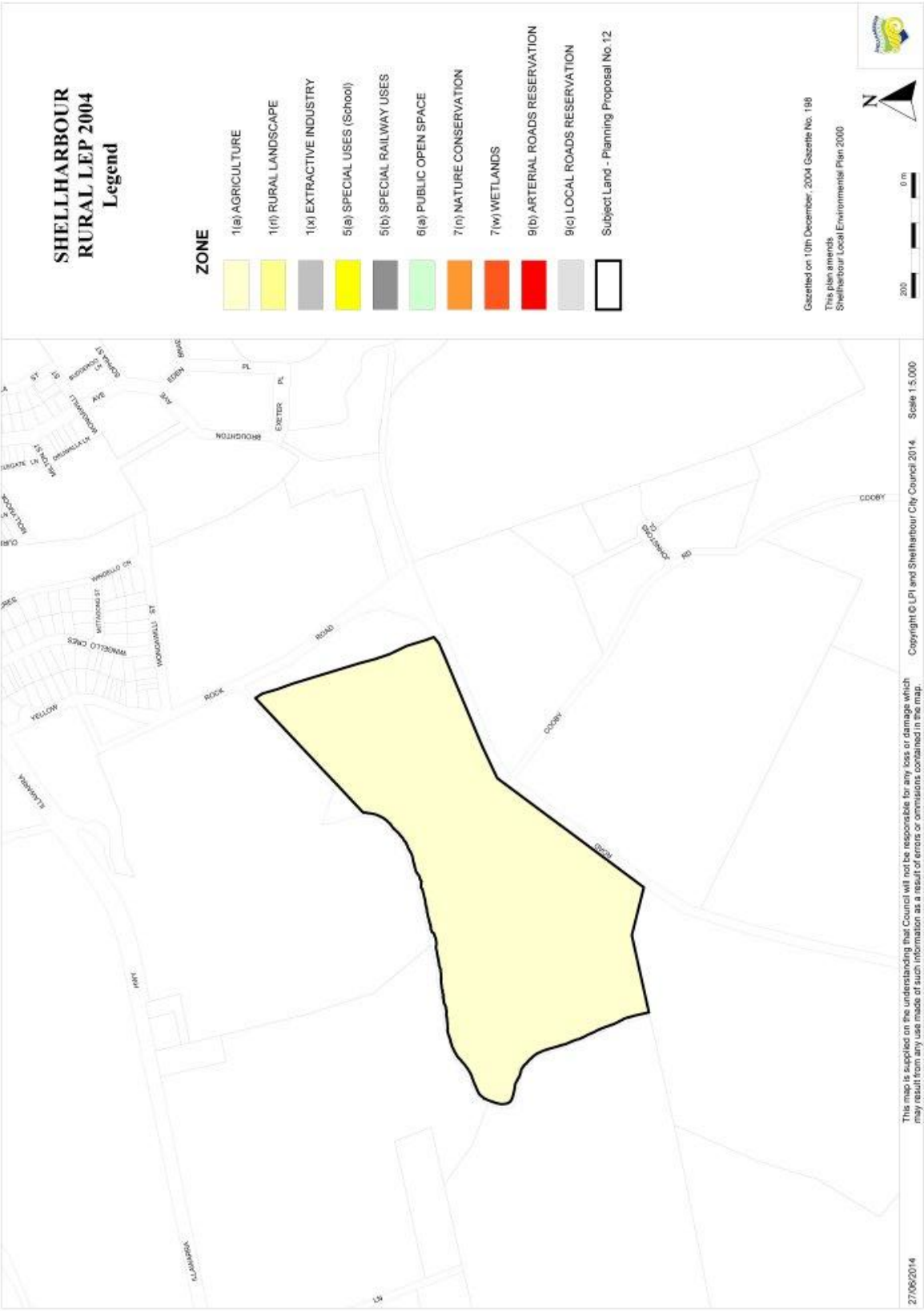
Attachments

1. Locality Plan
2. Current Zoning
3. Concept Plan
4. Proposed Zoning Map
5. Proposed Lot Size Map
6. Proposed Building Height Map
7. Proposed Floor Space Ratio Map
8. Proposed Biodiversity Map
9. preliminary planning assessment of relevant *Environmental Planning & Assessment Act*

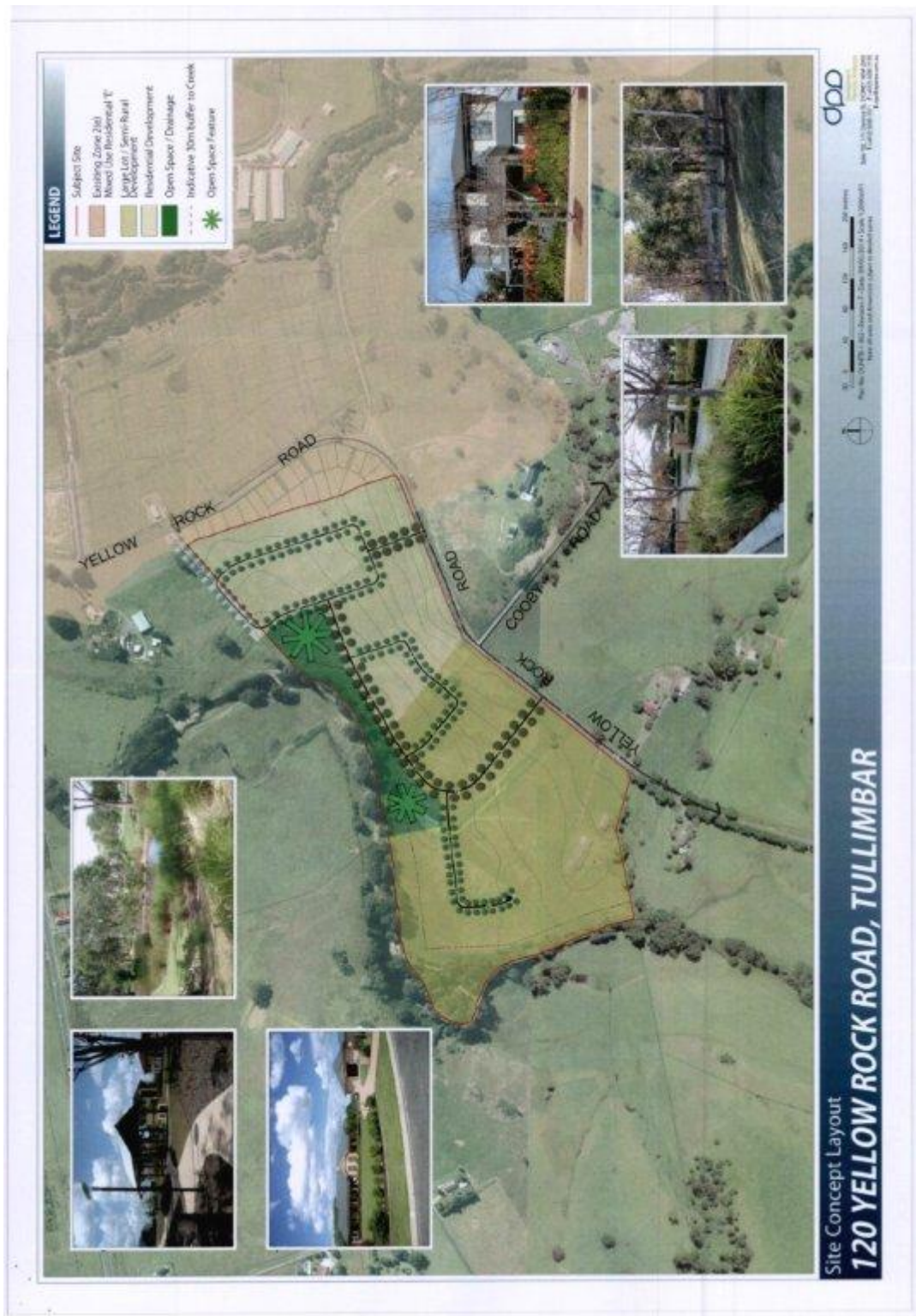
Attachment 1 – Locality Plan



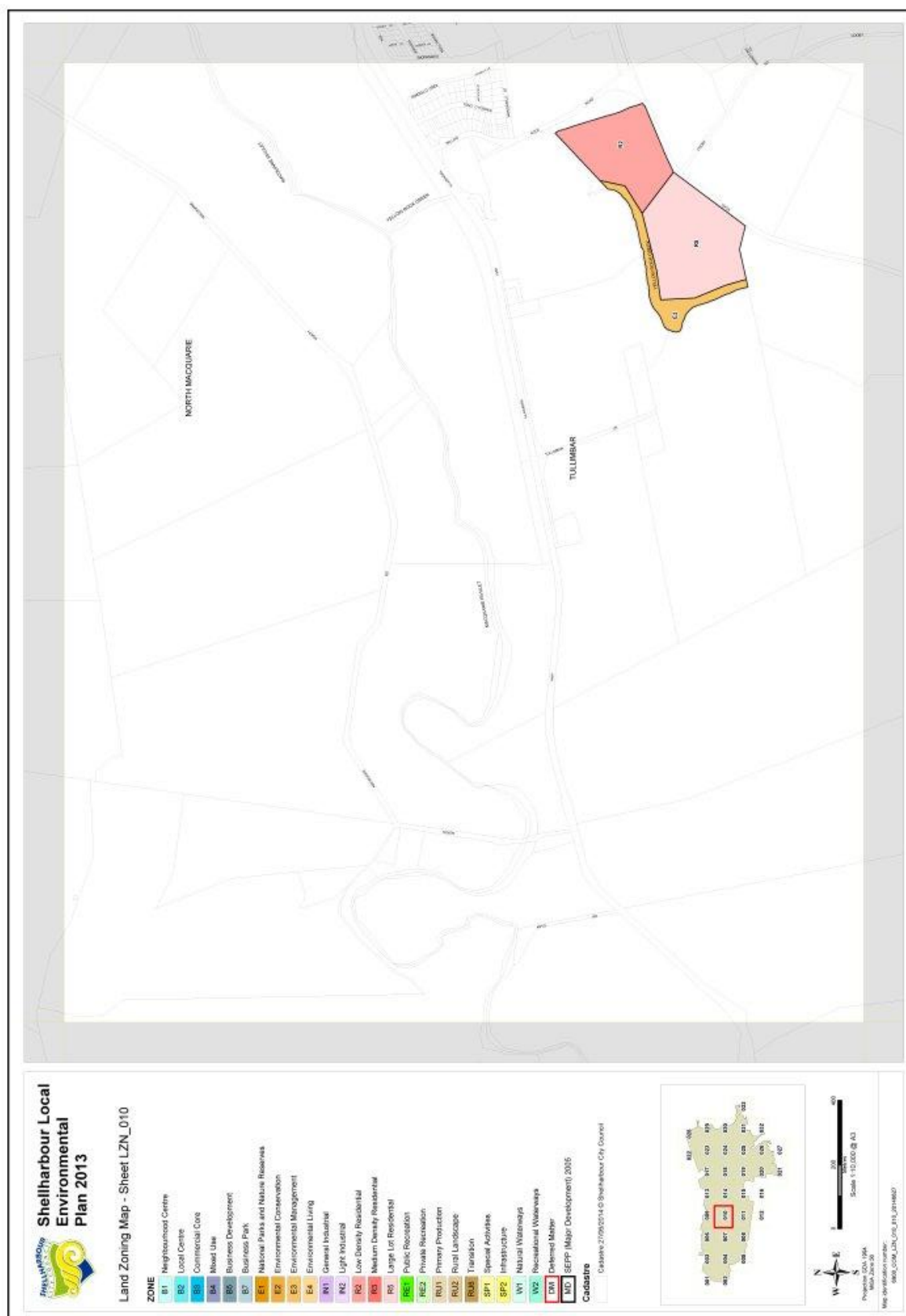
Attachment 2 – Current Zoning



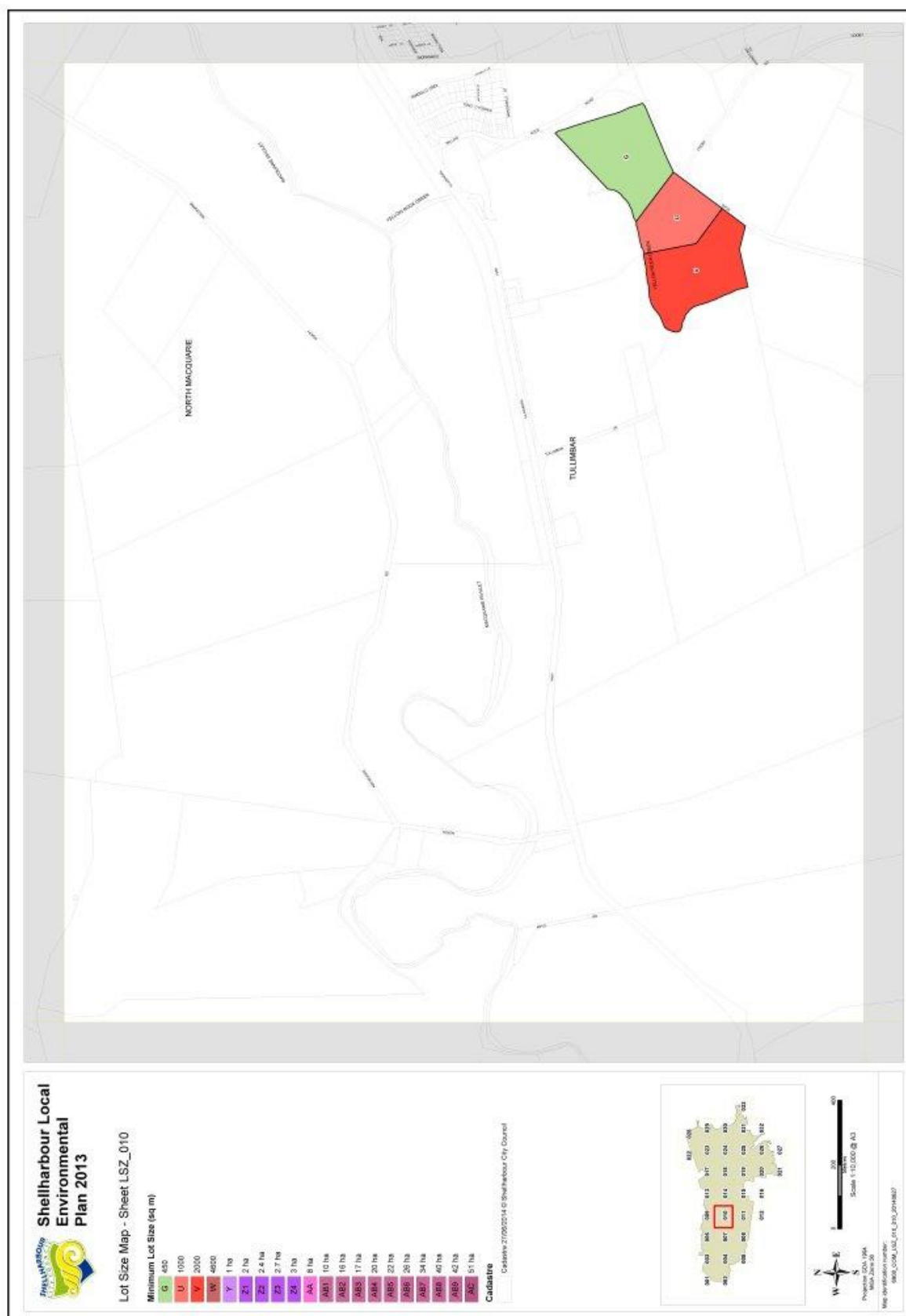
Attachment 3 – Concept Plan



Attachment 4 – Proposed Zoning Map



Attachment 5 – Proposed Lot Size Map



Attachment 6 – Proposed Building Height Map



Attachment 7 – Proposed Floor Space Ratio Map





Attachment 9 – Preliminary Planning Assessment of Relevant *Environmental Planning & Assessment Act*

A. Local Planning Directions (*S117(2) Environmental Planning & Assessment Act*)

The Planning Proposal is currently inconsistent with the following directions.

1. Rural Zones (1.2)

This proposal is inconsistent with this Direction as it is proposing to rezone Rural land to Residential and is not in accordance with a strategy approved by the Department of Planning of justified by a specific study in accordance with this Direction.

The proposal is also not in accordance with the Illawarra Regional Strategy (IRS). The IRS identifies that the land is being investigated by Council to determine appropriate land uses and zonings. This investigation was the Urban Fringe LES.

Whilst this Planning Proposal is not in accordance with the IRS, the Strategy (page 22) identifies that these lands are being investigated to determine appropriate land uses. That investigation was the Urban Fringe LES and this Planning Proposal is a further investigation of the lands.

The classification of the land, predominantly Class 3 and a small area of Class 4, identifies the land as having some rural use significance. NSW Agriculture, as part of the Section 62 of the *Environmental Planning & Assessment Act* consultations for the Urban Fringe LES, noted that generally within the study area, land was amongst other things, most likely Class 3 or 4 agricultural lands and not suited to cropping.

Being located near urban lands will restrict some forms of agriculture, particularly traditional forms of agriculture that rely on the use of chemical based products. The land is currently used for grazing cattle and has a total area of 17.76ha.

Whilst there are no State Government adopted policies for the urban development of this land, the continued viability of this land for traditional forms of agriculture may be limited.

This Planning Proposal is inconsistent with this Direction but the inconsistency may be justified by the information in the Housing and settlement section of the IRS identifying this land for investigation to determine appropriate land uses. This inconsistency is required to be assessed by the Department of Planning and the decision will be outlined in the Gateway determination.

2. Heritage Conservation (2.3)

The Planning Proposal is not consistent with this Direction as a thorough study to assess the presence or not of Aboriginal areas, places, landscapes or objects have not been carried out.

An Aboriginal heritage assessment is required to be carried out in accordance with the Cultural heritage assessment undertaken as part of the Urban Fringe LES and the LES recommendations.

Previous advise from the department of Planning and Infrastructure and the Office of Environment and Heritage indicate that this assessment may be deferred until the

Development Application stage and is therefore not required as part of any Gateway Application or determination.

4. Residential zones (3.1)

The Planning Proposal is not consistent with this Direction as it proposes urban development on the urban fringe and is not in accordance with a strategy approved by the Department of Planning or justified by a specific study in accordance with this Direction.

The proposal is also not in accordance with the Illawarra Regional Strategy (IRS). The IRS identifies that the land is being investigated by Council to determine appropriate land uses and zonings. This investigation was the Urban Fringe LES.

Whilst this Planning Proposal is not in accordance with the IRS, the Strategy (page 22) identifies that these lands are being investigated to determine appropriate land uses. That investigation was the Urban Fringe LES and this Planning Proposal is a further investigation of the lands.

This Planning Proposal is inconsistent with this Direction but the inconsistency may be justified by the information in the Housing and settlement section of the IRS identifying this land for investigation to determine appropriate land uses.

The Illawarra Urban Development Program 2012 Update states that Shellharbour LGA has a sufficient supply of strategy identified greenfield land (10,706 lots). This is well above the required 3,135 lots needed according to the 15 year benchmark. There are 7,806 lots zoned which means Shellharbour LGA also meets the 8 year benchmark of 1,672 lots zoned. Based on the 7.3 year benchmark for zoned and service ready lots, Shellharbour LGA would require 1,526 lots. There are 4,151 lots zoned and service ready.

The inconsistency that this proposal has with this Local Planning Direction is required to be assessed by the Department of Planning and the decision will be outlined in the Gateway determination.

6. Flood Prone Land (4.3)

This Planning Proposal is currently inconsistent with this Direction.

The Urban Fringe LES didn't undertake any studies to determine flood planning areas or to determine consistency with the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*.

This study can be carried out by the proponent prior to exhibition of the Planning Proposal if the proposal is supported by Council and the LEP Review Panel and if required as part of the Gateway determination.

7. Implementation of Regional Strategies (5.1)

The land is not identified in the Illawarra Regional Strategy for urban development.

The Illawarra Regional Strategy identifies these lands as being investigated by Council to determine appropriate land uses and zonings taking into account it's urban, biodiversity and natural resource values (page 22). This investigation was the Urban Fringe Local

Environmental Study that recommended minimal development on the land and this Planning Proposal is a further investigation of the lands

This Planning Proposal is inconsistent with this Direction but the inconsistency may be justified by the information in the Housing and settlement section of the IRS identifying this land for investigation to determine appropriate land uses.

The Illawarra Urban Development Program 2012 Update states that Shellharbour LGA has a sufficient supply of strategy identified greenfield land (10,706 lots). This is well above the required 3,135 lots needed according to the 15 year benchmark. There are 7,806 lots zoned which means Shellharbour LGA also meets the 8 year benchmark of 1,672 lots zoned. Based on the 7.3 year benchmark for zoned and service ready lots, Shellharbour LGA would require 1,526 lots. There are 4,151 lots zoned and service ready.

There is no shortage of zoned and serviced ready land in the Shellharbour LGA. This land is not required to meet a shortage of supply in the Shellharbour LGA.

The inconsistency that this proposal has with this Local Planning Direction is required to be assessed by the LEP Review Panel and the decision will be outlined in the Gateway determination.

B Illawarra Regional Strategy

The Planning Proposal is not consistent with the following sections of the Illawarra Regional Strategy.

4. Zone areas subject to high hazard to reflect the limitations of the land

Until a flood study is prepared in accordance with the Floodplain Development Manual 2005, it isn't possible to determine if any parts of the land are subject to high hazard. Should the proposal be supported and if deemed relevant by the LEP Review Panel, a flood study should be provided by the proponent to address this issue.

5. Cultural heritage

The Urban Fringe LES identified the need for additional Aboriginal heritage assessment to be carried out to determine if the land has any cultural significance.

Undertaking this study will ensure the relevant actions of this chapter of the IRS is completed.

Landscape Changes

The landscape will be changed significantly if the land is rezoned.

The Urban Fringe LES visual assessment recommends minimal development based on the visual quality of the area.

Should the proposal be supported and if deemed relevant by the LEP Review Panel, a visual assessment of the current proposal should be provided by the proponent to address this issue.

[Agenda Report](#)

To view the original Agenda Item, double-click on 'Agenda Report' blue hyperlink above.

The following item was dealt with by Council at its Ordinary Meeting on Tuesday 22 July 2014

Please action as appropriate and ensure that notes of your actions are recorded in ECM.

Subject 11.2.3 Planning Proposal No. 12 - Lot 2, DP 1191252, Yellow Rock Road, Tullimbar (10203942)

1 RESOLVED: Murray/Marsh

That Council:

1. prepare a Planning Proposal (No 12) for Lot 2, DP 1191252, Yellow Rock Road, Tullimbar and adjoining roads to amend *Shellharbour Local Environmental Plan 2013* to incorporate the proposed Zoning and Planning Controls in Attachments 4-8.
2. authorise the General Manager to submit the Planning Proposal (Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 12) to the NSW Department of Planning & Infrastructure in accordance with section 56 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.
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6. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 12 be reported back to the Council for final consideration and with further recommendations regarding adoption.

CARRIED UNANIMOUSLY