

Subject 10.2.2 Local Environmental Plan 2013 Planning Proposal No 17 - Rezoning of SP2 Infrastructure Classified Road zoned land & removal of associated classified road reservation on land between Princes Highway & East West Route, Albion Park Rail (1055896)

To the General Manager

Directorate: **City Outcomes**
Department: **City Strategy**

Manager: Geoff Hoynes – Group Manager City Strategy
Author: Michael Tuffy – Senior Strategic Planner

Summary

Council has received a request from Roads and Maritime Services to remove a classified road reservation from LEP 2013 on land between the Princes Highway and East West Route at Albion Park Rail. Affecting three lots and some road, the reservation is associated with the RMS' Albion Park Rail bypass project and is no longer needed by them, based on their current bypass design. The properties affected are shown on **Attachment 1**: Locality Plan and **Attachment 2**: Table of Properties.

The reservation land runs north south through a light industrial zoned area and as part of this planning proposal it is proposed to be rezoned from SP2 infrastructure Classified Road to IN2 Light Industrial in accordance with the surrounding zoning.

This report recommends that the planning proposal be submitted to the NSW Department of Planning and Environment for their gateway determination and that Council apply to the Department of Planning and Environment to use its plan making related delegations, after any consultation on the draft plan.

The planning proposal is not proposed to undergo formal public exhibition with newspaper notices and letters to land owners/adjoining land owners. No state government authority consultation is proposed.

The report also recommends that Council delegate authority to the General Manager the authority to finalise Planning Proposal 17 and amend Local Environmental Plan 2013.

Background

About planning proposals

A planning proposal is a document that explains the intended effect of a proposed amendment(s) to a Local Environmental Plan (LEP), in this case to Shellharbour LEP 2013, and sets out the justification for making the amendment.

This planning proposal will have the following four 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 resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Council is recommending that no community consultation is required. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.
3. *Assessment* - Council assesses and makes any post gateway changes as required. Parliamentary Counsel then prepares a draft local environmental plan — the legal instrument.
4. *Decision* - with the Minister's (or delegate's) approval the plan becomes law and is published on the NSW legislation website.

Council is at step 1.

About this planning proposal

The subject land is located in a light industrial zoned area, located between the Princes Highway and East West Route and involves some roadway on Colden Drive, Shandan Circuit, Durgadin Drive and three privately owned lots.

One of the lots is entirely covered by the reservation and corresponding SP2 Infrastructure Classified Road zoning with the other 2 partly covered by them. **See Attachment 1: Locality Plan.**

In addition to removing the reservation and consistent with rezoning the land to IN2 Light Industrial, the planning proposal proposes on the subject land, controls on building height (11 metres), minimum lot size (2.7 hectares) and floor space ratio (1:1).

The existing SP2 Infrastructure Classified Road zoning is restrictive, only permitting environmental protection works, flood mitigation works, roads, development ancillary or incidental to roads.

The owners of the three lots involved have been notified by Council of the RMS' request to remove the reservation and have no objection. The owner of Lot 1 has been advocating for its removal. Removal of the reservation and rezoning to light industrial would free the land up for development commensurate with the IN2 Light Industrial zoning.

The purpose of the reservation was to provide a future access via a bridge to the two quarries south of the East West Route, when the proposed motorway (as part of the Albion Park Rail bypass) is constructed over the existing East West Route.

Roads and Maritime Services displayed the preferred option for the Albion Park Rail bypass in September/October 2014 and have now developed a concept design to a level of detail enabling the Environmental Impact Statement to be prepared and are confident the concept design is not expected to change in relation to the subject reservation. Accordingly Roads and Maritime Services requests removal of the reservation.

The concept design provides for quarry vehicular access from a new local road adjoining to the south and parallel with the new motorway. The concept design provides no vehicular connection between the new motorway and existing light industrial area.

The proposed changes to LEP 2013 are indicated on **Attachment 2**: Table of Properties and **Attachment 3**: Planning Proposal Maps.

Financial Implications

Preparation of Planning Proposal 17 will utilise staff time and resources.

Legal and Policy Implications

Local planning directions for planning proposals are issued by the Minister under *Section 117(2) of the Environmental Planning & Assessment Act*. Direction 6.2: Reserving Land for Public Purposes applies to Planning Proposal 17.

Clause 6.2(7) of the direction requires that when a public authority such as the RMS requests a relevant planning authority (Council) to include provisions in a planning proposal to remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.

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

The relevant *Environmental Planning & Assessment Act* issues are outlined in the following sections of this report.

Draft State Environmental Planning Policies, State Environmental Planning Policies, Deemed State Environmental Planning Policies

Council officers' assessment is that these are not applicable to the planning proposal. The Department of Planning and Environment will review Council's assessment as part of its gateway determination.

Local Planning Directions (S117(2) Environmental Planning & Assessment Act)

Council officers have made an assessment of the planning proposal against the directions in consultation with the Department of Planning and Environment. Under the Gateway system these assessments can occur at different stages in the process. Based on Council's assessment there is an inconsistency with the following direction:

4.3 Flood Prone Land

The planning proposal is in a flood planning area and has the potential to enable a significant increase in the development of the land by permitting uses associated with the IN2 zone.

However Council's flood assessment policy in its Local Environmental Plan/Development Control Plan aims to ensure development does not result in significant flood impacts to other properties or result in substantially increased requirement for government spending on flood mitigation measures, infrastructure or services.

This inconsistency is therefore considered to be of minor significance.

It will be the Department of Planning and Environment that decides as part of its gateway determination, firstly whether the planning proposal is inconsistent with any direction and if so whether an inconsistency can be justified or is of minor significance.

Illawarra Regional Strategy (IRS)

Council officers' assessment is that the provisions of the IRS are either consistent with or not applicable to the planning proposal.

The Department of Planning and Environment will review Council's assessment as part of its gateway determination.

Use of Delegations

Given the matters in this planning proposal are considered to be of local significance, it is intended that as part of its gateway submission, Council apply to the Department of Planning and Environment to use its plan making delegations, including to make or not make the plan under Section 59 of the Environmental Planning and Assessment Act, after any consultation on the draft plan.

Public/Social Impacts

The land's SP2 zoning is restrictive, only permitting environmental protection works, flood mitigation works, roads, development ancillary or incidental to roads.

Removal of the reservation and rezoning to light industrial would free the land up for development commensurate with the IN2 Light Industrial zoning. This would be conducive to employment generating investment and development, providing economic and social benefits for the community.

Link to Community Strategic Plan

Planning Proposal 17 supports the following objectives and strategies of the Community Strategic Plan:

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

Infrastructure Service Group
Director Corporate Policy

External

The Department of Planning and Environment

If Council resolves to endorse the preparation of this planning proposal it will be referred to the NSW Department of Planning and Environment for review and gateway determination. If endorsed, the planning proposal is not proposed to undergo formal public exhibition with newspaper notices and letters to land owners/adjoining land owners.

Council officers have written to Roads and Maritime Services and the affected lot owners advising them that this planning proposal is being reported to Council 4 August 2015.

The gateway process will formally identify consultation that will need to be undertaken. Following this, any submissions objecting 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'.

This Planning Proposal report has been instigated by Council based on the request by Roads and Maritime Services to remove the reservation. As such, no reporting applies at this stage of the planning proposal.

Recommendation

1. **Council prepare a Planning Proposal (No. 17) to amend Shellharbour Local Environmental Plan 2013 to incorporate the proposed zoning and planning controls contained in Attachments 2 and 3 of this report.**
2. **The Council authorise the General Manager to submit the Planning Proposal (Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 17) to the NSW Department of Planning & Environment in accordance with section 56 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.**

3. The Council 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. 17 if and as required by the NSW Department of Planning & Environment's LEP Review Panel and gateway determination.
4. That Council as part of its gateway submission apply to the Department of Planning and Environment to use its plan making related delegations including to make or not make the plan under section 59 of the *Environmental Planning and Assessment Act*, after any consultation on the draft plan.
5. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 17 be subject to consultation in accordance with the gateway determination.
6. If submission(s) objecting result from consultation on Planning Proposal 17 or there are substantial post consultation changes proposed for other reason(s), a report be submitted to Council detailing consultation outcomes for final consideration and with further recommendations regarding adoption.

If there are no submission(s) objecting received as a result of consultation on Planning Proposal 17, or no substantial post consultation changes proposed for other reason(s), Council delegate authority to the General Manager the authority to finalise Planning Proposal 17 and amend Local Environmental Plan 2013.



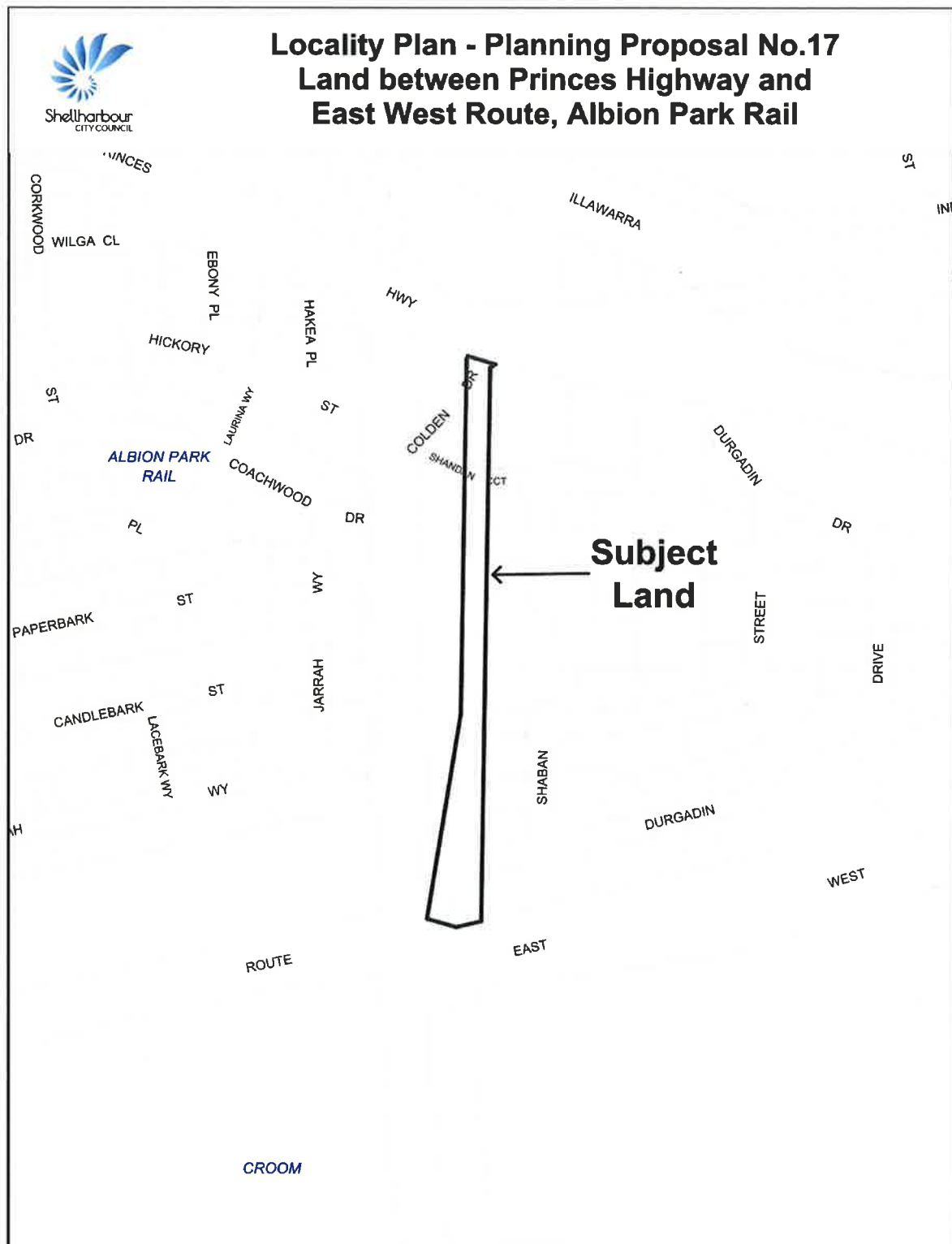
Approved for Council's consideration:

Date of Meeting: 4 August 2015

Attachments

1. Locality Plan
2. Table of Properties showing existing and proposed planning controls
3. Planning Proposal Maps (Available to view on Council's Website)

Attachment 1 – Locality Plan



Printed: 04/06/2015

This map is supplied on the understanding that Council will not be responsible for any loss or damage which may result from any use made of such information as a result of errors or omissions contained in the map.

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Scale 1:4,000

Attachment 2 - Table of Properties showing existing and proposed planning controls

Planning Proposal 17 – Table of Properties showing existing & proposed planning controls											
No.	Property	Existing Planning Controls				Proposed Planning Controls					
		Zone	Reservation - SP2 Infrastructure Classified Road	Floor Space Ratio	Height of Building	Minimum Lot Size	Zone	Reservation - SP2 Infrastructure Classified Road	Floor Space Ratio	Height of Building	Minimum Lot Size
1	No. 1 Lot 1 DP 1039969 Shandan Circuit Albion Park Rail	IN2 Light Industrial SP2 Infrastructure Classified Road	YES	1:1 for IN2 NIL for SP2	11m for IN2 NIL for SP2	2.7ha for IN2 NIL for SP2	IN2 Light Industrial	NO	1:1	11m	2.7ha
2	Part of Lot 23 DP 1039967 Princes Hwy. Albion Park Rail	IN2 Light Industrial SP2 Infrastructure Classified Road	YES	1:1 for IN2 NIL for SP2	11m for IN2 NIL for SP2	2.7ha for IN2 NIL for SP2	IN2 Light Industrial	NO	1:1	11m	2.7ha
3	Lot 10 DP 1040306 Princes Hwy. Albion Park Rail	SP2 Infrastructure Classified Road	YES	NIL	NIL	NIL	IN2 Light Industrial	NO	1:1	11m	2.7ha
4	Part of road reserve on Golden Dv., Shandan Circuit and Durgadin Dv. Albion Park Rail	SP2 Infrastructure Classified Road	YES	NIL	NIL	NIL	IN2 Light Industrial	NO	1:1	11m	2.7ha