
ADOPTED AT COUNCIL MEETING HELD ON TUESDAY 28 JUNE 2011

545. (Item 11, Page 7) Jerberra Estate Rezoning Investigations

File 2653E (PDR)

This item was withdrawn and dealt with separately.

Note: Cllr Fergusson returned to the meeting.

RECOMMENDED that:

- a) Council finalise and submit a draft planning proposal to the Department of Planning & Infrastructure (DP&I) for „gateway“ determination, based on the details outlined in the report to the Development Committee (7 June 2011); and
- b) Council report the outcome of DP&I's „gateway“ determination to Council and also outline the remaining steps and indicative timeframes for completing the rezoning process.
- c) Council utilise the Local Member to assist this process.

A MOTION was moved by Cllr Proudfoot, seconded Cllr Young, that:

- a) Council finalise and submit a draft planning proposal to the Department of Planning & Infrastructure (DP&I) for „gateway“ determination, based on the details outlined in the report to the Development Committee (7 June 2011); and
- b) Council report the outcome of DP&I's „gateway“ determination to Council and also outline the remaining steps and indicative timeframes for completing the rezoning process.
- c) Council utilise the Local Member to assist this process;
- d) Council allows affected residents who will be asked to leave their homes to remain until such time as negotiations with the Minister for Planning have concluded on this matter

The MOTION was withdrawn.

A FORESHADOWED MOTION was moved by Cllr Brumerskyj, seconded Cllr Fergusson, that:

- a) Council finalise and submit a draft planning proposal to the Department of Planning & Infrastructure (DP&I) for „gateway“ determination, based on the details outlined in the report to the Development Committee (7 June 2011); and
- b) Council report the outcome of DP&I's „gateway“ determination to Council and also outline the remaining steps and indicative timeframes for completing the rezoning process.
- c) Council utilise the Local Member to assist this process.

The FORESHADOWED MOTION upon being PUT to the meeting was declared LOST.

THE RECORD OF VOTING ON THIS MATTER WAS AS FOLLOWS:

The following Councillors voted "Aye";

Clrs Fergusson, Brumerskyj, Findley, Green

The following Councillors voted "No";

Clrs Soames, Bennett, Guile, Ward, Kearney, Watson, Proudfoot, Young

A FURTHER FORESHADOWED MOTION was moved by Clr Young, seconded Clr Soames, that:

- a) Council finalise and submit a draft planning proposal to the Department of Planning & Infrastructure (DP&I) for 'gateway' determination, based on the details outlined in the report to the Development Committee (7 June 2011); and
- b) Council report the outcome of DP&I's 'gateway' determination to Council and also outline the remaining steps and indicative timeframes for completing the rezoning process.
- c) Council utilise the Local Member to assist this process;
- d) Council hold an urgent Councillor Briefing to:
 - i) Enable consideration being given to providing for a zone which does not prohibit the dwelling on any property;
 - ii) Seek advice as to powers of Minister under the EPBC Act to take action other than to prevent the carrying out of demolition works;
 - iii) Obtain advice in respect of Councillors ability to not require demolition of structures constructed prior to the EPBC Act coming into force and any liability which may rest with Council in respect to any structure erected prior to bushfire legislation;
- e) The objective of the above is to achieve a situation where individuals are able to remain in their homes for continuous occupation of the property in an area zoned for environmental preservation

The FURTHER FORESHADOWED MOTION upon being PUT to the meeting was declared **CARRIED**.

THE RECORD OF VOTING ON THIS MATTER WAS AS FOLLOWS:

The following Councillors voted "Aye";

Clrs Soames, Bennett, Guile, Ward, Kearney, Watson, Proudfoot, Young, Green

The following Councillors voted "No";

Clrs Fergusson, Brumerskyj, Findley

REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

TUESDAY, 7 JUNE 2011

STRATEGIC PLANNING & INFRASTRUCTURE

1. Jerberra Estate Rezoning Investigations

File 2653E (PDR)

Purpose of the Report:

The purpose of this report is to obtain Council's resolution to finalise and submit a draft planning proposal to the NSW Department of Planning & Infrastructure (DP&I) under the 'gateway' planning process. The report details the draft planning proposal, which has been prepared in accordance with Council's resolution to finalise details of 'Option A' (MIN11.14).

RECOMMENDATION

Recommended that:

- a) Council finalise and submit a draft planning proposal to the Department of Planning & Infrastructure (DP&I) for 'gateway' determination, based on the details outlined in the report; and
- b) Council report the outcome of DP&I's 'gateway' determination to Council and also outline the remaining steps and indicative timeframes for completing the rezoning process.

Community Strategic Plan:

Objective 2.2 Population and urban settlement growth that is ecologically sustainable, carefully planned and managed to meet the needs of the community.

Strategy 2.2.1 Develop and implement land use zones and related strategies for future growth of the City, based on principles of connectivity, ecological sustainability, flexibility and accessibility.

Delivery Program:

Activity 2.2.1.11 Resolve the future of Small Lot Rural Subdivisions located in the Jervis Bay and St Georges Basin area are consistent with the Jervis Bay Settlement Strategy.

Options and Implications:

Option 1

Finalise a draft planning proposal and submit to the DP&I for 'gateway' determination.

Implications

Under the new plan making process a 'Gateway' approval is now required for the rezoning process to proceed to finalisation. Community consultation will be an integral part of this planning process once it has progressed through the 'gateway'. The "gateway" determination will also detail any other matters to be resolved through the planning proposal.

Option 2

Delay submission of a draft planning proposal.

Implications

It is imperative that the rezoning process is completed as soon as possible given the long running and protracted nature of this rezoning. The rezoning process cannot proceed without a 'gateway' approval.

Report Details:

Introduction:

Following an intensive landowner consultation process in the second half of 2010 to determine the feasibility of a possible option involving land pooling and re-subdivision, Council resolved on 1 February 2011 that it:

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- a) *Acknowledges that there appears to be insufficient support from landowners for "Option B - Land Pooling/Community Title re-subdivision";*
 - b) *Proceeds to finalise details of "Option A - Constrained Development" including:*
 - i. *Ongoing consultation with landowners as appropriate;*
 - ii. *Continuing to work constructively with Department of Planning and Department of Environment, Climate Change & Water toward a rezoning outcome for Jerberra Estate which is as far as possible, equitable to landowners; and*
 - c) *Considers the removal of the special rates from those properties identified as having little prospect of supporting development, from 2011/2012 onwards.*

"Option A" was outlined in an information brochure which was circulated to landowners in September 2011, the map from which is provided as **Attachment 'A'**.

In respect of part c) of the resolution, Council resolved on 19 April 2011 to remove the special rates from properties identified as having little prospect of being rezoned to allow development as part of the Draft Delivery & Operational Plan (MIN11.401). Identification of properties for special rate removal was informed by work on part b) of the above resolution, details of which are provided in this report.

Background:

In 2009, the NSW Government changed the way that Local Environmental Plans (LEPs) are developed and approved in an attempt to make the plan-making process more timely and efficient. The 'gateway' process involves:

- Planning proposal prepared - the relevant planning authority (in this case Council) is responsible for the preparation of a planning proposal, which explains the effect of, and justification for the Plan.
- 'Gateway' determination - 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 any 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 adjusted.
- Community consultation - the proposal is publicly exhibited.
- Assessment - the relevant planning authority (in this case Council) considers public submissions and the proposal is adjusted as necessary. Parliamentary Counsel then prepares a draft Local Environmental Plan (the legal instrument).
- Decision - with the Minister's (or delegate's) approval the Plan becomes law when it is published on the NSW legislation website.

While a transition period was provided for preparation of draft LEPs already in the planning system, Council was advised by DP&I that in the case of Jerberra Estate, a 'gateway' assessment will be required (refer to **Attachment 'B'**). A draft planning proposal is currently being prepared based on the maps in **Attachment 'C'** and the information in this report, and should be ready to submit for 'gateway' determination by the time the matter has been considered by Council at the next Ordinary meeting scheduled for 28 June 2011.

Key Issues:

The following maps are provided in **Attachment 'C'**:

- Map 1. Proposed zones. This map would form part of the LEP amendment.
- Map 2. Proposed minimum lot sizes. This map would form part of the LEP amendment.
- Map 3. Proposed building areas and bushfire planning information. This map shows where buildings would be located and the extent of bushfire asset protection zones (APZ). A suggested amalgamation plan is also shown to maximise the number of dwellings in both the Environmental Management (E3) and Environmental Living (E4) zones. This map would be incorporated into a supporting chapter in the Development Control Plan (DCP) for Jerberra Estate.
- Map 4. Proposed tree protection and conservation management areas. This would also be incorporated into a DCP for the Estate.
- Map 5. Combined map showing building areas etc with conservation management areas.

Description

The overall objective of the planning proposal is to enable appropriate residential development to occur (consistent with the resolved Option A) whilst protecting high value conservation areas and water quality in the Moona Moona Creek catchment, and managing bushfire risk in accordance with Planning for Bush Fire Protection.

The following zones and development outcomes are proposed:

E4 - Environmental living area

This area is relatively unconstrained by threatened species habitat. Up to one dwelling per lot would be permissible (subject to a development application). No further subdivision would be allowed. The minimum lot size for this area would be at least 2,000 m² (see note below on minimum lot sizes) to ensure effluent disposal can be safely accommodated, except where bushfire requirements dictate a larger minimum lot size. The proposed E4 land north of Invermay Avenue will not be able to be developed until perimeter fire trails have been established.

E3 - Environmental management area

This area contains predominantly arboreal threatened species habitat. Limited residential development could occur but lots would need to be amalgamated and land outside APZs managed for conservation. The extent of development/amalgamation would be controlled via the minimum lot size map. The minimum lot size proposed for this area is 2 ha (see note below on minimum lot sizes) except for the area between Jerberra Road and Inglewood Crescent on the western side of Greenslopes Avenue where it a 1.5 ha minimum lot size is proposed. Conservation requirements would be provided in a development control plan (DCP) for the Estate.

E2 - Environmental conservation area

This area is broadly defined by a threatened vegetation community Swamp Sclerophyll Forest endangered ecological community (EEC) and/or the Biconvex Paperbark (*Melaleuca biconvexa*). The Swamp Sclerophyll Forest EEC in the north east of the Estate is also habitat for the endangered Eastern Bristlebird. These areas are protected under both NSW and Federal environmental legislation and no development is proposed in these areas. Options for resolving the future tenure of properties in this area will be explored further as the planning process continues.

Variation of minimum lot sizes: Variation of up to 10% would be allowed. For example, a property of at least 1,800 m² could potentially be developed if the minimum lot size map stipulates 2,000 m². Where the existing properties do not comply with the proposed minimum lot size map, it will be necessary to amalgamate lots. Refer to the minimum lot sizes in Map 2 and the suggested lot configuration plan in Map 3, which are provided in **Attachment 'C'**.

The draft planning proposal is based on 'Option A' (refer to **Attachment 'A'**) except that some additional development is proposed following further detailed consideration, as outlined in Table 1 below.

Table 1: Proposed variations from "Option A" as shown in the 2010 information brochure.

Description	Explanation & justification
A dwelling is now proposed to be possible on Lot 156, increasing the cluster of dwellings in the south western corner of the Estate from three	There is sufficient area south of the EPBC-constrained land on Lot 156 to accommodate a dwelling and associated bushfire APZ. Note that this is not possible on Lots 150-155 due to the narrow width of land unaffected by the EPBC constraints. Development on

(3) to four (4). This clustered development area is proposed to be zoned Environmental Living (E4).	Lot 156 would be contingent on the creation of a right of carriageway over Lot 166.
A dwelling is now proposed to be possible on the combined area of lots 97-100 and the development footprint is proposed to be zoned E3 instead of Environmental Conservation (E2).	A dwelling and associated APZ could be accommodated without affecting the EPBC-constrained land provided the structure is constructed to BAL-40 (AS3959). There is an opportunity to ensure that the highly constrained land is protected and appropriately managed as part of one developable lot, thus realising a reasonable capital value for all four lots. Note that in addition to the significant threatened species constraints, Lots 98-100 are also part of the wildlife corridor in the Jervis Bay Regional Environmental Plan. See note ¹ below.
A dwelling is proposed on the combined area of Lots 24, 25, 29 & 30. The development footprint would be zoned E4 as is the adjoining land to the north and east. The remaining area (south of the APZ) would be zoned E2.	No dwellings were previously proposed on these lots as the area is partly within the buffer of the EPBC-constrained land. A dwelling constructed to BAL-40 located on Lot 25 would require an APZ to be established over Lot 24 and part of Lots 29 and 30. A reduction in the buffer would be necessary to accommodate the APZ. However the potential impacts would be minimal because the dwelling and the effluent disposal area would be located outside of the buffer and access would be off Jerberra Road. Furthermore, the overlap of the APZ and the buffer would be relatively small.
Expansion of the E4 zone and concomitant reduction in the E2 zone adjacent to the area containing the Biconvex Paperbark north of Invermay Avenue, benefitting Lots 62 and 66.	A small reduction in the vegetative buffer along or parallel with cadastre would have minimal impact subject to certain mitigation measures being implemented (see note ² below). Amalgamation of Lots 61 and 62, and Lots 66 and 67 would be necessary to provide minimum APZ's.

Notes

1. An alternative outcome for these lots (if development is not proposed) might be to seek acquisition by the NSW Government, however this could not be assured and probably has less chance of success.
2. Potential effects from stormwater runoff on the Biconvex Paperbark could be mitigated by installing a grassed swale between the development area and the conservation management area. The proposed fire trail around the perimeter of the development area combined with appropriate fencing would also help to delineate the boundary of the vegetative buffer and minimise edge effects.

Maps 3 to 5 (refer to **Attachment 'C'**) would form the basis for a supporting Development Control Plan (DCP) for Jerberra Estate. Key elements of the DCP would include:

-
- Bushfire management - road and perimeter fire trail network, and minimum construction standards for dwellings under AS3959 that are located in or adjacent to bushfire prone vegetation etc.
 - Tree protection and conservation management areas - requirements for establishment of covenants in the conservation management areas (excludes building envelopes and associated APZs) etc.
 - Effluent disposal - minimum acceptable standard for effluent disposal based on the site and soil constraints and will include onsite effluent disposal area calculations that have been undertaken as part of the rezoning investigations.

Resourcing Implications - Financial, Assets, Workforce

In 2005 Council borrowed \$350,000 to fund the Jerberra Estate rezoning investigations. In 2006/2007, a rezoning investigations special rate was introduced to repay this loan over a 10 year period. As at 31 March 2011, \$143,569 remained unspent. There is a strong financial imperative to bring the rezoning investigations to a conclusion as soon as possible.

Community, Environment (ESD), Economic and Governance Impact:

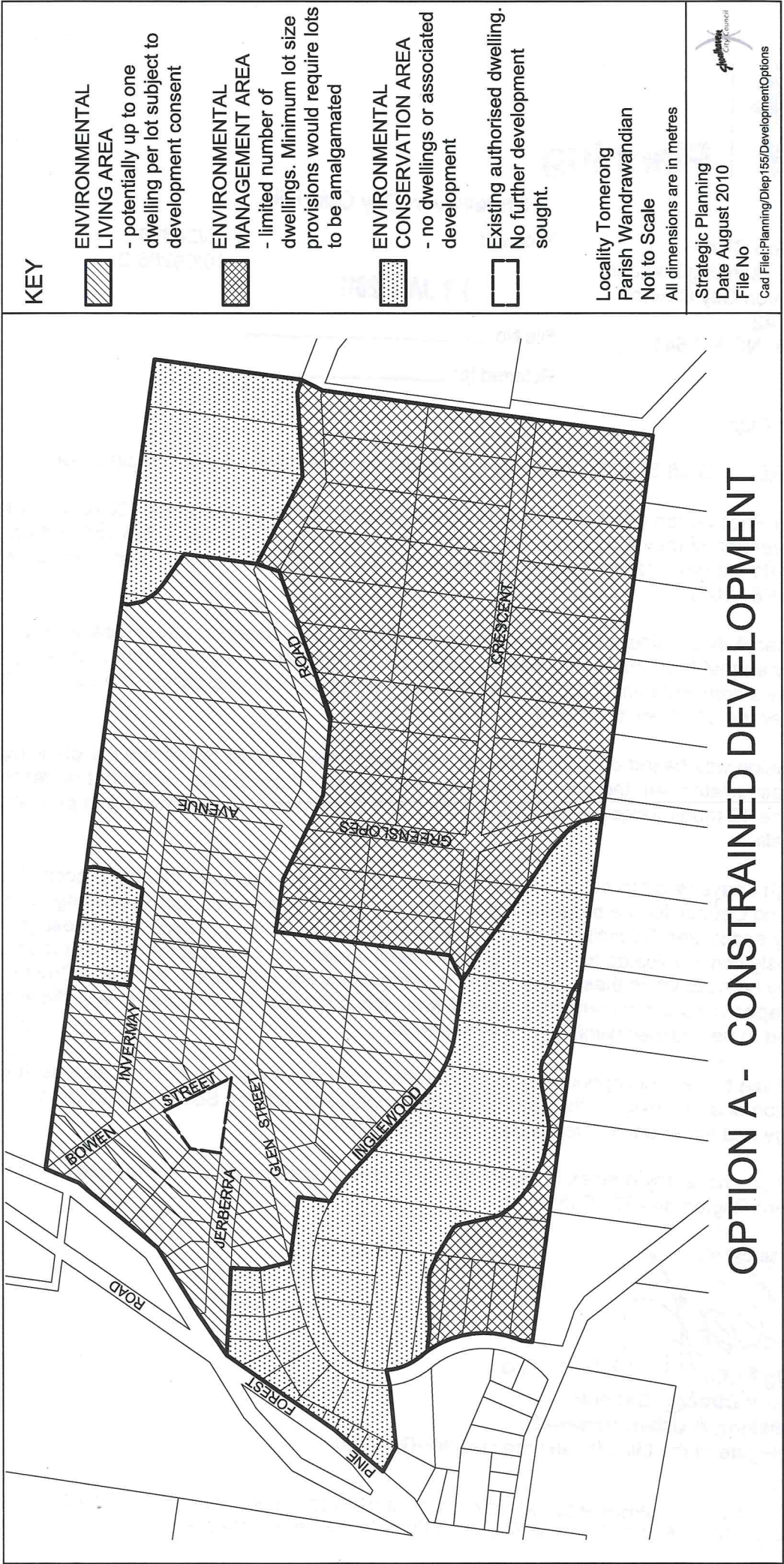
The objective of the draft planning proposal will be to balance environment and development outcomes in a manner which is fair and equitable to landowners. It will potentially allow some of the existing unauthorised structures to be regularised. Further Community consultation will be undertaken should the proposal proceed through the 'gateway'. There is a strong community and social imperative to also bring the rezoning to a conclusion as soon as possible.

Conclusion:

This report provides further details on rezoning 'Option A', prepared in accordance with Council's resolution on 1 February 2011, and seeks Council's resolution to finalise and submit a draft planning proposal as part of the 'gateway' planning process. Should the proposal proceed through the 'gateway', work on finalising the proposal and draft DCP will continue in consultation with the relevant agencies and the landowners, and will be publicly exhibited as soon as possible upon completion.

Peter Adams
DIRECTOR, STRATEGIC PLANNING AND INFRASTRUCTURE

R.D Pigg
GENERAL MANAGER





Planning

Shoalhaven City Council

Mr Gordon Clark
Strategy Planning Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Received

10/24696
10/04286-2

13 JAN 2011

File No. _____

Referred to: _____

Dear Mr Clark

RE: Draft Shoalhaven Local Environmental Plan 1985 LP No.155 Jerberra Estate,

I refer to Shoalhaven City Council's letter to the Department of 9th December 2010, requesting the conversion of the draft Shoalhaven Local Environmental Plan 1985 LP No.155 Jerberra Estate into the new plan making provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act).

I have carefully considered Council's request and have, as a delegate of the Director General, determined that the former plan making provisions of the EP&A Act will continue to apply to this LEP. As a consequence of my decision Council will not be able to progress the current draft LEP after the 31st December 2010.

My decision was based on the substantial work that is still required to resolve the planning issues associated with the draft LEP and my concern that these issues would not be resolved within the 12 month target established by the NSW Government for the making of planning proposals.

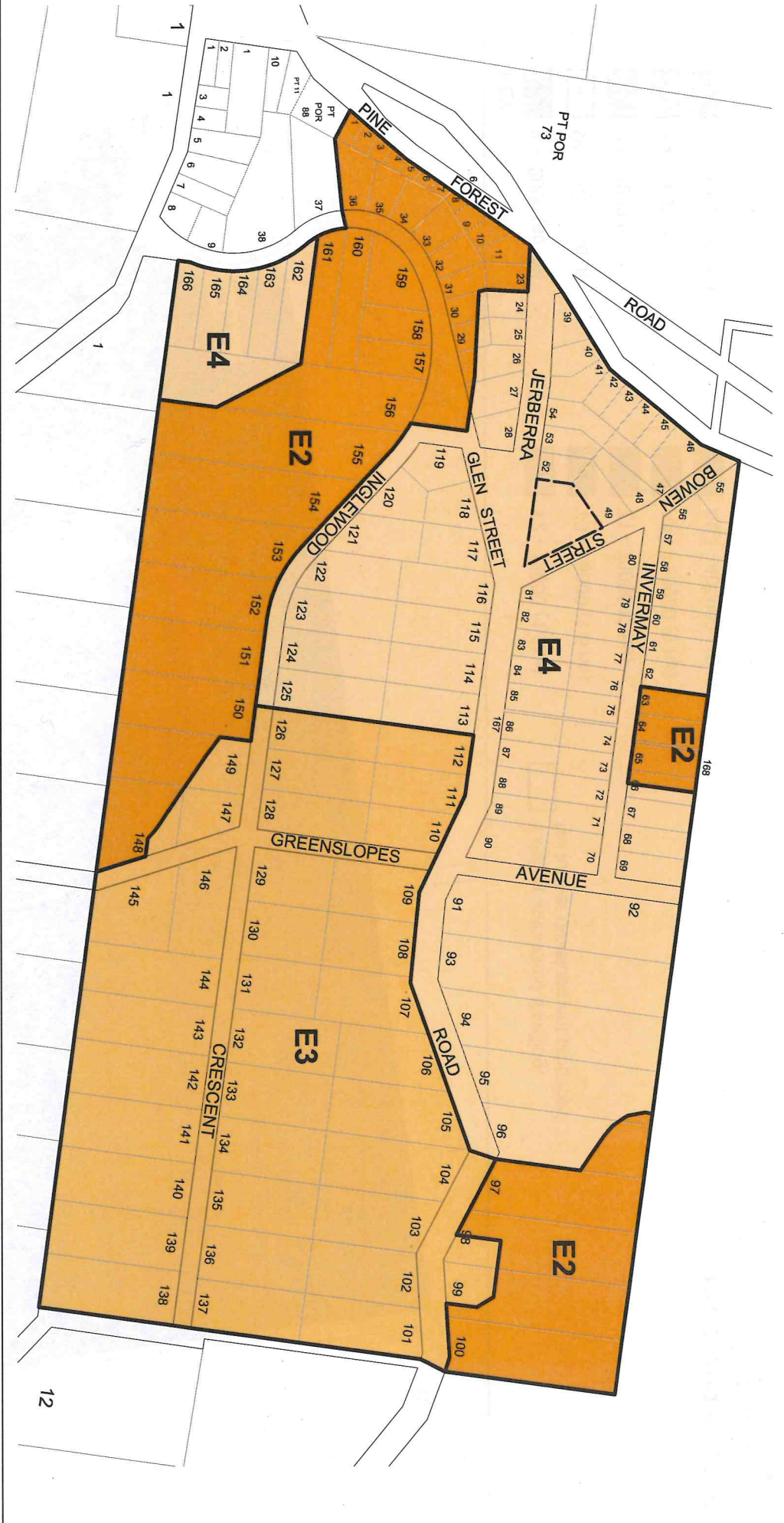
Although I have decided not to convert the draft LEP into the new plan making process I commend Council for the progress it has made in progressing this complex rezoning. I would strongly encourage Council to continue to complete the supporting studies and investigations previously communicated to Council and to submit a planning proposal for consideration by the gateway process when these studies and investigations are sufficiently resolved. Council is encouraged to submit a planning proposal when it is confident that the matter is sufficiently resolved to be finalised within a 12 month period.

I would like to take this opportunity to restate the Department's support for the successful resolution of a rezoning for the Jerberra Estate consistent with the South Coast Regional Strategy and the endorsed Jervis Bay Settlement Strategy.

Should you have any queries in regard to this matter, please contact Lisa Kennedy of the Southern Region on 4224 9457.

Yours sincerely


Neil McGaffin 24.12.10
A/Deputy Director General
Plan Making & Urban Renewal
(As delegate of the Minister and the Director-General)



Key

Zone

E2 Environmental Conservation

E3 Environmental Management

E4 Environmental Living

☐ Existing authorised dwelling. No further development proposed.

Proposed Zones

Attachment C



KEY

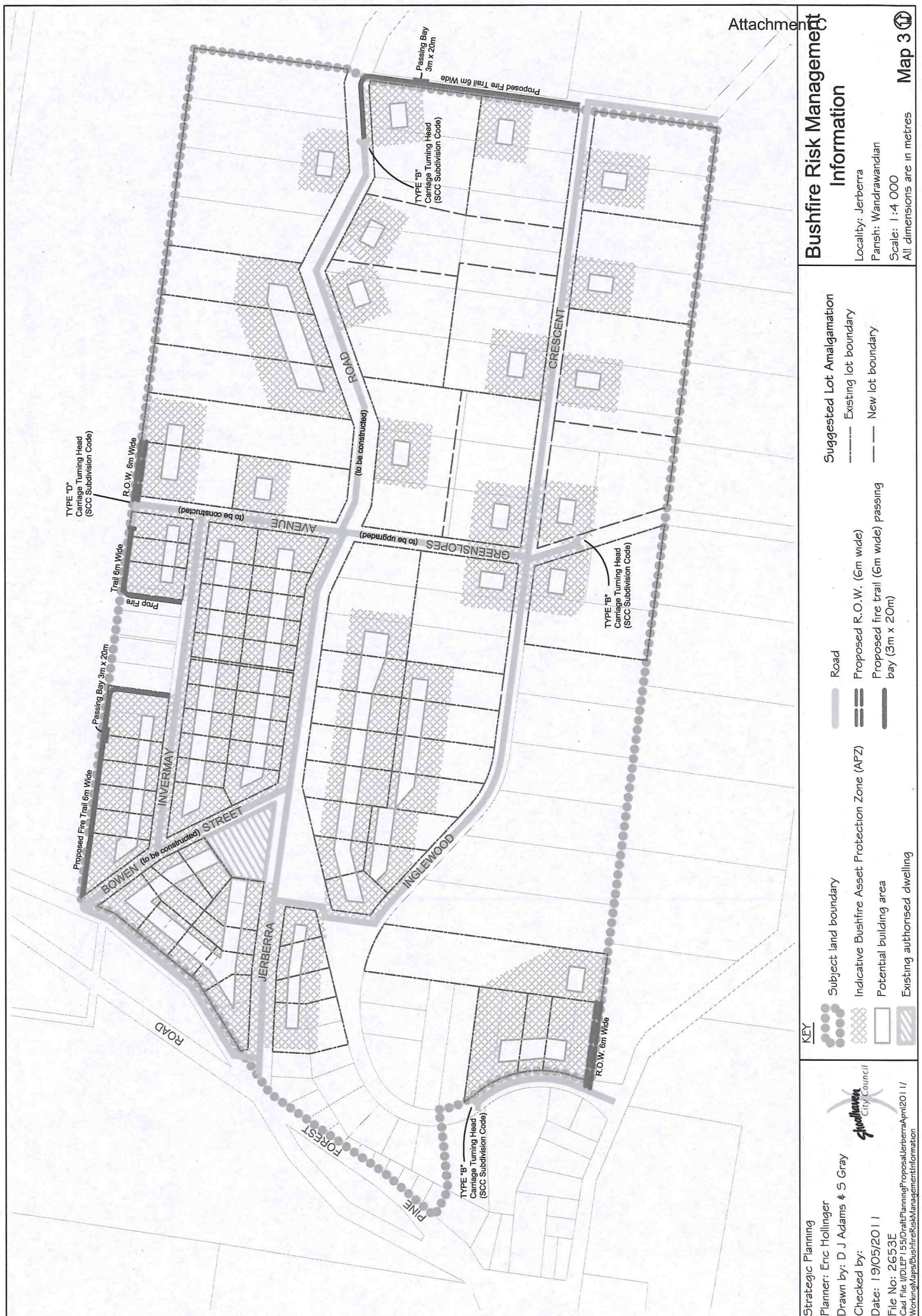
V1	V - 2000 (sq. m)	Y2	Y2 - 13000 (1.3ha)
W1	W1 - 3000 (sq. m)	Y3	Y3 - 15000 (1.5 ha)
X1	X1 - 5000 (sq. m)	Z1	Z1 - 20000 (2 ha)
X4	X4 - 8000 (sq. m)	AA1	AA1 - 50000 (5 ha)
Y1	Y1 - 10000 (1.0ha)	AB4	AB4 - 400000 (40 ha)

Existing authorised dwelling.
 No further development proposed.

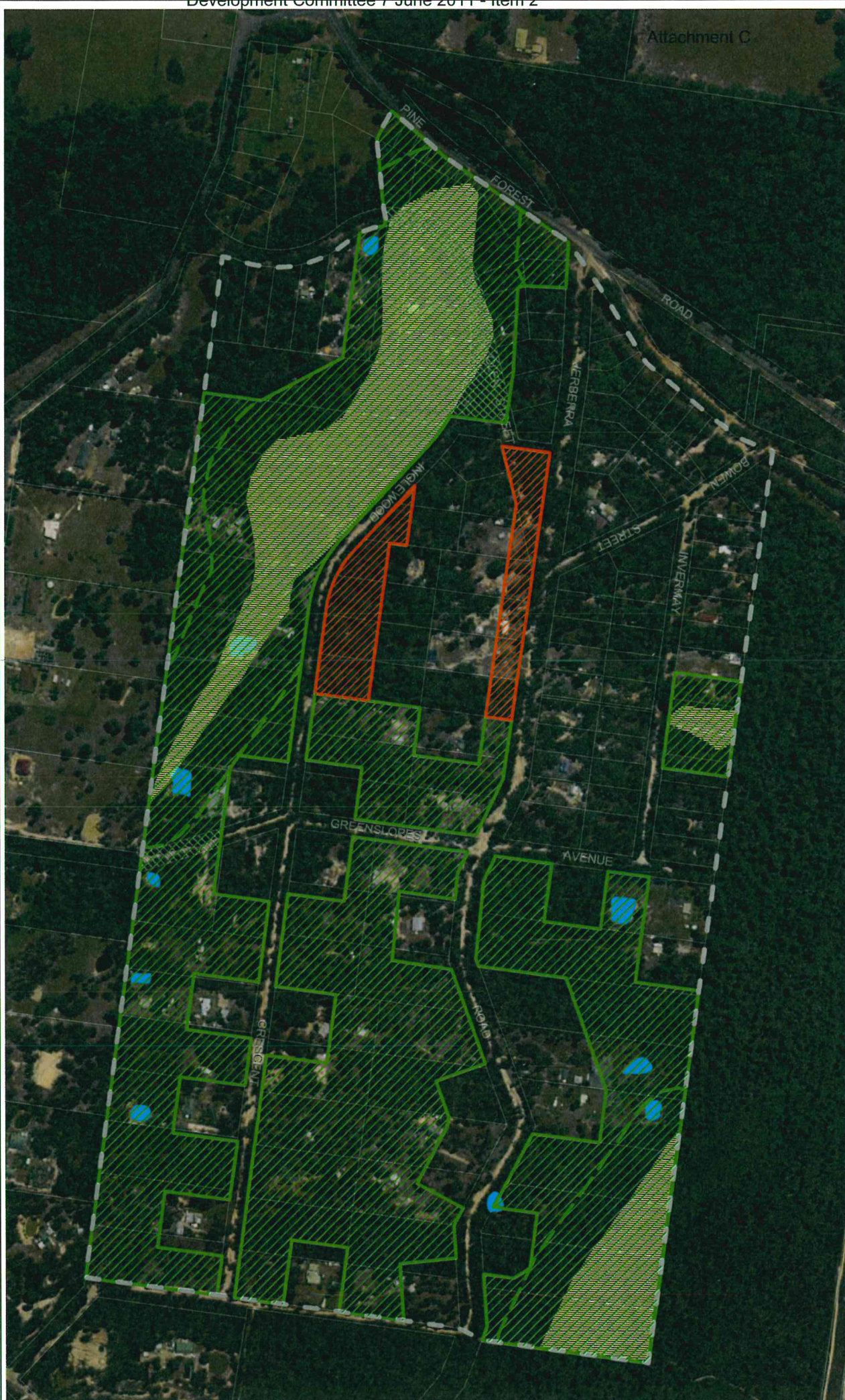
Proposed Minimum
Lot Sizes

Scale: NTS

I:\Planning\Graphics\Projects\Civil\epi\Dep\Draft\155\Draft\Planning\Proposals\Jerbera_April2011\Map2_MinimumLotSizes.dwg



Attachment C



Strategic Planning

Planner: Eric Hollinger

Drawn by: D J Adams & S Gray

Checked by:

Date: 18/05/2011

File No: 2653E

Cad File (JUL11) 155026 Planning Proposal Internal April 2011 / Working Map of Tree Protection Conservation Management Areas

City Council

KEY

Subject land boundary

Existing dam

Protected florav egetation/habitat associated with drainage lines

Tree protection area

Tree protection and conservation management area

Proposed closed road

50 metre buffer from protected florav egetation/habitat

Tree Protection & Conservation Management Areas

Locality: Jerberna

Parish: Wandrawandian

Scale: 1:4 000

All dimensions are in metres

Map 4



Strategic Planning
 Planner: Eric Hollinger
 Drawn by: D J Adams & S Gray
 Checked by:
 Date: 19/05/2011
 File No: 2653E
 Cad File: JUDLFI155D:\StrategicPlanning\Proposals\external\Map2011\Working\Map2011\BusfireManagement\ConservationManagement

KEY

- Subject land boundary
- Indicative Bushfire Asset Protection Zone (APZ)
- Potential building area
- Existing authorised dwelling
- Road

- Tree protection area
- Tree protection and conservation management area
- Protected florav egetation/habitat associated with drainage lines
- Proposed closed road
- 50 metre buffer from protected florav egetation/habitat

Proposed Subdivision Layout

- Existing lot boundary
- New lot boundary

Busfire Management & Conservation Management

Locality: Jerbera
 Parish: Wandrawandian
 Scale: 1:4 000
 All dimensions are in metres

Map 5

