

SHELLHARBOUR CITY COUNCIL

Ordinary Council Meeting - Tuesday 23 July 2013

11.3.5	Renewal of Licence Agreement with Savvy Fitness South (9961745)	Angela Saville
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During the speaker's address to Council on Item 11.1.1 the Mayor moved a POINT of ORDER for the speaker to keep to the topic only and not digress.

207 RESOLVED: Stewart/Rankin

That Standing Orders be suspended in order for Items 11.1.1, 11.2.3 and 11.3.5 the subject of Addresses to Council, to be considered here in the agenda.

CARRIED UNANIMOUSLY

11.1.1 Compliance with the GIPA Act - Review of Information Guide (9950972)

208 RESOLVED: Rankin/Murray

1. That the Information Guide - July 2012 as attached to this report be adopted.
2. That the Information Guide be updated as and when required to reflect changes as they occur.

CARRIED UNANIMOUSLY

11.2.3 Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 - Lot 11, DP 1128847, Crest Road, Albion Park (9967583)

MOTION: Rankin/Murray

1. Council prepare a Planning Proposal (No 10) for Lot 11, DP 1128847, Crest Road, Albion Park to amend Shellharbour Local Environmental Plan 2013 to incorporate the proposed Zoning and Planning Controls in Attachment 6.
2. The Council authorise the General Manager to submit the Planning Proposal (Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10) 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. The Council delegate to the General Manager authority to make minor mapping and Local Environmental Plan instrument changes to Draft

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Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 if and as required by the NSW Department of Planning & Infrastructure's LEP Review Panel and gateway determination.

4. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 be publically exhibited 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 10 detailing the outcomes of the community and government agency engagement.
6. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 be reported back to the Council for final consideration and with further recommendations regarding adoption.

Councillor Moran FORESHADOWED a MOTION that should the MOTION be lost he would move that:

This matter be deferred for further discussion between the owner and Council staff in relation to subdivision of some land and zonings.

209 RESOLVED: Rankin/Murray

1. Council prepare a Planning Proposal (No 10) for Lot 11, DP 1128847, Crest Road, Albion Park to amend Shellharbour Local Environmental Plan 2013 to incorporate the proposed Zoning and Planning Controls in Attachment 6.
2. The Council authorise the General Manager to submit the Planning Proposal (Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10) 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. 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 10 if and as required by the NSW Department of Planning & Infrastructure's LEP Review Panel and gateway determination.
4. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 be publically exhibited 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 10

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detailing the outcomes of the community and government agency engagement.

6. The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 be reported back to the Council for final consideration and with further recommendations regarding adoption.

CARRIED 6/1

FOR VOTE - Cr Boyle, Cr Saliba, Cr Murray, Cr Rankin, Cr Stewart, Cr Marsh

AGAINST VOTE - Cr Moran

11.3.5 Renewal of Licence Agreement with Savvy Fitness South (9961745)

210 RESOLVED: Boyle/Marsh

1. Council enter into a 12 month Licence Agreement with Savvy Fitness South for the use and occupation of the approved section of Beverley Whitfield Park to conduct commercial fitness training activities, for an annual amount of \$1,500 plus GST.
2. Should Savvy Fitness South breach any condition of the Licence agreement, immediate termination will be applied.
3. That the Mayor and General Manager, or his nominated delegate, be authorised to sign any documentation associated with the Licence Agreement under Council Seal.

CARRIED UNANIMOUSLY

Meeting adjourned 7.09pm

Meeting resumed 7.16pm

211 RESOLVED: Marsh/Murray

That Standing Orders be resumed.

CARRIED UNANIMOUSLY

8. Mayor's Statements / Reports / Presentations

The Mayor outlined the events she has attended since the last council meeting.

11.2.3 Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 - Lot 11, DP 1128847, Crest Road, Albion Park (9967583)

To the General Manager

Directorate: City Outcomes

Department: City Strategy

Manager: Geoff Hoynes - Group Manager City Strategy

Author: Ian Rankine - Senior Strategic Planner

Summary

This report seeks Council's resolution to prepare a Planning Proposal to permit the subdivision of the land into a total of six lots; two smaller lots at the southern end of the plateau; three lots on the lower slopes in the south eastern area of the property and one lot that contains the remaining land. The zoning of the land is recommended to be a mix of E4 Environmental Living, E3 Environmental Management, R2 Low Density Residential and SP2 Infrastructure - Electricity Transmission and Distribution.

The report also recommends that the Planning Proposal be submitted to the NSW Department of Planning & Infrastructure for their consideration. The proposed planning controls are based on the Urban Fringe LES, consideration of submissions to the exhibited Draft Shellharbour LEP 2011, presentations made to Councillors in September and October 2012, and a brief submission lodged with Council by the owner in February and May 2013.

Background

This property was deferred by Council when it considered Draft Shellharbour Local Environmental Plan (LEP) 2012 at its meetings in May, June and July 2012. At that meeting Council 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 land is in Map 1.4).

This property was further considered by Council, at its meeting of 30 April 2013, through a report on a Planning Proposal for Part 2 of the deferred lands in Shellharbour LEP 2013. At that meeting Council resolved to:

'Prepare a planning proposal to amend Shellharbour LEP 2013 to incorporate the proposed planning controls in Attachment 4 with the exception of Item 8 being Lot 11, DP 1128847, Huon Crescent Albion Park with that item being dealt with at a future meeting of council.'

This report specifically deals with Lot 11, DP 1128847, Crest Road, Albion Park as required by the Council resolution of 30 April 2013. The location of this property is shown in **Attachment 1**. The property was described as Huon Crescent in the Council report and resolution but is rated and linked to Crest Road in Council's land information systems. This report outlines the assessment process undertaken for this property from the commencement of the Urban Fringe Local Environmental Study (LES) to now.

As part of the assessment process, meetings were held with Councillors and interested landowners in September and October 2012. The current owner advised that they purchased the property in December 2012. At the Councillor briefing with staff in October 2012, Councillors outlined their preference for development of this land. This was three lots on plateau - southern end and three lots lower slopes - eastern area of the property. This preference was provided to the current landowner to assist in preparing and/or deciding to prepare a submission.

Existing LEP Controls

The land is currently zoned part Residential 2(e), part Rural 1(a) and part Environmental Protection (Scenic) 7(d) under Shellharbour LEP 2000 and has an area of about 43 hectares, see **Attachment 2**. Shellharbour LEP 2000 intends for this land to have the potential for four lots and a dwelling house on each lot. Shellharbour LEP 2000 has a schedule amendment that was gazetted in September 2000 permitting the subdivision of the land into four lots with no more than one dwelling house on each lot. The current property description is different to that in Shellharbour LEP 2000 due to subsequent subdivisions of the land. While the intent of the schedule amendment is clear, the issue of whether the lot yield could be achieved under the LEP would require a legal opinion.

The Albion Park Rural Residential Development Control Plan (DCP) identified the general location of the four lots originally intended under Shellharbour LEP 2000. This was generally in the southern section of the property on top of the ridge leading up to the large above-ground water reservoir off Crest Road. Development Application 55/2013 has recently been approved for a dwelling house along the ridge in the southern area of this property.

The Shellharbour DCP adopted by Council at its meeting on 11 June 2013 and effective from 26 June 2013 hasn't brought across the provisions from the Albion Park Rural Residential DCP relating to location of lots. The location of lots was principally based on the on-site waste water considerations in place at that time. The recently adopted Shellharbour DCP has introduced new on-site waste water provisions that allow consideration of best practice options and provides greater flexibility for the siting of dwellings and on-site waste water treatment facilities.

Local Environmental Study (LES)/Draft Shellharbour LEP

Local Environmental Study

In 2003, the then owner of this land agreed to be part of the Urban Fringe LES. This LES was co-ordinated and prepared by Council. 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 flora and fauna report identified some of the land as having Endangered Ecological Communities. The report also identified parts of the land that did not have any specific flora or fauna qualities.

The Bushfire report identified parts of the land as not having development potential, however there were areas that had development potential, subject to more detailed investigations as part of any future development applications.

One of the purposes of the LES was to determine whether there was any potential on this property for additional lots and subsequently a dwelling house on each lot.

Based on the assessment undertaken in the LES, that not only included the specialist consultant reports mentioned above, but also a preliminary social and public impact assessment, the property was recommended for additional development. This additional development was reported to Council on 19 October 2010 as part of the consideration of and decision to place Draft Shellharbour LEP 2011 on public exhibition. The additional development included:

- One lot and dwelling house on land that had an existing Residential zone and was proposed to be zoned Residential in the Draft LEP 2011; and
- Five lots and a dwelling house on each lot on the land proposed to be zoned Environmental Living in the Draft LEP 2011.

The Urban Fringe LES formed part of the exhibition of Draft Shellharbour LEP 2011. This Draft LEP was on public exhibition from 2 June to 29 July and again between 25 August and 22 September 2012.

The exhibited Draft Shellharbour LEP 2011 was more specific regarding lot location than the version considered by Council in October 2010. The exhibited Draft LEP proposed:

- two lots and a dwelling house on each lot in the eastern area near Huon Crescent. The proposed minimum lot size was 1.7 hectares (17,000m²) and the proposed zone was E4 Environmental Living. Generally, the adjoining Residential zoned land ranges in area from about 500m² to about 1200m²;
- one lot on the existing residential zoned land near Burnett Place, Albion Park; and
- three lots on top of the ridge leading up to the above ground water reservoir.

During the public exhibition of the Draft Shellharbour LEP 2011, eight submissions were received objecting to the creation of additional lots/dwellings on this property and in particular, the eastern area near Huon Crescent. One submission was received recommending additional development be permitted on the property.

Submissions received objecting to Draft Shellharbour LEP 2011

A summary of the issues raised objecting to proposed development on this property during the exhibition of the Draft Shellharbour LEP 2011 and the Council Officer comment as reported to Council on 29 May 2012 are outlined under this subheading of the report. Whilst the recommended lot location in this report has changed from that reported to Council on 29 May 2012 by moving one lot from near Burnett Place to near Huon Crescent, the Council Officer comments are still considered relevant.

Submission Comment

1. The assessment of the true edge of the threatened ecological communities is insufficient as saplings grow 20-30 metres east of the forest edge and have been slashed several times during the 14 years residing in Huon Crescent.

Officer Comment

The Flora and Fauna assessment in the Urban Fringe LES has reviewed the vegetation on this Lot. That assessment has considered all vegetation that may comprise the Endangered Ecological Community - Illawarra Lowlands Grassy Woodland as well as other types/species of vegetation. This particular site was reviewed twice. The second review was to assess the "edge" of the main stand of vegetation to help determine where that edge and/or buffer should be. The studies that have been done are considered satisfactory and sufficient.

Submission Comment

2. The 20 metre buffer proposed will significantly impact on the natural forest growth process and is a factor threatening its survival.

Officer Comment

The buffer has been set based on detailed flora assessment and is considered satisfactory.

Submission Comment

3. The LES flood assessment hasn't identified an inundation threat in this development but existing residences have been inundated by flood waters several times. Inundation has been mitigated to a fair degree by the extension to the south of the existing drainage channel above the Huon Crescent residences however this has lead to a concentration of runoff on the slope directly adjacent to the west of 25 Huon Crescent resulting in sheet flooding of this slope. Any development on the site would lead to further runoff concentration and much higher risks of inundation of residences on the eastern side of Huon Crescent from overtopping of the drainage channel.

Officer Comment

The impact of storm water runoff on downhill properties is noted. A flood study is not required by the planning legislation for this property based on the recommendations in the LES. If development is permitted on this land, storm water disposal will be required to be considered and assessed with any future development applications. Any development on the land will need to be done in such a manner that runoff is not made any worse than the existing situation and future landowners will need to maintain the storm water disposal management system that was approved as part of any future application for subdivision and/or dwelling.

Submission Comment

4. The proposal to allow sewerage disposal on-site will have an adverse effect on the sanitary and health aspects of those residences below the effluent disposal sites.

Officer Comment

On-site effluent disposal will need to be undertaken in accordance with any relevant approval and maintained in accordance with that or subsequent approvals. The land is located close to land that is connected to a reticulated sewerage disposal system. The current owner, or a future landowner, may choose to connect to the reticulated system rather than provide on-site effluent disposal.

Submission Comment

5. Section 117 Direction states in part that an existing environmental protection zone shall not reduce environmental protection standards unless justified by an LES.

Officer Comment

Agree and the LES has justified this inconsistency. The Department of Planning approved the Draft LEP for public exhibition by issuing a Section 65 Certificate. Should the Draft LEP be adopted, the Department of Planning will need to further consider the inconsistency with Direction 2.1.

Submission Comment

6. The Illawarra Regional Environmental Plan 1 states that land can't be removed from an Environmental Protection zone or introduce land uses incompatible with the Environmental Protection zone unless justified by an LES.

Officer Comment

Agree and the LES has justified this inconsistency.

Submission Comment

7. Current 7d zoned land should be protected.

Officer Comment

The LES has reviewed the site and the proposed E3 and E4 zonings provide a zoning that recognises the significant environmental values and also recognises that some parts of the lot may be suitable for a dwelling.

Submission Comment

8. Development on the lot should be prohibited as threatened ecological communities of State significance are present and trying to thrive, the lot contributes to the scenic attributes which significantly defines Albion Park, the land is bushfire prone, development would have an unreasonable and unsatisfactory impacts on neighbours in Huon Crescent and development of the site would be uneconomic.

Officer Comment

The LES has considered these issues and it is considered that the addition of two dwellings in this area is sustainable, would have minimal adverse impact on the environment and scenic qualities of the area. It is acknowledged that the addition of two dwellings in an area that is currently vacant would change the land use and have some impact on the privacy of existing occupants on nearby land. Whilst this loss of privacy is significant for the occupiers of the adjoining land, it is considered that there is adequate space and dwelling design options to minimise this loss of privacy.

Submission Comment

9. The Draft LEP proposes two lots of 1.7ha each but the LES states minimum 40ha lot size. Senior strategic planner advised that this is incorrect.

Officer Comment

The LES does state that the minimum lot size be 40ha but it also states that a clause be included in the LEP that permits the subdivision of the land to allow two dwellings in this locality. As part of the NSW Department of Planning's consideration and assessment of the Draft LEP prior to issuing a Section 65 Certificate, the Department advised Council that it would not support the use of the clause and the provision to consider permitting two dwellings in this locality needed to be shown on the Lot Size Map. This information was provided by the Department after the LES was adopted by Council at its meeting on 19 October 2010. For this reason the LES minimum lot size isn't correct but the LES recommended that two lots be created in this locality and the Draft LEP is considered to be consistent with the LES recommendations.

Submission Comment

10. Two lots is an insignificant addition to housing supply and doesn't justify disregarding the needs of the rest of the community and generations to come.

Officer Comment

The two lots in this location is considered reasonable having regard to the environmental attributes of the land, on-going management of the land and the matters raised during the public exhibition of the Draft LEP.

Submission Comment

11. The forests on the lot are a very significant natural resource and must be managed in a precautionary way, protected and enhanced.

Officer Comment

The vegetation on this property includes Endangered Ecological Communities and this attribute is considered in the LES. The proposal to include dwellings on this land is considered reasonable and is a mechanism that may assist in the protection and management of this important vegetation.

Submission Comment

12. The flood assessment has not identified an inundation threat but existing residents can attest that it is an issue.

Officer Comment

Storm water runoff from this site to adjoining properties is an important issue but one that exists now. The LES didn't and wasn't required to review this issue. If there is any future development on this land, development applications will need to take into consideration storm water runoff and include methods to deal with the runoff so that as a minimum, it is no worse than the current situation.

Submission Comment

13. Current swale that collects and redirects water cuts across the likely building envelope for the proposed lots. A high cost engineering solution will be required.

Officer Comment

Should the Draft LEP be adopted and approved, any future development application for a subdivision and/or dwellings will need to address storm water runoff. It is considered that there are engineering solutions available that could address this issue and this in itself is not a reason to not support the proposal.

Submission Comment

14. Land is bushfire prone. Land further from the development site had building construction requirements. This proposal would lead to development closer to the bushfire risk.

Officer Comment

The LES included a bushfire assessment and it concluded that there was adequate area on the site to construct a dwelling that could comply with the bushfire requirements. Any future development application to subdivide the land and/or construct dwellings will need to include a detailed bushfire risk assessment. Future owners will be required to maintain the land to minimise the risk from bushfire on their and adjoining land.

Submission Comment

15. Loss of privacy and intrusion of houses, sheds and stables on back fence.

Officer Comment

The land is currently vacant and a change in land use to permit a dwelling may impact on the privacy of the owners of adjoining land. This was recognised in the LES and contributed to the reasoning that development in this area be limited to two dwellings.

Submission Comment

16. Meeting access and utility needs would have an unsatisfactory and unreasonable impact on adjoining residents.

Officer Comment

As only two dwellings are proposed in this locality, it is not agreed that the provision of access and utility services would have an unsatisfactory and unreasonable adverse impact on the adjoining residents.

Submission Comment

17. Amend zone to E2 or E3.

Officer Comment

Based on the LES and the above points, the proposed zones of E3 and E4 and the development potential of the land as shown in the Draft LEP is considered reasonable.

Extraordinary Council Meetings 2012

The report to Council at its Extraordinary meetings in May, June and July 2012 recommended that this property have the following number of lots:

- two lots and a dwelling house on each lot in the eastern area near Huon Crescent. The proposed minimum lot size was 1.7 hectares (17,000m²) and the proposed zone was E4 Environmental Living;
- the one lot proposed on the existing residential zoned land was to be deleted (due to the narrow shape of the lot and the presence of large mature trees on the land)

and the zone changed to Environmental. Instead, another lot was proposed adjoining and immediately to the south, of 21 Burnett Place; and

- three lots on top of the ridge leading up to the above ground water reservoir.

Council at its meeting of 3 July 2012 resolved to defer this land from Draft Shellharbour LEP 2012, now Shellharbour LEP 2013.

Zoning and Planning Control Assessment

This section of the report reviews the number of lots that may be appropriate for this property.

Recommendation to Council Extraordinary Meeting 29 May 2012

- Three lots on plateau - southern end with dwellings located on the land zoned E4 Environmental Living
- Three lots lower slopes - eastern area of the property (1 x R5 Large Lot Residential zone, 2 x E4 Environmental Living zone)
- Remainder of the property Zoned E3 Environmental Management, E4 Environmental Living and SP2 Infrastructure - Electricity Transmission and Distribution

Councillor Preference October 2012

- Three lots on plateau - southern end
- Three lots lower slopes - eastern area of the property

Planning Proposal submission preference dated February and May 2013

- One lot at southern end of property - plateau
- Two lots at the northern end of the property and this area be zoned Rural and not Environmental - plateau
- Three lots on the lower slopes - eastern area of the property. After the Council meeting on 30 April 2013, the owner of the land has provided an indicative location and area for these three lots, see **Attachment 3**.

Officer Assessment

The property has an area of 43.1 hectares.

The current owner purchased the land in December 2012 and considers that there may be better development outcomes on the land than proposed in the exhibited Draft Shellharbour LEP 2011 but is not in a position to consider submitting detailed supporting documentation at this time for the plateau part of this property. **Attachment 3** shows an indicative lot location and area for the three lots in the eastern area of the property but

the more detailed information to address the possibility of a Rural zone and two lots at the northern end of the property is not able to be provided.

The development options reported to Council in 2012 are generally considered reasonable with the exception of the creation of a R5 Large Lot Residential lot behind 21 Burnett Place, Albion Park. Both 21 Burnett Place and Lot 11 have changed ownership since the exhibition of the Draft LEP and the report to Council in 2012. The location of a new lot immediately behind 21 Burnett Place is now not considered a reasonable option due the ownership change, the narrow shape of the lot and the presence of large mature trees on and near the proposed site. It is recommended that this lot be located on the lower slopes in the eastern area of the property and south of the electricity easement. This area has more developable area and less vegetation issues. **Attachment 3** shows how this may be achieved.

The subject land, Lot 11, has road frontage to Huon Crescent. The road frontage is in the head of the cul-de-sac and has an adequate road reserve to provide vehicular access to development, as proposed in this Planning Proposal. The location and design of any future road/access would be subject to a preliminary design at the development application stage, should the Planning Proposal be supported. At this point of the process, there appears to be adequate area and location options for a road/access to be provided without the need for further studies or assessment.

As mentioned above, eight submissions were received during the public exhibition of Draft Shellharbour LEP 2011 objecting to the creation of additional lots/dwellings on this lot and in particular, the eastern area. These submissions were addressed in the report to Council in 2012 and taken into account in forming the recommendations for this property at that time. It is recognised that the recommendation in **this** report will be adding one extra lot to this area.

The request by the current owner to move two of the southern plateau lots further north is not supported. The recommendations as reported to Council's Extraordinary Meeting in May 2012 are still considered appropriate. No preliminary information has been provided by the current owner to suggest that the flora and fauna assessment in the Urban Fringe LES was incorrect or should be reconsidered.

It is recommended that a total of six lots be permitted on this property, see **Attachment 4**; two smaller lots at the southern end of the plateau; three lots on the lower slopes in the south eastern area of the property and one lot that contains the remaining land. It is proposed that the lot containing the remaining land will also include the dwelling house (near the southern boundary) granted approval under development consent 55/2013.

Location of lots and houses

The LES identified potential overlooking/amenity issues between existing residential development and any potential development on this land, in particular, land near Huon Crescent.

Submissions provided to Council during the exhibition of Draft Shellharbour LEP 2011, addresses to Council on Draft Shellharbour LEP 2011/12, Councillors debate during

consideration of the adoption of Draft Shellharbour LEP 2011/12 and addresses to Council and debate on Item 11.2.1 of the Council Business Paper of 30 April 2013, have made clear the concerns of some of the residents of Huon Crescent to any development near their land.

The importance of limiting the amount and type of development near the existing Residential zoned land is something that Council staff has also acknowledged in their consideration of development opportunities on this land. The report to Council on 30 April 2013 recommended six lots be permitted on this property. The mechanism to achieve this was the use of a clause to allow the subdivision of the land into six lots. There was no minimum or maximum lot size and no proposed criteria for location of those lots.

The proposed clause had specific advantages in that it allowed flexibility in lot size, subdivision design and took into account the topography and significant vegetation found on this lot.

This benefit does not over-ride the potential impact on the adjoining property owners if more than three lots and dwelling houses were located on the eastern slopes.

This option has also been discussed with officers from the Wollongong office of the NSW Department of Planning & Infrastructure. The Department have advised us that they don't support the use of the clause in this instance as the Minimum Lot Size Map may achieve a similar outcome, although recognising there won't be the same flexibility.

For this property, it is proposed that the Minimum Lot Size Map be used to identify the number and location of lots that may be permitted. This will provide the specific location of the lots.

This is distinctly different to the proposed planning controls for the other properties considered by Council on 30 April 2013.

The Minimum Lot Size Map will identify the areas that have the potential for subdivision and subsequent construction of a dwelling house on each of the lots.

One of the areas is on the ridge on top of the plateau. This will have a minimum lot size that will permit the subdivision of the land into two lots. The two lots will be located generally to the north and west of the access road to the Sydney Water Reservoir. These will have a lot size of about 1.0 hectare (10,000m²).

The other area is on the eastern slopes in the vicinity of Huon Crescent. This will have a minimum lot size that will permit the subdivision of the land into three lots. Based on the information received from the owner, the minimum lot sizes will be about 600m², 4,000m² and 1.0 hectare (10,000m²).

The proposed location of the lots are shown in **Attachments 3 & 4**.

The remaining land will have an area of about 38 hectares and will be the sixth lot and include the dwelling house approved by Development Application 55/2013. This part of the property will be zoned E3 Environmental Management, E4 Environmental Living and

SP2 Infrastructure - Electricity Transmission and Distribution and a very small section that is an access handle off Avoca Place will be zoned R2 Low Density Residential, this is the same zone as the properties adjoining the access handle.

The proposed zoning of the land is shown in **Attachment 5**.

The proposed planning controls are shown in **Attachment 6**.

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

The Planning Proposal is generally consistent with the Local Planning Directions. There are some minor inconsistencies and these are outlined below:

1. Rural Lands (1.5)

This Direction applies as this Planning Proposal affects land in an existing rural and environmental zone and proposes to change the existing minimum lot sizes. These changes have been justified by the Urban Fringe LES. Also, the land included in this Planning Proposal has been identified in the Illawarra Regional Strategy to be investigated to determine appropriate land uses and zonings. The proposal is considered to be consistent with the Rural Planning and Subdivision Principles of State Environmental Planning Policy (Rural Lands) 2008 on the basis of the location of the land, current intended planning controls and area available for agricultural purposes.

2. Residential Zones (3.1)

The Planning Proposal will remove some residential zoned land and therefore won't be consistent with this Direction. There are three main areas. Two areas (about 730m² and about 900m²) that are irregular in shape, narrow in width and are residues from previous subdivisions and one other (about 18,000m²) that is proposed to be zoned SP2 Infrastructure - Electricity Transmission and Distribution. The Urban Fringe LES justifies this inconsistency.

3. Caravan Parks and Manufactured Home Estates (3.2)

This Planning Direction states that Planning Proposals will be inconsistent where they prohibit development for the purposes of a caravan park to be carried out.

The Planning Proposal is inconsistent in that some land prohibits caravan parks. The Urban Fringe LES has justified the appropriate zone and land uses. The Planning Proposal will be based on the Standard Instrument. The Standard Instrument doesn't contain a standard provision to satisfy this Direction (in not prohibiting caravan parks) and so the Planning Proposal is inconsistent with this Direction.

This is considered to be of minor significance as there has been minimal urban development potential recognised on these lands as supported by the LES.

Financial Implications

This is a Council initiated Planning Proposal and Council will bear the costs of staff time, resources and exhibition. Consequently, the relevant owners will benefit from being included in this project as there will be no fees required for processing the Planning Proposal.

Legal & Policy Implications

At its Meeting of 3 July 2012, the Council resolved to defer a number of areas from the Draft Shellharbour LEP 2012 so that the potential increases in residential densities could be further studied/assessed.

To introduce planning controls for this property, that is Deferred Land in Shellharbour LEP 2013, will require the preparation and public exhibition of a Planning Proposal. Should the Council resolve to endorse the preparation of the Planning Proposal, it will be undertaken in accordance with the requirements of the *Environmental Planning & Assessment Act* and *Regulations*.

As part of the process of understanding landowner preferences, Councillors held briefings with interested landowners, undertook viewings of some sites (on occasion this included an onsite inspection) and briefings with Council staff. At the request of some landowners, a Councillor preference was sought and provided to the relevant parties. In this instance, the current owner purchased the property after the Councillor briefings but was provided with the Councillor preference.

The Councillor preference was provided to the landowner as an indication only and was not given as a formal decision of Council. This can only be made at a properly constituted meeting of the Council.

Public/Social Impacts

The balance between development opportunities on this land and the potential impact on adjoining properties, as well as the broader community, has and will continue to be a major consideration in the assessment and determination of this Planning Proposal. Based on the information available and the assessment to this point, it is considered that the development opportunities proposed are considered reasonable.

The Urban Fringe LES included an assessment of the potential public and social impacts. A further assessment of the potential impacts will be undertaken if the proposal is supported and put on public exhibition.

Link to Community Strategic Plan

This Planning Proposal supports the following objectives and strategies of the Community Strategic Plan 2013 - 2023:

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

Preliminary advice has been received from Council's Executive Manager/Public Officer.

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'.

This Planning Proposal report has been instigated by Council. As such, no reporting applies at this stage of the application. Should the Proposal be placed on public exhibition, any person making a submission or with a financial interest in the application will need to disclose reportable political donations or gifts.

Recommendation

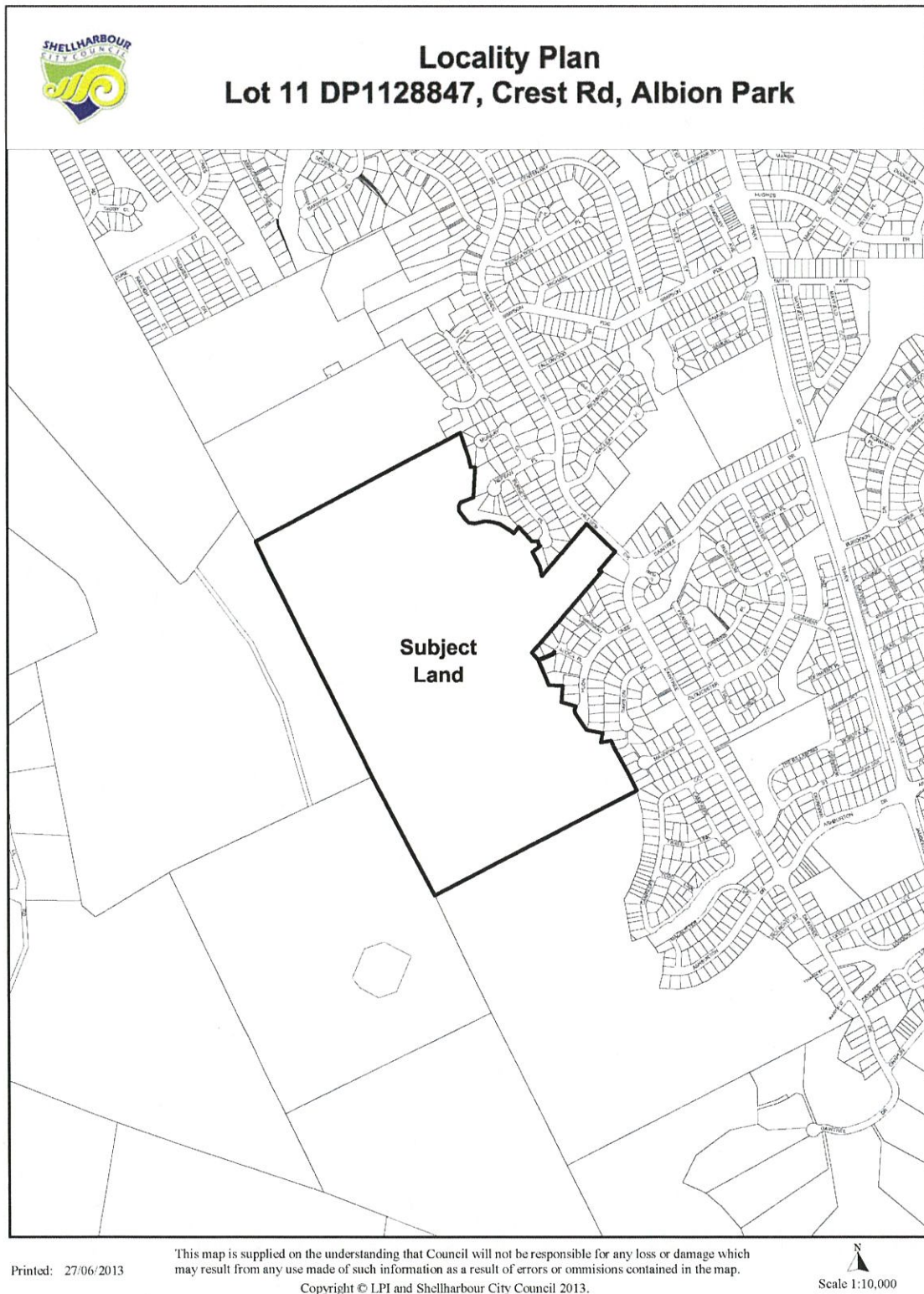
1. **Council prepare a Planning Proposal (No 10) for Lot 11, DP 1128847, Crest Road, Albion Park to amend Shellharbour Local Environmental Plan 2013 to incorporate the proposed Zoning and Planning Controls in Attachment 6.**
2. **The Council authorise the General Manager to submit the Planning Proposal (Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10) 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. **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 10 if and as required by the NSW Department of Planning & Infrastructure's LEP Review Panel and gateway determination.**
4. **The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 be publically exhibited 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 10 detailing the outcomes of the community and government agency engagement.**
6. **The Draft Shellharbour Local Environmental Plan 2013 Planning Proposal No 10 be reported back to the Council for final consideration and with further recommendations regarding adoption.**

Approved for Council's consideration: _____

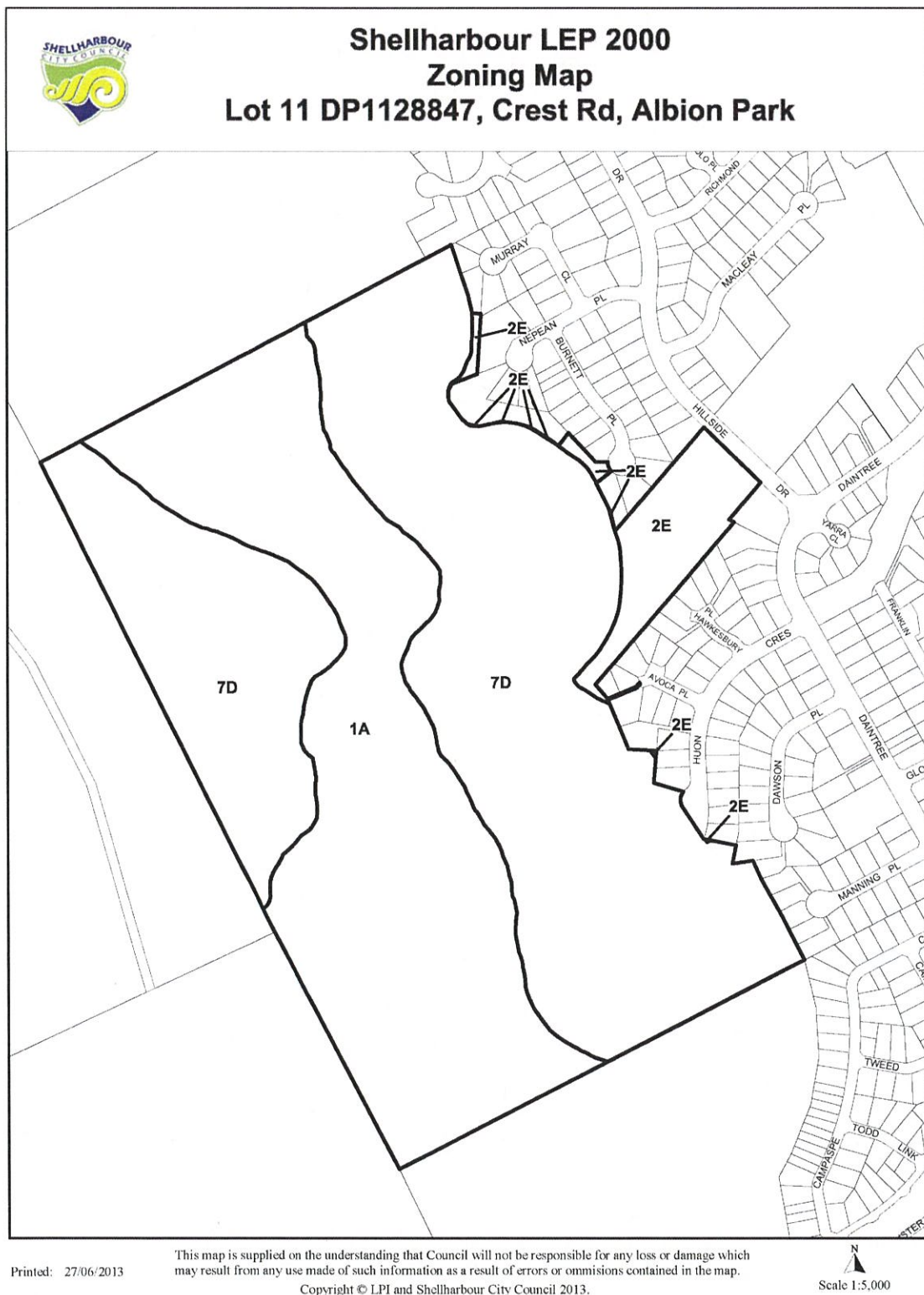
Attachments

1. Locality Plan
2. Current zoning
3. Indicative subdivision layout - eastern slopes
4. Indicative lot layout - six lots
5. Proposed zoning
6. Proposed zoning and planning controls table

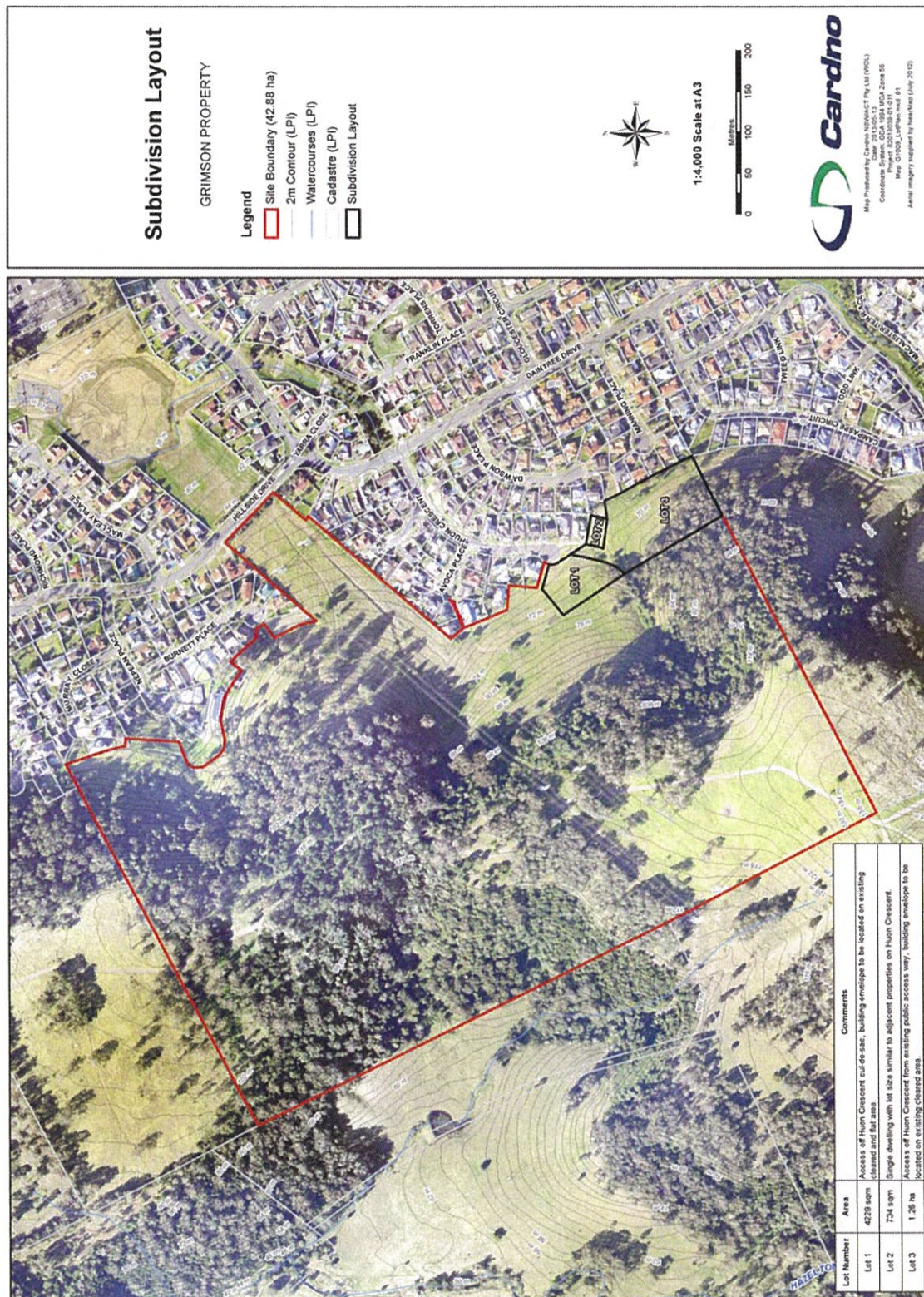
Attachment 1 - Locality Plan



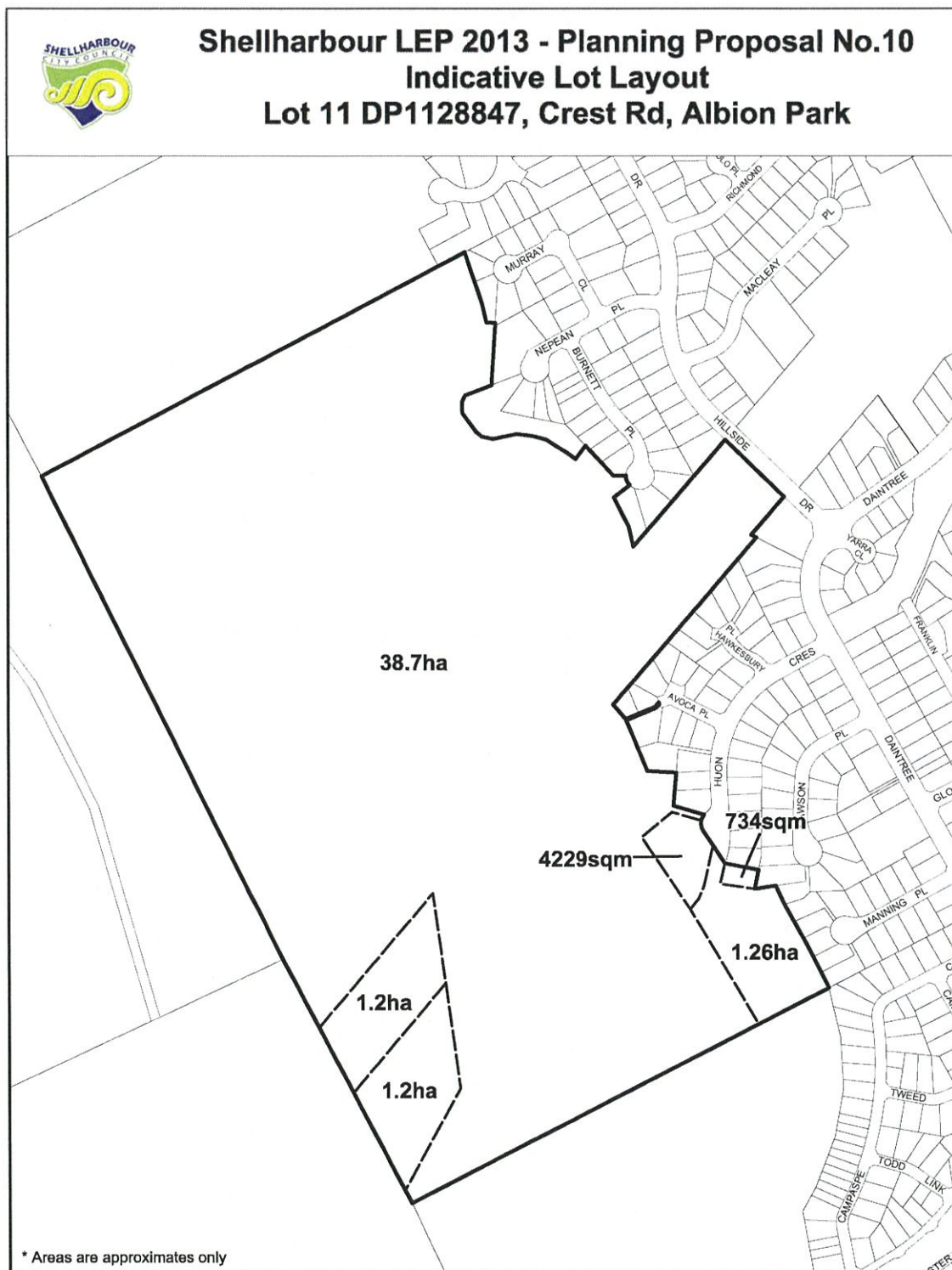
Attachment 2 - Current Zoning



Attachment 3 - Indicative subdivision layout - eastern slopes



Attachment 4 - Indicative lot layout - six lots

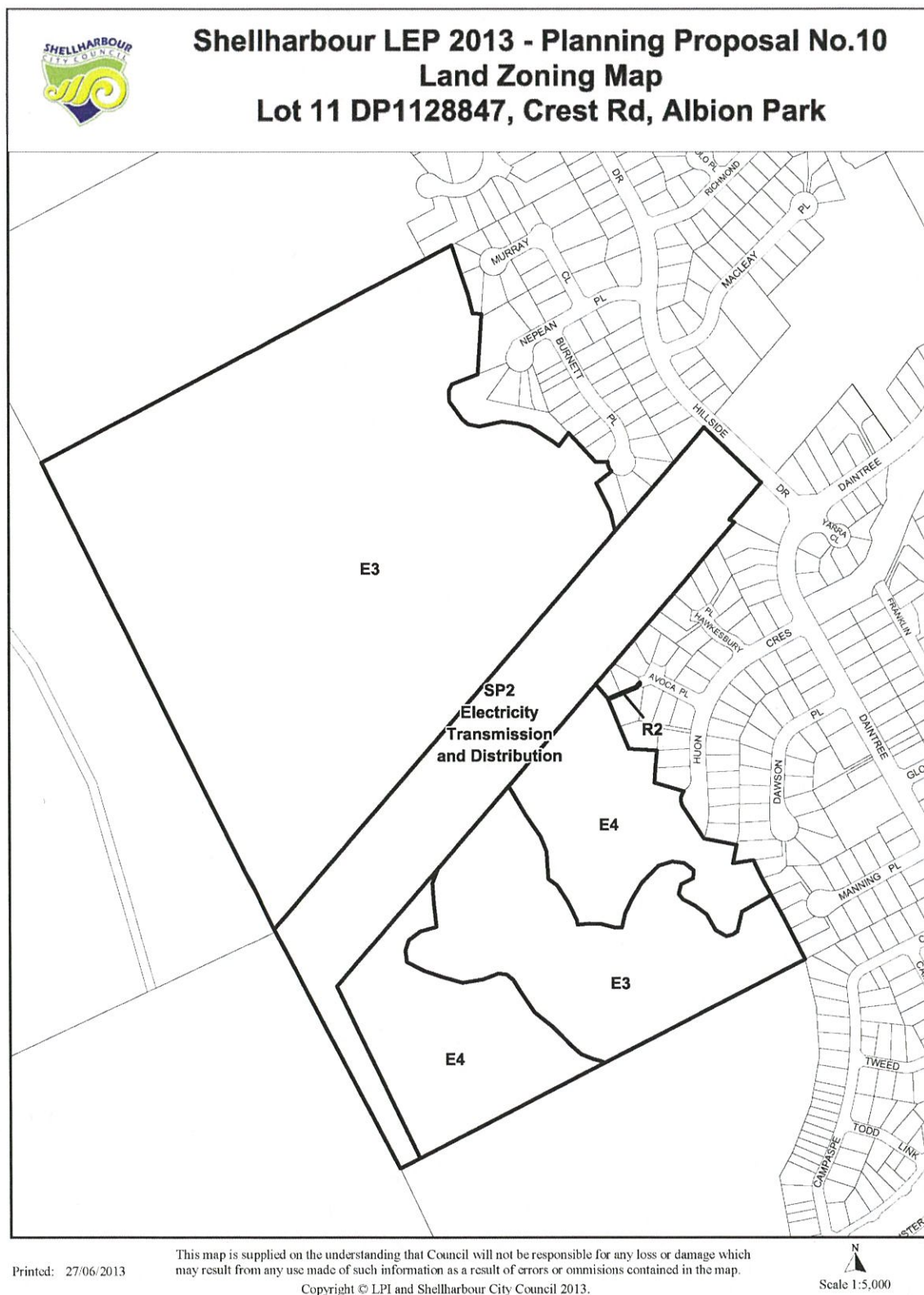


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 Scale 1:5,000

Attachment 5 - Proposed zoning



Attachment 6 - Proposed zoning and planning controls table

No.	Property	Area	Current Zone/Schedule	Proposed Planning Controls Zone/Clause	Proposed Planning Controls		
					Min Lot Size	Height	FSR:1
1	Lot 11, DP 1128847, Crest Road, Albion Park	43.1ha	Shellharbour LEP 2000 1(a) Rural, 7(d) Environmental Protection (Scenic) and 2(e) Residential; and Schedule 1 - Four allotments	- E3 Environmental Management - E4 Environmental Living - SP2 Infrastructure - Electricity Transmission and Distribution - Terrestrial Biodiversity	34ha x 1 1 Ha x 3 600m² x 1 4000m² x 1	9.0m all land	R2: 0.5:1