
10.2 City Outcomes Directorate

**10.2.1 Shellharbour Local Environmental Plan 2013 Planning Proposal
No. 3/2016 - Lot 2, DP 1144885, 1 Piper Road, Dunmore -
Shellharbour Anglican College Site - Deferred Land (10757163)**

To the General Manager

Directorate: City Outcomes

Department: City Strategy

Manager: Cheryl Lappin – Acting Group Manager City Strategy

Author: Bernadette Sharp – Strategic Planner

Summary

The purpose of this report is to seek Council's resolution to prepare a Planning Proposal to bring Lot 2 DP 1144885, 1 Piper Road Dunmore – Shellharbour Anglican College site into *Shellharbour Local Environmental Plan 2013* (LEP 2013). This property has an area of 8.69ha as is currently deferred from LEP 2013 and zoned 1(r1) Rural Landscape under *Shellharbour Rural Local Environmental Plan 2004* (Rural LEP 2004).

It is proposed to rezone this property to R2 Low Density Residential. This zone is considered appropriate and is in accordance with the Department of Planning & Environment (DP&E) guidance on zoning infrastructure sites, given that the adjoining land is currently zone R2 Low Density Residential.

The location of this property is shown in **Attachment 1**. The current zoning of this property is shown in **Attachment 2**.

This Planning proposal has been initiated by Council staff and not the landowner and is part of the continued process of considering the lands deferred when Council adopted Shellharbour LEP 2013 at its Extra-ordinary meeting of May 2012. Of the 1060ha deferred at that time, there is currently approximately 660ha of deferred land remaining in the Local Government Area.

It is proposed that the Planning Proposal will apply zoning, floor space ratio, building height and minimum lot size as shown in **Attachments 3 – 6**.

The report also recommends that the Planning Proposal be submitted to the DP&E seeking a Gateway determination to enable the public exhibition of the Proposal and request delegation to make the plan. A copy of this report will form part of Council's submission to the DP&E.

Background

This property was deferred by Council at its Extra-ordinary meeting of 29 May 2012 when it was considered as part of the Shellharbour LEP 2013 submissions received on properties within the Shellharbour urban fringe.

The subject property is the site of the Shellharbour Anglican College which has been in operation since 2004. The college is defined under LEP 2013 as an '*educational establishment*'.

Educational establishments as well as other types of infrastructure are covered in the State Environmental Planning Policy (Infrastructure) 2007 (SEPP). In 2010, the DP&E produced a practice note (PN10-001 *Zoning for Infrastructure in LEP's*) providing guidance to local Councils on zoning various infrastructure sites including *educational establishments*. This approach by the DP&E aims to provide greater flexibility and adaptive management of land used for the provision of public or private infrastructure, moving away from special use or special purpose zones which can limit future ability to respond to changing demographic trends. The practice note recommends that instead of using a 'special use zone' the appropriate adjoining zone should be considered. In this case the adjoining zone is R2 Low Density Residential which is one of the prescribed zones permitting *educational establishments* under the SEPP and considered to be a more appropriate zone than any rural zone.

Council officers have liaised with the land owner and they have indicated their support for the proposed Planning Proposal.

Considering this, it is the intention of the Planning Proposal to rezone the deferred matter area to R2 Low Density Residential under LEP 2013.

Mineral Resource Area

The subject land is currently identified as being within the Rural LEP 2004 Mineral Resources Area due to its proximity to local sand and hard rock aggregate resource operations. However, recent correspondence with the NSW Department of Industry – Geological Survey of New South Wales, has advised that; due to recent rezonings in the area where the transition area has been removed, the site now being located outside the most recent mineral resources audit in 2015 and with the site already developed, they have no comments in relation to the transition area being removed through the planning proposal.

This issue will be addressed formally through the gateway requirement to consult with relevant state agencies.

Flood Prone Land

The property has also been identified as being subject to flooding due to the existing dam located in the southern part of the site. In considering planning proposals, Section 117 direction 4.3 on Flood Prone Land does not support the rezoning of land

to a residential zone when it is subject to flooding unless it can be consistent with the direction. In recent consultation with the land owner, they have confirmed they will prepare and submit a flood study over the site to demonstrate consistency with this S117 direction.

This flood study will be included in the preparation of the planning proposal.

Financial / Resources Implications

There are no fees applicable to this Planning Proposal as it has been initiated by Council. The costs associated in preparing the Planning Proposal will be borne by City Strategy.

Legal and Policy implications

The property is zoned 1(r) Rural Landscape under the Rural LEP 2004. The preparation and finalisation of this Planning Proposal will bring the property into LEP 2013, and remove 8.69 hectares of deferred lands.

Should Council support the preparation of a Planning Proposal, it will need to be sent to the NSW DP&E for Gateway assessment and approval to place on public exhibition.

The Planning Proposal will need to be prepared, exhibited and 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 NSW DP&E.

Council Decision Making During Merger Proposal Periods – Section 23A of the Local Government Act 1993

The Office of Local Government's (OLG) document *Council Decision Making During Merger Proposal Periods* includes general principles and a number of specific guidelines. The general principles and regulatory guidelines of relevance are:

Councils and council officials should not make decisions during a merger proposal period that:

- Seek to damage or impede the operational effectiveness of a new council including by (but not limited to)
- Make significant and/or ongoing financial commitments that will be binding on a new council
- Make other significant undertakings or commitments that will be binding on a new council
- Make decisions that are designed to limit the flexibility or discretion of a new council

- Would not otherwise withstand legal challenge on the basis that the new council and not the outgoing one would need to defend any such challenge.

In the case of this Planning Proposal, the purpose of the proposal is to include the property in LEP 2013 is an Action that forms part of the 2016/17 Operational Plan. As such, this will form part of Council's normal operating functions.

In accordance with the OLG guidelines there are no adverse impacts on Council resolving to prepare a Planning Proposal and seek a Gateway determination from the DPE to place it on public exhibition.

Delegations

Council has received certain delegations from the Minister for Planning to finalise certain types of Planning Proposals/LEP Amendments.

Review of the criteria for use of delegations by Council's, indicates that the Minister for Planning or his delegate may grant delegation to Council to finalise this Planning Proposal. The recommendation includes an option for Council to seek delegation to finalise this Planning Proposal/LEP Amendment. Should that delegation be granted by the Minister for Planning, further reports will be made to Council to consider the finalising the LEP prior to the delegation being used.

Public / Social Impact

Placing the Planning Proposal on public exhibition will provide an opportunity for interested parties to provide their views for Council's consideration.

Link to Community Strategic Plan

The preparation of this Planning Proposal 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

Consultations

Internal

Infrastructure Services - Team Leader Water Engineering & Design

External

NSW Department of Industry (Geological Surveys NSW)

Sydney Anglican Schools Corporation

Political Donations Disclosure

Not applicable at this stage of the process.

Recommendation

1. That Council confirm its consideration of the guidelines issued by the NSW government in accordance with Section 23A of the Local Government Act, 1993, in resolving on this matter.
2. That Council prepare Planning Proposal No 3/2016 to amend Shellharbour Local Environmental Plan 2013 in the following manner:
 - a. Amend Shellharbour LEP 2013 Land Zoning Map in accordance with Attachment 3
 - b. Amend Shellharbour LEP 2013 Minimum Lot Size Map in accordance with Attachment 4
 - c. Amend Shellharbour LEP 2013 Height of Buildings Map in accordance with Attachment 5
 - d. Amend Shellharbour LEP 2013 Floor Space Ratio Map in accordance with Attachment 6
3. That Council authorise the General Manager to submit Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2016 to the NSW Department of Planning & Environment in accordance with section 56 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.
4. That Council delegate to the General Manager authority to make minor mapping and Local Environmental Plan instrument changes to Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2016 if and as required by the NSW Department of Planning & Environment's LEP Review Panel and gateway determination.
5. That Council as part of its gateway submission apply to the Department of Planning and Environment to use its plan making related delegations including making or not making the plan under section 59 of the *Environmental Planning and Assessment Act*, after any public exhibition of the draft plan.
6. That Shellharbour Local Environmental Plan 2013 Planning Proposal No 3/2016 be publicly exhibited in accordance with the gateway determination.

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7. That after the public exhibition period has closed, a report be submitted to Council for consideration detailing the public exhibition outcomes and with further recommendations regarding adoption.

Approved for Council's consideration: _____

Date of Meeting: 30 August 2016

Attachments

1. Locality Map
2. Shellharbour LEP 2004 Current Land Zoning Map
3. Shellharbour LEP 2013 Land Zoning Map
4. Shellharbour LEP 2013 Minimum Lot Size Map
5. Shellharbour LEP 2013 Height of Buildings Map
6. Shellharbour LEP 2013 Floor Space Ratio Map
7. Table of Zoning and Planning Control

Attachment 1 – Locality Map



Attachment 2 – Shellharbour LEP 2004 Current Land Zoning Map



Printed: 04/08/16

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Scale 1:4,000

Proposed Zoning - Planning Proposal No.03/2016
Lot 2 DP1144885, Dunmore

The map displays a large, irregularly shaped lot shaded in grey, labeled 'R2'. This lot is situated in the Dunmore area. Surrounding roads include Princes Highway to the west, Illawarra Rd to the north, and Dunmore Rd to the east. Other nearby roads shown are James Rd, Princes Rd, Railway, Piper Dr, and Dunmore Dr. To the east of the main lot, there are several smaller lots, some labeled 'R2' and others 'R1'. A legend in the bottom right corner indicates that the grey shaded area represents the 'R2 Low Density Residential' zone.

Zone
 R2 Low Density Residential

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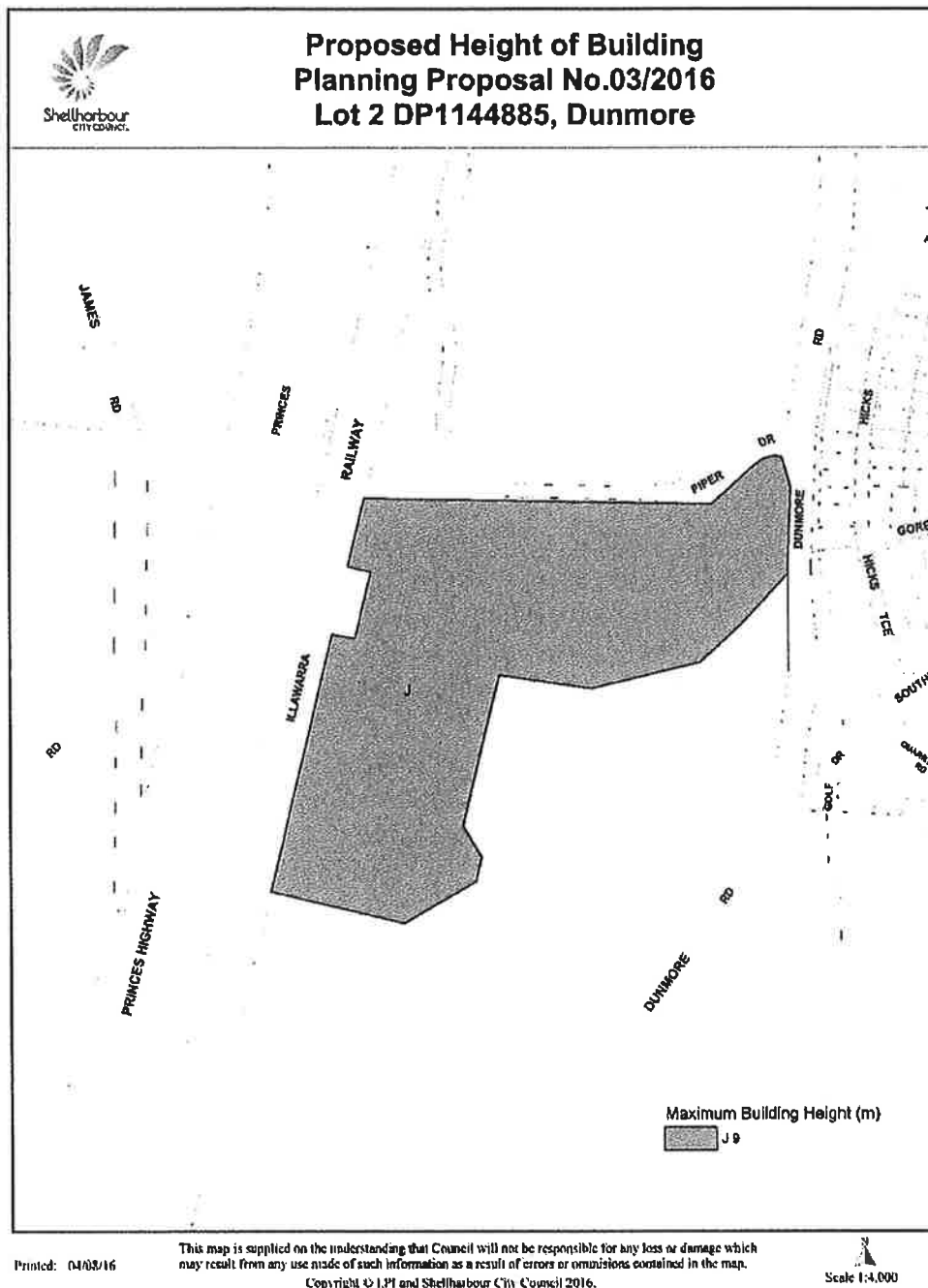
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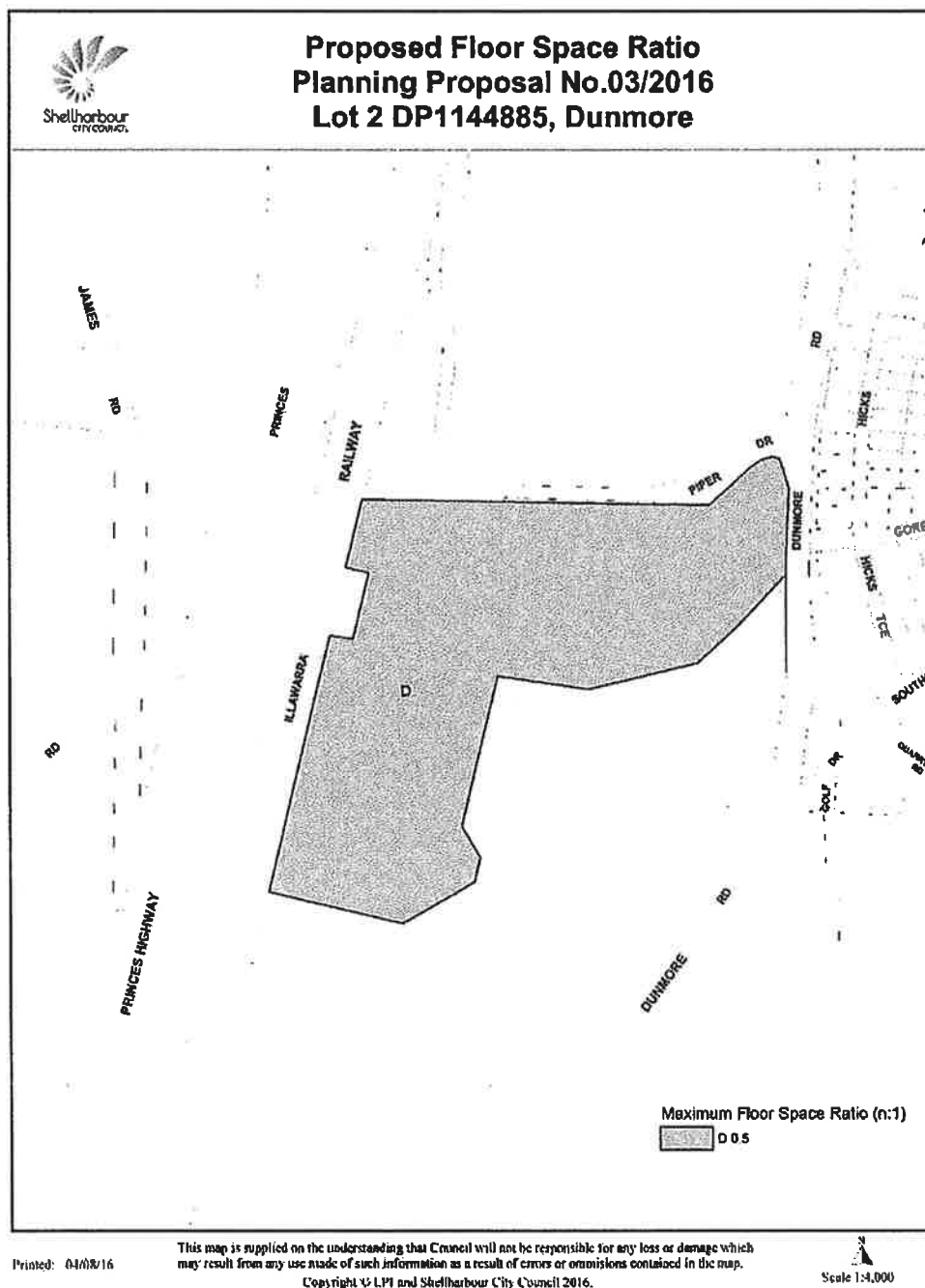
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Attachment 5 - Shellharbour LEP 2013 Height of Buildings Map



Attachment 6 - Shellharbour LEP 2013 Floor Space Ratio Map



Attachment 7 – Table of Zoning & Planning Controls

Property	Area	Existing Planning Controls	Proposed Planning Controls			
		Zone/Clause/Schedule	Zone/Clause/Schedule	Min Lot Size	Height	FSR:1
Lot 2 DP 1144885, 1 Piper Drive Dunmore (Shellharbour Anglican College)	8.66ha	Shellharbour Rural Local Environmental Plan 2004 1(f) Rural Landscape Zone Minerals Planning Buffer	R2 Low Density Residential	450 m ²	9m	0.5

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219 RESOLVED: Murray/Marsh

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CARRIED UNANIMOUSLY