
10.2.3 Planning Proposal No. 0502/2015 - Lot 16, DP 1206346, 71 Yellow Rock Road, Tullimbar (10634056)

To the General Manager

Directorate: City Outcomes

Department: City Strategy

Manager: Cheryl Lappin – Acting Group Manager, City Strategy

Author: Cheryl Lappin – Acting Group Manager, City Strategy

Summary

The purpose of this report is to recommend that Council prepare a planning proposal for Lot 16, DP11206346, 71 Yellow Rock Road, Tullimbar to facilitate the development of up to 40 residential lots. The report recommends that Council prepare a planning proposal to:

1. amend the zoning of the land from Part 1A Agriculture and Part 2e Mixed Residential 'E' under *Shellharbour Rural Local Environmental Plan (LEP) 2004* to R2 Low Density Residential; and
2. develop the following mapping layers for the site:
 - a. Lot size map
 - b. Building height map
 - c. Floor space ratio map

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

Background

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

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

The location of this land is shown in **Attachment 1**.

Since that time Council has processed a number of planning proposals that has reduced the amount of deferred lands in Shellharbour LEP 2013 by approximately 330 hectares. There are currently approximately 670 hectares that remain deferred.

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

The adjoining areas were also deferred from LEP 2013 and are currently zoned 2e Mixed Residential 'E'. This land is directly east and adjacent to the subject land and has recently been granted approval for a similar residential subdivision to that proposed in the planning proposal and the two are proposed to be integrated as a logical extension of residential land which transitions to a more rural setting.

Local Environmental Study (LES)/Draft Shellharbour LEP

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

The LES recommended that the subject land (which formed part of a larger lot) be zoned RU1 Primary Production unless a flood study determined that residential development was appropriate. A minimum lot size of 1 hectare was recommended.

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

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

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

What is a Planning Proposal?

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

The Gateway Process has the following five key steps:

1. *Planning Proposal* - Council is responsible for the preparation of a Planning Proposal, which explains the effect of and justification for the plan.
2. *Gateway* - The Minister (or delegate) determines whether the Planning Proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also

determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

3. *Community consultation* - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held.
4. *Assessment* - Council will consider public submissions and the proposal is varied as necessary prior to adoption. Parliamentary Counsel then prepares a draft local environmental plan — the legal instrument.
5. *Decision* - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW legislation website.

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

This Planning Proposal is currently at step 1.

Financial Implications

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

Legal and Policy Implications

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

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

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

Council's preliminary planning assessment of relevant *Environmental Planning & Assessment Act* issues can be found in **Attachment 8**.

Zoning and Planning Control Recommendations

The submitted Planning Proposal identifies a change in zone from 1A Agriculture to Residential. Based on the information submitted to date the proposal has merit and is a suitable approach to the future use of this land. Never the less, it is recommended that a number of additional studies be undertaken to confirm suitability of the proposed change in zone. These studies include:

- Bushfire Report;
- Visual Assessment.
- Infrastructure Provision Strategy

The land is also identified as being affected by the OLS (obstacle limitation surface) plan and the Planning Proposal will also be required to be referred to CASA for confirmation of suitability of the site for the development proposed.

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

The recommended controls are outlined in **Attachments 4 - 7** and are:

- Zone R2 Low Density Residential;
- Minimum Lot Size 450m² and 1000m²
- Building Height 9m;
- Floor Space Ratio max 0.5:1

Public/Social Impacts

The immediate local area surrounding the site is undergoing significant change, with both the Tullimbar Village Project and Calderwood Project currently under development. This Planning proposal promotes a continuation of standard residential development along Yellow Rock Road. The proposed Residential zoning for this land will also assist in providing additional housing affordability and diversity within the LGA.

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

Link to Community Strategic Plan

The proposed rezoning supports the following objectives and strategies of the Community Strategic Plan:

- Objective: 1.1 Vibrant, safe and inclusive City
- Strategy: 1.1.3 Make Shellharbour a friendly environment where people feel safe
- 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
- 2.3.4 Facilitate the provision of development that meets the changing needs and expectations of the community

Consultations

Internal

Nil

External

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

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

Political Donations Disclosure

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

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

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

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

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

Conclusion

As stated previously in this report, subject to the required studies being satisfactory, public exhibition and the lands proximity to the existing urban area, it is recommended that a change to urban zoning is appropriate.

Recommendation

1. Council prepare a Planning Proposal No. 0502/2015 for Lot 62, DP 1206346, Yellow Rock Road, Tullimbar and adjoining roads to amend *Shellharbour Local Environmental Plan 2013* to incorporate the proposed Zoning and Planning Controls in Attachments 4 - 7.
2. Council authorise the General Manager to submit Shellharbour Local Environmental Planning Proposal No 0502/2015 to NSW Planning & Infrastructure in accordance with section 56 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.
3. 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. 0502/2015 if and as required by the Department of Planning & Environment's LEP Review Panel and gateway determination.
4. Shellharbour Local Environmental Plan 2013 Planning Proposal No 0502/2015 be publically exhibited in accordance with the gateway determination.
5. A report be submitted to the Council on the public exhibition of the planning proposal detailing the outcomes of the community and government agency engagement.
6. The planning proposal be reported back to the Council for final consideration and with further recommendations regarding adoption.

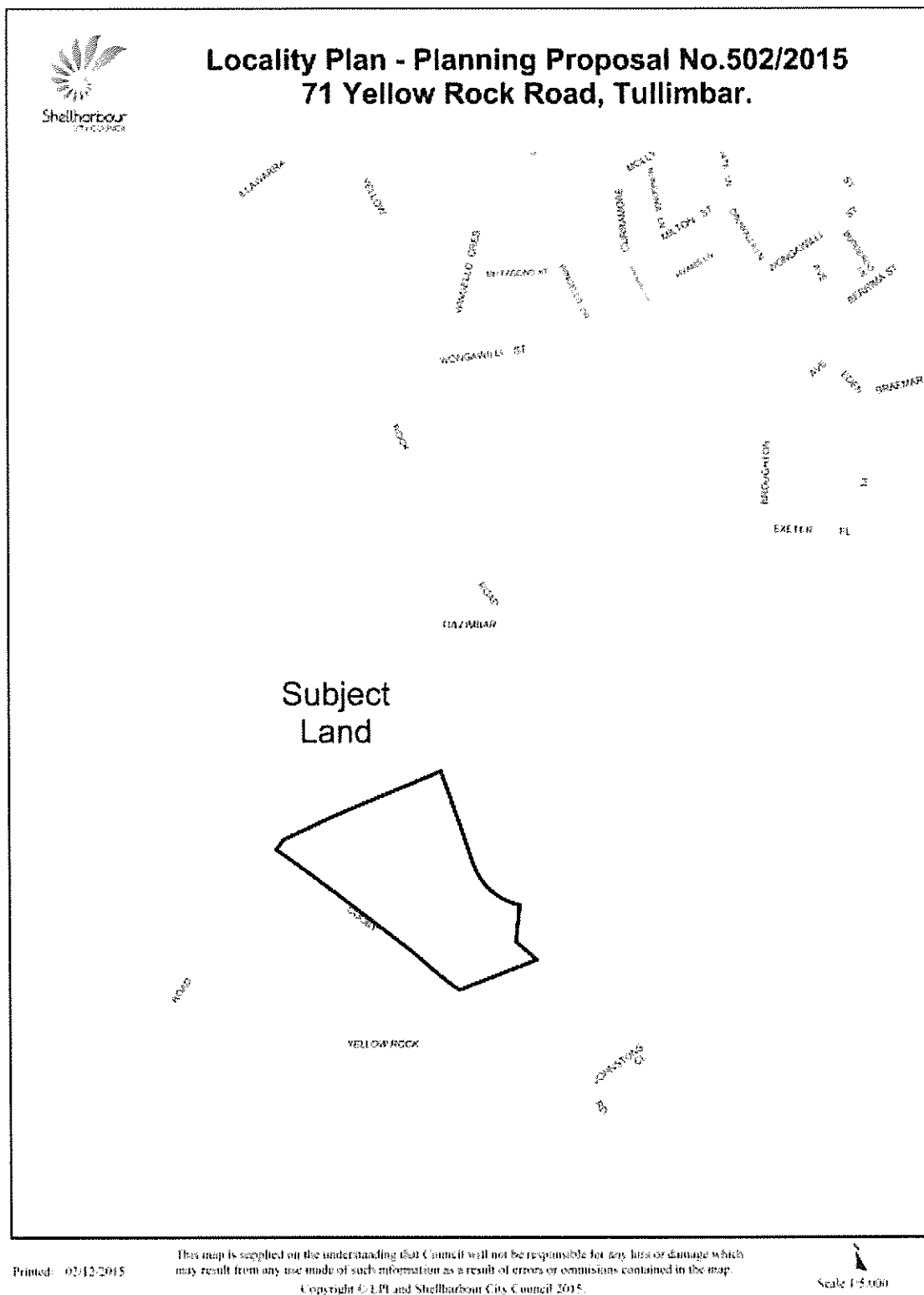
Approved for Council's consideration: _____

Date of Meeting: 15 December 2015

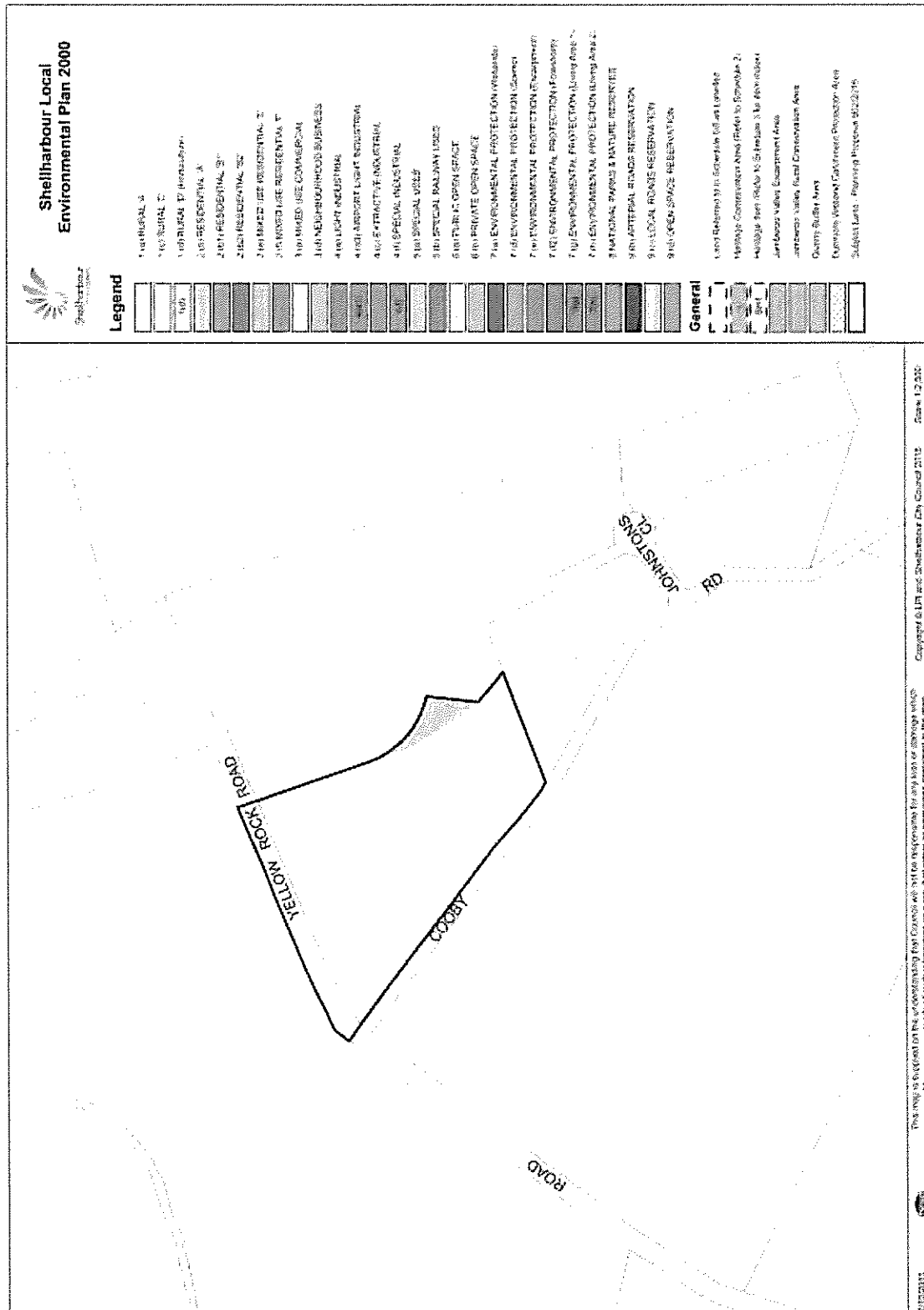
Attachments

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

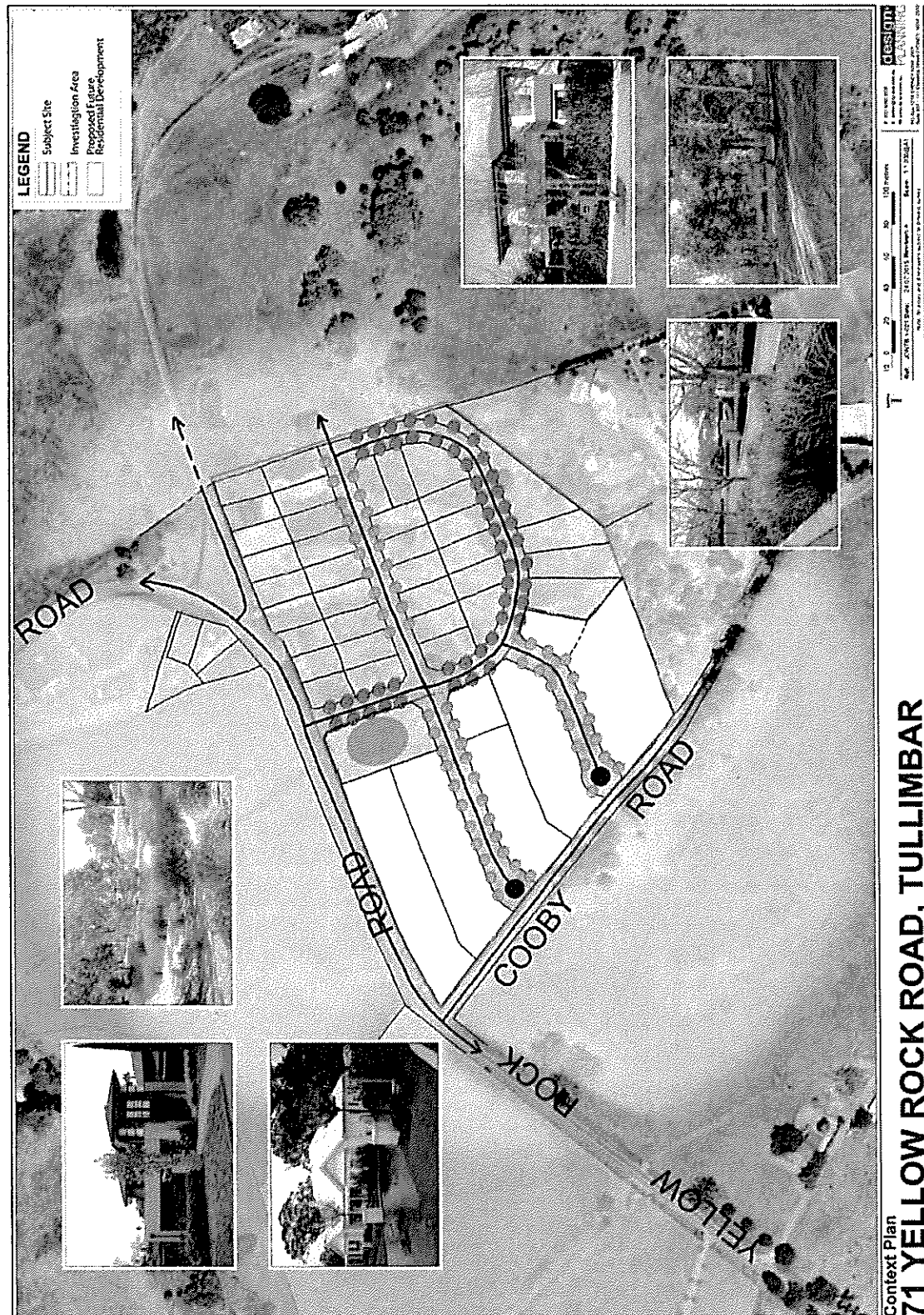
Attachment 1 – Locality Plan



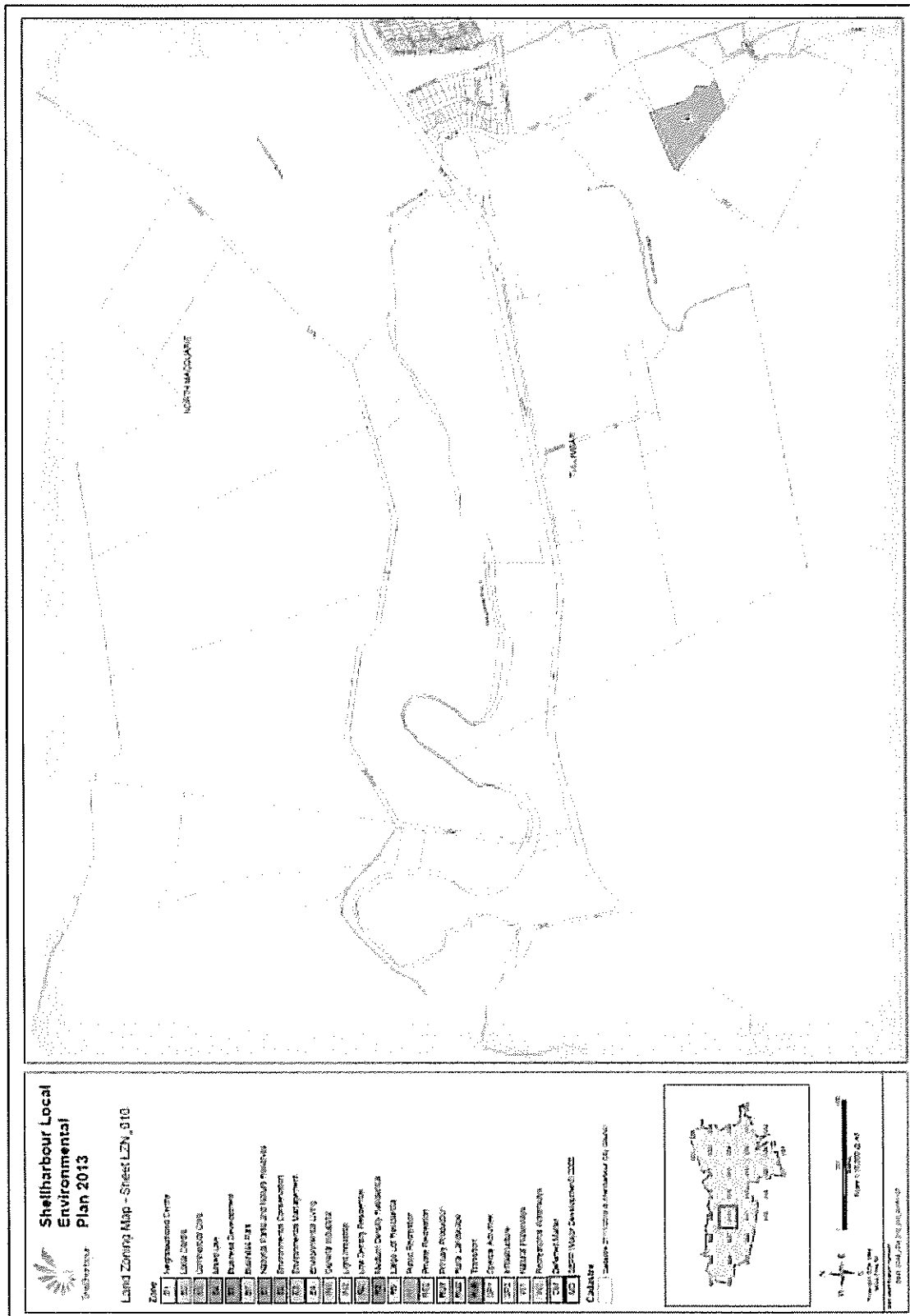
Attachment 2 – Current Zoning



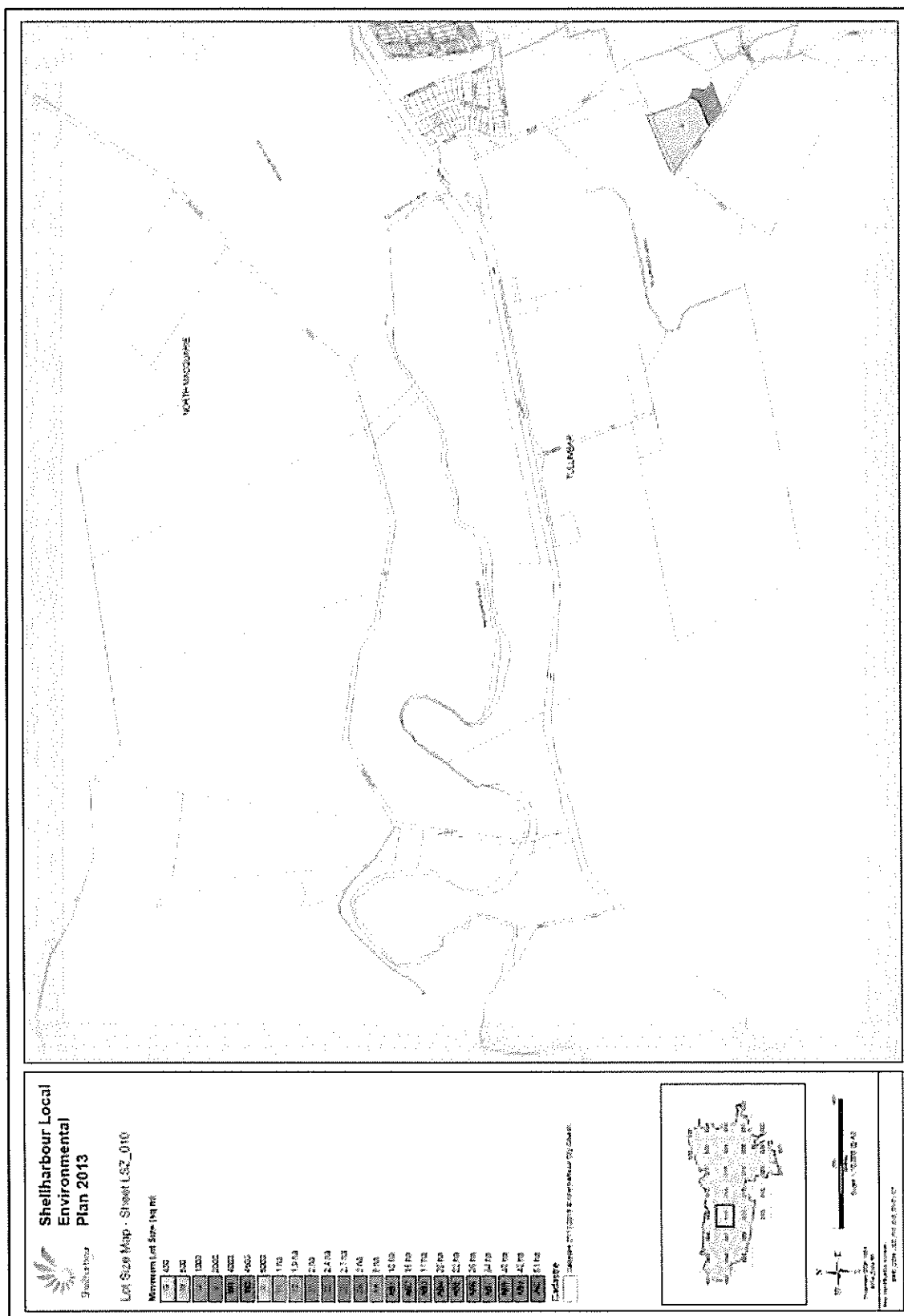
Attachment 3 – Concept Plan



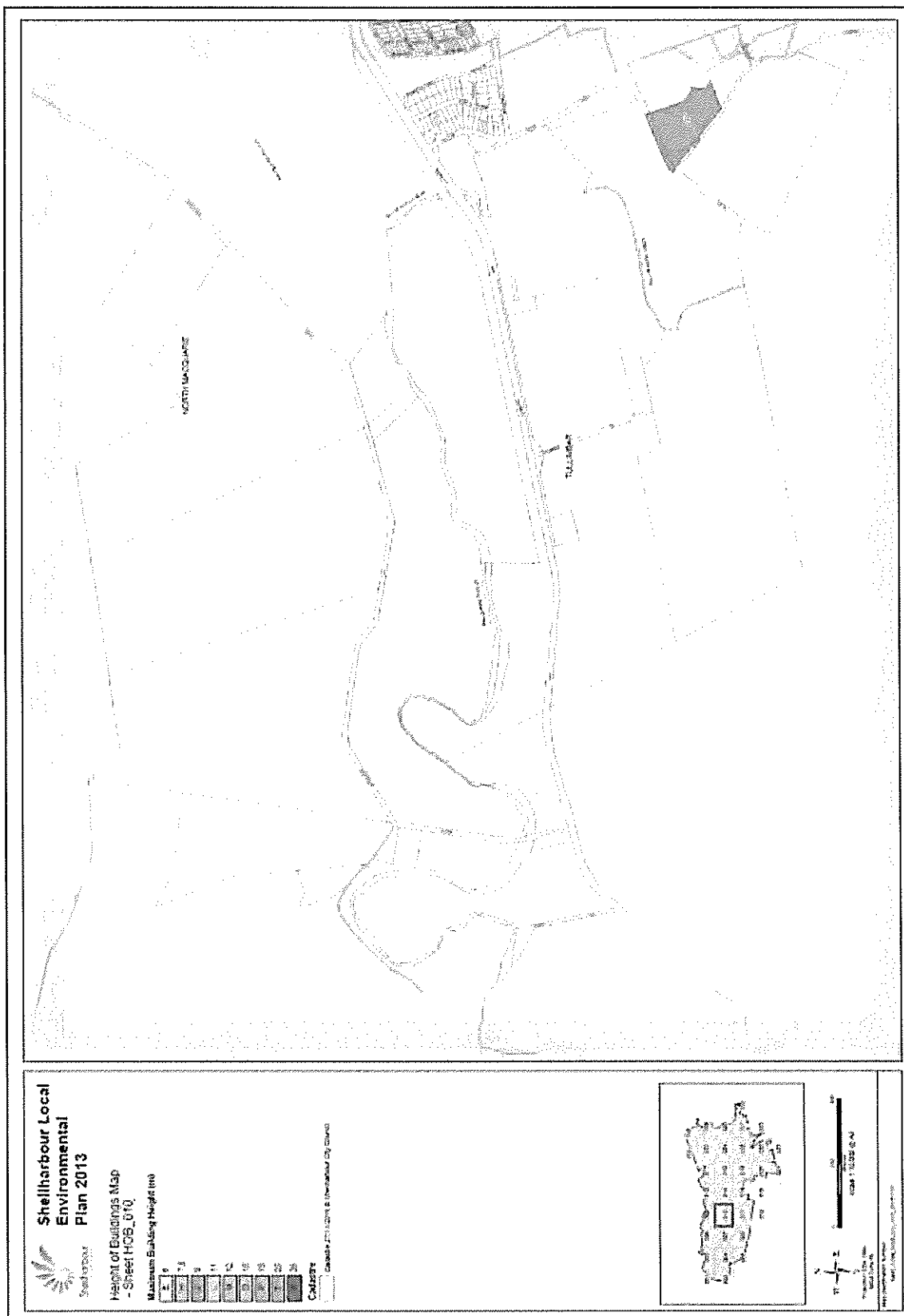
Attachment 4 – Proposed Zoning Map



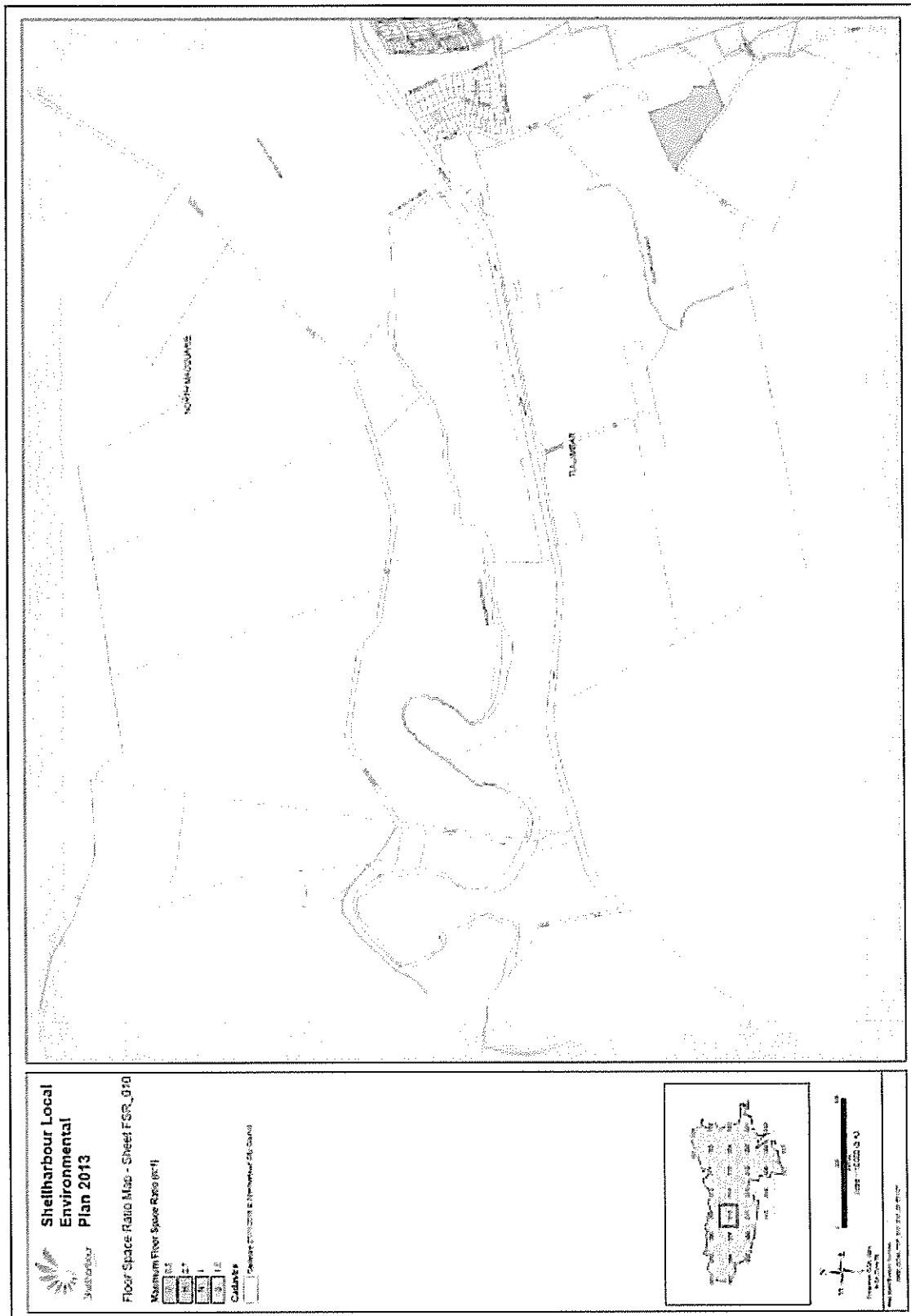
Attachment 5 Proposed Lot Size Map



Attachment 6 – Proposed Building Height Map



Attachment 7 – Proposed Floor Space Ratio Map



Attachment 8 – Preliminary planning assessment of relevant *Environmental Planning & Assessment Act*

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

The Planning Proposal is currently inconsistent with the following directions.

1. Rural Zones (1.2)

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

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

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

The classification of the land, predominantly Class 3 and a small area of Class 5, identifies the land as having some rural use significance. NSW Agriculture, as part of the Section 62 of the *Environmental Planning & Assessment Act* consultations for the Urban Fringe LES, noted that generally within the study area, land was amongst other things, most likely Class 3 or 5 agricultural lands and not suited to cropping.

Being located near urban lands will restrict some forms of agriculture, particularly traditional forms of agriculture that rely on the use of chemical based products. The land is currently used for grazing cattle and has a total area of 2.8ha.

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

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

2. Residential zones (3.1)

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

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

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

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

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

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

3. Development near Licensed Aerodromes (3.5)

The Planning Proposal is not consistent with Direction as it proposes urban development that is proposed to extend into the OLS (Obstacle Limitation Surface). In this regard it is proposed to undertake the following requirements specified in clause 4 of the direction which reads:

- (4) *In the preparation of a planning proposal that sets controls for the development of land in the vicinity of a licensed aerodrome, the relevant planning authority must:*
- (a) *consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome.*
 - (b) *take into consideration the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth,*
 - (c) *for land affected by the OLS:*
 - (i) *prepare appropriate development standards, such as height, and*
 - (ii) *allow as permissible with consent development types that are compatible with the operation of an aerodrome*
 - (d) *obtain permission from that Department of the Commonwealth, or their delegate, where a planning proposal proposes to allow, as permissible with consent, development that encroaches above the OLS. This permission must be obtained prior to undertaking community consultation in satisfaction of section 57 of the Act.*

4. Implementation of Regional Strategies (5.1)

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

The Illawarra Regional Strategy identifies these lands as being investigated by Council to determine appropriate land uses and zonings taking into account it's urban, biodiversity and natural resource values (page 22). This investigation was the Urban Fringe Local Environmental Study that recommended minimal development on the land and this Planning Proposal is a further investigation of the lands

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

The Illawarra Urban Development Program 2012 Update states that Shellharbour LGA has a sufficient supply of strategy identified greenfield land (10,706 lots). This is well above the required 3,135 lots needed according to the 15 year benchmark. There are 7,806 lots zoned

which means Shellharbour LGA also meets the 8 year benchmark of 1,672 lots zoned. Based on the 7.3 year benchmark for zoned and service ready lots, Shellharbour LGA would require 1,526 lots. There are 4,151 lots zoned and service ready.

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

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

Landscape Changes

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

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

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

**Subject 10.2.3 Planning Proposal No. 0502/2015 - Lot 16, DP
1206346, 71 Yellow Rock Road, Tullimbar (10634056)**

1 RESOLVED: Murray/Boyle

1. Council prepare a Planning Proposal No. 0502/2015 for Lot 62, DP 1206346, Yellow Rock Road, Tullimbar and adjoining roads to amend *Shellharbour Local Environmental Plan 2013* to incorporate the proposed Zoning and Planning Controls in Attachments 4 - 7.
2. Council authorise the General Manager to submit Shellharbour Local Environmental Planning Proposal No 0502/2015 to NSW Planning & Infrastructure in accordance with section 56 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.
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4. Shellharbour Local Environmental Plan 2013 Planning Proposal No 0502/2015 be publically exhibited in accordance with the gateway determination.
5. A report be submitted to the Council on the public exhibition of the planning proposal detailing the outcomes of the community and government agency engagement.
6. The planning proposal be reported back to the Council for final consideration and with further recommendations regarding adoption.

CARRIED 5 / 2

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

AGAINST VOTE - Cr Moran, Cr Marsh

