

DATE OF DECISION	Tuesday, 3rd March 2020
PANEL MEMBERS	Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks and Marianne Saliba
APOLOGIES	Graham Rollinson and John Murray
DECLARATIONS OF INTEREST	None

REZONING REVIEW

2020STH001 – Shellharbour City Council – RR_2019_SHELL_001 - AT 95-105 Cooby Road, Tullimbar (AS DESCRIBED IN SCHEDULE 1)

Reason for Review:

- ☐ The council has notified the proponent that the request to prepare a planning proposal has not been supported
- ☒ The council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

PANEL CONSIDERATION AND DECISION

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:

- ☒ **should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- ☐ **should not** be submitted for a Gateway determination because the proposal has
 - ☐ not demonstrated strategic merit
 - ☐ has demonstrated strategic merit but not site specific merit

The decision was unanimous.

REASONS FOR THE DECISION

Overview

The Panel has been requested to undertake a Rezoning Review of Planning Proposal RR_2019_SHELL_001 on land located at 95-105 Cooby Road, Tullimbar. The land is described as Lot 240 DP 828854 and is approximately 29 hectares in size. The land is deferred matter from *Shellharbour Local Environmental Plan 2013* (LEP 2013). It is currently zoned part 2(e) Mixed Use and part Rural 1(a) under *Shellharbour Local Environmental Plan 2000* (LEP 2000).

It is proposed to rezone the land to a combination of R2 Low Density Residential, R5 Large Lot Residential, E4 Environmental Living, E3 Environmental Management and E2 Environmental Conservation. Minimum lot sizes are proposed to range from 300 – 4,000 sqm with a proposed local clause to limit the number of lots that front Cooby Road to a maximum of eight.

A preliminary concept plan was submitted with the planning proposal. The concept plan proposes an indicative yields of 113 residential lots and 24 rural-residential lots, a total of 137 lots.

The Panel had the benefit of a written report from the Department of Planning, Industry and Environment (DPIE) dated 9 October 2019, correspondence from Council planning staff to the Department dated 31 October 2019 and the applicant's Planning Proposal.

Council's correspondence generally supported the mix of proposed zones and lot sizes on the plateau area and along the eastern boundary of the site. However, Council raised a number of concerns with the proposal in relation to other areas of the site including biodiversity impacts, subdivision of native vegetation areas and riparian areas (including future ownership and management), geotechnical and bushfire threat. Council divided the site into five precincts which are shown in Attachments 3-7 of their correspondence. The Precincts are as follows:

- Precinct 1 – Plateau 1 (southern area of plateau)
- Precinct 2 – Plateau 2 (northern area of plateau)
- Precinct 3 – Cooby Road Frontage
- Precinct 4 – Land on slopes of central plateau
- Precinct 5 – Land to east of the site

The Panel has adopted these precincts for the purposes of this report.

The Panel also undertook a site visit. The Panel met with the representatives of the **Applicant, Council and the Department**.

Strategic Merit

In considering the strategic merit the Panel noted advice provided by Council and the Department regarding the local strategic planning framework for the subject land and surrounding areas. The Panel is of the view that:

- The current land use and planning controls applying to the site have been in place for greater than five years.
- With regard to regional strategic plans:
 - There are no specific recommendations regarding the site or immediate locality in the Illawarra Shoalhaven Regional Plan (ISRP).
 - The Regional Plan states that no new release areas are required for Shellharbour beyond those already identified in the Illawarra Urban Development Program (UDP). The UDP is a NSW Government program for managing land and housing supply in the Illawarra and Shoalhaven. The program monitors the planning, servicing and development of new urban areas.
 - The current 2(e) zoned land on the site under LEP 2000 is identified in the UDP as part of the Tullimbar Release Area.
 - Goal 2 of the ISRP promotes a variety of housing choices, with homes that meet needs and lifestyles. Within Goal 2, Direction 2.2 supports housing opportunities close to existing services, jobs and infrastructure in the region's centres. Nearby Albion Park is categorised as an "urban centre" under the plan.
 - Goal 2, Direction 2.34 promotes delivery of housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact. Tullimbar is specifically mentioned as an established, smaller release area that will add to the diversity of supply.
 - The site is not located on biophysical strategic agricultural land or land identified as a strategic resource.
- With regard to local strategic plans:
 - There is currently no local strategy endorsed by the Department that applies to the site.
 - Notwithstanding this, parts of the site have been identified for urban development since the 1996 Tullimbar Charette process.
 - The site is identified for residential development in the Shellharbour Development Control Plan (Part 6 / Appendix 13) as part of the Tullimbar area. The identified areas within the DCP

- for residential development are generally consistent with the areas proposed for R2 Low Density residential and R5 Large Lot residential zoning in the planning proposal.
- The site was deferred from LEP 2013 by way of a Council resolution that required potential increases in residential densities on the site be studied/assessed to inform zoning and development controls provisions under LEP 2013. The Panel is of the view that the planning proposal is consistent with addressing the resolution.
- With regard to any change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls:
 - The site is in close proximity to existing infrastructure including sewer, water and electricity provided as part of development in the broader Tullimbar estate. These services can be extended to service the site.

The Panel is of the view that the proposal has strategic merit.

Site Specific Merit

The Panel was of the view that:

- Infrastructure, including sewer, water and electricity, will be delivered to the edge of the subject land as part of the development of Tullimbar Estate. These services can be extended/augmented to service the subject land.
- The subject land adjoins residential-zoned land to the north and a rural-residential subdivision to the south. A development application for residential subdivision has been lodged for the land to the north and east of the subject land, so the property is likely to adjoin residential development in the near future.
- The areas of the site proposed for R2 Low Density and R5 Large Lot Residential development are generally cleared and have been identified for housing in either the Illawarra-Shoalhaven UDP and/or the Shellharbour DCP.
- Proposed traffic access to and from the proposed R2 and R5 zoned land site will traverse through the adjoining residential areas of Tullimbar and will avoid Cooby Road.
- Visual impact of the development can be minimised through maintaining vegetated slope areas as environmental management zones, development on the hilltop will be set back from the edge through the location of open space areas
- The large lot area along the southern boundary provides a transition to the existing rural residential subdivision
- The local infrastructure requirements for the site can mostly be provided through the application of the Shellharbour Local Infrastructure Contributions plan 2019 (9th Review).

Site Constraints

The Panel identified a number of constraints that affect the site and will require consideration and resolution should the proposal proceed through the LEP Gateway:

- Topography, particularly the steep slopes associated with the central plateau area (Precincts 3 and 4) and the knoll area in the north of Precinct 5.
- Biodiversity constraints including the presence of two Endangered Ecological Communities; Illawarra Lowlands Grassy Woodland and Illawarra Subtropical Rainforest.
- The land is mapped as bushfire prone. There is potential bushfire threat associated with the environmental living and rural interface allotments.
- Riparian corridors including first and second order streams

On balance, the Panel considers the proposal has site specific merit provided the constraints are able to be addressed through further refinement and reduction in initial yields identified.

Panel Consideration

The Panel notes that proponent has provided various environmental studies in support of the application, including an ecological constraints assessment, a floodplain risk management plan, a bushfire assessment, an Aboriginal heritage review, a preliminary site investigation (contamination) and a preliminary geotechnical assessment. As noted earlier, a preliminary concept plan was submitted with the planning proposal that proposes a development outcome that proposes indicative yields of 113 residential lots and 24 rural-residential lots, a total of 137 lots.

Council planning staff's correspondence provided general support for those parts of the site proposed to be zoned R2 Low Density Residential and R5 Large Lot Residential. Notwithstanding this, Council highlighted the significant environmental attributes and consequent development constraints on the remaining parts of the site proposed to be zoned E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living. Accordingly, Council supports a reduced development yield in these areas.

The following is the summary of Council's advice:

- 1. Council Supports a mix of zones and lot sizes generally as proposed on the plateau (Precincts 1 and 2) with a building height of 9.0m and not 9.5m as 9.0m is the standard building height for residential development in the LGA. This will provide a yield of about 56 lots.*
- 2. Does not support the extent of development as proposed along the Cooby Road frontage (Precinct 3). Council supports a maximum of four lots along this frontage with a building height of 9.0m and not 9.5m as 9.0m is the standard building height for residential development in the LGA.*
- 3. Does not support the extent of development as proposed along the slopes of the plateau land (Precinct 4). Council supports a maximum of two lots in this area with a building height of 9.0m and not 9.5m as 9.0m is the standard building height for residential development in the LGA.*
- 4. Supports the proposed minor changes to the boundaries of the existing residential zoned land along the eastern part of the property (Precinct 5); the minimum lot size of 300m² for the southern area and a minimum lot size of 2,000m² for the northern area with a building height of 9.0m and not 9.5m as 9.0m is the standard building height for residential development in the LGA. This is about 49 lots.*
- 5. Supports an approximate total lot yield in the Planning Proposal of about 111 lots, not 137 as outlined in the Planning Proposal.*

The Panel has considered the Applicants planning proposal and technical studies and taken into consideration Council's correspondence and recommendations.

Precincts 1, 2 and 5

The Panel is satisfied that the proposed areas to be rezoned R2 Low density Residential and R5 Large Lot residential are suitable for residential development on the basis of these areas being generally cleared of significant vegetation, are able to be managed for bushfire risk, largely adjacent to existing or proposed development and able to be connected to utilities. The Panel's view however is that the rezoning of the knoll area to the north of Precinct 5 (shown in Attachment 7B of Council's correspondence) to R2 Low Density Residential requires further justification given the topographic and vegetation constraints associated with this area.

Precincts 3 and 4

The Panel is satisfied that the proposed E4 Environmental Living zone is appropriate for Precinct 3.

The Panel notes that proposed E2 Environmental Conservation Zone proposed for the riparian corridor in Precinct 3 is not consistent with the zoning for other riparian corridors in urban areas in LEP2013. Council has expressed a preference for this area to be zoned E4 Environmental Living. The Panel supports this outcome.

Within Precinct 4, the proposal includes areas of land proposed to be zoned E4 Environmental Living on the lower slopes and E3 Environmental Management on the steeper vegetated slope areas. A common 2,000m² minimum lot size is proposed through the entire precinct.





The areas of vegetation within Precinct 3 and 4 have connectivity with broader vegetation corridors beyond the site. These areas also contain endangered ecological communities. Subdivision of land within Precincts 3 and 4 will create the risk of fragmentation of areas of significant vegetation through the likely construction of future boundary fencing and implementation of asset protection zones. Therefore, the minimum lot size and resulting density of lots within these areas will be a significant factor in terms of biodiversity outcomes on the site.

While the Panel is of the view that an environmental zone is appropriate in these locations, the appropriate environmental zone (E3 or E4) and zone boundaries should be reviewed following a more comprehensive bushfire threat assessment to confirm what areas of vegetation are required to be removed or managed to create appropriate APZs and consultation with the Rural Fire Service. The Panel shares the concern raised by Council that the proposed building footprints identified in the preliminary concept plan are located too close to identified APZ areas and that, given the ecological constraints, the proposed minimum lot sizes are too small in these precincts.

Recommendations

1. That the Planning Proposal proceed to a Gateway Determination
2. That the following additional requirements as outlined in this report be provided and considered as part of the Gateway Determination:
 - Further information regarding bushfire threat associated with the land proposed to be zoned E3 and E4, including identification of areas required to be cleared or managed for asset protection zones.
 - Adequacy of and location of the secondary fire access to the plateau areas be reviewed in consultation with RFS.
 - A flora assessment consistent with the Biodiversity Conservation Act 2016 and Biodiversity Assessment Method be undertaken for the site, in particular the Illawarra Subtropical Rainforest and Illawarra Grassy Woodland Communities. The assessment should include targeted surveys for *Rhodamnia rubescens*, *Daphnandra johnsonii*, *Chorizema parviflorum* and *Zieria granulata*
 - Minimum lot size and dwelling numbers in the E4 zone be reviewed following consultation with relevant agencies, particularly the Rural Fire Service
 - Information regarding arrangements for the future ownership, management and funding for any residual lands within the site.
 - A 9m building height limit, consistent with the height limit generally applying in the proposed zones in the Shellharbour LGA.
 - A geotechnical report that addresses the appropriateness of the proposed R2 zone for the knoll area to the north of Precinct 5 (shown in Attachment 7B of Council's correspondence).
 - Proposed E2 zoned areas be zoned E3 – consistent with other riparian corridor areas in Shellharbour LGA.
 - Details of the proposed drainage design, including on-site detention basins, to demonstrate that the system can adequately manage stormwater from the site without compromising existing and future development within the 2(e) zoned areas of Shellharbour Development Control Plan (Part 6 / Appendix 13).
 - Details of proposed arrangements to fund or contribute funding for local infrastructure including open space, drainage structures, upgrades to Yellow Rock Road, community facilities and biodiversity conservation. The arrangements could be by way of a Voluntary Planning Agreement offer, which, if accepted should be publicly exhibited with the planning Proposal.

The Panel does not endorse the subdivision layout or lot yield submitted with this proposal.

PANEL MEMBERS	
 Gordon Kirkby (Chair)	 Renata Brooks
 Tim Fletcher	 Marianne Saliba

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	2020STH001– Shellharbour City Council – RR_2019_SHELL_001 - AT 95-105 Cooby Road, Tullimbar
2	LEP TO BE AMENDED	Shellharbour Local Environmental Plan 2013
3	PROPOSED INSTRUMENT	<p>The proposal seeks to apply zones and controls to land at 95-105 Cooby Road Tullimbar that is currently deferred from the Shellharbour LEP 2013.</p> <p>The land is currently zoned part 1(a) Rural and part 2(e) Mixed Use Residential under the Shellharbour LEP 2000.</p> <p>The proposal rezones the land to a mix of R2 Low Density Residential; R5 Large Lot Residential; E4 Environmental Living; E3 Environmental Management and E2 Environmental Conservation.</p>
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Rezoning review request documentation Briefing report from Department of Planning, Industry and Environment
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY	<ul style="list-style-type: none"> Site inspection: Tuesday, 3 March 2020 <ul style="list-style-type: none"> Panel members in attendance: Gordon Kirkby (Chair), Tim Fletcher and Renata Brooks Department of Planning, Industry and Environment (DPIE) staff in attendance: Louise Myler and Graham Towers Council staff in attendance: Jessica Lintern Landowner – Greg Glanville and Toni Hulme Applicant/Proponent in attendance: Michael Rodger and Ryhan Thomson Briefing with Department of Planning, Industry and Environment (DPIE): Tuesday, 3 March 2020 at 11:00am <ul style="list-style-type: none"> Panel members in attendance: Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks and Marianne Saliba

		<ul style="list-style-type: none"> ○ DPIE staff in attendance: Louise Myler and Graham Towers ● Briefing with Council: Tuesday, 3 March 2020 at 11:00am <ul style="list-style-type: none"> ○ Panel members in attendance: Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks and Marianne Saliba ○ DPIE staff in attendance: Louise Myler and Graham Towers ○ Council representatives in attendance: Jessica Lintern and Melissa Boxall ● Briefing with Proponent: Tuesday, 3 March 2020 at 11:00am <ul style="list-style-type: none"> ○ Panel members in attendance: Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks and Marianne Saliba ○ DPIE staff in attendance: Louise Myler and Graham Towers ○ Proponent representatives in attendance: Michael Rodger and Ryhan Thomson ○ Landowner – Greg Glanville and Toni Hulme
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