

The Planning Proposal

Local Government Area: Shellharbour City Council

Property Details: Lot 17 DP 1168920, Exeter Place Tullimbar

Council Planning Proposal No.: PP0004/2018

Part 1 Objectives or intended outcomes.

The intended outcomes of this Planning Proposal are to:

- Rezone the land currently zoned Mixed Use Residential 2(e) and Rural 1(a) to a combination of R2 Low Density Residential, R5 Large Lot Residential, SP2 Infrastructure (Electricity Transmission and Distribution) & E3 Environmental Management
- Include a range of provisions that are outlined in Part 2 below including limiting development opportunities to those locations identified in submitted planning studies to be satisfactory
- Provide an end state for the land that optimizes the development opportunities but provides protection to the significant vegetation on the land
- Provide smaller lot sizes closer to the centre of the development site
- Provide a transition in lot size and development density on the land that backs on to existing large lot development (6145m² to 1.03 hectares) and that land at the end of a small valley with no alternate access so that lots are larger and there is no more than one dwelling house and a secondary dwelling
- Not permit structures on land having high environmental significance

Part 2 An explanation of the Provisions that are to be included in the proposed local environmental plan.

- Rezone the land currently zoned Mixed Use Residential 2(e) and Rural 1(a) in Shellharbour LEP 2000 to a combination of R2 Low Density Residential, R5 Large Lot Residential, SP2 Infrastructure (Electricity Transmission and Distribution) & E3 Environmental Management. See **Attachment 1** for existing zoning and **Attachment 2** for proposed zoning
- Create a minimum lot size of 300m² for the R2 zoned land. See **Attachment 3**
- Create a minimum lot size of 1,000m² for the R5 zoned land. See **Attachment 3**
- Create a minimum lot size of 10,000 for some of the E3 zoned land. See **Attachment 3**
- Create a minimum lot size of 40 hectares for some of the E3 zoned land. See **Attachment 3**
- Include a Building Height of 9.0 metres for the R5 zoned land. See **Attachment 4**
- Include a Building Height of 11.0 metres for the R2 zoned land. See **Attachment 4**
- Have no building height for the land zoned E3 and SP2. See **Attachment 4**
- Not have a Floor Space Ratio for the R2 zoned land that has a lot size of less than 450m². See **Attachment 5**
- Include a local clause that requires a Floor Space Ratio of 0.5:1 for lots that have an area equal to or greater than 450m² and zoned R2. See **Attachment 5**
- Include a Local Clause for the land zoned R5 that prohibits Residential Accommodation other than a single dwelling house and a secondary dwelling. See **Attachment 6**

- Include a Local Clause that allows the E3 zoned land having a 40 hectare minimum lot size, to be subdivided into no more than three lots but not permit residential accommodation on the E3 zoned land due to the significance of the vegetation and adverse impacts on that vegetation by development and if Asset Protection Zones are required. See **Attachment 7**
- Include the No Development Map and Local Clause on certain E3 zoned land to minimize development that would have an adverse impact on the significant vegetation in those areas. See **Attachment 8**
- Include a Terrestrial Biodiversity Map as shown in **Attachment 9**

Part 3 Justification for the objectives, outcomes, provisions and the process for their implementation.

The land includes and immediately adjoins land currently zoned Residential 2(e) under Shellharbour LEP 2000 and deferred from Shellharbour LEP 2013.

The land was deferred from Shellharbour LEP 2013 when that LEP was made. The Council resolution for deferral in 2012 was so that potential increases in residential densities could be studied/assessed. This Planning Proposal addresses that Council resolution. See **Attachment 11** for the 9 June 2020 Council report and resolution to prepare the Planning Proposal.

The Planning Proposal applies to some land currently zoned Residential 2(e). Part of that land is also subject to Development Consent 73/2018 to conditionally permit the subdivision of some of the land into 290 lots, comprising 283 residential lots, three open space lots, one riparian area and three residual lots.

The requirement to not have a Floor Space Ratio on R2 zoned land that has a lot size of 450m² or less, is because the Shellharbour DCP has a requirement for these lands that Building Design (Access) Guidelines be submitted for all lots less than 450m². These Guidelines will assist in limiting the building footprint on the land but still provide flexibility in design. Further, the potential to have a mix of lot sizes that are not currently fixed to cadastre makes it unwise to introduce different Floor Space Ratio controls by mapping as the final subdivision layout may not correspond with the Floor Space Ratio controls.

The proposed R2 Low Density Residential land is generally located closer to the centre of the site and a 300m² lot size is appropriate.

The proposed R5 Large Lot Residential zoned land, combined with the minimum lot size of 1,000m² and the Local Clause to restrict residential accommodation to a maximum of one dwelling house and a secondary dwelling is proposed due to the location of some of the land at the end of a small valley on the periphery of the site with no alternate access, the need to provide a transition in lot size and residential density on the edge of existing development and as some of the land adjoins existing large lot development with lot areas ranging from 6145m² to 1.03 hectares.

The justification for the minimum lot size of 40 hectares for the land zoned E3 Environmental Management is to not allow the land to be subdivided and permit a dwelling house or other structures. A Local Clause is proposed to permit the subdivision of the land into a maximum of three lots and no residential accommodation permitted so there is an end state for the land. This will permit a range of lot sizes to suit the site after a detailed assessment of the land has been completed. The use of the No Development Map and Clause will further strengthen

the protection of the important vegetation on this part of the land. This land has the potential to be included with one or more of the proposed R5 Large Lot Residential zoned lots.

The No Development Map and Clause is also proposed on a band of E3 zoned land that adjoins and may become attached to proposed Residential zoned land. The use of this Map and Clause is to minimise inappropriate development on the E3 zoned land where no development has been intended.

The Building Height of 11.0 metres for the R2 zoned land is proposed to complement the existing height controls in the Building Design Guidelines for the existing Residential zoned land elsewhere in the estate and the height for the R5 zoned land to complement the general height limit of 9.0 metres across the Local Government Area.

Detailed assessment reports submitted with the application included flora and fauna, bushfire, water cycle management, contamination and traffic. These reports combined with Council's adopted Local Housing Strategy & Local Strategic Planning Statements and the Illawarra/Shoalhaven Regional Plan, provide further justification for the Planning Proposal as submitted for Gateway determination.

The detailed assessment reports should be exhibited with the Planning Proposal if a Gateway determination is received to progress the Proposal.

A. Need for the planning proposal.

1. Is the planning proposal a result of any strategic study or report?

The Planning Proposal has been prepared to address land that was deferred from Shellharbour LEP 2013 when that was made. Council deferred the land in 2012 so that potential increases in residential densities can be studied/assessed.

The Planning Proposal addresses Action 1.3 of the Shellharbour Local Strategic Planning Statement, in that it continues the program to carry over the deferred lands into Shellharbour LEP 2013 and delivers greater housing diversity and affordability to meet the changing needs of the community (Priority 1). See **Attachment 10**.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes, there is no other mechanism to rezone the land to permit the proposed development

B. Relationship to strategic planning framework.

1. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposal is generally consistent with the Regional Plan.

The existing Residential zoned land has been identified in the Plan as providing a contribution to greenfield land supply to the Region. The extension of this area as proposed is considered to be reasonable and make a minor contribution to the overall supply of Residential zoned land. The Proposal adjoining existing

Residential zoned land will assist in maximising the use of the infrastructure required to be provided to the existing residential zoned land as it is developed.

In this regard the Planning Proposal is considered to satisfy Direction 2.3 *Deliver housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact.*

The Planning Proposal intends to protect the important flora on the site by zoning it E3 Environmental Management. The use of the Terrestrial Biodiversity mapping layer to the relevant parts of this zoned land is also proposed. In this regard, the Planning Proposal is considered to satisfy the intent of Direction 2.4 *Identify and conserve biodiversity values when planning new communities.*

The Planning Proposal has site-specific merit as a large proportion of this site is already zoned residential and it is considered reasonable, in this instance, to consider rezoning the remainder of the land as proposed due to its location adjoining the existing residential zoned land, proximity to existing and planned infrastructure and physical constraints such as flooding and environmental issues can be managed in a positive manner.

2. Is the planning proposal consistent with a council's local strategic planning statement or another endorsed local strategy, or strategic plan?

The Planning Proposal is generally consistent with Council's adopted and Department endorsed Shellharbour Local Housing Strategy (SLHS) and Shellharbour Local Strategic Planning Statement (SLSPS).

The SLHS identifies in Objective 4, that no new land release areas are required.

The SLHS Evaluation of Options table recommendation 4, pages 82 & 83 and the Implementation and Delivery Plan recommendation 4, page 93, generally discusses differentiating planning controls between different areas and the need for fine grained planning to be undertaken to develop these details. It is considered that this Planning Proposal application has undertaken that fine grained work to propose the rezoning of the land and a range of lot sizes in this locality.

A departure from Objective 4 is considered reasonable in this case as, a large proportion of this site is already zoned residential and it is considered reasonable, in this instance, to consider rezoning the remainder of the land as proposed due to its location adjoining the existing residential zoned land, proximity to existing and planned infrastructure and physical constraints such as flooding and environmental issues can be managed in a positive manner.

Two of the priorities of the SLSPS are:

1. Deliver greater housing diversity and affordability to meet the changing needs of the community (P1, page 32 SLSPS) and continue the program to carry over the deferred lands into LEP 2013 (P1.3, page 31 SLSPS)
2. Develop a Rural Strategy for our City (P14.1) to help identify the future of our rural and environmental lands, and what will be appropriate and viable for the future of these areas of the LGA (page 56 SLSPS).

The Planning Proposal is considered to be generally consistent with the SLSPS as this Planning Proposal:

- was lodged prior to the commencement of the SLSPS project,
- includes proposed land use outcomes that are on existing or adjoin current or future Residential zoned land,
- is on land with minimal agricultural and rural land use options due to its location adjoining residential development,
- is on or adjoins land identified in the Illawarra Shoalhaven Regional Plan as providing housing opportunities,
- will add to the diversity and mix of lot sizes within our Local Government Area,
- addresses the Council resolution of 29 May 2012 that required the increased densities of the land deferred from Shellharbour LEP 2013 to be studied/assessed, and
- addresses Action 1.3 “continue the program to carry over the deferred lands into LEP 2013”.

It is considered that this Planning Proposal meets the general intent of Priority 1 of the SLSPS and the circumstances of this Planning Proposal over-ride the need to wait for the commencement and completion of a Rural Strategy.

The Planning Proposal has strategic merit in that it is generally consistent with the Illawarra Shoalhaven Regional Plan, Shellharbour Local Housing Strategy, Shellharbour Local Strategic Planning Statement and generally complies or has minor non-compliance with relevant Local Planning Directions.

The Planning Proposal has site-specific merit in that it has been prepared to take into account the significant vegetation on the site, adjoins existing and proposed residential development and will maximise the provision of infrastructure to adjoining development.

3. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes

4. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Generally yes. The Planning Proposal is inconsistent with:

- 1.2 Rural zones
- 1.5 Rural lands
- 3.5 Development near aerodromes
- 4.4 Planning for bushfire protection
- 6.3 Site specific provisions

These inconsistencies are considered minor in nature and an assessment is included in the Council report, see **Attachment 11**

C. Environmental, social and economic impact.

1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A detailed flora and fauna report was submitted with the application.

The land contains two Ecological Endangered Communities, being Illawarra Lowlands Grassy Woodland and Illawarra Subtropical Rainforest under the *Biodiversity and Conservation Act 2016*. The site also includes Illawarra and South Coast Forest and Woodland which is critically endangered under the *Commonwealth Environmental Protection Biodiversity Conservation Act 1999*.

Part of the southern part of the site is mapped on the Biodiversity Values Map. Development in areas covered by the Biodiversity Values Map will trigger Biodiversity Offsetting under the *Biodiversity and Conservation Act 2016* and also require Assessments as a Matter of National Environmental Significance under the *Commonwealth Environmental Protection Biodiversity Conservation Act 1999*. This will be addressed as part of any future Development Application.

There are also records of the site having the threatened species *Zieria granulata* and *Irenepharsus Trypheris* (Illawarra Irene).

The area to the south of the site proposed to be zoned E3 Environmental Management has environmental significance. The Proposal does not intend to include a dwelling house on this land and this will be controlled by the Local Clause that outlines this area and identifies the maximum number of lots this land can be subdivided into is three and is proposed to include the No Development Map layer of Shellharbour LEP 2013. These proposed controls will assist in minimising potential adverse impacts on the vegetation in this area.

This land is also proposed to be included in the Terrestrial Biodiversity Mapping to provide further protection to the important vegetation.

2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The Planning Proposal intends to zone land adjoining proposed R2 Low Density Residential and R5 Large Lot Residential development to the north of the site as Environment Management E3. This land contains scattered trees and is proposed to be subdivided with a minimum lot size of 10,000m². Information lodged with the application indicates that the land is not suitable for residential development and therefore the No Development Map and controls are also proposed to minimise adverse impacts on the vegetation and inappropriate development.

3. How has the planning proposal adequately addressed any social and economic effects?

Yes. Information lodged with the application shows the proposed rezoning will add to the supply and diversity of residential lots in Shellharbour City Council area.

D. State and Commonwealth interests.

1. Is there adequate public infrastructure for the planning proposal?

The rezoning of the land will require provision of additional infrastructure. Some of this will be catered for in Council's current Infrastructure Contributions Plan 2019. A proportional contribution to the upgrade of a local road has been identified as required. The landowner has commenced the process of entering a Voluntary Planning Agreement to make a contribution for these works.

Council requests that the Voluntary Planning Agreement be exhibited with the Planning Proposal, should a Gateway determination to exhibit be received.

Consultation with relevant Utility providers as part of the exhibition of the Planning Proposal will identify whether other infrastructure is required.

2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination?

To be determined following Gateway determination.

It is anticipated that the Planning Proposal will be referred to:

- NSW Rural Fire Service
- Civil Aviation Safety Authority and Manager Shellharbour Airport
- Utility providers
- Department of Planning, Industry & Environment – Planning & Environment teams
- Transport for NSW

Part 4 Maps, where relevant to identify the intent of the planning proposal and the area to which it applies

- Locality Plan and current zoning **Attachment 1 and 1a**
- Zoning **Attachment 2 and 2a**
- Minimum Lot Size **Attachment 3**
- Building Height **Attachment 4**
- Local Clause Floor Space Ratio **Attachment 5**
- Local Clause for the land zoned R5 that prohibits Residential Accommodation other than a single dwelling house and a secondary dwelling **Attachment 6**
- Local Clause that allows the E3 zoned land with a minimum lot size of 40 hectare, to be subdivided into no more than three lots but not permit residential accommodation or other development **Attachment 7 and 7a**
- No Development Map **Attachment 8**
- Terrestrial Biodiversity Map as shown in **Attachment 9 and 9a**

Part 5 Details of the community consultation that is to be undertaken on the planning proposal.

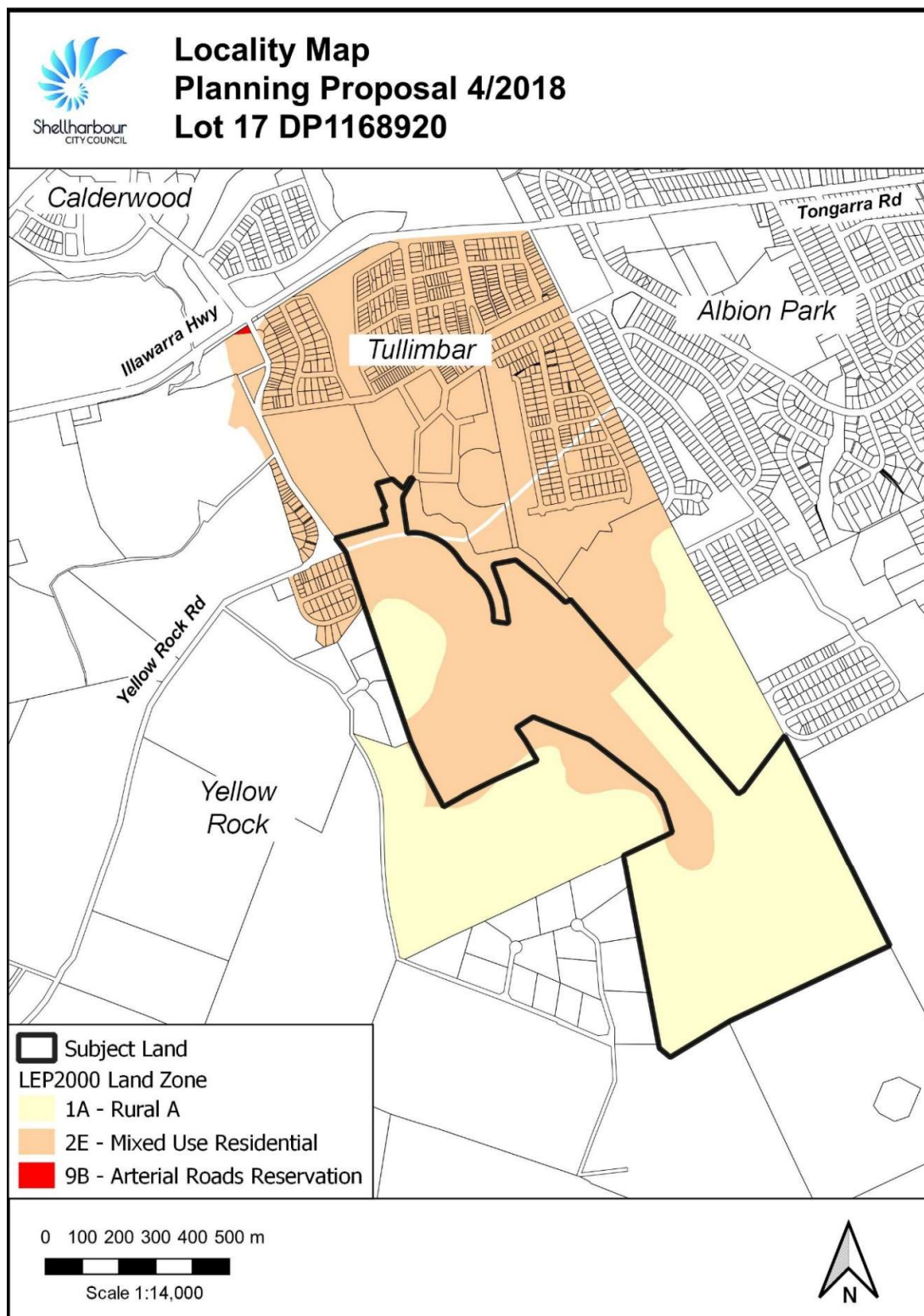
Subject to the Gateway determination, consultation for 28 days

Part 6 Project timeline.

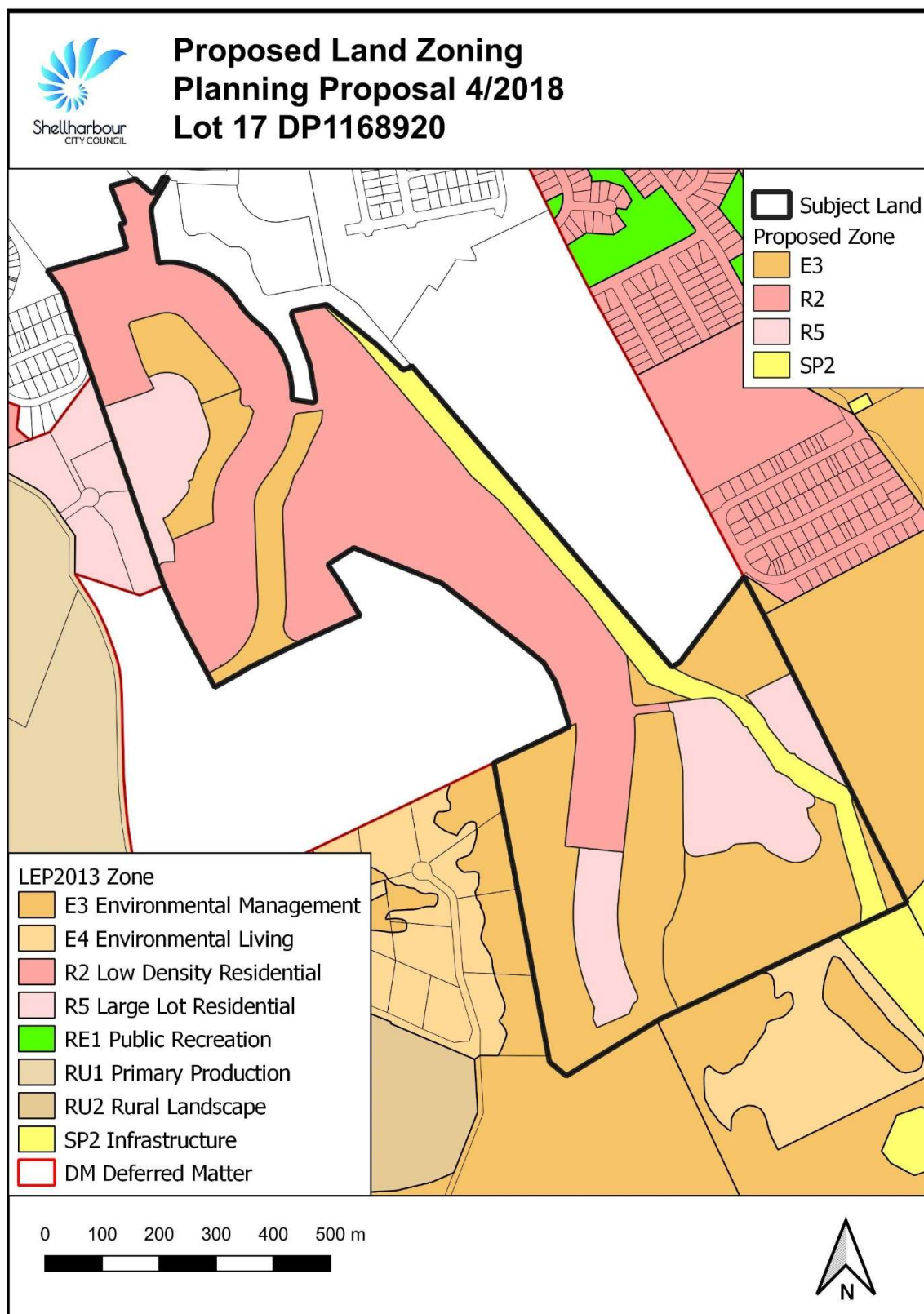
- Anticipated commencement date (Gateway determination): September 2020
- Anticipated timeframe for the completion of required technical information: Existing information adequate, subject to Gateway determination and government agency consultation, September 2020
- Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination): December 2020/February 2021
- commencement and completion dates for public exhibition period: 28 day exhibition. Christmas New Year period to be excluded from exhibition. December 2020/February 2021
- dates for public hearing (if required): To be determined
- timeframe for consideration of submissions: February/March 2021
- timeframe for the consideration of a proposal post exhibition: May 2021
- date of submission to the Department to finalise the LEP: June 2021

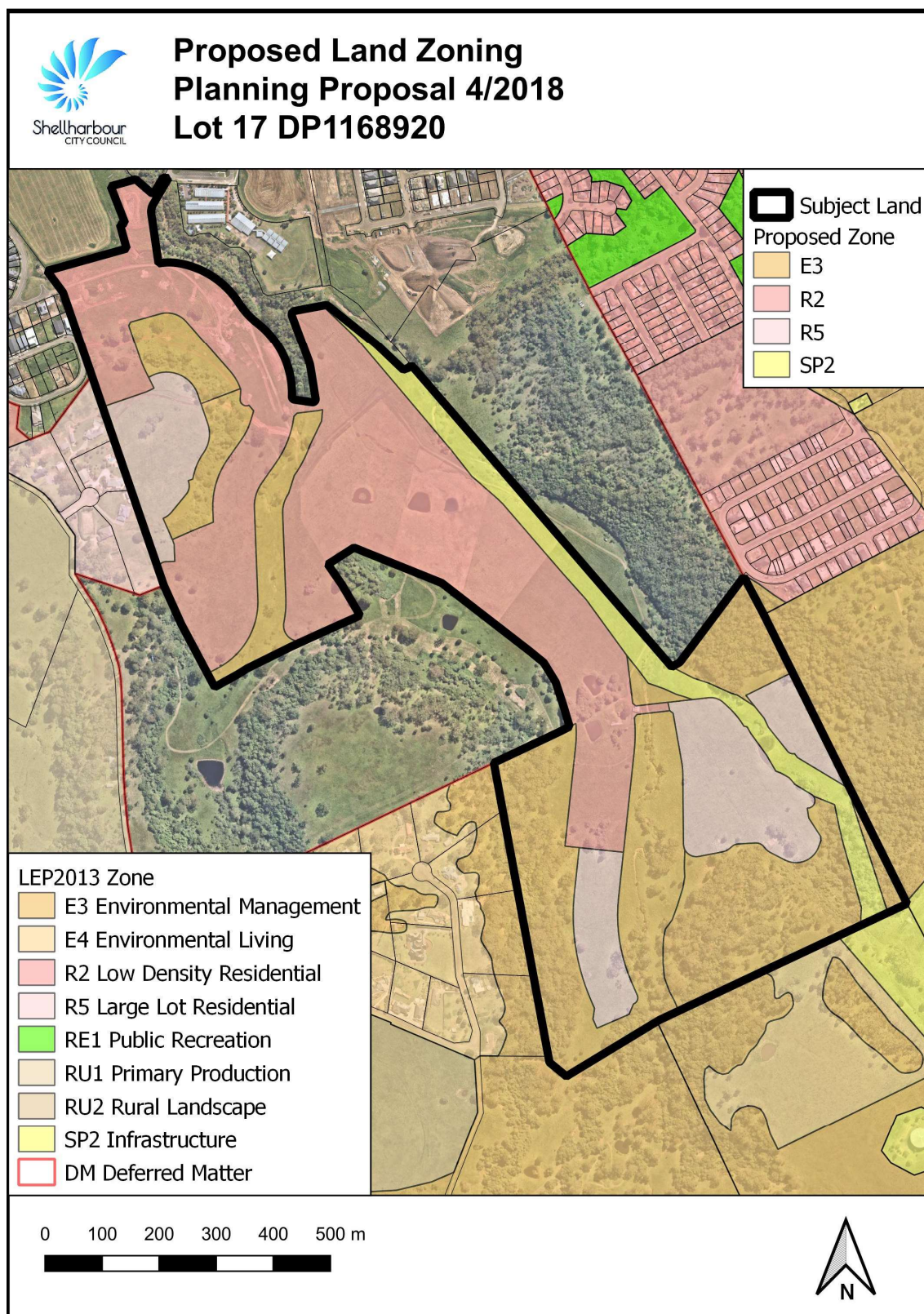
ATTACHMENTS

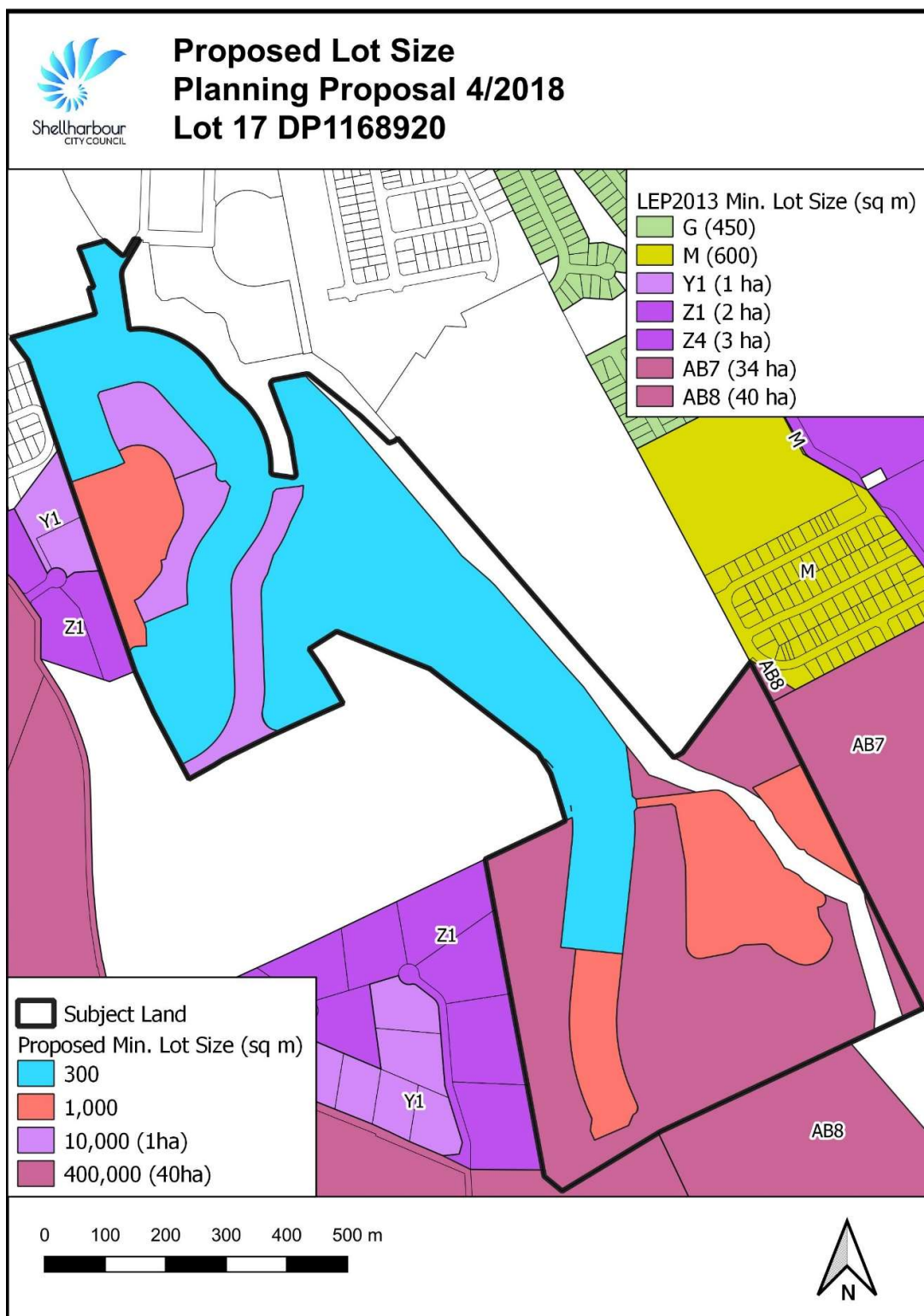
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- Local Clause that allows the 40 hectare, E3 zoned land to be subdivided into no more than three lots but not permit residential accommodation **Attachment 7 and 7a**
- No Development Map **Attachment 8**
- Terrestrial Biodiversity Map **Attachment 9 and 9a**
- Extract from Shellharbour Local Strategic Planning Statement **Attachment 10**
- Council meeting 9 June 2020 report and resolution **Attachment 11**

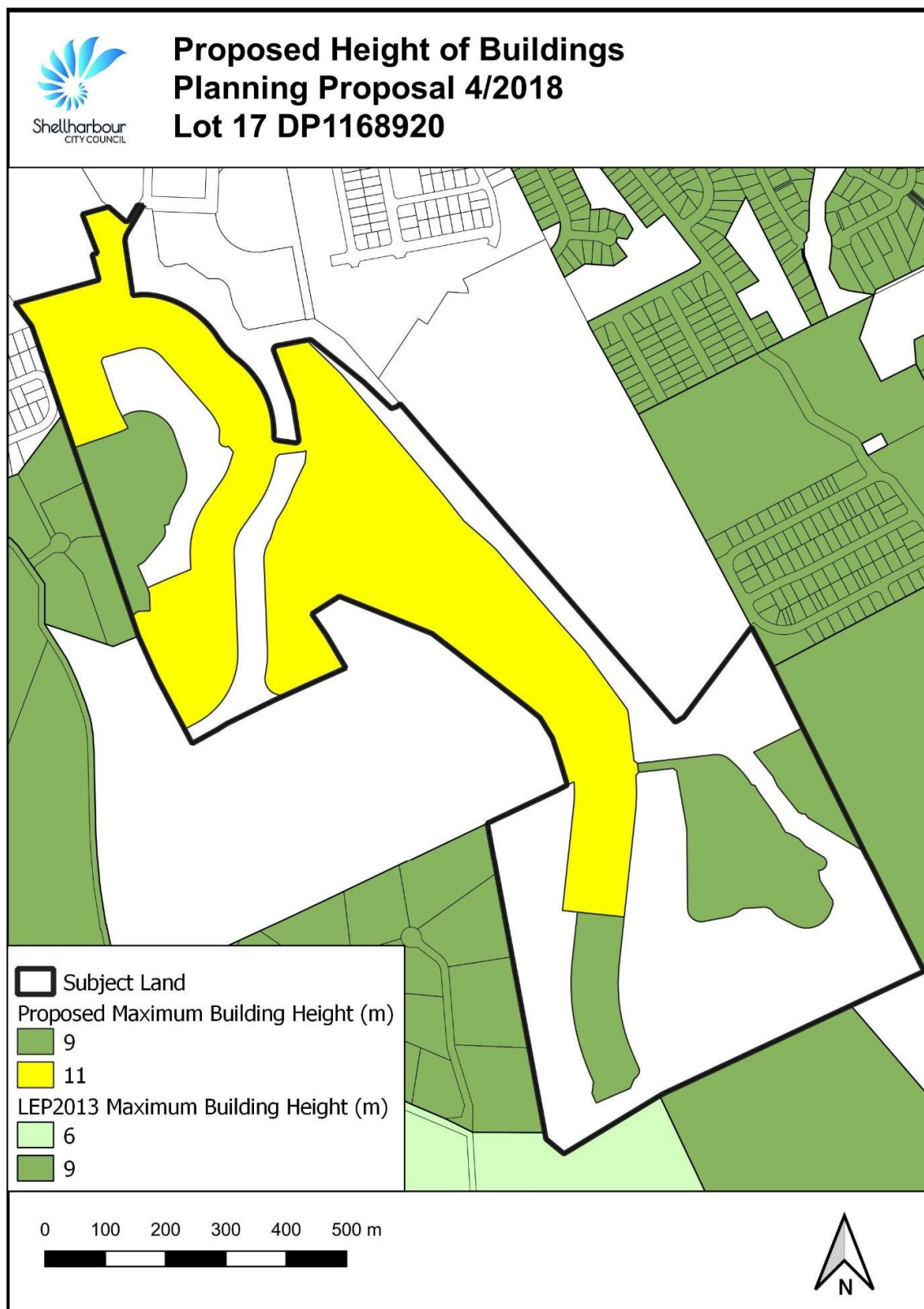


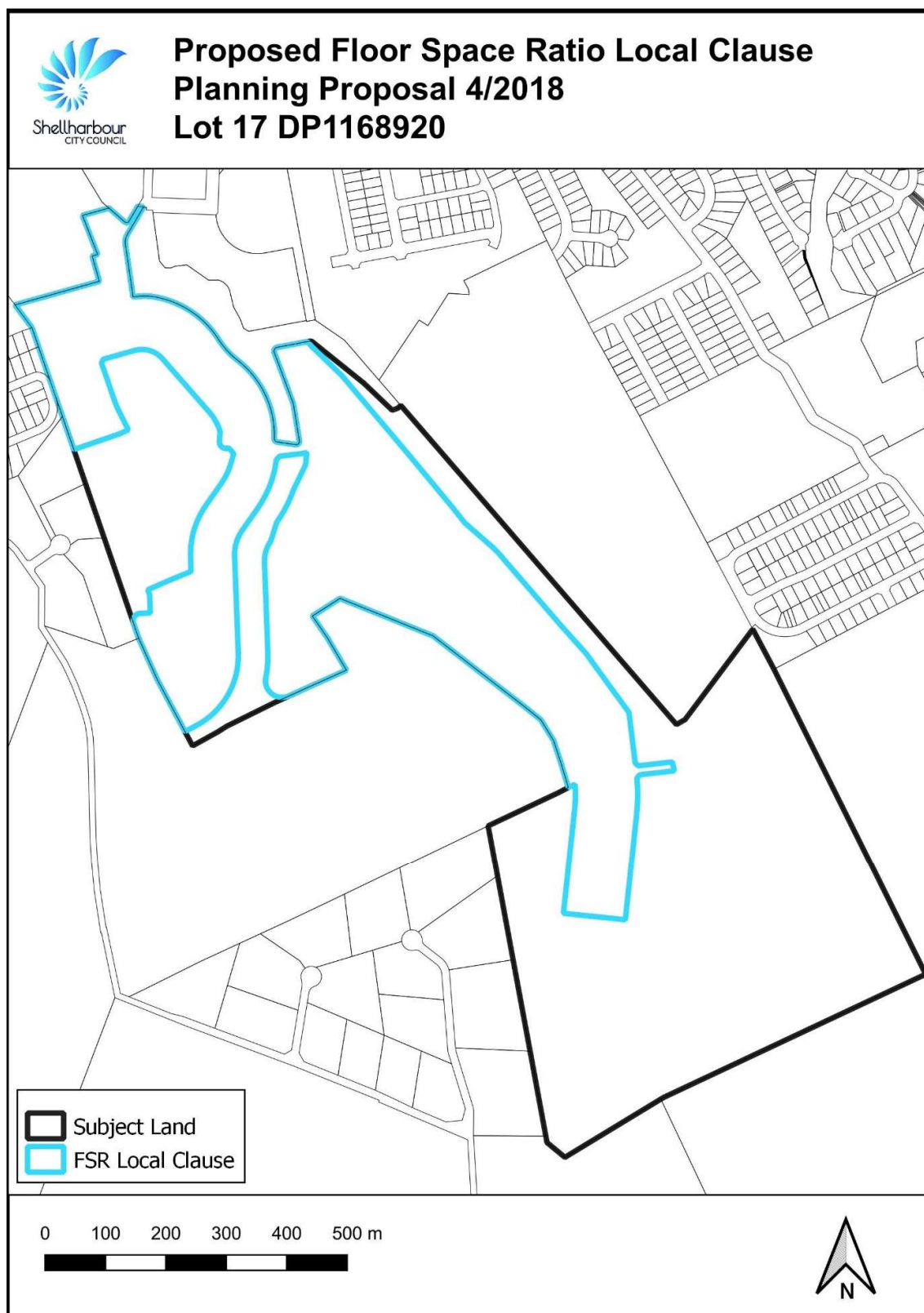


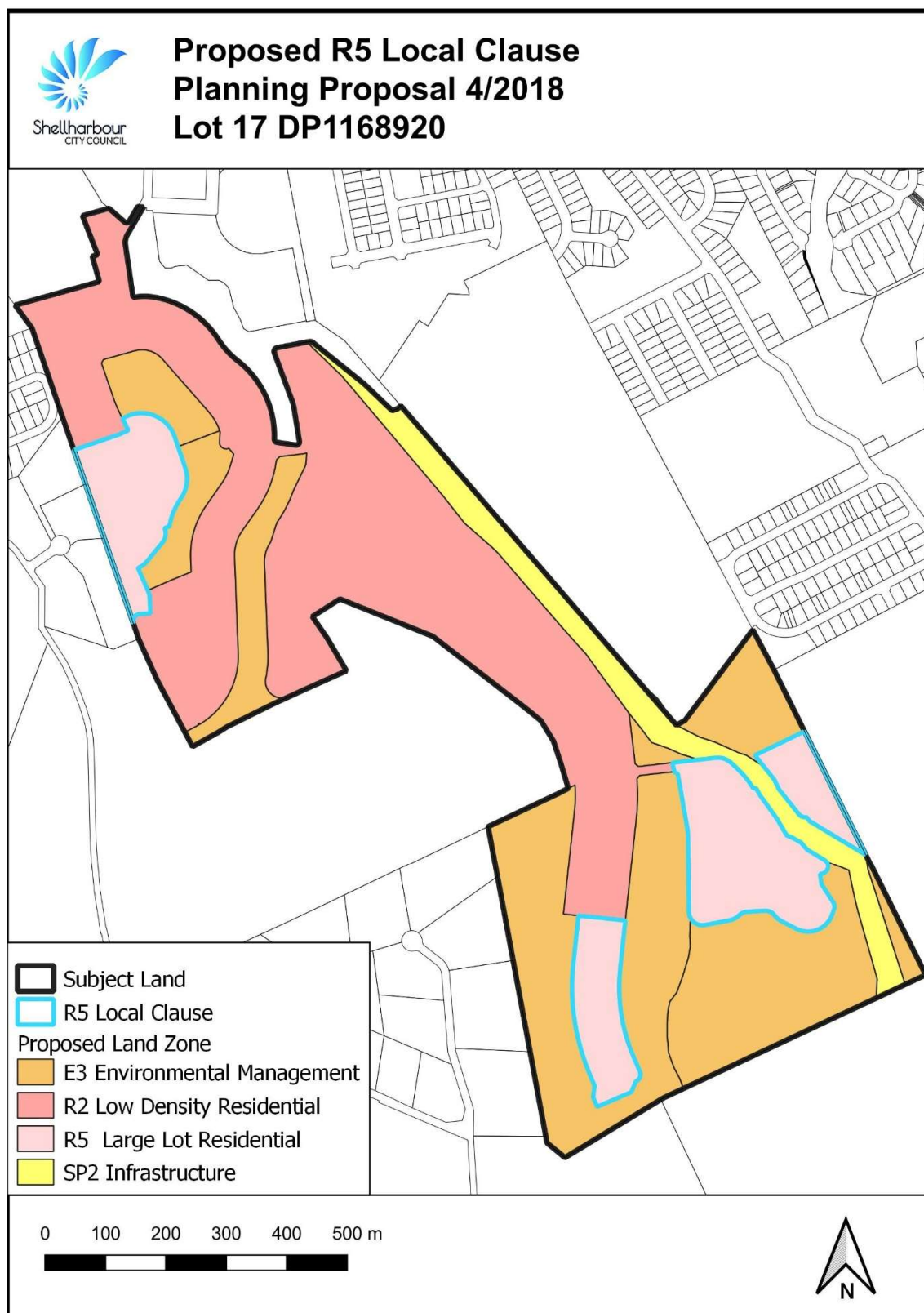


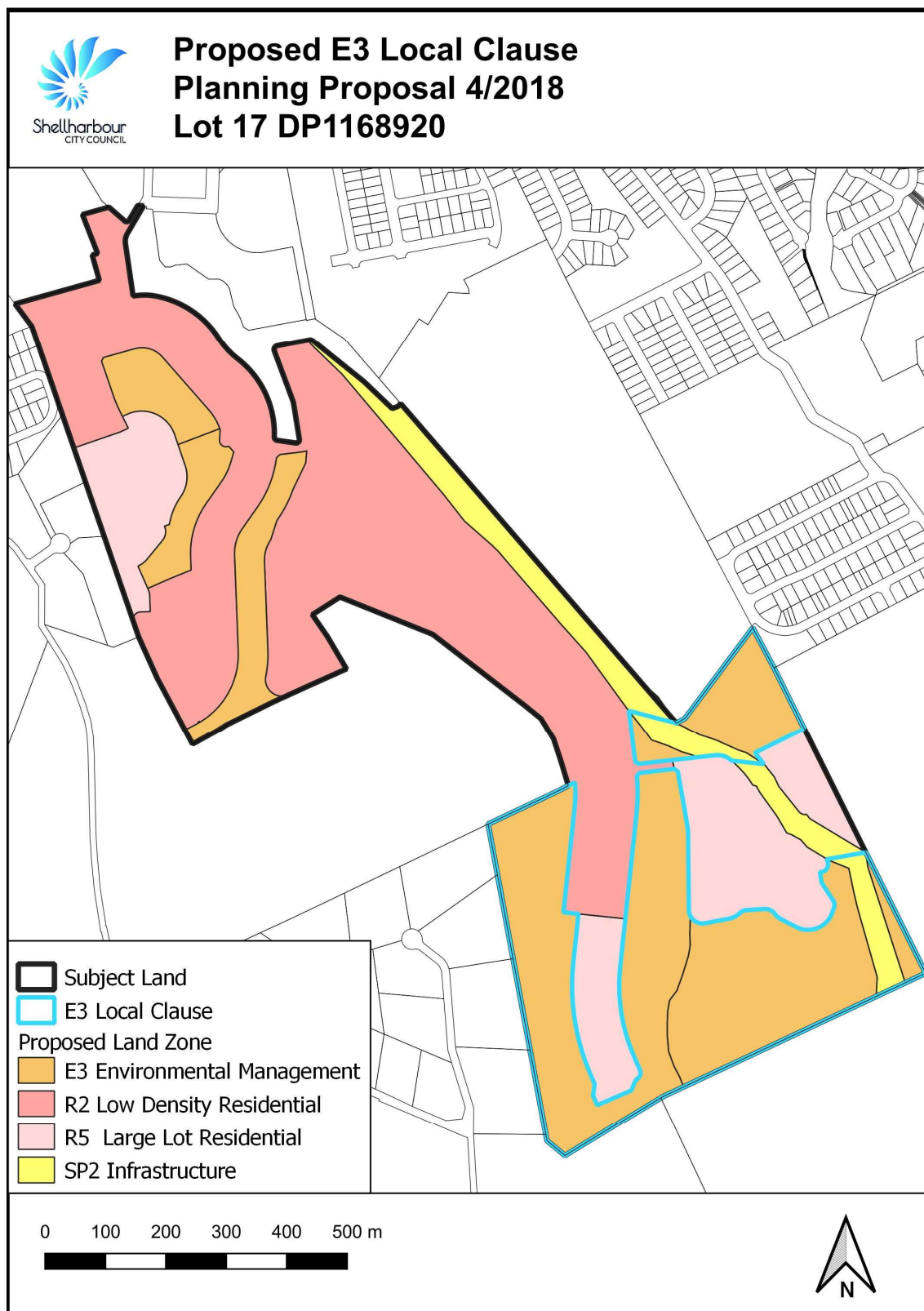






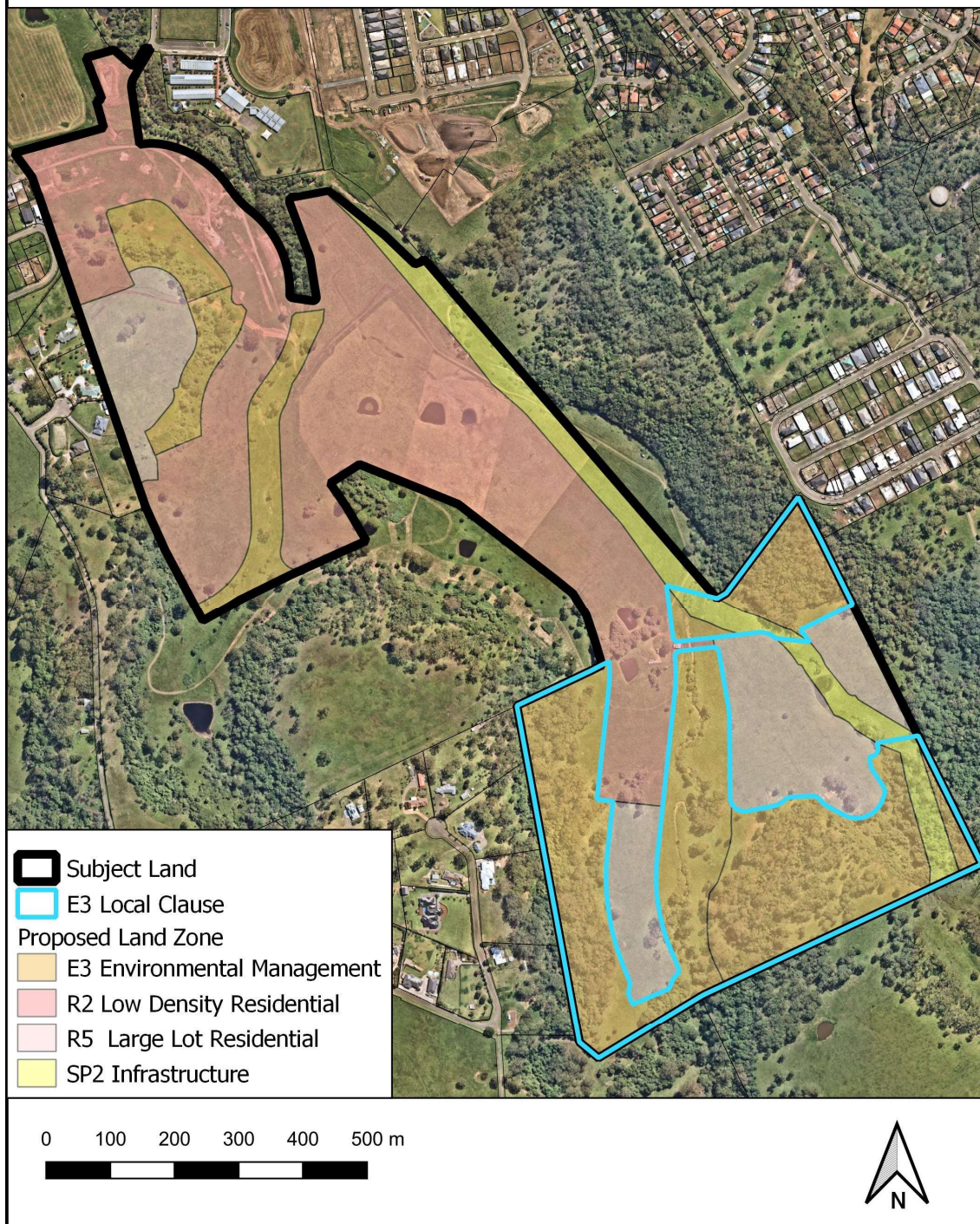


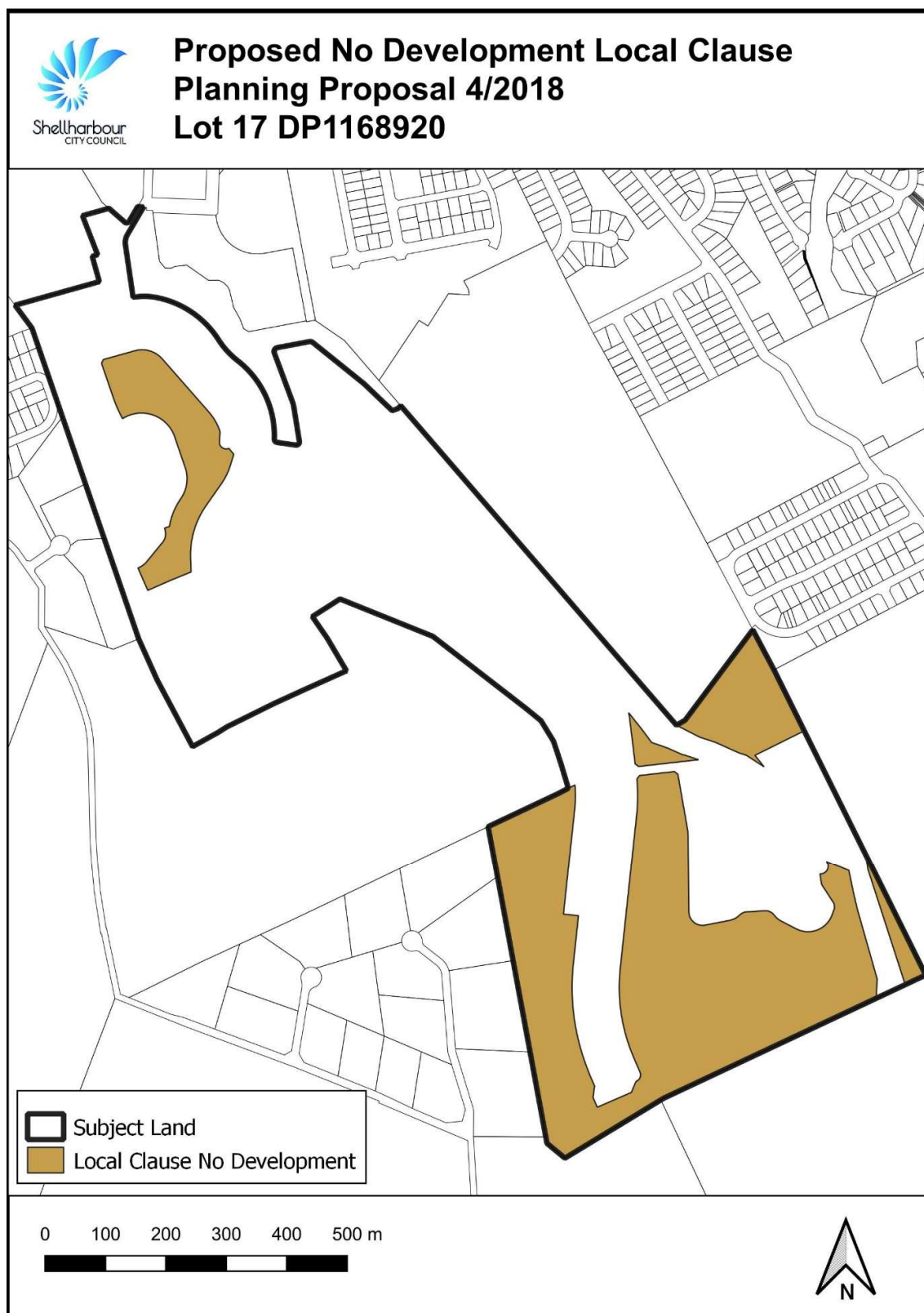


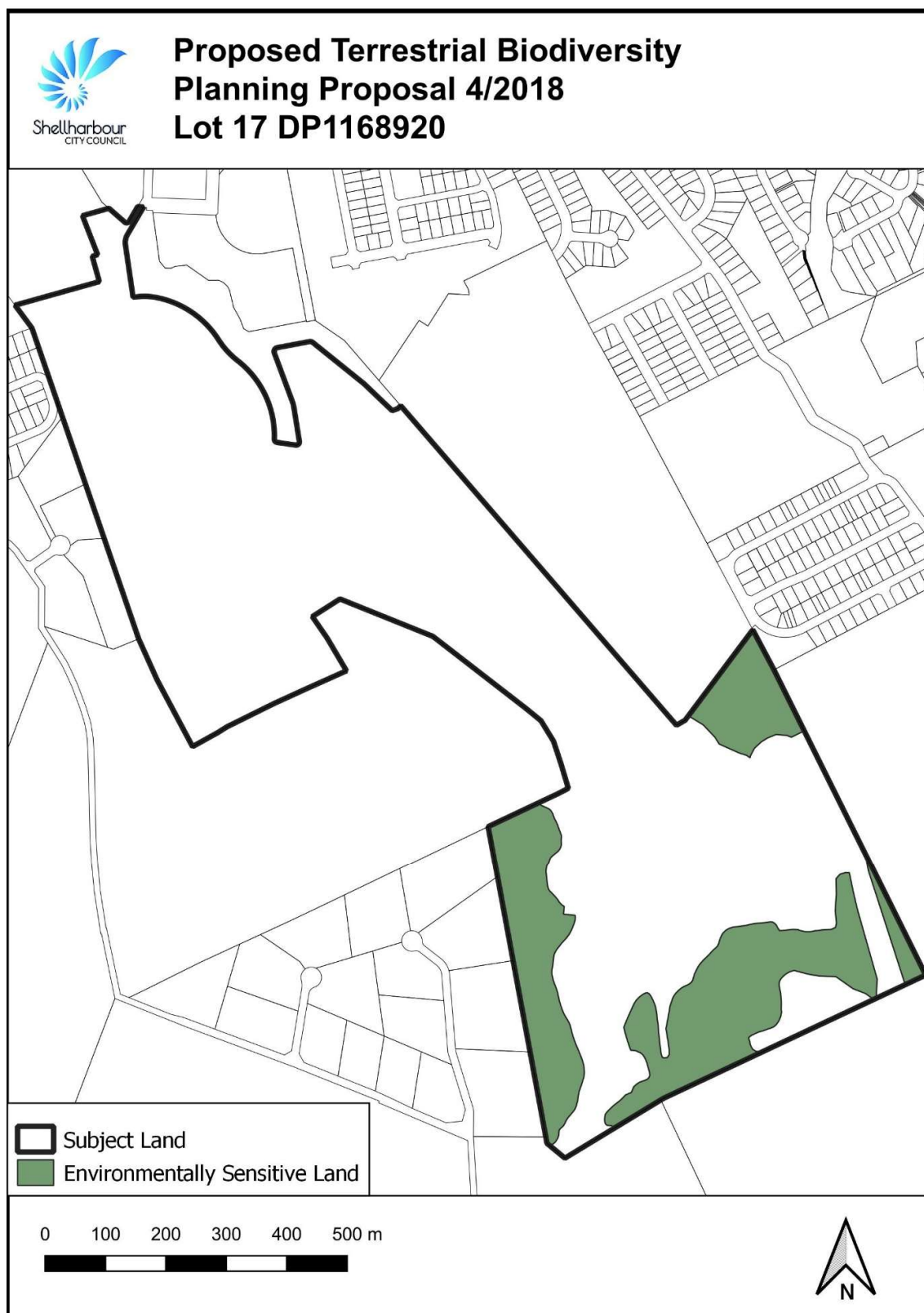


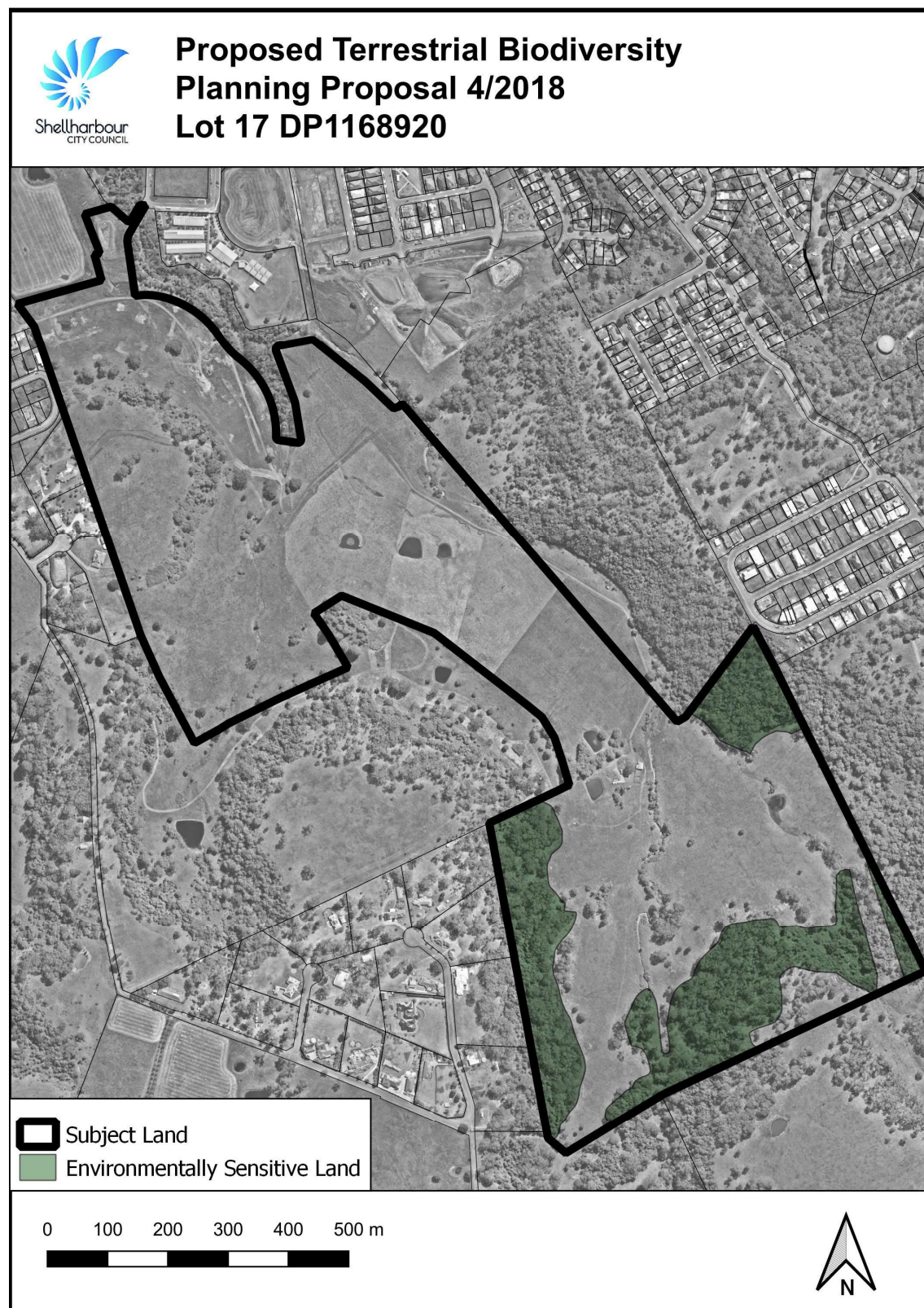


Proposed E3 Local Clause Planning Proposal 4/2018 Lot 17 DP1168920









**PLANNING
PRIORITY
P1**

Deliver greater housing diversity and affordability to meet the changing needs of the community

WHAT THE COMMUNITY TOLD US:

- Need more affordable housing options
- Housing diversity across the LGA is required
- **Need to consider existing services and infrastructure when retrofitting existing areas**
- Need to maintain the character of our residential areas

COUNCIL WILL:

- Facilitate the provision of social and affordable housing
- Encourage greater housing diversity, by identifying areas to increase density, and encouraging greater mix of lot and dwelling sizes
- Identify the desired future character of Shellharbour City's suburbs
- Encourage new residential development to be in keeping with the desired future character of our suburbs through siting, design and layout of building forms.

RELEVANT COUNCIL POLICIES, PLANS AND STRATEGIES:

- Shellharbour Local Housing Strategy
- Town Centre Plans
- Shellharbour Engineering Code
- LEP
- DCP

| ACTIONS | | TIMING | COUNCIL INFLUENCE | IP&R ACTION |
|---------|--|---------|-------------------|--------------------|
| P1.1 | Continue to give effect to the Implementation and Delivery Plan of the Shellharbour Local Housing Strategy | Ongoing | Control | 2.3.2.6 |
| P1.2 | When undertaking LEP and DCP reviews, incorporate the principles of the Local Housing Strategy to guide increases in residential density | Ongoing | Control | 2.3.2.1 2.3.2.2 |
| P1.3 | Continue the program to carry over deferred lands into LEP 2013 | Ongoing | Control | 2.3.2.1 |

SHELLHARBOUR CITY COUNCIL
Ordinary Council Meeting – 9 June 2020

**Minutes of the Ordinary Meeting
of Shellharbour City Council
held remotely via Zoom livestream webcast
on Tuesday 9 June 2020 commencing at 6:30 pm**

Present

| | |
|--------------------------|------------|
| Mayor, Councillor | M Saliba |
| Deputy Mayor, Councillor | J Murray |
| Councillor | M Hamilton |
| Councillor | K Marsh |
| Councillor | P Moran |
| Councillor | R Petreski |

In attendance

| | |
|---|--------------|
| General Manager | C McIntyre |
| Director Council Sustainability | S Bridgement |
| Director Community and Customers | M Boxall |
| Director Amenity and Assets | B Stewart |
| Executive Manager / Public Officer | F Lepouras |
| Chief Financial Officer | G Grantham |
| Group Manager Organisational Performance | E Woods |
| Group Manager Asset Strategy | W Peterson |
| Group Manager City Planning | G Hoynes |
| Manager Business and Investment | T James |
| Manager Shell Cove | K James |
| Manager Financial Services | P Henderson |
| Senior Strategic Planner | I Rankine |
| Media Officer | K Wells |
| Senior Executive Assistant (Minute Taker) | L Davey |
| Councillor Support Officer | J Frasca |

10. Reports

Note: The Addresses to Council Forum was held prior to the Council Meeting from 4.30pm to 5.30pm.

| Agenda Item No & Title | Page Ref | Name |
|--|----------|---------------------------------------|
| <i>Community and Customers Directorate</i> | | |
| 10.3.1 Shellharbour Local Environmental Plan 2013 Planning Proposal No 0004/2018 Lot 17 DP 1168920 Exeter Place, Tullimbar | 72 | 1. Kith Clark – <i>Dahua Group</i> |

88 RESOLVED: Murray/Petreski

That Standing Orders be suspended in order for Item 10.3.1, the subject of Addresses to Council, to be considered here in the agenda.

CARRIED UNANIMOUSLY

10.3 Community and Customers Directorate

10.3.1 Shellharbour Local Environmental Plan 2013 Planning Proposal No. 0004/2018 Lot 17 DP 1168920 Exeter Place, Tullimbar (11443409)

89 RESOLVED: Murray/Hamilton

That Council:

1. Prepare Planning Proposal No 4/2108 to amend Shellharbour Local Environmental Plan 2013 in the following manner:
 - a. Amend Shellharbour LEP 2013 Land Zoning Map generally in accordance with Attachment 4
 - b. Amend Shellharbour LEP 2013 Minimum Lot Size Map generally in accordance with Attachment 5
 - c. Amend Shellharbour LEP 2013 Building Height Map generally in accordance with Attachment 6
 - d. Amend Shellharbour LEP 2013 by introducing a Local clause and associated map that identifies a Floor Space Ratio of 0.5:1 for those

- lots zoned R2 Low Density Residential and equal to or greater than 450m² generally in accordance with Attachment 7
- e. Amend Shellharbour LEP 2013 by introducing a Local clause and associated map that identifies land zoned R5 Large Lot Residential and the only form of residential accommodation permitted is a dwelling house and a secondary dwelling generally in accordance with Attachment 8
 - f. Amend Shellharbour LEP 2013 by introducing a Local clause and associated map that permits the subdivision of the land as generally identified in Attachment 9 into a maximum of three lots and no residential accommodation is permitted
 - g. Amend Shellharbour LEP 2013 No Development Map generally in accordance with Attachment 10
 - h. Amend Shellharbour LEP 2013 Biodiversity Terrestrial Map by including a map generally in accordance with that exhibited in Draft Shellharbour LEP 2011 generally in accordance with Attachment 11
2. Advise the landowner that if they intend to enter into a Planning Agreement a formal Letter of Offer to enter into a Planning Agreement must be submitted within 30 days of Council's resolution on this item and include the following:
 - How the Planning Agreement interacts with the Planning Proposal
 - Details of infrastructure to be included, timing of provision and concept design/estimated costs of that infrastructure
 - Details of how the Planning Agreement will interact with Council's Contributions Plan. For example, extent of any offsets sought, cash contributions they will pay outside of the contributions plan
 - If the Planning Agreement involves works for which they will be seeking reimbursement from Council, details of what is sought (amount, timing)
 - Any restrictions they are seeking to place on negotiations
 3. As part of the gateway submission to the Department of Planning, Industry and Environment seek the exhibition of the Planning Agreement with the Planning Proposal.
 4. Not finalise the Planning Proposal until a satisfactory Planning Agreement is entered into or the Shellharbour Local Infrastructure Contributions Plan 2019 is amended.
 5. Request a further report be submitted to Council if a formal Letter of Offer is not received within 30 days of Council's resolution on this item, to consider amending the Shellharbour Local Infrastructure Contributions

Plan 2019 to include, amongst other things, contributions towards the upgrade of Yellow Rock Road.

6. Authorise the General Manager to submit Shellharbour Local Environmental Plan 2013 Planning Proposal No 4/2018 to the NSW Department of Planning & Environment in accordance with section 3.34 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.
7. 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 4/2018 if and as required by the NSW Department of Planning & Environment's gateway determination.
8. 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 3.36 of the *Environmental Planning and Assessment Act*, after any public exhibition of the draft plan.
9. Approve Shellharbour Local Environmental Plan 2013 Planning Proposal No 4/2018 to be publicly exhibited in accordance with the gateway determination.
10. Endorse a further report be provided to Council for consideration after the public exhibition period has closed, detailing the public exhibition outcomes and with further recommendations regarding adoption.

CARRIED 5 / 1

FOR - Cr Saliba, Cr Murray, Cr Petreski, Cr Moran, Cr Hamilton
AGAINST - Cr Marsh

- 90 RESOLVED: Murray/Marsh
- That Standing Orders be resumed.
- CARRIED UNANIMOUSLY

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9 June 2020

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10.3 Community and Customers Directorate

10.3.1 Shellharbour Local Environmental Plan 2013 Planning Proposal No. 0004/2018 Lot 17 DP 1168920 Exeter Place, Tullimbar (11443409)

To the General Manager

Directorate: Community & Customers
Group: City Planning

Manager: Geoff Hoynes – Group Manager City Planning
Author: Ian Rankine – Senior Strategic Planner

Summary

The purpose of this report is to seek Council's resolution to prepare a Planning Proposal to amend *Shellharbour Local Environmental Plan 2013* (Shellharbour LEP 2013) by rezoning Lot 17 DP 1168920 from Residential 2(e) and Rural 1(a) in Shellharbour LEP 2000 to a mix of R2 Low Density Residential, R5 Large Lot Residential, SP2 Infrastructure (Electricity Transmission and Distribution) and E3 Environmental Management and introducing other planning controls.

The land was deferred by Council when it was considering the adoption of Shellharbour LEP 2013 at its meeting of 29 May 2012. Council resolved, amongst other matters, 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 and the current zoning of Lot 17 DP 1168920 are shown in **Attachment 1**.

This Planning Proposal was initiated by the landowner.

The report also recommends that the Planning Proposal be submitted to the NSW Department of Planning, Industry and Environment (DPIE) seeking a Gateway determination. A copy of this report will form part of Council's submission to DPIE.

Background

About Planning Proposals

A planning proposal is a document that explains the intended effect of a proposed amendment(s) to a Local Environmental Plan (LEP), in this case the Shellharbour LEP 2013, and sets out the justification for making the amendment.

This Planning Proposal will involve 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 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. *Consultation* – if required by the gateway determination, 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.
4. *Assessment* – Council will consider any submissions objecting and the proposal may be 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.

Council is considering step 1.

Existing Tullimbar Controls

The urban release area of Tullimbar is zoned 2(e) Mixed Use Residential under Shellharbour LEP 2000. The zone was specifically developed by Council for urban release areas to allow for fully developed neighbourhoods and permit a range of residential and commercial uses that would be expected in fully developed neighbourhoods. The Standard Instrument LEP (Shellharbour LEP 2013) does not have a zone similar to the 2(e) zone or contain the framework to permit such a flexible approach to planning as the current controls.

Planning Proposal 4/2018

This Planning Proposal applies to all of Lot 17 DP 1168920, Exeter Place, Tullimbar.

As shown in **Attachment 1**, part of the land is zoned Residential (Mixed Use) 2(e) and the remainder of the land is zoned Rural 1(a) in Shellharbour LEP 2000.

Part of the 2(e) zoned land is subject to Development Consent 0073/2018 considered by Council at its meeting of 24 September 2019. Development Consent was granted to a 290 Lot Staged Subdivision, Comprising of 283 Residential Lots, Three Open Space Lots, One Riparian Area and Three Residual Lots.

The proposed zoning and other planning controls for the site are outlined in **Attachment 2** and relevant maps are in **Attachments 4 – 11**.

Generally, the proposed zones are R2 Low Density Residential, R5 Large Lot Residential, E3 Environmental Management and SP2 Infrastructure (Electricity Transmission and Distribution).

Proposed lot sizes will range from a minimum of 300m² on the R2 zoned land to 1,000m² or greater on the R5 zoned land, with E3 zoned land greater than 10,000m².

The increase from 300m² to 1,000m² or greater is proposed to provide a transition to larger lots on the periphery of the site or where the land adjoins existing large lot development.

To assist in providing a land use outcome that limits residential accommodation to no more than one dwelling and a secondary dwelling (that is, no attached dual occupancies that could be subdivided) on the proposed R5 zoned land, a local clause is intended that will only permit one dwelling and a secondary dwelling as residential land uses. A secondary dwelling has a maximum floor area of 60m² and can't be subdivided under current legislation.

The No Development Map and Clause is also proposed on the E3 zoned land to the south and near the knoll towards the west of the site to minimise the opportunity for a dwelling house to be constructed on the land where none are intended but still permit the subdivision of the land.

Another Local clause is proposed to impose a Floor Space Ratio (FSR) on those lots zoned R2 Low Density Residential that are greater than 450m². A FSR on lots less than 450m² is not proposed because Building Design Guidelines are required under the Tullimbar provisions of the Shellharbour Development Control Plan (DCP) for lots less than 450m². These guidelines will outline building setbacks which will assist in limiting the building footprint on lots less than 450m².

It is also recommended that a Terrestrial Biodiversity map be created to cover the important vegetation on the proposed E3 zoned land. The map will generally follow the boundaries of the Terrestrial Biodiversity Map exhibited with Draft Shellharbour LEP 2011.

Financial / Resources Implications

The Stage 1 Planning Proposal fee of \$7,880 (28 June 2018) has been paid. Should Council support the preparation of the Planning Proposal, the Stage 2 fee currently \$20,869 (2019/2020 financial year) will need to be paid prior to sending the Proposal to the DPIE for Gateway determination. As the Stage 2 fee will be paid next financial year, this cost will be adjusted to suit Council's adopted fees and charges for 2020/2021.

Staff resources have and will be required to continue processing the Planning Proposal.

Legal and Policy implications

Should Council support the preparation of a Planning Proposal, the Planning Proposal will need to be sent to DPIE for Gateway assessment.

Environmental Planning & Assessment Act and Regulations

The Planning Proposal will need to be prepared 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 DPIE.

Shellharbour Local Housing Strategy

The Shellharbour Local Housing Strategy (SLHS) was adopted by Council at its meeting of 17 December 2019 and endorsed by the DPIE's Director, Southern Region, Local and Regional Planning on 12 May 2020.

As this Planning Proposal was lodged on 28 June 2018 it is unreasonable for the Planning Proposal to be consistent with all the recommendations of the SLHS.

The SLHS includes a number of objectives. Objective 4 is:

The Shellharbour LEP and associated planning controls continues to provide opportunities for new residential development through already committed greenfield estates and redevelopment opportunities within established communities, to meet the needs of its residents. No new land release areas are required.

The letter from the Department endorsing the SLHS included

"In relation to Objective 4 which focus on greenfield and in-fill development, while it is noted that additional land is not required to meet projected housing demand, the Department remains open to receiving applications to rezone land for residential development"

The SLHS Evaluation of Options table recommendation 4, pages 82 & 83 and the Implementation and Delivery Plan recommendation 4, page 93, generally discusses differentiating planning controls between different areas and the need for fine grained planning to be undertaken to develop these details. It is considered that this Planning Proposal application has undertaken that fine grained work to propose the rezoning of the land and a range of lot sizes in this locality.

A large proportion of this site is already zoned residential and it is considered reasonable, in this instance, to consider rezoning the remainder of the land as proposed due to its location adjoining the existing residential zoned land, proximity to existing and planned infrastructure and physical constraints such as flooding and environmental issues can be managed in a positive manner.

In this instance, the inconsistency with the SLHS is considered to be minor.

Shellharbour Local Strategic Planning Statement

Council adopted the Shellharbour Local Strategic Planning Statement (LSPS) at its meeting of 19 May 2020.

This Planning Proposal was lodged on 28 June 2018 which was before Council initiated the LSPS project.

Section 3.33(2)(c) of the *Environmental Planning & Assessment Act* requires a Planning Proposal to include whether the Proposal will give effect to the LSPS.

Two of the priorities of the LSPS are:

1. Deliver greater housing diversity and affordability to meet the changing needs of the community (P1, page 31 LSPS) and continue the program to carry over the deferred lands into LEP 2013 (P1.3, page 31 LSPS)
2. Develop a Rural Strategy for our City (P14.1) to help identify the future of our rural and environmental lands, and what will be appropriate and viable for the future of these areas of the LGA (page 56 LSPS).

As this Planning Proposal:

- was lodged prior to the commencement of the LSPS project,
- includes proposed land use outcomes that are on existing or adjoin current or future Residential zoned land,
- is on land with minimal agricultural and rural land use options due to its location adjoining residential development,
- is on or adjoins land identified in the Illawarra Shoalhaven Regional Strategy as providing housing opportunities,
- will add to the diversity and mix of lot sizes within our Local Government Area,
- addresses the Council resolution of 29 May 2012 that required the increased densities of the land deferred from Shellharbour LEP 2013 to be studied/assessed, and
- addresses Action 1.3 "continue the program to carry over the deferred lands into LEP 2013",

it is considered that this Planning Proposal meets the general intent of Priority 1 of the LSPS and the circumstances of this Planning Proposal over-ride the need to wait for the commencement and completion of a Rural Strategy.

Draft State Environmental Planning Policies, State Environmental Planning Policies (SEPPs)

Council officers have made an assessment of the planning proposals against the SEPPs. Based on this assessment, the planning proposal is consistent with, or not applicable to, the SEPPs.

Local Planning Directions (S9.1 of the *Environmental Planning and Assessment Act*)

There are some inconsistencies with the Planning Directions and these are outlined in **Attachment 3**.

Generally, these inconsistencies are considered to be minor. An assessment of the significance of the inconsistency and approval for the inconsistencies will need to be undertaken by the DPIE as part of their assessment.

Illawarra Shoalhaven Regional Plan

The Planning Proposal is generally consistent with the Regional Plan.

The existing Residential zoned land has been identified in the Plan as providing a contribution to greenfield land supply to the Region. The extension of this area as proposed is considered to be reasonable and make a minor contribution to the overall supply of Residential zoned land. The Proposal adjoining existing Residential zoned land will assist in maximising the use of the infrastructure required to be provided to the existing residential zoned land as it is developed.

In this regard the Planning Proposal is considered to satisfy Direction 2.3 *Deliver housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact*.

The Planning Proposal intends to protect the important flora on the site by zoning it E3 Environmental Management. The use of the Terrestrial Biodiversity mapping layer to the relevant parts of this zoned land is also proposed. In this regard, the Planning Proposal is considered to satisfy the intent of Direction 2.4 *Identify and conserve biodiversity values when planning new communities*.

Illawarra Shoalhaven Urban Development Program

That part of the site currently zoned Residential 2(e) is identified in Map 4 of the Illawarra Urban Development Program Update 2010. The remainder of the site was not identified for urban development in the 2010 Update.

The Illawarra Shoalhaven Urban Development Program Update 2018 identifies Tullimbar Village by text only and identifies the locality as having greenfield subdivision potential of 1270 on zoned and serviced land.

Urban Fringe Local Environmental Study

The Urban Fringe Local Environmental Study (UFLES) was adopted by Council for the purpose of public exhibition with the then Draft SLEP which, when finalised became Shellharbour LEP 2013.

The UFLES had a significantly less development than included in this Planning Proposal being considered by Council.

Since the completion of the UFLES, the development scenarios in the Calderwood & Tullimbar localities has changed. Calderwood has been approved and is being developed to cater for about 4,800 dwellings and the original development vision for Tullimbar has changed and generally as development moves further away from the Village Centre, does not include the development outcomes of rear lanes and housing styles.

Further, and importantly, Council deferred the UFLES lands so that potential increases in residential densities could be studied/assessed.

Based on the current development in this locality and the site specific merits of this Proposal, it is considered reasonable to increase the development potential of this land as outlined in this report.

Loss of Agricultural Land

The majority of the site is Class 3 lands, with some class 4 & 5. The Class 3 lands includes land already zoned Residential.

Class 2 – 4 lands are capable of being used for agricultural activities but may not include cropping or regular cultivation of the land.

The location of the land next to existing residential zoned land to the north and northwest and rural residential to the west, would make the carrying out of agricultural activities difficult due to the potential conflict with residential land uses.

Whilst agricultural land can play an important role in our City, the location of this site does not readily lend itself to sustainable agricultural pursuits.

Flooding

A Water Cycle Management Report has been reviewed. The assessment concluded that the residential components of the Planning Proposal will comply with the necessary requirements of Local Planning Direction 4.3 Flood Prone Land.

Further details on stormwater design will be required as part of any future development application.

Flora and Fauna

An ecological report has been submitted.

The land contains two Ecological Endangered Communities, being Illawarra Lowlands Grassy Woodland and Illawarra Subtropical Rainforest under the *Biodiversity and Conservation Act 2016*. The site also includes Illawarra and South Coast Forest and Woodland which is critically endangered under the Commonwealth *Environmental Protection Biodiversity Conservation Act 1999*.

Part of the site is mapped on the Biodiversity Values Map. Development in areas covered by the Biodiversity Values Map will trigger Biodiversity Offsetting under the *Biodiversity and Conservation Act 2016* and also require Assessments as a Matter of National Environmental Significance under the Commonwealth *Environmental Protection Biodiversity Conservation Act 1999*. This will be addressed as part of any future Development Application.

There are also records of the site having the threatened species *Zieria granulata* and *Irenepharsus Trypheris* (Illawarra Irene).

If clearing is proposed as part of any future development application a comprehensive Biodiversity Assessment report (BAR) must be prepared using the Biodiversity Assessment Method to assess the full biodiversity significance and offsetting requirements.

The area to the south of the site, proposed to be zoned E3 Environmental Management, has environmental significance. The Proposal does not intend to include a dwelling house on this land and this will be controlled by the local clause that outlines this area and identifies the maximum number of lots this land can be subdivided into is three and is proposed to include the no development layer of Shellharbour LEP 2013. The land could then be consolidated with adjoining R5 zoned lots to provide a residential component and an environmental component.

Bushfire

The Planning Proposal contains land that is mapped as bushfire prone land. A Bushfire assessment report has been submitted.

Asset Protection Zones (APZs) will be required as part of any future development. The Bushfire assessment report indicates that there is potential for development of the land although and future development applications will need to take into account the need for APZs and design an appropriate lot layout.

As part of the processing of this Planning Proposal (should it be supported by Council and receive a Gateway determination to proceed), referral to the NSW Rural Fire Service (RFS) is required by Local Planning Direction 4.4 Planning for Bushfire Protection. The comments from the RFS will need to be taken into account and incorporated into the Planning Proposal.

Traffic

The proposal will generate additional traffic in this locality. The review of the submitted traffic impact assessment reports concluded that due to the variables associated with future development in Tullimbar and Calderwood it is difficult to make a definitive assessment of the impacts of this proposal on the intersections of Yellow Rock Road and the Illawarra Highway and the intersection of Broughton Avenue and the Illawarra Highway.

One impact that can be quantified is the increased traffic volume on Yellow Rock Road up to Araluen Terrace.

The Tullimbar Village Development Control Plan originally intended for the Yellow Rock Road intersection with the Illawarra Highway to be closed. As a result of this, the road was envisaged to be a local street cul-de-sac and retained a carriageway width of only 6m with no provision for parking. This, coupled with the fact that the road still retains its rural geometric design, creates road safety and traffic management issues.

To address this matter Council is considering options to upgrade parts of Yellow Rock Road to an urban road standard. The Council traffic assessment concluded that as part of the Planning Proposal it is considered reasonable to require a proportional contribution to the upgrade.

The contribution is justified on the basis that only two access points (Broughton Avenue and Yellow Rock Road) to the Planning Proposal site are guaranteed. Additionally, the last traffic report indicated that at a minimum, one third or 33% of traffic from the site would use Yellow Rock Road even with the additional access point into the Allam subdivision area. Should that access never eventuate, it is reasonable to assume a 50:50 split between Yellow Rock Road and Broughton Avenue. Through discussions with the applicant and landowner, they have agreed to consider entering into a Planning Agreement with Council to contribute to the upgrade of parts of Yellow Rock Road to be able to cope with the additional traffic volumes brought about by the application.

Local Infrastructure Contribution Issues

Council's Contributions Plan was based on land that was, at the time of preparation of the Plan, zoned for residential development. As much of the subject site was outside of this area and was not zoned for Residential use, it was not included in the consideration of infrastructure that would be needed to support the development of Tullimbar.

For this reason, whilst some of the infrastructure needed to support the development of this site was included in the Contributions Plan, other infrastructure may be needed to address those parts of the site not included in the Plan.

The extent of that infrastructure needs to be determined by the applicant and will be determined on lot yield.

Satisfactory provision of local infrastructure can be provided by amending the Shellharbour Local Infrastructure Contributions Plan 2019 to include this land, zoning changes and development yield. Alternatively, the legislation provides for the preparation of a Planning Agreement to be entered into as a means of providing for infrastructure that is required to support development, and is a useful means of delivering infrastructure outside the contributions plan.

Entering into a Planning Agreement at rezoning stage would provide certainty that the infrastructure would be delivered. Any such Planning Agreement should provide the infrastructure (or funding for that infrastructure) that is identified above, specifically:

- Dedication and embellishment of sufficient and suitable open space land to meet the demand created by the development
- A monetary contribution towards the upgrade of Yellow Rock Road in addition to the contributions required under Council's Local Infrastructure Contributions Plan
- Contribution towards, or agreement to provide Drainage Works (outside those required as "direct works" – that is, those required to enable the development). Any drainage structures that are required could also be dedicated through this Planning Agreement, possibly accompanied by a contribution for maintenance.

Such an Agreement would also identify the interaction of these matters with Council's current Contributions Plan.

The land owner has provided a letter of intent to enter into a Planning Agreement (dated 27 May 2020). Although this intent is noted, the letter is not considered to be a formal Letter of Offer to enter into an agreement as it does not provide sufficient information on the following:

- How it interacts with the Planning Proposal
- Details of infrastructure to be included, timing of provision and concept design/estimated costs of that infrastructure
- Details of how the Planning Agreement will interact with Council's Contributions Plan. For example, extent of any offsets sought, cash contributions they will pay outside of the contributions plan
- If the Planning Agreement involves works for which they will be seeking reimbursement from Council, details of what is sought (amount, timing)
- Any restrictions they are seeking to place on negotiations

If the landowner wishes to address the infrastructure relating to this proposal through a Planning Agreement, they will need to provide Council with a formal Letter of Offer to enter into a Planning Agreement that addresses these issues so that it can be considered as part of the further assessment of the Planning Proposal.

Any Letter of Offer that is submitted will be reported to Council separately to determine whether Council is willing to enter negotiations for a Planning Agreement on the basis of the information provided in the Letter of Offer. If Council supports the Planning Proposal, it is recommended that when sending the Planning Proposal for a Gateway determination that Council request the Planning Proposal and Planning Agreement be exhibited at the same time.

To ensure that all the local infrastructure can be provided as a result of this development, should a final Letter of Offer not be submitted with 30 days of Council's resolution on this item, a separate report will be made to Council to consider amending the Shellharbour Local Infrastructure Contributions Plan 2019 to include, amongst other things, contributions towards the upgrade of parts of Yellow Rock Road.

City Planning Summary

The proposed rezoning will provide an extension to the existing residential zoned land at Tullimbar.

The concept of providing 300m² lots immediately adjoining the existing residential zoned land and transitioning to lots of a minimum 1000m² with no more than 1 dwelling house and a secondary dwelling generally on the periphery of the site is considered a reasonable form of development in this locality. The land having significant environmental attributes is proposed to be zoned E3 Environmental Management and include the Terrestrial Biodiversity mapping layer.

The proposal provides a transition in lot size and development density whilst adding to the diversity of lot and housing products in our City. The proposal addresses the Council resolution that deferred the land in 2012 and provides an end state for this part of the Tullimbar valley. The proposal also addresses Action 1.3 of the LSPS, "continue the program to carry over deferred lands into LEP 2013".

Plan making delegations

Given the matters in this Planning Proposal are considered to be of local significance, it is intended that as part of its Gateway submission, Council staff apply to DPIE to use Council's plan making delegations, including to make or not make the plan under Section 3.36 of the *Environmental Planning and Assessment Act*, after any required consultation on the draft plan.

Public / Social Impact

The Planning Proposal will provide public and social benefits with the provision of additional housing in the LGA. Progressing the Planning Proposal to Gateway determination and if received, public exhibition will provide an opportunity for interested parties to provide their views for Council's consideration.

Link to Community Strategic Plan

This report supports the following objectives and strategies of the Community Strategic Plan:

- Objective: 2.3 A city that is connected through places and spaces
- Strategy: 2.3.2 Undertake land use planning in a socially, economically and environmentally responsive manner
- Strategy: 2.3.4 Facilitate the development of the built environment to meet community needs

Consultations

Internal

- City Development Planning
- City Development Environment
- Subdivision
- Flooding and
- Infrastructure Contributions

Another round of referrals will be undertaken as part of the consultation process should the Planning Proposal receive a Gateway determination to progress.

External

Subject to the Planning Proposal progressing to a Gateway determination, any future consultation with our community will be undertaken in accordance with the Gateway's recommendation.

Consultation will also be required with:

NSW Rural Fire Service
Civil Aviation Safety Authority and Manager Shellharbour Airport
Utility providers
Department of Planning, Industry & Environment – Planning & Environment teams
Transport for NSW

Political Donations Disclosure

Information lodged with each of the Planning Proposal applications indicate that no political donations have been made.

Recommendation

That Council:

- 1. Prepare Planning Proposal No 4/2108 to amend Shellharbour Local Environmental Plan 2013 in the following manner:**
 - a. Amend Shellharbour LEP 2013 Land Zoning Map generally in accordance with Attachment 4**
 - b. Amend Shellharbour LEP 2013 Minimum Lot Size Map generally in accordance with Attachment 5**
 - c. Amend Shellharbour LEP 2013 Building Height Map generally in accordance with Attachment 6**
 - d. Amend Shellharbour LEP 2013 by introducing a Local clause and associated map that identifies a Floor Space Ratio of 0.5:1 for those lots zoned R2 Low Density Residential and equal to or greater than 450m² generally in accordance with Attachment 7**
 - e. Amend Shellharbour LEP 2013 by introducing a Local clause and associated map that identifies land zoned R5 Large Lot Residential and the only form of residential accommodation permitted is a dwelling house and a secondary dwelling generally in accordance with Attachment 8**
 - f. Amend Shellharbour LEP 2013 by introducing a Local clause and associated map that permits the subdivision of the land as generally identified in Attachment 9 into a maximum of three lots and no residential accommodation is permitted**
 - g. Amend Shellharbour LEP 2013 No Development Map generally in accordance with Attachment 10**
 - h. Amend Shellharbour LEP 2013 Biodiversity Terrestrial Map by including a map generally in accordance with that exhibited in Draft Shellharbour LEP 2011 generally in accordance with Attachment 11**
- 2. Advise the landowner that if they intend to enter into a Planning Agreement a formal Letter of Offer to enter into a Planning Agreement must be submitted within 30 days of Council's resolution on this item and include the following:**
 - How the Planning Agreement interacts with the Planning Proposal**
 - Details of infrastructure to be included, timing of provision and concept design/estimated costs of that infrastructure**
 - Details of how the Planning Agreement will interact with Council's Contributions Plan. For example, extent of any offsets sought, cash contributions they will pay outside of the contributions plan**

-
- If the Planning Agreement involves works for which they will be seeking reimbursement from Council, details of what is sought (amount, timing)
 - Any restrictions they are seeking to place on negotiations
3. As part of the gateway submission to the Department of Planning, Industry and Environment seek the exhibition of the Planning Agreement with the Planning Proposal.
 4. Not finalise the Planning Proposal until a satisfactory Planning Agreement is entered into or the Shellharbour Local Infrastructure Contributions Plan 2019 is amended.
 5. Request a further report be submitted to Council if a formal Letter of Offer is not received within 30 days of Council's resolution on this item, to consider amending the Shellharbour Local Infrastructure Contributions Plan 2019 to include, amongst other things, contributions towards the upgrade of Yellow Rock Road.
 6. Authorise the General Manager to submit Shellharbour Local Environmental Plan 2013 Planning Proposal No 4/2018 to the NSW Department of Planning & Environment in accordance with section 3.34 of the *Environmental Planning & Assessment Act 1979* for review and gateway determination.
 7. 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 4/2018 if and as required by the NSW Department of Planning & Environment's gateway determination.
 8. 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 3.36 of the *Environmental Planning and Assessment Act*, after any public exhibition of the draft plan.
 9. Approve Shellharbour Local Environmental Plan 2013 Planning Proposal No 4/2018 to be publicly exhibited in accordance with the gateway determination.
 10. Endorse a further report be provided to Council for consideration after the public exhibition period has closed, detailing the public exhibition outcomes and with further recommendations regarding adoption.

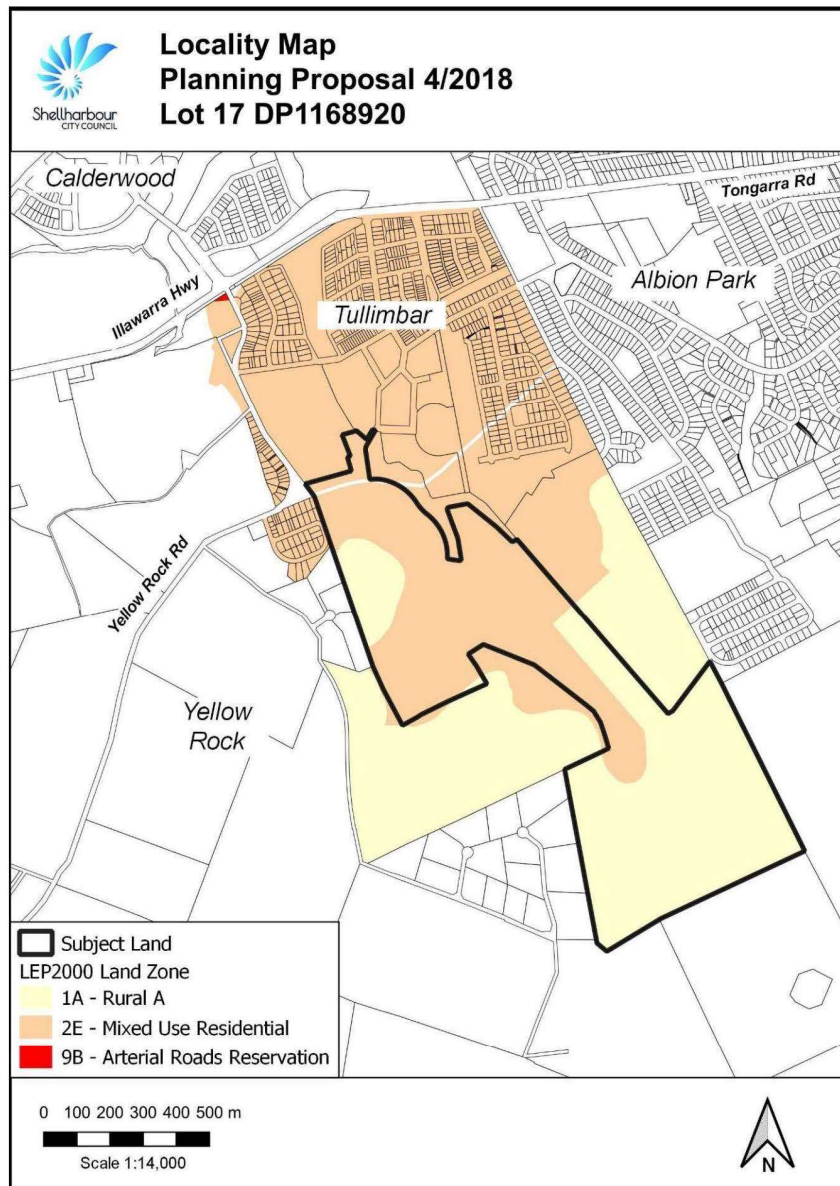
Geoff Hoynes
Approved for Council's consideration: Group Manager City Planning

Date of Meeting: 9 June 2020

Attachments

1. Locality and current zoning plan – *Page 87*
2. Proposed planning controls – *Page 88*
3. Inconsistent Local Planning Directions – *Page 89*
4. Proposed zoning – *Page 92*
5. Proposed Minimum Lot Size – *Page 93*
6. Proposed Building Height – *Page 94*
7. Proposed Local Clause Floor Space Ratio – *Page 95*
8. Proposed Local Clause limiting residential accommodation on R5 zoned land to a single dwelling house and a secondary dwelling – *Page 96*
9. Proposed Local Clause that permits the subdivision of E3 zoned land to the south of the site into a maximum of three lots and no residential accommodation – *Page 97*
10. Proposed No Development Map – *Page 98*
11. Proposed Terrestrial Biodiversity Map – *Page 99*

Attachment 1 – Locality and current zoning plan



This is page 44 of 56 of the Minutes of the Ordinary Meeting of the Council of the City of Shellharbour held 9 June 2020

Attachment 2 – Table of Zoning and Planning Controls

| Property | Area | Existing Planning Controls | Proposed Planning Controls | | | |
|-------------------|----------------|--|---|--|----------|---|
| | | Zone/Clause/Schedule | Zone/Clause/Schedule | Min Lot Size | Height | FSR:1 |
| Lot 17 DP 1168920 | 74.83 hectares | 2(e) Residential and 1(a) Rural Schedule 6 - 1 lot | R2 Low Density Residential | R2 - 300m ² | R2 - 11m | R2 less than 450m ² – Nil R2 greater than or equal to 450m ² – 0.5:1 |
| | | | R5 Large Lot Residential | R5 - 1,000m ² | R5 - 9m | R5 - Nil |
| | | | SP2 Infrastructure (Electricity Transmission and Distribution) | Nil | Nil | Nil |
| | | | E3 Environmental Management | Part 10,000m ² Part 40ha | Nil | Nil |
| | | | Local Clause – FSR of 0.5:1 on lots zoned R2 and equal to or greater than 450m ² | Nil | Nil | Nil |
| | | | Local Clause to permit the subdivision of the E3 zoned land to the south of the site into a maximum of three lots | Nil | Nil | Nil |
| | | | Introduce the No Development map layer to the E3 zoned land to the south and northwest of the site | Nil | Nil | Nil |
| | | | Introduce the Terrestrial Biodiversity Map | Nil | Nil | Nil |
| | | | Local Clause on R5 zoned land - the only form of residential accommodation to be a maximum of one dwelling house and one secondary dwelling on each lot | Nil | Nil | Nil |

Attachment 3 – Local Planning Directions

Attachment 3 - Local Planning Directions

Based on Council's assessment of the Planning Proposal there is an inconsistency with the following Directions. These inconsistencies are considered to be minor in nature and meets the criteria that permits inconsistency with the Directions. However, an assessment of the significance of the inconsistencies and approval for the inconsistencies needs to be undertaken by the Department of Planning Industry & Environment (DPIE).

1.2 Rural zones

The Planning Proposal is not consistent with this Direction as part of the Proposal is to rezone Rural zoned land to Residential.

The existing Residential zoned land component of the Planning Proposal is in the Illawarra Shoalhaven Urban Development Program (ISUDP) and partly included in the Illawarra Shoalhaven Regional Plan (ISRP).

Whilst the Proposal is inconsistent with this Direction, it is considered of minor significance as part of the land is in the ISUDP and ISRP. The remainder of the land adjoins existing residential zoned land identified in the ISUDP/ISRP and development of this adjoining land is considered more appropriate than considering a rezoning of greenfield land not within reasonable distance of existing infrastructure.

The rezone to Residential consists of Low Density Residential on existing residential zoned land and on the rural land immediately adjoining that land and a transition to an increase in lot size on the proposed Large Lot Residential zoned land generally towards the periphery of the site.

1.5 Rural Lands

The Planning Proposal is not wholly consistent with this Direction as the Planning Proposal is not justified by a strategy endorsed by DPIE but is generally consistent with the Illawarra Shoalhaven Regional Plan and Shellharbour's Local Strategic Planning Statement. The Planning Proposal is also in accordance with the Council resolution of 29 May 2012 when the property was deferred from Shellharbour LEP 2013. This resolution deferred the land so that potential increases in residential densities could be studied/assessed.

The land has minimal ongoing agricultural production value due to its size and location and proximity to existing and proposed residential zoned land.

The proposal is identifying and protecting land with significant environmental attributes by minimising development on those lands and by zoning that land Environmental.

The land is not State significant agricultural land under State Environmental Planning Policy (Primary Production and Rural Development) 2019.

The Planning Proposal is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses by reducing rural land uses in an inappropriate location which would cause conflict with the rural land uses on existing residential zoned land.

The Planning Proposal will not adversely affect the operation and viability of existing and future rural land uses and related enterprises as the surrounding land has minimal rural land uses.

The use of the land for residential purposes will continue the residential use from adjoining land as well as a future residential development on an adjoining property that has received a conditional recommendation from the Southern Regional Planning Panel to proceed to a Gateway determination.

The inconsistency is considered to be relatively minor in terms of the land location and proximity to existing and other proposed residential zoned land, maximising use of existing and proposed infrastructure, minimal use for rural/agricultural pursuits and the proposed method to minimise environmental impacts on the important ecological lands.

3.5 Development near Licensed Aerodromes

The Planning Proposal is inconsistent as a referral to CASA is required should a Gateway determination be received. This Direction can be reviewed once advice is received from CASA.

4.4 Planning for Bushfire Protection

The Planning Proposal is inconsistent as this land is bushfire prone and a referral to the NSW Rural Fire Service (NSW RFS) is required if a Gateway determination is received and prior to public exhibition. This Direction can be reviewed once advice is received from the NSW RFS.

6.3 Site Specific Provisions

This Planning Proposal is inconsistent with this Direction as it is proposing:

1. limiting development to one dwelling house and a secondary dwelling on the proposed R5 Large Lot Residential zoned land on the edges of the development site where Council does not consider small lot residential development to be appropriate.

This inconsistency is considered minor as the land use outcome is providing a transition from the R2 Low Density Residential zoned land with a minimum lot size of 300m² to the R5 Large Lot Residential zoned land with a minimum lot size of 1000m². The location of these lands is either:

- on the periphery of the site where the intent is to provide product that adds to the diversity and mix of lot sizes within our Local Government Area, minimises adverse impacts on surrounding Environmental zoned land and bushland; or immediately adjoins rural residential development that range in lot size from 6145m² - 1.03 hectares and dual occupancy development
- and multi-dwelling housing adjoining these properties is not considered an appropriate or a desired outcome.

2. Limiting the subdivision of the southern area proposed to be zoned E3 Environmental Management by limiting the subdivision of the land into three lots but with no minimum lot size to enable a site specific subdivision pattern to be developed.

3. A floor space ratio of 0.5:1 for those lots zoned R2 Low Density Residential and having a lot size greater to or equal than 450m². A floor space ratio on lots less than 450m² is not appropriate as building design guidelines are a requirement of the Shellharbour Development Control Plan for these lands. The guidelines will set the relevant setbacks and dwelling design criteria and a floor space ratio of 0.5:1 on these smaller lots will adversely impact on dwelling design and floor space on these lots.

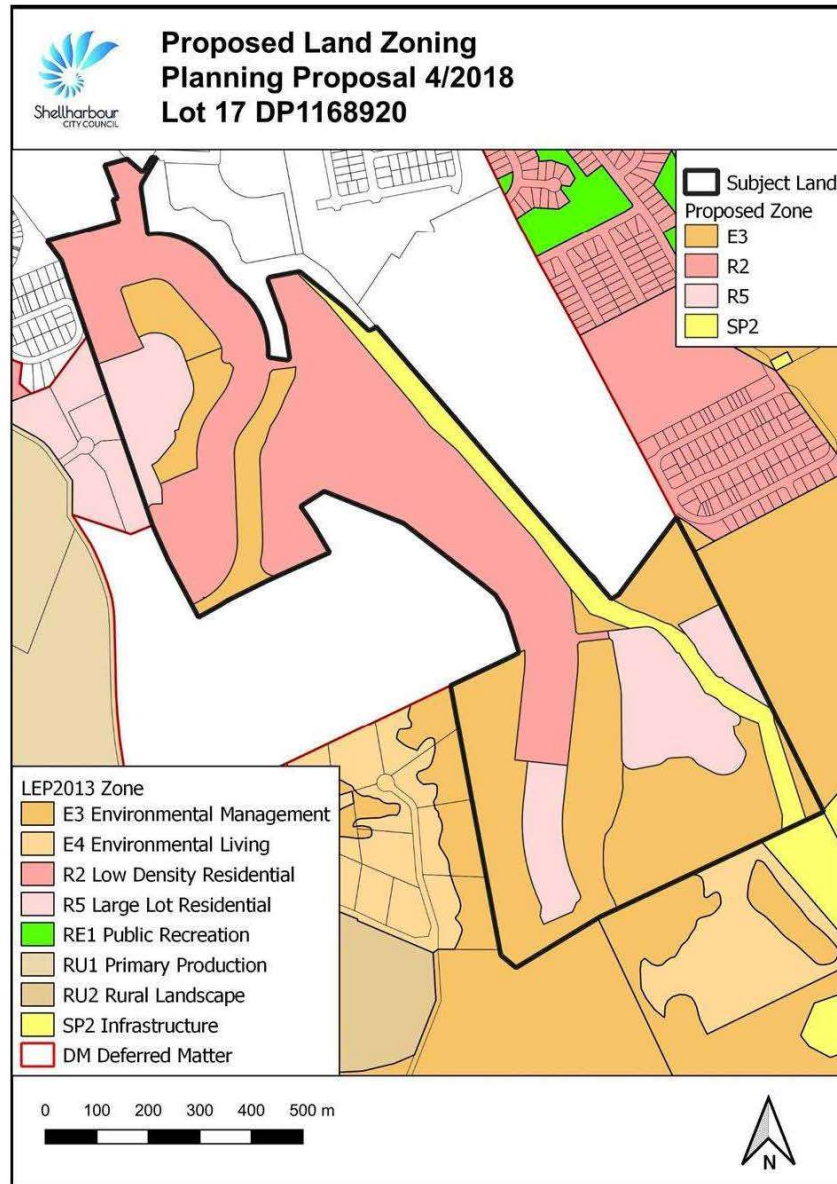
These proposed provisions will complement Council's adopted Shellharbour Local Housing Strategy (SLHS) and Local Strategic Planning Statement (LSPS) in that it will encourage greater housing diversity, by identifying areas to increase density, and encouraging greater mix of lot and dwelling sizes and continue the program to carry over deferred lands into LEP 2013 (LSPS Planning Priority 1).

The SLHS has indicates that there is enough zoned land to provide for the projected dwelling demands over the next 20 years. As such there is no pressure to zone more land for residential development (page 28 LSPS). The proposed minimum lot size of 300m² on the existing 2(e) Residential zoned land and the proposed R2 Low Density Residential zoned land immediately adjoin the 2(e) zoned land, transitioning to R5 Large Lot Residential zoned land with a minimum lot size of 1,000m² will assist in providing increased density and a mix of lot and dwelling sizes in this part of the LGA.

The rezoning of the Rural land to Residential is a continuation of the existing Residential zoned land and will result in the provision of services that will be an extension of that required for the existing residential zoned land.

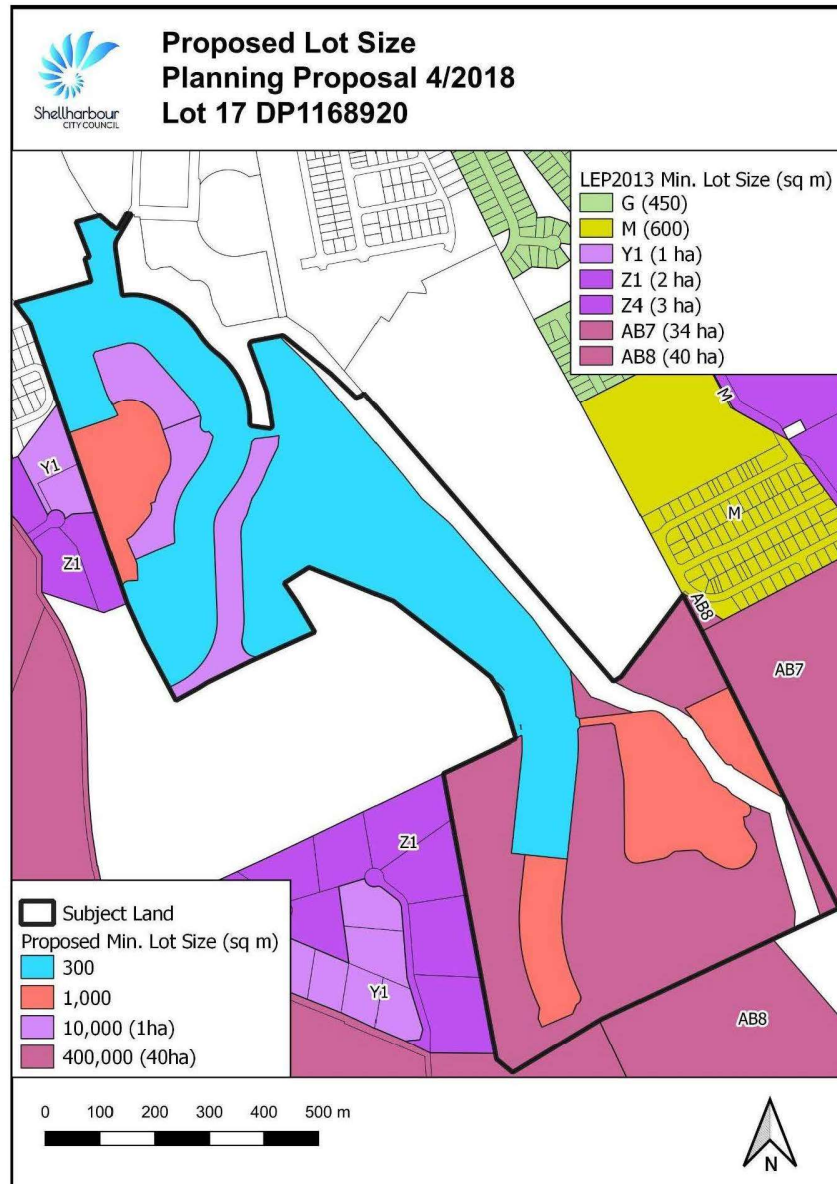
The proposed rezoning will not result in an adverse impact on other residential development fronts in the LGA or more generally across the region, due its relatively small yield (about 160 lots) and it is considered to be a small release area that will add to existing development fronts including Tullimbar (page 38 Illawarra Shoalhaven Regional Plan).

Attachment 4 - Proposed zoning



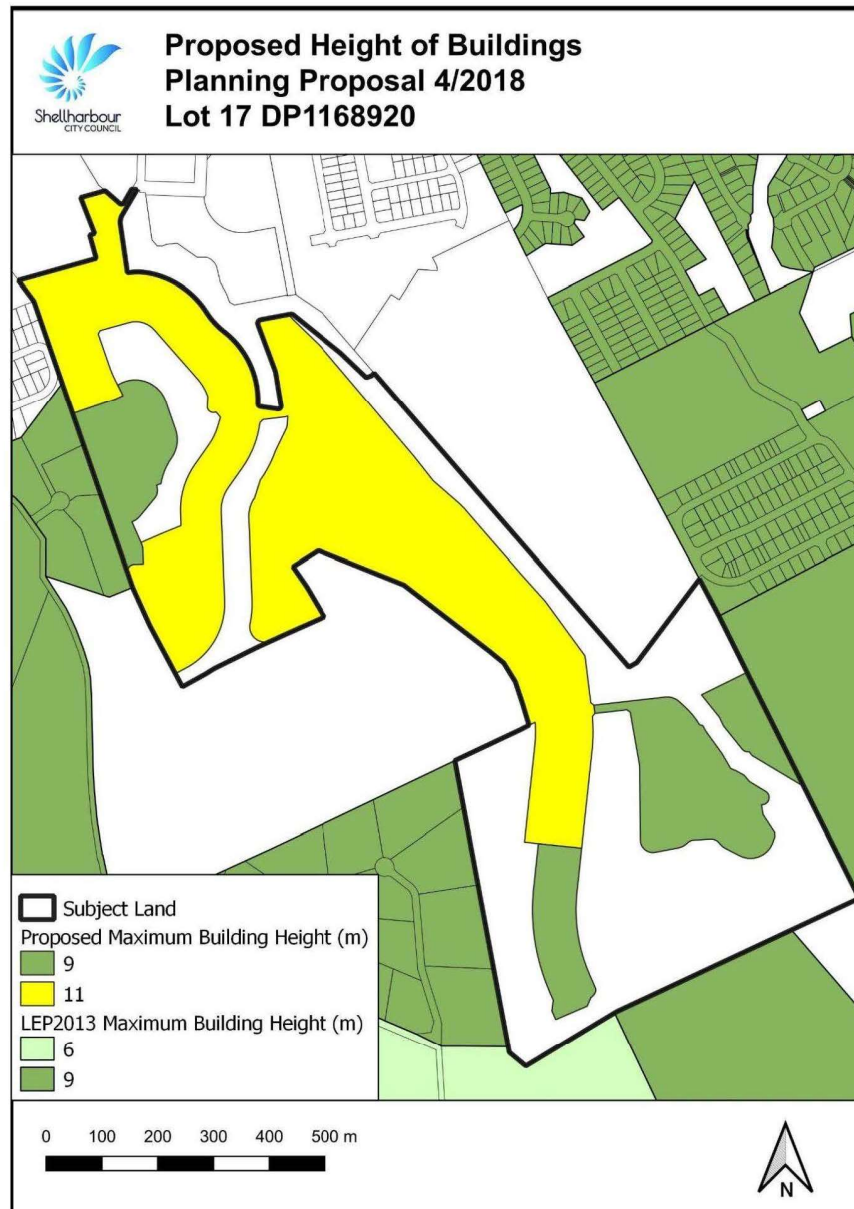
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Attachment 5 – Proposed Minimum Lot Size



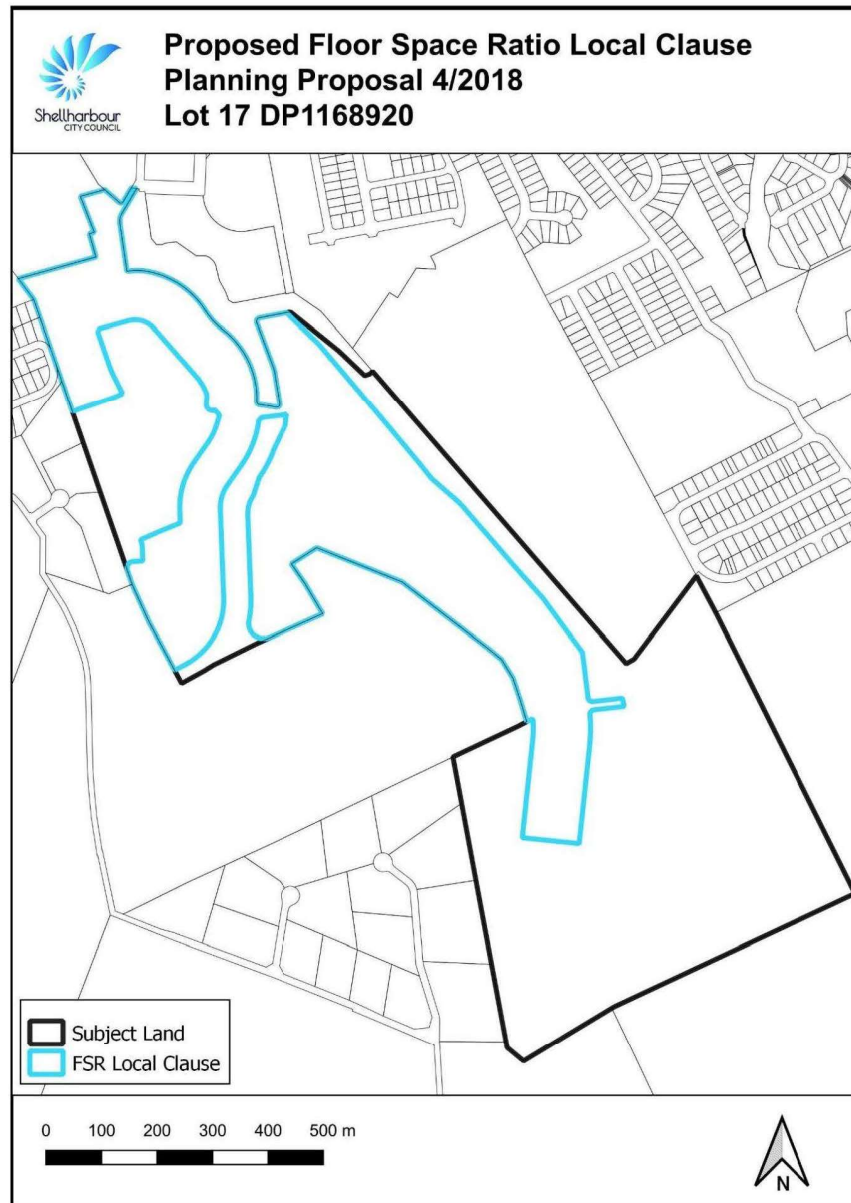
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Attachment 6 – Proposed Building Height



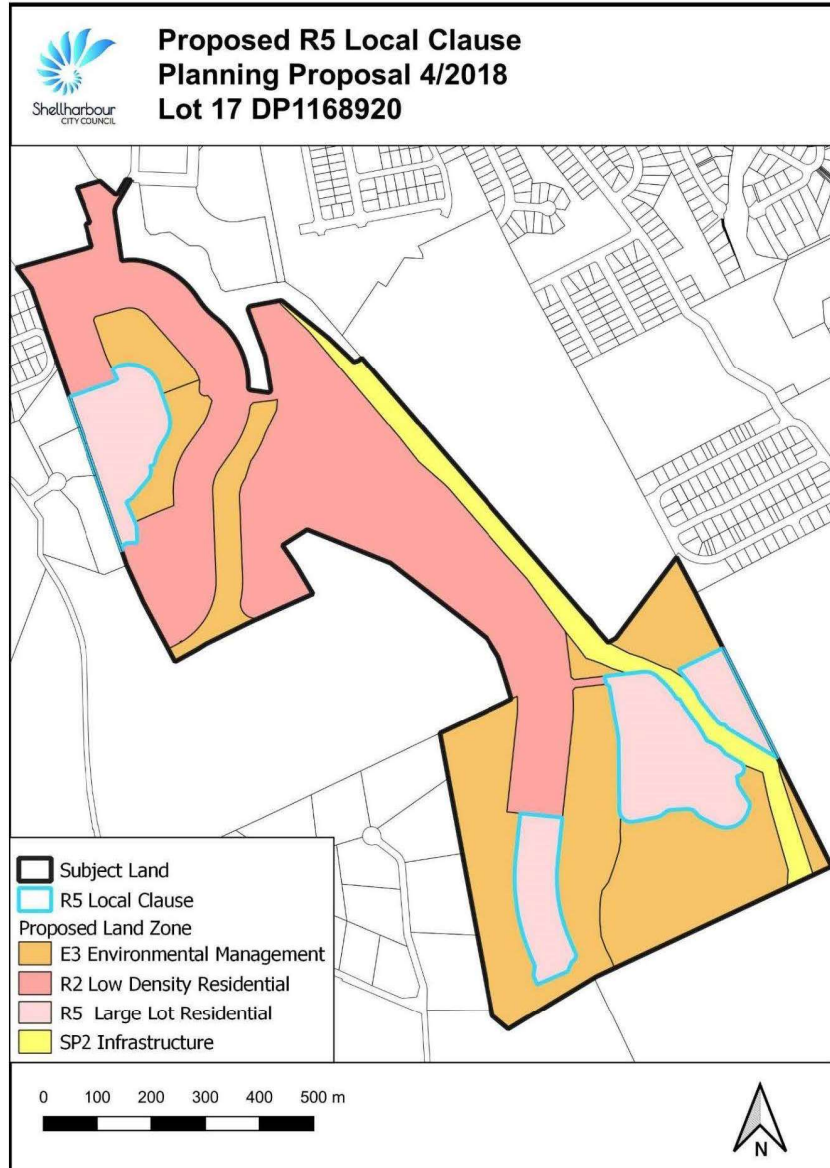
This is page 51 of the Minutes of the Ordinary Meeting of the Council of the City of Shellharbour held 9 June 2020

Attachment 7 – Proposed Local Clause Floor Space Ratio



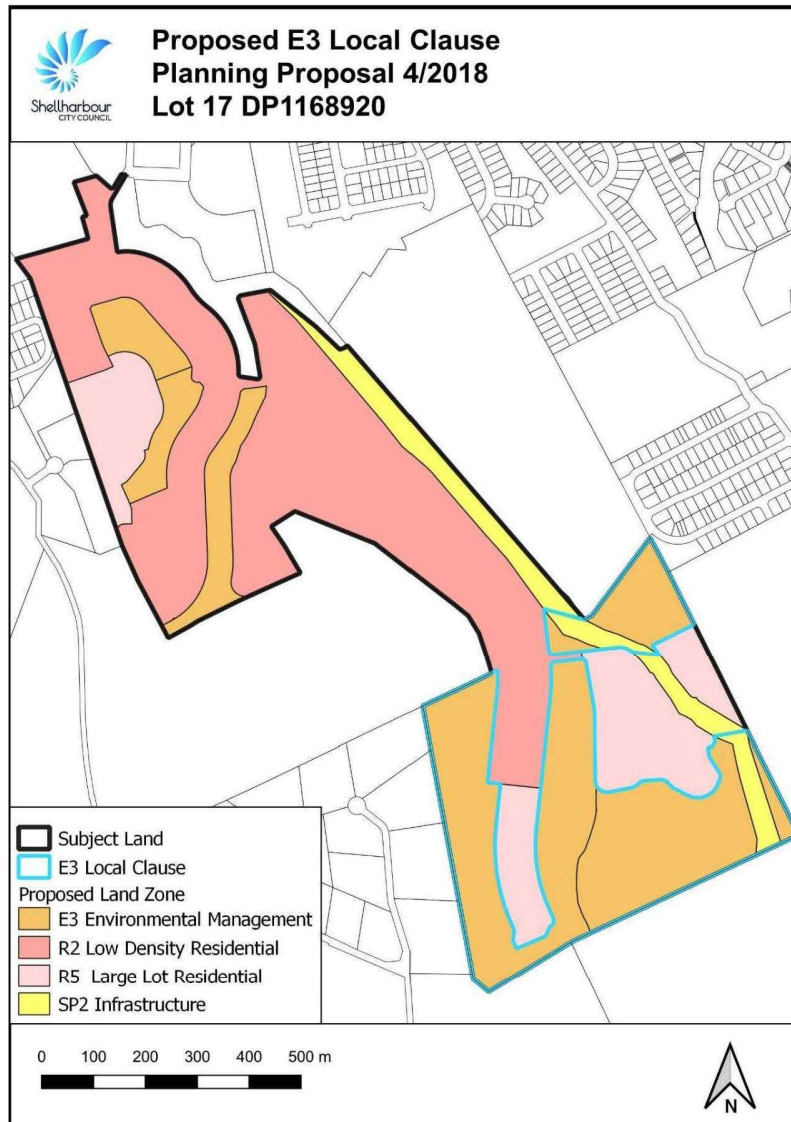
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Attachment 8 – Proposed Local Clause limiting residential accommodation on R5 zoned land to a single dwelling house and a secondary dwelling



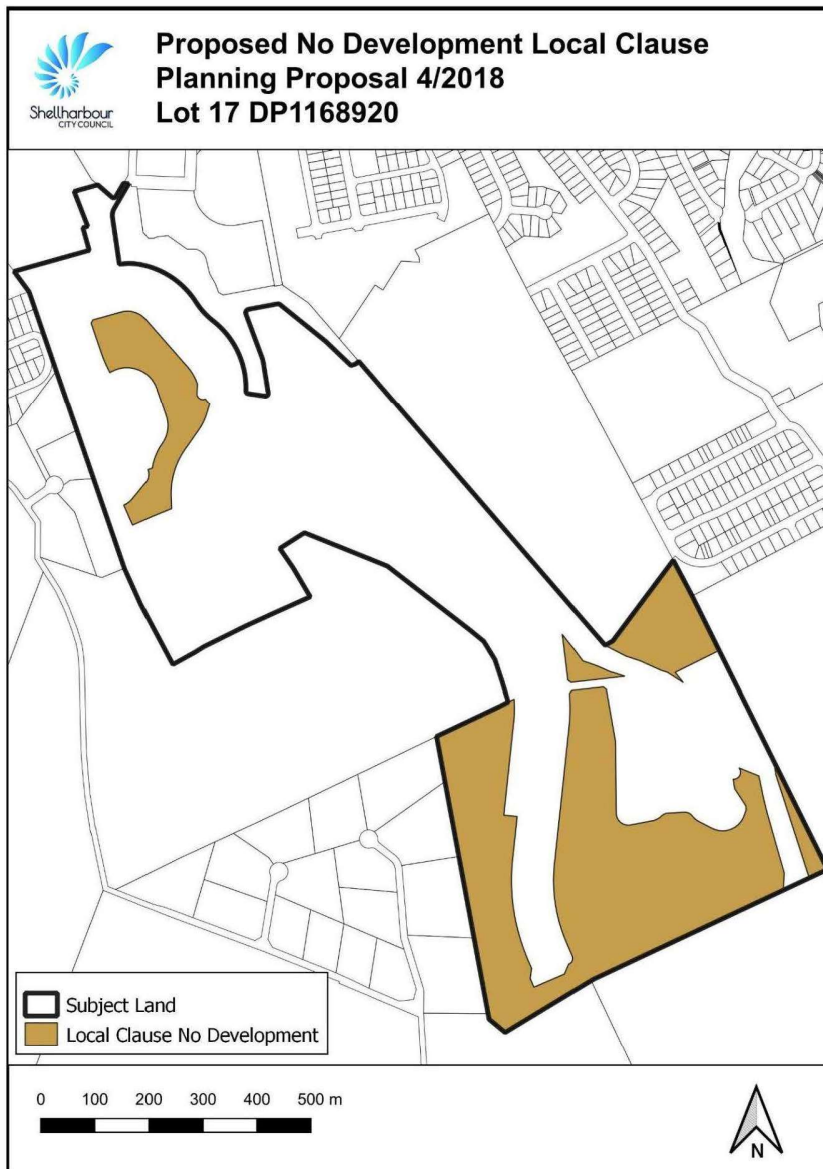
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Attachment 9 – Proposed Local Clause that permits the subdivision of E3 zoned land to the south of the site into a maximum of three lots and no residential accommodation



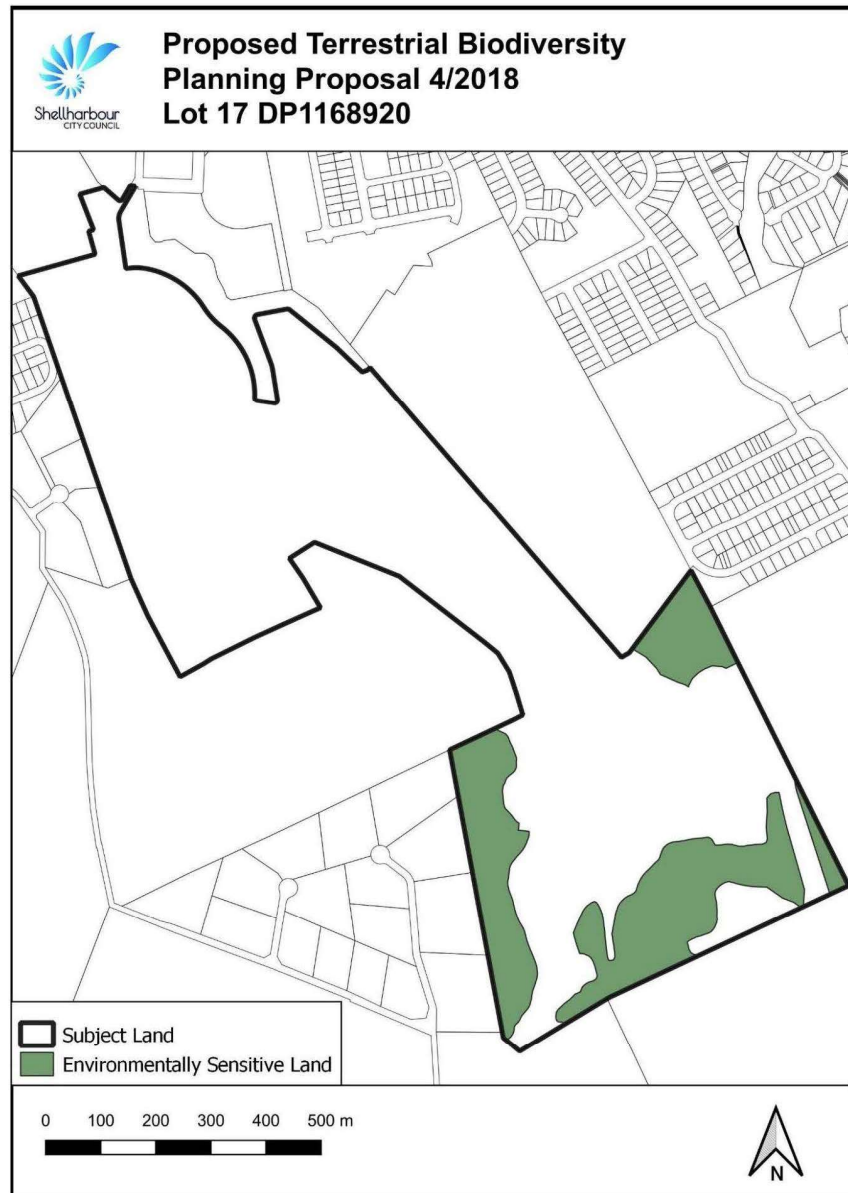
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Attachment 10 – Proposed No Development Map



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Attachment 11 – Proposed Terrestrial Biodiversity Map



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