

**Subject 11.3.2 Shellharbour Local Environmental Plan 2013
Planning Proposal No. 0005/2018 - Various Sites -
Mapping Anomalies (11140430)**

To the General Manager

Directorate: **Community and Customers**
Group: **City Planning**

Manager: Geoff Hoynes – Group Manager City Planning
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Summary

The purpose of this report is to seek Council's resolution to prepare a Planning Proposal to amend *Shellharbour Local Environmental Plan 2013* (LEP) and *Shellharbour Rural Local Environmental Plan 2004* (Rural LEP) by rezoning land to address miscellaneous mapping anomalies. The mapping anomalies are minor in nature and do not seek to alter the underlying planning intent of the controls on the affected lands.

The identified mapping anomalies have occurred through various means. Generally, when recent surveys have been undertaken of properties to inform development, updated mapping data has been provided to Council with regards to the location of the property boundaries (the cadastre). This has resulted in the cadastral information being updated, although the LEP mapping boundaries have not been updated at the same time.

This has caused a minor misalignment between the LEP mapping boundaries and the updated cadastre. This Planning Proposal will seek to address this misalignment by updating the LEP mapping boundaries with the updated cadastre.

There are several properties that are affected by the minor misalignment of LEP mapping boundaries and the cadastre. The location and the current zoning of the affected properties are shown at **Attachment 1** and a list of the affected properties and a table of current and planning controls can be found at **Attachment 2**.

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

The Planning Proposal has been initiated by Council staff and not the landowners

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 at step 1.

The LEP 2013 mapping anomalies Planning Proposal

It has come to Council staff's attention that there are several minor mapping anomalies where the cadastre and LEP mapping boundaries are misaligned. This report proposes that these mapping anomalies be rectified as part of a single Planning Proposal. This will ensure that the original planning intent of the affected properties is reflected in the LEP.

There are a number of properties that are affected by the mapping anomalies, which are outlined in **Attachment 2**. The mapping anomalies have arisen through various means, such as the cadastre being updated through recent surveys that does not reflect the cadastral information used to undertake mapping for the LEP planning controls.

The following is a brief summary of the anomalies, grouped by location, that are intended to form part of the Planning Proposal:

- Crest Road, Albion Park properties – There are two affected properties along Crest Road where the adjoining boundary encroaches into the affected property. The planning proposal will seek to address this by aligning the LEP mapping boundaries with the cadastre. This will result in a shift of the applicable planning controls for each of the affected properties, as outlined in **Attachment 2**.

This is shown in Maps 1 and 2 of **Attachment 1**.

- Yellow Rock Road / Tullimbar Lane, Tullimbar Properties – The anomalies for the affected properties here have resulted from a recent survey of the creek bed that forms the boundary of these properties. The creek bed has shifted over time, which in turn has caused the cadastre to shift. The planning proposal will bring the LEP mapping boundaries in line with the updated cadastre.

One of the affected properties included in this locality (Lot 1 DP 1050550, 24 Yellow Rock Road, Tullimbar) is deferred from LEP 2013. The deferred matter boundary is now currently sitting across two properties, one of which is not intended to be deferred from LEP 2013 (Lot 202 DP 1230191, Yellow Rock Road, Tullimbar). This Planning Proposal will bring the parts of Lot 202 DP 1230191 currently deferred back into LEP 2013, and

take the small portion of Lot 1 DP 1050550 currently in LEP 2013, back into the Rural LEP 2004.

There will also be a realignment of the applicable planning controls for the affected properties, as outlined in **Attachment 2**. The realignment of the planning controls will reflect the original planning intent for each of the properties.

This is shown in Maps 3, 4 and 5 of **Attachment 1**.

- Whistlers Run, Albion Park Properties – The lands affected by this anomaly were part of a recent subdivision that has provided an updated cadastre. The amendment to the mapping for these properties will shift the relevant planning controls (as outlined in **Attachment 2**) in line with the updated cadastre. The planning proposal will seek to rectify this misalignment and bring the relevant planning controls back in line with the original planning intent for each of the included properties.

This is shown in Maps 6 and 7 of **Attachment 1**.

- Ulan Place Road Reserve & Chaffey Way Road Reserve – The two road reserve areas included as part of this report have mapping anomalies within current roadways. The Planning Proposal will seek to map these areas in accordance with the surrounding planning controls as outlined in **Attachment 2**.

This is shown at Maps 8 and 9 respectively of **Attachment 1**.

The Whistlers Run, Albion Park and the Yellow Rock Road / Tullimbar Lane, Tullimbar are currently subject to three separate development applications. The Yellow Rock Road / Tullimbar Lane development application (DA0488/2018) is for the subdivision of the property into a 116 residential lots. There are two development applications that are located within the Whistlers Run properties. DA0113/2018 is for the consolidation of two lots and the development and subdivision of five townhouses. DA0404/2018 is for a two lot subdivision and the construction of two townhouses.

In order to progress the relevant development applications, the split zoning of the various subject sites needs to be addressed in order to satisfy minimum subdivision lot sizes. The Planning Proposal will address the mapping anomalies that are currently restricting the subdivision opportunities of these properties.

Financial / Resources Implications

If Council resolves to prepare a Planning Proposal, there is no Financial or Resource Implications except for staff time to prepare and process the proposal.

There are no fees applicable to this Planning Proposal as it has been initiated by Council.

Legal and Policy Implications

Should Council support the preparation of a Planning Proposal, the Planning Proposal will need to be sent to DP&E for gateway assessment.

The changes to the mapping will include modifications to the Land Zoning Map, Floor Space Ratio Map, Land Application Map, Lot Size Map, Additional Permitted Uses Map and Terrestrial Biodiversity Map to bring the mapping boundaries in line with the updated cadastre of the affected properties. The proposed changes to each property are outlined in **Attachment 2**.

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 NSW Department of Planning & Environment.

The relevant *Environmental Planning & Assessment Act* issues are outlined in the following sections of this report:

Draft State Environmental Planning Policies, State Environmental Planning Policies (SEPPs), and Deemed State Environmental Planning Policies.

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*)

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. An assessment of the significance and approval for the inconsistencies will need to be undertaken by DP&E.

2.1 Environmental Protection Zones

The Planning Proposal seeks to rezone some areas of E3 Environmental Management and E4 Environmental Living land to R2 Low Density Residential and RU1 Primary Production. The Local Planning Direction states that a planning proposal must not reduce the environmental protection standards that apply to the land. Given the minor nature of the planning proposal and the small portions of land involved in the rezoning, the inconsistency is considered to be of minor significance. The two road reserves included in the Planning Proposal are currently zoned E4, however they are located in an existing road and it is not considered that rezoning this land will result in any adverse outcomes. The other sites included as part of the Planning Proposal are minor realignments of the mapping boundaries and are considered to be of minor significance.

4.3 Flood Prone Land

The Planning Proposal is not consistent with this Direction as one of the properties included in the Whistlers Run area is identified as flood prone land and this Planning Proposal will seek to rezone a small portion of the property from E4 Environmental Living to R2 Low Density Residential Development. The majority of the property is zoned R2, including the majority of the mapped flood prone area of the site, the inconsistency is considered to be of minor significance. Additionally, the site is currently developed for residential purposes, as such, it is not considered that the rezoning will cause any adverse impacts.

4.4 Planning for Bushfire Protection

The Planning Proposal is not consistent with this Direction as some of the included sites are mapped as bushfire prone land. In accordance with the Direction, the Planning Proposal will be referred to the Commissioner of the NSW Rural Fire Service following receipt of the gateway determination prior to any required exhibition period.

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 DP&E to use their 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 enable the affected sites to be appropriately zoned in accordance with the intended planning and objectives. The current split zoning of the sites is impacting any potential development of the affected lands. Resolving the mapping anomalies will be of significant benefit to the owners of the affected properties seeking to develop now or in the future.

Link to Community Strategic Plan

The planning proposal to address miscellaneous mapping anomalies 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. |
| | 2.3.4 | Facilitate the development of the built environment to meet community needs. |

Consultations

Internal

Team Leader Environment
Manager Technical Services

Should Council resolve to prepare the Planning Proposal, a formal internal referral process will occur as part of the process to prepare the Planning Proposal.

External

The affected land owners will be notified should Council resolve to prepare the Planning Proposal.

If Council resolves to endorse the preparation of the Planning Proposal it will be referred to the NSW Department of Planning and Environment for review and gateway determination.

Given the minor nature of the Planning Proposal it is intended to seek exemption from formal public exhibition with newspaper notices and letters to land owners/adjoining land owners. The *Environmental Planning and Assessment Act* s3.22 allows for an amendment to an environmental planning instrument without compliance with the provisions of the Act if the

proposal is to correct an obvious error consisting of a misdescription. This will be subject to assessment from DP&E.

Political Donations Disclosure

Not Applicable

Recommendation

That Council:

1. Prepare a Planning Proposal (No. 0005/2018) to amend Shellharbour Local Environmental Plan 2013 and Shellharbour Rural Local Environmental Plan 2004 to address miscellaneous mapping anomalies as outlined at Attachment 2.
2. Authorise the General Manager to submit Shellharbour Local Environmental Planning Proposal No. 0005/2018 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.
3. 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. 0005/2018 if and as required by the NSW Department of Planning & Environment's LEP Review Panel and gateway determination.
4. Request to not undertake full consultation, with public exhibition of the Planning Proposal due to the minor nature of the mapping anomalies, in accordance with section 3.22 of the *Environmental Planning and Assessment Act 1979*.
5. Approve that the Shellharbour Local Environmental Plan 2013 Planning Proposal No. 0005/2018 be publicly exhibited if required by the gateway determination.
6. Endorse a further report be provided to Council at the end of any consultation required by the gateway determination detailing the outcomes and with further recommendations regarding adoption.

Approved for Council's consideration:



Date of Meeting: 11 December 2018

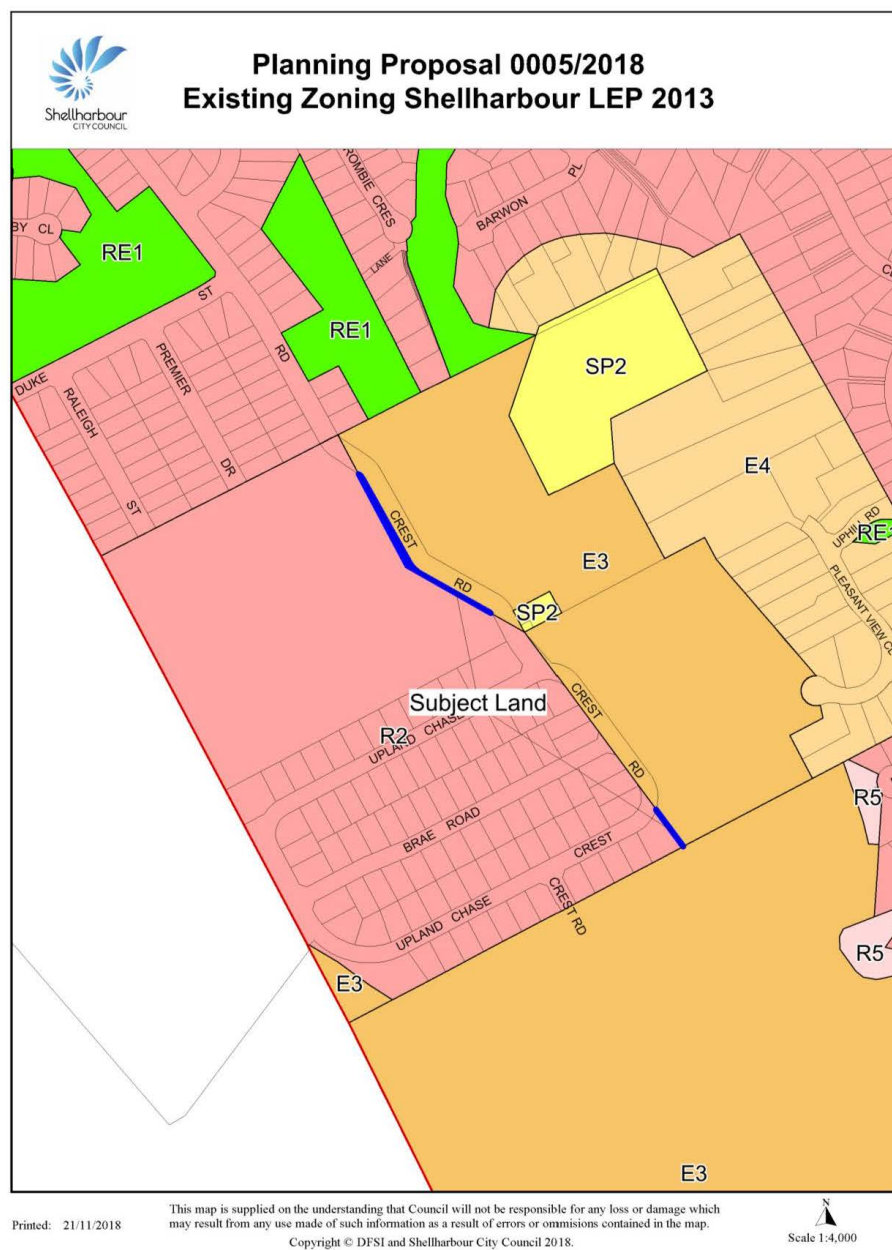
Attachments

1. Locality Plans
2. Table of Affected Lands and Controls

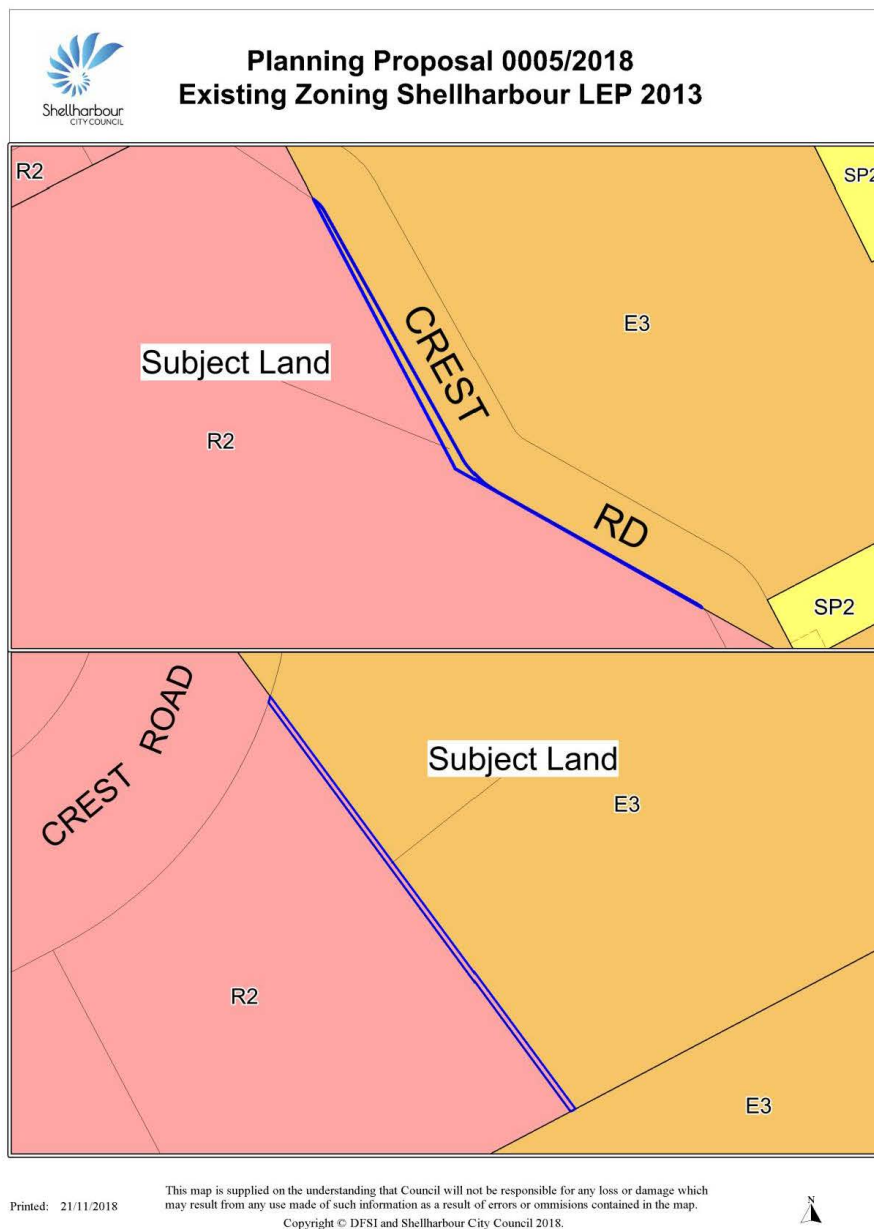
Attachment 1 - PP0005/2018 – Locality Plans

PP0005/2018 – Attachment 1 – Locality Plans

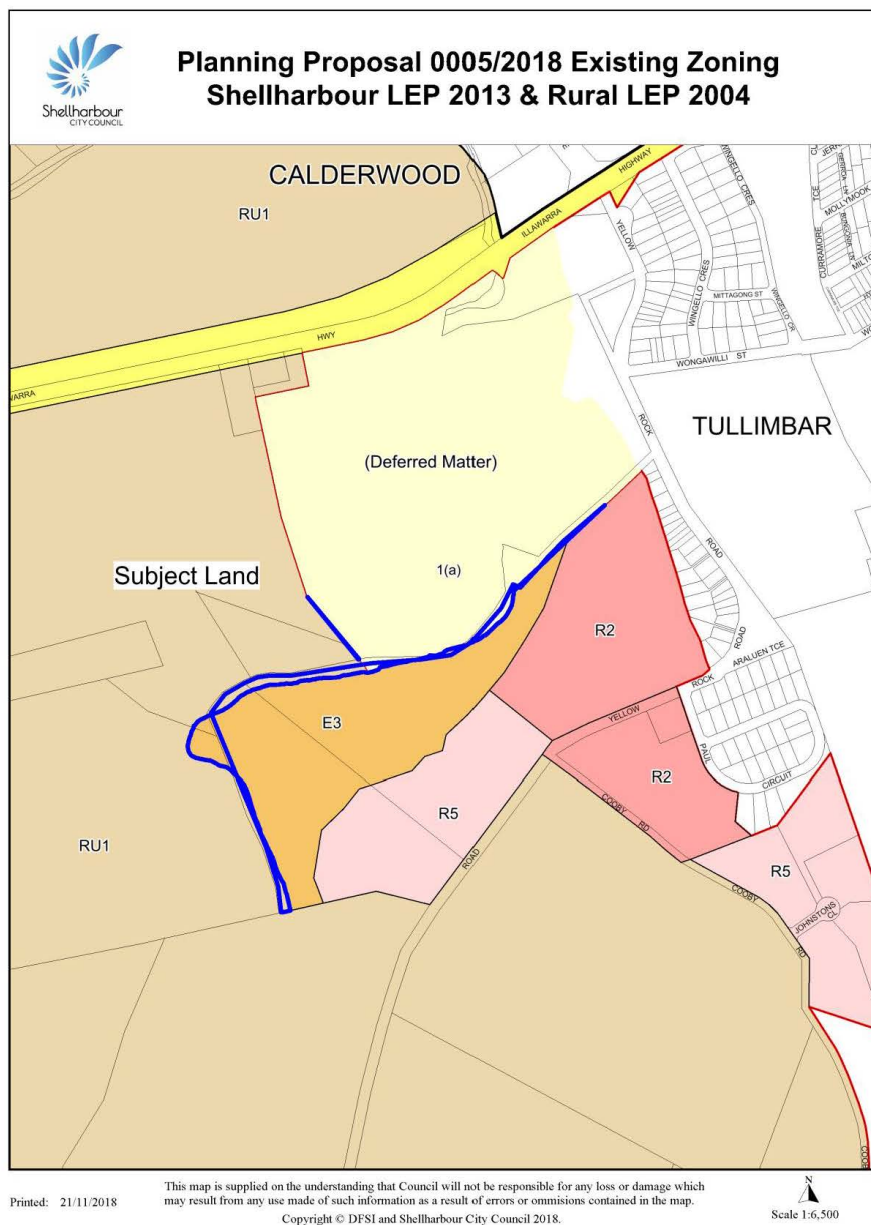
Map 1



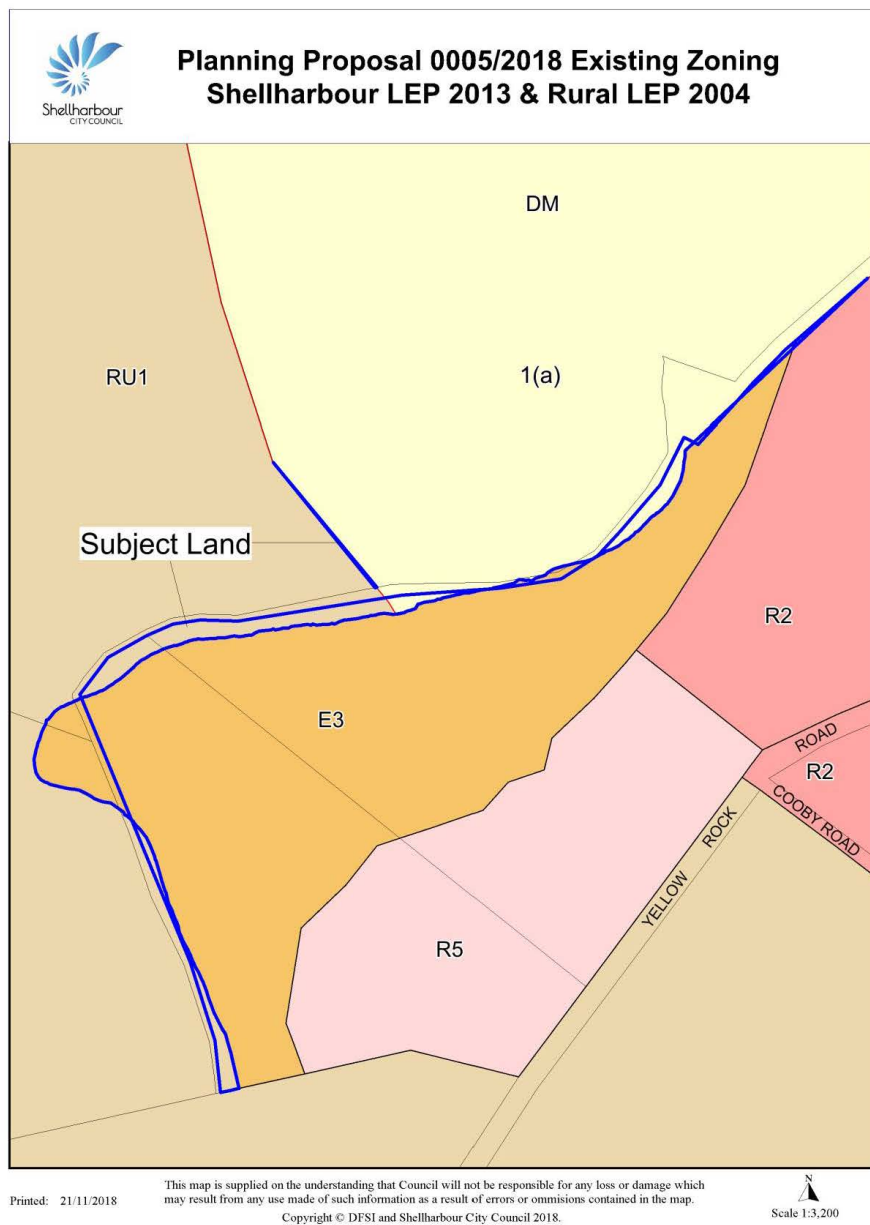
Map 2



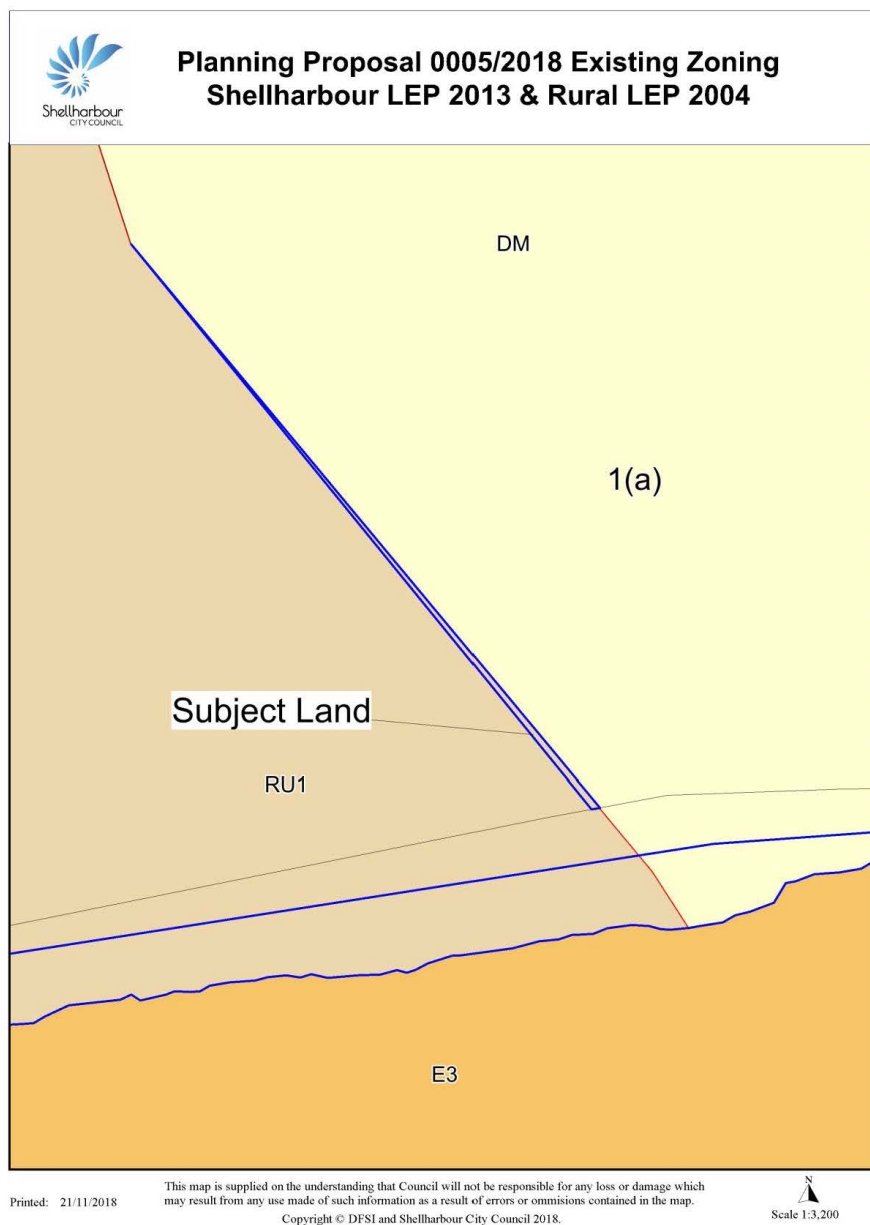
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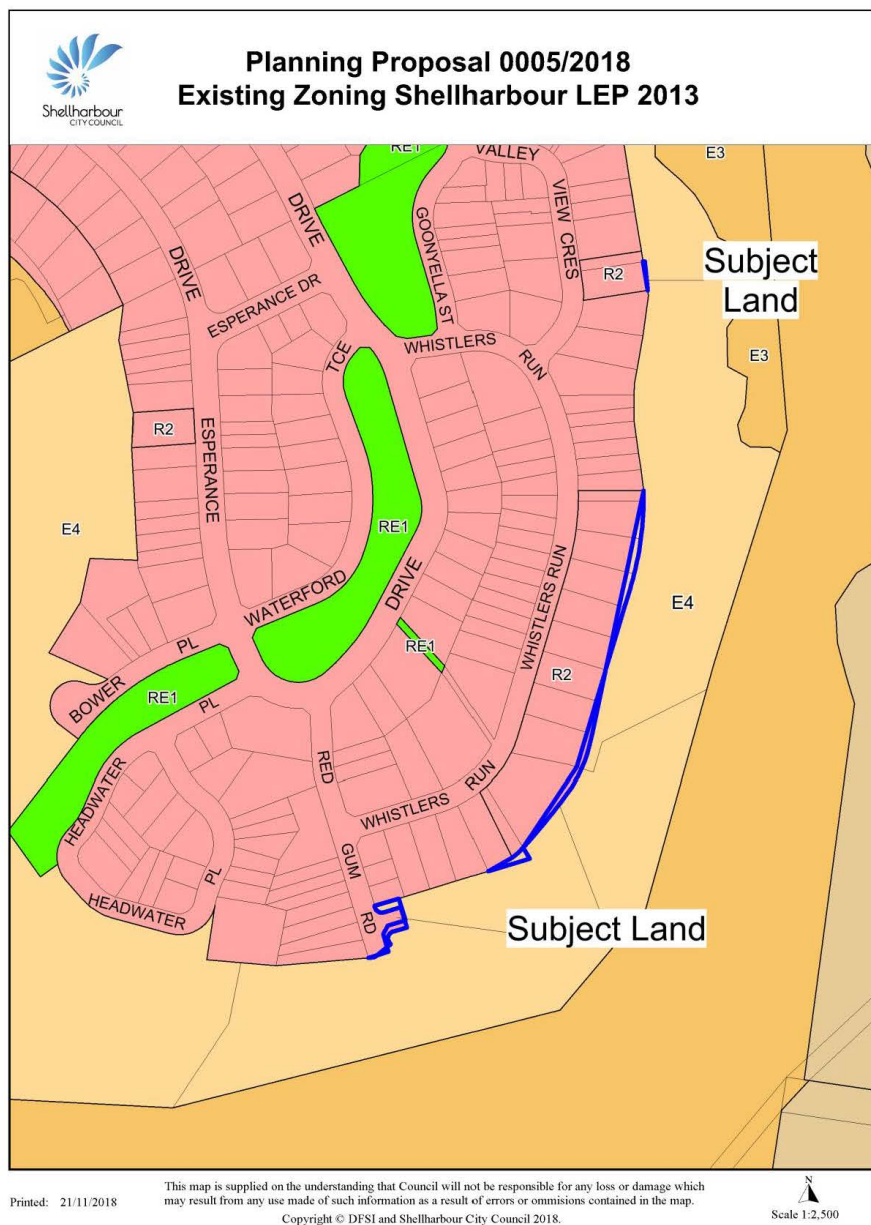
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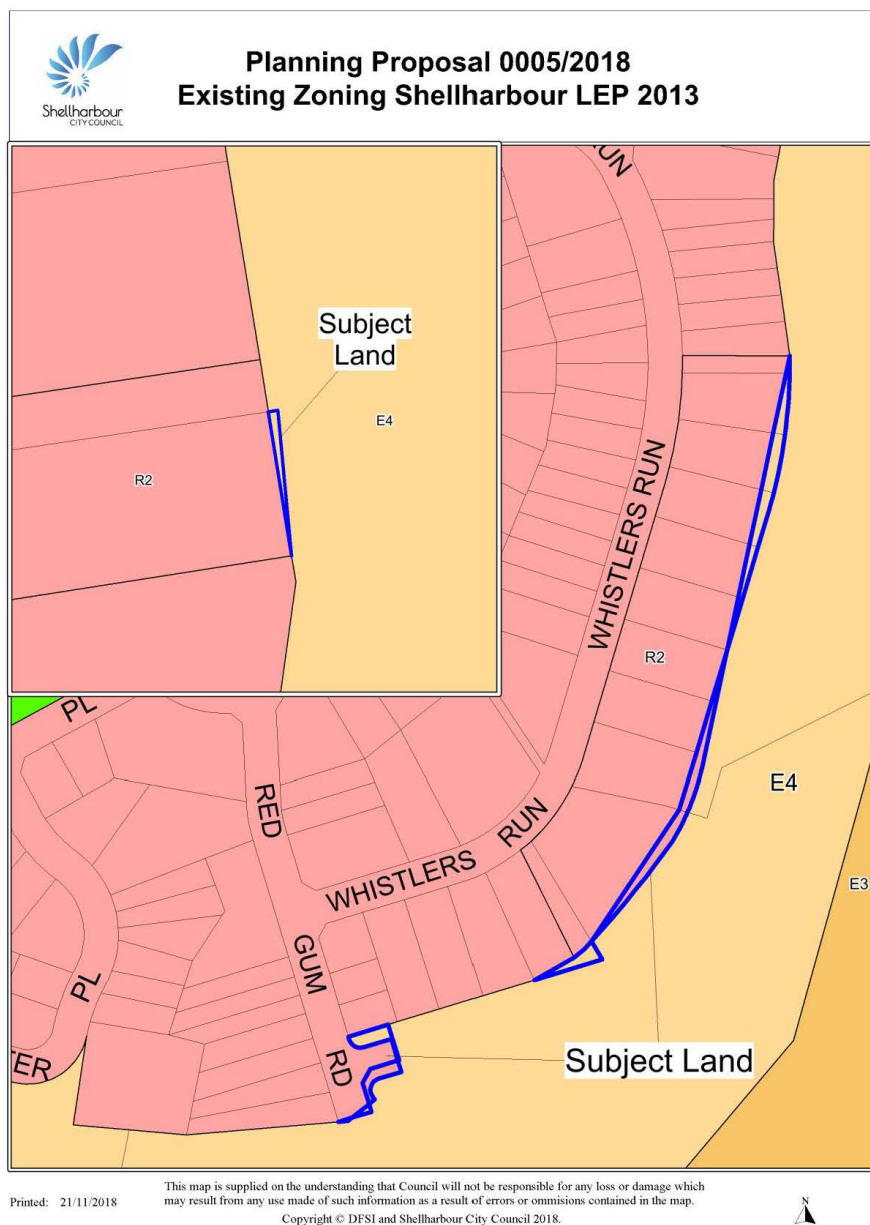
Map 5



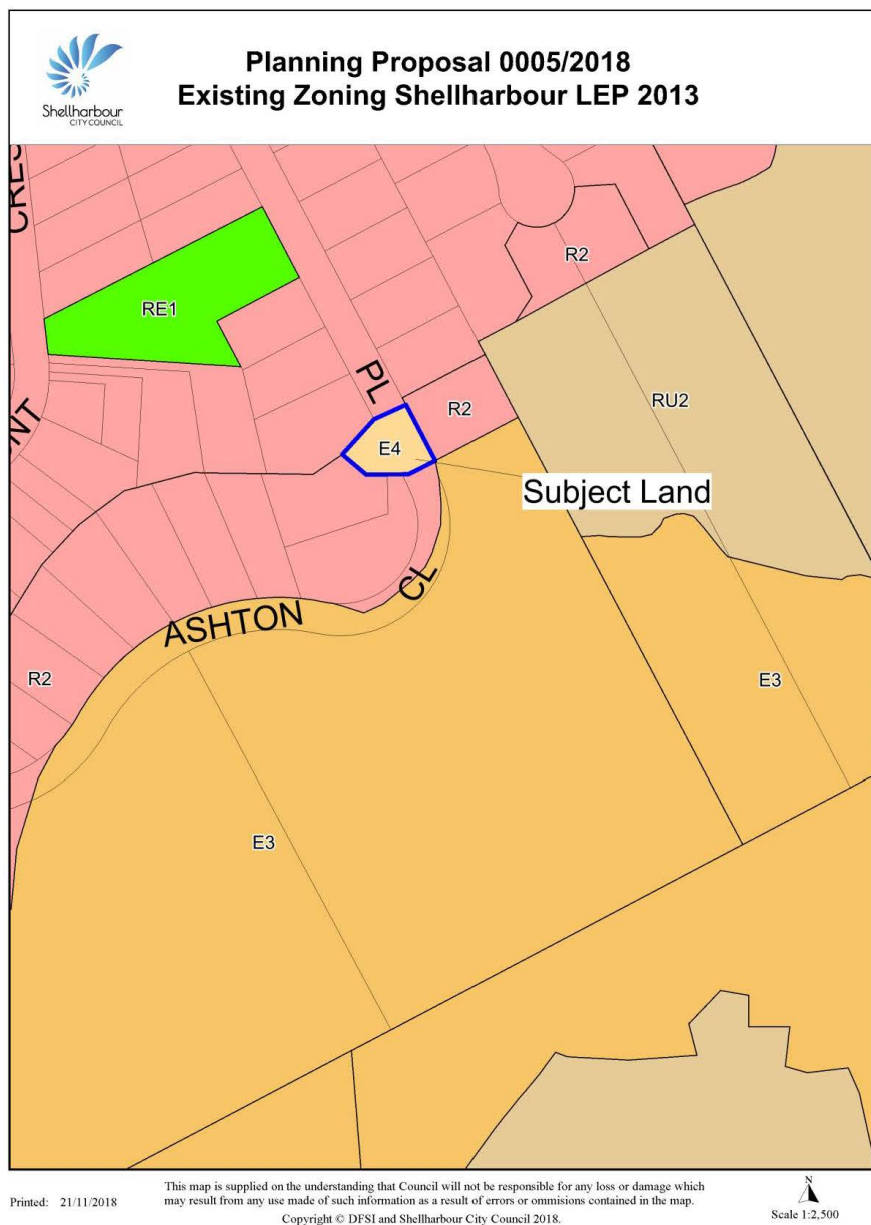
Map 6



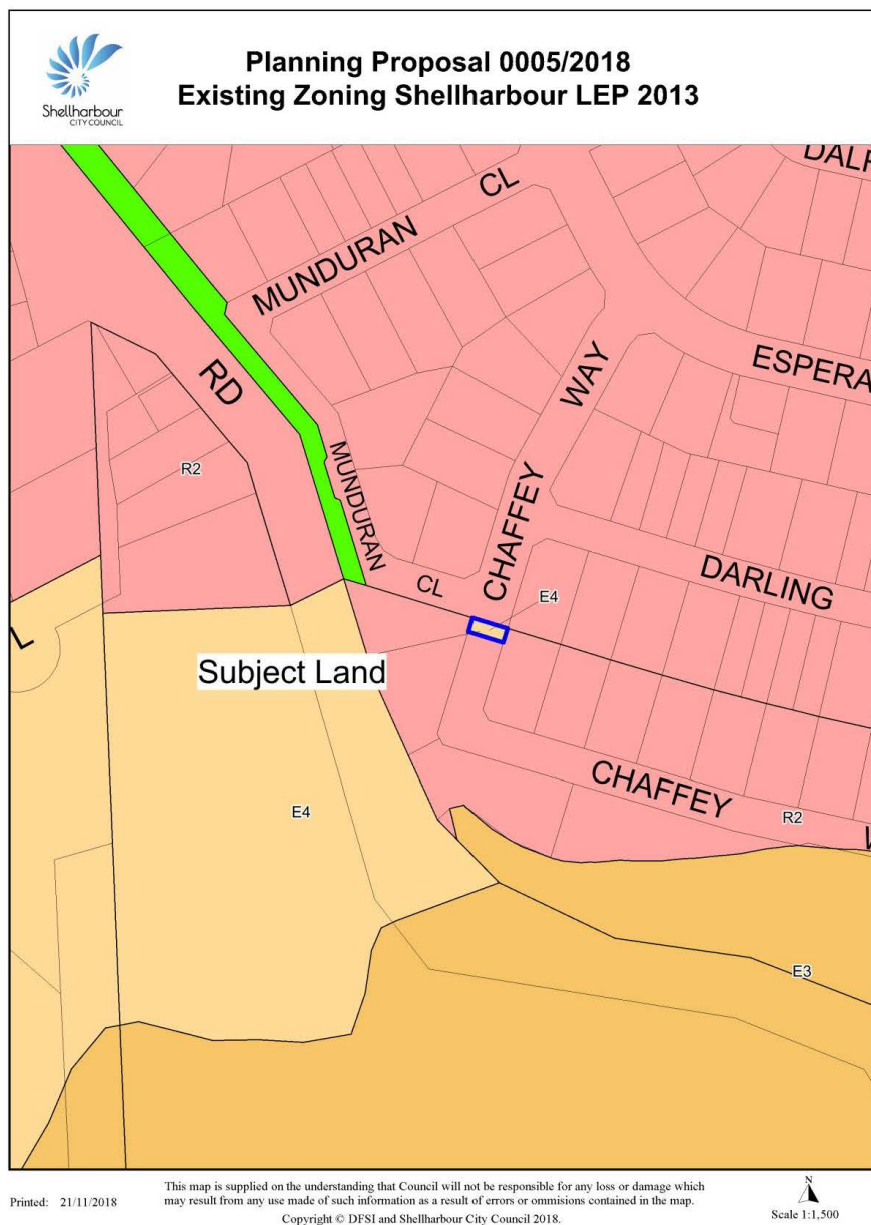
Map 7



Map 8



Map 9



Attachment 2 - PP0005/2018 – Table of Affected Lands and Controls

	Property	Mapping anomaly	Maps and controls affected by the PP		
			Applicable Maps	Current Controls	Proposed Controls
Yellow Rock Road / Tullimbar Lane affected lands	Lot 201 DP 1230191 120 Yellow Rock Road, Tullimbar	Recent survey of the creek has adjusted the property boundaries. The proposal will adjust the LEP 2013 mapping boundaries to realign with the cadastre and the intended planning controls.	Land Zoning Map	E3 Environmental Management R5 Large Lot Residential RU1 Primary Production	E3 Environmental Management R5 Large Lot Residential
			FSR Map	0.5 : 1 Nil	0.5 : 1
	Additional Permitted Uses		Part Schedule 1 Part not applicable	Schedule 1	
	Land Zoning Map		E3 Environmental Management R5 Large Lot Residential R2 Low Density Residential RU1 Primary Production	E3 Environmental Management R5 Large Lot Residential R2 Low Density Residential	
	FSR Map		0.5 : 1 Nil	0.5 : 1	
	Terrestrial Biodiversity Map (Area of High Conservation Value Rural LEP 2004)		Environmentally Sensitive Land Area of High Conservation Value (Rural LEP 2004)	Environmentally Sensitive Land	
	Land Application Map		Part LEP 2013 Part Deferred Matter (Rural LEP 2004)	LEP 2013	
	Additional Permitted Uses		Part LEP Clause 6.14 Part not applicable	LEP Clause 6.14	
	Land Zoning Map		Deferred Matter (Zone 1(a) Rural LEP 2004) E3 Environmental Management RU1 Primary Production	Deferred Matter (Zone 1(a) Rural LEP 2004)	
	FSR Map		Deferred Matter 0.5 : 1	Deferred Matter	
	Lot Size Map		Deferred Matter 40 ha	Deferred Matter	
	Building Height Map		Deferred Matter 9m	Deferred Matter	
	Terrestrial Biodiversity Map		Deferred Matter (Area of High Conservation Value Rural LEP 2004) Environmentally Sensitive Land	Deferred Matter (Area of High Conservation Value Rural LEP 2004)	

		Land Zoning Map	RU1 Primary Production E3 Environmental Management		RU1 Primary Production
			FSR Map	Nil 0.5 : 1	Nil
Lot 1 DP 724362 58 Tullimbar Lane, Tullimbar		Terrestrial Biodiversity Map	Environmentally Sensitive Land may require adjustment due to the realignment of the LEP mapping boundary for the E3 zone		Not applicable
		Additional Permitted Uses Map	Part not applicable Part LEP Clause 6.14		
Lot 81 DP 634605 7 Tullimbar Lane, Tullimbar		Land Zoning Map	RU1 Primary Production E3 Environmental Management		RU1 Primary Production
		FSR Map	Nil 0.5 : 1	Nil	
		Terrestrial Biodiversity	Environmentally Sensitive Land may require adjustment due to the realignment of the LEP mapping boundary for the E3 zone		Not applicable
		Additional Permitted Uses	Part not applicable Part LEP Clause 6.14		
Lot 101 DP 1238120 Crest Road, Albion Park	E3 Zone extends past the road reserve boundary into the affected property that is predominantly zoned R2. The Planning Proposal will realign the boundary with the intended zoning and other applicable planning controls.	Land Zoning Map	R2 Low Density Residential E3 Environmental Management		R2 Low Density Residential
		Lot Size Map	600 sqm 3 ha	600 sqm	
		FSR Map	0.5 : 1 Nil	0.5 : 1	E3 Environmental Management
		Land Zoning Map	E3 Environmental Management R2 Low Density Residential		
Lot 87 DP 1229526 115 Crest Road, Albion Park	R2 Zone extends past property boundary into the affected property that is predominately zoned E3. The Planning Proposal will realign the boundary with the intended zoning and other applicable planning controls.	Lot Size Map	3 ha 600 sqm	3 ha	3 ha
		FSR Map	Nil 0.5 : 1	Nil	

E3 Zone extends past the road reserve boundary into the affected property that is predominantly zoned R2. The Planning Proposal will realign the boundary with the intended zoning and other applicable planning controls.

R2 Zone extends past property boundary into the affected property that is predominately zoned E3. The Planning Proposal will realign the boundary with the intended zoning and other applicable planning controls.

**Crest Road
affected lands**

Whistlers Run affected lands	Lot 112 DP 1170763 Red Gum Road, Albion Park	Realignment of boundary between E4 and R2 zones to bring LEP 2013 mapping boundaries in line with the cadastre and the intended zoning and other relevant planning controls of the properties.	Land Zoning Map	E4 Environmental Living R2 Low Density Residential	E4 Environmental Living
Whistlers Run affected lands	Red Gum Road, Road Reserve, Albion Park	Realignment of boundary between E4 and R2 zones to bring LEP 2013 mapping boundaries in line with the cadastre and the intended zoning and other relevant planning controls of the properties.	FSR Map	Nil	Nil
			Lot Size Map	0.5 : 1 40 ha 600 sqm	40 ha
			Additional Permitted Uses	Part LEP 2013 Schedule 1 Part Not applicable	LEP 2013 Schedule 1
			Land Zoning Map	R2 Low Density Residential E4 Environmental Living	R2 Low Density Residential
			FSR Map	0.5 : 1 Nil	0.5 : 1
			Lot Size Map	600 sqm 40 ha	600 sqm
			Additional Permitted Uses	Part Not applicable Part LEP 2013 Schedule 1	Not applicable
			Land Zoning Map	R2 Low Density Residential E4 Environmental Living	R2 Low Density Residential
			FSR Map	0.5 : 1 Nil	0.5 : 1
			Lot Size Map	450 sqm 600 sqm 40 ha	450 sqm
Whistlers Run affected lands	Lot 113 DP 1170763 Whistlers Run, Albion Park	Realignment of boundary between E4 and R2 zones to bring LEP 2013 mapping boundaries in line with the cadastre and the intended zoning and other relevant planning controls of the properties.	Additional Permitted Uses	Part Not applicable Part LEP 2013 Schedule 1	Not applicable
			Land Zoning Map	E4 Environmental Living E3 Environmental Management R2 Low Density Residential	E4 Environmental Living E3 Environmental Management R2 Low Density Residential
			FSR Map	Nil 0.5 : 1	Nil 0.5 : 1
			Lot Size Map	40 ha 600 sqm	40 ha 600 sqm
			Land Zoning Map	R2 Low Density Residential E4 Environmental Living	R2 Low Density Residential
			FSR Map	0.5 : 1 Nil	0.5 : 1
			Lot Size Map	600 sqm 40 ha	600 sqm
			Additional Permitted Uses	Part Not applicable Part LEP 2013 Schedule 1	Not applicable
			Land Zoning Map	E4 Environmental Living E3 Environmental Management R2 Low Density Residential	E4 Environmental Living E3 Environmental Management R2 Low Density Residential
			FSR Map	Nil 0.5 : 1	Nil 0.5 : 1
Whistlers Run affected lands	Lot 101 to 109 DP 1170763 13 Valley View Crescent: 13, 15, 17, 19, 21, 23, 25, and 27 Whistlers Run, Albion Park	Realignment of boundary between E4 and R2 zones to bring LEP 2013 mapping boundaries in line with the cadastre and the intended zoning and other relevant planning controls of the properties.	Lot Size Map	40 ha 600 sqm	40 ha 600 sqm
			Land Zoning Map	R2 Low Density Residential E4 Environmental Living	R2 Low Density Residential
			FSR Map	0.5 : 1 Nil	0.5 : 1
			Lot Size Map	600 sqm 40 ha	600 sqm
			Additional Permitted Uses	Part Not applicable Part LEP 2013 Schedule 1	Not applicable
			Land Zoning Map	E4 Environmental Living E3 Environmental Management R2 Low Density Residential	E4 Environmental Living E3 Environmental Management R2 Low Density Residential
			FSR Map	Nil 0.5 : 1	Nil 0.5 : 1
			Lot Size Map	40 ha 600 sqm	40 ha 600 sqm
			Land Zoning Map	R2 Low Density Residential E4 Environmental Living	R2 Low Density Residential
			FSR Map	0.5 : 1 Nil	0.5 : 1

Road Reserves	Chaffey Way Road Reserve	Portion of Road Reserve to be rezoned to reflect surrounding land use	Land Zoning Map	E4 Environmental Living R2 Low Density Residential	R2 Low Density Residential
			FSR Map	Nil 0.5 : 1	0.5 : 1
	Ulan Place Road Reserve	Portion of Road Reserve to be rezoned to reflect surrounding land use	Land Zoning Map	E4 Environmental Living R2 Low Density Residential	R2 Low Density Residential
			FSR Map	Nil 0.5 : 1	0.5 : 1
			Lot Size Map	450 sqm 40 ha	450 sqm
			Building Height Map	6m	7.5m