

REZONING REVIEW – Briefing Report

Date of referral	9 October 2019	
Department ref. no	RR_2019_SHELL_001	
LGA	Shellharbour	
LEP to be amended	Shellharbour Local Environmental Plan 2013	
Address	95–105 Cooby Road, Tullimbar	
Reason for review	<input type="checkbox"/> Council notified the proponent it will not support the proposed amendment	<input checked="" type="checkbox"/> Council failed to indicate support for the proposal within 90 days
Is a disclosure statement relating to reportable political donations under s10.4 of the Act required and provided?	<input type="checkbox"/> Provided <input checked="" type="checkbox"/> Not required Comment: There are no donations or gifts to disclose	

1. SUMMARY OF THE PROPOSAL

1.1 Background

On 8 January 2019, Urbanco Group Pty Ltd submitted a planning proposal to Shellharbour City Council seeking to amend the Shellharbour Local Environmental Plan (LEP) 2013 to rezone land at 95–105 Cooby Road, Tullimbar and apply development controls to enable the development of the land for housing and environmental conservation.

The land is deferred from the 2013 LEP and zoned part 1(a) Rural and part 2(e) Mixed Use Residential under the Shellharbour LEP 2000.

Parts of the subject land – including land within the rural-zoned area – have been identified for housing since 1999, including in the Shellharbour Development Control Plan (DCP). Council resolved to defer the subject land from the 2013 LEP to investigate appropriate residential densities.

The proposal seeks to rezone the land to a mix of R2 Low Density Residential, R5 Large Lot Residential, E4 Environmental Living, E3 Environmental Management and E2 Environmental Conservation and proposes minimum lot sizes ranging from 300m² to 4000m².

A preliminary concept plan indicates the proposal will yield approximately 113 residential lots and 24 rural-residential lots.

Council provided preliminary advice on the proposal to the proponent in a letter dated 5 July 2019 and further advice during a meeting with the proponent on 2 August 2019. The proponent subsequently amended the proposal to address issues raised by Council.

The applicant is seeking a rezoning review because Council failed to formally indicate support for the proposal within 90 days.

Council's comments on the rezoning review request – discussed in section 3 of this report – indicate general support for the proposal subject to a reduction in the potential lot yield and the maximum height of buildings from 9.5m to 9m to address potential environmental impacts. A concept plan provided with the proposal indicates the potential for approximately 137 lots, and Council supports controls that would permit approximately 111 lots.

1.2 Locality and context

The site is on the eastern side of Cooby Road (which runs off Yellow Rock Road) at the southern end of the Tullimbar Valley. It is south-west of Tullimbar Village and separated from residential development to the north by land zoned 2(e) Mixed Use Residential under the Shellharbour LEP 2000 (Figure 1, below). This deferred land is subject to planning proposals to bring it into the 2013 LEP and there is a development application for residential subdivision over parts of the area.

The 2(e) zone extends onto the north-east portion of the subject land.

There is a 16-lot subdivision zoned E4 Environmental Living on the southern boundary of the site.



Figure 1: Locality map – the site is outlined in red (source: SIX Maps).

1.3 Site description

The subject land is identified as Lot 240 DP 828854, being 95–105 Cooby Road, Tullimbar. The site is irregular in shape and has an area of approximately 29ha (Figure 2, next page). Most of the land is zoned 1(a) Rural and the northern portion of the site is zoned 2(e) Mixed Use Residential.

The land comprises varying topography, with a cleared plateau, vegetated slopes and a creek corridor. It slopes upwards from north to south through vegetated areas to the plateau.

The site is heavily vegetated in some areas, and a biodiversity study accompanying the proposal identifies that the site contains endangered ecological communities (EECs) and other medium/high-value vegetation.

There is a natural creek corridor on the western part of the site and ridgelines along the western boundary and towards the middle of the property.

The land has been used for a variety of agricultural purposes and is currently used for grazing.

The site is approximately 650m from Tullimbar Public School and playing fields.

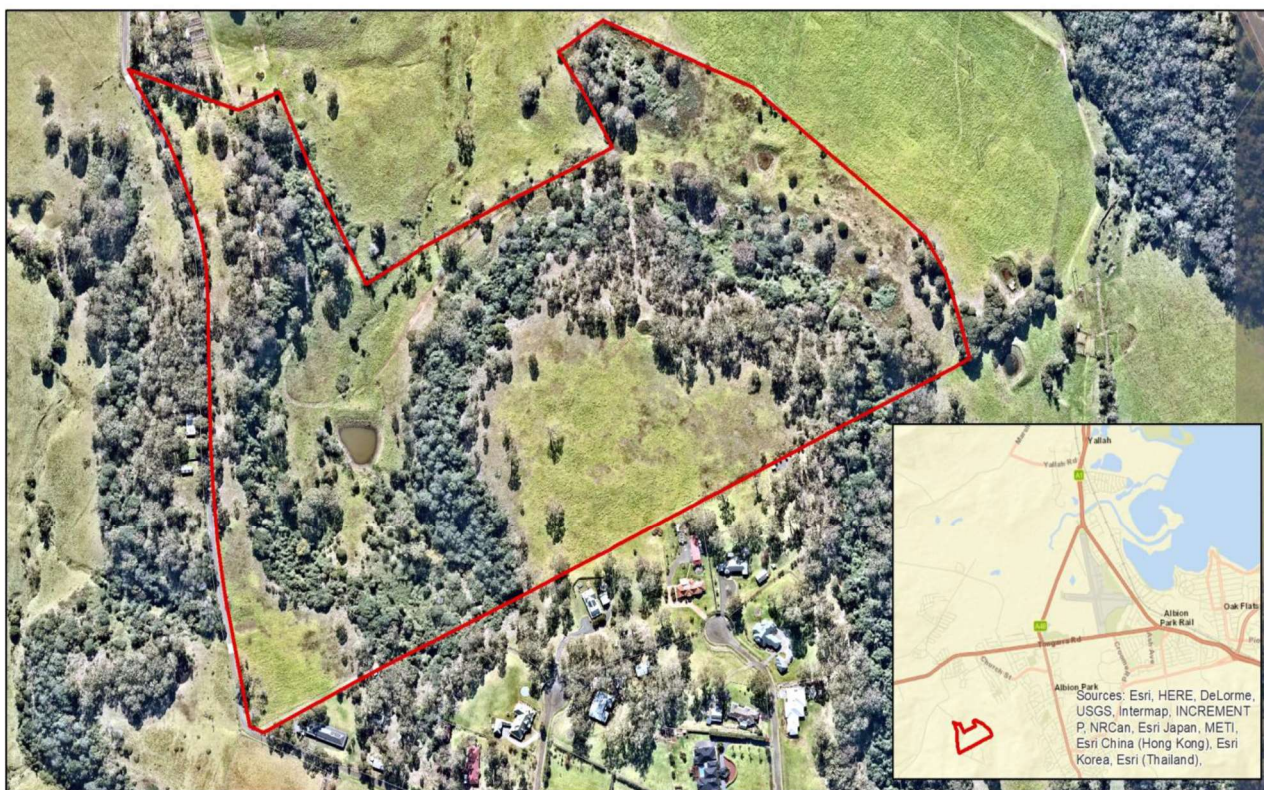


Figure 2: Site map – the site is outlined in red (source: Ecoplanning ecological report).

1.4 Current planning provisions

The site is zoned part 1(a) Rural and part 2(e) Mixed Use Residential under the Shellharbour LEP 2000. A current zoning map is provided at **Attachment C**.

The subject land – along with other land in the Albion Park/Tullimbar area known as the ‘urban fringe’ – was deferred when the Shellharbour LEP 2013 was made to allow investigations into higher residential densities.

The minimum lot size for subdivision and/or a dwelling on the 1(a)-zoned land is 40ha. There is no minimum lot size for the 2(e)-zoned land, although there are average lot sizes/minimum yields identified for Tullimbar in the Shellharbour DCP.

The 2000 LEP does not contain height or FSR controls.

1.5 Proposed planning provisions

The following table summarises existing and proposed provisions:

Provision	Existing	Proposed
Land use zone	2(e) Mixed Use Residential	R2 Low Density Residential E4 Environmental Living
	1(a) Rural	R2 Low Density Residential R5 Large Lot Residential E4 Environmental Living E2 Environmental Conservation
Lot size	2(e) – no MLS	R2 – 300m ² E4 – 2000m ²
	1(a) Rural – 40ha	R2 – 300m ² R5 – 2000m ² E4 – 2000m ² and 4000m ² E2 – N/A
Height of building (HOB)	2(e) – no HOB	R2 - 9.5m E4 – 9.5m
	1(a) Rural – no HOB	R2 – 9.5m R5 – 9.5m E4 – 9.5m E2 – N/A
Local clause	N/A	Despite the minimum lot size, this clause restricts the number of lots fronting Cooby Road to a maximum of eight.

The proposed LEP maps and draft clause are provided at **Attachment D**.

2. INFORMATION ASSESSMENT

Does the proposal seek to amend a zone or planning control that is less than five years old?

No. The land is zoned under the Shellharbour LEP 2000 and was deferred from the Shellharbour LEP 2013 to investigate potential increases in residential densities.

2.1 Strategic merit test

Consistency with the relevant regional plan outside the Greater Sydney region, district plan within the Greater Sydney region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment.

Proponents will not be able to depend on a draft regional, district or corridor/precinct plan when the Minister for Planning and Public Spaces or the Department of Planning, Industry and Environment have announced that such a plan will be updated before being able to be relied on.

Illawarra-Shoalhaven Regional Plan

The regional plan applies to the Shellharbour LGA and was adopted by the Department in 2015.

The proposal states it is consistent with the regional plan and addresses each of the plan's goals:

Goal 1 – A prosperous Illawarra-Shoalhaven

This goal relates mainly to employment and industrial activity in major centres and at Port Kembla, therefore it is not strictly relevant to this proposal. Despite this, the proposal states it will help deliver a prosperous Illawarra by contributing to local economic investment and employment with the construction of roadways and housing.

Goal 2 – A variety of housing choices, with homes that meet needs and lifestyles

The proposal notes that it supports the regional plan's *Direction 2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres*.

Albion Park is identified as an urban centre in the regional plan, and the proposal will enhance housing diversity near Albion Park.

The proponent argues the subject land is well located in terms of access to existing and planned services, jobs and infrastructure and that the proposal will provide housing choice by delivering a range of lot sizes to suit the needs and lifestyles of the community.

Goal 3 – A region with communities that are strong, healthy and well-connected

The proposal notes the development of this area will enhance local connectivity outcomes with the introduction of new local roadways, intersections and pedestrian pathway networks.

Goal 4 – A region that makes appropriate use of agricultural and resource lands

The regional plan identifies biophysical strategic agricultural lands in the region. The subject land does not include any such land or strategic resource lands.

Goal 5 – A region that protects and enhances the natural environment

The proposal notes it will protect and enhance the natural environment by retaining and protecting remnant vegetation within large environmental lots and retaining, protecting and revegetating riparian corridors. Environmental zones will be applied to vegetated lands.

Consistency with a relevant local strategy that has been endorsed by the Department.

There is no relevant local strategy that has been endorsed by the Department.

Illawarra-Shoalhaven Urban Development Program (2016)

The urban development program (UDP) is a NSW Government program for managing land and housing supply in the Illawarra and Shoalhaven. The program monitors the planning, servicing and development of new urban areas.

The land that is zoned 2(e) on the north-eastern part of the site is identified as part of the Tullimbar release area in the UDP. The proposed R2 land on the plateau does not fall within the mapped UDP area. However, the plateau land was identified by Council for potential residential development through the Tullimbar charrette process in 1999 and in the Shellharbour DCP.

Responding to a change in circumstances, such as investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.

Council resolved to defer this land to enable further investigations to identify appropriate residential densities. This planning proposal responds to that resolution.

The proponent notes that development applications for subdivision have been lodged for the land to the north of the subject land and so it will soon adjoin residential development. Infrastructure – including sewer, water and electricity – will be delivered to the edge of the

subject land as part of the development of Tullimbar Estate, which can be extended to service the subject land.

2.2 Site-specific merit test

The natural environment (including known significant environmental values, resources or hazards).

Relevant environmental issues include flooding, biodiversity – including EECs – and bushfire.

The proponent has provided various environmental studies in support of the application, including an ecological constraints assessment, a floodplain risk management plan, a bushfire assessment, an Aboriginal heritage review, a preliminary site investigation (contamination) and a preliminary geotechnical assessment.

The site contains EECs, including Illawarra Lowlands Grassy Woodland and Illawarra Subtropical Rainforest.

The site is mapped as bushfire prone. It contains first and second-order streams.

The areas of the site proposed for R2 Low Density and R5 Large Lot Residential development are generally cleared and have been identified for housing in either the Illawarra-Shoalhaven UDP and/or the Shellharbour DCP.

The proponent advises that the site investigations and concept plan demonstrate the site is suitable for residential and large-lot environmental living.

The existing uses, approved uses and likely future uses of land in the vicinity of the proposal.

The subject land adjoins residential-zoned land to the north and a rural-residential subdivision to the south.

A development application for residential subdivision has been lodged for the land to the north of the subject land, so the property is likely to adjoin residential development in the near future.

The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Infrastructure – including sewer, water and electricity – will be delivered to the edge of the subject land as part of the development of Tullimbar Estate, which can be extended/augmented to service the subject land.

3. COUNCIL VIEWS

On 10 October 2019, the Department wrote to Council advising that a rezoning review application had been received for the Cooby Road, Tullimbar planning proposal. The Department received Council's response on 31 October 2019 (**Attachment E**).

Council confirmed that the proposal and supporting documentation is the same as that being considered by Council.

The proposal has not gone to a Council meeting and so there is no Council resolution on this matter.

Council has provided detailed comments and has indicated general support for the rezoning of the land but has concerns with the potential zones, lot sizes and lot yields in some areas. Council acknowledges that an indicative concept plan provided with the proposal is conceptual only and does not form part of the planning proposal but is of assistance in setting zone and lot size boundaries. The concept plan identifies a lot yield of approximately 137 lots. Council supports controls that will yield approximately 111 lots.

For the purposes of its assessment, Council has broken the area into five precincts. Figure 3 (next page) provides the indicative location of each precinct.



Figure 3: Precincts as identified by Council.

Below is a table identifying the proponent and Council's preferred outcomes:

Precinct	Proponent position	Council position
Precinct 1	<p>Zone – R5 Large Lot Residential</p> <p>Lot size – 2000m² (approx. eight lots)</p> <p>Local clause – N/A</p> <p>Height – 9.5m</p>	<p>Zone – R5 Large Lot Residential</p> <p>Lot size – 2000m² over a reduced area (approx. seven lots)</p> <p>Local clause – restrict number of dwellings</p> <p>Height – 9m</p>
Precinct 2	<p>Zone – R2 Low Density Residential</p> <p>Lot size – 300m² (approx. 49 lots)</p> <p>Height – 9.5m</p>	<p>Zone – R2 Low Density Residential</p> <p>Lot size–300m² (approx 49 lots)</p> <p>Height – 9m</p>
Precinct 3	<p>Zones – E2 and E4</p> <p>Lot size – 4000m² (approx. 10 lots)</p> <p>Local clause – maximum eight lots fronting Cooby Road</p> <p>Height – 9.5m</p>	<p>Zone – E4 only</p> <p>Lot size – To permit only four lots</p> <p>Local clause – maximum four lots</p> <p>Height – 9m</p>
Precinct 4	<p>Zones – E3 and E4</p> <p>Lot size – 4000m² (approx. 14 lots)</p> <p>Local clause – N/A</p> <p>Height – 9.5m</p>	<p>Zone – E3 only</p> <p>Lot size – to permit two lots</p> <p>Local clause – maximum two lots</p> <p>Height – 9m</p>
Precinct 5	<p>Zone – R2 Low Density Residential</p> <p>Lot size – 300m² (approx. 52 lots)</p> <p>Height – 9.5m</p>	<p>Zone – R2 Low Density Residential</p> <p>Lot size – 300m² and 2000m² (approx. 45 lots)</p> <p>Height – 9m</p>

In summary, Council:

- does not support the proposed 9.5m building height but instead prefers a 9m height consistent with other residential development;
- generally supports a mix of zones and lot sizes proposed in precincts 1 and 2;
- does not support the extent of development proposed along Cooby Road in precinct 3 (prefers four dwellings rather than eight as proposed);
- does not support the extent of development in precinct 4 (prefers two lots rather than 14 as proposed); and
- supports the proposed minor changes to the boundaries of residential-zoned land and lot sizes proposed in precinct 5.

ATTACHMENTS

Attachment A – Locality map

Attachment B – Site map

Attachment C – Current zone map

Attachment D – Proposed LEP maps and clause

Attachment E – Council comments on proposal

Attachment F1 – Application form

Attachment F2 – Cover letter – rezoning review request

Attachment F3 – Draft planning proposal

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