

COUNCIL RESOLUTION EXTRACT FROM MINUTES 14 SEPTEMBER 2015

DISCLOSURE OF INTERESTS

Councillor Martin declared a non-significant, non-pecuniary conflict of interest in Items 6 and 7 insofar as she is employed by the Department of Planning and Environment. However, Councillor Martin advised that she does not work on Wollongong-based matters.

CALL OF THE AGENDA

124 **COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor Brown seconded Councillor Connor that the staff recommendations for Items 2, 7, 11 to 13, and 15 to 22 inclusive, be adopted as a block.

ITEM 7 - CALDERWOOD DRAFT PLANNING AGREEMENT

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 124).

COUNCIL'S RESOLUTION –

- 1 The developer be advised that Council is not prepared to accept their current Calderwood draft Planning Agreement offer.
- 2 A draft Section 94 Development Contribution Plan be prepared for the Calderwood Urban Release Area based on the infrastructure costs identified in the report, and exhibited for a minimum period of 28 days. The exhibition include advice that the Wollongong Section 94A Development Contribution Plan would be repealed if the new Plan is made.

ITEM 7 CALDERWOOD DRAFT PLANNING AGREEMENT

The Calderwood Urban Release Area spans across the Shellharbour City Local Government Area (593 hectares) and Wollongong City Local Government Area (107 hectares). The land was rezoned in 2010 by the previous State Government, to permit urban development through State Environmental Planning Policy (Major Developments) 2005. On 23 September 2013, Stage 1 of the development for 231 lots in Shellharbour was approved by the Land and Environment Court.

The proponents have signed a Planning Agreement with Shellharbour City Council concerning the provision of local infrastructure and have requested Wollongong City Council to enter into a Planning Agreement for the provision of local parks and a contribution towards the upgrading of Marshall Mount Road and Yallah Road.

It is recommended that Council not accept the current offer, and prepare a draft Section 94 Development Contribution Plan for the Calderwood Urban Release Area.

RECOMMENDATION

- 1 The developer be advised that Council is not prepared to accept their current Calderwood draft Planning Agreement offer.
- 2 A draft Section 94 Development Contribution Plan be prepared for the Calderwood Urban Release Area based on the infrastructure costs identified in the report and exhibited for a minimum period of 28 days. The exhibition include advice that the Wollongong Section 94A Development Contribution Plan would be repealed if the new Plan is made.

ATTACHMENTS

- 1 Calderwood Location map
- 2 Proposed Yallah Marshall Mount Road network

REPORT AUTHORISATIONS

Report of: Renee Campbell, Manager Environment Strategy and Planning
Authorised by: Andrew Carfield, Director Planning and Environment – Future, City and Neighbourhoods

BACKGROUND

The Calderwood Urban Release Area was historically in the Shellharbour City Local Government Area, around the locality of Calderwood. However, the Urban Release Area was later expanded during the State Government's major project approval process to include land that straddles the local government boundary, which comprises 107 hectares of land in the Wollongong Local Government Area at Marshall Mount (Attachment 1).

In 2009, Calderwood was declared a State Significant Project under the State Environmental Planning Policy (SEPP) (Major Development) 2005. In January 2011, the Calderwood Urban Release Area was included as a State Significant Site in Schedule 3 – Part 28 of the SEPP. The SEPP rezoned the land to permit urban development, and removed the planning controls from both Councils local planning instruments. The SEPP applies to 107 hectares of land in Wollongong and 593 hectares in Shellharbour City Council area (Attachment 1).

The rezoning of the precinct, and its inclusion in the SEPP, was not supported by either Wollongong or Shellharbour Councils as:

- the proposal was inconsistent with the Department of Planning's Illawarra Regional Strategy (2007);
- the precinct contains valuable agricultural land on the floodplain;
- the precinct has significant flood constraints;
- the precinct has a high scenic value;
- the land within Wollongong was not identified for development as part of the West Dapto investigations due to its constraints and scenic values;
- development would impact on infrastructure provision and servicing of West Dapto, Tullimbar and other release areas;
- the rezoning removed local planning control by the Councils; and
- development would impact on the localities of Marshall Mount and Yallah, especially Marshall Mount Road.

Between 14 April 2010 and 11 June 2011, the NSW Department of Planning and Infrastructure exhibited:

- Concept Plan for the entire development (MP-2009/82) (similar to a master plan) proposing 4,800 dwellings; and
- Project Application for Stage 1, proposing the development of 320 residential lots within the Shellharbour City Council area.

On 8 December 2010, the NSW Department of Planning and Infrastructure approved the Concept Plan (MP-2009/82), with amendments. Shellharbour City Council, with financial support from Wollongong City Council, lodged a Class 4 Action in the Land and Environment Court challenging this determination. In February 2012, the Court upheld the Concept Plan and it remains in place.

On 14 September 2011, the NSW Department of Planning and Infrastructure submitted a report to the Planning Assessment Commission recommending that the project approval for Stage 1 be approved (MP-2009/83). Council made representations to the Planning Assessment Commission at its public meeting on 27 October 2011, and in further submissions and meetings. On 17 April 2012, the Planning Assessment Commission refused the Project Application. In summary, the Planning Assessment Commission found that:

- *The proposal was inconsistent with the Illawarra Regional Strategy and will adversely impact on the orderly development of land in the Illawarra Region;*
- *the proposal will adversely impact on the planned provision of key social and physical infrastructures to service the area; and*
- *the proposal did not adequately demonstrate that:*
 - *filling in high hazard flood areas is a sustainable approach to providing land for residential purposes;*
 - *the significant landform modifications will not adversely affect flood behaviour;*
 - *the development will not adversely affect the environment;*
 - *the proposal will not significantly increase the requirements for emergency services in time of flood; and*
 - *the proposal is unlikely to result in any substantial long-term social and economic impacts to the community as a result of increased flood levels.*
- *local infrastructure contributions have not been adequately dealt with under the provisions of a comprehensive Section 94 contributions strategy and plan;*
- *not all relevant information supporting the proposal was exhibited to enable meaningful public participation; and*
- *there was no publicly exhibited and endorsed Development Control Plan for the area to guide development.*

On 31 May 2012, the developer lodged an appeal to the Land and Environment Court against the Planning Assessment Commission refusal.

On 25 June 2012, Council resolved to prepare a draft Planning Proposal to remove Calderwood from the Major Projects SEPP and apply the Wollongong LEP 2009 and zone the land from the urban zones back to rural and environmental protection zones. The Planning Proposal was refused by the NSW Department of Planning through the Gateway process.

On 23 September 2013, the Court upheld the developer's appeal, and a modified Stage 1 development for 231 lots was approved. These lots are required to pay a Section 94 contribution of \$2,891.10 per lot to Shellharbour City Council and \$1,320 per lot to Wollongong Council (a total of \$304,920).

On 11 November 2013, Wollongong City Council and Shellharbour City Councils requested the Minister for Planning to declare Calderwood an Urban Release Area for the purpose of capping Section 94 Development Contributions, similar to West Dapto. The (then) Director-General of the (then) Department of Planning and Infrastructure responded on 4 March 2014 advising that:

My agency will soon make recommendations to the Minister for Planning and Infrastructure, the Hon Brad Hazzard MP, on the way forward for local infrastructure contributions at Calderwood. Part of those recommendations will be advice on the application of the local infrastructure contribution cap to Calderwood.

No further advice has been received from the Department.

Subsequently, in 2014 Shellharbour City Council exhibited a draft Section 94 Plan to which the developer objected. The developer and Shellharbour City Council then signed a Planning Agreement for development contributions to Shellharbour City Council. The agreement also applies to land within the Wollongong LGA, although Wollongong City Council is not a party to the agreement. The Shellharbour agreement requires a contribution (no matter whether in Wollongong or Shellharbour) of between \$3,310 to \$4,810 per dwelling to Shellharbour City Council. The developer will also construct the road network, parks, sporting facilities and a community facility within the Shellharbour City Council area.

On 25 November 2014, consultants for the developer lodged DA-2014/1480 with Council for the consolidation and re-subdivision of 5 lots within the Wollongong part of Calderwood into 2 lots and 1 super lot. The 5 lots straddle the LGA boundary and are partially in both Council areas.

The application was refused on 10 June 2015. The application included a request to enter into a Planning Agreement. The draft Planning Agreement has been progressed separately to the Development Application and requires a determination from Council.

Lend Lease have now lodged DA-2015/149 with Shellharbour City Council for Stage 2A comprising 234 lots. Shellharbour City Council have sought advice from Wollongong City Council as to how the local infrastructure contributions payable to Council should be considered. The Land and Environment Court judgement applied to Stage 1 although could be used to guide contributions for future stages. There is a risk that Stage 2A could be approved without any local infrastructure contribution condition relating to Wollongong. Based on the Stage 1 conditions this equates to \$308,880.

In summary, the current status of the land and proposed urban release project is:

- Calderwood is zoned under the SEPP (Major Developments) 2005, and permits urban development;
- The Concept Plan (MP-2009/82) (similar to a master plan) is approved;
- The Project Approval for Stage 1 (231 residential lots) within Shellharbour City Council LGA has been approved;
- The developer and Shellharbour City Council have signed a Planning Agreement for development contributions to Shellharbour City Council, covering the entire release area (including Wollongong LGA); and
- Shellharbour City Council is currently assessing DA-2015/149 for Stage 2A comprising 234 lots.

PROPOSAL

A Planning Agreement is a voluntary agreement between Council and a developer which specifies the contribution a developer will make towards a public purpose in lieu of the Section 94/94A Contribution Plan applying to the land. The planning agreement can specify a monetary contribution, the works to be undertaken, the dedication of land, or a combination of contributions.

As part of DA-2014/1480 for the consolidation and re-subdivision of 5 lots within the Wollongong part of Calderwood into 2 lots and 1 super lot, Lend Lease have submitted a draft Planning Agreement for Council's consideration. The draft Planning Agreement is the same proposal that was discussed with Councillors at a briefing session in 2013. The draft Planning Agreement proposes the following local infrastructure within Wollongong:

| | | Size (ha) | Design & Construct | 3 Year Maintenance | Land Cost | Total |
|-------------------|-----------------------|--------------|-----------------------|-----------------------|--------------------|---------------------|
| Open Space | | | | | | |
| | Local Park 1 | 0.3 | \$150,000 | \$16,000 | \$924,000 | \$1,090,000 |
| | Local Park 2 | 0.3 | \$150,000 | \$16,000 | \$924,000 | \$1,090,000 |
| | Local Park 3 | 0.3 | \$150,000 | \$16,000 | \$924,000 | \$1,090,000 |
| | District Park "creek" | 1 | \$750,000 | \$16,000 | \$1,383,200 | \$2,149,200 |
| | City Park "heritage" | 1.3 | \$985,000 | \$46,000 | \$4,034,800 | \$5,065,800 |
| | Sub total | 3.2 | \$2,185,000 | \$110,000 | \$8,190,000 | \$10,485,000 |
| Roads | | | | | | |
| | Marshall Mount Road | | \$5,702,400 | | | \$5,702,400 |
| | Yallah Road | | \$633,600 | | | \$633,600 |
| | Sub total | | \$6,336,000 | | | \$6,336,000 |
| Total | | | \$8,521,000 | \$110,000 | \$8,190,000 | \$16,821,000 |

It is noted that the three local parks have a land acquisition value of \$3.08 million/hectare which appears excessive. Council's valuers have advised that the englobo rate for urban land is at \$0.5 million/hectare. There is no detailed design for the parks or roads.

For the open space component, a contribution of \$2,184.38 per dwelling is proposed (\$10.485 million / 4,800 lots within both Council areas).

For the local roads component, the following schedule is proposed (taking into account the Court judgment), which averages at \$1,350 per lot.

| | No Lots | Rate | Contribution |
|--|--------------|---------|--------------------|
| 1st 231 dwellings (L&E Court approved) | 231 | \$1,320 | \$304,920 |
| 232-1000 dwellings | 769 | \$500 | \$384,500 |
| 2nd 1000 dwellings | 1000 | \$928 | \$928,000 |
| 3rd 1000 dwellings | 1000 | \$1,356 | \$1,356,000 |
| 4th 1000 dwellings | 1000 | \$1,783 | \$1,783,000 |
| Any further dwellings | 800 | \$2,211 | \$1,768,800 |
| Total | 4800 | | \$6,525,220 |
| | Average Rate | \$1,350 | |

In total, an average contribution of \$3,438.67 per lot is proposed, which equals \$16.5 million for the entire 4,800 lot development.

The Land and Environment Court judgement for Stage 1 considered in detail the traffic volumes, road standards and costing for Yallah Road and Marshall Mount Road. The Court preferred Council's traffic analysis, but the developer's road and bridge designs and costings. The proponent has used the Stage 1 judgement as the basis for contribution funding for all future stages.

From Council officers' view there are a number of shortcomings with the Court judgement:

- The development of Yallah – Marshall Mount was not considered. Yallah was regarded as a rural area, as Council had at that time not approved the draft Planning Proposal for exhibition;
- The cumulative effect of both Yallah – Marshall Mount and Calderwood on traffic volumes and road design was not considered. Therefore a 2 lane road (not 4 lane) road design was considered;
- The Duck Creek Flood Study and Floodplain Risk Management Study and Plan were still in preparation – so the flood levels were not known, and the required bridge lengths were not known; and
- The West Dapto Section 94 Development Contribution Plan had not included a "flood access" route for Yallah – Marshall Mount.

As part of the finalisation of the draft Planning Proposal for Yallah-Marshall Mount preliminary concept designs for Yallah Road (including realignment at the M1 Albion Park bypass), Marshall Mount Road, Road 8 (link from Yallah Road to Avondale Road) and the "Marshallvale" Local Bypass Road were prepared. The concepts suggested a significant increase to the cost of delivering Yallah-Marshall Mount and the West Dapto Release Area. On 9 March 2015, Council resolved to defer the finalisation of the Yallah-Marshall Mount Planning Proposal, pending a further review of infrastructure requirements. The local infrastructure review is being reported separately to Council on 14 September 2015.

As part of the consideration of the draft Calderwood Planning Agreement, consideration needs to be given to how much of the infrastructure cost is attributable to the Calderwood development. In terms of dwelling numbers, Yallah-Marshall Mount is proposed to contain some 4,000 dwellings (subject to finalisation) and the ultimate Calderwood 7,700 (including Lend Lease current urban release project of 4,800 lots). Only some of the traffic from Calderwood will use the Wollongong local road network, with the first stages being accessed via the Illawarra Highway, and connections to Albion Park and the M1. The roads within Wollongong will all need to be built/upgraded without Calderwood; however the traffic volumes will increase when Calderwood is included.

As noted, the Court preferred Council's traffic volumes splits for the contribution of Calderwood traffic on Wollongong's local roads, as follows:

- Marshall Mount Road between proposed link road and Yallah Road (section 22) set at 46%;
- Marshall Mount Road between Yallah Road and TAFE (section 23) set at 27%;
- Marshall Mount Road between TAFE and Huntley Road (section 24) set at 26%; and Yallah Road (section 25) set at 26%; and
- Yallah Road (section 25) set at 26%.

Council's Traffic Engineers have reviewed these splits based on the updated data incorporated into the 2036+ Tracks model.

In summary, the infrastructure review estimates the local road costs to be:

| | Council's Portion of Total Cost Estimate | Ultimate Calderwood % 2036+ | Calderwood Cost Estimate (7,700 lots) | Lend Lease Calderwood (4,800 lots) |
|--|---|--|--|---|
| Yallah Road (Marshall Mount Road to Local Access Road) | \$8.55m | 0% | \$0 | \$0 |
| Yallah Road (east of Local Access Road to Princes Highway) | \$9.41m | 22% | \$2.07m | \$1.29m |
| Marshall Mount Road (south of North Marshall Mount Road) | \$20.07m | 89% | \$17.86m | \$11.13m |
| Marshall Mount Road (south of Yallah Road to North Marshall Munt Road) | \$16.13m | 9% | \$1.45m | \$0.90m |
| Marshall Mount Road (north of Yallah Road) | \$7.64m | 9% | \$0.69m | \$0.43m |
| Road 8 (Yallah Road – Avondale Road) | \$41.5m | 36% | \$14.99m | \$9.31m |
| Local Access Road | \$28.18m | 68% | \$19.16m | \$11.95m |
| Yallah Road – Princes Highway Interchange | Not costed | | | |
| Total | \$131.48m | | \$56.17m | \$35.02m |

The Lend Lease Calderwood share of the estimated road costs (\$35.02m) is significantly higher than the developers share of the estimates submitted in the draft Planning Agreement (\$6.336m). Accordingly, it is recommended that Council not support the draft Planning Agreement and pursue another option to recover the Calderwood share of contributions.

Options:

- 1 Support the progression of the draft Planning Agreement (an average of \$3,438.67 per lot for a total contribution of \$16.5 million) to exhibition.
- 2 Not support the progression of the current draft Planning Agreement and seek to negotiate improved terms, noting that the current offer is the same as the 2013 offer.

- 3 Not support the progression of the draft Planning Agreement. The Wollongong Section 94A Development Contributions Plan (1% levy) will continue to apply to the site. Based on the stated value of development in the Major Project application of \$410 million, on a pro-rata basis, the estimated Wollongong proportion is some \$68.3 million. A 1% contribution would equate to \$0.683 million. It is noted that a portion of the contribution would be paid by the developer as part of the residential subdivision of the land, and there would be a contribution for each dwelling with a value over \$100,000.
- 4 Not support the progression of the draft Planning Agreement and prepare an amendment to the West Dapto Development Contributions Section 94 Plan to apply to the precinct (and concurrently remove the Wollongong Section 94A Development Contributions Plan). The boundaries of the West Dapto Section 94 Plan could be extended to apply to Calderwood Release Area (within the Wollongong LGA). Council could then apply a contribution of:
 - a \$20,000 per lot, resulting in a total contribution of \$16 million (based on the 800 lots in Wollongong); or
 - b \$30,000 per lot if the Department of Planning and Environment declare Calderwood to be an urban release area under Section 94EE of the Environmental Planning and Assessment Act 1979, resulting in a total contribution of \$24 million (based on the 800 lots in Wollongong); or
 - c Seek a contribution greater than \$30,000 per lot if supported by the Independent Pricing and Regulatory Tribunal (IPART). This option will be considered by the West Dapto Section 94 review.
- 5 Not support the progression of the draft Planning Agreement and prepare a separate Section 94 Development Contributions Plan for Calderwood (and concurrently remove the Wollongong Section 94A Development Contribution Plan), to seek contributions payable towards the provision of local infrastructure in the Wollongong LGA. **RECOMMENDED**

PLANNING AND POLICY IMPACT

Illawarra Regional Strategy and Draft Illawarra Regional Group and Infrastructure Plan (2014)

The West Dapto Release Area is identified in the Illawarra Regional Strategy (2007) as a regionally significant urban release area.

Wollongong Community Strategic Plan 2022

This report contributes to a number of Wollongong 2022 objectives as the West Dapto Section 94 plan is aligned with the Capital Works Program, which contributes to the funding required to meet the Delivery Program.

It specifically delivers on core business activities as detailed in the Land Use Planning Service Plan 2015-16.

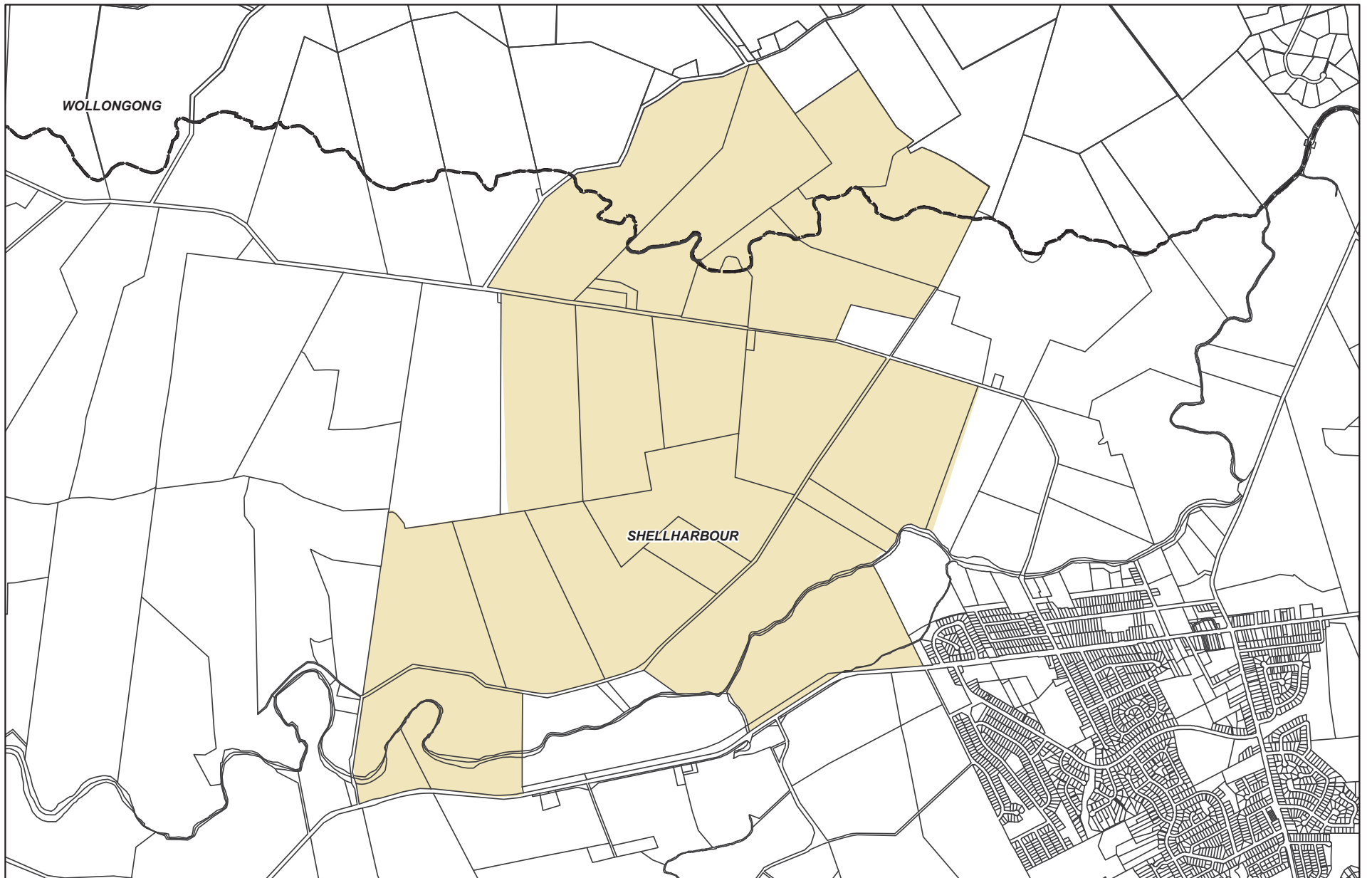
FINANCIAL IMPLICATIONS

The financial implications are discussed under options.

CONCLUSION

The proponents of the Calderwood Urban Release Area have requested Council to enter into a Planning Agreement for the provision of local parks and a contribution towards the upgrading of Marshall Mount Road and Yallah Road.

It is recommended that Council not accept the offer, as it does not reflect the impact and demand Calderwood will have on the Wollongong road network. It is recommended that Council resolve to prepare a separate Section 94 Development Contributions Plan for the Calderwood Urban Release Area to collect contributions towards the provision of local infrastructure within the Wollongong LGA.



Legend

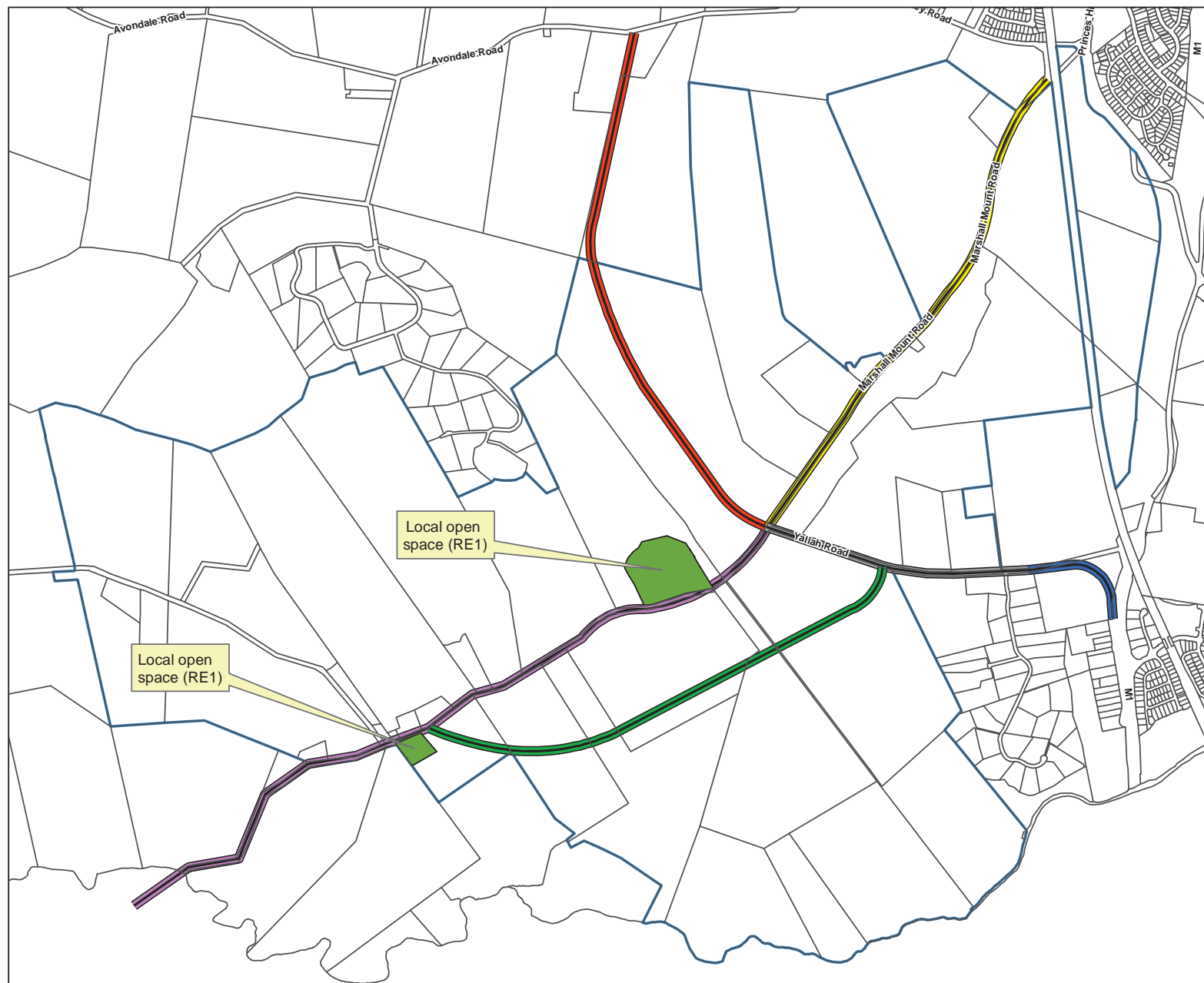
 SEPP - Calderwood

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Main Roads and Open Space

Legend

- Active Open Space
- Internal Link Rd
- Marshall Mt Road Nth
- Marshall Mt Road Sth
- Road No. 8
- Uncosted Road
- Yallah Road
- Stage 5 Boundary



0 520
Meters

Scale 1:16000 @ A3

Drawn By: J Lewis

Date: 24.08.15

Gis ref: MainRoads_OpenSpace 240815.mxd