

## ITEM 1 PUBLIC EXHIBITION - WEST DAPTO MINOR AMENDMENTS PLANNING PROPOSAL

Since the rezoning of the West Dapto Urban Release Area, several minor issues have arisen, requiring changes to the provisions of Wollongong Local Environmental Plan 2009. This Planning Proposal seeks to make minor amendments to the various clauses and Maps relating to West Dapto to clarify the intent of clauses and improve the delivery of housing and environmental outcomes. This report recommends that a Planning Proposal be prepared and exhibited to progress the amendments.

### RECOMMENDATION

- 1 A Planning Proposal be prepared to amend Wollongong Local Environmental Plan 2009 for the West Dapto Release Area to:
  - a Amend Clause 4.1B Lot Averaging clause.
  - b Amend the Land Zoning Map to make minor changes to the C2 Environmental Conservation zoning boundaries, along with consequential amendments to the Floor Space Ratio, Minimum Lot Size and Height of Buildings Maps, as outlined in the report.
  - c Amend the Land Reservation Acquisition Map to reflect the revised road design corridors.
  - d Amend the Natural Resources Sensitivity – Biodiversity Map and Clause 7.2 Natural resource sensitivity - biodiversity
- 2 The Planning Proposal request be referred to the NSW Department of Planning, Housing and Infrastructure for a Gateway Determination.
- 3 Following the Gateway Determination, the Planning Proposal be exhibited for a minimum period of 28 days.
- 4 The NSW Department of Planning Housing and Infrastructure be requested to issue authority to the General Manager to exercise plan making delegation in accordance with Council's resolution of 26 November 2012.

### REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

### ATTACHMENTS

- 1 Location Plan
- 2 Wollongong Local Planning Panel Minutes 31 October 2022
- 3 Existing and Proposed Planning Proposal Maps

### ACRONYMS USED IN REPORT

Abbreviation	Meaning
<b>DCP</b>	Wollongong Development Control Plan 2009
<b>DPHI</b>	NSW Department of Planning, Housing and Infrastructure
<b>LEP</b>	Wollongong Local Environment Plan 2009
<b>WDURA</b>	West Dapto Urban Release Area

### BACKGROUND

#### Strategic Context

Stages 1 and 2 of the West Dapto Urban Release Area (WDURA) were rezoned in 2010. The Yallah-Marshall Mount precinct is also known as Stage 5 of the WDURA and was rezoned for urban purposes and conservation outcomes in June 2018.

The precinct is situated on the lower slopes of the Illawarra Escarpment and has a total area of 1,005 hectares. The precinct has historically been used for grazing and cattle farming. The precinct is made up of cleared grasslands and remnant trees with a mostly cleared understory. Portions of the precinct are vegetated, including the presence of Endangered Ecological Communities. The Duck Creek and a number of smaller riparian corridors run through the precinct.

Surrounding development consists of rural properties, with Shellharbour Local Government Area and the Calderwood release area to the south, rural lands to the west and proposed Stages 3 and 4 of the West Dapto Urban Release area to the north. Access to the precinct is currently off Calderwood Road to the southwest, Yallah Road to the east and Marshall Mount Road to the north.

The precinct has the zoned capacity for approximately 4,260 lots / dwellings. Council has approved three Neighbourhood Plans for the Elm Park, Iowna, Marshall Vale / Duck Creek precincts (total of 1,603 lots / dwellings). A concept development application for the Woodville Neighbourhood (1,600 lots / dwellings) has also been approved. Council has also prepared the Marshall Mount Town Centre master plan.

While the process of Neighbourhood Planning and infrastructure planning within the precinct have been underway, some minor issues have been noted that require amendment/adjustment to the planning controls to assist the orderly implementation of development within the precinct (Attachment 1).

## PROPOSAL

The Planning Proposal request seeks to make minor amendments to various clauses and maps to improve the operation and implementation of the LEP to facilitate housing and environmental outcomes.

### **1 Amend Clause 4.1B – Lot Averaging Clause, within the Yallah-Marshall Mount precinct (West Dapto Urban Release Area Stage 5)**

Wollongong LEP 2009 Clause 4.1B Lot averaging was prepared to enable some flexibility in subdivision design, to allow some lots to be smaller than the minimum lot size and others larger. The clause states:

#### **4.1B Lot averaging subdivision in Zone RU2, Zone C3 and Zone C4**

- 1) *The objective of this clause is to ensure that lot sizes and subdivision patterns for residential accommodation conserve and provide protection for the environmental values of the land by encouraging buildings to be appropriately sited.*
- 2) *This clause applies to the following land in the Yallah-Marshall Mount Precinct shown on the Urban Release Area Map -*
  - (a) *land within the following zones -*
    - (i) *Zone RU2 Rural Landscape,*
    - (ii) *Zone C3 Environmental Management,*
    - (iii) *Zone C4 Environmental Living,*
  - (b) *Lot 5, DP 24143, being 297 Marshall Mount Road, Marshall Mount.*
- 3) *Despite clauses 4.1 and 4.1AA, development consent may be granted to the subdivision of land to which this clause applies that requires development consent (whether or not the subdivision is under the Community Land Development Act 1989) to create lots of any size if -*
  - (a) *the consent authority is satisfied that the land to be subdivided is proposed to be used for the purpose of residential accommodation, and*
  - (b) *the total number of lots resulting from the subdivision will not exceed the number of lots that could be created by a subdivision of the same land under clause 4.1 (3) or 4.1AA (3), and*
  - (c) *the consent authority is satisfied that the development retains, and is complementary to, the environmental attributes of the land and its surrounds, and*
  - (d) *in the case of Lot 5, DP 24143—an existing dwelling house will be located on each lot resulting from the subdivision.*

- 4) *Despite any other provision of this Plan, development consent must not be granted to the subdivision of a lot created under this clause unless the consent authority is satisfied that -*
- (a) the lots resulting from the subdivision will not be used for the purpose of residential accommodation, and*
  - (b) the subdivision will not result in any significant adverse environmental impacts on the land being subdivided.*

A review of the clause was initiated as a result of a pre-lodgement meeting, where a proposed development intended to apply the lot averaging clause with potential inappropriate outcomes, as the resulting lots were mostly well below the appropriate size and would not reflect the intended outcomes within the zone. On that site a minimum 4,999sqm Minimum Lot Size applied and some of the proposed lots were as small as 801sqm, which would have resulted in a different character and infrastructure requirements. The pre-lodgement meeting has not resulted in a development application. To-date the clause has not been used.

Council officers propose to amend the clause to specify a maximum variation of 20 percent below the minimum lot size to address this issue. Subclause (4) is proposed to be amended to include a maximum percentage for variation below the minimum lot size (20 percent), by adding point (c) to Clause 4.1B(4) (red font) to read -

- 4) *Despite any other provision of this Plan, development consent must not be granted to the subdivision of a lot created under this clause unless the consent authority is satisfied that -*
- (a) the lots resulting from the subdivision will not be used for the purpose of residential accommodation, and*
  - (b) the subdivision will not result in any significant adverse environmental impacts on the land being subdivided, and*
  - (c) The subdivision will not result in any lot being less than 20% below the stated minimum lot size for that land.*

The Wollongong Local Planning Panel suggested that if the clause was not operating as Council had intended, and if it had not been used, there was also the option to delete the clause to prevent its potential misuse. This option was considered, however is not supported as there are some parcels of land within the Yallah-Marshall Mount precinct that will need the clause in order to be efficiently and developed due to site constraints.

## 2 Road Reserves

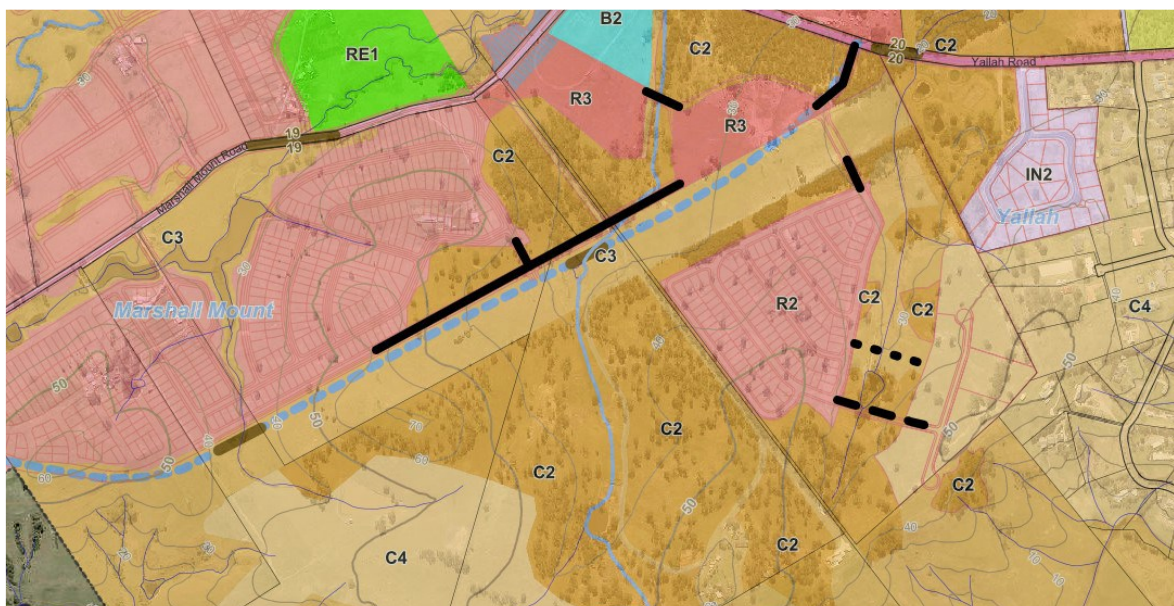
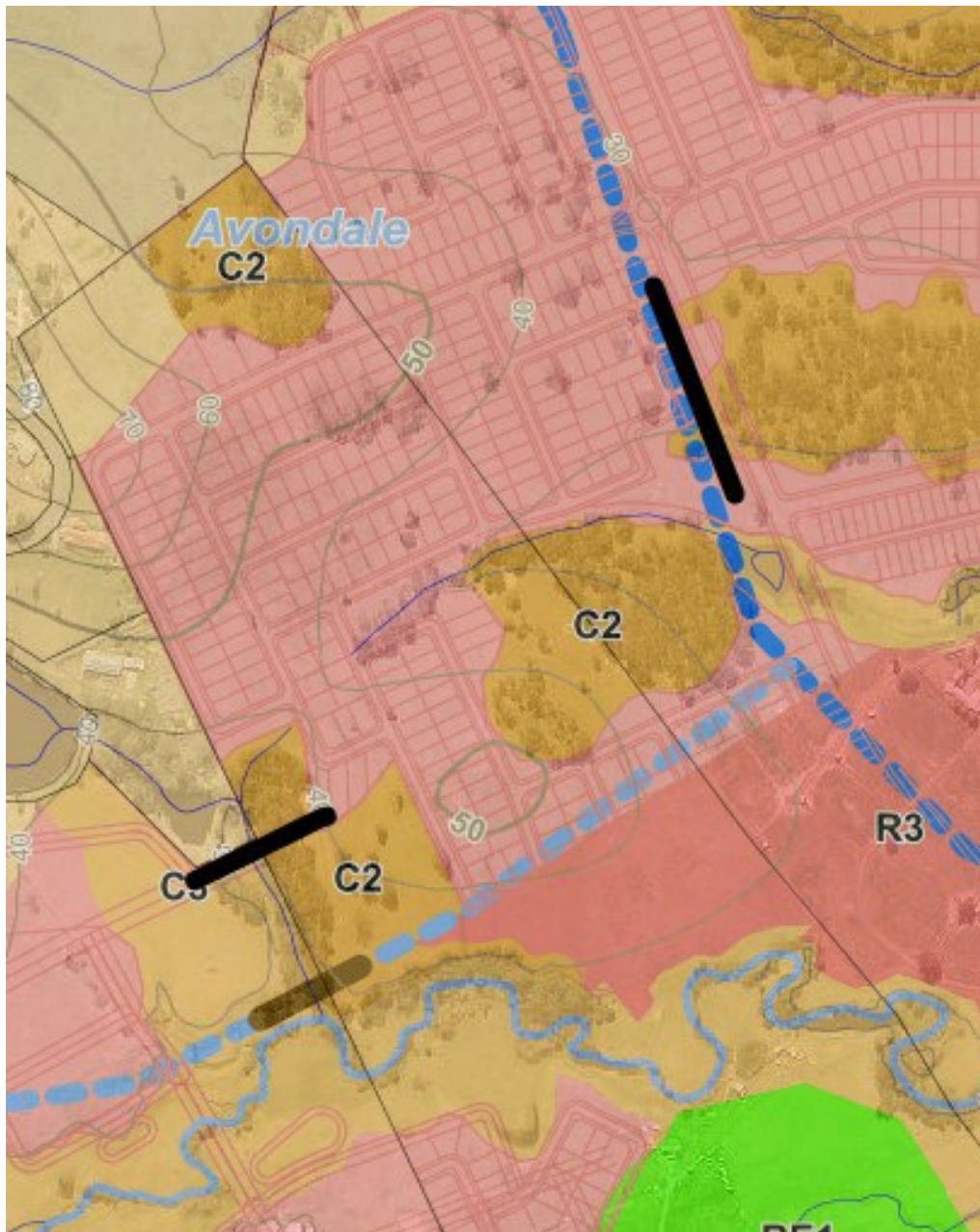
In 2018 Council exhibited a Planning Proposal (PP-2018/5) that included a proposal to rezone collector road corridors to SP2 Infrastructure – Road Reserve (see map below). This aspect of the Planning Proposal (Map Amendment 2) was subsequently deferred, as the road designs were under review.

It is proposed to recommence this aspect of the Planning Proposal. While the Detailed Designs have not been finalised, the 80% Concept Designs enable the Land Reservation Acquisition Map to be updated to detail where land is required for roads and the widening of existing roads. The maps will assist in making Council's intentions clearer to landholders and developers, and facilitate land acquisition or dedication for the construction of the roads.

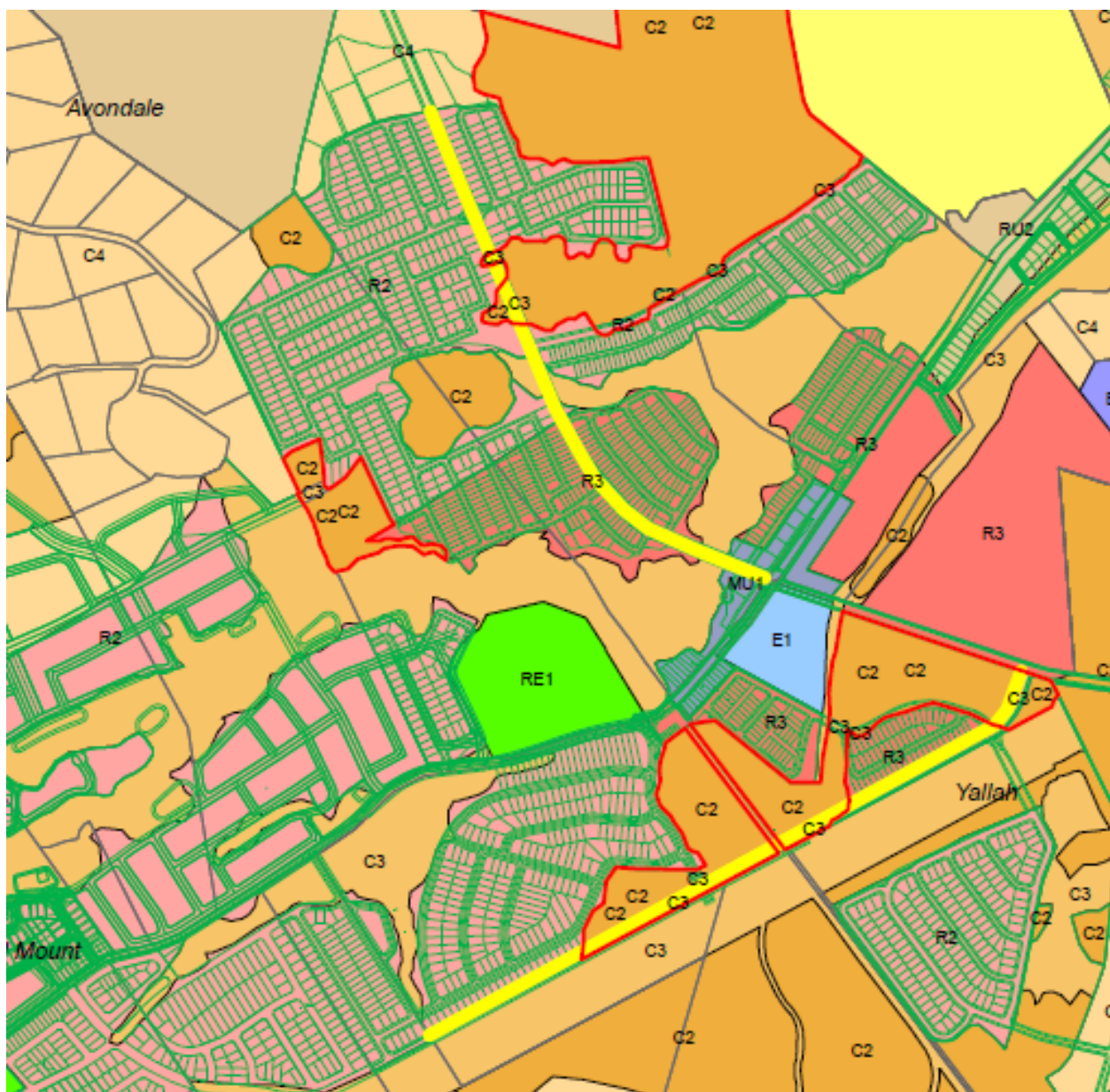
Additionally, it has been identified that a number of local road corridors are proposed through land zoned C2 Environmental Conservation, where roads are prohibited. To enable the linking of development areas, these road corridors need to be rezoned.

Some examples shown below -









Rezoning proposed road reserves will streamline the approvals process within the new release area to reflect the access arrangements within the adopted structure plan. Inclusion of the “missing” areas for land acquisition would assist in making Council’s intentions clearer to landholders and developers. The mapping in Attachment 3 is based on the 80 percent design work and will be subject to amendment as the Planning Proposal progresses.

The Wollongong Local Planning Panel supported this amendment.

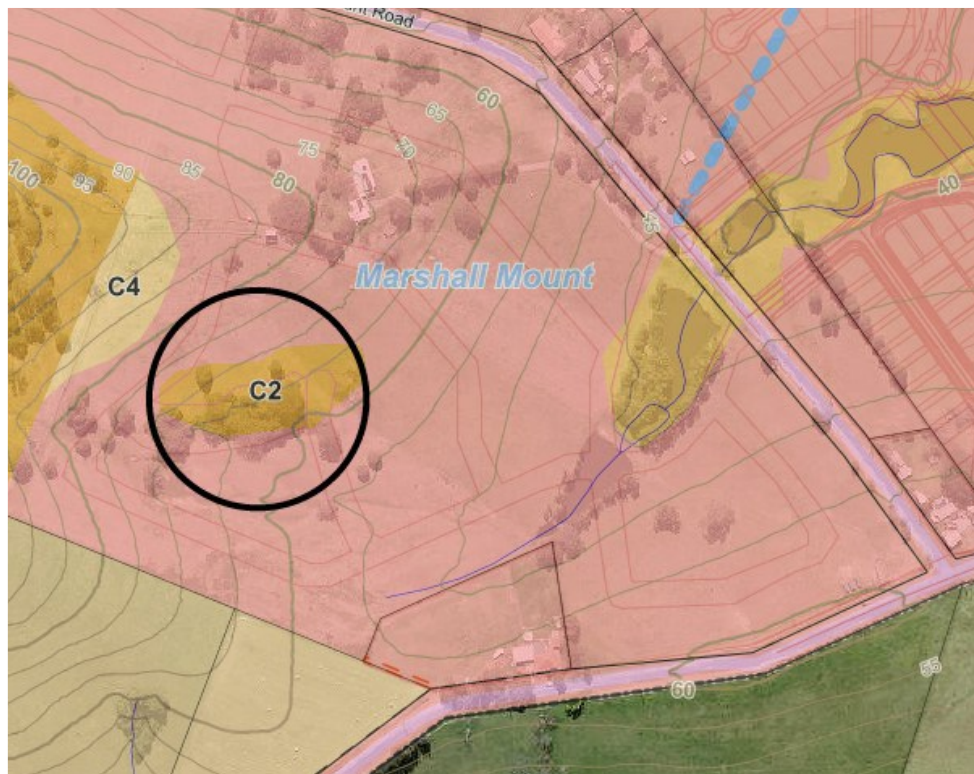
### 3 Minor Rezoning

During the consideration and assessment of draft Neighbourhood Plans, several minor zoning issues have been identified as part of more detail assessment.

#### **a 27 North Marshall Mount Road, Marshall Mount**

The C2 Environmental Conservation zone – does not accurately reflect the vegetation stand or the watercourse. It should be shifted southwest and changed to C3 Environmental Management zone to also facilitate other uses.



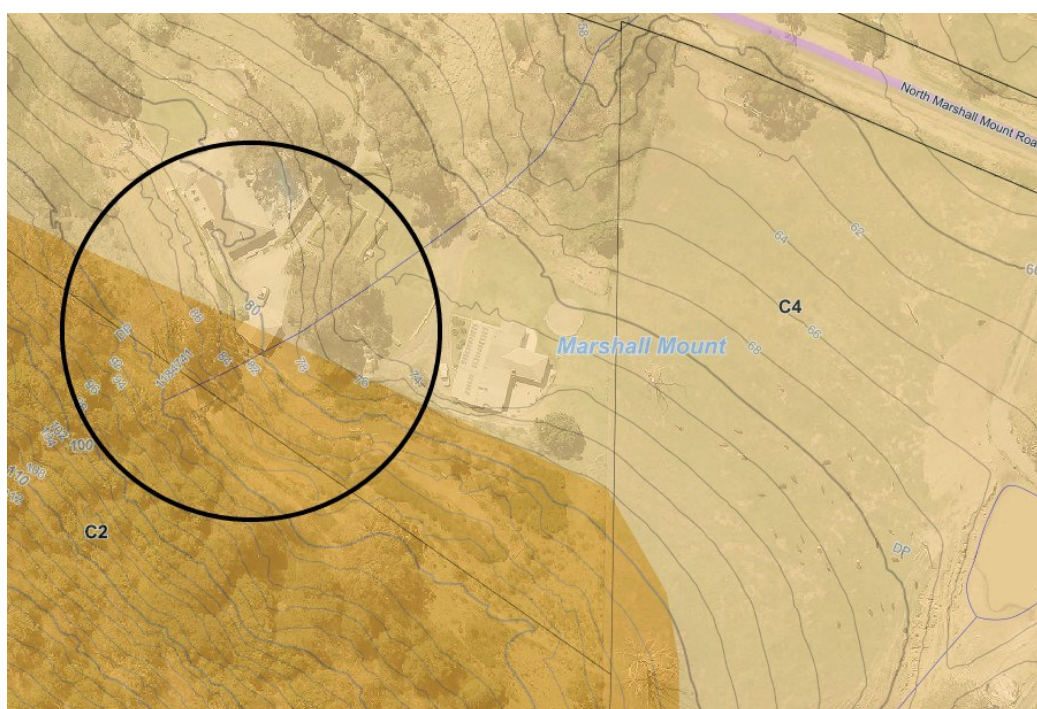


The Wollongong Local Planning Panel supported the amendment to the C2 zone but did not consider the proposed rezoning of the C4 land to R2. It is considered that this additional amendment is minor and does not need to be reported to the Panel for advice. The Department's 2018 delegation to Council allows the General Manager to determine that minor matters can be reported to Council without the advice of the Panel.

The proponent for this land has recently lodged a Planning Proposal request for the site, proposing the RE1 Public Recreation zone for the revised C2 zoned area, due to delays with the Council-led Planning Proposal. This proposal is still on preliminary exhibition at the time of reporting. If the Council-led amendment is supported, it provides the proponent with the opportunity to make a submission to this planning proposal and withdraw their request, or continue to progress their recently lodged proposal.

**b 43 North Marshall Mount Road, Marshall Mount**

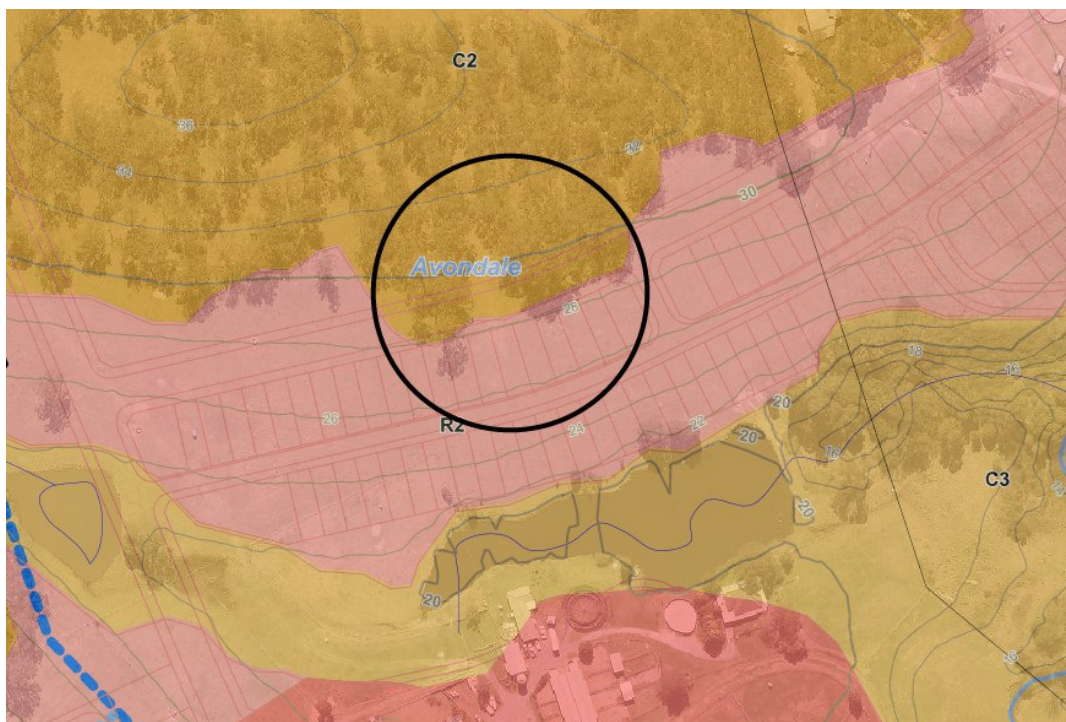
A more detailed review of the C2 Environmental Conservation zone identified that it includes a shed and farmed land and gardens. It is proposed to rezone the C2 Environmental Conservation zone to C4 Environmental Living to align with the property boundary to the south, with consequential amendments to the Floor Space Ratio, Minimum Lot Size and Height of Buildings Maps.



**c 240 Marshall Mount Road, Marshall Mount**

A more detailed review of the C2 Environmental Conservation zone identified that the zone boundary reflects shadows of trees, rather than the vegetation boundary. It is proposed to rezone the C2 Environmental Conservation zone to R2 Low Density Residential to align with the approved concept plan boundary, with consequential amendments to the Floor Space Ratio, Minimum Lot Size and Height of Buildings Maps.





**d Amend Clause 7.2 Natural Resources Sensitivity – Biodiversity map – West Dapto**

The Natural Resource Sensitivity – Biodiversity map is used to identify significant vegetation and flora and fauna habitats. Clause 7.2 of WLEP applies to land identified on the Natural Resource Sensitivity – Biodiversity map. The clause requires that development consent must not be granted for development on mapped land unless the consent authority is satisfied that the development has been designed, sited and managed to avoid adverse environmental impact and mitigates residual adverse impact through restoration of any existing disturbed or modified area on the site. As part of the Development Application assessment process for subdivision, with the benefit of more detailed, ground-truthing information such as ecological surveys, an evaluation of the biodiversity values of the land is undertaken in the context of the proposed subdivision layout. In some cases, it is found that the mapping did not accurately reflect biodiversity values. In others, the consent may authorise the clearing of some mapped vegetation. If this evaluative process is done in accordance with clause 7.2, the impacts to the biodiversity values during construction to create new lots or other urban infrastructure should be offset through the restoration of other parts of the site.

In either case, any removal of vegetation or loss of biodiversity values, should be reflected through updates to LEP mapping. To date, these updates have not been occurring, resulting in a mismatch between values on the ground and the values indicated by the map. This becomes problematic post subdivision when, notwithstanding that the vegetation has been cleared, new landowners can't undertake Complying Development for a house, pool, spa, etc.

An example of this issue (from West Dapto, Stage 1) is shown below –





It is proposed that Council amend the Natural Resources Biodiversity – Sensitivity mapping, to remove the affectation from developed properties, where an adopted Neighbourhood Plan is in force that identifies the land for intensive forms of development – such as the development anticipated in Residential, Commercial and Industrial zones. Such amendments would not apply to Conservation zones.

Amending the Natural Resources Sensitivity – Biodiversity mapping would enable a streamlined approvals process for minor development using complying development provisions. At present, if a property is affected, the property owner cannot use exempt and complying development provisions.

In addition, the LEP clause 7.2 Natural resource sensitivity – biodiversity makes references in subclause (5) to outdated legislation. These references should be updated to reflect the current legislation.

## 7.2 Natural resource sensitivity – biodiversity

Current wording	Proposed wording (proposed change in red font)
(5)(a) the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the <i>Native Vegetation Act 2003</i> or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or	(5)(a) the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the <i>Local Land Services Act 2013</i> or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
(5)(b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003</i> ) that is authorised by a development consent under the provisions of the <i>Native Vegetation Conservation Act 1997</i> as continued in force by that clause, or	(5)(b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003</i> ) that is authorised by a development consent under the provisions of the <i>Local Land Services Act 2013</i> as continued in force by that clause, or
(5)(c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserves under the <i>Forestry Act 1916</i> , or	(c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserves under the <i>Forestry Act 2012</i> , or
(5)(d) action required or authorised to be done by or under the <i>Electricity Supply Act 1995</i> , the <i>Roads Act 1993</i> or the <i>Surveying Act 2002</i> , or	(5)(d) action required or authorised to be done by or under the <i>Electricity Supply Act 1995</i> , the <i>Roads Act 1993</i> or the <i>Surveying and Spatial Information Act 2002</i> , or
(5)(e) plants declared to be noxious weeds under the <i>Noxious Weeds Act 1993</i> .	(5)(e) plants declared to be noxious weeds under the <i>Biosecurity Act 2015</i> .

## Wollongong Local Planning Panel Considerations

On 31 October 2022, the Planning Proposal request was considered by the Wollongong Local Planning Panel. The Panel minutes (Attachment 2) largely supported the officer's recommendations. The Panel suggested that Council consider deleting the Lot Averaging Clause, rather than amending it. Council officers consider that an amended clause should be retained to facilitate improved development outcomes on some properties. The Panel also considered proposed mapping amendments to the watercourses and riparian corridors. Council has subsequently engaged consultants to review the Riparian Corridor Management Strategy and associated mapping. The draft Study has been exhibited and will be reported to Council in the coming months. The mapping amendments have been deferred till the completion of the draft Study.

## CONSULTATION AND COMMUNICATION

If Council resolves to prepare a Planning Proposal, it will be referred to the NSW Department of Planning, Housing and Infrastructure, seeking a Gateway Determination. If a Gateway Determination is issued the Planning Proposal and associated material will be exhibited for a minimum period of 28 days. All submissions will be reviewed, and any post exhibition revised amendments will be reported to a future Council meeting for adoption.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong Our Future 2035 Community Strategic Plan Goal 2 – “We have well planned, connected, and liveable places”.

The proposal is minor in nature, supports housing and environmental outcomes and is broadly consistent with -

- Illawarra Shoalhaven Regional Plan (2021) – it supports urban development within the WDURA.
- Wollongong Local Strategic Planning Statement 2020, as it supports urban development within the WDURA.
- Council’s West Dapto Vision 2018.
- Yallah-Marshall Mount Vision 2015.

## SUSTAINABILITY IMPLICATIONS

The revised Local Environmental Plan would provide greater clarity to assist with the understanding and application of development controls in the Wollongong DCP, many of which seek to improve the sustainability, liveability and resilience of our city.

## RISK MANAGEMENT

The revised Local Environmental Plan will provide improved clarity to Council, developers and the community regarding the lodgement requirements and development assessment process within the WDURA.

## FINANCIAL IMPLICATIONS

The financial implications of the West Dapto Urban Release Area are significant and are subject to regular monitoring and modelling. As part of the West Dapto Review Project, Council considered and adopted an updated Section 7.11 Contributions Plan for the West Dapto Urban Release Area.

There are no significant financial implications resulting from this particular Planning Proposal.

## CONCLUSION

The Planning Proposal is to amend the Wollongong Local Environmental Plan 2009 to make minor adjustments to the Yallah-Marshall Mount precinct. The strategic merit of the proposal is consistent with the Regional Plan, Ministerial Directions and Council’s strategic planning documents. It is recommended that Council resolve to progress the Planning Proposal and it be submitted to the NSW Department of Planning, Housing and Infrastructure, seeking a Gateway Determination and subsequent exhibition.





**Planning Proposal**  
**Location Plan**

- WDURA - Stage 5
- Subject Sites

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Date: 10.07.25  
Scale: 1:23,000  
Date of Aerial Photo 2024

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## ADVICE AND STATEMENT OF REASONS

### WOLLONGONG CITY COUNCIL – WOLLONGONG LOCAL PLANNING PANEL (WLPP)

<b>DATE OF MEETING</b>	31/10/22
<b>PANEL MEMBERS</b>	Sue Francis (Chair), Scott Lee (Expert Panel Member), Larissa Ozog (Expert Panel Member)

Meeting held at Wollongong City Council, 41 Burelli Street, Wollongong on 31/10/22 opened at 1.15pm and closed at 5:00pm.

### MATTER DETERMINED

Item 3 – Possible Planning Proposal – Yallah Marshall Mount various amendments

### PUBLIC SUBMISSIONS

The Panel heard from:

- Council officers

### PANEL CONSIDERATION

The Panel considered the Council officer's report, and attachments, and the material presented at the meeting.


### PANEL DECISION

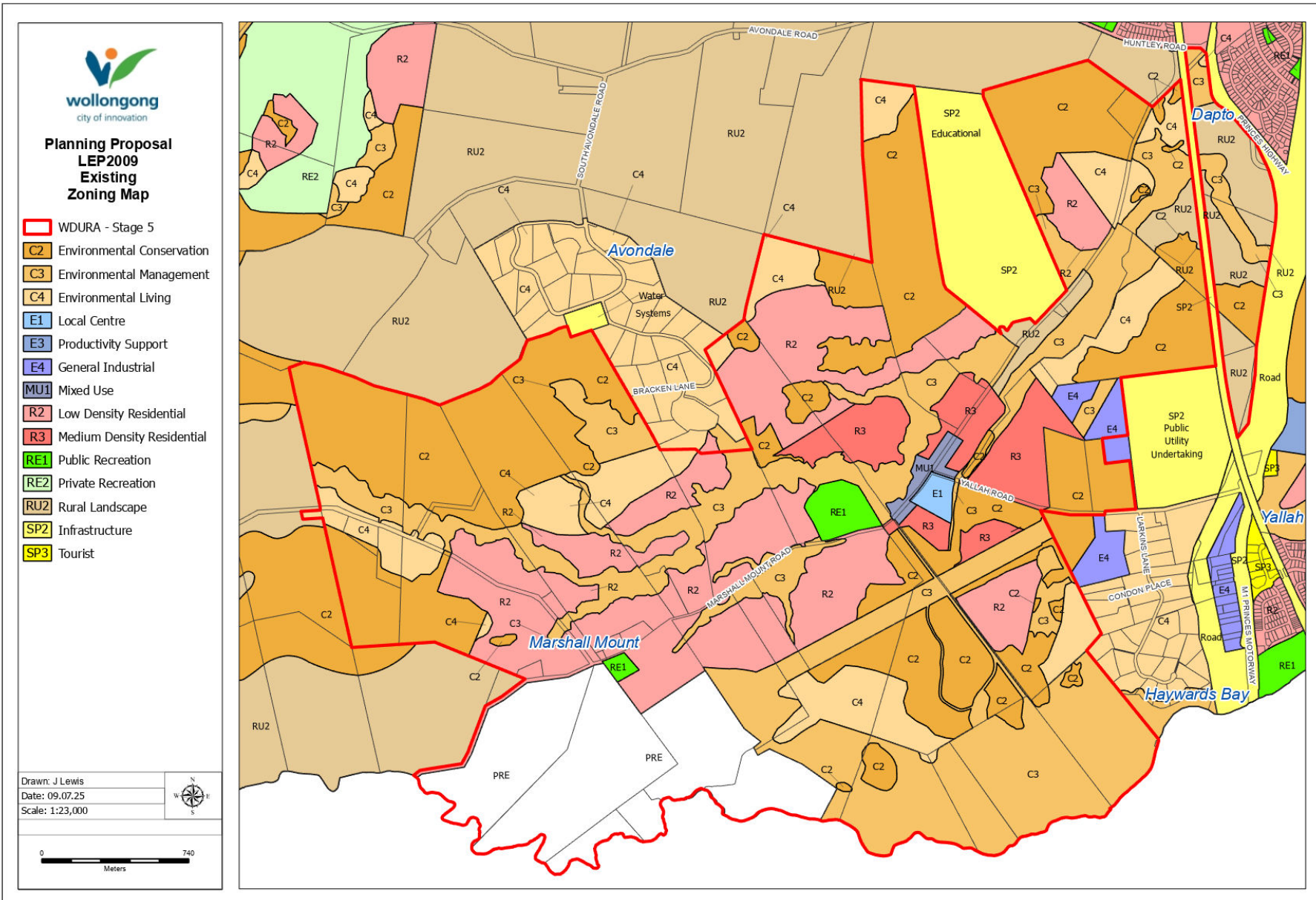
1. The Panel supports the purpose of the Planning Proposal and believes it has strategic merit.
2. The Panel recommends in terms of each aspect of the proposed Planning Proposal the following be considered:
  - a. Lot averaging – the Panel suggest that this clause be deleted as it does not achieve Council's desired outcome, has not been used, and may lead to undesirable planning outcomes. Should Council not wish to delete the clause, the Panel supports the introduction of an absolute minimum number or percentage of the minimum lot size, and to define the area that is subject to the averaging, and to detail clear clause objectives.
  - b. Natural Resource Sensitivity – the Panel supports the review of the mapping to rectify inaccuracies in the presence of vegetation across sites.
  - c. Road reserves – the Panel supports the concept of updating of the road reservations including the proposed corridors through the C2 zone, to enable future roads
  - d. Riparian Lands Map – the Panel supports the updating of the mapping to be more accurate to facilitate environmental and development outcomes
  - e. Minor rezonings – The Panel supports the proposed minor amendments to tidy up the zone boundaries

The decision was unanimous

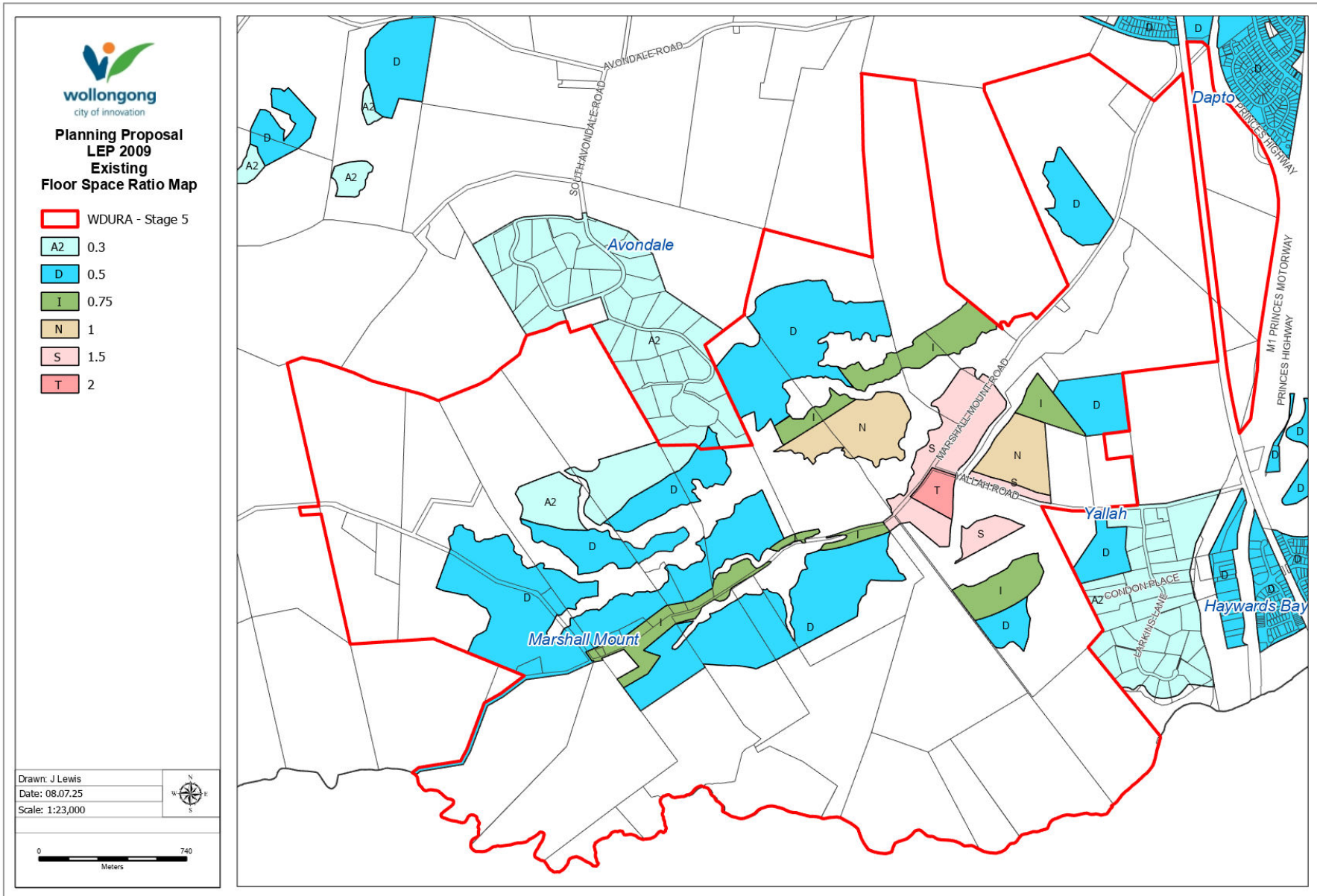
PANEL MEMBERS	
 Sue Francis (Chair)	 Larissa Ozog

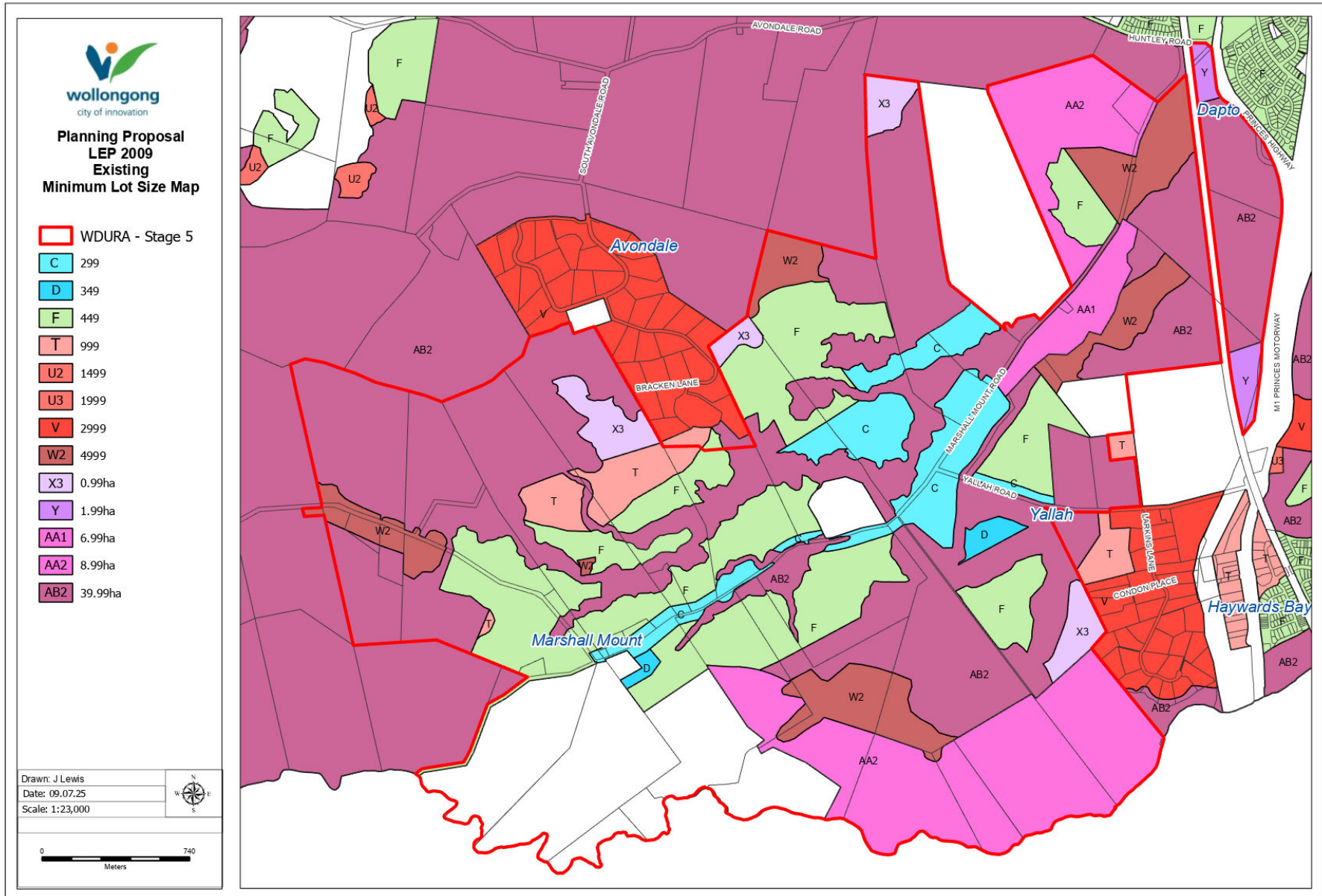


 Scott Lee	
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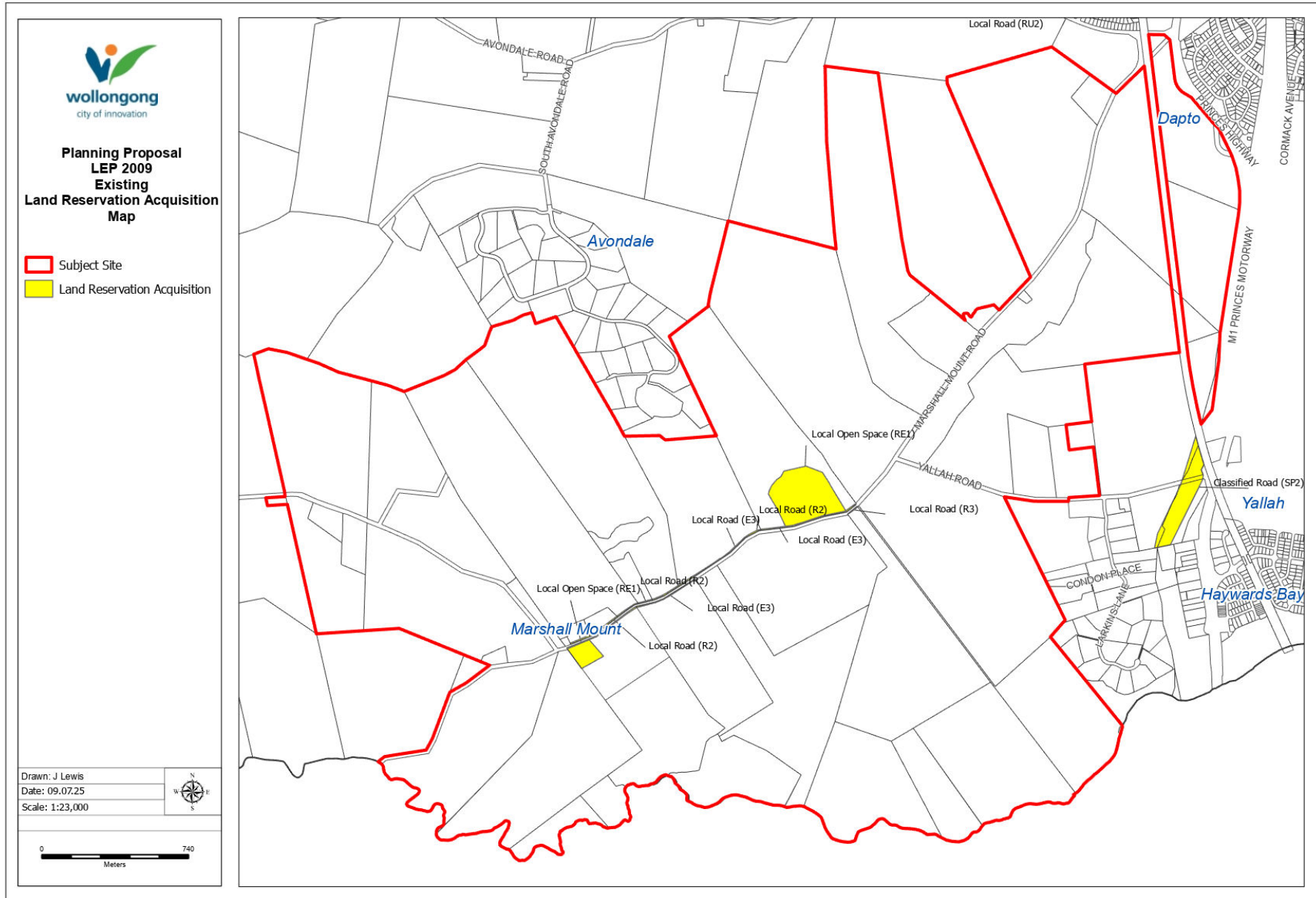


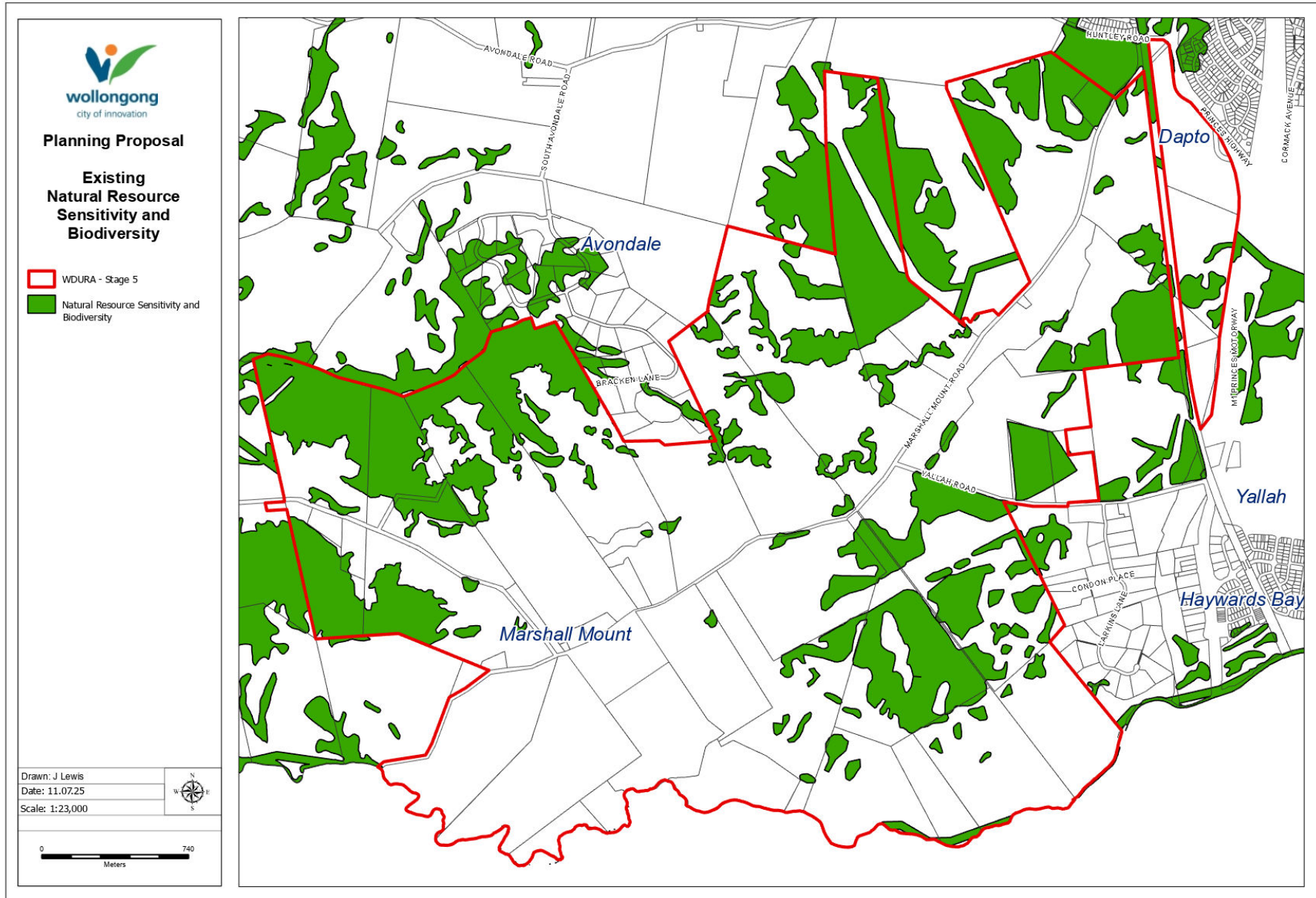




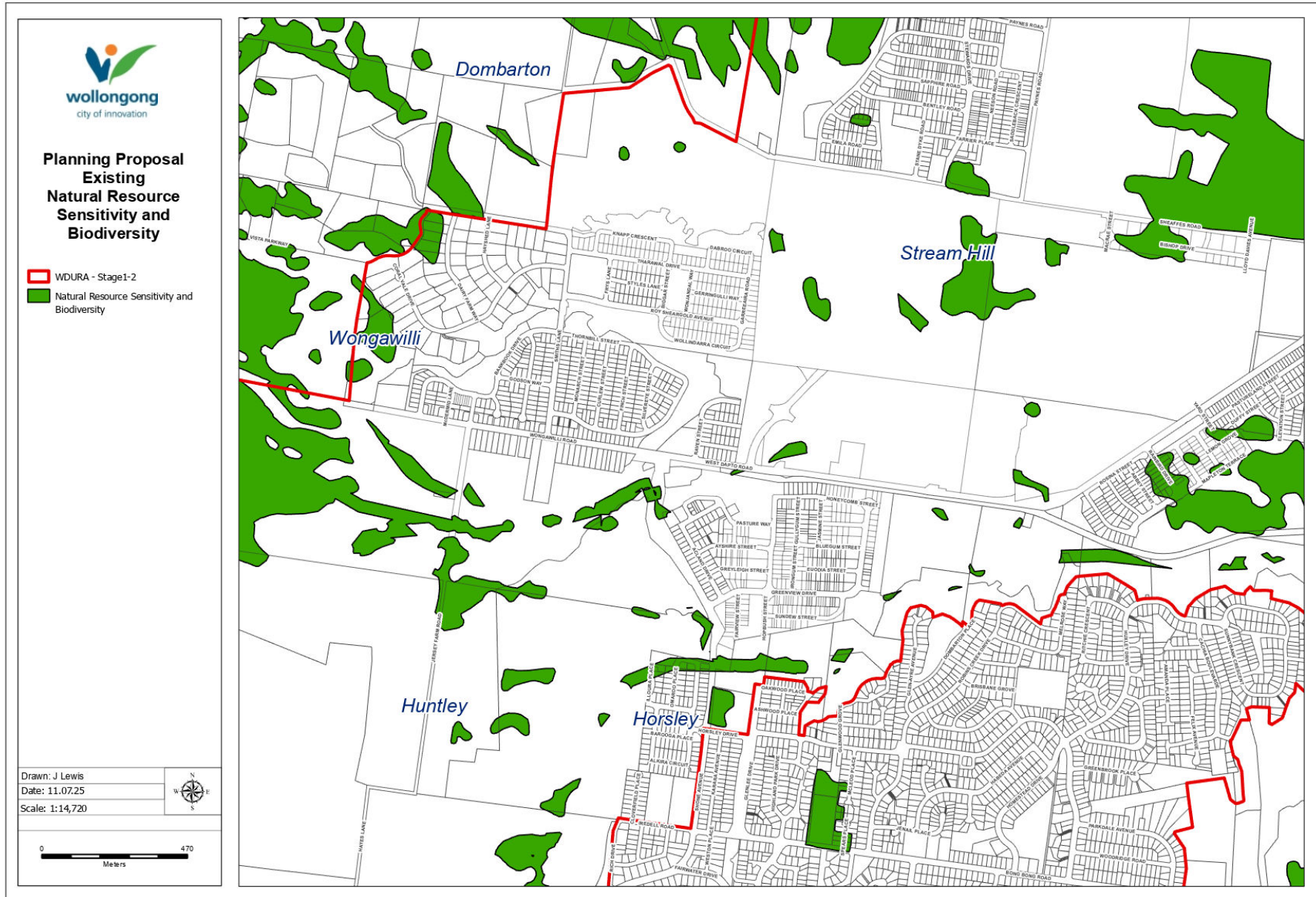
















**Planning Proposal  
LEP2009  
Proposed  
Zoning Map**

- Subject Site
- C2 Environmental Conservation
- C3 Environmental Management
- C4 Environmental Living
- E1 Local Centre
- E3 Productivity Support
- E4 General Industrial
- MU1 Mixed Use
- R2 Low Density Residential
- R3 Medium Density Residential
- RE1 Public Recreation
- RE2 Private Recreation
- RU2 Rural Landscape
- SP2 Infrastructure
- SP3 Tourist

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Marshall Mount Minor Amendments  
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Name: PP Yallah Marshall Mount  
Minor Zone 27-06-25

Drawn: H. Jones

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