

Mr D Johnston
55 Wire Lane
Berry NSW 2535

9th July 2020

The Hon Gareth Ward MP
Minister for Families, Communities and Disability Services
Member for Kiama
Email: gareth.ward@parliament.nsw.gov.au

Dear Gareth

Our recent determination on application to rezone our land from RU1 (rural) to R5 (large lot residential) - 55 Wire Lane, Berry

Background: A planning proposal was submitted to Shoalhaven City Council to rezone land from RU1 (Primary Production) and RU4 (Primary Production Small Lots Zone) to an R5 Large Lot residential zone and E2 (Environmental Conservation Zone) with a 1 ha minimum lot size under the Shoalhaven LEP 2014.

The planning proposal was voted in favour of by the local Shoalhaven City Councilors on the 28th January 2020 (refer to **Attachment 1**) and subsequently sent to NSW Department of Planning Industry and Environment for Gateway Determination (refer to **Attachment 2** for Planning Proposal)

On the 10th June 2020 we received the Gateway determination that the planning proposal should not proceed for a number of reasons that have been addressed in the planning proposal document, however seem to have been dismissed (refer to **Attachment 3**)

Planning Proposal Summary

The site

- Fronts Beach Rd and located between Wire Lane to the west and Sunnymede Lane to the east
- Current land zoning is RU1
- Adjoins existing rural residential developments to the east and west (refer to **Attachment 4**)
- 80% cleared with partly vegetated riparian area
- Currently used for cattle grazing requiring significant fertilizer input.
- Mostly unvegetated riparian corridors running west to east and south to north (refer to **Attachment 5 – Concept lot layout**)

Planning history associated with 55 Wire Lane and surrounds

- Our land, and the broader locality has a complex planning history, specifically associated with the consideration of rural residential development throughout the rural plan process and subsequent site specific rezonings, which has resulted in a mix of existing zones and planning controls across the area.
- The land to the west of the subject land is zoned RU4 Primary Production Small Lots, and was previously zoned Rural 1(c) (rural lifestyle) under Shoalhaven LEP 1985. This area was rezoned to a rural lifestyle zoning as part of the Rural Plan Amendments to the 1985 LEP, and while the land currently has a mapped minimum lot size of 10ha, this area presents as a rural lifestyle development with a diverse mix of smaller lot sizes consistent with the previous rural lifestyle zoning over the land.
- As part of the preparation of the Rural Plan, our land was proposed by Shoalhaven City Council to be rezoned to a rural lifestyle zone (Rural 1(c)) in a later exhibited version of the draft LEP amendment. It was also later mapped as part of 'Special Rural Lifestyle Area No.13' in the final draft LEP amendment that was submitted to the then NSW Department of Urban Affairs & Planning (DUAP) for gazettal.
- At the time, DUAP did not agree to the proposal for our land (and other adjacent land to the south). This appears to have been based on the fact that the lots in question had been added by the Council after the 1994 exhibition of the draft plan and concerns around regional values. Our land was ultimately zoned Rural 1(a), which reflects the current RU1 zone under Shoalhaven LEP 2014.

- In July 2000, the land immediately east of our land was rezoned to facilitate a rural residential development. The rezoning of the adjoining site ultimately resulted in our land being located between a rural residential development to the east and a small lot rural lifestyle subdivision to the west. Therefore, our land now presents as an infill rural area between two existing rural lifestyle developments, having previously been proposed by Council to be rezoned to a rural lifestyle zone.

Current Planning Proposal

- To rezone land from RU1 and RU4 to R5 in line with surrounding rural residential developments including Campbells Run and 510 Beach Rd.
- Informed by comprehensive studies including Agricultural and Market Assessments
- Minimum lot size proposed of 1 ha, however we propose a mix of lot sizes based on topography, riparian areas and neighbouring lots.
- Our concept layout allows for 29 lots ranging in size from 1 ha to 2.7 ha with average lot size of 1.3 ha (refer to **Attachment 5**)
- Allows for the opportunity to protect the existing mapped wildlife corridor in perpetuity through an E2 Environmental Conservation Zone, and to protect enhance, restore and establish new wildlife corridors associated with the riparian areas running east-west and north-south through the site, consistent with the Illawarra Shoalhaven Regional Plan and the South Coast Regional Conservation Strategy (refer to **Attachment 6**).
- Seeks to assist in meeting the market demand for rural residential land in the Shoalhaven consistent with the Goal 2 of the Illawarra-Shoalhaven Regional Plan.

As outlined in the Planning Proposal report, the proposal is explicitly consistent with a number of key Goals and Directions outlined in the Illawarra Shoalhaven Regional Plan including:

- Goal 2 aims to provide “A variety of housing choices, with homes that meet needs and lifestyles”
- Direction 2.1 aims to “provide sufficient housing supply to suit the changing demands of the region”. Specifically, the Direction states that ‘Councils are to plan for the mix of housing that suits the projected growth, changing demographics (such as an ageing population) and market demand particular to their area’.
- Direction 5.1 aims to ensure that development is located to avoid significant environmental impacts, to protect high environmental value lands and to protect the regions biodiversity corridors.

Further, the Planning Proposal directly achieves the strategic outcomes outlined in the South Coast Regional Conservation Plan by protecting the regionally significant Berry Wildlife Corridor in perpetuity, and protecting, enhancing and restoring wildlife corridors, to create vegetated linkages between significant patches of vegetation.

Agricultural Land Assessment

- Concluded the site currently fits the “rural living category”. The site is currently used primarily for residential rather than agricultural purposes due to size and viability of farming which is similar to R5 zoning.
- The site has significant constraints for farming operations including slope, soil fertility and lack of permanent water supply, making the site unsuitable for cropping.
- The size of the farm (40 ha) is too small to make a sustainable profit from cattle grazing which is the only form of agriculture that can be practiced on the property due to land use conflicts (ie chicken and pig farming would present odour and noise issues for nearby residents).
- Buffer zones requirements for intensive agriculture present issues and would not permit poultry farming (1000m buffer) and significantly reduce the amount of land available for protected cropping and outdoor horticulture (250m).

Market Analysis

- Few large lot residential home sites available in the northern Shoalhaven (2 lots between 1 ha and 4 ha currently for sale as of 26th November 2019)
- Few large lots in the Shoalhaven (3 lots between 1 ha and 4ha currently for sale as of 26th November 2019)
- Very strong demand for rural residential lots between 1 and 4ha in the northern part of the Shoalhaven, especially the Berry region.

- The market is capable of selling between 15 to 20 rural residential lots (between 1 and 4ha) in the Berry region per year.
- 510 Beach Rd and this development could be absorbed into the market over a 2-3yr timeframe

Community Consultation - Summary

- We presented at the Berry Forum on October 10th 2019.
- We have been in contact with the Berry Landcare Group to discuss potential wildlife corridor/s within the site. Berry Landcare representatives inspected the site in 18th November 2019. There are two riparian corridors through the site which we are planning to revegetate as part of the development and could be used as wildlife corridors. We are happy to continue working with Landcare group to establish a wildlife corridor/s as part of this development.
- We subsequently amended the planning proposal to formalise the intent of including wildlife corridors within the development.

Economic Benefits - Summary

- **Estimated \$29m** in revenue for local trades businesses during the building of homes (based on \$1m house build price for 29 lots). The houses within this area will likely be architecturally designed and be built by local trades people.
- **Estimated \$3m** in civil and landscaping revenue for local businesses during the construction of the subdivision
- Ongoing maintenance revenue opportunities
- More families living in the Berry area supporting local businesses
- Opportunity for people to purchase a rural lifestyle block in the area and build a new home

Response to Gateway Determination dated 10th June 2020

1. The proposal is inconsistent with the Illawarra Regional Plan and Shoalhaven Growth Management Strategy

Response to point 1

The Planning Proposal is explicitly consistent with a number of key Goals and Directions outlined in the Regional Plan.

Direction 2.1 aims to provide a variety of housing choices to meet the needs and lifestyles of local communities. Specifically, the Direction states that '*... Councils are to plan for the mix of housing that suits the projected growth, changing demographics (such as an ageing population) and market demand particular to their area*'.

This PP aims to address a specific market demand for rural lifestyle lots in the northern Shoalhaven, consistent with the requirements of this direction. The PP is supported by a strategic Market Assessment which demonstrates that there is insufficient supply to meet the demand for this type of housing product, and there is sufficient demand to warrant the rezoning of the subject land.

Direction 5.1 aims to ensure that development is located to avoid significant environmental impacts, to protect high environmental value lands and to protect the regions biodiversity corridors.

The PP proposes development on land with the capacity to absorb development, as outlined in the land capability assessment and supporting environmental studies. Further, the PP specifically achieves this Direction by not only protecting the significant Berry wildlife corridor, but also restoring, enhancing and creating new vegetated corridors between significant patches of vegetation within and adjoining the site.

The Gateway determination states the proposal is inconsistent with Direction 4.1 which seeks to protect regionally significant agricultural lands for food production. However, as outlined above, the Planning Proposal is supported by an Agriculture Assessment of the subject land which found that there were significant physical constraints to the agricultural use of the site. Agricultural use of the land is limited to cattle grazing and the land has insufficient carrying capacity to allow for a viable agricultural operation on the site.

The size of the subject land is 40ha and is too small to make a sustainable profit from cattle grazing, which is the only form of agriculture that can be practiced on the property given the physical constraints and limitations of the land. Given the above, the land is not considered to be regionally important agricultural lands, and the RU1 Primary Production zone is not considered appropriate in this instance.

The Gateway determination quotes advice from DPI Agriculture which states that the land is considered Class 3 agricultural lands that is suitable for grazing and cropping in rotation. This advice appears to be based on a desktop analysis that ignores the physical constraints of the land including the size and slope of the land, which significantly limit the agricultural production values of the land.

Further, it is noted that the RU1 Primary Production zone in the Shoalhaven is generally reserve for Class 1 and 2 agricultural lands, and the advice from DPI Agriculture further demonstrates that the land is incorrectly zoned.

2. The proposal is inconsistent with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 3.1 Residential Zones and 5.10 Implementation of Regional Plans and the inconsistencies have not been adequately justified.

Response to point 2

The planning proposal document submitted clearly addresses the above

1.2 Rural Zones

As per planning proposal document submitted for gateway (extract below)

The Planning Proposal (PP) is potentially inconsistent with the Direction in that the PP will result in a loss in rural zoned land. However, any inconsistency is considered to be minor in nature, as the proposal represents an infill type development and is reflective of the zoning of the adjoining land. In addition, the proposal is justified by a study prepared in support of the proposal, consistent with the requirements of this Direction.

The PP also seeks to alter the minimum lot size applicable to the subject land from 40 hectares to 1 hectare. However this is considered to be of minor significance given this is consistent with the existing lot sizes of the adjoining rural residential development immediately to the east and only slightly smaller than the lots to the west.

As outlined further in this response, the Gateway assessment argues that the PP is inconsistent with the adjoining lot sizes and therefore inconsistent with this Direction. As outlined in the response to Point 5 below, this is a clear error in the assessment as the immediately adjoining land is a large lot residential subdivision with 1ha lots, approved under previous provisions of the Shoalhaven LEP 1985.

Further information on this Direction is provided in the Agricultural Assessment supporting the PP.

1.5 Rural Lands

The PP is potentially inconsistent with the Direction in that the PP will result in a loss in rural zoned land through a rezoning, and reduction in the minimum lot size. However, the PP is consistent with the Rural Planning Principles and Rural Subdivision Principles outlined in the Direction (previously contained within SEPP (Rural Lands) 2008). Further information on this Direction is provided in the Agricultural Assessment supporting the PP.

3.1 Residential Zones

This Direction specifically seeks to encourage a variety of housing types to provide for existing and future housing needs. The PP seeks to address a specific demand for rural lifestyle lots in the northern Shoalhaven.

Further, the subject land is located between two existing rural residential areas, and will utilise existing infrastructure networks and services.

The PP is not inconsistent with the terms of this direction.

5.10 Implementation of Regional Plans

As per planning proposal document submitted for gateway (extract below)

Illawarra Shoalhaven Regional Plan

The Illawarra Shoalhaven Regional Plan provides a regional planning framework to guide the sustainable growth of the region over the next 20 years. The Regional Plan provides high level objectives and directions for land use in the region, specifically relating to the economy, housing, connectivity, agriculture and the natural environment.

The relevant Directions from the Regional Plan are discussed below.

Direction 2.1 – Provide sufficient housing supply to suit the changing demands of the region

Direction 2.1 aims to provide a variety of housing choices to meet the needs and lifestyles of local communities. Specifically, the Direction states that ‘...Councils are to plan for the mix of housing that suits the projected growth, changing demographics (such as an ageing population) and market demand particular to their area’.

This PP aims to address a specific market demand for rural lifestyle lots in the northern Shoalhaven, consistent with the requirements of this direction. The PP is supported by a strategic Market Assessment that considers the supply and demand of rural lifestyle lots in the northern Shoalhaven. The Market Assessment found that while the housing market for standard residential has slowed considerably since the start of 2018, there remains strong demand for large lot residential home sites in the northern Shoalhaven. Further, the assessment states that there is currently insufficient supply to meet the demand for this housing product, and there is sufficient demand to warrant the rezoning of the subject land.

Direction 4.1 - Protect regionally important agricultural lands as an asset to food and fibre production

The subject land is zoned RU1 Primary Production, however, does not appear to be mapped as ‘Biophysical Strategic Agricultural Land (BSAL)’ under the Regional Plan.

An Agriculture Assessment of the subject land was prepared by Edge Land Planning and is provided as Appendix D to this report. The assessment found that the physical characteristics of the site, including the slope, soil fertility and lack of permanent water supply result in significant constraints to the agricultural use of the site. Agricultural use of the land is limited to cattle grazing and the land area is significantly smaller than the area needed to allow for a viable agricultural operation on the site.

The size of the subject land is 40 ha and is too small to make a sustainable profit from cattle grazing, which is the only form of agriculture that can be practised on the property given the physical constraints and limitations of the land. Given the above, the land is not considered to be regionally important agricultural lands, and the RU1 Primary Production zone is not considered appropriate in this instance.

Direction 5.1 – protect the region’s environmental values by focusing development in locations with the capacity absorb development, and

Direction 5.1 aims to ensure that development is located to avoid significant environmental impacts, to protect high environmental value lands and to protect the regions biodiversity corridors.

The PP proposes development on land with the capacity to absorb development, as outlined in the land capability assessment and supporting environmental studies. Further, the PP specifically achieves this Direction by not only protecting the significant Berry wildlife corridor, but also restoring, enhancing and creating new vegetated corridors between significant patches of vegetation within and adjoining the site.

The PP is not inconsistent with the Illawarra Shoalhaven Regional Plan.

South Coast Regional Conservation Plan

The Berry Wildlife Corridor is mapped as a regionally significant corridor in the South Coast Regional Conservation Plan (SCRCP). The SCRCP outlines a number of priority actions, namely to protect, enhance and restore regionally significant wildlife corridors, to create vegetated linkages between significant patches of vegetation.

The PP protects the existing mapped wildlife corridor in the western portion of the site in perpetuity, consistent with the aims of the SCRCP, through an E2 Environmental Conservation zone and the use of a VMP. The PP also seeks to restore and enhance this corridor to provide a vegetated corridor associated with the riparian area running east-west through the site. Further, the PP seeks to enhance the corridor value of the Beach Road road reserve, by providing a 15m deep vegetated corridor along the Beach Road frontage of the subject land.

The PP also seeks to establish a new north-south corridor associated with the riparian area running north-south through the site, providing a new, vegetated link between significant patches of vegetation to the south of the site, and a significantly improved environmental outcome in this area. The PP specifically addresses the priority actions in the SCRCP to protect, enhance and restore important wildlife corridors

- 3. The proposal is inconsistent with the Southern Regional Planning Panel's November 2016 report on the nearby Beach Rd Rezoning Review which recommended "there should not be further consideration of rezoning proposals for rural residential subdivision until Shoalhaven City Council has developed a rural residential strategy (it is understood that there is a current resolution to develop a new position on rural residential land) and has identified regional important agricultural land"**

Response to point 3:

The last comprehensive review of rural lands in the Shoalhaven was completed in the 1990s, and resulted in major amendments to the Shoalhaven LEP known as the Rural Plan. Among other things, the Rural Plan rezoned a number of rural areas to allow for rural residential development to occur.

As part of the preparation of the Rural Plan, our land was proposed by Shoalhaven City Council to be rezoned to a rural lifestyle zone (Rural 1(c)) in a later exhibited version of the draft LEP amendment. It was also mapped as part of 'Special Rural Lifestyle Area No.13' in the final draft LEP amendment that was submitted to the then NSW Department of Urban Affairs & Planning (DUAP) for gazettal.

However, at the time, DUAP did not agree to rezone our land (and other adjacent land to the south), as the lots in question had been added by the Council after the initial 1994 exhibition of the draft plan. Our land was ultimately zoned Rural 1(a), which reflects the current RU1 zone under Shoalhaven LEP 2014.

Despite the assertions made in the Gateway determination, our land was proposed by Shoalhaven Council to be rezoned to a rural lifestyle zone, in the only comprehensive review of rural lands undertaken by Council since the introduction of the 1985 LEP. If it were not for procedural errors on behalf of the Council at the time (not including our land in the initial exhibited draft LEP), then our land would already be zoned either R5 Large Lot Residential or RU4 Small Lot Primary Production consistent with the adjoining zones.

In July 2000, the land immediately east of our land was rezoned to facilitate a rural residential development, despite not being proposed by Council in the Rural Plan process. The rezoning of the adjoining site ultimately resulted in our land being located between a rural residential development to the east and a small lot rural lifestyle subdivision to the west. Therefore, our land now presents as an infill rural area between two existing rural lifestyle developments, having previously been proposed by Council to be rezoned to a rural lifestyle zone.

It is noted that the preparation and implementation of the Rural Plan process took approximately 16 years to complete. The Gateway determination recommends that the Planning Proposal not proceed until the next review of rural lands is completed by Shoalhaven Council, however, staff have indicated that this strategy is likely to be many years away from being completed. Given that our land has previously been identified and proposed by Council to be rezoned through the Rural Plan process, it is not considered appropriate to wait for this long-term project to be finalised, while the market is demanding this housing product in the short term.

4. The proposal will lead to the loss of viable agricultural land on the site and may create a precedent for the rezoning of adjoining rural lots located south of the site under consideration for similar proposals

Response to point 4

As per response to point 1 above:

The size of the subject land is 40ha and is too small to make a sustainable profit from cattle grazing, which is the only form of agriculture that can be practiced on the property given the physical constraints and limitations of the land. Given the above, the land is not considered to be regionally important agricultural lands, and the RU1 Primary Production zone is not considered appropriate in this instance.

The Gateway determination quotes advice from DPI Agriculture which states that the land is considered Class 3 agricultural lands that is suitable for grazing and cropping in rotation. This advice appears to be based on a desktop analysis that ignores the physical constraints of the land including the size and slope of the land, which significantly limit the agricultural production values of the land.

Further, it is noted that the RU1 Primary Production zone in the Shoalhaven is generally reserved for Class 1 and 2 agricultural lands, and the advice from DPI Agriculture further demonstrates that the land is incorrectly zoned.

In relation to 'precedent', the land at 510 Beach Road (east of our land), was subject to a site specific PP to be rezoned to allow a large lot residential subdivision. This land was not identified by Council through the Rural Plan process, however, was ultimately supported by Council as it had previously been considered as part of the LEP Amendment known as Campbells Run which rezoned the land immediately east of our property. It is noted, that this PP received a favourable Gateway determination, despite not being identified by Council through the Rural Plan process.

If precedent was a consideration in the assessment of Planning Proposal's, then it is clear that a precedent has been established through the rezoning of 510 Beach Road. However, the difference between our site, and 510 Beach Road, is that our site was identified by Council through the Rural Plan process, and specifically addresses key actions in the Regional Plan to protect and enhance regionally significant wildlife corridors (which 510 Beach Road does not).

Nevertheless, we are informed that the Departments Guidelines for Preparing Planning Proposals outline what is considered in the assessment of Planning Proposals. Based on the information in the Departments Guidelines, each Planning Proposal is to be considered on its own merits, and precedent is not a consideration in the assessment process as outlined in the Guidelines.

However, it is fair to say that decisions of both Council and the Department create expectations (rather than precedent), that there will be consistency in the assessment process. So we are shocked that our Planning Proposal was not supported, given that the Proposal at 510 Beach Road was, despite not forming part of the Rural Plan process, having less strategic merit and not adequately addressing the agricultural capabilities of their land.

5. The proposal is not consistent with the planning controls or local character of the surrounding area.

Response to point 5

This finding raises significant concerns about the adequacy of the assessment undertaken on the Planning Proposal. Not only do the assertions in the assessment report completely ignore the prevailing character and subdivision pattern of the locality, this finding is used to justify the reasons for not supporting the Planning Proposal throughout the assessment.

The Gateway determination states that the land is not consistent with the planning controls or local character of the surrounding area, as the land to the east and west of the site have mapped minimum lot sizes of 10ha under the Shoalhaven LEP. However, this assessment completely ignores the fact that the land to the east has an existing rural residential subdivision consisting of 28 lots (ranging from 1ha to approx 4ha in size),

and the land to the west of our land presents as a rural lifestyle development with a diverse mix of smaller lot sizes (starting from 2ha) consistent with the previous rural lifestyle zoning over the land.

The Gateway determination asserts that the land either side of our land contains lots with a minimum lot size of 10ha, which is not reflective of the existing subdivision patterns and character of the area. Our land presents as an infill development opportunity, located between an existing rural residential subdivision to the east, and rural lifestyle subdivision to the west as shown in **Attachment 4**.

It is extremely disappointing that the assessment report has completely ignored the prevailing character and subdivision pattern of the area, when a simple look at the aerial photos for the area clearly demonstrates a development pattern consistent with what has been proposed in our Planning Proposal. It is even more disappointing that this clear error in the assessment has been compounded, as the perceived inconsistency with the local character has been used to argue that the Proposal is inconsistent with relevant strategies and Ministerial Directions.

If this simple error in the assessment was rectified, it is our view that there would be no justification for not issuing a Gateway determination for our Planning Proposal to proceed.

6. The rezoning of any rural land in this location should be considered through a Council led strategic approach rather than as a spot rezoning.

Response to point 6

We will be waiting years. The market is demanding this product now. This is not spot zoning (refer to planning history and location)

Conclusion

We would like to meet with yourself and the Planning minister to discuss this decision and why it is the wrong determination.

Yours faithfully

David Johnston

Attachment 1: SCC Council Determination
Attachment 2 Planning Proposal Document
Attachment 3 Assessment Report Wire Lane
Attachment 4 Proposed & Adjoining Development Plan
Attachment 5 Concept Layout Plan
Attachment 6 Proposed Zoning and VMP Plan