

PLANNING PROPOSAL – PP010

Shoalhaven Local Environmental Plan 2014

Council Land Reclassification (Housekeeping) Revision

Prepared by
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Shoalhaven City Council

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1 Introduction

This Planning Proposal (PP) seeks to reclassify land at Shoalhaven Heads, Coolangatta, St Georges Basin and part of land at Vincentia from “community” to “operational” with interests removed to enable the land to be sold or licensed.

The subject land was reclassified from “community” to “operational” as part of the comprehensive Shoalhaven LEP 2014 (SLEP 2014), with the intention that Council’s interests in the land would also be removed. However, due to an administrative error when the new LEP was drafted, the sites were inserted into Part 1 of Schedule 4 instead of Part 2. This meant that when the SLEP 2014 came into effect on 22 April 2014, the land was reclassified to “operational” but no change was made to the interests in the land. In addition, the SLEP 2014 changed the classification of all of Lot 2081 DP 216860 at Vincentia to “operational”, not just the narrow strip of land to the rear of 83 to 109 Frederick Street and 7 Sutton Street.

The Local Government Act (LG Act) does not allow removal of interests from land which already has an “operational” classification. Therefore the land has been reclassified as “community” and through this PP Council is seeking to correct the administrative error by reclassifying the land as “operational” with interests removed and insert the subject sites into Part 2 of Schedule 4 in SLEP 2014.

This PP has been prepared consistent with DP&E’s *LEP Practice Note PN 09-003 – Classification and reclassification of public land through a local environmental plan* (Reclassification Practice Note) and *Best Practice Guidelines for LEPs and Council Land* (Best Practice Guidelines).

1.1 Subject Land

The subject land is located throughout the Shoalhaven LGA as follows:

1. Lot 21 DP 252581 - 50 Shoalhaven Heads Road, Shoalhaven Heads
2. Lot 12 DP 617101 - Bolong Road, Coolangatta
3. Lot 3 DP597223 - Bolong Road, Coolangatta
4. Lot 4 DP 550354 - Island Point Road, St Georges Basin
5. Part Lot 2081 DP 216860 - Lively Street, Vincentia (land along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street only)

The location of the sites is mapped on **Figure 1**. Details of the subject land including zoning and site characteristics are in **Table 1** below.

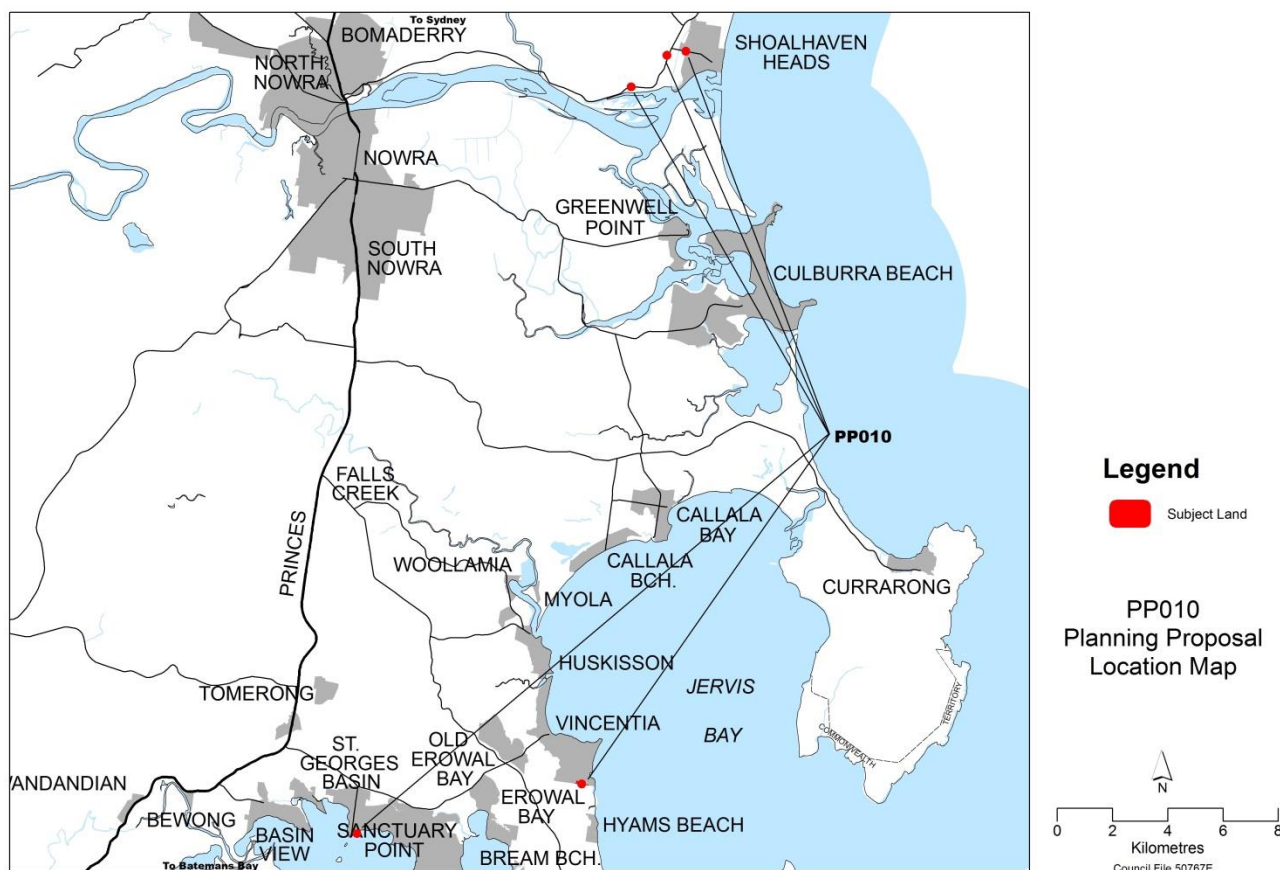


Figure 1 – Subject Land Locations

1.2 Background

Council resolved on 20 March 2012 to reclassify the following parcels of Council owned land from “community” to “operational” as part of SLEP 2014 (**Attachment “A”**):

1. Lot 21 DP 252581 - 50 Shoalhaven Heads Road, Shoalhaven Heads
2. Lot 12 DP 617101 - Bolong Road, Coolangatta
3. Lot 3 DP597223 - Bolong Road, Coolangatta
4. Lot 4 DP 550354 - Island Point Road, St Georges Basin
5. Part of Lot 2081 DP 216860 - Lively Street, Vincentia along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street
6. Lot 35 DP 226342 - Edgewater Avenue, Sussex Inlet

For sites 1 to 5, the reclassifications also proposed to extinguish Council’s interests in the land to enable the land to be sold or licensed (see Fact Sheet which formed part of the exhibition materials for SLEP 2014 at **Attachment “B”**).

However, due to an administrative error when the plan was drafted, the sites were inserted into Part 1 of Schedule 4 of the new LEP instead of Part 2. This meant that when the SLEP 2014 came into effect on 22 April 2014, the land was reclassified to “operational” but no

change was made to the interests in the land. In addition, the SLEP 2014 changed the classification of all of Lot 2081 DP 216860 to “operational”, not just the narrow strip of land to the rear of 83 to 109 Frederick Street and 7 Sutton Street.

This matter was reported to Council on 14 July 2015 and Council resolved to submit Planning Proposal (PP010) – Housekeeping Reclassification of Council Land for initial Gateway determination (**Attachment “C”** – Development Committee Report and Minutes). A copy of the Gateway determination is provided as Attachment D.

Note: This PP does not apply to the land at Lot 35 DP 226342 Edgewater Avenue, Sussex Inlet which was also reclassified as part of the preparation of SLEP 2014.

Council exhibited the original PP from 30 September to 16 October 2015. The Development Committee considered a report on the exhibition on 3 November 2015 and resolved to submit the PP to the DP&E for finalisation. However after finalisation DP&E advised that the LEP could not be made as the Local Government Act 1993 (LG Act) does not allow for the removal of interests from land which already has an “operational” classification. This can only take place when land is classified from “community” to “operational”.

Council subsequently resolved on 5 April 2016 to reclassify the subject land to “community” in accordance with the LG Act. Pursuant to Section 34 of the LG Act, public notice of Council’s intention to reclassify the land described in Schedule A was placed in the local press inviting written submissions. No submissions were received. On 26 July 2016 Council resolved to reclassify the land described in Schedule A as Community land:

Legal Description	Street	Locality	Reference
Lot 21 DP252581	50 Shoalhaven Heads Road	Shoalhaven Heads	50767E
Lot 12 DP617101	Bolong Road	Coolangatta	50767E
Lot 3 DP597223	Bolong Road	Coolangatta	50767E
Lot 4 DP550354	Island Point Road	St Georges Basin	50767E
Lot 2081 DP216860	Lively Street	Vincentia	50767E

A copy of the July 2016 report is provided as Attachment E to the PP.

2 Part 1 –Intended Outcome

The intended outcome of this PP is to allow Council to explore the sale or licensing of the subject land.

Details of the subject land and purpose of the PP in relation to that land are contained in **Table 1** below.

Table 1. Subject Land Details

Site 1. Lot 21 DP 252581 - 50 Shoalhaven Heads Road, Shoalhaven Heads
 Subject Land Planning Proposal PP010 Air Photo 2014 0 20 40 60 80 Metres Council File 50767E I:\Planning\Graphics\Projects\City\PlanningProposals\PP010\PlanningProposal_AirPhoto.mxd <u>Current zoning:</u> RU1 Primary Production <u>Site Characteristics:</u> The site has an area of approximately 1235m². It is a 'battle-axe' shaped lot with an access handle on Shoalhaven Heads Road. It forms part of a service station and part of the Coastal Palms Holiday Park. The part within the Coastal Palms Holiday Park contains a sewer main and play equipment. In the past the site has been maintained by the holiday park under a lease from Council. This lot was dedicated to Council as public reserve under subdivision no. 3062A in 1976. <u>Purpose of PP:</u> Due to the configuration of the land it has limited public use and the reclassification will enable the investigation of sale of the land in accordance with Councils resolution. On 15 December 2015, Council resolved to: - Appoint a registered estate agent to market 50 Shoalhaven Heads Road, Shoalhaven Heads and call for "Expressions of Interest"; - Approve the General Manager to set the reserve price based on valuation advice and to complete the sale transaction if successful EOI's either exceed or is within 10% of the reserve price; - Resolve to place the net income from the sale in the Strategic Property Acquisition Reserve, and

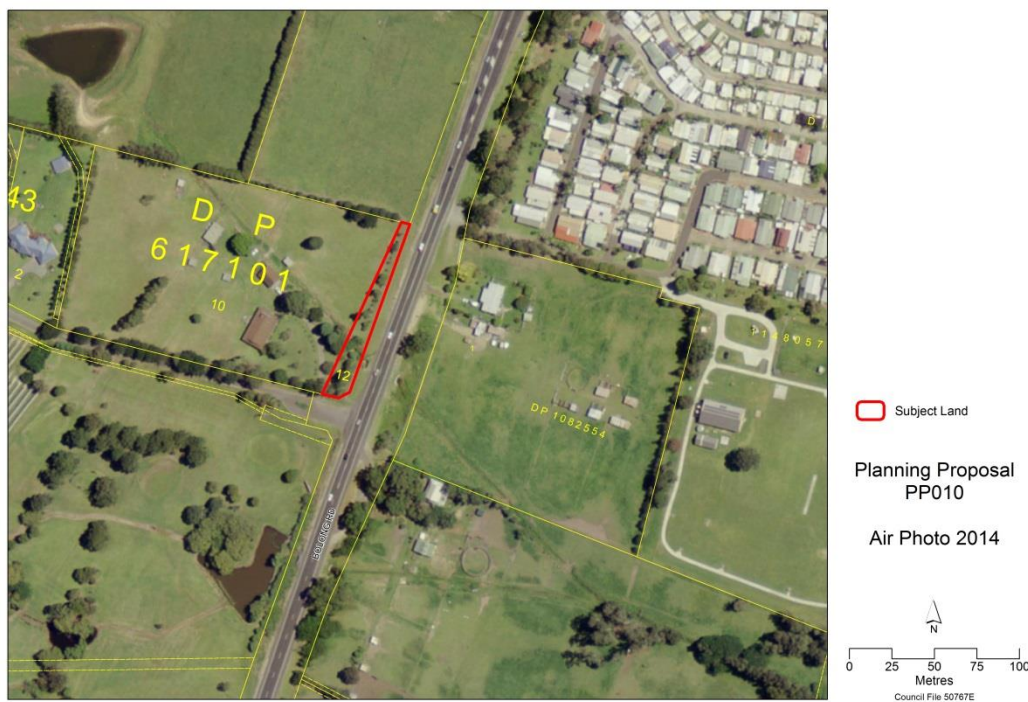
d) Grant authority to fix the Common Seal of Council to any documents required to be sealed in this matter and that the General Manager be authorised to sign any documents necessary to give effect to this resolution.
(Minute 812).

Rights or interests to be extinguished:

- The Deposited Plan (DP) identifies the land as a 'Public Reserve'.
- K200000P Caveat by the Registrar General forbidding registration of instruments not authorised by the provisions of the Local Government Act, 1919, relating to public reserves.
- Reservations and conditions, if any, contained in the Crown Grant referred to in the certificate of title.

Any trusts and covenants relevant to the site: Nil

Site 2. Lot 12 DP 617101 Bolong Road, Coolangatta



Current Zoning: RU1 Primary Production

Site Characteristics:

The site has an area of approximately 1082m². It is a long narrow lot which runs parallel to Bolong Road. It is partly unused land within the fenceline of an adjoining private property and contains a small amount of vegetation. This lot was dedicated to Council as public reserve under subdivision no. 4308 in 1981.

Purpose of PP:

The site has no practical public use and the reclassification will allow Council to investigate the sale of the land to an adjoining land owner.

Rights or interests to be extinguished:

- The DP identifies the land as a 'Public Reserve'.
- K200000P Caveat by the Registrar General forbidding unauthorised dealing with public reserves.
- Reservations and conditions, if any, contained in the Crown Grant referred to in the certificate of title.

Any trusts and covenants relevant to the site: Nil

Site 3. Lot 3 DP 597223 Bolong Road, Coolangatta



Current Zoning: RU1 Primary Production

Site Characteristics:

The site has an area of approximately 2263m². It runs parallel to Bolong Road. It is partly within the fenceline of adjoining private land. The owner of the adjoining property was granted a grazing permit for this land in the past, but this permit is not current. This site was dedicated to Council as a condition of consent under subdivision no. 4306. It was dedicated as a public reserve with the idea of it being used as a driver rest area, however, it has not been utilised for this purpose.

Purpose of PP:

The site has no practical public use and the reclassification will allow Council to investigate the sale of the land to an adjoining land owner(s).

Rights or interests to be extinguished; any trusts and covenants relevant to the site:

- The DP identifies the land as a 'Public Reserve'.
- K200000P Caveat by the Registrar General forbidding registration of instruments not authorised by the provisions of the Local Government Act, 1919, relating to public reserves.
- Reservations and conditions, if any, contained in the Crown Grant referred to in the certificate of title.

Any trusts and covenants relevant to the site: Nil

Site 4. Lot 4 DP 550354 Island Point Road, St Georges Basin



Current zoning: B4 Mixed Use

Site Characteristics:

The site has an area of approximately 354m² and has water frontage to St Georges Basin. It is land-locked and has no means of access other than via water. This lot was dedicated to Council as public reserve in 1971 under subdivision No. 3071.

Purpose of PP:

The site has no practical public use and the reclassification will allow Council to investigate the sale of the land to an adjoining land owner(s).

Rights or interests to be extinguished:

- The DP identifies the land as a 'Public Reserve'.
- K200000P Caveat by the Registrar General forbidding registration of instruments not authorised by the provisions of the Local Government Act, 1919, relating to public reserves.

Any trusts and covenants relevant to the site: Nil

Sites 5. Part of Lot 2081 DP 216860 Lively Street, Vincentia



Current Zoning: Part RE1 Public Recreation and part R2 Low Density Residential

Site Characteristics:

The site has an area of approximately 1ha, is irregular in shape and contains access handles from Sutton and Frederick Streets. A further access handle is connected to the unformed part of Waldegrave Crescent to the west. The majority of the site is well vegetated and backs onto Jervis Bay National Park. This lot was dedicated to Council under subdivision no. 710 as public garden and recreation space in 1954.

Purpose of PP:

This PP will enable investigation of licensing the narrow section of the lot adjoining 83-109 Frederick Street and 7 Sutton Street to adjoining land owners in order to formalise access to the rear of their properties (orange shading on map above). All Frederick Street properties have existing legal access, however, 7 Sutton Street currently uses part of the land to access a garage at the rear of the property. This will create a dual classified lot.

Rights or interests to be extinguished:

- The DP identifies the site as 'Public Garden and Recreation Space'.
- Reservation and conditions, if any, contained in the Crown Grant(s) referred to in the DP.

Any trusts and covenants relevant to the site: Nil

3 Part 2 – Explanation of Provisions

The PP proposes to amend SLEP 2014 to list sites 1 to 5 under Part 2 of Schedule 4 “Land classified, or reclassified, as operational land – interests changed”. This change will give effect to Clause 5.2(5) of SLEP 2014 so that the subject land will no longer have public reserve status, and will be discharged from “all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land” (as indicated in **Table 1**). This will enable Council to explore the sale (sites 1-4) or licensing (site 5) of the subject land.

As the PP involves removing Council’s interests in some of the land, the approval of the Governor of NSW will be required in accordance with section 30 of the Local Government Act 1993 (LG Act) prior to the PP being finalised. Copies of the Certificates of Title for the subject land are at **Attachment “F”**.

4 Part 3 – Justification

4.1 Need for the Planning Proposal (Section A)

4.1.1 Is the Planning Proposal a result of any strategic study or report?

The PP is not the result of a strategic study or report. It aims to correct an administrative error which occurred in the drafting of SLEP 2014.

4.1.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

This PP is considered to be the best means of achieving the intended outcome.

4.2 Relationship to strategic planning framework (Section B)

4.2.1 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

➤ Illawarra-Shoalhaven Regional Plan

The Illawarra-Shoalhaven Regional Plan applies to the whole Shoalhaven LGA including the subject lands. The draft Plan seeks to provide choice, affordability, and supports the orderly supply of land for development. The proposed PP is consistent with the draft Plan.

➤ South Coast Regional Conservation Plan (2010)

The South Coast Regional Conservation Plan (SCRCP) provides direction to local government on planning and development decision-making so that the biodiversity of the South Coast can be maintained or improved. The proposed PP is consistent with the SCRCP.

4.2.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

➤ Shoalhaven City Council's Community Strategic Plan, Shoalhaven 2023

The Proposal is consistent with Council's Community Strategy Plan and the relevant objective and strategy below:

Objective 2.2	Population and urban settlement growth that is ecologically sustainable and carefully planned and managed.
Strategy 2.4.2	Develop land use and related plans for the sustainable growth of the City which use the core principles of the Growth Management Strategy and ESD principles, also carefully considering community concerns and the character of unique historic townships.

4.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

The PP is consistent with the applicable state environmental planning policies (SEPPs). A full list of the SEPPs is provided at **Attachment "G"**. The relevant SEPPs are discussed below.

State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)

This policy aims to protect and manage the natural, cultural, recreational and economic attributes of the NSW coast through ensuring that development in the NSW Coastal zone is appropriate and suitably located. All of the lots within the planning proposal area fall within the boundaries to which SEPP 71 applies. Two of the sites are also identified as being within a sensitive coastal location. The proposal does not seek to rezone land, nor does it relate to development of the land, and therefore the PP is considered to be consistent with SEPP 71.

SEPP (Rural Lands) 2008

The Rural Lands Ministerial Direction requires that PPs which affect land within existing or proposed rural or environmental zones be consistent with the principles of the Rural Lands SEPP. The PP is considered to be consistent with this SEPP.

4.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Ministerial Directions are considered in **Attachment “H”** and those that are most relevant are discussed below.

1.2 Rural Zone and 1.5 Rural Lands

The properties at Coolangatta and Shoalhaven Heads are zoned RU1 Primary Production. This PP does not seek to rezone these lots, and will allow the continuation of the existing use in the case of the land in Shoalhaven Heads adjacent to a caravan park, or to be used for agricultural purposes for the land in Coolangatta. The proposal does not detract from the agricultural production value of the land and is consistent with these Directions.

2.2 Coastal Protection

All of the subject land is located in the coastal zone, however, due to the administrative nature of the proposal it is consistent with this Direction.

3.2 Caravan Parks and Manufactured Home Estates

Lot 21 DP 252581 Shoalhaven Heads Road, Shoalhaven Heads adjoins an existing caravan park. Council intends to explore the sale of this lot to the adjoining caravan park. The draft PP is consistent with this direction.

5.10 Implementation of Regional Plans

The consistency of the PP with the Illawarra- Shoalhaven Regional Plan is discussed in Section 4.2.1.

4.3 Environmental, Social and Economic Impact (Section C)

4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The PP will not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats as it involves an administrative amendment to the SLEP 2014. Any future use of the land will consider environmental impacts as part of the development assessment process.

4.3.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The PP will not have any environmental impacts as it involves an administrative amendment to the SLEP 2014. Any future use of the land will consider environmental impacts as part of the development assessment process.

4.3.3 How has the Planning Proposal adequately addressed any social and economic effects?

The social and economic impacts related to the PP are considered minimal. Where the land is to be investigated by Council for its sale to an adjoining land owner, this may avail funds to be reallocated to the development of other public spaces for community use.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the Planning Proposal?

The PP does not require the provision of additional public infrastructure. The public land to be reclassified does not currently serve a practical public purpose due to the configuration of the land and limited accessibility from public areas.

4.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

The Gateway determination issued on 3 September 2015 did not require consultation with public authorities.

As an adjoining land owner the National Parks and Wildlife Service/Office of Environment and Heritage were consulted in relation to the land at Vincentia. Their concerns related to the maintenance of the Asset Protection Zone (APZ) and runoff and erosion. Their comments were noted and passed onto the relevant sections of Council to consider in regard to the future management and licensing of the land. Their submission was addressed as part of the report to Council's Development Committee on 3 November 2015.

Further, as noted in Section 3 of this PP, approval of the Governor of NSW will be required in accordance with section 30 of the LG Act prior to the PP being finalised.

5 Part 4 – Mapping

The maps included in this PP (**Figure 1** and **Table 1**) are provided for information purposes. The PP does not involve changes to the SLEP 2014 maps.

6 Part 5 - Community Consultation

Section 29 of the LG Act requires a public hearing to be held into land reclassifications when the classification of the land is changing from “community” to “operational”. To comply with this requirement, public hearings for the land reclassifications under draft SLEP 2014 were held on 2nd and 3rd November 2011, and 11 June 2013, following each public exhibition period. At the previous public hearings information was presented to the effect that the interests in the land would be “changed”. As a public hearing has already been held in respect of the same matter with the same intent, it will be up to the Minister to determine if Council is required to hold another public hearing in relation to the same matter in accordance with section 29 (1) of the LG Act.

In accordance with DP&E’s Reclassification Practice Note and Best Practice Guidelines, Council will include a written statement in the exhibition material to cover the exhibition requirements contained therein. The exhibition material will include the details of the land, Council’s interests in the land, financial implications, purpose of the reclassification and anticipated development resulting from the PP. A copy of the Reclassification Practice Note and Best Practice Guidelines will also be included with the exhibition material.

It is proposed to exhibit the PP for the minimum of 14 days or as otherwise directed in the DP&E’s Gateway determination.

7 Part 6 – Project Timeline

The anticipated timeline for the Planning Proposal is shown in Table 2 below.

Table 2 – Project Timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	September 2015
Reviewed Gateway determination	September 2016
Public exhibition	October 2016
Consideration of submissions	December 2016

Finalisation and notification of Plan	February 2017
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Attachments

- A. Council Report and Minute (2012)**
- B. Shoalhaven LEP 2014 Reclassification Fact Sheet**
- C. Development Committee Report and Minute (July 2015)**
- D. Gateway Determination**
- E. Development Committee Report and Minute (July 2016)**
- F. Certificates of Title**
- G. SEPP Checklist**
- H. S117 Checklist**
- I. Evaluation Criteria for the Delegation of Plan Making Functions**