

# PLANNING PROPOSAL PP018

## Shoalhaven Local Environmental Plan 2014

Rezoning (rural residential and environmental conservation)

510 Beach Road Berry - Lot 4 DP 834254

Prepared by  
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File: 52163E  
Version 1 Pre-Gateway  
Date: 21 April 2017

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Attachment 1: Pre Gateway Review Determination - Department of Planning & Environment

Attachment 2: JRPP Panel Advice Report to Minister 2016STH024

Attachment 3: Report to Development Committee - January 2016

Attachment 4: Council Minute MIN16.2

Attachment 5: Proponent Pre-Gateway review PP Document

Attachment 6: Proponent Ecological Constraints Analysis

Attachment 7: Proponent Preliminary Agricultural Assessment

Attachment 8: Proponent Preliminary Bushfire Assessment

Attachment 9: Proponent Water Cycle Management Study

Attachment 10: Proponent Stage 1 Contamination Assessment

Attachment 11: OEH Letter - 28 January 2016

Attachment 12: SEPP Checklist

Attachment 13: Section 117 Directions Checklist

Attachment 14: Evaluation Criteria for the Delegation of Plan Making Functions

*Attachments 1-11 are included as a separate attachment to this Planning Proposal report.*

*Attachments 12-14 are included as attachments within this Planning Proposal report.*

## 1 Introduction

This Planning Proposal (PP) seeks to implement the Pre-Gateway Review determination of 19 December 2016 (**Attachment 1**) to prepare an amended PP that is consistent with the recommendations of the Southern Joint Regional Planning Panel (JRPP) Advice Report in November 2016 (**Attachment 2**). Accordingly, this PP seeks to amend the Shoalhaven Local Environmental Plan (LEP) 2014 for Lot 4 DP 834254, 510 Beach Road, Berry, to permit rural residential subdivision and development, environmental protection and facilitate the transfer of Coomonderry Swamp lands to the NSW National Parks and Wildlife Service (NPWS) for conservation as part of the Seven Mile Beach National Park.

### 1.1 Subject Land

The subject land (Lot 4 DP 834254) is located east of the Berry township and has a total area of approximately 74.85 ha and is currently zoned part RU1 Primary Production and part E2 Environmental Conservation under the Shoalhaven LEP 2014. The land contains an existing farmhouse and structures from the former dairy in the north-western portion and is currently used for cattle grazing. The part of the lot zoned E2 Environmental Conservation forms part of Coomonderry Swamp which is gazetted wetland No. 370 under State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP 14). This wetland has considerable environmental significance as the largest fresh water coastal wetland on the NSW coast and is of national significance. This E2 part of the site is also identified in the Shoalhaven LEP 2014 as containing high terrestrial biodiversity values with significant vegetation and forms part of a habitat corridor.

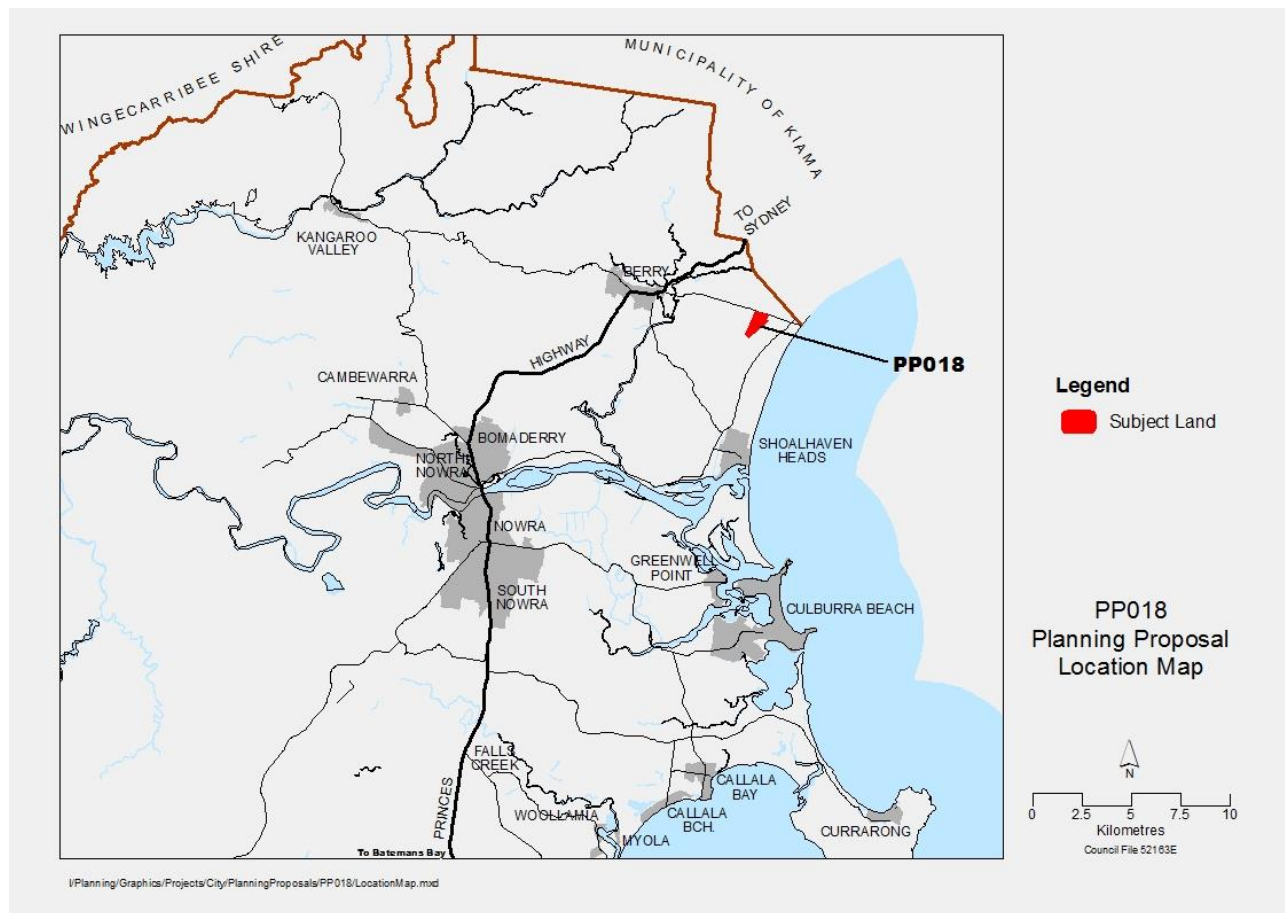


Figure 1: Location Map

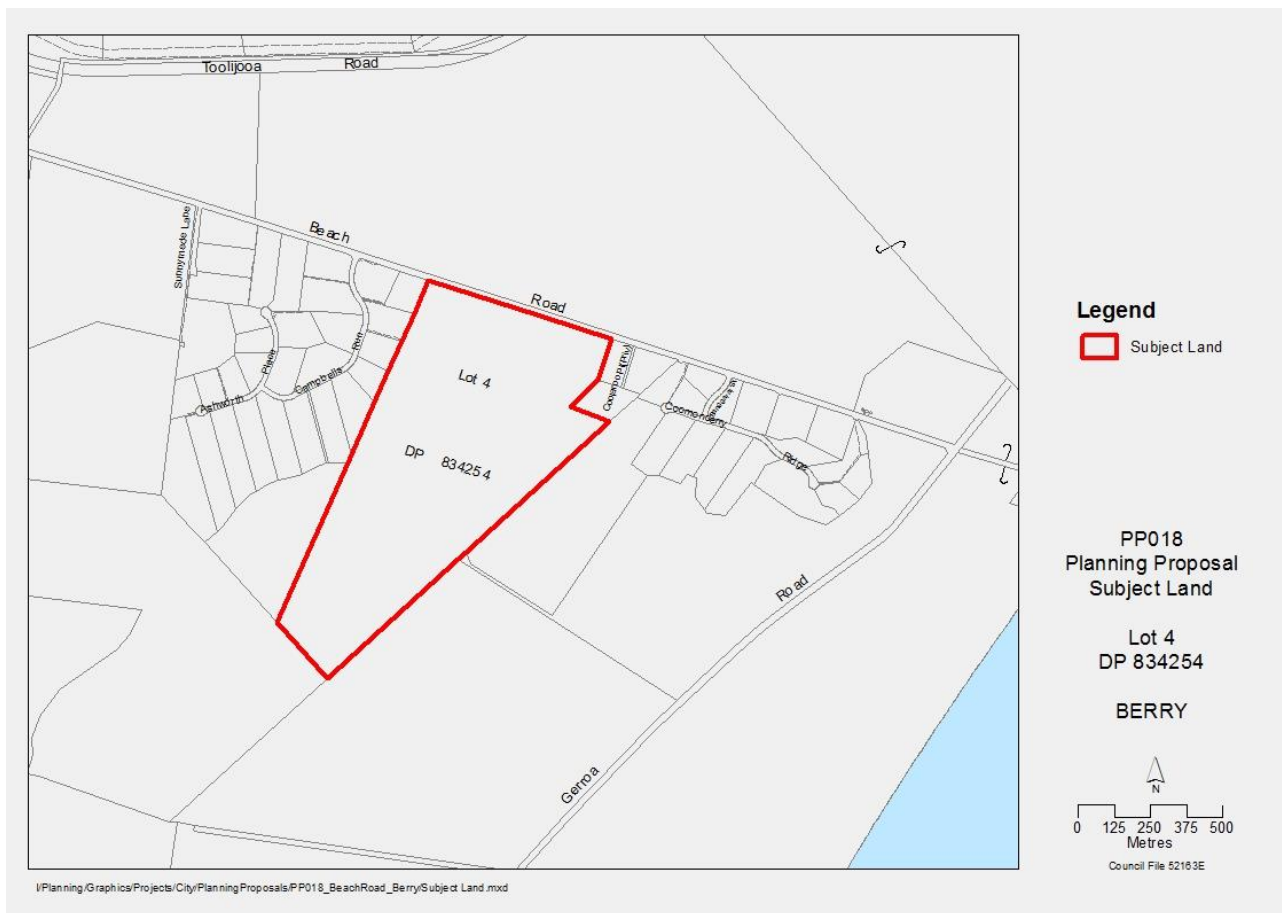


Figure 2: Subject Land





**Figure 3: Aerial Photo Map of Subject Land**



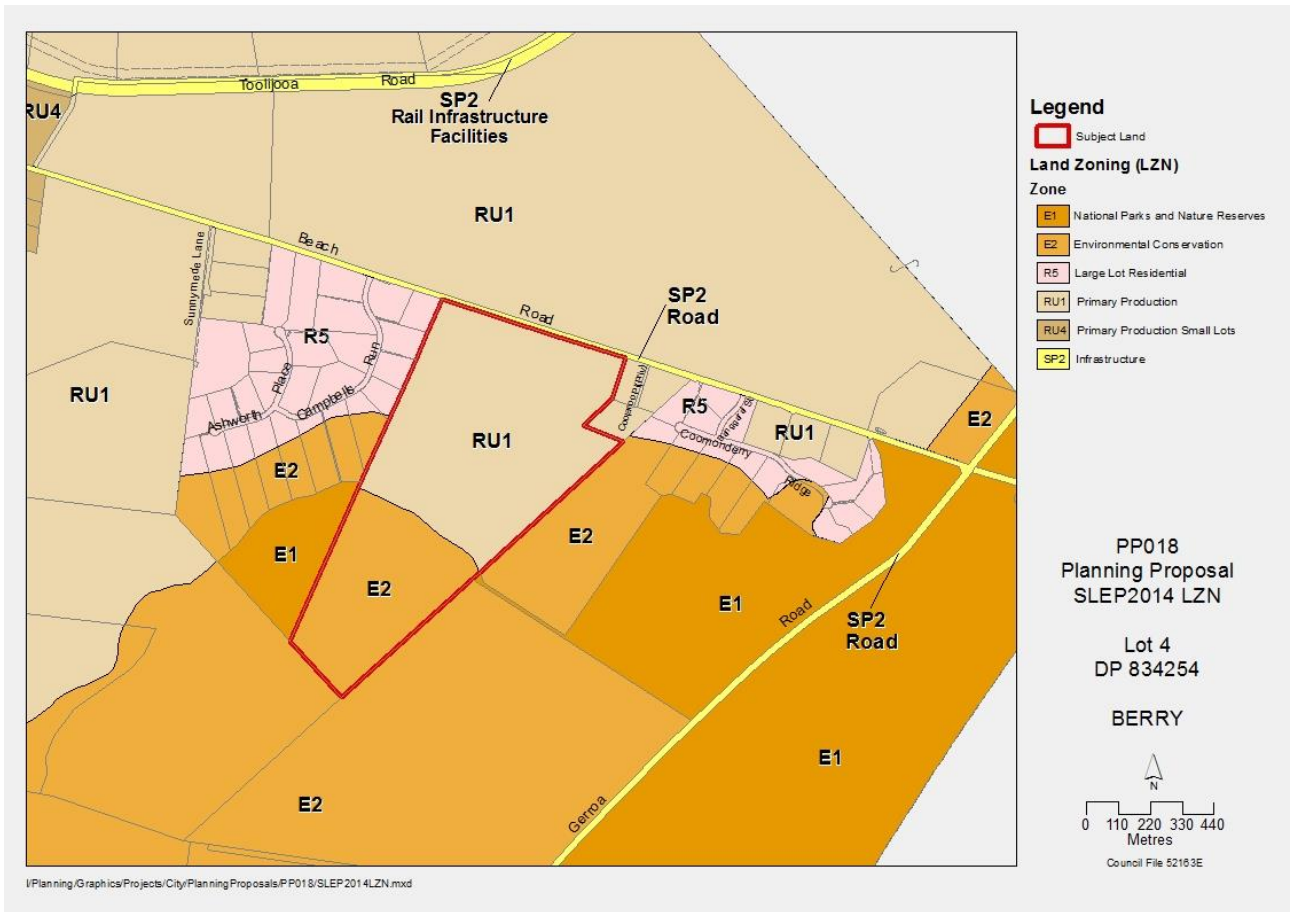


Figure 4: Current Land Use Zoning Map (LEP)

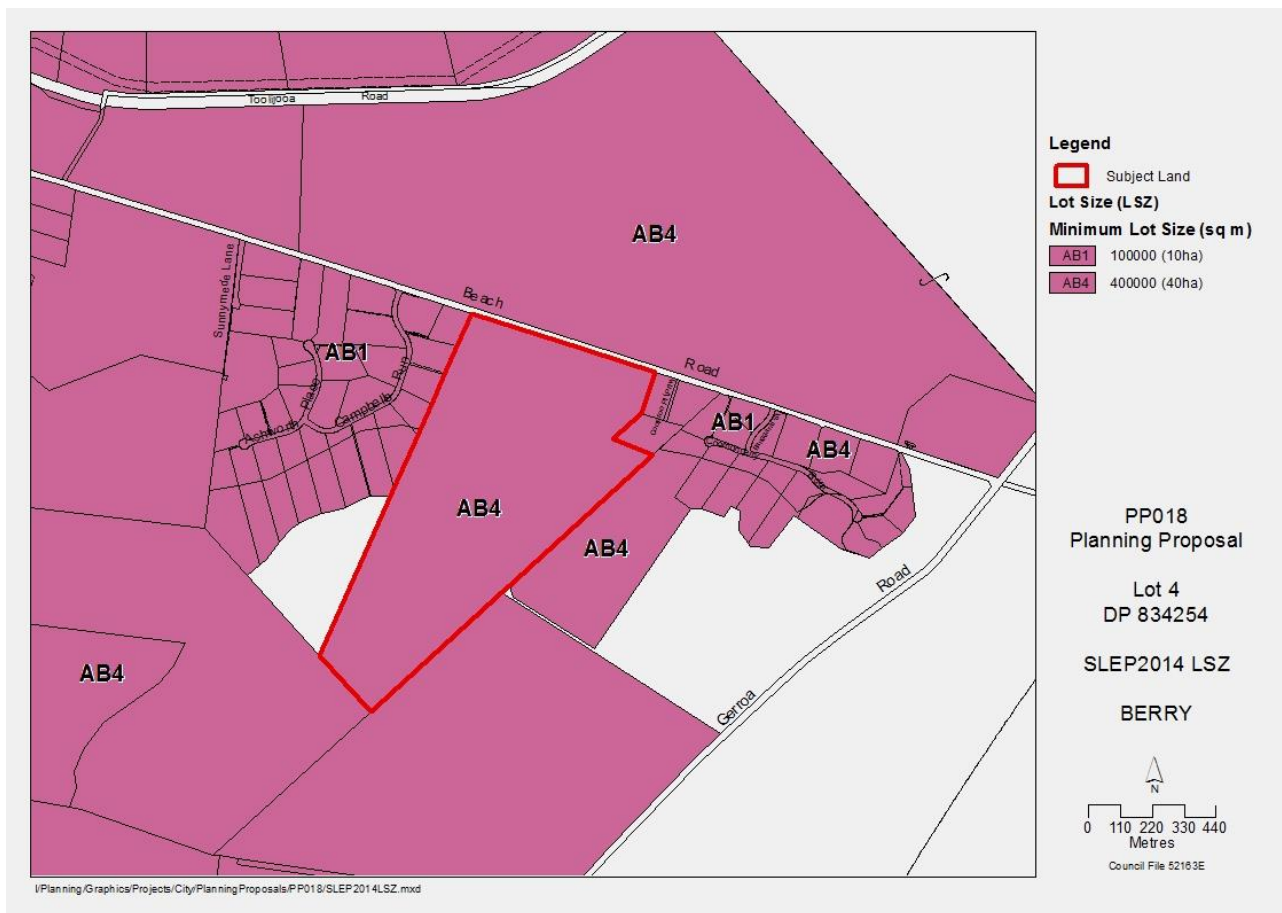


Figure 5: Existing Minimum Lot size Map (LEP)

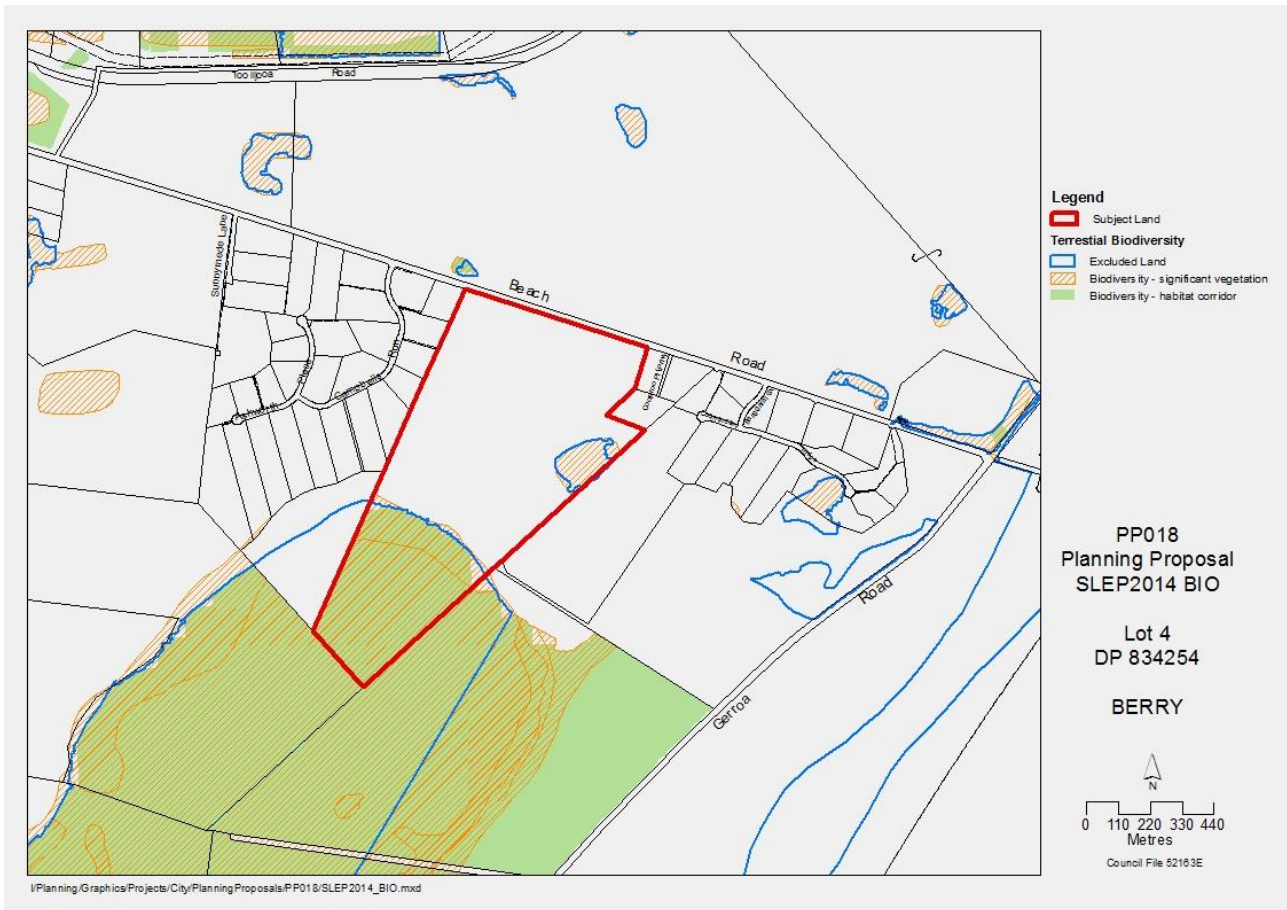


Figure 6: Existing Terrestrial Biodiversity Map (LEP)

## 1.2 Background

### History

The subject land was initially considered as part of investigations into the suitability of land in this location for rural residential development with the adjoining lots to the east and west. However in 1995 the owner of the subject land withdrew from the rezoning process. In July 2000, Amendment No. 166 to the Shoalhaven LEP 1985 rezoned the adjoining lots to the east and west for rural residential development, ultimately resulting in the land being subdivided and developed with housing and the transfer of land Coomonderry swamp into public ownership by NPWS as part of Seven Mile Beach National Park.

### Planning Proposal

Discussions regarding a PP to rezone the subject land began in 2014. A pre-lodgement meeting with State Government agencies was held in July 2015. In September 2015 Council provided a pre-lodgement letter outlining the matters to be addressed in any PP over the subject land. A PP was ultimately lodged with Council in September 2015 by Michael Brown Planning Strategies, on behalf of the landowner. The PP was assessed and informal early community notification was undertaken including letters being sent to adjoining and adjacent

property owners. A copy of the Proponent's PP document was made available on Council's website.

Council's Development Committee considered a report on the Proponent's PP document on 18 January 2016 (**Attachment 3**). Council resolved at its January 2016 Development Committee Meeting (MIN16.2 – see **Attachment 4**) to support the PP, subject to revisions as outlined below:

*(MIN16.2) RESOLVED That in accordance with the Committee's delegated authority from Council, that the Committee:*

- a) *Give in principle support for the proposed rezoning of Lot 4 DP 834254, Beach Road, Berry and submit a revised Planning Proposal to the NSW Department of Planning and Environment for Gateway determination, subject to:*
  - i) *Revision of the proposed minimum lot size to ensure the size of future lots is consistent with adjacent subdivisions and can adequately accommodate on site effluent disposal;*
  - ii) *Revision of the proposed zoning to ensure appropriate environmental zoning for the swamp and buffer area and other ecologically significant areas on the subject land including, but not limited to, protection of Coomonderry Swamp/SEPP 14 wetland and ecologically significant areas such as the patch of forest known as "Jim's Forest" and Berry Wildlife Corridor.*
  - iii) *Development to be limited to the north of the ridgeline (i.e. no dwellings south of the ridge) to minimise any potential impact on Coomonderry Swamp, to maintain the integrity of the ridgeline, and to be consistent with the planning outcomes of the adjacent sites*
  - iv) *Resolution of the proposed transfer of land to National Parks and Wildlife Service, and the possible need for a Voluntary Planning Agreement.*
- b) *Advise the proponent and those who submitted comments of this resolution, noting the opportunity for formal comment later in the process; and*
- c) *Receive a further report following the Gateway determination, if necessary.*

The proponent was advised in writing of the Council resolution and confirmation was sought on whether they wished to proceed with the PP.

### *Pre-Gateway Review*

In May 2016, Council was then advised by DP&E that the proponent had requested a pre-Gateway review (PGR) on the basis that Council did not make a decision within 90 days. The proponent submitted an amended PP document for the PGR (**Attachment 5**) which was considered by the Southern Joint Regional Planning Panel in September 2016 and included a number of preliminary assessment reports (**Attachments 6 – 10**). The JRPP released their Advice report in November 2016 (**Attachment 2**) which included the following recommendations:

1. *The Panel considers that the Planning Proposal has strategic merit and recommends that the Planning Proposal proceed to a gateway determination.*
2. *The Panel is of the view that the following amendments should be made:*

- *Lands around Jim Forrest and south of the ridge being zoned E2 Environmental Protection to ensure limited and restricted use;*
  - *Delineation of the area as proposed Lot 47 to be transferred to National Parks and Wildlife Services and zoned appropriately as E1 or E2;*
  - *Controls being drafted to promote a variety of lot sizes greater than a minimum of 1 hectare, to appropriately reflect the rural character; and*
  - *Controls to maintain all vegetation on site and that there is limited change to land levels.*
3. *The Panel recommends that there should be certainty around the transfer of lands to public ownership and that the mechanism for these should accompany the Planning Proposal.*
  4. *There should not be any further consideration of rezoning proposals for rural residential subdivision until 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 regionally important agricultural lands.*

The outcome of the PGR determination by DP&E was that an amended PP, consistent with the JRPP recommendations, should be prepared and submitted for a Gateway determination (this PP) and that there should be clarity around the transfer of the lands within Coomonderry Swamp into public ownership and the mechanism for this should accompany the PP.



## 2 Part 1 – Intended Outcome

The intended outcome of this PP through appropriate rezoning and other controls is to balance conservation of the Coomonderry Swamp with providing for additional rural residential development, in accordance with the following objectives:

- Protect ecologically significant lands on the site around Jim’s Forest and south of the west-east ridgeline to ensure limited and restricted use.
- Locate new residential development north of the ridgeline only to minimise potential impacts on Coomonderry Swamp, maintain the scenic integrity of the ridgeline and ensure consistency with the planning outcomes in the adjacent land to the east and west.
- Allow the future subdivision of the land with a variety of lot sizes greater than a minimum of 1 hectare, to appropriately reflect the existing rural residential character, ensure lot sizes are consistent with adjacent subdivisions and ensure they can adequately accommodate on-site effluent disposal.
- Facilitate the transfer of Coomonderry Swamp lands that form part of the site into Public Ownership (NPWS) as part of the overall rezoning proposal.

### *Transfer of Coomonderry Swamp land into Public Ownership by NPWS*

The mechanism to transfer the Coomonderry Swamp land to NPWS will be further investigated and resolved as the PP progresses, following the Gateway determination. Council has undertaken preliminary informal discussions with OEH and NPWS in relation to the land transfer mechanism. It is proposed that a Voluntary Planning Agreement (VPA) will be prepared between Council, OEH/NPWS and the land owner as the mechanism to facilitate the land transfer. The VPA process for the proposed transfer will be resolved prior to the site being rezoned.

A proposed additional local provisions clause is intended to apply controls to any proposed future subdivision of the subject land, to require the transfer of land to NPWS. The clause will be prepared in accordance with the planning objectives for the rezoning and subdivision of adjacent land to the east and west and advice provided to Council by the then Legal Services Branch of the NSW Department of Urban Affairs and Planning (DUAP) (letter dated 29 February 2000).

In this regard, Shoalhaven LEP 1985 Amendment No. 166 for the rezoning of the adjacent lands Lot 4 DP 804218 and Lot 4 DP 713138 included the following Clause 39BB *Development of certain land at Seven Mile Beach*:

*(1) This clause applies to land shown edged heavy black on the map marked “City of Shoalhaven Local Environmental Plan 1985 (Amendment No 166)”.*

*(2) The Council shall not consent to an application to subdivide or otherwise carry out development of land to which this clause applies unless:*

- (a) it has considered plans and documentation showing how pollution is to be controlled which might arise from carrying out development on the allotments to be created by the proposed subdivision or from carrying out the other development, and*
- (b) if the proposed subdivision or other development is of, or on, an allotment abutting Seven Mile Beach National Park—it has considered plans and documentation showing the measures to be introduced to protect the natural values of that National Park, and*
- (c) subdivision of Lot 4, DP 713138 does not exceed twenty-eight lots plus one lot of approximately 13 hectares to be transferred to the Minister administering the National Parks and Wildlife Act 1974 in accordance with subclause (4), and*
- (d) subdivision of Lot 4, DP 604218 does not exceed fourteen lots plus one lot of approximately 53 hectares to be transferred to the Minister administering the National Parks and Wildlife Act 1974 in accordance with subclause (4).*

*(3) The provisions of clause 12 (3) (c) of this plan do not apply to land subject to this clause.*

*(4) Development Consent for any subdivision of Lot 4, DP 713138 or Lot 4, DP 604218 shall not be granted unless the Council is satisfied that arrangements have been made for the transfer to the Minister administering the National Parks and Wildlife Act 1974 under Part 11 of that Act, at no cost to that Minister, of the land identified on the map referred to in clause (1) as “area to be transferred for addition to Seven Mile Beach National Park”.*

*(5) Until development consent to the subdivision of the land to which this clause applies is granted in accordance with subclauses (2)–(4), development may be carried out on the land in accordance with this plan as if the land had continued to be zoned Rural “A” (Agricultural Production), notwithstanding the amendments made to this plan by City of Shoalhaven Local Environmental Plan 1985 (Amendment No 166).*

### **3 Part 2 – Explanation of Provisions**

The proposed outcome will be achieved by a combination of the following:

- Amending the Shoalhaven LEP 2014 Zoning Map 6950\_COM\_LZN\_018E\_080 and 6950\_COM\_LZN\_019\_080 to provide an appropriate rural residential zoning for the lands north of the ridgeline and give an appropriate environmental zoning for lands south of the ridgeline and other ecologically significant areas of the subject land.
- Amending the Shoalhaven LEP 2014 Lot Size Maps 6950\_COM\_LSZ\_019\_080 and 6950\_COM\_LSZ\_019E to ensure a variety of lot sizes greater than a minimum of 1 hectare and to provide appropriate lot sizes for the environmental zoned areas and to ensure all dwellings/residential development are located to the north of the ridgeline only. In addition or alternatively, the proposed outcome could be achieved by amending the Shoalhaven LEP 2014 Part 7 Additional Local Provisions to insert a proposed additional *Clause 7.27 Subdivision of land at Beach Road, Berry* (and Clauses Map) to the effect of the indicative clause shown below (note subject to change as the PP process advances). The total number of lots and sizes will be determined following completion of additional studies following the Gateway determination:



*Clause 7.27 Subdivision of land at Beach Road, Berry*

1. This clause applies to land identified as “CI 7.27” on the Clauses Map, being Lot 4 DP 834254, Beach Road, Berry.
2. Development Consent for any subdivision of Lot 4, DP 834254 shall not be granted unless the Council is satisfied that arrangements have been made for the transfer to the Minister administering the National Parks and Wildlife Act 1974, at no cost to that Minister, of the land identified on the map referred to in clause (1) as “*area to be transferred for addition to Seven Mile Beach National Park*”.
3. Development consent must not be granted to the subdivision of, or other development on land to which this clause applies unless:
  - a. Subdivision of Lot 4, DP 834254 does not exceed a total of X with a variety of lot sizes and the area of each lot has a minimum area of 1 hectare plus one lot of approximately X hectares to be transferred to the Minister administering the National Parks and Wildlife Act 1974 in accordance with clause (2).
  - b. Dwellings are located to the north of the ridgeline only and are located to minimise changes to land levels and maintain all vegetation.

## **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 has not resulted from a strategic study or report. The subject land previously formed part of a wider investigation into the suitability of the land for rural residential development, together with the adjoining lands to the east and west. However, in 1995 the landowner decided to withdraw from the rezoning process. The Proponent’s revised pre-Gateway review PP document (**Attachment 5**) indicates that the landowner is now seeking to have the land rezoned to reflect the zoning of adjoining lands, as the dairy business has now ceased.

The outcome of the pre-Gateway review by the JRPP (**Attachment 2**) was that the PP has strategic merit, based on the land use context, being bordered to the east and west by established rural residential land uses that would pose some constraint to continuing agricultural use and the opportunity to transfer Coomonderry Swamp lands into public ownership to NPWS.

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

Depending on the outcomes of the required technical studies, to achieve the desired outcomes of this PP, the LEP zoning map, minimum lot size map and Clauses map and Part 7 Additional Local Provisions clause will need to be amended to protect the ecologically

significant areas on the site, allow for suitable additional rural residential development and facilitate the transfer of swamp lands to NPWS.

There is no other strategic approach that would achieve a balance between protection of the Coomonderry Swamp and rural residential development, other than amending the zoning, minimum lot size and potentially other maps in Shoalhaven LEP 2014 to facilitate this.

## 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 2015 (ISRP)*

The ISRP is a high-level strategic planning document that provides a framework to guide sustainable growth in the region, over the next 20 years. ISRP sets strategic directions for:

- Protecting regionally important agricultural lands as an asset to food and fibre production; and
- Protecting the region’s biodiversity corridors in local planning controls.

The subject land does not appear to be mapped as ‘Biophysical Strategic Agricultural Land (BSAL)’ in *Figure 11: Illawarra – Shoalhaven’s Resources* in the IRSP, however the land to the north of the site is zoned RU1 Primary Production and part of the land is mapped as BSAL in the lower scale Strategic Agricultural Land Map – sheet STA\_042 of the Mining SEPP. Part of the land (and the existing rural residential land to the east and west of the site) is identified as Class 3 prime crop and pasture land by the Department of Agriculture.

Whilst the site is suitable for high quality grazing based on the size and soil types, the site is considered to be an infill rural property that is located between two (2) rural residential subdivisions.

The JRPP in their advice report to the Minister (**Attachment 2**) concluded that:

*“The impact on achieving the ISRP outcome of protecting regionally significant agricultural lands as an asset to food and fibre production and the significance of the departure from S117 1.2 and 1.5 is lessened by potential constraints already created on the subject land by Amendment No 166 to the SLEP 1985 allowing rural residential development to the east and west.*

*The regional strategies give equal weight to environmentally sensitive lands and strategically important agricultural land. This land is still reasonable agricultural land and of a size that could support primary production. However its location between existing rural residential subdivisions does give rise to the potential for land use conflicts.*

*It is the Panel's view that, only because there has been a history of consideration, and the fact that it is an infill, that there is strategic merit in changing the zoning to complement adjoining land uses and achieve the transfer of a portion of Coomonderry Swamp to public ownership.*

*On balance while the Panel is of the view that there are justifiable reasons to maintain the agricultural use of the site, the earlier land use decisions of adjoining lands distinguishes this site from the other sites exhibiting similar characteristics, which means strategically it is appropriate to revisit the planning framework.” (page 5).*

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

##### *Community Strategic Plan - Shoalhaven 2023 (CSP)*

Council's Community Strategic Plan – Shoalhaven 2023 provides long-term direction for the overall development of the City and identifies objectives and strategies for place, people, prosperity and leadership in Shoalhaven. The proposal is not inconsistent with the CSP and is consistent with the following relevant objective and strategy for 'Place':

**Objective 2.2:** *Population and urban settlement growth that is ecologically sustainable and carefully planned and managed.*

**Strategy 2.1.2:** *Ensure that the natural ecological and biological environments and the built and cultural heritage of the Shoalhaven are protected and valued through careful management.*

##### *Shoalhaven Growth Management Strategy (GMS)*

The Shoalhaven GMS establishes a growth direction for the City to help guide the future development and conservation of the City for 20-25 years, particularly for settlements that do not currently have a Settlement Strategy. The GMS notes Berry as a settlement with longer term growth potential, subject to infrastructure development and additional service provision. The growth of Berry as a settlement is limited by surrounding land identified as prime crop and pasture land which should be retained for agricultural purposes. The GMS suggests growth should occur within the existing urban framework and boundaries of the Berry township and on the existing residential zoned land to the south west of the town.

The GMS did not consider the opportunity for additional rural residential rezoning at a strategic level.

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

The PP has been assessed for consistency with the applicable state environmental planning policies. A full list of SEPPs is provided at **Attachment 12**. The most relevant SEPPs are discussed below.

##### *State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP 14)*

SEPP 14 Coastal Wetlands aims to ensure that coastal wetlands are preserved and protected. Part of the subject land forms part of Coomonderry Swamp, gazetted wetland No. 370 under SEPP 14. The PP does not propose any development within the Coomonderry Swamp.

#### *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)*

SEPP 55 aims to provide a Statewide planning approach to the remediation of contamination land and consideration for an RPA when preparing an Environmental Planning Instrument for land identified in the SEPP. The Proponent's PP document included a Stage 1 Preliminary Contamination Assessment (**Attachment 10**). The majority of the site has been used for agricultural purposes including a dairy operation and more recently grazing for beef cattle. Some lands near the homestead and immediately downslope may have been contaminated by past practices, including an underground diesel tank. The Stage 1 Contaminated Land Assessment identified that a Stage 2 Assessment is required.

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

The Ministerial Directions are considered in **Attachment 13** and those that are specifically relevant to the site and the proposal are discussed in greater detail below.

The proposal is **not inconsistent** with the following s117 Directions:

- 2.1 Environmental Protection Zones – this PP seeks to ensure appropriate environmental zoning of ecologically significant lands, to be confirmed through a flora and fauna impact assessment. Consistent with adjoining lands, the catchment of the swamp south of the ridgeline will be zoned E2 to protect the swamp and buffer area from drainage and waste water issues/runoff.
- 2.4 Recreational Vehicle Areas – there is no proposal for recreation vehicle areas in the PP.
- 3.1 Residential zones – the subject land is bounded by rural residential development to the east and west and the PP is considered to be an infill rezoning/development that is generally consistent with the planning principles of the adjoining land.
- 3.3 Home occupations – home occupations are permitted without consent in the proposed R5 Rural Residential zone that could be utilised over part of the site.
- 3.4 Integrating land use and transport – the site is located on Beach Road which connects Berry and Gerroa.
- 4.1 Acid sulphate soils - the area proposed for rural residential development is not affected by Acid sulphate soils however the area of swamp and buffer to the south of the site is affected by Class 2 Acid Sulphate Soils.

- 5.10 Implementation of Regional Plans – the ISRP applies to the site and detailed commentary on the ISRP is provided at Section 4.2.1. The ISRP gives equal weight to environmentally sensitive lands and strategically important agricultural land. While the land has agricultural value, the land use context of the site as an infill rural property between two rural subdivisions is balanced with the conservation benefit of environmentally significant wetland being transferred into public ownership (NPWS) for their ongoing protection.

The proposal is **inconsistent, to a minor extent** with the following s117 Directions:

- 1.2 Rural Zones - the PP seeks to rezone part of the subject land from a rural zone (RU2 Rural landscape) to a rural residential zoning (R5 Large lot residential), however this is considered to be of minor significance as it reflects its infill natural and the zoning of the adjoining land. In addition, the site was considered as part of rezoning investigations for adjacent land to the east and west which were rezoned to enable rural residential development. 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 currently existing lots sizes of the adjoining rural residential development immediately to the east and west.
- 1.5 Rural Lands – the PP will change the minimum lot sizes of land currently zoned RU2 Rural landscape and E2 Environment Conservation. The PP is consistent with the Rural Planning Principles and the Rural Subdivision Principles in SEPP (Rural Lands) 2008. The subject land is located between two existing rural residential subdivisions and was originally included in the rezoning investigations for this land, thus it will provide for the orderly and economic development of this land. Given that this is an infill lot between existing rural residential developments there is the potential for land use conflict between the use of the subject land for agricultural purposes and the rural residential land to the immediate east and west. As such, the PP is considered to be appropriate for this location as it reduces this conflict.

The consistency of the PP with the following s117 Directions will be considered as the process advances and as relevant detailed investigations are completed:

- 2.3 Heritage Conservation – it is proposed that an Aboriginal Cultural Heritage assessment will be completed following the Gateway determination, to identify any aboriginal heritage items, objects and landscapes located on the subject land and also consistency with this Direction.
- 4.4 Planning for Bushfire Protection – it is proposed that consultation be undertaken with the NSW Rural Fire Service following the Gateway determination as part of the site and adjacent lands are identified as bush fire prone land.

### 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?

Parts of the subject land have the potential to contain critical habitat or threatened species, populations or ecological communities, or their habitats. The Coomonderry Swamp provides habitat for a number of species and a number of Endangered Ecological Communities (EECs) listed in the Threatened Species Conservation (TSC) Act 1995 (TSC Act). The Shoalhaven LEP 2014 also currently identifies parts of the site as having significant vegetation and forming part of a habitat corridor.

The Ecological Constraints Analysis by Eco Logical Australia (May 2015) which was submitted with the Proponent's PP document (**Attachment 6**) identified the presence of EECs on the subject land. In relation to threatened flora and fauna, the report states on page 8:

*No threatened flora species were observed during the brief site visit; however one species, Solanum celatum has the potential to occur within the site boundary.*

*No threatened fauna were observed within the brief site visit, however, based on habitat features, including hollow bearing trees, the land within the site boundary contains likely or potential habitat for nine threatened birds, four migratory birds and seven threatened bats. Further assessment for potential impacts to these species would be required at the development application stage.*

The ecologically significant areas of the subject land will be given an appropriate environmental zoning following a further flora and fauna impact assessment. The proposed amendments to the LEP, such as the minimum lot size and zoning will attempt to ensure that no new lot boundaries are created through ecologically significant land and will be consistent with and informed by the recommendations of OEH and the flora and fauna impact assessment.

#### 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 Proponent's PP document included a number of preliminary assessment reports to address environmental effects as a result of the PP, provided as **Attachments 6 - 10**:

- Stage 1 Contamination Assessment (SEEC, October 2015)
- Water Cycle Management Study (SEEC, October 2015)
- Ecological Constraints Analysis (Eco Logical Australia, May 2015)
- Preliminary Agricultural Assessment (Eco Logical Australia, May 2015)
- Preliminary Bushfire Assessment (Eco Logical Australia, May 2015)

The environmental effects may include impact on water quality, stormwater management, onsite effluent management, bushfire and maintaining onsite vegetation. These environmental effects are proposed to be managed by limiting rural residential development



to the north of the ridgeline and zoning ecologically significant areas an appropriate environmental zoning and location of zone boundaries, vegetated buffers, asset protection zones, appropriate lot sizes and location of dwellings. The swamp area and its buffer will be identified and zoned for ultimate transfer to the National Parks and Wildlife Service.

Environmental impacts are proposed to be investigated following the Gateway determination by additional technical studies including:

- Flora and fauna impact assessment;
- Agricultural assessment;
- Bushfire Assessment;
- Contamination assessment;
- Soils and geology assessment;
- Water cycle assessment;
- On-site effluent management assessment;
- Traffic and transport assessment.
- On-site Aboriginal Cultural Heritage Assessment; and
- Independent valuation analysis of the equity of land dedication.

The Gateway determination will confirm the technical studies required to support the PP continuing through the process.

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

The socio-economic affect of this PP will be relatively minimal. It will provide some economic benefit through the supply of additional rural residential land and housing opportunities. It also provides an opportunity to bring part of Coomonderry Swamp into public ownership. An independent valuation assessment will be undertaken to consider the equity of the land transfer associated with the rezoning (i.e. the value of the land to be transferred vs the value of the development potential created). The transfer is proposed to be achieved through a Voluntary Planning Agreement (VPA).



## 4.4 State and Commonwealth Interests (Section D)

### 4.4.1 Is there adequate public infrastructure for the Planning Proposal?

Existing public infrastructure may need to be augmented to support the development. The availability of infrastructure will be further investigated with relevant agencies following the Gateway determination, to ensure it is adequate to serve the needs of the proposal. The Proponent's PP document did not include supporting advice from service providers that infrastructure is needed or can be provided.

Informal discussions with Shoalhaven Water have indicated that sewer is unavailable and future connection to reticulated water is unlikely, therefore onsite effluent management will be required.

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

Council will consult with any public authorities identified in the Gateway determination, including but not limited to:

- NSW Rural Fire Service
- NSW Office of Environment and Heritage (National Parks and Wildlife Service)

Council has undertaken early consultation with the NSW Office of Environment and Heritage who indicated "in-principle" support regarding accepting the swamp lands into NPWS in their letter dated 28 January 2016, provided at **Attachment 11**. Council has also undertaken information discussions with NPWS regarding the mechanism for land transfer.

## 4 Part 4 – Mapping

Mapping is currently provided to identify the subject land, constraints and current planning controls applying to the site. A proposed zoning map, proposed minimum lot size map and potentially a development area map will be included in the post-gateway version of the PP following completion of additional technical studies. The specific zones and minimum lot sizes will be determined following completion of the technical studies and will be prepared for public exhibition of the PP.

The following mapping changes to the Shoalhaven LEP 2014 are likely to be required:

- Amending the Zoning Maps to apply an appropriate rural residential zoning for the lands north of the ridgeline and an appropriate environmental zoning for lands south of the ridgeline and also the ecologically significant areas of the subject land.
- Amending the Lot Size Maps to ensure a variety of lot sizes greater than a minimum of 1 hectare and ensure all dwellings/residential development are located to the north of the ridgeline.

- Amending the Clauses Map to include a Part 7 Additional local provisions clause.

Additional maps may be required by the Gateway determination requirements and as a result of any additional technical studies. Any mapping required by the Gateway determination will be prepared for inclusion in the public exhibition version of the PP.

## 6 Part 5 - Community Consultation

The PP will be exhibited in accordance with the requirements of Section 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and any other requirements as determined by the Gateway. It is intended that an exhibition period of 28 days apply.

The public exhibition will include notification in the local newspapers, and a notice on Council's website. Hard copies of the PP will be available at Council's Administrative Building in Nowra.

## 7 Part 6 – Project Timeline

Depending on the specific requirements of the Gateway determination and the number of technical studies required to be completed, this timeline is indicative and subject to change.

It is requested that the Gateway Determination provide a timeframe of up to 2 years to allow for the necessary steps to be completed. This timeframe will allow the completion of the necessary studies, preparation and finalisation of a Voluntary Planning Agreement (VPA) or other mechanism to facilitate the transfer of lands, government agency consultation and public exhibition.

The anticipated timeline for the PP is provided in the following table.

<b>Task</b>	<b>Anticipated Timeframe</b>
Commencement date (date of Gateway determination)	May 2017
Completion of Gateway determination requirements	July/August 2018
Government Agency consultation	August 2018
Public exhibition (28 day period)	October 2018
Consideration of submissions	December 2018
Post exhibition consideration of PP	January 2019
Submission to the Department to finalise the LEP	February 2019
Finalisation and notification of Plan	March 2019

## Attachments

### Attachment 12 - SEPP Checklist

SEPP	Name	Applicable	Not inconsistent
1	Development Standards	x	n/a
14	Coastal wetlands	✓	Not inconsistent
19	Bushland in Urban Areas	x	n/a
21	Caravan parks	x	n/a
26	Littoral rainforests	x	n/a
30	Intensive agriculture	x	n/a
33	Hazardous and Offensive development	x	n/a
36	Manufactured home estates	x	n/a
44	Koala habitat protection	x	n/a
50	Canal estate development	x	n/a
52	Farm Dams and Other Works in Land and Water Management Plan Areas	x	n/a
55	Remediation of land	✓	Not inconsistent
62	Sustainable aquaculture	x	n/a
64	Advertising and signage	x	n/a
65	Design quality of residential apartment development	x	n/a
70	Affordable Housing (Revised Schemes)	x	n/a
71	Coastal protection	x	n/a
--	Housing for Seniors or People with a Disability 2004	x	n/a
--	BASIX : 2004	x	n/a
--	Mining, Petroleum Production and Extractive Industries 2007	x	n/a
--	Miscellaneous Consent Provisions 2007	x	n/a
--	Infrastructure 2007	✓	Not inconsistent
--	Rural Lands 2008	✓	Potentially Inconsistent
--	Exempt and Complying Development Codes 2008	x	n/a
--	Affordable Rental Housing 2009	x	n/a
--	Urban Renewal 2010	x	n/a
--	Sydney Drinking Water Catchment 2011	x	n/a
--	State and Regional Development 2011	x	n/a

### Attachment 13: Section 117 Directions Checklist

Direction		Applicable	Relevant	Not inconsistent
<b>1 Employment and Resources</b>				
1.1	Business and Industrial Zones	✓	✗	n/a
1.2	Rural Zones	✓	✓	Potentially inconsistent – however this is considered acceptable due to the infill nature of this proposal – Section 4.2 of the report.
1.3	Mining, Petroleum Production and Extractive Industries	✓	✗	n/a
1.4	Oyster Aquaculture	✗	✗	n/a
1.5	Rural lands	✓	✓	Potentially inconsistent – however this is considered acceptable due to the infill nature of this proposal – Section 4.2 of the report.
<b>2 Environment and Heritage</b>				
2.1	Environmental Protection Zones	✓	✓	Not inconsistent
2.2	Coastal Protection	✗	✗	n/a
2.3	Heritage Conservation	✓	✓	Unknown – refer to Section 4.2.4 of the report.
2.4	Recreation Vehicle Area	✓	✗	n/a
2.5	Application of E2 and E3 Environmental Overlays in Far North Coast LEPs	✗	✗	n/a
<b>3 Housing, Infrastructure and Urban Development</b>				
3.1	Residential Zones	✓	✓	✓
3.2	Caravan Parks and Manufactured Home Estates	✓	✗	n/a
3.3	Home Occupations	✓	✓	Not inconsistent
3.4	Integrating Land Use and Transport	✓	✓	Not inconsistent
3.5	Development Near Licensed Aerodromes	✓	✗	n/a
3.6	Shooting Ranges	✓	✗	n/a
<b>4 Hazard and Risk</b>				
4.1	Acid Sulphate Soils	✓	✓	Not inconsistent
4.2	Mine Subsidence and Unstable Land	✗	✗	n/a
4.3	Flood Prone Land	✗	✗	n/a
4.4	Planning for Bushfire Protection	✓	✓	Unknown – refer to Section 4.2.4 of the report.
<b>5 Regional Planning</b>				

5.1	Implementation of Regional Strategies	x	x	n/a
5.2	Sydney Drinking Water Catchments	x	x	n/a
5.3	Farmland of State & Regional Significance Far North Coast	x	x	n/a
5.4	Commercial & Retail Development Far North Coast	x	x	n/a
5.8	2 <sup>nd</sup> Sydney Airport: Badgerys Creek	x	x	n/a
5.9	North West Rail Link Corridor Strategy	x	x	n/a
5.10	Implementation of Regional Plans	✓	✓	Not inconsistent
<b>6 Local Plan Making</b>				
6.1	Approval and Referral Requirements	✓	x	n/a
6.2	Reserving Land for Public Purposes	✓	x	n/a
6.3	Site Specific Provisions	✓	✓	Not inconsistent

## **Attachment 14: Evaluation Criteria for the Delegation of Plan Making Functions**

### **Checklist for the review of a request for delegation of plan making functions to Councils**

**Local Government Area:**

Shoalhaven City Council

**Name of draft LEP:**

Shoalhaven Local Environmental Plan 2014  
PP018

**Address of Land (if applicable):**

The subject land is known as [510 Beach Road, Berry] and is legally described as [Lot 4 DP 834254].

**Intent of draft LEP:**

The Planning Proposal seeks to amend the zoning, minimum lot size and Clauses maps and insert an additional local provision.

**Additional Supporting Points/Information:**

<b>Evaluation criteria for the issuing of an Authorisation</b>	<b>Council Response</b>		<b>Department Assessment</b>	
	<b>Y/N</b>	<b>Not relevant</b>	<b>Agree</b>	<b>Not agree</b>
<b>(Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)</b>				
Is the Planning Proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the Planning Proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the Planning Proposal contain details related to proposed consultation?	Y			
Is the Planning Proposal compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	N			
Does the Planning Proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>				
Does the Planning Proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NR		
<b>Heritage LEPS</b>				
Does the Planning Proposal seek to add or remove a local heritage item and is it supported by a strategy / study endorsed by the Heritage Officer?		NR		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NR		



Does the Planning Proposal potentially impact on item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		NR		
<b>Reclassifications</b>				
Is there an associated spot rezoning with the reclassification?		NR		
If yes to the above, is the rezoning consistent with an endorsed Plan Of Management (POM) or strategy?		NR		
Is the Planning Proposal proposed to rectify an anomaly in a classification?		NR		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?		NR		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		NR		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the Planning Proposal?		NR		
Has the council identified that it will exhibit the Planning Proposal in accordance with the Department's Practice Note (PN09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guidelines for LEPs and Council Land?		NR		
Has council acknowledged in its Planning Proposal that a Public Hearing will be required and agree to hold one as part of its documentation?		NR		
<b>Spot Rezonings</b>				
Will the proposal result in a loss of development potential for the site (i.e. reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the Planning Proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the Planning Proposal contain sufficient documented justification to enable the matter to proceed?	Y			

Does the Planning Proposal create an exception to a mapped development standard?	Y			
<b>Section 73A matters</b>				
<p>Does the proposed instrument:</p> <p>a. Correct an obvious error in the principal instrument consisting of a mis-description, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary works or a formatting error?;</p> <p>b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;</p> <p>c. Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE – the Minister (or delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</p>	N			