

DE21.25 Public Exhibition Outcomes and Finalisation - Planning Proposal: Jervis Bay Road, Falls Creek (PP035)

HPERM Ref: D21/83338

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. PP035 Summary of State Agency Submissions (under separate cover) [↗](#)
2. Final Planning Proposal PP035 Jervis Bay Road Falls Creek (under separate cover) [↗](#)

Reason for Report

- Consider the outcomes of the public exhibition of the Planning Proposal (PP035) to amend Shoalhaven Local Environmental Plan (LEP) 2014 to allow for community title subdivision of a maximum of 13 housing lots and one neighbourhood conservation lot on Lot 3 DP 846470, Jervis Bay Road Falls Creek.
- Obtain endorsement to finalise PP035 and proceed to amend the LEP.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt Planning Proposal (PP035) as exhibited.
2. Liaise with the Office of the NSW Parliamentary Counsel's Office (PCO) to amend the Shoalhaven LEP 2014.
3. Ensure that Aboriginal cultural heritage values are considered and addressed as part of the development application to undertake the community title subdivision that will be permitted by the proposed LEP amendment.
4. Advise key stakeholders of this decision when the LEP has been amended.

Options

1. Adopt the PP as exhibited.

Implications: This is the preferred option. The resulting LEP amendment will potentially allow (subject to development approval) for the subdivision of the subject land (Lot 3 DP 846470) into a community title arrangement, as proposed by the proponent, to provide conservation and land management benefits, consistent with the findings of detailed site investigations.

Part 3 of the recommendation is in response to a submission from Heritage NSW.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes to the recommendation and may require an alteration to the Gateway determination and re-exhibition of the PP.

3. Not adopt the recommendation.

Implications: This is not a preferred option as it would not enable the benefits of the proposal to be realised. The current planning controls permit development across the subject land, and do not include an area set aside for environmental conservation. Substantial site-specific planning investigations have informed PP035 in order to balance development and environmental conservation outcomes, whilst minimising natural hazard risks.

Background

The subject land is Lot 3 DP 846470, Jervis Bay Road, Falls Creek (refer to **Figure 1** Location Map). It has an area of 25.21 hectares and is located on the southern edge of the Falls Creek Large Lot Residential area (south of McArthur Drive/Stapleton Street).

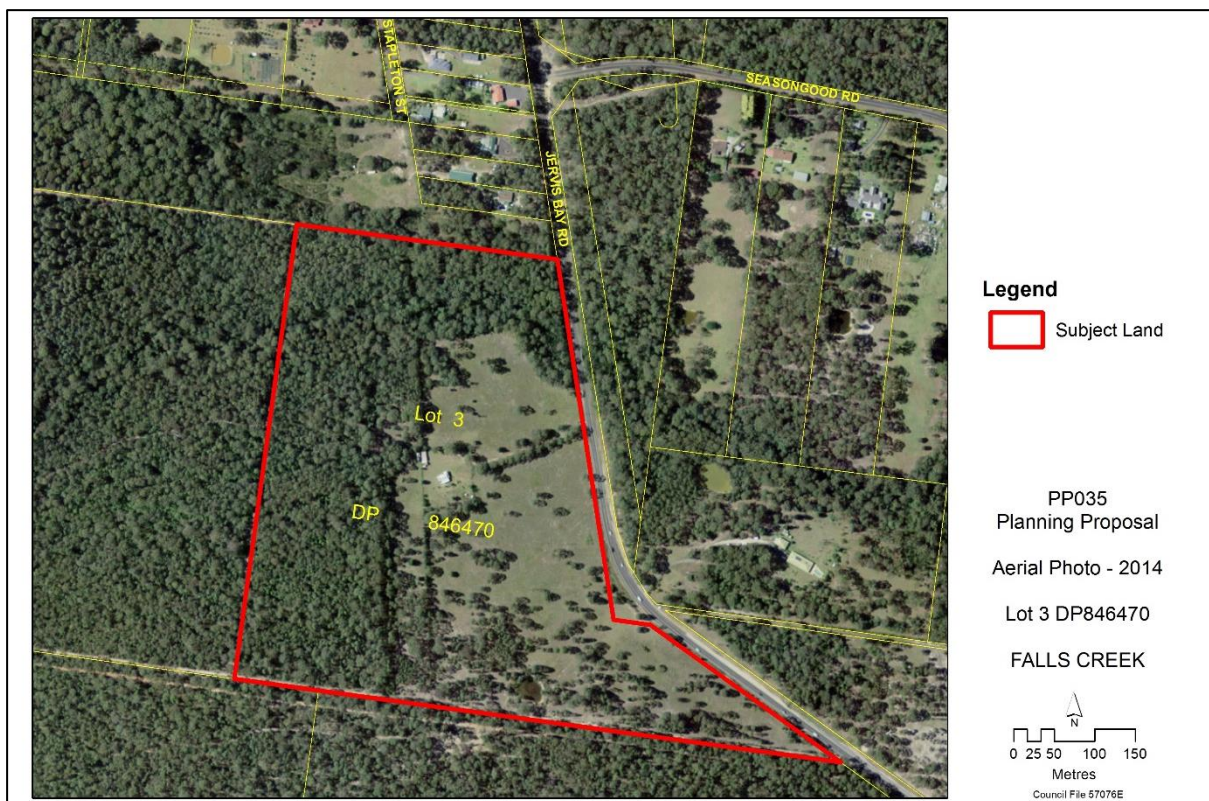


Figure 1: Location Map

Council originally received a Planning Proposal (PP) request in late November 2017 from Cowman Stoddart Pty Ltd (on behalf of the owner, T. Pasialis). The request was also accompanied by a Development Application (DA) for a community title subdivision (SF10637). Assessment of this DA has been on hold pending the PP outcome.

The PP seeks to better balance the provision of new housing with long-term biodiversity conservation outcomes by potentially allowing a community title subdivision which will provide for the long-term maintenance of bushland on the site. The proposal will cluster housing lots in the predominantly cleared areas of the site, close to Jervis Bay Road, without reducing the theoretical subdivision yield permitted under current planning controls.

Council's resolved to progress the PP on 13 March 2018 (MIN18.162) and a favourable Gateway determination was received on 10 September 2018, requiring the completion of a number of technical studies and resulting revision of the proposal in response to the findings of the studies.

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Adjustments to the PP were considered by Council on 7 April 2020 and it was resolved (MIN20.253) to:

1. *Update the Planning Proposal for Lot 3 DP 846470, Jervis Bay Road, Falls Creek (PP035) to reflect the completed studies, and include the following changes prior to public exhibition:*
 - a. *Update zoning, minimum lot size, and terrestrial biodiversity maps to reflect the revised development footprint.*
 - b. *The intended outcome be revised to allow up to 13 residential lots, no smaller than 4,000 m².*
 - c. *Replace the reference to amending Clause 4.2B of the LEP with a statement that the legal mechanism to achieve the intended outcome of the Planning Proposal will be determined in consultation with NSW Parliamentary Counsel.*
2. *Place the Planning Proposal and the supporting information on public exhibition for a minimum of 28 days.*
3. *Adopt a policy position that should the Planning Proposal ultimately be finalised on the basis of a minimum lot size of 4,000 m², that town water will not be supplied to the subject land (regardless of whether the land/subdivision complies with Council's Rural Water Supply Policy).*

The PP was updated in accordance with this resolution to enable it to proceed to exhibition.

Overview - Planning Proposal (PP035)

The PP seeks to amend planning controls in the Shoalhaven Local Environmental Plan 2014 (LEP) to facilitate a small rural residential subdivision via a proposed community title subdivision comprising up to 13 residential lots (each 4,000 m² or larger) within the cleared area adjacent to Jervis Bay Road, with a communally-owned neighbourhood lot covering the forested land.

Community title is a form of land subdivision with individually owned properties and a common area shared between all owners in the subdivision. The communally-owned neighbourhood lot would be managed for conservation by future residents.

The land is currently zoned predominantly R5 Large Lot Residential, with the south-west corner being zoned RU2 Rural Landscape (**Figure 2**). The R5 land currently has a 2 hectare minimum lot size requirement and the RU2 area a 40 hectare minimum lot size (**Figure 3**). Under current planning controls, it is possible (with consent) to subdivide the majority of the site into rural residential housing lots (minimum of 2 hectares each).

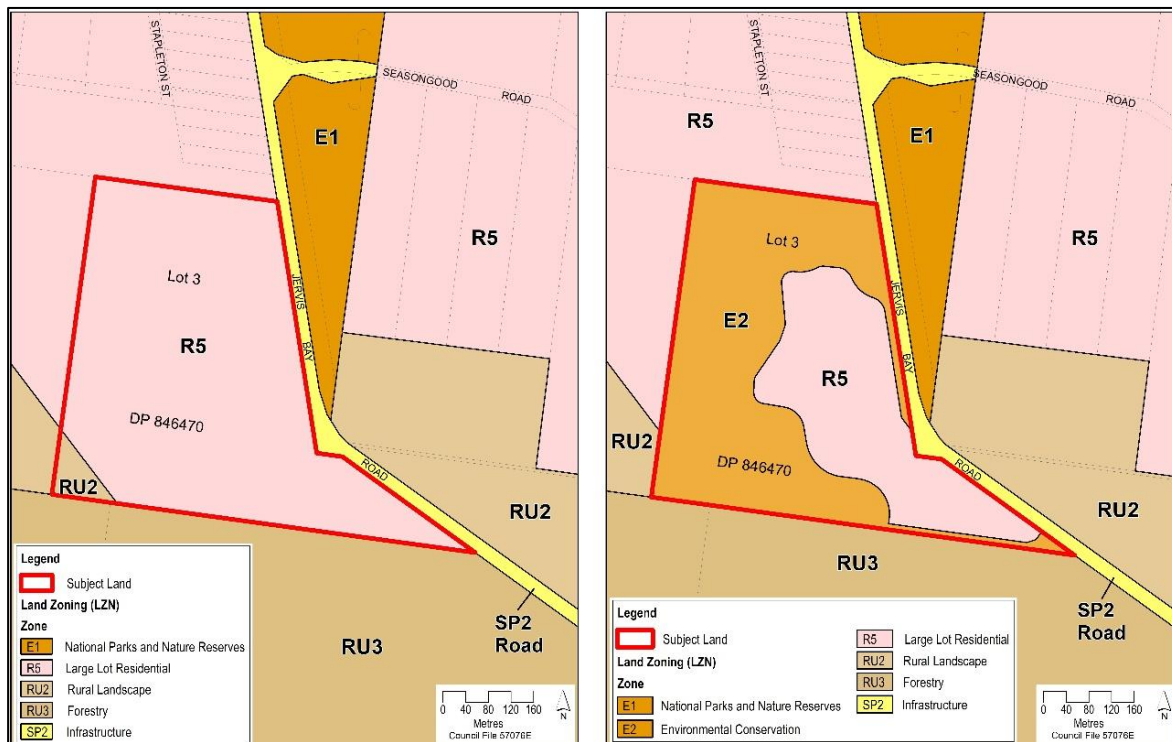


Figure 2: Land Use Zoning Maps (current zoning left and proposed zoning right)

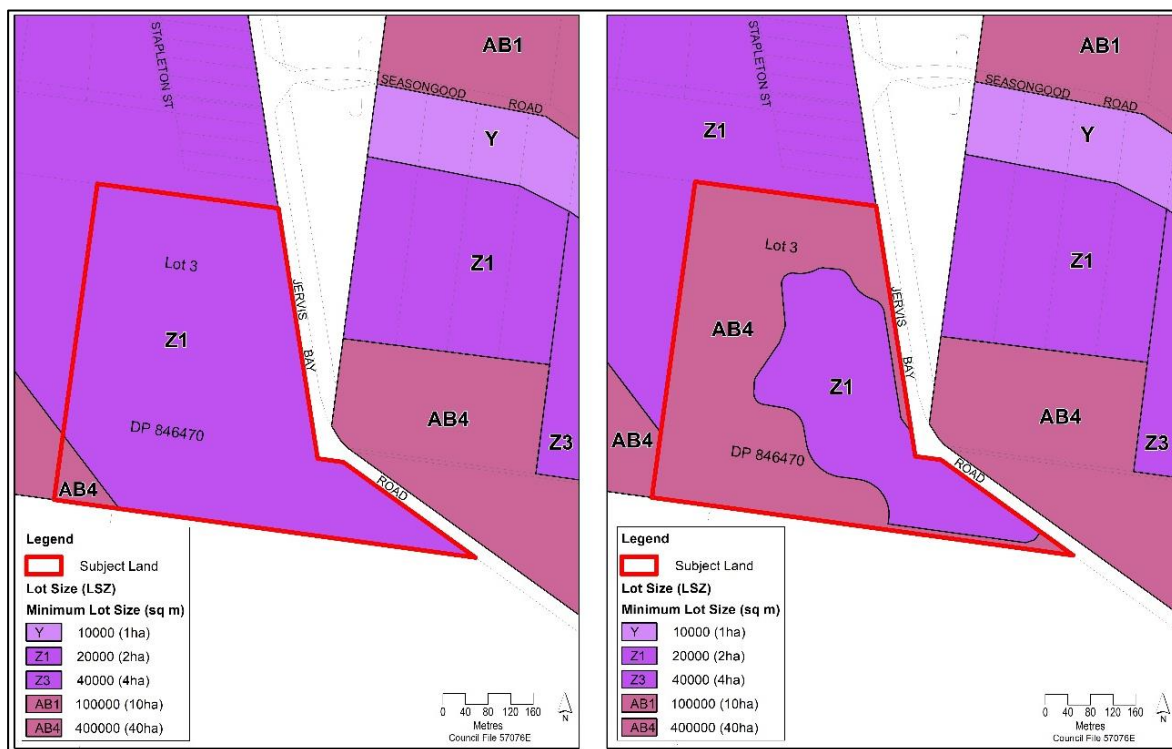


Figure 3: Lot Size Maps (current controls left and proposed controls right).

Note: it is proposed to introduce the ability to subdivide land into lots $\geq 4000 \text{ m}^2$ only in a community title arrangement in the R5 zone (to enable a *maximum* of 13 community title housing lots). Any Torrens Title subdivision would need to comply with the 2 ha minimum.

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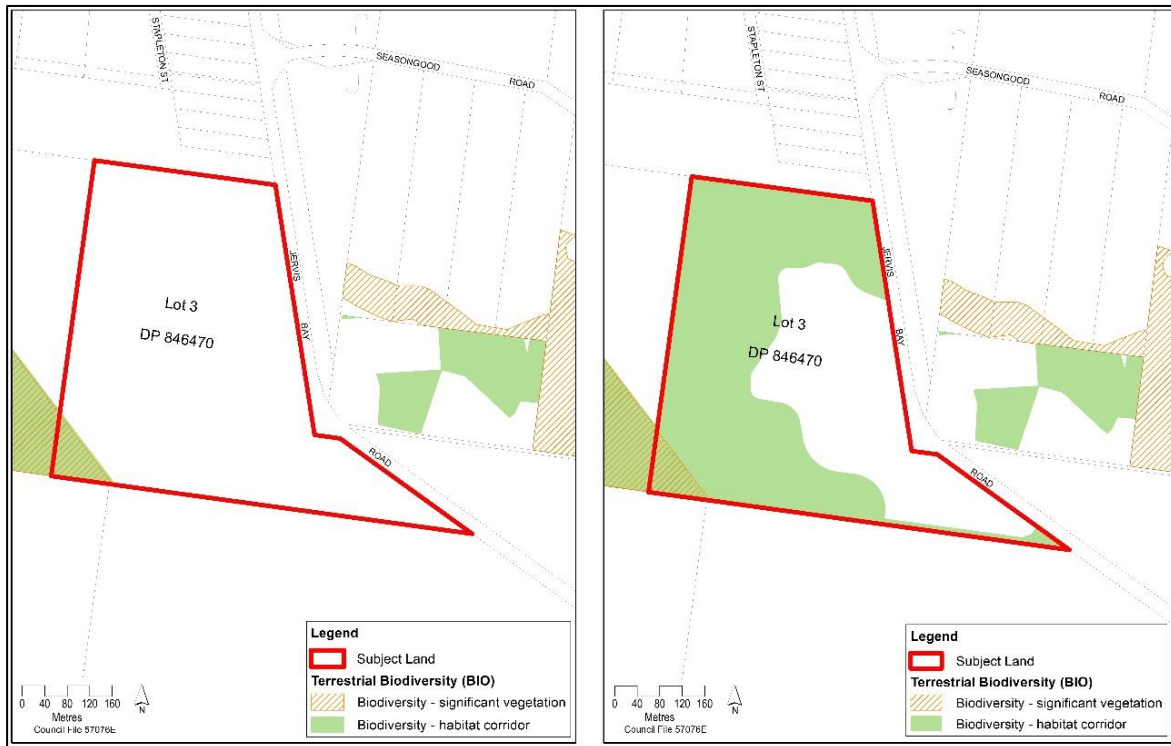


Figure 4: Terrestrial Biodiversity Maps (current map left and proposed map right).

Thus the PP seeks to reduce the area able to be developed for housing, allowing for smaller rural residential lots concentrated in the disturbed part of the site. The remaining bushland area is proposed to be zoned for environmental conservation and unable to be subdivided or developed for housing.

The following amendments are proposed to the LEP to facilitate this:

- Reduce R5 area from 24.45 ha to 9.65 ha - this will reduce the area where subdivision for housing will be permitted. (Figure 2).
- Rezone the remainder (15.56 ha) from R5/RU2 to E2 Environmental Conservation, including a 15 m wide strip adjacent to Jervis Bay Road (where a native vegetation screen will be established) to recognise the environmental significance of the area and protect existing vegetation (Figure 2).
- Amend the Minimum Lot Size Map to extend the 40 ha minimum subdivision lot size over the E2 zone to ensure this area is not subdivided and is retained as one lot (Figure 2).
- Retain the existing 2 ha minimum lot size control across the R5 zone, but introduce a legal mechanism (e.g. local clause) to allow a community title subdivision of up to 13 residential lots (no smaller than 4,000 m² each), and one neighbourhood lot over the E2 zoned area. The E2 'neighbourhood' lot will not have a dwelling entitlement. This will allow the proposed community title subdivision. (Figure 3).
- Amend the Terrestrial Biodiversity Map to recognise the land to be zoned E2 as a habitat corridor, except for the narrow strip adjacent to Jervis Bay Road (where a native vegetation screen is proposed). (Figure 4).

Possible future development resulting from these proposed planning controls could be:

- Community title subdivision of up to 14 lots (thirteen (13) housing lots a minimum of 4,000 m² in size and one environmental protection lot) or;

- Torrens Title subdivision of up to four (4) housing lots with a large residue area zoned for environmental protection.

The proposed community title subdivision model offers a number of positive planning and environmental outcomes in context of the subject land. Further details on the proposed planning controls, justification and assessment of potential impacts can be found in **Attachment 2: Final Planning Proposal Document**.

The proposed changes to the LEP provide a framework to assess the subdivision application SF10637. The LEP amendment does not guarantee approval of the DA, as a number of detailed design and planning control issues will need to be addressed (including further consideration of Aboriginal cultural heritage issues).

Exhibition Details

The PP was publicly exhibited for a total of 31 days, from 6 January to 5 February 2021 (inclusive). The Gateway determination required a public exhibition period of a minimum of 28 days. Note: Covid-19 pandemic procedures applied during this time. Exhibition could not be delayed any further due to the pending Gateway determination deadline (10 March 2021) and advice from the NSW Department of Planning, Industry and Environment (DPIE) to continue to progress the PP.

The exhibition was publicly notified via Council's website. Nearby landowners (82), the Huskisson-Woollamia Community Voice (CCB) and Jerrinja Local Aboriginal Land Council were notified directly in writing.

The PP package was available on Council's webpage. The exhibition package comprised the following (Note: links will expire on 5 May 2021):

1. PP035 - Public Exhibition Notice - (74kb)
2. PP035 - Explanatory Statement - (430kb)
3. PP035 - Frequently Asked Questions - (342kb)
4. PP035 - Planning Proposal - (2,522kb)
5. PP035 - Gateway Determination - (636kb)

Community Feedback/Submissions

Council staff took several phone calls from nearby residents. Queries related to access, community title subdivision, provision of water and questions about the development potential of surrounding land.

However, no (0) submissions were received from residents or community groups.

State Agency Consultation

The following NSW Government Agencies and other bodies were notified and invited to comment in accordance with the Gateway and to demonstrate consistency with the relevant Ministerial directions issued under S 9.1 of the *NSW Environmental Planning and Assessment Act 1979*:

- NSW Rural Fire Service (RFS)
- Heritage NSW
- NSW Department of Planning Industry and Environment - Environment, Energy and Science
- Transport for NSW

- NSW Department of Planning Industry and Environment - Natural Resources Access Regulator
- Shoalhaven Water
- Endeavour Energy
- Jervis Bay Marine Park (NSW Department of Primary Industries)

Submissions were received from seven (7) agencies. These are briefly summarised below and addressed detail in **Attachment 1: Summary of submissions**. No submission was received from DPIE – Natural Resources Access Regulator (former NSW Office of Water).

An initial objection by Heritage NSW (discussed further below) has been resolved and there are no outstanding objections or matters to be addressed resulting from State Agency submissions.

NSW RFS

Pre-exhibition consultation with the in June 2020 revealed the need to provide an additional Strategic Bushfire Study. This was completed in September 2020 and RFS comments on it received on 16 October 2020 and 29 January 2021.

In summary, there is no objection to the PP, on the basis that:

In recognition of the risk associated with the site within the landscape, additional quantities of static water shall be provided for each dwelling totalling 20,000L.

The proponent's bushfire consultant was involved in formulating the above additional safety measure after the RFS initially suggested that reticulated water should be provided. (As noted below, technical advice from Shoalhaven Water does not support the provision of reticulated water. Furthermore, Council's adopted position is to not provide reticulated water.)

Heritage NSW

The submission received during the public exhibition period initially objected to the progression of the PP without further consideration of Aboriginal cultural heritage impacts and undertaking an Aboriginal Cultural Heritage Assessment (ACHA).

The submission mistakenly assumed the proposal formed part of the Woollamia/Falls Creek Deferred Areas PP (PP018) and that advice in 2012 from the former NSW Office of Environment and Heritage relating to that proposal had not been followed. The subject land was removed from PP018 early in the assessment of that proposal and was rezoned to its current split of majority R5 with some RU2 as part of the citywide Shoalhaven LEP process in 2014. Also, as discussed in Attachment 1, an ACHA was not required as a condition of the Gateway determination for this PP.

Heritage NSW issued subsequent advice which acknowledged the extensive strategic planning history of the site and the intentions of this proposal to limit site development footprints and impacts. The proposed development area will be located on disturbed already cleared land associated with the current rural-residential land use. Whilst the majority of the site was historically disturbed by logging and grazing activities, much of the land is heavily forested and development in this area will be controlled/restricted by the E2 zone. Thus the likelihood of any impacts to any potential heritage values will be reduced, compared to the current situation where development impacts may eventuate across most of the subject land.

Heritage NSW's advice, dated 24 February 2021, also acknowledged that an AHCA is not expected at this stage in the PP process, and reiterated advice to undertake cultural heritage assessment early in the planning process in all future proposals. In recognition of this, a recommendation is included to ensure that the Heritage NSW concerns in relation to the subject land are considered further as part of the community title subdivision application. In

this regard it is noted that potential impacts on Aboriginal cultural heritage values already need to be considered under clause 5.10 of the Shoalhaven LEP 2014.

On 3 March 2021, Heritage NSW confirmed that they no longer objected to the PP progressing. **Attachment 1** includes a comprehensive overview of the Heritage NSW submission.

Shoalhaven Water

Advised that reticulated sewer was not available and the supply of reticulated (town) water is opposed due to a range of factors including site constraints and ongoing issues with water pressure and flows in nearby areas.

As already noted, in response to the previous report on this matter, Council adopted a policy position to not extend reticulated water to the subject land (Part 3 of MIN20.253).

NSW Department of Primary Industries – Fisheries - Jervis Bay Marine Park

Advised that the PP is unlikely to have an impact on the Marine Park.

DPIE Biodiversity & Conservation Division (BCD)

Did not object to the PP, subject to further consideration of the potential impacts of bushfire protection measures on flora and fauna and adequate consideration of biodiversity issues at the DA stage. Also suggested that the proposed neighbourhood lot (to be zoned E2) could be managed in perpetuity under a biodiversity conservation agreement.

Transport for NSW

Raised no objections to the PP in principle as it is unlikely to have a significant impact on the state road network.

Endeavour Energy

No objection to the PP, subject to the consideration of comments provided and the satisfactory resolution of the management of powerlines that traverse the site.

Comment: It is understood that the developer proposes to remove the existing supply in conjunction with extending power, expected to be by way of underground cabling, to service the proposed future lots in the subdivision. This will be undertaken in accordance with detailed electrical engineering plans to be further approved by Endeavour Energy and constructed in accordance with their requirements.

Post-Exhibition Changes to Planning Proposal

The proposed land use zones, minimum lot size and terrestrial biodiversity maps have been retained as exhibited.

Additional information has however been added to the intended final version of the PP document (see **Attachment 2** - Final Planning Proposal) as summarised below:

- Commentary about the strategic planning history of the site has been added to the 'Background' section in response to comments from Heritage NSW, specifically to clarify the relationship between this PP and the Woollamia/Falls Creek Deferred Areas PP018 which applied to neighbouring land.

- Updated commentary on the new State Environmental Planning Policy Koala Habitat Protection 2020. This change has no implications for the PP as the SEPP reverts back to historical controls and the proposed development is not seeking to expand any residential zones across the site (and instead seeks to reduce the area of land zoned for residential development).
- Additional information added in relation to Section 9.1 Direction 2.3 Heritage Conservation in response to comments received from Heritage NSW. This information provides further justification illustrating that the PP complies with the objectives and requirements of this Direction.
- Updates to Section 3.4.2 to include feedback received from state government agencies.

Conclusion

The PP complies with required legislative requirements, included having satisfied all requirements of the Gateway determination. Additional detailed planning assessment will be required at the subdivision stage of development, as part of the development application process.

The proposed rezoning balances provision of rural residential development, environmental protection and bushfire risk mitigation by:

- rezoning the majority of the site for environmental conservation;
- limiting development to the cleared portions of the site close to the road; and,
- enabling a community title subdivision which will offer positive planning and environmental outcomes in respect of the subject land.

It is envisaged that any potential impacts of the proposal can be suitably managed/conditioned at the subdivision stage of the development. It is recommended that PP be finalised by Council as proposed.

Policy Implications

The PP complies with all relevant state government and Council planning policies required to be considered at this stage, as detailed in the final PP document (**Attachment 2**).

The proponent's proposed community title subdivision arrangement offers a number of positive planning and environmental outcomes in context of this specific site. Council's support of this PP should not be taken out of context and construed as support for community title subdivisions generally.

Financial Implications

There are no immediate financial implications for Council. The cost of preparing and finalising the PP is met by the proponent, consistent with Council's guidelines.