

Attachment 1:

PP035 – Jervis Bay Road, Falls Creek – Community Title Subdivision

Summary of submissions – State Agency Submissions

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Endeavour Energy

Date of submission

6 January 2021

Summary of Submission

Subject to the consideration of comments provided and the satisfactory resolution of the management of powerlines that traverse the site, Endeavour Energy has no objection to the Planning Proposal.

There are low voltage and 11 kV high voltage overhead powerlines traversing part of the site, from the bend of Jervis Bay Rd to a pole mounted substation. Low voltage lines extend from the substation to private poles and the existing dwelling on site. These are to be managed as if an easement exists in accordance with Endeavour Energy's policies and Australian Standards. Alternatively, in some instances the adoption of an underground solution may be warranted.

Whilst the pole mounted substation located on the site is likely to have some spare capacity, it may not be sufficient to facilitate the proposed development. An extension and / or augmentation of the existing local network is likely to be required. The extent of the works will not be determined until the final load assessment is completed. In due course the applicant will need to submit an appropriate application based on the maximum demand for electricity and the method of supply will be determined.

Endeavour Energy also provided detailed comments relating to the various policies and standards that future subdivision proposals would need to consider at detailed design stage

and comply with throughout the life of the development. These have been passed on to the proponent.

Response

The existing power lines service the established dwelling and shed. They do not extend beyond the subject site and service other properties or development.

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 allotments in the subdivision. This will be undertaken in accordance with detailed electrical engineering plans to be further approved by Endeavour Energy and to be constructed in accordance with their requirements.

The local network will need to be extended as part of the development. No significant capacity issues have been raised at this stage. The network extension will be assessed and implemented as part of the subdivision stage of development.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

Transport for NSW

Date of submission

27 January 2021 & 29 January 2021

Summary of Submission

TfNSW initially requested that the PP be delayed until intersection upgrades at the Jervis Bay/Princes Highway intersection are resolved. However, additional advice was issued after discussions regarding the minimal amount of additional development proposed as part of this PP and the distance between the site and the Princes Highway intersection.

Advice issued on 29 January 2021 stated:

All access to the PP site will be via Jervis Bay Road (regional road). TfNSW notes the Planning Proposal – PP035 document dated November 2020 suggests that a CHR/BAL treatment would be required at the intersection of the subdivision access and Jervis bay Road. TfNSW determines it more appropriate for councils to consider and determine if proposed arrangements for developments on regional roads are acceptable from a network perspective (i.e. acceptable in terms of safety and efficiency).

TfNSW has no objections to the planning proposal in principle as it is unlikely to have a significant impact on the state road network.

TFNSW strongly supports development which will reduce car dependency and encourage the use of sustainable modes of travel including buses, bicycles and walking.

Response

Traffic issues have been considered throughout the assessment process. Council's Traffic Section have reviewed the submitted traffic assessment and accepted the proposed intersection treatment. In addition to provision of an upgraded turning intersection, additional widening of Jervis Bay Road may be necessary (additional design and assessment will occur at subdivision stage).

Jervis Bay Road is a very car-dominated environment and although there is a bus route, there are no nearby bus stops. It is difficult to reduce car dependency in rural residential areas. Community title arrangements however can facilitate (and lower the cost of) innovative communal transport options such as car shares and community-owned electric vehicle charging stations. These are not necessarily included in the proposal, but the legal subdivision arrangement provides more opportunities for shared infrastructure should future residents' desire.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

NSW Rural Fire Service

Date of submissions

16 October 2020 (pre-exhibition); 29 January 2021 (exhibition)

Submission

Consultation with the NSW RFS occurred prior to the public exhibition of PP035. Advice issued on 16 October 2020 stated:

The NSW RFS notes that the site is subject to significant bush fire risk. As such Council shall be satisfied that the following comments are addressed prior to progressing the planning proposal:

- The planning proposal does not result in any increase in residential/rural residential density, to that currently applicable to the site;
- Future development is generally consistent with the proposed concept plan, including provision of an 8m wide paved perimeter road;
- Future development complies with the provisions for subdivisions detailed in Section 5 of 'Planning for Bushfire Protection 2019' and considers provision of increased bush fire protection measures (i.e. increased Asset Protection Zones (APZs) and/or construction standards or other protection measures) commensurate with the risk; and
- Future development includes a reticulated hydrant system meeting the provisions of AS2419.1:2005.

Advice received from the NSW RFS on 29 January 2021 reiterated previous advice, and presented a revised position on water supply for firefighting, stating:

The NSW Rural Fire Service has no objection to the progression of the planning proposal based on our previous advice dated 16 October 2020, with the following revision;

- 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.

Response

Density

Overall site density will remain rural-residential in nature. The Planning Proposal manages the development footprint across the site, reducing the area able to be developed for housing by clustering rural residential lots in the cleared part of the site, close to the road and excluding development over the majority of the site. With the clustering of development in a smaller part of the site and smaller proposed lot sizes (minimum of 4,000 m² each) development intensity

will increase in the R5 zoned area but will decrease (there will be no development) in the E2 zoned area.

Under current planning controls most of the land is zoned R5 Large Lot Residential, permitting Torrens Title subdivision (of up to 12 lots) and housing development across the site. The proposal seeks to cluster rural-residential housing lots (up to 13 lots) in the cleared portion of the site. This represents an increase in potential yield of one (1) lot, up to a maximum number of thirteen (13) lots when the land is subdivided as community title. Thirteen (13) lots represent the maximum development yield for the site, and the number of lots to be developed will be subject to further investigations and detailed design at subdivision stage (the eventual lot yield could be reduced due to development constraints emerging during subdivision design and assessment).

The Planning Proposal provides benefits for bushfire risk management, for example through clustering of development in one area of the site and provision of efficient perimeter roads (rather than the currently possible pattern of allowing homes surrounded by bushland dispersed across the site and limited access). Community title also provides opportunities for holistic bushfire risk management, including providing for coordinated land management plans and ongoing funding for maintenance of communally-owned infrastructure and bushland. The alternative of Torrens Title subdivision (as currently permitted) would result in up to 12 privately-owned housing lots with no communally owned land or infrastructure and reliance on individual land management and bushfire risk mitigation actions.

Compliance with Planning for Bushfire Protection 2019

Planning for Bushfire Protection 2019 includes specific guidance related to rural-residential subdivisions as these are generally located in areas of increased bushfire risks, stating:

The NSW RFS has seen an increase in developments involving the subdivision of large rural blocks into smaller rural-residential allotments. In these circumstances, developers, designers and Consent Authorities need to be made aware that additional BPMs [Bushfire Protection Measures] ... will be a requirement to allow for safer and appropriate outcomes for future occupants. (page 40).

The proponent's Strategic Bushfire Study (Ecological, 16 September 2019) recognises the significant risk of bushfire to the site and concludes that bushfire risk mitigation measures can be provided to comply with *NSW Planning for Bushfire Protection (PBP) 2019* and reduce the risk to appropriate levels. These include:

- Provision of a road system that complies with PBP 2019 (including min. 8 m wide perimeter road); and,
- PBP compliant setbacks from bushfire prone vegetation (APZs);

The Study also canvassed additional possible risk mitigation measures (bushfire protection measures in addition to the required prescriptive standards in PBP 2019), including:

- Additional APZ provision (biannual slashing of a 20 m wide buffer area along the subdivision interface);
- Establishment of a Strategic Fire Advantage Zone (SFAZ) over the community title allotment around the northern and western edges of the property to allow for more frequent hazard reduction burning in this area; and

- Development of a Bushfire Emergency and Evacuation Management Plan to coordinate actions (and evacuation of residents/pets) on days of higher Fire Danger Ratings.

Detailed bushfire mitigation responses would be assessed during the subdivision application stage, should the land rezoned, with applications referred to the NSW RFS for their concurrence under Section 100B of the *Rural Fires Act 1997*. The implications of these additional measures on flora and fauna are discussed further below and will need to be investigated further and ameliorated at subdivision stage.

Water supply for firefighting

Additional consultation occurred with the NSW RFS during the public exhibition period. Advice was sought as to the acceptability of providing static water supply for firefighting instead of access to reticulated (town) water hydrants. Advice from Shoalhaven Water opposes connection of reticulated water to the site (in part due to an inability to guarantee supply for this area during a bushfire). This position is reinforced by the Council resolution of 7 April 2020 not to provide reticulated water to the site. PBP 2019 requires a minimum of 10,000 L of static (tank) water per dwelling to be provided for firefighting purposes on rural-residential lots 1,000 m² – 10,000 m² in size.

The NSW RFS have indicated for the subject land that any future subdivision would need to provide double this amount (20,000 L / dwelling) for firefighting purposes. The proponent has indicated that provision of 20,000 L/dwelling of static water supply for firefighting is possible and will be incorporated into subdivision planning for the site. Any development applications for the site require the NSW RFS to issue a Bushfire Safety Authority under section 100B of the *Rural Fires Act 1997* which will reiterate requirements such as provision of the additional static water supply.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

Biodiversity & Conservation Division, Department of Planning, Industry and Environment (Environment, Energy and Science)

Date of submission

5 February 2021

Submission

No major objection to the proposal, subject to the following points:

- That all development, including any bushfire mitigation works, be wholly contained within the proposed R5 – Large Lot Residential portion of the site and not extend into the proposed E2 – Environmental Conservation portion.
- That any subsequent development application appropriately assess the biodiversity impacts of the proposal.
- Recommend that the large E2 portion proposed to be retained be placed under some form of conservation agreement, such as a biodiversity stewardship agreement, so that it is protected and managed for conservation in perpetuity. BCD do not object to PP035, subject to further consideration of the potential impacts of bushfire protection measures on flora and fauna and adequate consideration of biodiversity issues at the

development application stage. BCD also suggested that the proposed neighbourhood lot (to be zoned E2 Environmental Conservation) could be managed in perpetuity under a biodiversity conservation agreement.

Response

Impact of bushfire protection measures on biodiversity

The Flora and Fauna Assessment (Ecological Aug 2019) and draft Planning Proposal indicated that all bushfire protection measures required to comply with *Planning for Bushfire Protection (PBP) 2019 (NSW RFS)*, for example clearing and vegetation management for asset protection zones, can be contained within the area proposed to be rezoned R5 Large Lot Residential. However, given the NSW RFS' advice that *additional* bushfire protection measures may be required to further minimise risk (*in excess* of the general prescriptive requirements of PBP 2019), which could have implications for land zoned E2 Environmental Conservation. Bushfire protection measures will be detailed further as part of the subdivision application process, in consultation with the NSW RFS. It is expected any potential impacts could be avoided or managed in the subdivision design. The E2 zoned land area will also be mapped as a 'habitat corridor' in the LEP Terrestrial Biodiversity maps, providing additional protection over this ecologically sensitive area. The Planning Proposal provides a suitable framework to balance environmental protection and bushfire risk reduction which will be further explored and evaluated during the subdivision phase of development.

Assessing biodiversity impacts in DAs

All DAs for the subject land are required to assess biodiversity impacts, and applications must address and give effect to the strongly environmentally-focused objectives of the E2 Environmental Conservation zone as well as Clause 7.5 Terrestrial Biodiversity in SLEP 2014.

Biodiversity Conservation Agreements

A conservation agreement could provide an effective management mechanism to maintain the ecological values of the property and open up potential grant funding opportunities for environmental land management.

There are a variety of different conservation agreements, ranging from wildlife refuge agreements, to 'in-perpetuity' conservation agreements and stewardship agreements (which allow for the sale of biodiversity offset credits for protected land to fund ongoing management). Landowners with conservation agreements may also benefit from financial concessions and incentives. Conservation agreements are voluntary, and in this case could be investigated at the subdivision development application stage of development.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

Heritage NSW

Date of submission

5 February 2021 & 24 February 2021 & 3 March 2021

Submission

In the submission dated 5 February 2021 Heritage NSW objected to the proposal on the basis that the impact of future development on Aboriginal cultural heritage has not been considered.

The submission recommended an Aboriginal cultural heritage assessment (ACHA) be undertaken to inform the Planning Proposal.

The submission made the following points:

- *The AHIMS search attached to the proponents Planning Proposal is insufficient to address cultural heritage requirements for a PP and is over 12 months old and no longer valid.*
- *Previous advice was provided by the Office of Environment and Heritage to Shoalhaven City Council, in a letter dated 6 July 2012, that Aboriginal cultural heritage would need to be considered as part of the Planning Proposal for the Falls Creek/Woolamia Deferred Areas. We note the current Planning Proposal was one of the Lots included in the previous advice.*
- *An Aboriginal cultural heritage assessment, and consultation with the Aboriginal community, needs to occur early in the planning process to identify Aboriginal cultural heritage values that may occur within the proposal area and establish how this may constrain future development.*
- *An Aboriginal Cultural Heritage Assessment undertaken early and as part of the planning process will also provide increased certainty to any future development applications and may minimise further assessment at a later stage.*
- *The consideration of heritage values as part of the Planning process is in line with Direction 3.4 of the Illawarra Shoalhaven Regional Plan 2036 and Strategy 23.1 of the Draft Illawarra Shoalhaven Regional Plan 2041.*

In addition, Heritage NSW recommended that the Planning Proposal be revised to adequately consider the Aboriginal cultural heritage values and constraints of the proposal and to ensure consistency with the requirements of Section 9.1 (Direction 2.3 - Heritage Conservation) of the Environment Planning and Assessment Act 1979.

After discussions with Council staff and a review of the complex planning history of the site, Heritage NSW provided the following additional comments on 24 February 2021:

- *Have reviewed the project context and history and understand that Council is unable to undertake a heritage assessment as part of this Planning Proposal due to the late stage in the process.*
- *Reiterate that in order to achieve best outcomes for Heritage conservation, an upfront assessment should always be undertaken at the planning stage in order to refine and mitigate impacts to Aboriginal cultural heritage. In future, recommend that Shoalhaven City Council is engaging fully with this process, irrespective of whether a heritage assessment is technically required by DPIE.*
- *Shoalhaven area has high Aboriginal cultural heritage values and consequently the protection of these values needs to be a strong consideration, particularly during the planning process.*
- *In acknowledgment of the complex planning history of the site, advise that a clear commitment needs to be given to undertaking an Aboriginal cultural heritage assessment(s) and Aboriginal consultation at the Development Application stage of the project.*
- *Remind Council that without an understanding of the heritage significance and values of the Proposal Area, Heritage NSW cannot guarantee that we will be able to issue an*

Aboriginal Heritage Impact Permit (AHIP) over the area as part of any subsequent Development Application.

After further discussions with Council, final advice was issued by Heritage NSW on 3 March 2021, confirming the objection put forward in correspondence dated 5/02/21 is resolved. An option was discussed with Heritage NSW of adding a subclause to the enabling community title subdivision to ensure that Aboriginal cultural heritage is considered at the subdivision stage. Heritage NSW was supportive of this approach. Heritage NSW's comments of 3 March 2021 are summarised below:

- *In regards to the proposed approach, Heritage NSW are satisfied with the proposed condition and wording and would expect the recommendation to be included as part of Councils endorsement of the Planning Proposal.*
- *We also understand that you cannot guarantee that this requirement will be incorporated, however we would hope that PCO will be supportive and Council will advocate for this outcome.*
- *While our objection more broadly to a lack of heritage assessment during the Planning Proposal stage remains, we consider our objection in relation to this Planning Proposal resolved.*
- *We would reiterate however, that without an understanding of the heritage significance and values of the Proposal Area, Heritage NSW cannot guarantee that we will be able to issue an Aboriginal Heritage Impact Permit (AHIP) over the area as part of any subsequent Development Application.*

Response

Potential impacts of the Planning Proposal on Aboriginal cultural heritage have been considered, with the proposal seeking to limit impacts on any heritage items and places by reducing the area of developable land on the site (as the land is currently zoned majority R5, Large Lot Residential). The reduction of the R5 zone will allow large lot residential development only within the already disturbed and cleared areas of the site.

The proposal also includes rezoning the majority of the subject land, including areas of bushland and a ~50m buffer area around the watercourse, to E2 Environmental Conservation. The environmental zoning of this area will minimise future disturbances and development impacts. The existing land use zone of R5 Large Lot Residential applies across the site (except for a small area of RU2 Rural Landscape zone in the south-west) and allows for subdivision and development across a large part of the site, subject to detailed development assessment.

Council supports the principle of undertaking heritage assessments early in the planning process to ensure that heritage values are appropriately protected. However, it is Council's position that key study requirements, such as an Aboriginal cultural heritage assessment (which typically take around 5 months to complete and involve considerable expense) should be detailed within the Gateway determination.

In this case, an Aboriginal Cultural Heritage Assessment (ACHA) was not a study required by the Gateway determination issued on 10 September 2018 or by the subsequent Gateway alteration dated 2 March 2020. In the pre-gateway planning proposal submission to the NSW DPIE in June 2018, no request to undertake additional Aboriginal cultural heritage study, or ACHA, was included. Several potential reasons for this are outlined below:

- No items or specific places of significance are currently known to occur on the site;
- The AHIMS search submitted at lodgement of the PP was valid at the time, and an additional contemporary AHIMS search will be required, at a minimum, at the subdivision development stage of development.
- The extensive strategic planning history of the site and the similarities of the proposal to the Woollamia/Falls Creek Deferred Areas PP (LP406/PP018) where a decision was made to not require an ACHA at PP stage;
- The nature of the proposal in reducing the developable area of the site and thereby being viewed as minimising development impacts (all other contemporary PPs that seek to allow additional development do require Aboriginal cultural heritage studies);
- The cleared/disturbed nature of the proposed R5 zoned area (used historically for logging, grazing and rural-residential related uses) and the nature of the proposed E2 Environmental Conservation zone which will extend across the majority of the site and restrict development in this area (including the watercourse and 50m buffer);
- Present planning controls allow residential development and subdivision across the site, existing legal requirements to consider Aboriginal cultural heritage issues as part of any development application; for example, Shoalhaven LEP 2014 Clause 5.10(8) Heritage Conservation, Chapter 2 Part 4 Aboriginal Cultural Heritage, also needs to be addressed at DA stage, in addition to the requirements of the *National Parks & Wildlife Act 1974* and various operational codes and policies issued by Heritage NSW (i.e. the former DECCW and OEH). These requirements remain unchanged by the PP (which seeks to reduce the developable area across the site).

The Planning Proposal document has been updated to include additional commentary on Aboriginal cultural heritage planning considerations, including additional justification outlining how the Section 9.1 Direction 2.3 Heritage Conservation has been satisfied. The PP is not inconsistent with the Planning Direction 2.3 Heritage Conservation issued under the *Environmental Planning and Assessment Act 1979*.

Staff agree that consideration of potential impacts of future development on any Aboriginal cultural heritage values is crucial at all stages of the planning process, recognising that consultation with the Aboriginal community should occur early and throughout. Heritage NSW's feedback will be utilised in future planning proposal preparation and has been forwarded on to the NSW DPIE for consideration.

In regard to consultation, the subject land parcel was rezoned to majority R5 Large Lot Residential (theoretically allowing for vegetation clearing and development across the site) as part of the introduction of the standard instrument, city-wide, Shoalhaven Local Environmental Plan 2014. This city-wide LEP project broadly considered Aboriginal cultural heritage matters and included consultation with Jerrinja Local Aboriginal Land Council (and consultation with other Aboriginal Land Councils and members of the Aboriginal community). Jerrinja Local Aboriginal Land Council made multiple submissions as part of the city-wide LEP process, but none related to the subject land. Jerrinja Local Aboriginal Land Council, and the (former) Office of Environment and Heritage, were consulted as part of the Deferred Areas Woollamia/Falls Creek Planning Proposal (PP018), which covered land in close proximity to the subject land. As part of the current PP035, notification of the proposal was sent to Jerrinja Local Aboriginal Land Council, inviting them to make a submission or to contact Council for more information if desired. No submission was received. It is recognised that the consultation for PP035 occurred within constraints during the Covid-19 pandemic.

In relation to previous advice issued by OEH in 2012, relating to the Woollamia/Falls Creek Deferred Areas Planning Proposal (PP018), the subject land did not form part of that PP, as the scope of that proposal was significantly reduced over the course of its assessment (initially applying to over 340 lots, and reduced to just 15 lots). The need to undertake cultural heritage investigations was also revised (confirmed in the revised Gateway determination for PP018 of 8 September 2015) due to the greatly reduced scope of the proposal and OEH continued to be involved with the progression of PP018. Like the current PP035, the Woollamia/Falls Creek Planning Proposal (PP018) sought originally to permit an increase in rural-residential development or density over a wider area, consistent with strategic plans of the time, including the Shoalhaven Rural Plan, Jervis Bay Settlement Strategy and Shoalhaven Growth Management Strategy. However, over time, the intent of the proposals was changed to reduce development footprints and restrict further expansion of rural-residential development or widespread intensification, based on changing environmental standards, land-based constraints and landowner requests.

Therefore, the current planning proposal seeks to restrict the development footprint across the site to limit development over the majority of the site, which is considered to have a positive impact on environmental values and any cultural heritage values that may be present. The process to consider any potential impacts to cultural heritage values within the area proposed to accommodate rural-residential development remain unchanged by the Planning Proposal and will be investigated further at the subdivision stage of development, where opportunities to avoid or minimise any potential impacts can be explored at this more detailed design phase.

Whilst planning legislation does require additional consideration of Aboriginal cultural heritage issues, it is proposed to suggest insertion of a subclause highlighting this requirement, within the proposed legal mechanism/local clause that will enable community title subdivision on the subject land. This proposal will be subject to discussion and acceptance by Parliamentary Counsel and Heritage NSW supported and accepted this proposed outcome.

In conclusion, the PP complies with relevant legislative requirements and can proceed on this basis. Aboriginal cultural heritage values will be assessed further at the development application stage, in the context of a detailed subdivision design, and against all relevant strategies and policies.

Implications for Planning Proposal

The Planning Proposal document has been updated to include additional commentary on Aboriginal cultural heritage planning considerations, in particular providing additional information illustrating consistency with section 9.1 Direction 2.3 Heritage Conservation.

The feedback received from Heritage NSW has been forwarded to Council's Development Assessment, City Development Division and discussed with, and forwarded to, the NSW Department of Planning Industry and Environment.

Shoalhaven Water

Date of submission

5 May 2020; 16 February 2021

Submission

Advice on servicing the proposed subdivision was sought from Shoalhaven Water in early 2020. Shoalhaven Water indicated reticulated sewer was not available and opposed supply of reticulated (town) water given the following risks:

- Ongoing issues with water pressure and flows in nearby areas;
- Inability to guarantee water supply for bushfire fighting purposes; and
- Potential water quality risks. Should town water be provided, the proposed lot sizes of a minimum of 4000 m² will be insufficient to provide suitable on-site sewerage management systems – i.e. the effluent management areas will be undersized as households with town water are expected to use more water (at least about 20% more) than those that rely on rainwater tanks.

This advice was reconfirmed after the public exhibition period.

Response

The proposed development will be self-sufficient in terms of water and on-site effluent (wastewater) management, consistent with Shoalhaven Water's advice. The proponent has provided technical studies to illustrate that sufficient water can be supplied to the development for domestic and firefighting uses. An on-site wastewater management and water quality report was also submitted which shows water can be treated on-site without adverse impacts on water quality. The proposed self-sufficiency will provide environmental benefits, as water consumption will be less than the equivalent rural residential development connected to town water supplies.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

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

Date of submission

17 February 2021

Submission

The DPI Marine Operations Unit do not wish to provide a submission in this case due to the proposal being unlikely to have an impact on the Marine Park.

Response

Response acknowledged and noted – no adverse impacts on Jervis Bay Marine Park are expected as a result of the proposed development.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

PLANNING PROPOSAL – PP035

Shoalhaven Local Environmental Plan 2014

Jervis Bay Road, Falls Creek Community Title Subdivision

Prepared by
Strategic Planning, City Futures Group
Shoalhaven City Council

File: 57076E
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1 Introduction

This Planning Proposal (PP) seeks to facilitate development of a small rural residential estate at Jervis Bay Road, Falls Creek on land legally described as Lot 3 DP 846470. Large lot housing will be allowed over the mostly cleared part of the site with the remaining land set aside and managed for environmental conservation. The land is intended to be subdivided under community title, providing for up to 13 individual housing lots and one common neighbourhood lot. The neighbourhood lot will encompass the forested and environmentally sensitive areas and be communally owned and managed in perpetuity for environmental conservation.

Accordingly, this PP (PP035) seeks to rezone the subject site from part *R5 Large Lot Residential* and part *RU2 Rural Landscape*; to part *R5 Large Lot Residential* and part *E2 Environmental Conservation*.

The current minimum lot size control of 2 ha will be retained over the proposed R5 zoned area. It is proposed to include a local clause or other legal mechanism to allow community title subdivision over the land, permitting development of a maximum of 13 housing lots, no less than 4,000 m² in area each. This will enable a cluster of housing lots in the cleared area of the site. The community title scheme will provide for the ongoing conservation of the forested and environmentally sensitive areas of the site by providing plans and funding for long-term management. The current minimum lot size for subdivision applying to the *RU2 Rural Landscape* portion of the site is 40 ha, and it is proposed to extend this control across the area zoned *E2 Environmental Conservation* to prevent land subdivision and fragmentation.

Except for the narrow strip of land between the R5 area and Jervis Bay Road, the area zoned *E2 Environmental Conservation* will also be designated as “Biodiversity—habitat corridor” on the Terrestrial Biodiversity Map, to protect flora and fauna from potential development impacts. A dense landscape screen will be required in the narrow strip of land adjacent to Jervis Bay Road (measuring approximately 15 m wide and 200 m long) to mitigate visual impacts from Jervis Bay Road and improve amenity for the residents of the future development. This strip between Jervis Bay Road and the R5 area will be zoned E2 Environmental Conservation.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

1.1 Subject Land

The subject land is Lot 3 DP 846470 located on Jervis Bay Road, Falls Creek. It has an area of 25.21 ha (according to the Deposited Plan). It is located on the southern edge of the Falls Creek Large Lot Residential precinct. A Location Map is provided as **Figure 1** below.

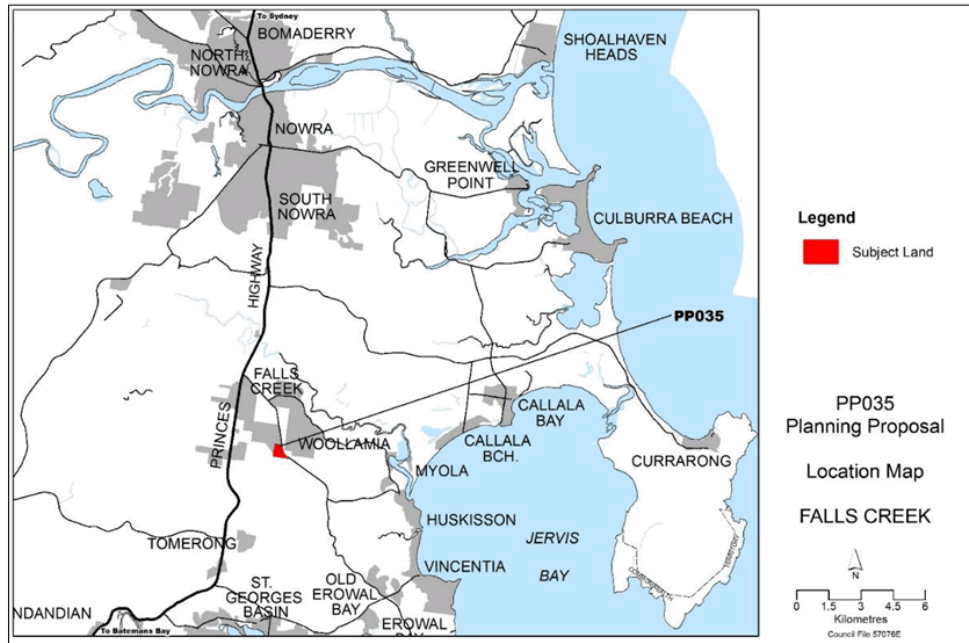


Figure 1: Location Map

The land to the south is part of the Tomerong State Forest. The land to the west is forested land in private ownership, and is also zoned part *R5 Large Lot Residential*, part *RU2 Rural Landscape*. The land to the north contains large lot housing and is zoned *R5 Large Lot Residential*. A wedge-shaped area of National Park on the eastern side of Jervis Bay Road separates the subject land from large lot housing to the north east. The current zoning of the site and neighbourhood is provided in **Figure 2** on the following page.

The subject land is currently zoned part *RU2 Rural Landscape* (0.76 ha / 3%) and part *R5 Large Lot Residential* (24.45 ha / 97%) under Shoalhaven Local Environmental Plan (SLEP) 2014.

The objectives of the RU2 zone relate to facilitating primary industries and maintaining rural character. The objectives of the R5 zone relate to providing large lot (semi-rural/rural lifestyle) housing while avoiding adverse environmental, social and economic impacts.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

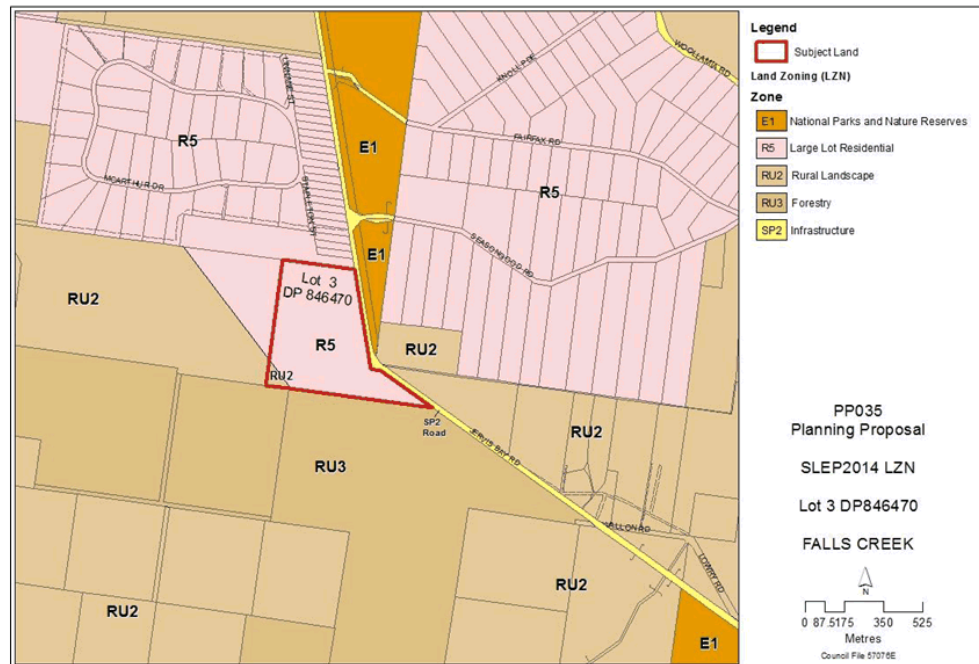


Figure 2: Current Land Use Zones

In this location, the SLEP 2014 prescribes a minimum lot size for subdivision of 40 ha for the RU2 zone and a 2 ha minimum lot size for the R5 zone (refer to the existing Minimum Lot Size map in Part 4).

The proponent contends that the lot size controls provide a development potential of 12 lots across the 24.5 ha of land zoned R5 Large Lot Residential. However, this is only a theoretical maximum yield. The actual yield under current planning controls is likely to be lower given the environmental constraints of the site.

The subject land has distinct cleared and vegetated areas as can be seen in the aerial photograph provided below. The site has previously been used for primary industry (logging and grazing) and is identified as native forest regrowth in the flora and fauna assessment.

The RU2 zoned part of the site is mapped under SLEP 2014 as having biodiversity significance (refer to the existing Terrestrial Biodiversity map in Part 4). This area is part of the Jervis Bay habitat corridor system that was previously identified in the Jervis Bay Regional Environmental Plan 1996 (now repealed).

The cleared area contains a dwelling house, outbuildings and two (2) earth dams. An aerial photograph of the site is provided as **Figure 3**.

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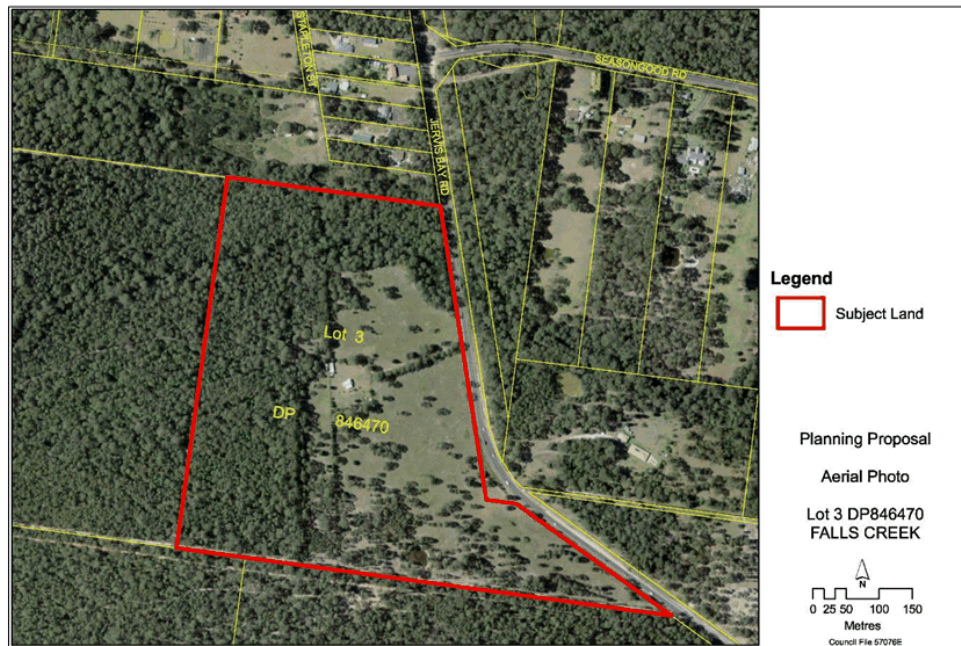


Figure 3: Aerial Photo

The proponent submitted a flora and fauna assessment prepared by Eco Logical Australia (refer to Attachment 3). This assessment concluded that the vegetation communities present are not threatened ecological communities. It also did not find any threatened plant species on the site. The assessment noted, however, the presence of threatened fauna, including Green and Gold Bell Frogs and Grey-Headed Flying-Foxes on the site. There was also evidence of Glossy Black-Cockatoo foraging on the site.

Parts of the subject land are identified on the flood planning area map (see **Figure 4**). This relates to an east-flowing intermittent watercourse that flows through the northern part of the subject land. This watercourse is a tributary of Currumbene Creek, which flows into the Jervis Bay Marine Park.

The subject land is classified as bushfire prone and a strategic bushfire study and bushfire assessment report have been prepared by Eco Logical Australia (see Attachment 3).

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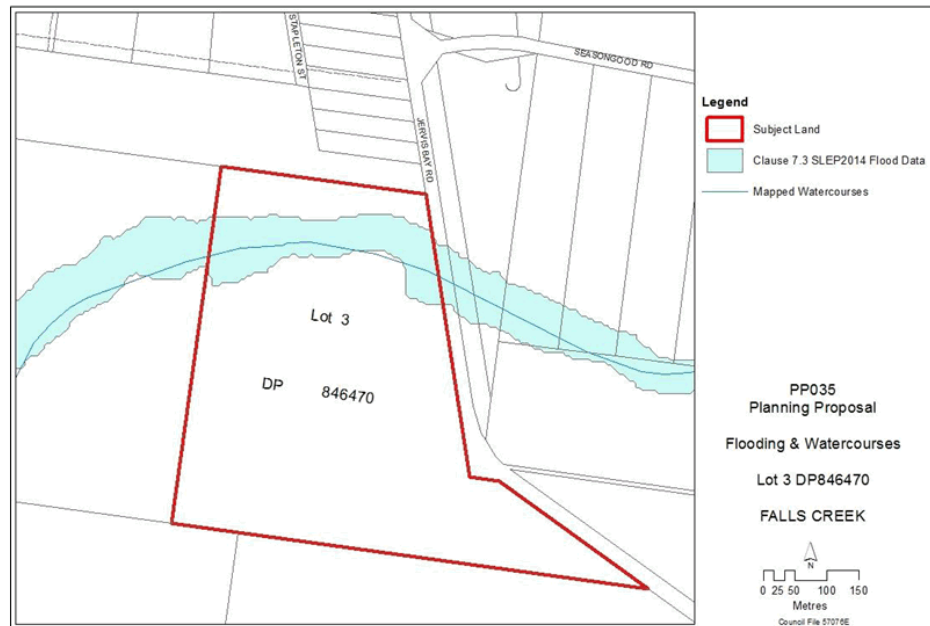


Figure 4: Flooding and Watercourses Map

1.2 Background – Rural Residential Deferred Areas

Council initially considered the suitability of this land for rural residential development in 1993 when it received a rezoning request from the then owners of the land. This request was ultimately rolled into the 'Rural Plan' being prepared by Council at the time. The Rural Plan originally proposed to amend the zoning of 344 rural-zoned properties in the Falls Creek / Woollamia areas to potentially enable increased rural residential densities. The then Department of Urban Affairs and Planning, however, "deferred" the zoning of these rural residential areas (including the subject land) when the Rural Plan LEP amendment was finalised in 1999 (LEP Amendment No 127).

The Jervis Bay Settlement Strategy (JBSS) (2003) recognised the need to resolve planning for the deferred areas, including the subject land. Section 10.4 stated that the deferred rural residential land "will be further investigated for [its] potential to provide increased rural living opportunities for the Region".

The Growth Management Strategy (GMS) adopted by Council in 2014 recognised that the situation was still unresolved and provided at section 5.2.4 that "the [potential of the] existing rural residential deferred areas to accommodate increased densities will be investigated and resolved".

Originally, the rural residential deferred areas related to 344 properties. However after agency consultation, completion of technical studies, and landowner requests, the areas

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

proposed to be rezoned were greatly reduced. Only 15 properties were ultimately rezoned by the [Falls Creek / Woollamia Deferred Areas Planning Proposal](#) (PP018), which was finalised in April 2018. The subject land did not form part of the Falls Creek / Woollamia planning amendment (PP018 / Amendment No 17 to SLEP 2014) as it was taken out in the early stages of that project. The subject land was removed from PP018 – Woollamia/Falls Creek Deferred Areas, because it was rezoned separately (to the current mix of R5 Large Lot Residential and RU2 Rural Landscape zones) as part of the introduction of the standardised city-wide Shoalhaven Local Environmental Plan (LEP) 2014. The drafting of the Shoalhaven LEP 2014 ran from 2006 – 2014 and involved significant community and agency consultation.

The proponent's Planning Proposal request was received on 27 November 2017 from Cowman Stoddart Pty Ltd (on behalf of the owner, T. Pasialis). The request originally sought to permit the subdivision of the land into a community title scheme comprising 12 housing lots and a neighbourhood property lot as an additional permitted use under Schedule 1 of the LEP. The lots proposed were to have a minimum area of 5,635 m². The proponent's PP request was accompanied by a Development Application (DA) that was also submitted the community title subdivision. Assessment of this DA (SF10367) was placed on hold pending the outcome of the PP.

On 13 March 2018, Council's development committee considered a report on the matter. The committee resolved under delegation:

That Council:

1. *Prepare a Planning Proposal to:*
 - a. *Permit a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls into rural residential lots and a neighbourhood environmental conservation lot; and*
 - b. *Rezone the land to part R5 – Large Lot Residential and part E2 - Environmental Conservation.*
2. *Submit this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination.*
3. *Advise the NSW Department of Planning & Environment that the following studies are considered appropriate as part of the post Gateway stage of the Planning Proposal to determine the actual subdivision potential (prior to public exhibition):*
 - a. *Flora and fauna assessment*
 - b. *Onsite wastewater management plan*
 - c. *Water quality and stormwater management*
 - d. *Bushfire hazard assessment*
 - e. *Traffic study*
 - f. *Visual impact assessment*
4. *Receive a report once all the above studies have been completed to determine the number and size of lots prior to public exhibition of the Planning Proposal.*

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5. *Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.*

A Planning Proposal document (PP035) was subsequently prepared and submitted for Gateway determination in July 2018. The then NSW Department of Planning and Environment issued a Gateway determination in September 2018 (see Attachment 4) which included the following conditions:

1. *Technical studies on flora and fauna assessment; onsite wastewater management plan; water quality and stormwater management; and bushfire hazard assessment are to be prepared and included in the planning proposal prior to public exhibition.*
2. *The explanation of the provisions and maps are to be updated, following the completion of the technical studies, into a revised planning proposal prior to public exhibition.*

The required studies have been completed and the PP has been updated to reflect the findings of these studies.

Council's Development and Environment Committee considered the results of the studies and updated proposal at their meeting of Thursday, 9 April 2020 (reconvened from Tuesday 7 April 2020) and resolved under delegation:

That Council:

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).*

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1.3 Summary of Proposal

The following changes to the Shoalhaven Local Environmental Plan (SLEP) 2014 are proposed to enable rural-residential development on the land:

- The mostly cleared area in the east of the subject site is proposed to retain the existing *R5 Large Lot Residential* zone allowing this area to be subdivided into large housing lots (9.65 ha).
- The remainder (15.56 ha) is proposed to be rezoned to *E2 Environmental Conservation*, with a minimum lot size of 40 ha (precluding further subdivision).
- Introduce a legal mechanism to allow for community title subdivision on the land to allow up to 13 residential lots no smaller than 4000 m² over the land zoned *R5 Large Lot Residential* and one community lot over the area zoned *E2 Environmental Conservation*.
- The E2 zoned area will be recognised as a habitat corridor through inclusion on the Terrestrial Biodiversity map, with the exception of the narrow strip adjacent to Jervis Bay Road (the primary value of this strip is visual impact mitigation.)

In response to the flora and fauna report, the area to be zoned for housing (R5) has been reduced to avoid Green and Golden Bell Frog habitat and the extent of the land to be zoned *E2 Environmental Conservation* has been increased from the original PP request (+2.11 ha for a total area of 15.56 ha).

Introducing an effective legal mechanism to enable community title subdivision of the land is a key part of this proposal. Community title is a form of land subdivision with individually owned properties and a common area shared between all owners in the subdivision. A community title subdivision would provide benefits because communal ownership of the E2 zoned land will provide for coordinated management of bushland and ongoing funding. Details of how this land will be managed will be resolved as part of the development application assessment process. Community title subdivision can also provide for coordinated bushfire risk management and management of infrastructure. The most appropriate and effective legal mechanism to enable community title subdivision will be developed with the NSW Department of Planning, Industry and Environment (DPIE) and Parliamentary Counsel.

This PP has been updated to reflect the proponent's amended concept subdivision layout as reported to Council in April 2020. The scheme now proposes 13 residential lots and one (1) neighbourhood lot to provide for environmental conservation. In the concept, the proposed housing lots range from 4,048 m² to 8,755 m², with the bushland being retained in a large community lot (15.56 ha). The concept illustrates that wastewater (domestic effluent) can be satisfactorily treated and managed on site and effluent disposal areas are shown for each lot. The concept also shows a satisfactory visual outcome can be achieved by providing a wider building setback to Jervis Bay Road and additional landscaping. A copy of the plan (showing potential lot layout and on-site effluent disposal areas) is provided as **Figure 5**.

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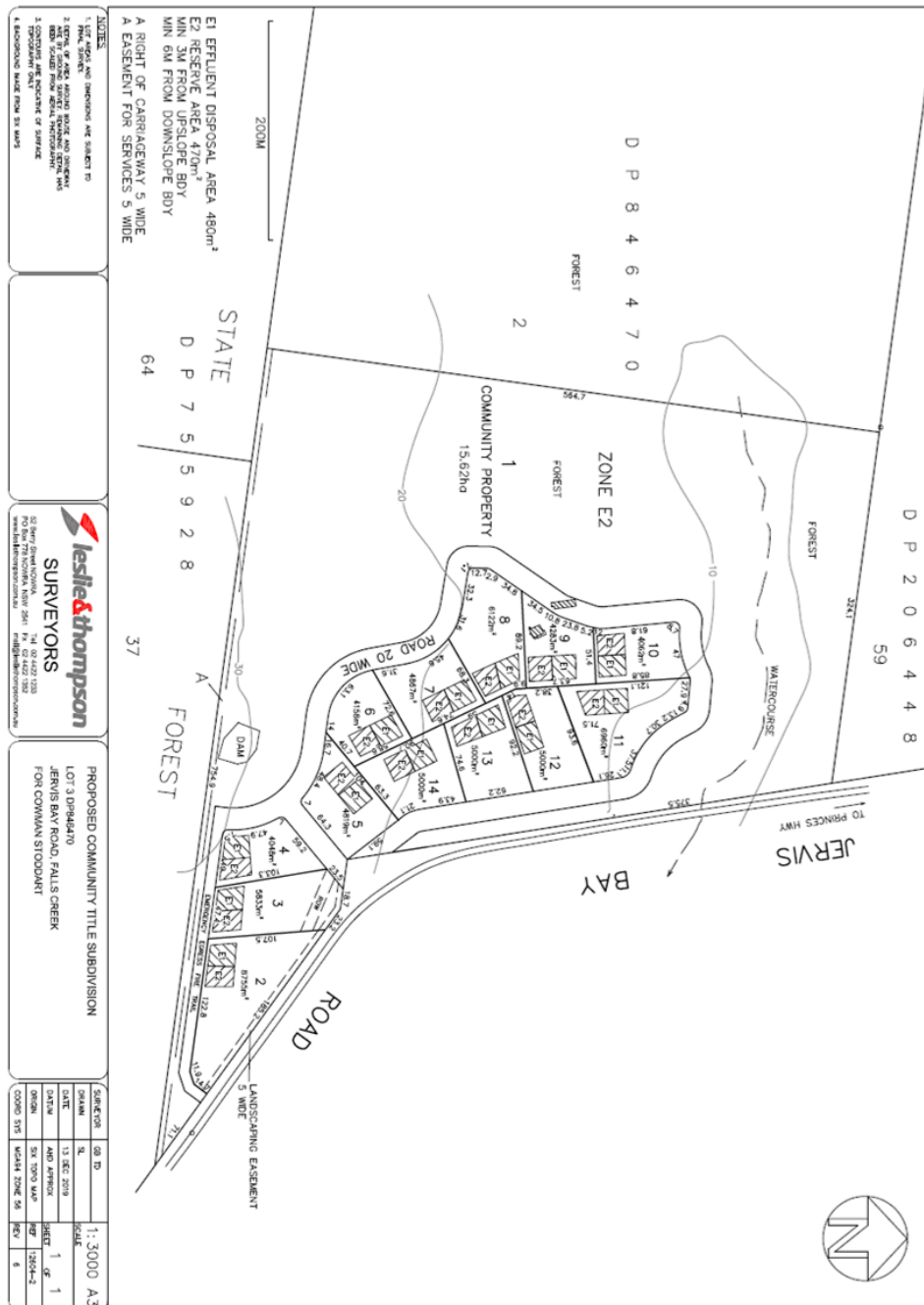


Figure 5: Proponent's concept subdivision plan.

Note: Fire trail (10 m wide) shown along southern boundary of Lots 2-4 will be a perimeter road (8 m wide) to satisfy bushfire requirements as described in Strategic Bushfire Study by Eco Logical Sept 2020.

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It is noted that this Planning Proposal (PP) seeks to allow a community title subdivision as described but it does not seek to lock in this exact subdivision design. The design could be amended as part of the development application assessment provided it is within the planning parameters of this PP and demonstrates compliance with state and local planning policies and controls.

The PP describes planning control changes that will facilitate future development. One of these changes will include a restriction on the maximum lot yield for the community title subdivision, which has been informed by a range of environmental and infrastructure capacity studies (summarised below). The maximum residential lot yield that can be accommodated within the constraints of the proposal is proposed to be limited to 13 housing lots. Each lot must have a minimum of 4000 m² to provide for sufficient area to effectively manage effluent onsite.

1.4 Specialist Studies informing this Planning Proposal

The results of the specialist studies and their implications for the proposed development are briefly summarised below. In summary, the constraints applying to the site have resulted in a reduced development footprint and a shift away from increasing development density as outlined in the Jervis Bay Settlement Strategy 2003. The proposal seeks to limit the R5 Large Lot Residential Zone to the existing cleared areas of the site and to rezone the remainder of the site E2 Environmental Conservation.

Onsite Wastewater Management Report

Cowman Stoddart – dated November 2017 and updated August 2019

The proposal will not be connected to reticulated (town) sewerage services and on-site management of wastewater (effluent) will be required. The onsite effluent/wastewater report (by Cowman Stoddart and dated November 2017 and supplementary addendum by Cowman Stoddart, dated 19 August 2019) states that effluent can be effectively managed for the proposed subdivision via onsite treatment and disposal, taking into account the constraints applying to the land.

The report assumes that town water will not be available to the subdivision and makes recommendations regarding wastewater management on that basis. However, the large lot residential areas to the north of the subject land are provided with access to town water and Council has a Rural Water Supply Policy, which could potentially allow for town water to be extended to the subject land. If town water were made available to the proposed subdivision, larger onsite effluent management areas would be required because residents would be expected to use more water (approximately 20% more than those that rely on rainwater tanks) and therefore create more wastewater. In this case, lot sizes would potentially need to be larger than the proposed minimum of 4000 m² in order to provide adequate onsite effluent management areas.

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Shoalhaven Water have provided feedback on the proposal and have recommended that town water not be extended to the proposal, as the infrastructure in the area may become overstretched and suffer issues with pressure and flows. In addition, there may not guaranteed water supply for bushfire events.

To avoid any uncertainty in this regard, Council resolved to: *“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).”*

As a result, from a wastewater treatment point of view, a minimum lot size of 4000 m² is considered acceptable for the proposed community title subdivision. Shoalhaven Water’s technical advice that town water should not be provided to the subject land is reinforced by Council’s adopted policy position that town water will not be provided to the subject land.

Hence, the subdivision will be supplied by individual rainwater tanks for domestic and firefighting purposes. This will also achieve water conservation goals (as rural-residential homes not connected to town water use less water on average) and reduce costs related to the possible need to upgrade town water infrastructure in the area.

Stormwater treatment and water quality – Neutral or Beneficial Effect Assessment

The proponent’s Stormwater Assessment was completed by SEEC in August 2019 to ensure water quality impacts could be managed to not adversely affect downstream catchments. There is a watercourse on the site which flows to the Jervis Bay Marine Park. This assessment is called a NorBE assessment which stands for ‘Neutral or Beneficial Effect’, as planning policies require development to ensure that waterways are not adversely impacted by pollution or run-off. This assessment found that the required neutral or beneficial outcome for water quality could be achieved based on appropriate design and management of future development. Specifically, the assessment described the following design and management measures for future development:

- A loop road would encompass most of the development and be drained via grassed-line swales to a single bioretention basin.
- The water quality measures (swales and bioretention basin) would be maintained by the body corporate under a community title subdivision that would enter into a contract with an appropriately qualified contractor. The bioretention basin would have a defined life and would require replacement (or at least re-generation) every 15-20 years or so. Such work would also be the responsibility of the body corporate.
- Proposed Lots 2, 3 and 4 in the far south of the site could drain offsite with no treatment.

Flora and Fauna Assessment

The proponent’s flora and fauna assessment was completed by Eco Logical Australia in August 2019. The report found that no fauna habitats of importance will be removed and

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tree removal would be minimised due to clustering of development in the predominantly cleared area of the site. There are scattered mature trees across the cleared portion of the site, including an identified Glossy Black Cockatoo feed tree. The assessment does not detail the amount of vegetation removal necessary to accommodate roads, dwellings, bushfire protection and effective on-site wastewater treatment for each of the proposed lots. Whilst design measures of future homes could limit tree removal, Shoalhaven Council planning controls currently allow tree removal above a line 45 degrees from the vertical extension of the wall of any building measured from its base (where a tree is closer than its own height from an approved building). Therefore, mature trees could be removed post-development approval within housing lots.

However, the PP is considered to result in less vegetation clearing than if the land was developed under the current planning controls, given a larger extent of the site is currently zoned for residential purposes. If rural residential development were to extend across the site (as is currently permitted) larger areas of the site would need to be cleared to accommodate buildings and associated infrastructure and be maintained as an Asset Protection Zone (APZ) for bushfire protection purposes. In addition, similar rural-residential development in the locality consists of managed land around dwellings with retained mature trees, which contribute to the bushland character of the area.

No threatened ecological communities listed under the NSW *Biodiversity Conservation Act* (BC Act) or the Commonwealth *Environment Protection and Biodiversity Conservation Act* (EPBC Act) were present in the study area. No threatened flora species were recorded in the study area, and none were identified as likely to occur there. Three threatened fauna species were recorded in the study area: Grey-headed Flying-fox, Glossy Black-cockatoo and Green and Golden Bell Frog (GGBF). The two dams and the watercourse, as well as a 40 m buffer will be retained and zoned *E2 Environmental Conservation*, with these water sources providing habitat corridor links.

One migratory species listed under the EPBC Act, the Black-faced Monarch, was recorded on the northern fringe of the study area, although all suitable forest habitat for this and other potentially occurring migratory species would be retained. The report found referral to federal agencies is not required under the EPBC Act.

A 7-part test, under the NSW *Threatened Species Conservation Act 1995* (in place at time of lodgement), concluded that the proposed development is unlikely to have a significant impact on assessed threatened species provided the recommended mitigation measures are implemented.

The measures recommended to mitigate any development impacts include:

- Limiting development to previously cleared areas to retain intact vegetation, riparian areas and threatened species habitats.
- A Management Plan should be prepared for the proposed Lot 1 Community Property to guide appropriate management activities and maintain its natural values.

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- Green and Golden Bell Frog management measures should be implemented including pre-clearing surveys, frog exclusion fencing, enhancement of frog habitat (on-site dams) and connectivity to adjoining forest and following of hygiene protocols with ongoing monitoring and reporting.

The following map (**Figure 6**) from the Flora and Fauna Assessment report shows the identified threatened species habitat.

It is noted that the Strategic Bushfire Study suggested additional (biannual) slashing of vegetation along the subdivision interface to the west and north to provide an additional 20 m wide buffer to the fire hazard and reduce risk of crown fires. This additional recommendation was not detailed further (e.g. whether tree removal would be necessary/the extent of any required tree removal) and would be designed to complement required bushfire control measures (such as APZ management). This scenario was not considered in the Flora and Fauna Assessment submitted with the Planning Proposal, but would be considered as part of a subdivision application should the eventual subdivision design propose additional bushfire mitigation measures (beyond those required by Planning for Bushfire Protection 2019).

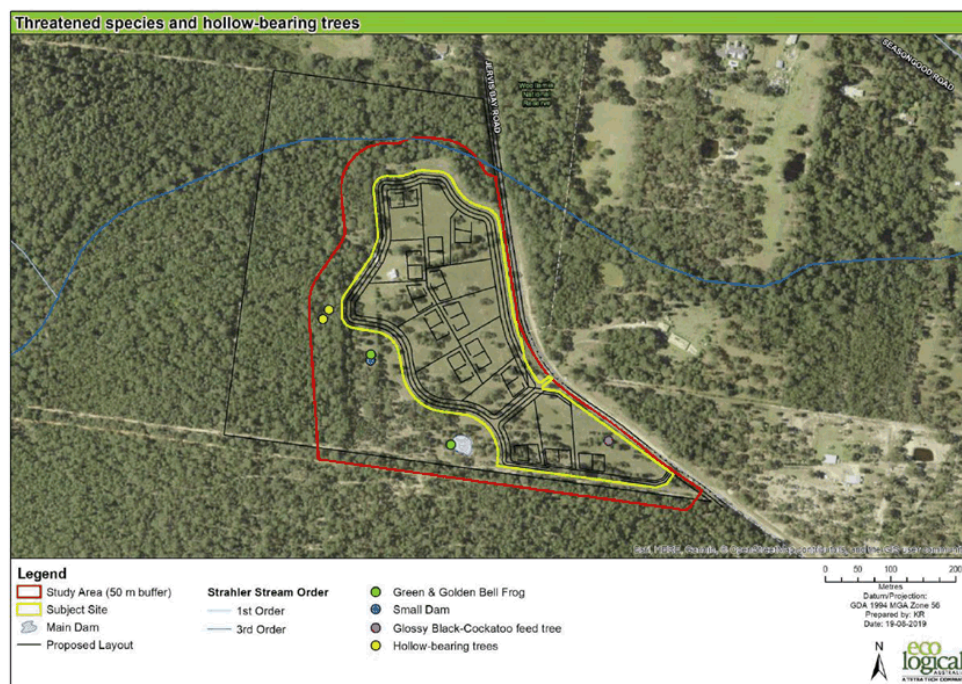


Figure 6: Threatened species habitat within proposed development footprint (Source: Eco Logical Australia)

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Bushfire hazard assessments

The proponent's original bushfire hazard assessment report was completed by Eco Logical Australia in August 2019. A Strategic Bushfire Study was completed by Eco Logical Australia September 2020. The recommendations made by these reports to reduce bushfire risk to the proposed subdivision are discussed below.

Access

The initial bushfire assessment noted the concept design provided a perimeter road around most of the proposed lots, except for the southern edge of the proposed residential subdivision adjacent to Lot 37 DP 755928, where a 10 m wide fire trail was proposed. This fire trail was an 'alternate solution' to a provision of a perimeter road. A subsequent Strategic Bushfire Study (discussed further below) indicated a perimeter road (8 m wide pavement) would be provided around the entire subdivision, to comply with the performance Criteria and Acceptable Solutions of Planning for Bushfire Protection 2019.

Construction standard and Asset Protection Zones (APZs)

The minimum required bushfire asset protection zones (APZs) to achieve a maximum Bushfire Attack Level (BAL) of BAL-29 range from 24 m to 50 m based on the development footprint enabled by the Planning Proposal. Building envelopes would be restricted as part of any future development consent for a subdivision to ensure APZs could be provided.

An APZ is an area between a bushfire hazard and a building, which is managed to minimise fuel loads, inhibit a fire path and reduce the effects of heat, flame, ember and smoke attack. The bushfire assessment report states that the majority of the necessary APZ is already in place and the additional area needed can be provided via the construction of roads. The need for tree removal has been minimised due to clustering of future housing within the largely cleared areas of the site.

Water supply and electricity provision

Based on the assumption that the subdivision will not be serviced by town water, each lot will require a static water supply of 10,000 L for firefighting purposes as required by *Planning for Bushfire Protection 2019*. The bushfire report also states that electrical transmission lines within the subdivision should be underground. The report states future development can comply with these requirements.

Strategic Bushfire Study

The Planning for Bushfire Protection (PBP) policy used by government and the NSW Rural Fire Service (RFS) to assess proposals was updated in 2019. Planning for Bushfire Protection (PBP) 2019 introduced additional strategic planning considerations. Correspondence in August 2020 from the RFS recognised significant bushfire risks to the site and requested additional assessment to address Chapter 4 Strategic Planning of PBP 2019.

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A Strategic Bushfire Study for 48 Jervis Bay Road Falls Creek was prepared by Eco Logical Australia, dated 16 September 2020. The Study provides an assessment of the landscape bushfire risk and the residual risk for development following the provision of recommended bushfire protection measures.

This study notes that the site is already identified by the Shoalhaven LEP 2014 as an area for rural residential development, being mostly zoned R5 – Large Lot Residential and allowing for lots with an area of 2 ha (thus theoretically allowing for up to 13 lots to be created subject to meeting other planning requirements). This Planning Proposal is generally consistent with the R5 zone objectives, as it seeks to develop the predominantly cleared portion of the site into 13 smaller lots, with the balance of the site being retained as a Community Lot and managed for its ecological and passive recreational value. Therefore, the overall (theoretically allowable) density of lots is not increased (13 lots); however, these lots are proposed to be clustered closer together towards the road. This clustering of development in a community title scheme provides benefits, including for coordinated land management, infrastructure maintenance, community bushfire planning and evacuation. The bushfire risk of buildings being clustered closer together is considered manageable as the lots will be larger than 4,000 m² leaving ample space for buildings with generous setbacks from each other and lots will be managed as Asset Protection Zones.

The risk of bushfire in the landscape was described in the study as most hazardous to the west and south, as larger landscape wide bushfires were more likely from these directions and typically be more difficult to control. Significant fire hazard was noted from the north, mitigated to some extent by rural residential properties. Bushfire hazards to the east were present but mitigated by lower hazard managed agricultural properties and generally less adverse fire weather conditions from this direction.

The vegetation types present on the subject land are forest types with potential for maximum fire intensity, higher flame heights, spotting, crown fires and the possibility of pyrocumulonimbus (firestorm) formation. It was recognised that the surrounding forests, such as the nature reserve and state forest are unlikely to be managed in a way that will reliably lower bushfire risk each year.

The position of the subject land in the bush fire prone landscape (from a slope perspective) was assessed in the Study as relatively advantageous (no slopes of significance where fire can run steeply uphill at increased intensity on a long fire run towards the proposed development). The subject land benefits from bushfire protection from the north in the form of the existing rural-residential subdivision associated with Macarthur Drive and from its position in the landscape requiring potential larger fires to spread downhill toward the site. The fire history, showing that only one of the multiple fires that have occurred in the study area over the 50 year period has directly impacted the subject land, supports that the site's position within the landscape has such bushfire protection benefits.

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The Strategic Bushfire Study also assessed climate and weather patterns to determine fire risk and noted that climate change is expected to bring a longer bushfire season, increased numbers of extreme fire weather days and increased fire intensity.

Overall, the assessment of fire risk factors indicated that uncontrollable fire intensities could occur in the forest vegetation abutting the development site particularly to the west and the south of the site and that higher intensity fires will impact the future development periodically. The Study recognised that design of development needs to stringently account for these risks in accordance with Planning for Bushfire Protection 2019 requirements.

Strategically, the Study made the following points in support of the proposal:

- *The land is capable of providing the necessary APZ [Asset Protection Zone] setbacks to ensure that all future dwellings will be exposed to no greater than 29 kW/m² of radiant heat flux from a surrounding bushfire.*
- *All dwellings will be required constructed to the requisite bushfire construction standard as determined by PBP.*
- *The increased resilience of any proposed development designed under PBP will potentially lower the life and property risk currently posed by fire in Tomerong State Forest to properties to its north, given the area's proximity to State Forests.*
- *The establishment of a Community Title (CT) allotment to the west and north of the proposed development may also provide an opportunity for the establishment of a Strategic Fire Advantage Zone (SFAZ) to benefit the proposed subdivision which will also provide the opportunity for a reduction in the rate of fire spread across the landscape.*
- *The loop road perimeter access proposed for the development will also provide improved access for fire suppression and mitigation within the local landscape and for the existing dwelling.*

The Study concludes that, 'the planning proposal considers bushfire risks strategically in the landscape rather than just site specific bushfire risk and in so doing facilitates a better outcome compared to that [allowable] under the current LEP provisions.'

The Study found that the proposal can comply with the Performance Criteria and Acceptable Solutions within Planning for Bushfire Protection 2019, by illustrating the following:

- *PBP compliant setbacks from bushfire prone vegetation (APZs);*
- *A PBP compliant road system designed to provide safe access and egress from the site;*
- *Underground electricity and gas services where possible;*
- *Compliant water supplies; and*
- *Appropriate design for emergency and evacuation response.*

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The Study also provided additional measures for consideration that could be used to minimise bushfire risk and complement the requirements of PBP. These additional measures could include:

- Biennial slashing of a 20 m buffer from the subdivision interface (perimeter road) to fire hazards to the west and north, to reduce the potential for crown fire impact on the edge of the development land.
- Establishment of a Strategic Fire Advantage Zone (SFAZ) over the Community Title (CT) allotment around the western and northern sides of the development to allow for more frequent hazard reduction burning within this area.
- A Bushfire Emergency and Evacuation Management Plan should be considered for the development including provisions for relocation of residents/pets on days of higher Fire Danger Rating (FDR).

More detailed bushfire protection design is required at the subdivision stage, yet the Strategic Bushfire Study concludes that a range of risk reduction measures are available and that the proposal can comply with PBP 2019.

The Map on the following page (**Figure 7**) illustrates that the APZ required to reduce bushfire risk to dwellings in accordance with PBP 2019 can be accommodated on the subject site. The map does not show the additional recommended 20 m wide slashed buffer or any SFAZ.

Access

The Conceptual Development Layout provides:

- two egress routes; a central road off the primary access road to the east to Jervis Bay Road and a perimeter road to the south-east to Jervis Bay Road; and
- 8 m wide perimeter road between the bushfire hazard and all future buildings.

The Strategic Bushfire Study states that the Conceptual Development Layout is capable of meeting the compliance criteria within PBP.

Emergency Services Impact

The development increases the density of dwellings on the site from 1 to 13 but will provide more resilient buildings and access. The bushfire study states the potential fire suppression workload resulting from the additional 12 dwellings is considered more than compensated for by the interface buildings being constructed to contemporary bushfire protection standards and the interface having a wider (safer) perimeter road i.e. 8 m wide.

The increase in population in the area resulting from the Planning Proposal will be similar to what is potentially allowable under current planning controls. The planning proposal and the increase in buildings and occupants is relatively small and is not considered likely to increase the 'load' on emergency services requiring an upgrade of their services.

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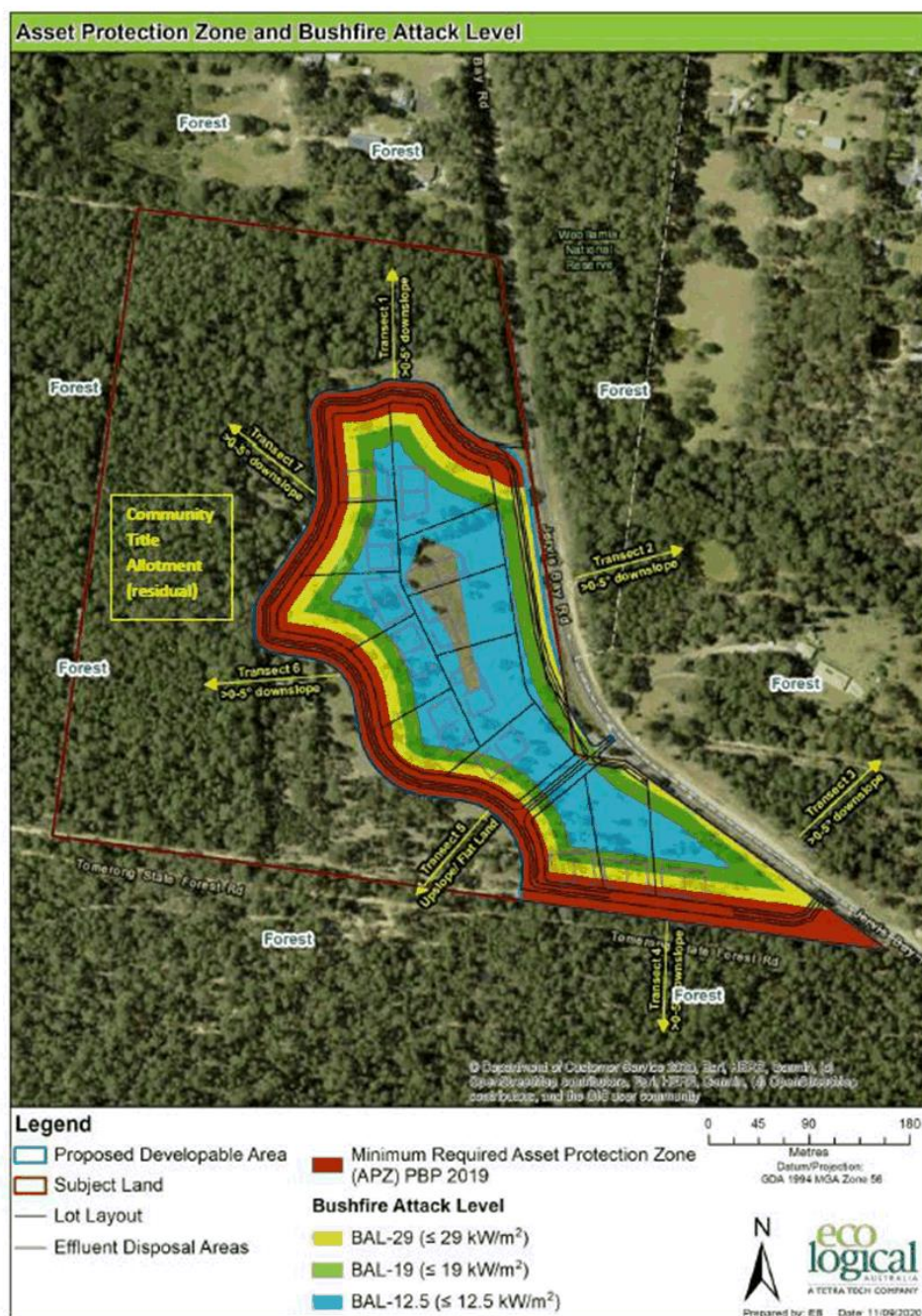


Figure 7: Required Asset Protection Zones for proposed subdivision concept

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Evacuation

Future residents will be located <600 m from egress onto Jervis Bay Road which leads north back to the Princes Highway and onto Nowra, or south to the villages of the Bay and Basin area. Evacuation of future residents is considered feasible for fire emanating from all directions, with the primary risk likely to be associated with a NW approaching fire. Under a fire threat from this direction the egress routes from the proposed development are not likely to be cut as they are located on the eastern side of the development. The bushfire study also found that even a fire from the south under a southerly wind is likely to impact directly on only one of the evacuation points onto Jervis Bay Road.

Evacuation of the proposed site is also unlikely to complicate or adversely affect evacuation from existing surrounding residents as they similarly have the option for relocation to Nowra or relocation towards the villages of the Bay and Basin. The report recommends a Bushfire Emergency and Evacuation Management Plan be prepared for the development including provisions for relocation of residents/pets on days of higher Fire Danger Rating (FDR). Having a bushfire plan and early evacuation is strongly encouraged by authorities in areas of significant fire risk.

Infrastructure including water supply

The Study indicates the development can comply with the PBP requirements for electricity and gas supply.

Planning for Bushfire Protection requires a minimum static water supply for dwellings of 10,000 L. Additional information submitted by the proponent indicated additional static water supply could be provided, doubling the amount of water required for bushfire fighting purposes to 20,000 L. This static supply could be plumbed to the road for ease of access by tankers and personnel. This information was provided in response to comments received from the RFS, who initially requested reticulated water supply for the area, as discussed later in this report. Shoalhaven Water has recommended against reticulated water supply in this location, which is supported by a recent Council resolution (also discussed later in this report).

Visual Impact Assessment

The scenic character of the area currently provides semi-rural and bushland outlooks with existing rural-residential development mostly obscured when viewed from the road, due to topography and presence of native vegetation. Where rural-residential development is visible, buildings are generally modest in size and recessive in the landscape, with many large mature trees retained across the landscape.

A [Visual Impact Assessment \(VIA\)](#) was completed on Council's behalf by Envisage in August 2019. The VIA considered the potential for view impacts given the clustering of development in the eastern and south-eastern corners of the site, close to Jervis Bay Road.

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The report acknowledged the likelihood of larger modern dwellings (including potential double-storey dwellings) and associated buildings being constructed. The VIA provides recommendations to reduce potential visual impacts of development, including:

- A minimum 15 m setback between Jervis Bay Road and internal roads to be landscaped.
- Revise layout to enable more of the existing trees within the overall development footprint to be retained.
- Reduce the number of lots – set a minimum lot size of 5,000 m² so that the density of dwellings is lower.

The concept subdivision plan has considered these recommendations and incorporates a wider setback (approx. 15 m) and provides for additional landscaping. The lot layout was also revised to enable more of the existing trees on the site to be retained. The proposed E2 Environmental Conservation Zone extends along the majority of the development's boundary to Jervis Bay Road to maximise tree retention in the area and provide a landscape buffer to reduce visual impacts from new development.

The proponents' revised subdivision plan is now generally consistent with the key findings of the VIA, except that six (6) of the lots are smaller than 5,000 m². Importantly however, all but one of the lots adjacent to Jervis Bay Road are 5,000 m² or greater. This is considered acceptable provided the other key recommendations outlined above are also implemented. Whilst the minimum proposed lot size is 4,000 m² for the community title, a range of lot sizes above this figure are likely in future subdivision because of the shape of the R5 zoned area and site constraints. In addition, a local clause or similar mechanism will enable community title subdivision on the land and limit the housing yield to 13 lots.

A conceptual image (**Figure 8**) from the VIA showing a 15 m setback and landscape screening illustrates how potential visual impacts can be mitigated through subdivision design and landscaping. Further visual impact mitigation measures could be explored during development assessment including landscaping of lots, colour and material selection for buildings, limiting hardstand areas, fencing design etc.

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Figure 3-3: Conceptual image of recommended changes – i.e. increased setback (15m) & screening along Jervis Bay Road

Figure 8: Concept image from Visual Impact Assessment (Source: Envisage)

Note: The proponent's amended subdivision design incorporates the recommended 15 m wide landscape screening.

Traffic Assessment: Traffic Intersection (Turning Warrants) Assessment

Jervis Bay Road links the Princes Highway to the west with the Jervis Bay Region to the east and facilitates access to other towns and villages including Huskisson and Vincentia. This area experiences seasonal travel peaks associated with tourism. The proposed development (limited to 13 housing lots) will generate minor additional traffic movements. Two access/egress points into the subdivision are proposed off Jervis Bay Road and all lots will be accessed via internal roads.

An additional study was commissioned post-Gateway Determination to investigate safety requirements at the intersection entering and exiting the subdivision onto Jervis Bay Road. This road has a speed limit of 90 km/hr with limited sight distances (the site is located on a bend), is seasonally very busy and has vehicle crash history. The speed limit in this area has recently been lowered from 100 km/hr in recognition of safety issues in the area.

A Traffic Intersection (Turning Warrants) Assessment was completed by Allen Price & Scarratts in February 2020. This assessment recommends that a CHR(S)/BAL intersection (Channelised Right Turn / Basic Left Turn) with Jervis Bay Road would adequately address safety requirements in accordance with Austroads Guide to Traffic Management (Part 6) 2019. The CHR(S) would reduce the risk of rear-end collisions occurring, particularly in relation to stationary/vehicles entering/departing the subdivision. Further detailed design and assessment would be undertaken as part of the development application if the Planning Proposal is supported and finalised.

2 Planning Proposal

The following assessment provides details of the proposal to fulfill the requirements of Section 3.33(2) of the *Environmental Planning and Assessment Act 1979* and has been prepared in accordance with the NSW Department of Planning and Environment's *A guide to preparing planning proposals (2018)*.

Part 1 – Intended Outcome

The intended outcome of this Planning Proposal is to allow the subject land to be subdivided under a community title scheme. The subdivision would create a large lot housing area on the cleared part of the site (9.65 ha) and a common lot principally for environment conservation on the remainder of the land (15.56 ha).

This proposal seeks to minimise any potential water quality impacts resulting from development. Accordingly, lot sizes in the scheme will be large enough to safely accommodate onsite effluent disposal and prevent any downstream environmental impacts. The dwellings will be self-sufficient in terms of water supply, maximising water use efficiency. The overall footprint and the maximum lot yield have been informed by specialist studies and considers environmental constraints such as flooding and bushfire risk, habitat for threatened species, downstream water quality and visual impact of development.

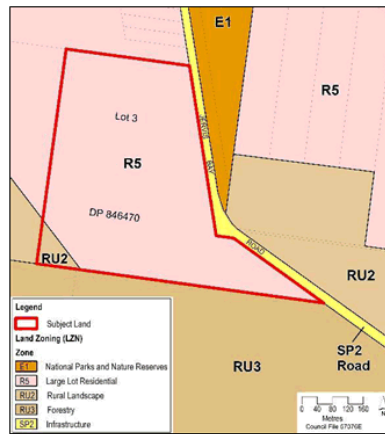
Part 2 – Explanation of Provisions

The following amendments are proposed to Shoalhaven Local Environmental Plan 2014:

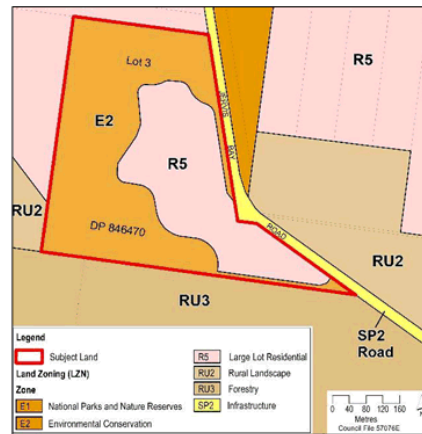
1. Amend the Land Use Zoning Map to rezone land from RU2 Rural Landscape and R5 Large Lot Residential to R5 Large Lot Residential and E2 Environmental Conservation.
2. Amend the Minimum Lot Size Map to extend the 40 ha minimum subdivision lot size control over the E2 Environmental Conservation zoned area.
3. Amend the Terrestrial Biodiversity Map to include all the land to be zoned E2 Environmental Conservation as a habitat corridor with the exception of the narrow strip adjacent to Jervis Bay Road for visual impact mitigation.
4. Include a legal mechanism to allow a community title subdivision of the land allowing up to 13 residential lots (no smaller than 4,000 m² each) on the land and one neighbourhood lot over the environmental conservation land. The mechanism shall also prohibit dwelling houses and dual occupancies on the neighbourhood (communally owned) property (zoned E2 Environmental Conservation). The appropriate legal mechanism will be determined in consultation with NSW Parliamentary Counsel.

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Thumbnail maps (for full-sized maps see Part 4)



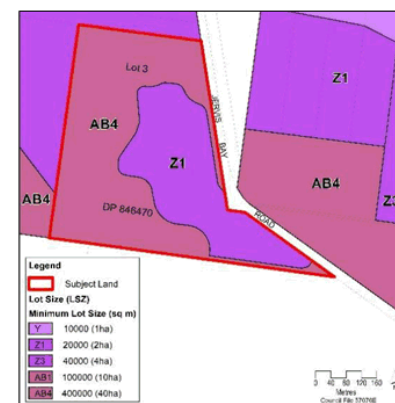
Existing land use zones



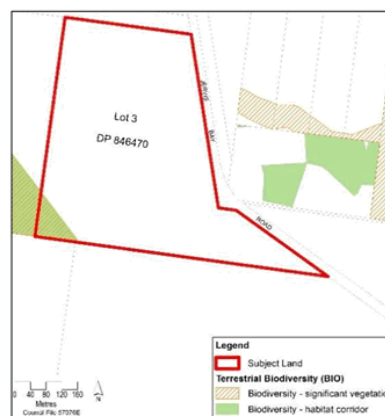
Proposed land use zones



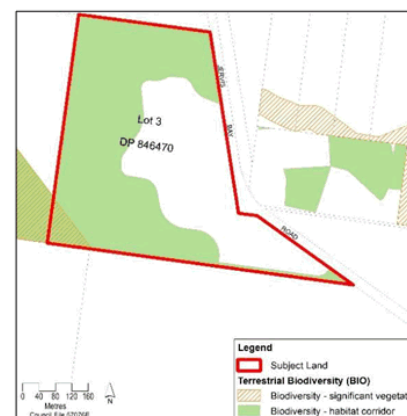
Existing min. lot size for subdivision



Proposed min. lot size for subdivision



Existing terrestrial biodiversity



Proposed terrestrial biodiversity

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Part 3 – Justification

3.1 Need for the Planning Proposal (Section A)

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

Yes.

The Jervis Bay Settlement Strategy 2003 (JBSS) provides an action to resolve planning for deferred rural residential areas in Woollamia/Falls Creek. Part 10.4 states that the deferred rural residential land (including the subject site) “*will be further investigated for (its) potential to provide increased rural living opportunities for the Region*”.

The Shoalhaven Growth Management Strategy 2014 reiterates the need to resolve planning for the deferred rural residential areas of Woollamia/Falls Creek.

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

Yes.

The PP process is the most appropriate way to allow the community title subdivision to occur on the land and provide for improved environmental management over sensitive areas. The option presented in this proposal is considered the best way to protect environmentally sensitive areas of the site and provide for rural residential development as described in the JBSS. The overall area zoned R5 Large Lot Residential (allowing for housing) will be reduced to protect native bushland and threatened fauna on the site.

However, the rural residential area will allow for smaller lot sizes (4,000 m² compared to the current 2 ha limit) to enable a viable community title subdivision (of up to 13 housing lots). A cluster of rural residential development in the cleared area of the site with the remaining land set aside, managed and equitably funded for environmental conservation via a community title subdivision is considered preferable to land being subdivided in a Torrens Title arrangement, whereby bushland is held in fragmented private ownership. The exact mechanism to enable the community title subdivision of the site is to be determined in consultation with the NSW Department of Planning, Industry and the Environment and Parliamentary Counsel.

Alternative options for the site (not preferred) include also amending the minimum lot size for subdivision control from 2 ha to 4,000 m² over the R5 zoned area of the site. This option would not provide any incentive or coordinated mechanism to secure the protection and ongoing management of the environmentally sensitive land. Another option could involve keeping the current zoning across the land and allowing for the community title subdivision via an additional permitted use in Schedule 1 of the Shoalhaven LEP 2014. This option would mean the zoning of the land would not allow for increased protection of environmentally sensitive lands (to occur through rezoning of part of the land to E2 Environmental Conservation). Zoning changes provide for clearer and more transparent planning controls than use of Schedule 1.

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3.2 Relationship to strategic planning framework (Section B)

3.2.1 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)?

Yes.

Illawarra-Shoalhaven Regional Plan (ISRP)

The Regional Plan was released by the NSW Government in late 2015. *Direction 2.1 - Provide sufficient housing supply to suit the changing needs of the region* adopts the forecasts and planning intent of Shoalhaven Growth Management Strategy 2014 (GMS) which is discussed below. The proposal will also achieve a biodiversity conservation outcome that is desirable under Goal 5 of this plan.

The GMS identifies the need to resolve the status of the Falls Creek rural residential deferred areas (as discussed further below) and hence the PP is consistent with direction 2.1 of the ISRP.

There is no relevant subregional strategy applicable to the subject land.

The draft Illawarra-Shoalhaven Regional Plan 2041 was placed on public exhibition in late 2020. The draft updated Regional Plan forms part of a 5 yearly review and builds on the existing plan in a number of ways, including:

- Strengthening Metro Wollongong as a connected, innovative and progressive city;
- Growing Nowra and Shellharbour City Centres as regional cities;
- Developing a Green Grid network of connected open spaces;
- Building more resilient communities to cope with the changing climate and natural hazards.

Relevant sections of the draft Regional Plan include recognition of improved road connectivity between Nowra, Huskisson and Jervis Bay; increasing resilience to natural hazards and enabling new rural residential development only where it has been identified in a local strategic plan. In this case, the PP enables limited rural-residential development in accordance with various adopted strategic plans including the Jervis Bay Settlement Strategy and Shoalhaven Growth Strategy.

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

Yes.

Shoalhaven City Council's Community Strategic Plan

The Proposal is consistent with Council's Community Strategic Plan and the relevant priorities below:

- 2.2 Plan and manage appropriate and sustainable development

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2.3 Protect and showcase the natural environment

Shoalhaven Growth Management Strategy (GMS) 2014

The Shoalhaven Growth Management Strategy (GMS) was adopted by Council in 2012 and endorsed by the NSW Department of Planning in 2014. The GMS does not itself rezone or change the use of land within Shoalhaven, rather it identifies broad areas for potential rezoning and development in the future, and strategic directions to guide the planning outcomes for these areas if they are rezoned or developed.

The 2014 GMS provided at part 5.2.4 that *“the existing rural residential deferred areas... to accommodate increased densities will be investigated and resolved”*. This action was derived from the Jervis Bay Settlement Strategy 2003 (JBSS) which is discussed below.

Jervis Bay Settlement Strategy 2003 (JBSS)

The Jervis Bay Settlement Strategy was adopted by Council and endorsed by the NSW Department of Planning in 2003. The broad aim of JBSS is to manage future growth and settlement in the Jervis Bay / St Georges Basin area. The JBSS does not itself rezone or change the use of land, rather it identifies broad areas for potential development in the future, and strategic directions to guide the planning outcomes for these areas if they are rezoned or developed.

The JBSS provides an action to resolve planning for deferred rural residential areas in Woollamia/Falls Creek. The JBSS recognises the ecological sensitivity of the area, noting the subject land and surrounds are upstream of significant wetlands and form part of a habitat corridor. The JBSS notes some potential to increase the density of rural residential development in certain locations (no outward expansion/infill development only) if proposals also result in beneficial outcomes for biodiversity and riparian areas. The subject site is zoned majority R5 Large Lot Residential and allows for subdivision of housing lots no smaller than 2 ha.

The JBSS suggests enabling subdivision in the area down to an ‘absolute minimum of 1 ha’ (as had been proposed in the 1999 Rural Plan LEP Amendment No. 127) subject to the constraints of the land. The proposed minimum lot size of 4,000 m² for the community title subdivision is therefore inconsistent with the 1 ha minimum noted in the JBSS/GMS for investigation.

However, the proposal presents several justifications for reduction in the minimum subdivision lot size from the 1 ha recommended in the JBSS, including:

- The proposal seeks to reduce the extent of the R5 Large Lot Residential Zone over the site, and to provide environmental benefits by rezoning the majority of the site E2 Environmental Conservation.
- The Onsite Wastewater Management Report, supplementary letter and amended subdivision plan illustrate how effluent management areas can be accommodated

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on each lot (based on a 4 bedroom residence on each lot supplied by rainwater tanks), limiting water quality impacts.

- The Stormwater Assessment report shows a neutral or beneficial effect on water quality can be provided with stormwater from the majority of lots (all except proposed Lots 2, 3 and 4 in the south) draining via swales to a bio-retention basin for treatment.
- The proposed community title arrangement provides for an environmental management and funding mechanism in perpetuity over the conservation land (community lot) and for ongoing funding and maintenance of water quality measures and therefore environmental and community benefits.
- The proposal will not allow for Torrens Title subdivision below the minimum lot size of 2 ha because the mechanism allowing for lot sizes of $\geq 4,000 \text{ m}^2$ will only apply to a community title arrangement which brings associated conservation benefits.

The landscape quality of Jervis Bay is an important feature of the region, and the JBSS provides principles for proposals to identify and conserve the scenic landscape qualities of the area.

Clustering of housing lots (no smaller than $4,000 \text{ m}^2$) on the cleared areas of the site and communal ownership of the bushland in a community title arrangement as proposed by the landowner, provides for better environmental conservation outcomes than if a conventional rural residential subdivision occurred, and the bushland was held in fragmented private ownership. Clearing for bushfire protection purposes will also be minimised because of clustered development in already cleared areas. In summary, the community title subdivision model enables better development and environmental outcomes to be achieved in this instance, than can be achieved in a conventional Torrens title subdivision.

A [Visual Impact Assessment \(VIA\)](#) was prepared by Envisage on Council's behalf. The VIA considered the potential visual impacts of development facilitated by this proposal. The proponent revised their subdivision plan in response to the VIA and this revised subdivision plan is generally consistent with the VIA's key findings. Setbacks are proposed to provide for mature tree retention and additional landscaping between Jervis Bay Road and the development to soften any visual impacts of development.

It is considered that the PP is consistent with the underlying intent of the JBSS - to provide for rural residential development within defined areas whilst minimising impacts on water quality, and scenic landscapes in the area and providing for positive biodiversity outcomes. This conclusion is based on the assumption that the land will be developed as a community title subdivision, so that appropriate planning mechanisms can be put in place to ensure development proceeds as intended to achieve environmental outcomes, consistent with the JBSS. The number and size of the residential lots also assumes that the subdivision will be self-sufficient in terms of water supply.

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

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Yes.

Applicable State Environmental Planning Policies (SEPPs) are considered below. Attachment 6 provides a comprehensive list of SEPPs. Note that the following SEPPs were in place when the PP was submitted for Gateway determination but have since been repealed:

State Environmental Planning Policy No. 44 – Koala Habitat Protection

State Environmental Planning Policy No. 62 – Sustainable Aquaculture

State Environmental Planning Policy (Rural Lands) 2008

State Environmental Planning Policy (Koala Habitat Protection) 2020

In November 2020, the NSW Government announced plans to revert to operations under the former State Environmental Planning Policy No. 44 - Koala Habitat protection (SEPP 44) while a new policy is developed in 2021 that would protect koalas and the interests of farmers. The State Environmental Planning Policy (Koala Habitat Protection) 2020 commenced on 30 November 2020 to replace and repeal the State Environmental Planning Policy (Koala Habitat protection) 2019 (2019 Koala SEPP).

The Koala SEPP 2020 replicates the objectives and provisions of SEPP 44, which was in force from 1995 through to 2019. This change does not have any implications for the proposal, because the proposed rezoning does not seek to expand any residential land use zone over the site.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 6 (Contamination and remediation to be considered in zoning or rezoning proposal) of SEPP 55 was repealed on 17/4/2020 and its requirements effectively transferred to a new Ministerial direction (No 2.6) under section 9.1 of the Environmental Planning and Assessment Act. The Ministerial direction is addressed in section 3.2.4 of this PP.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

This SEPP replaces SEPP No.62 – Sustainable Aquaculture and SEPP (Rural Lands) 2008.

Division 4 of this SEPP provides for consideration of effects of proposed development on oyster aquaculture. This SEPP requires consideration of the impact of development on any oyster aquaculture areas as part of a development application and consideration of the NSW Primary Industries NSW Oyster Industry Sustainable Aquaculture Strategy 2016. This strategy states Currumbene Creek historically supported up to 13 ha of oyster aquaculture leases but had no oyster lease areas as of January 2016 and is not designated as priority oyster aquaculture area. This strategy also sets out water quality requirements, recognising the health of waterways is paramount for healthy oyster production. Maintaining water quality is a key aim of this proposal, therefore the current planning proposal is not inconsistent with the provisions of this SEPP.

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State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

This SEPP commenced on 25 August 2017 and forms part of a package of biodiversity reforms undertaken by the NSW Government. The PP and accompanying development application were submitted prior to the provisions of this SEPP and associated reforms coming into effect. The proposed development will be confined to the mostly cleared areas of the site, minimising the need for vegetation clearing. Future tree removal activities on the site will be assessed at development application stage and will be subject to the provisions of the *Biodiversity Conservation Act 2016*, the provisions of this SEPP and Council's Development Control Plan and vegetation permit process.

3.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. Applicable Ministerial Directions are discussed below.

1.5 Rural Lands

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary). The proposal rezones a small corner of land currently zoned RU2 Rural Landscape to E2 Environmental Conservation and extends the E2 zoning across the vegetated areas of the site. The area is native bushland with minimal agricultural value, and it will be managed to protect environmental values, consistent with the requirements of this direction.

2.1 Environment Protection Zones

The PP proposes to rezone the forested areas to E2 Environmental Conservation, which will also be mapped on the Terrestrial Biodiversity LEP overlay. Management arrangements for this forested area will be developed via community title subdivision. These provisions increase the environmental protection standards applying to the site and the proposal is therefore consistent with the requirements of this direction.

2.3 Heritage Conservation

The PP will reduce the area of the R5 Large Lot Residential zoned land to the cleared area of the site and zone the remainder of the site to E2 Environmental Conservation. The subject land has been historically disturbed for logging and has not been identified as containing any heritage items or places of heritage significance. No Aboriginal Cultural Heritage Assessment (ACHA) was required by the Gateway determination and an ACHA was not prepared for this proposal, as the proposal seeks to reduce the developable area of the site and limit development footprint, whilst rezoning the majority of the site for environmental conservation (excluding most development types and associated impacts). The subject land was rezoned to the current extent of R5 Large Lot Residential as part of the introduction of the Shoalhaven Local Environmental Plan 2014. This process considered a wide variety of planning matters, including heritage considerations, and involved extensive community

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consultation, including with Jerrinja Local Aboriginal Land Council (LALC). Jerrinja LALC were notified of the subject PP (PP035) and no comments have been received.

The PP does not contain any provisions that would hinder the conservation of any heritage value that the site might have, or which may be revealed at later stages subject to detailed subdivision design and site investigations.

The proposal will not change/alter any requirements that currently apply to address heritage conservation, including investigating Aboriginal cultural heritage, at development application stage. For example, development will be required to comply with the requirements under the *National Parks and Wildlife Act 1974*, clauses 5.10 and 7.20 of SLEP 2014, and the various policies of former Department of Climate Change and Water (DECCW) and former Office of Environment and Heritage (OEH) including but not limited to:

- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH, 2011)
- Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW, 2010)
- Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW, 2010)
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW, 2010)

The proposal is not inconsistent with the requirements of this Direction.

2.6 Remediation of Contaminated Land

The proposal is consistent with this direction as the land is already zoned for rural residential uses. The small area of RU2 that will be rezoned to E2, is native vegetation and has not been used for agricultural purposes.

In addition, the proponent's PP report states that:

The subject site is not identified as being contaminated. Furthermore, the subject site has not been subject to land use practices potentially causing concern with land uses being restricted to residential use (existing dwelling which is being retained in the subdivision layout) and passive grazing of the cleared areas, currently by horses.

3.1 Residential Zones

The PP would increase the variety of rural-residential housing options by enabling a community title estate. This estate would comprise relatively small rural residential lots with a large environmental lot that will be collectively owned and managed by the estate's residents.

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The proposed reduction in area of the R5 Large Lot Residential zone and reduction in minimum subdivision lot size provisions will result in more efficient use of infrastructure and services, through clustering of rural-residential development in the cleared area of the site adjacent to the road. The proposal is therefore considered to be consistent with the requirements of this direction.

4.3 Flood Prone Land

All of the flood prone land within the subject land is within the area to be zoned E2. There are no inconsistencies with this direction.

4.4 Planning for Bushfire Protection

A Bushfire Assessment was completed by Ecological dated August 2019. The NSW Rural Fire Service's Planning for Bushfire Protection (PBP) guideline was updated after the lodgement of this assessment and was legislatively adopted in the Environmental Planning & Assessment Regulations on 1 March 2020.

Consultation with the NSW Rural Fire Service (RFS) was carried out between July and November 2020, consistent with this section 9.1 Direction. The RFS requested submission of an additional assessment report – a Strategic Bushfire Study, to address the recently introduced strategic planning requirements in Chapter 4 of PBP 2019.

A Strategic Bushfire Study addressing the requirements of Table 4.2.1 in PBP 2019 was submitted in September 2020 and sent to the RFS for comment. Additional comments from the RFS were received on 16 October 2020 and are reproduced below:

The NSW RFS notes that the site is subject to significant bush fire risk. As such Council shall be satisfied that the following comments are addressed prior to progressing the planning proposal:

- *The planning proposal does not result in any increase in residential/rural residential density, to that currently applicable to the site;*
- *Future development is generally consistent with the proposed concept plan, including provision of an 8m wide paved perimeter road;*
- *Future development complies with the provisions for subdivisions detailed in Section 5 of 'Planning for Bushfire Protection 2019' and considers provision of increased bush fire protection measures (ie increased APZs and/or construction standards or other protection measures) commensurate with the risk; and*
- *Future development includes a reticulated hydrant system meeting the provisions of AS2419.1:2005.*

The PP will limit rural residential density to no more than 13 housing lots on the site in a community title arrangement. The current rural residential density allowed under planning controls is one housing lot per 2 hectares (i.e. a total of 12 lots are theoretically possible).

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The clustering of dwellings is recognised in PBP (section 5.1.1) as a good bushfire risk mitigation measure. Provision of the perimeter road, APZs and other bushfire protection measures compliant with the requirements of PBP 2019 are able to be accommodated on the land (as shown in the concept plan).

The subdivision is not proposed to be provided with a reticulated water supply, as Shoalhaven Water have recommended against it and cannot guarantee adequate pressure for firefighting purposes. Additional clarification has been requested from the RFS and additional consultation will occur during the public exhibition period.

The specific requirements of Direction 4.4 Planning for Bushfire Protection are addressed in the table below:

Section	Direction	Comment
4	<i>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of Schedule 1, clause 4 of the Act, and take into account any comments so made.</i>	Consultation with the NSW RFS has occurred in accordance with the Gateway determination requirements and is ongoing.
(5)(a)	<i>A planning proposal must: (a) have regard to Planning for Bushfire Protection 2019</i>	The bushfire assessment was completed before the introduction of PBP 2019, however, performance-based solutions were developed using the pre-release version of Planning for Bush Fire Protection 2018 to determine a number of bushfire protection measures. It is noted that rural residential development is recognised in PBP 2019 as possibly requiring additional bushfire protection measures commensurate to level of risk (page 40). A Strategic Bushfire Study was submitted in September 2020 and addresses the updated PBP 2019, illustrating compliance with the relevant provisions of PBP 2019 and suggesting additional bushfire protection measures.
(5) (b)	<i>introduce controls that avoid placing inappropriate developments in hazardous areas, and</i>	The area is currently zoned for large lot housing and similar development exists in the area. The proposal will reduce the area zoned for large lot housing and cluster future development in the already cleared section of the site close to Jervis Bay Road.
(5) (c)	<i>ensure that bushfire hazard reduction is not prohibited within the APZ</i>	The required APZ can be contained on the subject land as demonstrated in the Strategic Bushfire Study. Additional protection is also recommended to further reduce bushfire risks (e.g. slashing up to 20 m beyond the APZ).

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		Bushfire hazard reduction is not prohibited in the adjacent E2 Environmental Conservation zone; however, it is strategically beneficial for asset protection to be contained within the developable land area to minimise future biodiversity impacts.
(6) (a)	A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road.	The submitted bushfire assessment report provides for APZs which incorporate a perimeter road, and inner and outer protection areas. The Strategic Bushfire Study indicates APZ can be accommodated entirely on the subject land. If the APZs overlap onto adjoining properties within the proposed subdivision, easements will need to be established as part of the subdivision process. A community title subdivision provides mechanisms to manage the outer protection area in a coordinated manner in relation to any communal areas.
(6) (b)	for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with	N/A the development is not development within an already subdivided area.
(6) (c)	contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks	The submitted Strategic Bushfire Study provides for a perimeter road around the entire subdivision.
(6) (d)	contain provisions for adequate water supply for firefighting purposes	The subdivision will not be connected to reticulated water supply. Shoalhaven Water has indicated current water supply infrastructure in the area may not be able to be guaranteed for firefighting purposes. PBP requires a static water supply for each dwelling of 10,000 L for firefighting purposes only. The submitted bushfire assessment report states the proposed subdivision can comply and suggests additional plumbed static water supply could be provided for the area (20,000L for each dwelling).

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(6) (e)	<i>minimise the perimeter of the area of land interfacing the hazard which may be developed</i>	The proposal minimises the area of land interfacing with the bushfire hazard because it reduces the area able to be developed for large lot housing and clusters future development into one area that is already mostly cleared of vegetation.
(6) (f)	<i>introduce controls on the placement of combustible materials in the Inner Protection Area</i>	This is a condition that could be placed on any future development; however, the proposed community title subdivision could provide a mechanism to reinforce such controls (e.g. via bylaws).
(7)	<i>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the noncompliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.</i>	Additional consultation with the NSW RFS will be undertaken throughout the public exhibition period of the Planning Proposal to confirm consistency with this Planning Direction.

5.10 Implementation of Regional Plans

The PP is not inconsistent with the Illawarra Shoalhaven Regional Plan as discussed earlier in this report.

6.1 Approval and Referral Requirements

The PP does not include provisions that require additional concurrences or referrals during the assessment period than would otherwise apply. Therefore, the PP is consistent with this direction.

6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. This direction requires that:

(4) *A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:*

- (a) allow that land use to be carried out in the zone the land is situated on, or*
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*

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(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

(5) A planning proposal must not contain or refer to drawings that show details of the development proposal.

(6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.

The PP seeks to maintain transparent planning standards and amends land use zoning to allow for large lot housing over part of the site (area to be zoned R5 Large Lot Residential) and to provide for limits on development over the remainder of the site (area to be zoned E2 Environmental Conservation). This proposed zoning clearly articulates the strategic intention and eventual expected development for each of these areas.

However, the proposal does seek a site-specific provision to enable and encourage community title subdivision of the subject site, as intended by the proponent. The exact site-specific provisions have not been defined and will be prepared in consultation with the NSW Department of Planning, Industry and Environment and Parliamentary Counsel.

The site-specific provision/s to facilitate community title subdivision provide an additional development option for the site and do not seek to unreasonably restrict permissibility of uses on the land. The current maximum (theoretical) lot yield for the site would be 12 rural residential lots 2 ha in size (not accounting for the environmental constraints of the site). The minimum subdivision lot size over the R5 Large Lot Residential zone will not be amended and will remain at 2 ha. The site-specific provision allowing for community title subdivision will provide a development yield up to 13 housing lots no less than 4,000 m² in size each over the less environmentally constrained areas of the site. The site-specific provision would also ensure that the land to be zoned E2 Environmental Conservation would not allow for a dwelling or dual occupancy to be constructed.

Enabling this community title arrangement will provide a similar yield to what is theoretically allowable under the current controls (+1 housing lot) and is therefore not a more restrictive planning control. Community title subdivision will provide future residents with a niche rural residential housing product – with a level of self-sufficiency (e.g. off-grid water and sewer) and communal conservation goals. Community title is considered the optimal outcome to balance provision of rural residential homes and environmental and hazard constraints on this site.

Should the land be rezoned, a Torrens Title subdivision could occur with lots 2 ha or greater in size (up to 4 lots), with uncertain environmental management outcomes across the residue bushland lot. In effect, the proposed provision will incentivise community title subdivision which will provide for a higher lot yield and ongoing management and funding

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for environmental conservation on common property, maintenance of internal roads and bushfire risk management.

The proponent has provided various iterations of concept subdivision plan, the latest of which is provided in this PP as an example only of a future development outcome, noting that the proponent also submitted a subdivision application concurrently with the PP application and which is currently held in abeyance. This PP illustrates how a future community title subdivision on the site can work within existing environmental constraints. It is not proposed to introduce controls that will restrict future development to a particular design.

A site-specific provision enabling community title will provide for improved development outcomes over the site, enabling clustering of large lot housing in the cleared portion of the site and allowing for ongoing management and conservation over the environmentally sensitive, vegetated areas of the site, which contain threatened species and habitat. The proposed yield (of up to 13 lots no smaller than 4,000 m² each) has been informed by specialist studies, largely avoids threatened species habitat, and provides sufficient area on each lot to maintain water quality and effectively treat and discharge wastewater.

Given the benefits of a community title arrangement on this constrained site, the introduction of a site-specific provision is justified in this case and any inconsistency with this direction is considered minor.

3.3 Environmental, Social and Economic Impact (Section C)

3.3.1 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 site contains threatened fauna species and forms part of a habitat corridor. The conservation of this land will be facilitated by this PP. This PP adopts a footprint for rural residential development so that environmentally sensitive parts of the site will be within the neighbourhood property that is to be managed primarily for conservation purposes (via community title subdivision). The submitted flora and fauna assessment report states that impacts on threatened species and habitats will be minimal. Importantly, identified Green and Golden Bell Frog habitat (an existing man-made dam, surrounded by managed land) will be protected from development (within the E2 Environmental Conservation zoned area).

This PP seeks to rezone a significant part of the site from R5 Large Lot Residential and RU2 Rural Landscape to E2 Environmental Conservation (over 15 ha). This is the most appropriate zone to protect threatened species, in addition a legal mechanism will enable community title subdivision of the land which will provide for the ongoing management of this land, and ongoing protection of threatened species.

The environmentally sensitive land will be managed, and habitat potentially enhanced under a community title scheme as opposed to the bushland being in fragmented private

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ownership in a conventional Torrens Title subdivision. This will give the consent authority the ability to condition a subdivision consent with requirements for the future community management statement to manage the environmental-zoned land as a single parcel. If the environmentally sensitive land were in fragmented Torrens Title ownership, the environmental value of this land would be diminished due to clearing along boundary fences and the land is less likely to be appropriately and consistently managed.

Tree removal is proposed to be minimised via clustering of development in the mostly cleared areas of the site.

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

The subject land is in an upper part of the catchment that drains to Jervis Bay Marine Park. Accordingly, downstream water quality impacts from development must be avoided. A stormwater assessment completed by SEEC Consultants on 29 August 2019, found that the large lot nature of the development provides flexibility for stormwater impacts to be managed on-site with minimal drainage offsite and to the stormwater system. Drainage off roads can be directed to swales and bioretention basins. Modelling in SEEC's report indicates that pollutant (sediment, nitrogen and phosphorus) concentrations and exports could be reduced if the recommended stormwater treatment measures are incorporated into the subdivision design and appropriately managed. On this basis, the PP is expected to achieve the required post-development neutral or beneficial outcome on water quality.

An effluent (wastewater) management study (by Cowman Stoddart Pty Ltd dated November 2017 and 19 August 2019) was submitted with the proposal which found that effluent can be effectively managed on site without adverse water quality impacts. These findings were based on each lot having a 4 bedroom home and an on-site treatment system (aerated wastewater treatment system with disposal of secondary treated effluent on site via irrigation or a septic tank and mound system where slopes are <7%). A further effluent disposal report may be needed for each lot when development applications are lodged at Council with the building plans for each lot.

Town water will not be provided to the proposed subdivision, conserving town water and resulting in residents being self-sufficient on rainwater.

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

The subject site proposes to cluster development close to Jervis Bay Road, retaining development potential of the land for large lot housing (consistent with current zoning and strategic plans) whilst protecting native vegetation on site and rezoning environmentally sensitive areas to E2 Environmental Conservation (preventing housing development in these areas). Due to proximity to Jervis Bay Road, a Visual Impact Assessment was completed to assess the proposal's potential impact on the visual character and landscape quality of the area.

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The Visual Impact Assessment was completed by Envisage (dated 16 September 2019) and described the visual character of the area as *“dominated by bushland and undulating landform”*. The report stated that when travelling along Jervis Bay Road *“glimpses of rural properties are seen, however, most are partially screened by existing vegetation and built elements.”* The report acknowledged that new development could include a house on each lot plus rural outbuildings and noted secondary dwellings (granny flats) are also permitted.

The report found the proposed development would not impact on any distant views, but some rural-residential development will likely be visible when travelling past the site on Jervis Bay Road. The report made recommendations to maintain a bushland view including:

- Maximise retention of existing mature vegetation, especially along the roadside and along current driveway servicing the existing dwelling.
- Additional landscape planting along the roadside to assist in obscuring and softening views of development with a landscape plan provided at subdivision stage.
- Reduce the number of lots by requiring a minimum lot size of 5,000 m², thereby reducing the number and extent of dwellings and associated buildings.
- Combine the proposed lots 11 and 12 on the draft plan [which has since been revised] to maximise tree retention and break up views to the north of the site.
- Provide for rural fencing styles and roof materials.
- Require ancillary buildings to be recessive in the landscape (e.g. limited in height and coloured in darker tones).

The report concludes that the visual impact of development would be acceptable subject to the above recommendations. A number of these recommendations relate to the development application and subdivision stage of development and are specific in nature (relating to landscaping and material choices etc). These are factors that could be included in the community title subdivision, as design requirements or guidelines/bylaws. The development footprint (area to remain zoned R5 Large Lot Residential) has been adjusted to allow for more tree retention, and the concept subdivision plan illustrates how additional landscaping and setbacks to the road can be achieved. The proposed minimum lot size has not been altered, as it is likely that lots larger than 4,000 m² will be provided where they share a boundary with Jervis Bay Road, allowing for design flexibility for other lots in less visually prominent locations to be slightly smaller to a minimum of 4,000 m².

The subject site is bushfire affected and a bushfire protection assessment was completed by Eco Logical Australia dated 30 August 2019. The report found that bushfire risk can be managed through the provision and maintenance of APZs (the majority of which are already in place given the location of the development in the already cleared areas of the site). The coordinated maintenance of APZs is facilitated in a community title subdivision with a body corporate, strata-type fees and communally owned and managed land. The clustering of development in one area of the site also provides for more efficient and effective risk reduction compared to properties dispersed throughout areas of bushland and located further from the main road.

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The proposed community title subdivision will allow for rural-residential lots smaller than the 2 ha (minimum of 4,000 m²) required by Shoalhaven LEP 2014. The minimum allowable lot size of 4,000 m² in a community title arrangement allows for a small community of support to develop (landowners may be closer to neighbours than in other rural estates) and provides rural-lifestyle/environmentally-orientated properties that are easier and less expensive to maintain than larger 2 ha sized properties (e.g. lawn mowing, weed removal). The clustering of homes in the cleared areas of the site provide for an efficient and cost-effective road layout, minimising construction and maintenance costs for owners. The cost to provide on-site sewer systems and rainwater tanks involves higher capital costs for owners when building their dwelling, however these owners will not have to pay ongoing bills to Shoalhaven Water for service connections and usage.

3.4 State and Commonwealth Interests (Section D)

3.4.1 Is there adequate public infrastructure for the Planning Proposal?

The subject proposal will allow up to 12 new dwellings (plus retention/redevelopment of an existing dwelling) and will result in minimal additional demand for public infrastructure.

Shoalhaven Water has advised that reticulated sewer will not be provided to the site. Shoalhaven Water have also recommended that reticulated water not be provided to the site given infrastructure capacity issues in the vicinity. The rural-residential development is relatively small (up to 13 lots including the existing dwelling) and can accommodate on-site rainwater tanks (for domestic and firefighting uses) and onsite wastewater treatment, allowing residents to be self-sufficient in terms of water and wastewater. This has environmental benefits including for water conservation. The estate could attract conservation-minded owners given the bushland setting and presence of the environmental conservation land within the rural residential estate.

Reticulated power is available in the locality supplied by way of overhead power lines within the Jervis Bay Road reserve. The site is currently zoned R5 Large Lot Residential and it is likely electricity can be extended to the subject site subject to design at subdivision stage. Consultation with Endeavour Energy as part of the public exhibition of the proposal will confirm requirements for connections to the electricity grid.

The subdivision will have one access road from Jervis Bay Road. Given the road topography, bend, high speed limit (recently reduced to 90 km/hr) and restricted sight distances, an upgraded intersection treatment is required.

A Traffic Intersection (Turning Warrants) Assessment was completed by Allen Price & Scarratts in February 2020, which stated a CHR(s) (Channelised Turn) intersection treatment is likely to be required for right-hand turns with a BAL (Basic Turn) for left turns. These details require design input at subdivision stage. Preliminary feedback from the Roads and Maritime Services (RMS) indicated Jervis Bay Road is a regional classified road under the management of Shoalhaven Council and stated:

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In 2015, RMS reviewed its level of involvement on classified regional roads and determined it more appropriate for councils to consider the implications of development. In this case, recognising the matter is a planning proposal, RMS considers it a matter for Council to determine if appropriate access arrangements can be provided for the future development facilitated by this planning proposal.

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

The Gateway Determination dated 10 September 2018 stated that consultation was required with the following public authorities under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Rural Fire Service
- Office of Environment and Heritage (now Biodiversity & Conservation Division, DPIE)
- Roads and Maritime Services (now Transport for NSW - TfNSW)
- Department of Primary Industries Water (now Natural Resources Access Regulator - NRAR)
- Shoalhaven Water
- Endeavour Energy and
- Jervis Bay Marine Park.

Consultation with these agencies occurred during the public exhibition period. Submissions were received from seven (7) agencies which are comprehensively addressed within the post-exhibition report to Council and briefly summarised below.

Endeavour Energy

Subject to the consideration of comments provided and the satisfactory resolution of the management of powerlines that traverse the site, Endeavour Energy has no objection to the Planning Proposal.

Implications for Planning Proposal

The comments provided by Endeavour Energy were considered and addressed – the future development will result in removal of existing electricity infrastructure upon the site with redesign of the network to occur as part of the future subdivision in accordance with all relevant standards and policies. No changes to the Planning Proposal were made in response to this submission.

Transport for NSW

All access to the PP site will be via Jervis Bay Road (regional road). TfNSW notes the Planning Proposal – PP035 document dated November 2020 suggests that a CHR/BAL treatment would be required at the intersection of the subdivision access and Jervis bay Road. TfNSW determines it more appropriate for councils to consider and determine if proposed arrangements for developments on regional roads are acceptable from a network perspective (i.e. acceptable in terms of safety and efficiency).

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TfNSW has no objections to the planning proposal in principle as it is unlikely to have a significant impact on the state road network. TfNSW strongly supports development which will reduce car dependency and encourage the use of sustainable modes of travel including buses, bicycles and walking.

Response

Traffic issues have been considered throughout the assessment process. Council's Traffic Section have reviewed the submitted traffic assessment and accepted the proposed intersection treatment. In addition to provision of an upgraded turning intersection, additional widening of Jervis Bay Road may be necessary (additional design and assessment will occur at subdivision stage).

No changes to the Planning Proposal were made in response to this submission.

NSW Rural Fire Service

Consultation with the NSW RFS occurred prior to the public exhibition of PP035. Advice issued on 16 October 2020 stated:

The NSW RFS notes that the site is subject to significant bush fire risk. As such Council shall be satisfied that the following comments are addressed prior to progressing the planning proposal:

- The planning proposal does not result in any increase in residential/rural residential density, to that currently applicable to the site;
- Future development is generally consistent with the proposed concept plan, including provision of an 8m wide paved perimeter road;
- Future development complies with the provisions for subdivisions detailed in Section 5 of 'Planning for Bushfire Protection 2019' and considers provision of increased bush fire protection measures (i.e. increased Asset Protection Zones (APZs) and/or construction standards or other protection measures) commensurate with the risk; and
- Future development includes a reticulated hydrant system meeting the provisions of AS2419.1:2005.

Advice received from the NSW RFS on 29 January 2021 reiterated previous advice, and presented a revised position on water supply for firefighting, stating:

The NSW Rural Fire Service has no objection to the progression of the planning proposal based on our previous advice dated 16 October 2020, with the following revision;

- 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.

Response

Planning considerations relating to bushfire are discussed below and also within sections 1.3 and 3.2.4 of this Report.

Density

Overall site density will remain rural-residential in nature. The Planning Proposal manages the development footprint across the site, reducing the area able to be developed for

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housing by clustering rural residential lots in the cleared part of the site, close to the road and excluding development over the majority of the site.

Under current planning controls most of the land is zoned R5 Large Lot Residential, permitting Torrens Title subdivision (of up to 12 lots) and housing development across the site. The proposal seeks to cluster rural-residential housing lots (up to 13 lots) in the cleared portion of the site. This represents an increase in potential yield of one (1) lot, up to a maximum number of thirteen (13) lots when the land is subdivided as community title. Thirteen (13) lots represent the maximum development yield for the site, and the number of lots to be developed will be subject to further investigations and detailed design at subdivision stage (the eventual lot yield could be reduced due to development constraints emerging during subdivision design and assessment).

Compliance with Planning for Bushfire Protection 2019

Planning for Bushfire Protection 2019 includes specific guidance related to rural-residential subdivisions as these are generally located in areas of increased bushfire risks, stating:

The NSW RFS has seen an increase in developments involving the subdivision of large rural blocks into smaller rural-residential allotments. In these circumstances, developers, designers and Consent Authorities need to be made aware that additional BPMs [Bushfire Protection Measures] ... will be a requirement to allow for safer and appropriate outcomes for future occupants. (page 40).

The proponent's Strategic Bushfire Study (Ecological, 16 September 2019) recognises the significant risk of bushfire to the site and concludes that bushfire risk mitigation measures can be provided to comply with *NSW Planning for Bushfire Protection (PBP) 2019* and reduce the risk to appropriate levels. Detailed bushfire mitigation responses would be assessed during the subdivision application stage, should the land rezoned, with applications referred to the NSW RFS for their concurrence under Section 100B of the *Rural Fires Act 1997*. The implications of these additional measures on flora and fauna are discussed further below and will need to be investigated further and ameliorated at subdivision stage.

Water supply for firefighting

Additional consultation occurred with the NSW RFS during the public exhibition period. Advice was sought as to the acceptability of providing static water supply for firefighting instead of access to reticulated (town) water hydrants. Advice from Shoalhaven Water opposes connection of reticulated water to the site (in part due to an inability to guarantee supply for this area during a bushfire). This position is reinforced by the Council resolution of 7 April 2020 not to provide reticulated water to the site. PBP 2019 requires a minimum of 10,000 L of static (tank) water per dwelling to be provided for firefighting purposes on rural-residential lots 1,000 m² – 10,000 m² in size.

The NSW RFS have indicated for the subject land that any future subdivision would need to provide double this amount (20,000 L / dwelling) for firefighting purposes. The proponent has indicated that provision of 20,000 L/dwelling of static water supply for firefighting is possible and will be incorporated into subdivision planning for the site. Any development applications for the site require the NSW RFS to issue a Bushfire Safety Authority under

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section 100B of the *Rural Fires Act 1997* which will reiterate requirements such as provision of the additional static water supply.

Given the concerns of the NSW RFS were addressed throughout the assessment process no changes to the Planning Proposal were made in response to the submissions received. Further detailed assessment and consultation with the NSW RFS will occur at subdivision stage.

Biodiversity & Conservation Division, Department of Planning, Industry and Environment (Environment, Energy and Science)

No major objection to the proposal, subject to the following points:

- That all development, including any bushfire mitigation works, be wholly contained within the proposed R5 – Large Lot Residential portion of the site and not extend into the proposed E2 – Environmental Conservation portion.
- That any subsequent development application appropriately assess the biodiversity impacts of the proposal.
- Recommend that the large E2 portion proposed to be retained be placed under some form of conservation agreement, such as a biodiversity stewardship agreement, so that it is protected and managed for conservation in perpetuity. BCD do not object to PP035, subject to further consideration of the potential impacts of bushfire protection measures on flora and fauna and adequate consideration of biodiversity issues at the development application stage. BCD also suggested that the proposed neighbourhood lot (to be zoned E2 Environmental Conservation) could be managed in perpetuity under a biodiversity conservation agreement.

Response

Impact of bushfire protection measures on biodiversity

The Flora and Fauna Assessment (Ecological Aug 2019) and draft Planning Proposal indicated that all bushfire protection measures required to comply with *Planning for Bushfire Protection (PBP) 2019 (NSW RFS)*, for example clearing and vegetation management for asset protection zones, can be contained within the area proposed to be rezoned R5 Large Lot Residential. However, given the NSW RFS' advice that *additional* bushfire protection measures may be required to further minimise risk (*in excess* of the general prescriptive requirements of PBP 2019), which could have implications for land zoned E2 Environmental Conservation. Bushfire protection measures will be detailed further as part of the subdivision application process, in consultation with the NSW RFS. It is expected any potential impacts could be avoided or managed in the subdivision design. The E2 zoned land area will also be mapped as a 'habitat corridor in the LEP Terrestrial Biodiversity maps, providing additional protection over this ecologically sensitive area. The Planning Proposal provides a suitable framework to balance environmental protection and bushfire risk reduction which will be further explored and evaluated during the subdivision phase of development.

Assessing biodiversity impacts in DAs

All DAs for the subject land are required to assess biodiversity impacts, and applications must address and give effect to the strongly environmentally-focused objectives of the E2

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Environmental Conservation zone as well as Clause 7.5 Terrestrial Biodiversity in SLEP 2014.

Biodiversity Conservation Agreements

A conservation agreement could provide an effective management mechanism to maintain the ecological values of the property and open up potential grant funding opportunities for environmental land management.

There are a variety of different conservation agreements, ranging from wildlife refuge agreements, to 'in-perpetuity' conservation agreements and stewardship agreements (which allow for the sale of biodiversity offset credits for protected land to fund ongoing management). Landowners with conservation agreements may also benefit from financial concessions and incentives. Conservation agreements are voluntary, and in this case could be investigated at the subdivision development application stage of development.

No changes to the Planning Proposal were made in response to this submission.

Shoalhaven Water

Advice on servicing the proposed subdivision was sought from Shoalhaven Water in early 2020. Shoalhaven Water indicated reticulated sewer was not available and opposed supply of reticulated (town) water given the following risks:

- Ongoing issues with water pressure and flows in nearby areas;
- Inability to guarantee water supply for bushfire fighting purposes; and
- Potential water quality risks. Should town water be provided, the proposed lot sizes of a minimum of 4000 m² will be insufficient to provide suitable on-site sewerage management systems – i.e. the effluent management areas will be undersized as households with town water are expected to use more water (at least about 20% more) than those that rely on rainwater tanks.

This advice was reconfirmed after the public exhibition period.

Response

The proposed development will be self-sufficient in terms of water and on-site effluent (wastewater) management, consistent with Shoalhaven Water's advice. The proponent has provided technical studies to illustrate that sufficient water can be supplied to the development for domestic and firefighting uses. An on-site wastewater management and water quality report was also submitted which shows water can be treated on-site without adverse impacts on water quality. The proposed self-sufficiency will provide environmental benefits, as water consumption will be less than the equivalent rural residential development connected to town water supplies.

No additional changes to the exhibited Planning Proposal, as the advice issued by Shoalhaven Water prior to public exhibition was unchanged.

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

The DPI Marine Operations Unit do not wish to provide a submission in this case due to the proposal being unlikely to have an impact on the Marine Park.

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Response

Response acknowledged and noted – no adverse impacts on Jervis Bay Marine Park are expected as a result of the proposed development. No changes to the Planning Proposal were made in response to this submission.

NSW Heritage

Heritage NSW made a submission to the PP during the public exhibition period and initially objected to the progression of the proposal without further consideration of Aboriginal cultural heritage impacts and the undertaking of an Aboriginal cultural heritage assessment (ACHA). Heritage NSW issued subsequent advice which acknowledged the extensive strategic planning history of the site and the intentions of this proposal to limit development footprints and development impacts across the site. This advice also acknowledged that an ACHA is not expected to be accommodated this late in the PP process, and reiterated advice to undertake cultural heritage assessment early in the planning process in all future proposals. Heritage NSW subsequently advised that they no longer objected to the PP but requested that Council consider measures to ensure that Aboriginal cultural heritage matters are adequately considered at the development application stage of development.

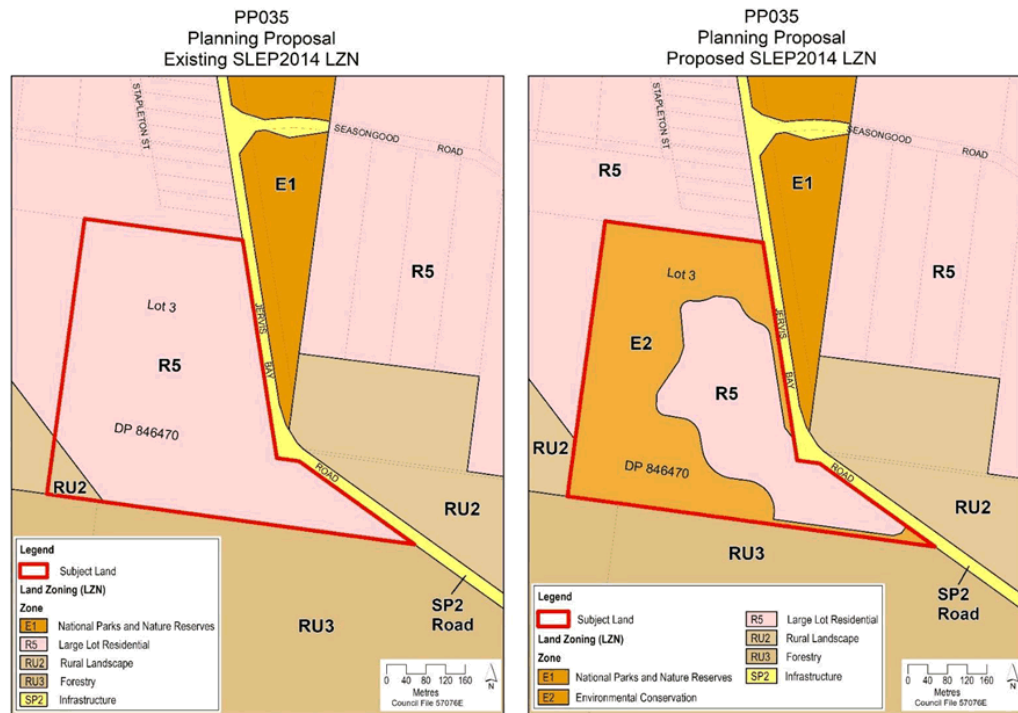
Response

An ACHA was not required as a condition of the Gateway determination for this proposal (PP035). In this case, the PP seeks to limit the development footprint across the site to the mostly cleared area and provides a buffer from development to the watercourse in the northern part of the site. Also, by rezoning the majority of the land to E2 Environmental Conservation, development will be restricted in that area, thereby reducing the likelihood of any impacts to any potential heritage values (compared to the current situation where development and associated impacts are permitted across the entire site). At this stage, no objects, items or specific places of Aboriginal cultural heritage significance are known to occur on the site and the area is currently zoned for rural-residential development, theoretically allowing for development and associated impacts to stretch across the site (subject to detailed merit-based assessment). The PP complies with all relevant legislative requirements and additional Aboriginal cultural heritage investigations can occur at the development application stage. The process to consider any potential impacts to cultural heritage values within the area proposed to accommodate rural-residential development remain unchanged by the Planning Proposal and will be investigated further at the subdivision stage of development, where opportunities to avoid or minimise any potential impacts can be explored at this more detailed design phase. Heritage NSW's feedback will be utilised in future planning proposal preparation and has been discussed with, and forwarded to, the NSW DPIE for consideration.

Part 4 – Mapping

The PP proposes to amend the following LEP Maps as shown below.

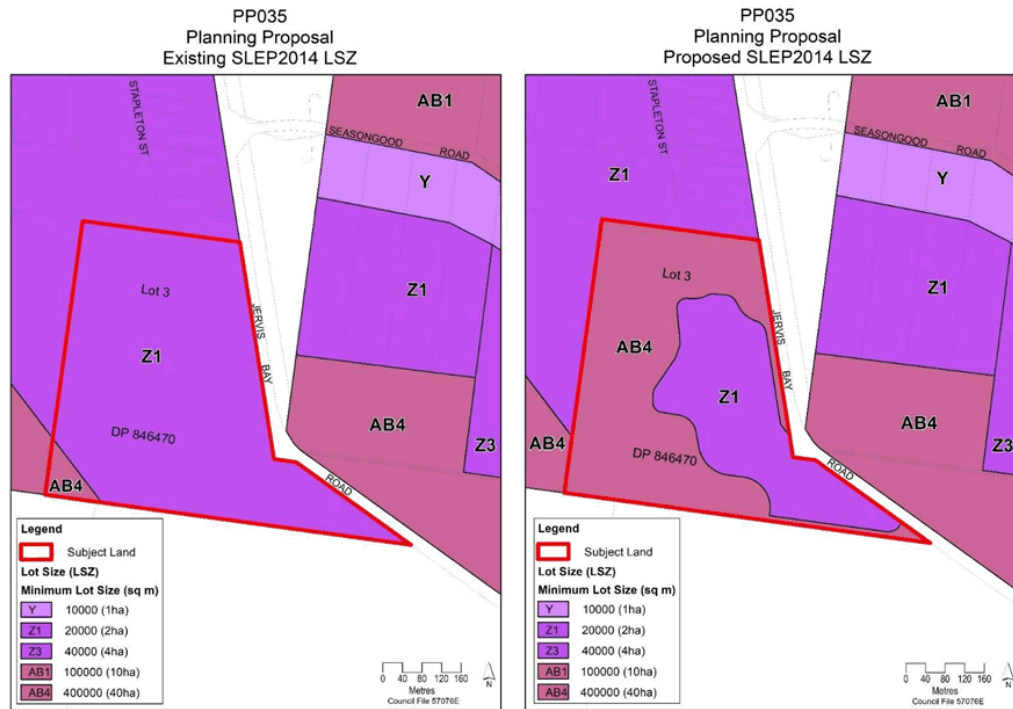
Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision



Map 1: Existing and Proposed Land Use Zone Maps

DE21.25 - Attachment 2

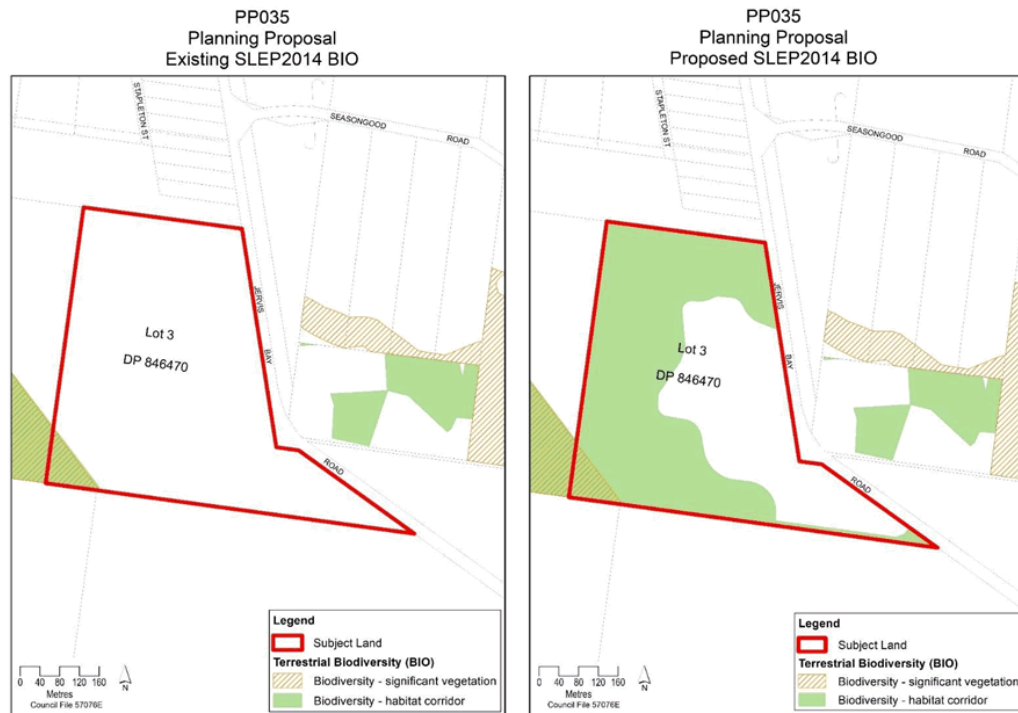
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Map 2: Existing and Proposed Lot Size Maps

DE21.25 - Attachment 2

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Map 3: Existing and Proposed Biodiversity Maps

Part 5 - Community Consultation

PP035 was publicly exhibited for a total of 31 days between Wednesday 6 January 2021 and Friday 5 February 2021 (inclusive). The exhibition was delayed to begin after the Christmas holiday period. The Gateway determination required a public exhibition period of a minimum of 28 days.

Nearby landowners (82), the Huskisson Woollamia Community Voice (CCB) and Jerrinja Local Aboriginal Land Council were notified in writing of the public exhibition and invited to make a submission.

The exhibition was affected by Covid-19 pandemic procedures and was placed on public exhibition during this time because of the looming Gateway determination deadline (10 March 2021) and advice from the NSW Department of Planning, Industry and Environment to continue to progress the Planning Proposal. The Planning Proposal and accompanying information were made available on Council's 'Documents on Exhibition' webpage and Council staff were available to answer questions. Council staff took several phone calls from notified residents with queries relating to access, community title subdivision, provision of water and questions about the development potential of surrounding land.

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No (0) submissions from residents or community groups were received during the exhibition period.

Part 6 – Project Timeline

Task	(Original) Anticipated Timeframe (July 2018)	Updated timeframe (updated Nov 2020)
Commencement date (date of Gateway determination)	August 2018	August 2018
Completion of Gateway determination requirements	April 2019	September 2019 (plus additional traffic study March 2020) Preliminary Consultation with RFS July - November 2020.
Public exhibition	June 2019	December – January 2021
Consideration of submissions	August 2019	January – February 2021
Post exhibition consideration of PP	September 2019	February 2021*
Finalisation and notification of Plan	February 2020	March 2021*

*subject to proposal having no unresolved objections

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Attachments

Attachment 1: Council Reports and Resolutions

[Report to Council's Development Committee 13 March 2018](#)

[Resolution: MIN18.162](#)

[Report to Council's Development & Environment Committee 7 April 2020](#)

[Resolution: MIN20.253](#)

DE21.25 - Attachment 2

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Attachment 2: Proponent's Planning Proposal

[Planning Proposal Report](#)* prepared by Cowman Stoddart D17/394310

[Annexure 1](#) Plans of Proposal/Subdivision sketch*

[Annexure 2](#) Flora and Fauna Assessment dated Nov 2017*

[Annexure 3](#) Bushfire Protection Assessment dated Nov 2017*

[Annexure 4](#) Report on Effluent Disposal dated Nov 2017*

[Annexure 5](#) Correspondence from RMS

Annexure 6 AHIMS Search - Cowman Stoddart dated 2017 – Note the AHIMS search did not show any listed Aboriginal sites or objects. AHIMS searches are not available for public viewing.

[Annexure 7](#) Chapter G11 of DCP Compliance Table

*Note: Changes have occurred to the proposal as described within the proponent's Planning Proposal Report dated November 2017.

These changes have occurred in response to the recommendations of subsequent technical studies. Some of the technical studies included above have also been updated - see Attachment 3 for copies of these studies.

DE21.25 - Attachment 2

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Attachment 3: Specialist Studies

[Stormwater Assessment - Neutral or Beneficial Effect \(NorBE\)](#) prepared by SEEC dated Aug 2019

[Flora and Fauna Assessment](#) prepared by Eco Logical Australia dated August 2019

[Bushfire Assessment](#) prepared by Eco Logical Australia dated August 2019

[Strategic Bushfire Study](#) prepared by Eco logical Australia dated September 2020

[Onsite Effluent Assessment](#) prepared by Cowman Stoddart dated November 2017

[Onsite Effluent Addendum Letter](#) prepared by Cowman Stoddart dated August 2019

[Turning Warrants Assessment](#) (Jervis Bay Road intersection) prepared by Allen Price & Scaratts dated February 2020

[Visual Impact Assessment](#) prepared by Envisage dated August 2019

DE21.25 - Attachment 2

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Attachment 4: Gateway determination

[Gateway determination](#) – issued by NSW Department of Planning and Environment dated 10 September 2018

[Gateway determination cover letter](#)

[Extension of Gateway determination](#) – issued by NSW Department of Planning, Industry and Environment dated 2 March 2020

[Extension of Gateway determination cover letter](#)

DE21.25 - Attachment 2

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Attachment 5: State Environmental Planning Policies

SEPP	Name	Applicable	Not inconsistent
		✓ / ✗	✓ / n/a
19	Bushland in Urban Areas	x	
21	Caravan Parks	x	
33	Hazardous and Offensive development	x	
36	Manufactured home estates	x	
46	Moore Park Showground	x	
50	Canal estate development	x	
55	Remediation of land	x	
64	Advertising and signage	x	
65	Design quality of residential apartment development	x	
70	Affordable Housing (Revised Schemes)	x	
	Aboriginal Land 2019	x	
	Activation Precincts 2020	x	
	Affordable Rental Housing 2009	x	
	BASIX : 2004	x	
	Coastal Management 2018	x	
	Concurrences and Consents 2018	x	
	Educational Establishments and Child Care Facilities 2017	x	
	Exempt and Complying Development Codes 2008	x	
	Gosford City Centre	x	
	Housing for Seniors or People with a Disability 2004	x	
	Infrastructure 2007	x	
	Koala Habitat Protection 2019	✓	✓
	Kosciusko National Park (Alpine Resorts) 2007	x	
	Kurnell Peninsula	x	
	Major Infrastructure Corridors 2020	x	
	Mining, Petroleum Production and Extractive Industries 2007	x	
	Penrith Lakes Scheme 1989	x	
	Primary Production and Rural Development 2019	✓	✓
	State and Regional Development 2011	x	
	State Significant Precincts 2005	x	
	Sydney Drinking Water Catchment 2011	x	
	Sydney Region Growth Centres 2006	x	
	Three Ports 2013	x	
	Urban Renewal 2010	x	

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	Vegetation in Non-Rural Areas 2017	✓	✓
	Western Sydney Aerotropolis 2020	x	
	Western Sydney Employment Area 2009	x	
	Western Sydney Parklands 2009	x	

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Attachment 6: Section 9.1 Directions

Direction	Applicable	Relevant	Not inconsistent
1 Employment and Resources			
1.1 Business and Industrial Zones	x		
1.2 Rural Zones	✓	✓	All of the RU2 land is proposed to be zoned E2.
1.3 Mining, Petroleum Production and Extractive Industries	x		
1.4 Oyster Aquaculture	x		
1.5 Rural Lands	✓	✓	Biodiversity values of site protected. No impact on agricultural production values.
2 Environment and Heritage			
2.1 Environmental Protection Zones	✓	✓	Environmentally significant land on the site is proposed to be rezoned to E2. The PP will not reduce the environmental protection standards that apply to the land.
2.2 Coastal Management	x		
2.3 Heritage Conservation	✓	✓	Not inconsistent. This is discussed in detail in the PP documentation. The land is already zoned for rural residential uses.
2.4 Recreation Vehicle Area	x		
2.5 E2 and E3 overlays Far North Coast	x		
2.6 Remediation of contaminated land	✓	x	The land is already zoned for rural residential uses.
3 Housing, Infrastructure and Urban Development			
3.1 Residential Zones	✓	✓	Not inconsistent. This is discussed in detail in the PP documentation.
3.2 Caravan Parks and Manufactured Home Estates	x		
3.3 Home Occupations	x		
3.4 Integrating Land Use and Transport	x		
3.5 Development Near Regulated Airports and Defence Airfields	✓	x	The subject land is within the HMAS Albatross Military Aircraft Operating Area. The proposal will have no impact on operations however, given it represents low-rise rural residential development, currently enabled by SLEP 2014.
3.6 Shooting Ranges	x		
3.7 Short-term holiday rental	x		Applies to Byron Shire only.

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4 Hazard and Risk				
4.1	Acid Sulphate Soils	x		
4.2	Mine Subsidence and Unstable Land	x		
4.3	Flood Prone Land	✓	✓	Flood prone land to be zoned E2 Environmental Conservation.
4.4	Planning for Bushfire Protection	✓	✓	This is discussed in detail in the PP. Not inconsistent as consultation with NSW carried out and no objection received.
5 Regional Planning				
5.1	Implementation of Regional Strategies	x		
5.2	Sydney Drinking Water Catchments	x		
5.3 – 5.9	Various site specific directions	x		Do not apply to Shoalhaven LGA
5.10	Implementation of Regional Plans	✓	✓	The PP is not inconsistent with the regional plan or the relevant local plans.
5.11	Development of Aboriginal Land Council land	x		
6 Local Plan Making				
6.1	Approval and Referral Requirements	x		
6.2	Reserving Land for Public Purposes	x		
6.3	Site Specific Provisions	✓	✓	This is discussed in detail in the PP. Any inconsistency is fully justified and minor.
7 Metropolitan Planning				
7.1-7.13	Various	x		Applies to various areas within the State, excluding Shoalhaven