

## **DE20.30 Planning Proposal (PP035 ) - Lot 3 DP 846470, Jervis Bay Road, Falls Creek - Public Exhibition Detail Confirmation**

**HPERM Ref:** D20/52111

**Section:** Strategic Planning

**Approver:** Phil Costello, Director Planning Environment & Development Group

**Attachments:** 1. Proponent's revised conceptual subdivision plan

### **Reason for Report**

- Present the findings of the supporting studies which have now been completed in regard to this proponent initiated Planning Proposal (PP); and
- Obtain Council's direction in relation to the number and size of the proposed lots prior to public exhibition, consistent with the Council resolution of 13 March 2018 (MIN18.162).

### **Recommendation (Item to be determined under delegated authority)**

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 m<sup>2</sup>.
  - 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 m<sup>2</sup>, 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).

### **Options**

1. Proceed as recommended to publicly exhibit the PP on the basis of the proponents' proposed changes to the size and number of lots and also the findings of the various supporting studies. Also replace the reference in the PP to amending Clause 4.2B (subdivision in certain rural and environment protection zoned) of the LEP with a statement that the legal mechanism to achieve the intended outcome of the PP will be determined in consultation with Parliamentary Counsel.

#### Implications:

This is the preferred approach as the proponent's proposed subdivision layout has now been revised based on the findings of a range of studies.

One of the key studies is an onsite effluent/wastewater report which assumes that town water will not be available. Advice from Shoalhaven Water, however, is that town water could potentially be supplied, subject to compliance with Council's Rural Water Supply Policy. Larger onsite effluent management areas would be required if town water is available, in which case, a larger/more conservative minimum lot size should be applied. As a result, this report recommends that if the PP is ultimately finalised on the basis of 13 residential lots and a 4,000 m<sup>2</sup> lot size, that Council adopt a prudent policy position not to provide town water to the subject land.

The best legal mechanism for achieving the intended outcome of this PP remains to be determined. In this regard, a new local clause is potentially more appropriate than amending the current LEP Clause 4.2B. The primary purpose of the PP is to describe the intended outcome in plain English and legal mechanism for achieving the outcome does not necessarily need to be described in the document.

2. Amend the recommended approach.

Implications:

Would largely depend on the nature of any changes or additions to the recommendation.

3. Not proceed further with the PP

Implications:

This would not be recommended given the level of work that has gone into this PP consistent with a previous resolution of Council.

## Background

In March 2018, Council considered an initial report on a proponent-initiated Planning Proposal (PP) application for Lot 3 DP 846470, Jervis Bay Road, Falls Creek.

The PP application was submitted by Cowman Stoddart Pty Ltd (on behalf of the owner T Pasialis) in November 2017 and sought to amend the Shoalhaven Local Environmental Plan (LEP) 2014 to permit a 13-lot community title subdivision comprising 12 residential lots (within a largely cleared area) and a neighbourhood property (bushland which is to be managed for conservation). The proposed residential lots had a minimum area of 5,635 m<sup>2</sup>. The existing minimum lot size under the LEP is part 40 ha and part 2 ha.

Council resolved on 13 March 2019 (MIN18.162) to:

1. *Prepare a Planning Proposal to:*

- a. *Permit a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls Creek 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.*

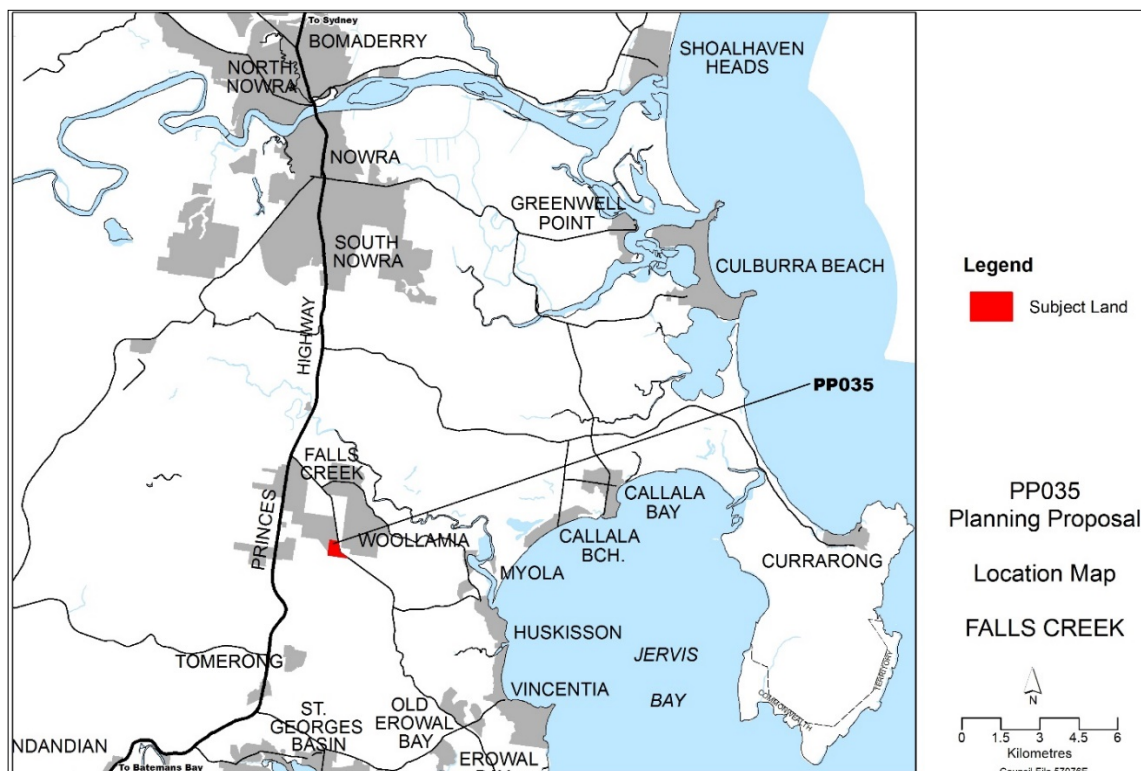
The resultant PP document (PP035) was prepared and submitted for Gateway determination in July 2018. The then NSW Department of Planning and Environment issued a Gateway determination in September 2018, which included the following conditions:

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.*

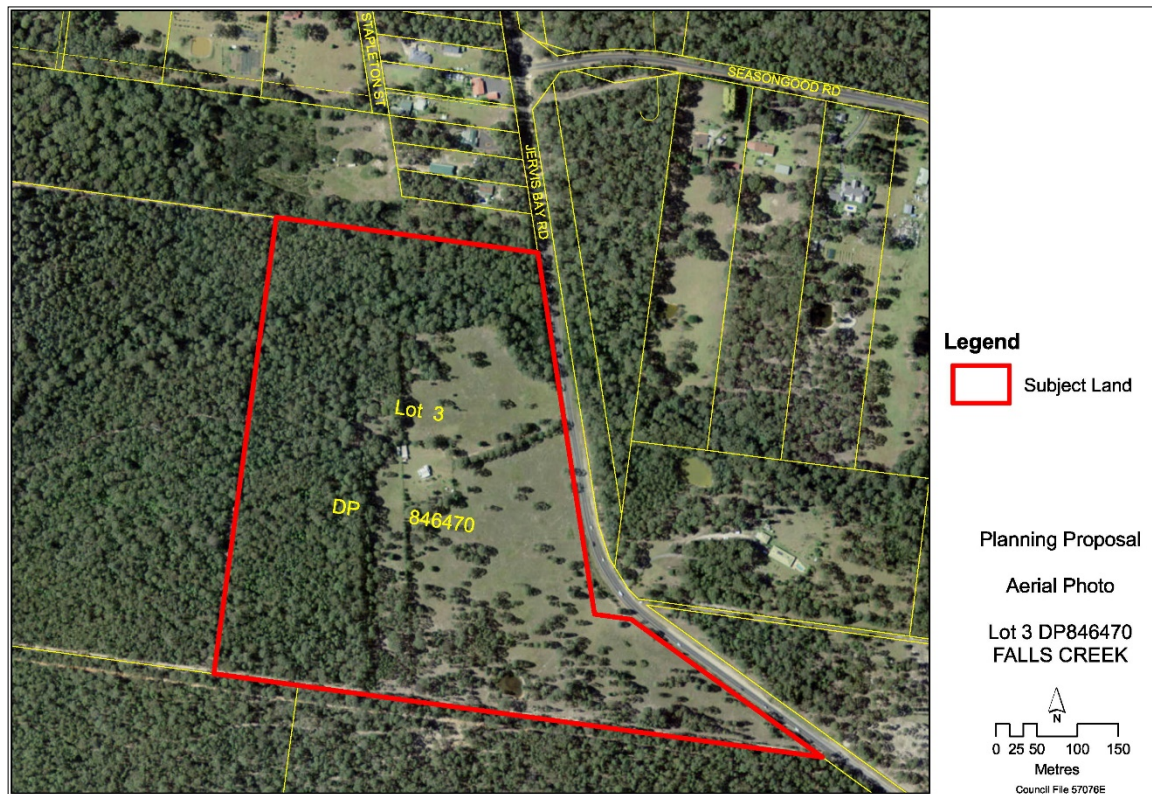
Consistent with Part 4 of the above Council resolution, this report now presents the findings of the required studies and seeks Council's direction/confirmation in relation to the number and size of the lots so that the PP can be updated and publicly exhibited.

Subject land

The site location and the subject land are shown in Figures 1 and 2 below.

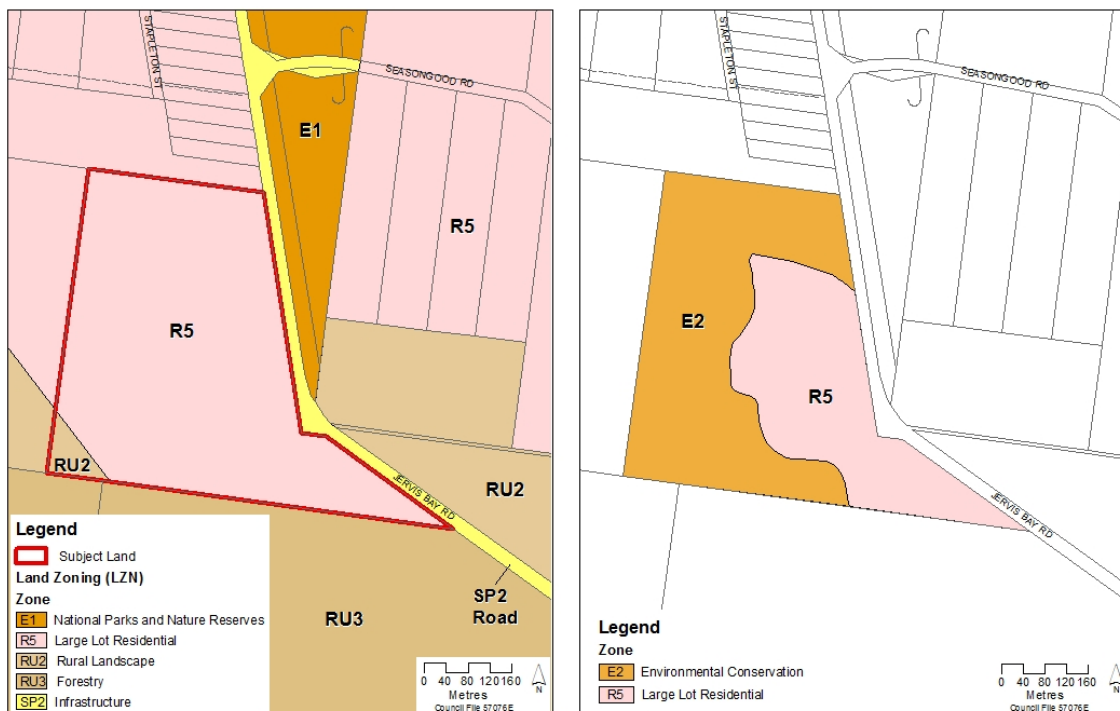


**Figure 1 – Site Location**



**Figure 2 – Subject land overlaid onto aerial photograph**

The PP sought to rezone the subject land from part R5 - Large Lot Residential and part RU2 – Rural Landscape to part R5 and part E2 - Environmental Conservation – see Figure 3 below.



**Figure 3 – Existing and proposed land use zoning**  
(Source: PP035, Gateway request version)

**Accompanying subdivision application (SF10637) and proposed layout**

The proponent's original PP application included a conceptual subdivision plan dated 6 November 2019, for which a subdivision application was also submitted at the same time (SF10637).

**Subdivision Application Notes:**

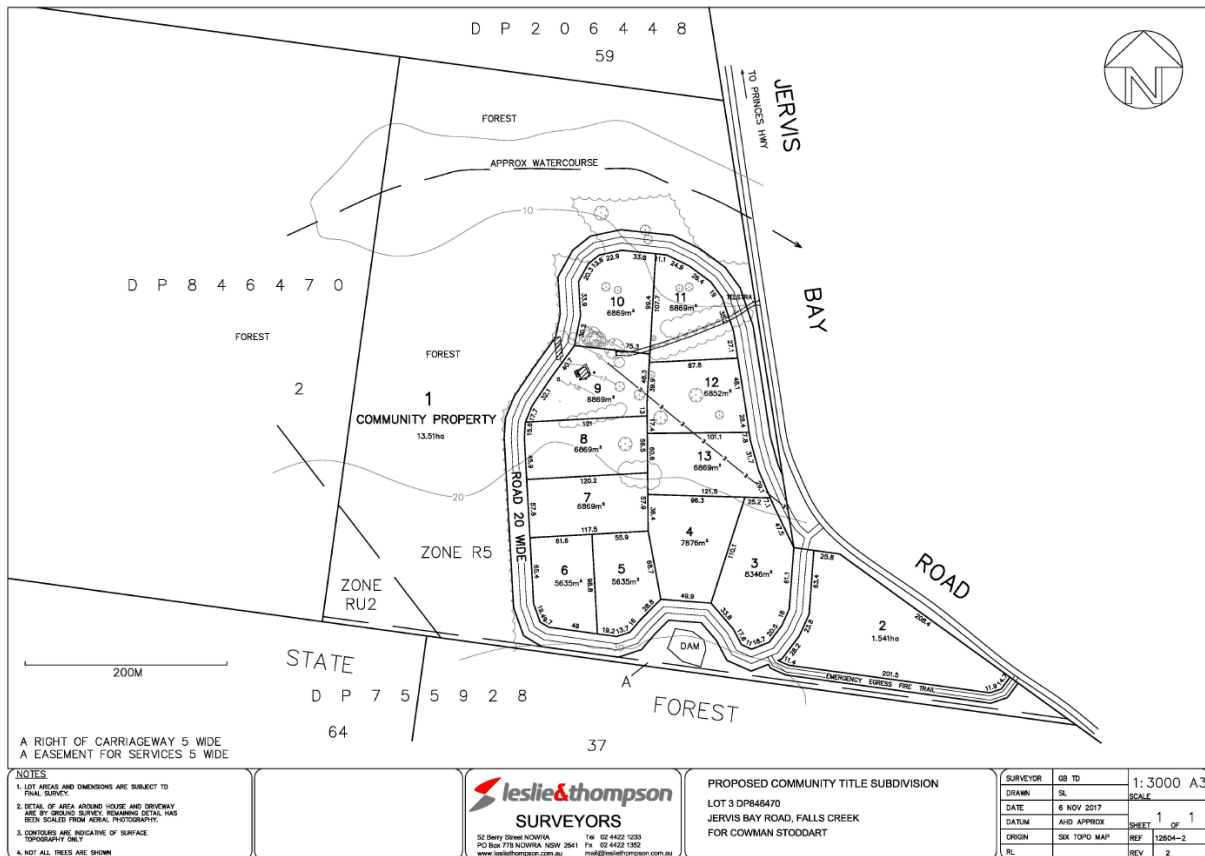
1. Was submitted during the transitional period for the NSW Biodiversity Act, meaning that the biodiversity impacts may be assessed under the previous legislation (i.e. a '7-part test' rather than applying the new Biodiversity Assessment Methodology and biodiversity offsetting scheme).
2. Has been in abeyance as requested by the proponent on 22 December 2017, pending progression of the PP.

The proponent has subsequently submitted two amendments to their proposed subdivision layout in light of studies undertaken as part of the PP process. The proposed subdivision changes are outlined in Table 1 and shown in Figures 4 to 6 below. The latest layout version is also provided in **Attachment 1**.

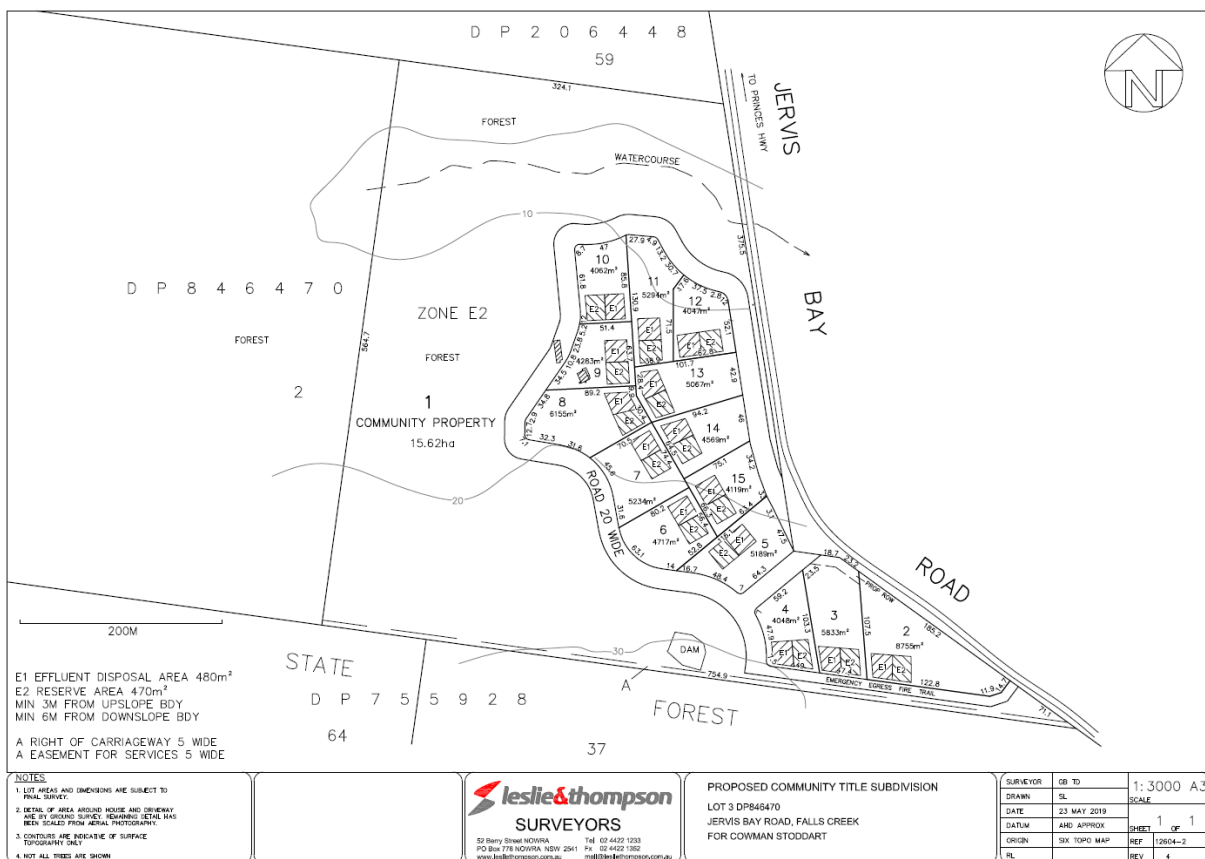
**Table 1** – Outline of changes to proponent's proposed subdivision application/layout

Version /date	# proposed lots	Residential lot size range	Comments
Version 1 6/11/2017	12 residential lots, + 1 conservation/ community lot	5,635 m <sup>2</sup> to 1.541 ha	Proponent's original proposed subdivision plan. Corresponds to SF10637 which has been held in abeyance since December 2017.
Version 2 23/5/2019	14 residential lots, + 1 conservation/ community lot	4,047 m <sup>2</sup> to 8,755 m <sup>2</sup>	Development footprint reduced to avoid Green and Golden Bell Frog habitat. Plan shows indicative effluent management areas (including reserve areas)
Version 3 13/12/2019	13 residential lots + 1 conservation/ community lot	4,048 m <sup>2</sup> to 8,755 m <sup>2</sup>	Largely same footprint as Version 2. Layout amended to accommodate recommendations of the Visual Impact Assessment including a slightly wider setback to Jervis Bay Road to enable more effective vegetation screening.

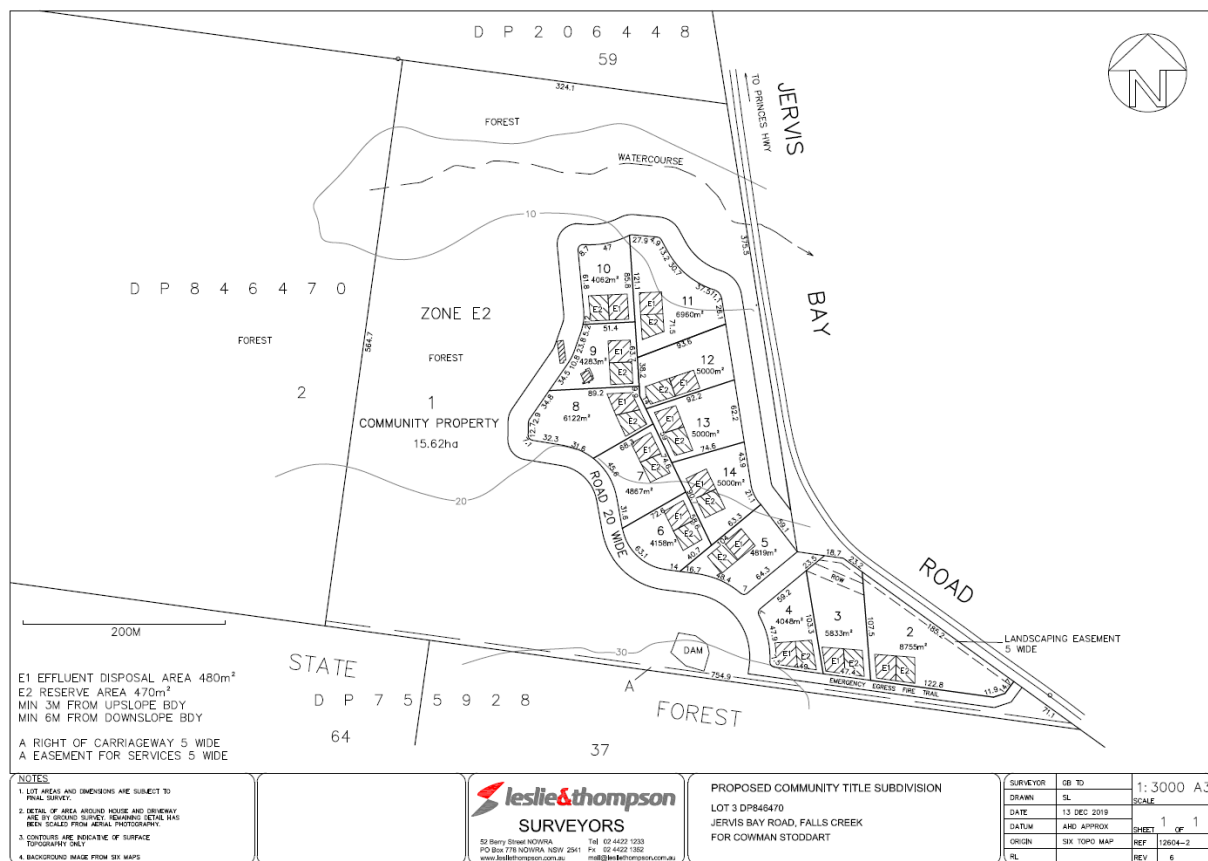




**Figure 4** – Proponent's original proposed subdivision plan dated 6/11/2017 (Version 1) – showing 12 residential lots. Corresponds to SF10637 which is currently held in abeyance.



**Figure 5** – Proponent's proposed subdivision plan dated 23/5/2019 (Version 2) showing 14 residential lots and indicative effluent management areas.



**Figure 6 – Proponent's proposed subdivision plan dated 13/12/2019 (Version 3) – also provided in Attachment 1**

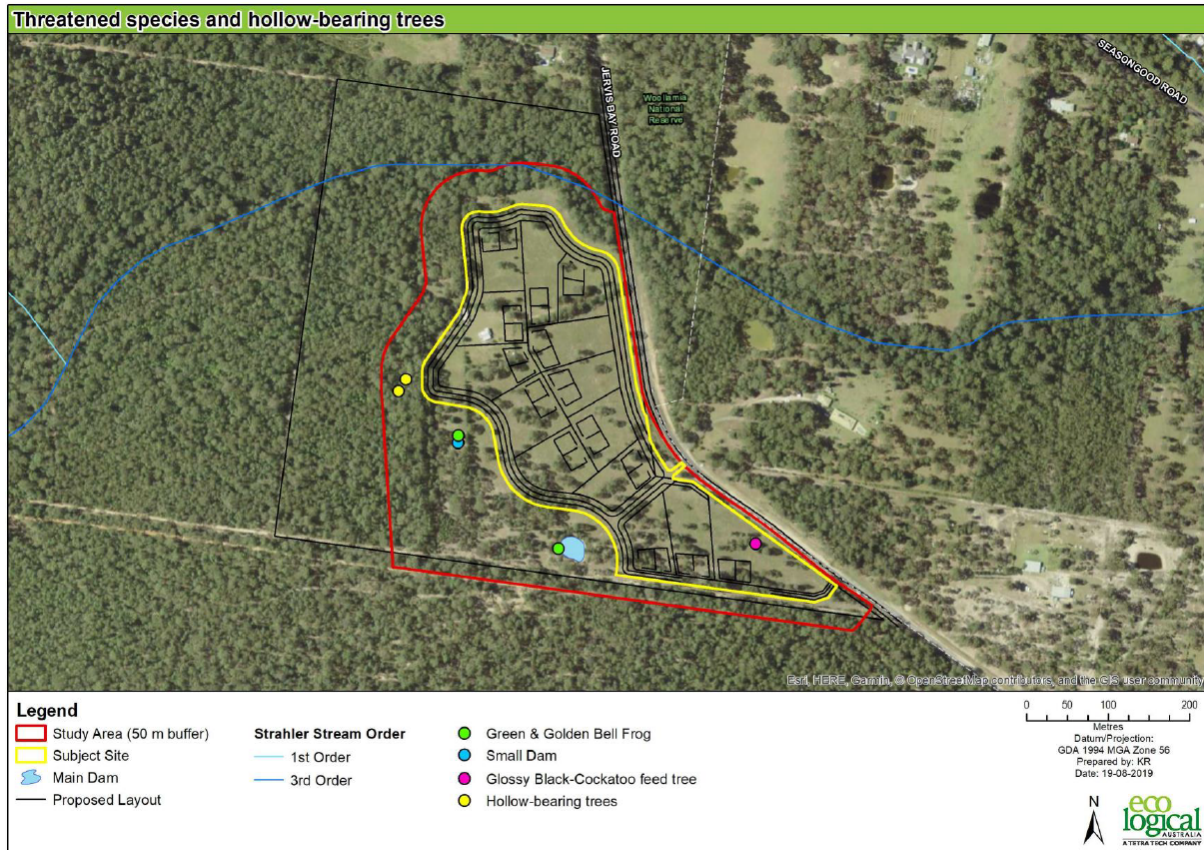
## Supporting Studies - Summary of Findings

The key findings of the studies that have now been prepared to support this PP are summarised below. Apart from the Visual Impact Assessment, the studies were commissioned and managed by the proponent, consistent with Council's Planning Proposal Guidelines.

### Flora and Fauna Assessment (Eco Logical Australia, August 2019)

- The proposal has been limited to previously cleared areas to retain intact vegetation, riparian areas and threatened species habitats.
- A 7-part test concluded that the proposed development is *unlikely* to have a significant impact on those assessed threatened species provided the recommended mitigation measures are implemented.
- Referral under the EPBC Act is not required.
- Management Plan should be prepared for the proposed Lot 1 Community Property to guide appropriate management activities and maintain its natural values.
- Green and Golden Bell Frog management measures include frog exclusion fencing, access, enhancement of frog habitat and connectivity to adjoining forest, pre-clearing surveys, hygiene protocols, monitoring and reporting.

The following map (Figure 7) from the Flora and Fauna Assessment report shows the threatened species habitat.

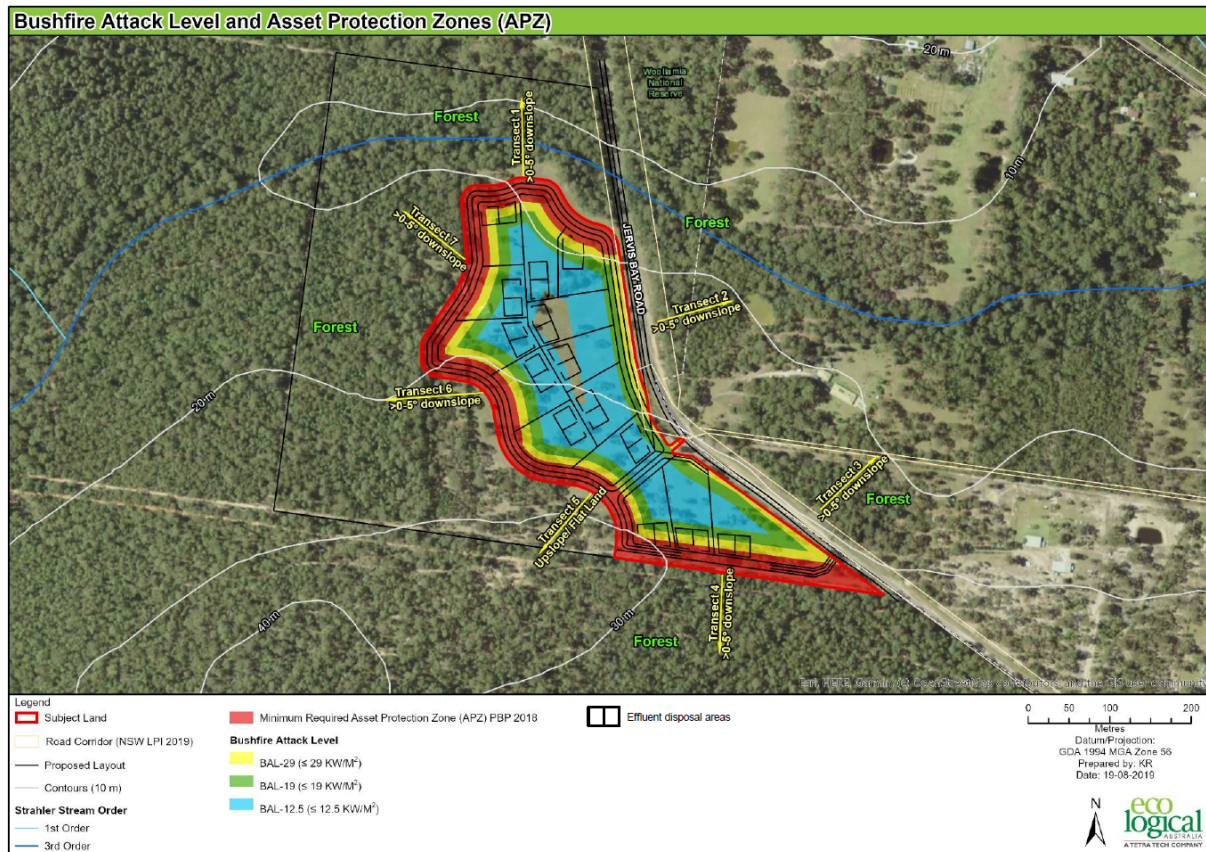


**Figure 7 – Threatened species habitat within the proposed development footprint**  
(Source: Ecological Australia 2019)

#### Bushfire Assessment (Eco Logical Australia, August 2019)

- Access - a perimeter road is proposed around most of the proposed lots, except for the southern edge of the proposed residential subdivision adjacent to Lot 37 DP 755928, where a fire trail is proposed.
- Construction standard - 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 – see Figure 8 below.
- Water supply - 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.
- Electricity - where practicable, electrical transmission lines within the subdivision should be underground.





**Figure 8 – Minimum APZ and Bushfire Attack Level**  
(Source: Ecological Australia 2019)

#### Onsite Wastewater Management (Cowman Stoddart, November 2017)

- Assumes that town water will not be extended to the subject land and therefore hydraulic loading of 600 L (i.e. 150 L/bedroom/day) has been assumed for the purpose of calculating the minimum required effluent management area.
- Minimum area for onsite wastewater management = 480 m<sup>2</sup>
- Minimum reserve area = 470 m<sup>2</sup>
- Gypsum should be applied to the land application area at a rate of 2 kg per 10 m<sup>2</sup> and should be mixed in with the topsoil.
- Agricultural lime should be incorporated into the land application area at a rate of 2 kg per 10 m<sup>2</sup>.

#### Supplementary letter - Onsite Wastewater Management (Cowman Stoddart, dated 19 August 2019)

The supplementary letter clarified that the updated subdivision plan shows the minimum Effluent Management Area and reserve area for a future 4-bedroom house for each lot. The minimum required setbacks to property boundaries and intermittent watercourses have been incorporated in the updated subdivision plan.

**Staff Comment:** although town water is not currently provided to the subject land, the adjoining property to the north is serviced by town water. Advice from Shoalhaven Water is that town water supply may also be made available to the subject land if the development complies with Council's Rural Water Supply Policy. However, should town water be extended to the subject land, the calculated minimum effluent management areas will be undersized

because households with town water use more water (approx. 20%) than those that rely on rainwater tanks. Thus, it is recommended that Council adopt a policy position that if the PP is ultimately finalised on the basis of a minimum lot size of 4,000 m<sup>2</sup>, that town water not be supplied to the subject land (regardless of whether the land/subdivision complies with Council's Rural Water Supply Policy). Council has adopted a similar prudent approach in relation to Jerberra Estate at Tomerong to minimise risks associated with onsite effluent management.

#### Stormwater Assessment (SEEC August 2019)

- A loop road would encompass most of the development and would drain via grassed-line swales to a single bioretention basin. Proposed Lots 2, 3 and 4 in the far south of the site would drain offsite with no treatment.
- The large size of each lot (>4,000 m<sup>2</sup>) means the effective imperviousness area on each is estimated at 5%. The new road would be 30% effective impervious.
- Modelling shows a neutral or beneficial effect (NorBE) can be met.
- The water quality measures (swales and bioretention basin) would be maintained by the body corporate 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.

#### Visual Impact Assessment (Envisage , August 2019)

- Recommended a minimum 15 m setback between Jarvis Bay Road and the internal road to enable a more effective landscape screen to be established between Jarvis Bay Road and the dwellings and also to increase the setback between the dwellings and associated structures and Jarvis Bay Road.
- The subdivision layout should be revised 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 m<sup>2</sup> so that the density of dwellings is lower.

**Staff Comments:** The proponent's original subdivision plan incorporated a narrower setback between Jarvis Bay Road and the internal road. The revised subdivision plan (Figure 6 and **Attachment 1**) has incorporated a wider setback (approx. 15 m). The lot layout was also revised from 'version 2' (Figure 5) reducing the proposed number of lots by one, to enable more of the existing trees to be retained.

The proponents' revised subdivision plan is now generally consistent with the key findings of the Visual Impact Assessment, except that six (6) of the lots are smaller than 5,000 m<sup>2</sup>. However, importantly, all but one of the lots adjacent to Jarvis Bay Road are 5,000 m<sup>2</sup> or greater. This is considered acceptable provided the other key recommendations outlined above are also implemented.

#### Intersection (Turning Warrants) Assessment (Allen Price & Scarratts, February 2020)

- Recommends that a CHR(s)/BAL intersection (right turn and left turn treatments) be provided at the intersection with Jarvis Bay Road to adequately address the Turning Warrants in accordance with Austroads Guide to Traffic Management (Part 6) 2019.

### **Community Engagement**

Assuming that Council resolves to proceed, community feedback will now be formally sought when the PP is publicly exhibited.

**Policy Implications**

As outlined above, it is recommended that if the PP is finalised to allow lots down to 4,000 m<sup>2</sup> in size, that Council adopt a policy position that town water not be supplied to the subject land to prudently ensure there is sufficient land on each lot to manage household wastewater/effluent.

**Financial Implications**

Work on this PP is being funded by the Proponent in accordance with Council's Planning Proposal Guidelines and adopted fees/charges.

**Conclusion**

The range of supporting studies have now been prepared and finalised to inform the detail of this PP and enable it to proceed to public exhibition. As such it is appropriate that following Council's consideration and confirmation of the detail in this report that it proceed to exhibition, noting that it is via this exhibition/consultation process any further issues can be identified and addressed.