

Planning Services

Gateway Determination Report

LGA	Shoalhaven LGA
PPA	Shoalhaven City Council
NAME	Planning proposal to amend Shoalhaven LEP 2014 to allow for a community title subdivision of large lot rural residential development and environmental conservation on Lot 3 DP846470, 48 Jervis Bay Road, Falls Creek. (12 homes, 0 jobs)
NUMBER	PP_2018_SHOAL_007_00
LEP TO BE AMENDED	Shoalhaven Local Environmental Plan, 2014 (LEP)
ADDRESS	48 Jervis Bay Road, Falls Creek
DESCRIPTION	Lot 3 DP846470
RECEIVED	27 June 2018, Additional information 20 August 2018
FILE NO.	IRF18/4661 (EF18/32184)
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

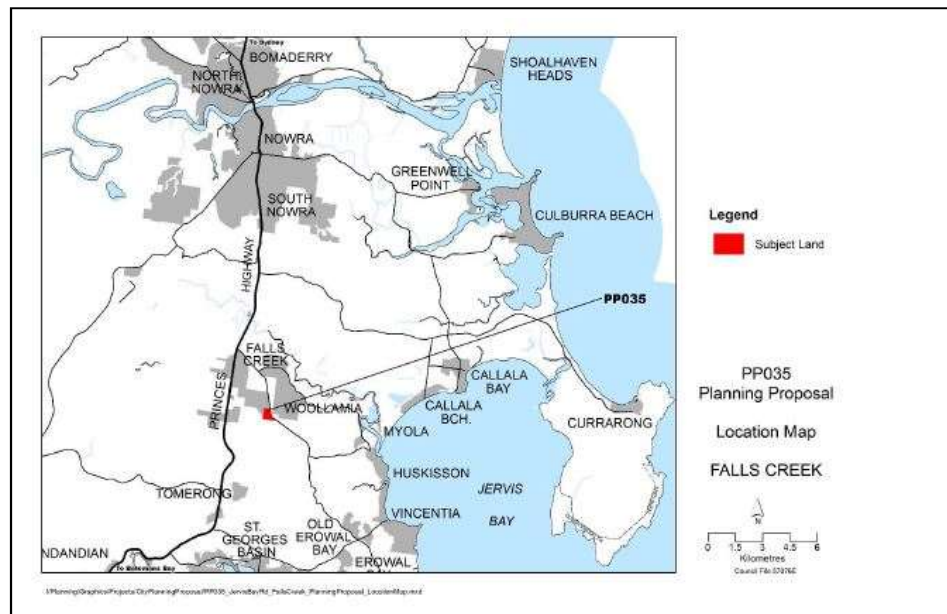
Description of planning proposal

- The planning proposal seeks to amend Shoalhaven LEP 2014 to allow for a community title subdivision of large lot rural residential development and environmental conservation on Lot 3 DP846470, 48 Jervis Bay Road, Falls Creek. - **Attachment B1** – Planning proposal.
- The proposal is rezoning land from part R5 Large Lot Residential and part RU2 Rural Landscape to part R5 and part E2 Environmental Conservation and mapping the environmental land on the Terrestrial Biodiversity Map.
- The planning proposal also seeks additional flexibility for lot sizes for a community title subdivision of the site.
- The lot size for large lot residential and the number of lots will be confirmed following the preparation of technical studies.
- The explanation of provisions and mapping will be revised prior to public exhibition.

Site description

- Lot 3 DP846470, is located along Jervis Bay Road on the southern edge of the Macarthur Drive Large Lot Residential precinct. The land is an irregular allotment with an area of 25.21ha.

- The western and northern areas of the Lot are heavily vegetated. An east flowing intermittent watercourse (a tributary of Currumbene Creek which flows into Jervis Bay Marine Park) flows through the northern part of the land.
- The remaining area of the land has been cleared with scattered trees. This area contains a dwelling house, outbuildings and two dams. The cleared areas are regularly grazed and slashed.



Subject site and locality plan

(Source: Planning Proposal 48 Jervis Bay Road Falls Creek Community Title Subdivision)



Subject site

(Source: Planning Proposal 48 Jervis Bay Road Falls Creek Community Title Subdivision)

Existing planning controls

- The land is currently zoned predominately part R5 Large Lot Residential (97%) with a 2ha minimum lot size and RU2 Rural Landscape (3%) with a 40ha minimum lot size.

- The area of RU2 land is mapped on the Terrestrial Biodiversity map as part of the Jervis Bay Habitat Corridor system.
- Flood prone lands along the watercourse flowing across the northern area of the lot are also mapped on the Flood Planning Area Map.

Surrounding area

- The site is on the southern edge of the Macarthur Drive Large Lot Residential precinct (zoned R5).
- Land to the west is forested in private ownership and zoned part R5 and part RU2.
- Land to the south is part of Tomerong State Forest.
- To the east on the other side of Jervis Bay Road is a wedge-shaped area of Jervis Bay National Park which adjoins rural residential land zoned R5 to the north east and small rural holdings (RU2 Rural Landscape) to the south east.
- The site is within the catchment of Jervis Bay.

Summary of recommendation

- It is recommended that the planning proposal should proceed as submitted with conditions.

PROPOSAL

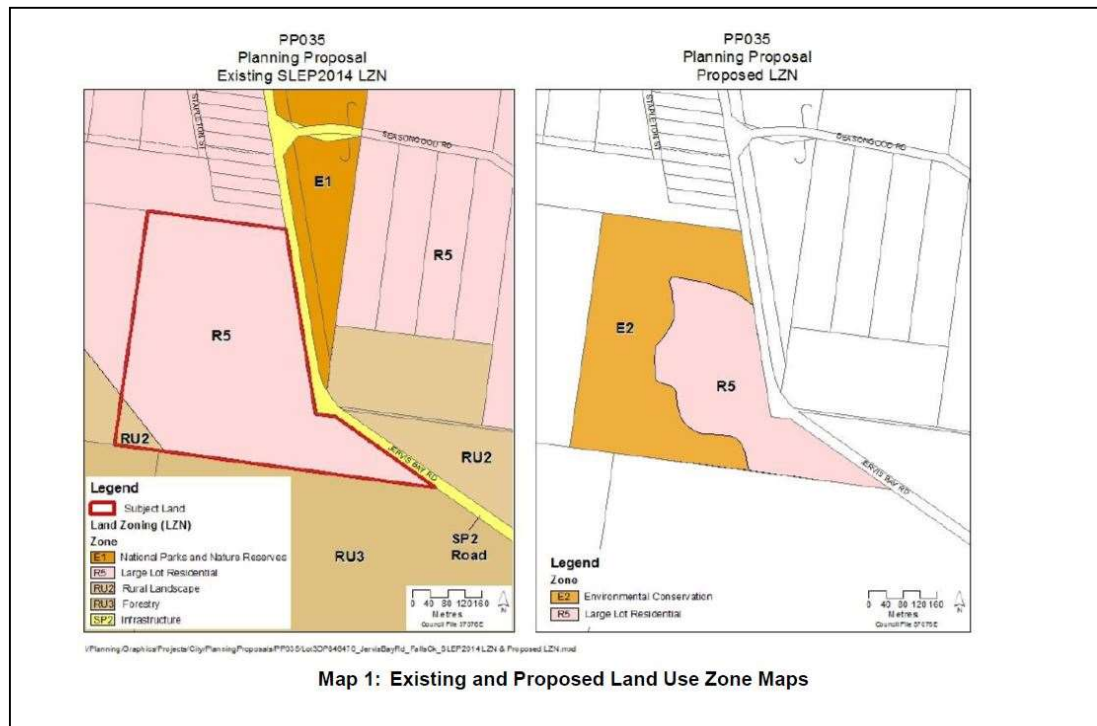
Objectives or intended outcomes

- The objective of the planning proposal is to amend the Shoalhaven Local Environmental Plan (LEP) 2014 to allow the land to be subdivided by a community title scheme.
- The scheme would create a large lot residential precinct in the cleared eastern part of the site and a community lot principally for environment conservation for the remainder of the land.
- The planning proposal states that the “yield and extent of the large lot residential precinct are to be determined following the completion of the technical studies”.
- The objectives are clear and appropriate for the planning proposal.

Explanation of provisions

It is proposed to amend the Shoalhaven LEP 2014 by:

- Amending the Land Zoning Map to rezone the land from RU2 Rural Landscape and R5 Large Lot Residential to E2 Environmental Conservation;
- Amending the Lot Size Map with the lot sizes to be determined prior to public exhibition;
- Amending the Terrestrial Biodiversity Map to include all the land to be zoned E2 as a habitat corridor; and
- Amending Clause 4.2B Subdivision of certain land in Zone R5 to:
 - Allow a community title subdivision of the land; and
 - Prohibit dwelling house and dual occupancy on the resulting neighbourhood property.

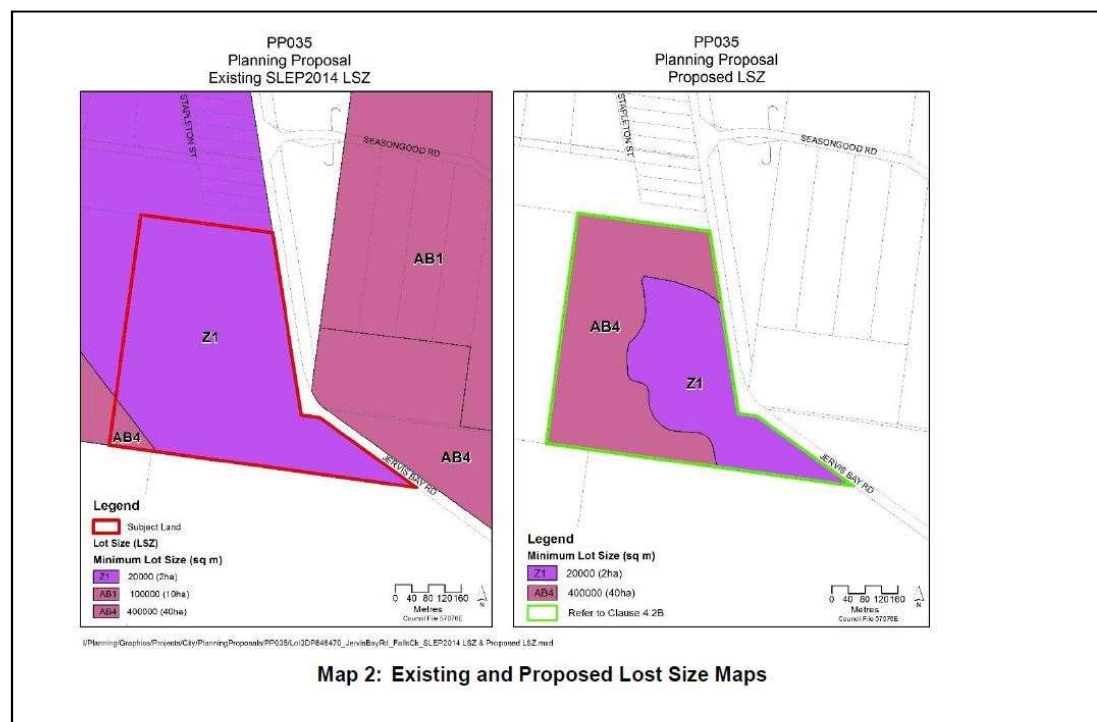


(Source: Planning Proposal 48 Jervis Bay Road Falls Creek Community Title Subdivision)

- The explanation of the provisions are to be updated, following the completion of the technical studies, into a revised planning proposal prior to public exhibition.

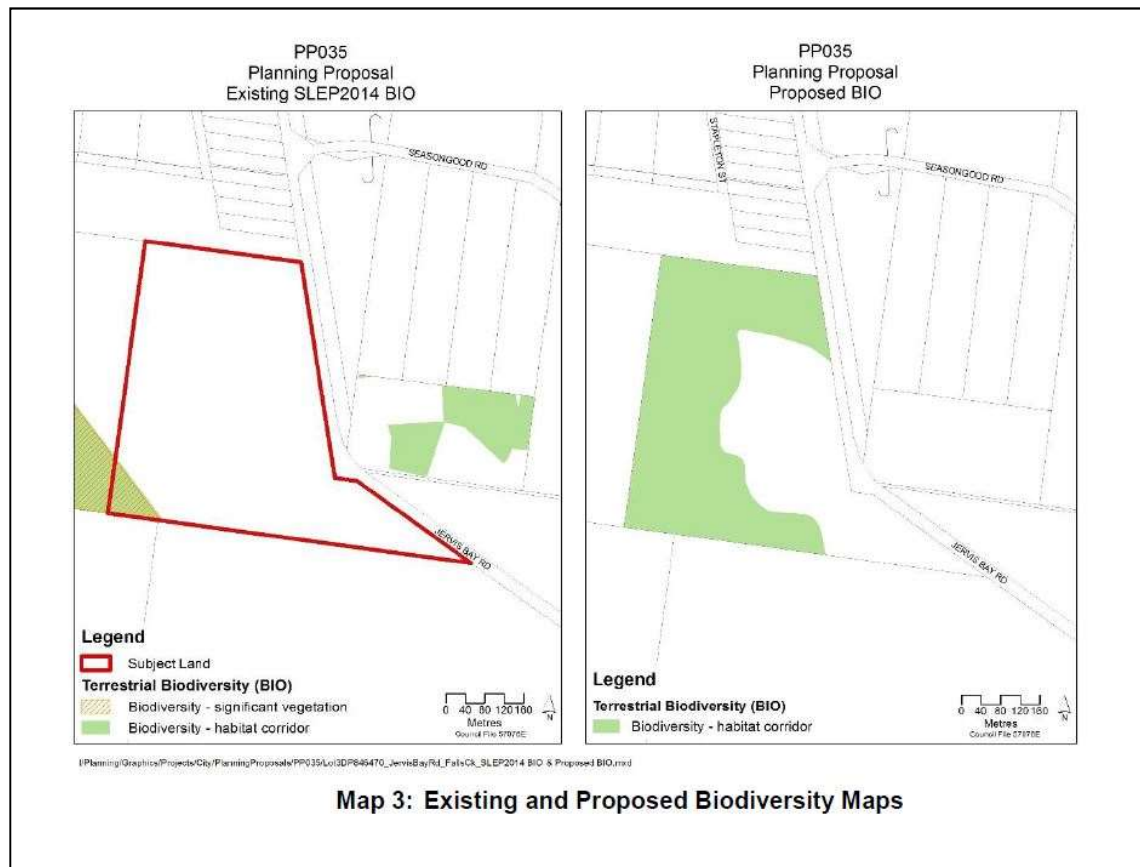
Mapping

- The existing and proposed zoning, minimum lot size, and biodiversity maps are included in the planning proposal.



(Source: Planning Proposal 48 Jervis Bay Road Falls Creek Community Title Subdivision)

- The proposed maps are to be updated, following the completion of the technical studies, into a revised planning proposal prior to public exhibition.



(Source: Planning Proposal 48 Jervis Bay Road Falls Creek Community Title Subdivision)

NEED FOR THE PLANNING PROPOSAL

- Council considers that the planning proposal is the most appropriate mechanism to allow community title subdivision to occur on the land.
- The planning proposal is not the result of any strategic study or report.
- The landholder lodged a planning proposal on 27 November 2017 seeking to permit the subdivision of the land into a community scheme comprising 12 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.
- Accompanying the planning proposal was a development application for a 12 lot community title subdivision.
- Council has prepared an amended version of the landholder's planning proposal.
- The planning proposal discusses that a 'community title scheme (using lot averaging) would achieve better environmental outcomes because the environmentally sensitive land will be managed under a community title scheme as opposed to it potentially being in fragmented private ownership'.
- The planning proposal is the only means of achieving a community title subdivision on the land.

STRATEGIC ASSESSMENT

The planning proposal is not the result of any strategic study or report.

Regional - Illawarra Shoalhaven Regional Plan 2015

- The planning proposal is consistent with the goals of the Illawarra Shoalhaven Regional Plan (the Plan) as it will:
 - Provide housing supply to suit the changing demands of the region. - The Shoalhaven has few community title subdivisions in rural residential areas.
 - Protect the region's biodiversity corridors in local planning controls. – The rezoning of the environmentally sensitive lands to E2 and their mapping on the Terrestrial Biodiversity Map will enhance the nearby east/west Jervis Bay Corridor in the Shoalhaven LEP 2014.
 - Avoid, minimise and mitigate the impact of development on significant environmental assets. – No development is to be undertaken on environmentally sensitive lands. These lands are to be rezoned from R5 Large Lot Residential to E2 Environmental Conservation.

Jervis Bay Settlement Strategy

- The Jervis Bay Settlement Strategy 2003 (the Strategy) was prepared by Shoalhaven Council and endorsed by the Department of Planning to manage future growth and settlement in the Jervis Bay/St Georges Basin Region.
- The site was identified in the Strategy as part of an area known as the Woollamia - Falls Creek Rural Residential Deferred Area. This Area was to be investigated further for its potential to provide increased rural living opportunities for the Region.
- The Falls Creek Woollamia Deferred Rural Residential Planning Proposal was issued a gateway determination on 29 August 2012 to resolve the development potential (including lot size and configuration) of 344 lots within the Falls Creek Woollamia area.
- On 3 December 2013 Council reduced the boundaries of the Falls Creek Woollamia Deferred Rural Residential Planning Proposal to cover 37 lots. The site (Lot 3 DP846470) remained in the planning proposal but was to be removed following the commencement of the new Shoalhaven LEP. The draft Shoalhaven LEP 2013 had been exhibited earlier proposing to rezone part of the Lot to R5 Large Lot Residential with a 2ha minimum lot size.
- The residential development potential of the Lot was resolved with the notification of the Shoalhaven LEP 2014. The site was zoned part R5 Large Lot Residential with a 2ha minimum lot size and part RU2 Rural Landscape with a 40ha minimum lot size.
- On 8 September 2015 a revised gateway determination was issued for the Falls Creek Woollamia Deferred Rural Residential Planning Proposal which reduced the number of lots from 37 to 15. The site was one of the 22 lots removed from the Planning Proposal.
- The current planning proposal is re-investigating the development potential of the Lot. The Jervis Bay Settlement Strategy set 'subdivision down to an absolute 1ha minimum' for the deferred areas across the Region. It may be the case that the lots resulting from this proposal will be less than 1ha in area, subject to the results of the studies to be completed.

Shoalhaven City Council Integrated Strategic Plan

- The planning proposal is consistent with Shoalhaven Council's Integrated Strategic Plan in addressing the priorities:
 - 2.2 - Plan and manage appropriate and sustainable development; and
 - 2.3 - Protect and showcase the natural environment.

Section 9.1 Ministerial Directions

- The planning proposal is consistent with the s9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones, 4.3 Flood Prone Land, 5.10 Implementation of Regional Plans and 6.3 Site Specific Provisions.
- Environmentally sensitive lands including flood prone and biodiversity significant lands are being rezoned from rural and rural residential to environmental conservation. No development is to occur on environmental lands. The area suitable for residential development is being investigated for higher housing density via a community title subdivision. It is proposed to identify the site under Clause 4.2B to allow a community title subdivision however no diagrams/plans showing a possible development is part of the planning proposal.
- The site is mapped as bushfire prone land. It is unknown whether the planning proposal is consistent or justifiably inconsistent with the s9.1 Direction 4.4 Planning for Bushfire Protection. Any potential inconsistency remains unresolved until consultation with the Rural Fire Service has been undertaken.

State environmental planning policies

- The planning proposal is consistent with SEPP55 Remediation of Land. The land is already zoned for rural residential use.
- The planning proposal is consistent with the Rural Planning Principles in the SEPP Rural Lands. The environmental sensitive lands within the Rural Landscapes and Large Lot Residential zones are to be rezoned to Environmental Conservation.

SITE-SPECIFIC ASSESSMENT

Social

- The planning proposal has not addressed social impacts in detail.
- The planning proposal identifies that a study is needed to investigate the visual impacts of the proposal and its impact on the landscape character of the locality, particularly given its location along Jervis Bay Road.
- The planning proposal has not addressed heritage issues however the landholder's planning proposal includes an Aboriginal site search.
- It is considered that the provision of housing choice will have social benefits.

Environmental

- The landholder prepared a Flora and Fauna Constraints Assessment to support their 12-lot community subdivision development application and planning proposal.
- The Assessment concludes that the vegetation communities on the site are not threatened ecological communities. No threatened flora species were found.

- The Assessment noted the presence of Green and Gold Bell Frogs, Grey-Headed Flying Foxes and Glossy Black-Cockatoos on the site.
- The intact vegetation on the Lot forms part of a habitat corridor.
- There are flood prone lands along the watercourse traversing the northern part of the lot which are to be protected by the E2 zoning.
- Council believes that the planning proposal 'will result in a positive environmental outcome because the environmentally sensitive land will be managed under a community title scheme as opposed to it potentially being in fragmented private ownership.'
- The site is mapped as bushfire prone land. A bushfire assessment will be required.
- The planning proposal states that additional studies are required to consider the impacts of the proposal on water quality (both stormwater and domestic wastewater).

Economic

- The planning proposal has not addressed economic impacts.

Infrastructure

- Shoalhaven Water has advised that reticulated sewer will not be provided to the land.
- Consultation with service providers will confirm which services are available.
- The Council resolution identified the need for a traffic study. This should address any impacts of future residential development on traffic flows along Jervis Bay Road and its intersection with the Princes Highway.

CONSULTATION

Community

- Council has advised that the planning proposal is to be publicly exhibited for 28 days. Public notification will include notifications in local newspaper; notice on Council's website and hard copies of the planning proposal provided at Council's administration building. This is considered appropriate.

Agencies

- The planning proposal identifies consultation with the Office of Environment and Heritage, Roads and Maritime Services, Department of Primary Industries Water, Endeavour Energy, Shoalhaven Water and NSW Rural Fire Service (to meet requirements under section 9.1 Direction 4.4 Planning for Bushfire Protection).
- Agency consultation is also required with the Jervis Bay Marine Park.

TECHNICAL STUDIES

- The planning proposal includes the landholder's planning proposal and Flora and Fauna Assessment. The landholder's other technical studies (bushfire protection; effluent disposal; and AHINIS Search Record) were not included as they have been prepared based on the proposed subdivision.
- The planning proposal identifies that Shoalhaven Council has resolved that studies on flora and fauna assessment; onsite wastewater management plan;

water quality and stormwater management; bushfire hazard assessment; traffic study; and visual impact assessment are appropriate to determine the actual subdivision potential of the site and prior to public exhibition.

- The planning proposal should be updated to address traffic and visual impacts however studies on these issues are not required as part of the gateway determination.

TIME FRAME

- Council has proposed a 18-month project timeframe to complete the rezoning process.
- This is considered appropriate to complete the technical studies and agency and public consultation.

LOCAL PLAN-MAKING AUTHORITY

- Council has requested in its email of 14 August 2018 Council Officer Delegation to prepare the draft LEP under Section 59 of the Act. Appendix 4 – Evaluation Criteria for the Delegation of Plan Making Functions was submitted.
- Due to the simple, local nature of the proposal and as the land is already zoned for large lot residential it is considered appropriate to provide delegations to Council.

CONCLUSION

- Preparation of the planning proposal is supported to proceed with conditions.
- The planning proposal addresses the Department's 'A guide to preparing planning proposals'.
- The planning proposal has local merit given its ability to provide residential development whilst protecting environmentally sensitive lands.
- Further studies will confirm the development footprint of the site and its ability to accommodate a community title subdivision with small lot sizes.
- Delegation of plan making functions are recommended to be given to council.

RECOMMENDATION

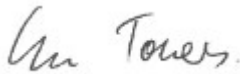
It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

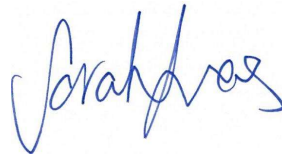
1. Technical studies on flora and fauna assessment; onsite wastewater management plan; water quality and stormwater management; and bushfire hazard assessment are to be prepared and included in the planning proposal prior to public exhibition.
2. The explanation of the provisions and maps are to be updated,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

3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the NSW Rural Fire Service in accordance with the Act and S9.1 Direction 4.4 Planning for Bushfire Protection; Office of Environment and Heritage, Roads and Maritime Services, Department of Primary Industries Water, Shoalhaven Water, Endeavour Energy and Jervis Bay Marine Park.
5. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should be the local plan-making authority.



7/09/18

Graham Towers
Team Leader, Southern Region



10/09/18

Sarah Lees
Director Regions, Southern
Planning Services

Contact Officer: Lisa Kennedy
Planner, Southern Region
Phone: 4224 9457