

PLANNING PROPOSAL – PP035

Shoalhaven Local Environmental Plan 2014

Jervis Bay Road, Falls Creek

Community Title Subdivision

Prepared by
Planning, Environment & Development Group
Shoalhaven City Council

File: 57076E
Version 1.1 Gateway Request
Date: June 2018

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Table of Contents

1	Introduction	4
1.1	Subject Land.....	4
1.2	Background – Rural Residential Deferred Areas	7
2	Part 1 – Intended Outcome.....	8
3	Part 2 – Explanation of Provisions	9
4	Part 3 – Justification	9
4.1	Need for the Planning Proposal (Section A)	9
4.2	Relationship to strategic planning framework (Section B).....	9
4.3	Environmental, Social and Economic Impact (Section C).....	13
4.4	State and Commonwealth Interests (Section D)	13
5	Part 4 – Mapping	15
6	Part 5 - Community Consultation	17
7	Part 6 – Project Timeline	17
	Attachments.....	18

Attachments

Attachment 1:	Council Report and Resolution	19
Attachment 2:	Proponent’s Planning Proposal	20
Attachment 3:	Proponent’s Flora and Fauna Assessment.....	21
Attachment 4:	State Environmental Planning Policies	22
Attachment 5:	Section 9.1 Directions.....	23

Figures

Figure 1:	Location Map.....	4
Figure 2:	Current Land Use Zones	5
Figure 3:	Aerial Photo.....	6
Figure 4:	Flooding and Watercourses Map	7

Planning Proposal Maps

Map 1:	Existing and Proposed Land Use Zone Maps	15
Map 2:	Existing and Proposed Lost Size Maps	16
Map 3:	Existing and Proposed Biodiversity Maps.....	16

1 Introduction

This Planning Proposal (PP) seeks to rezone land in the Falls Creek locality from to part R5 - Large Lot Residential and part RU2 – Rural Landscape; to part R5 and part E2 - Environmental Conservation. It also seeks to provide additional flexibility for lot sizes for a community title subdivision of the site.

1.1 Subject Land

The subject land is Lot 3 DP 846470 at 48 Jervis Bay Road, Falls Creek. It has an area of 25.21 ha (according to the DP). It is located on the southern edge of the Falls Creek Large Lot Residential precinct. A map showing the subject land and its location is provided as Figure 1 below.

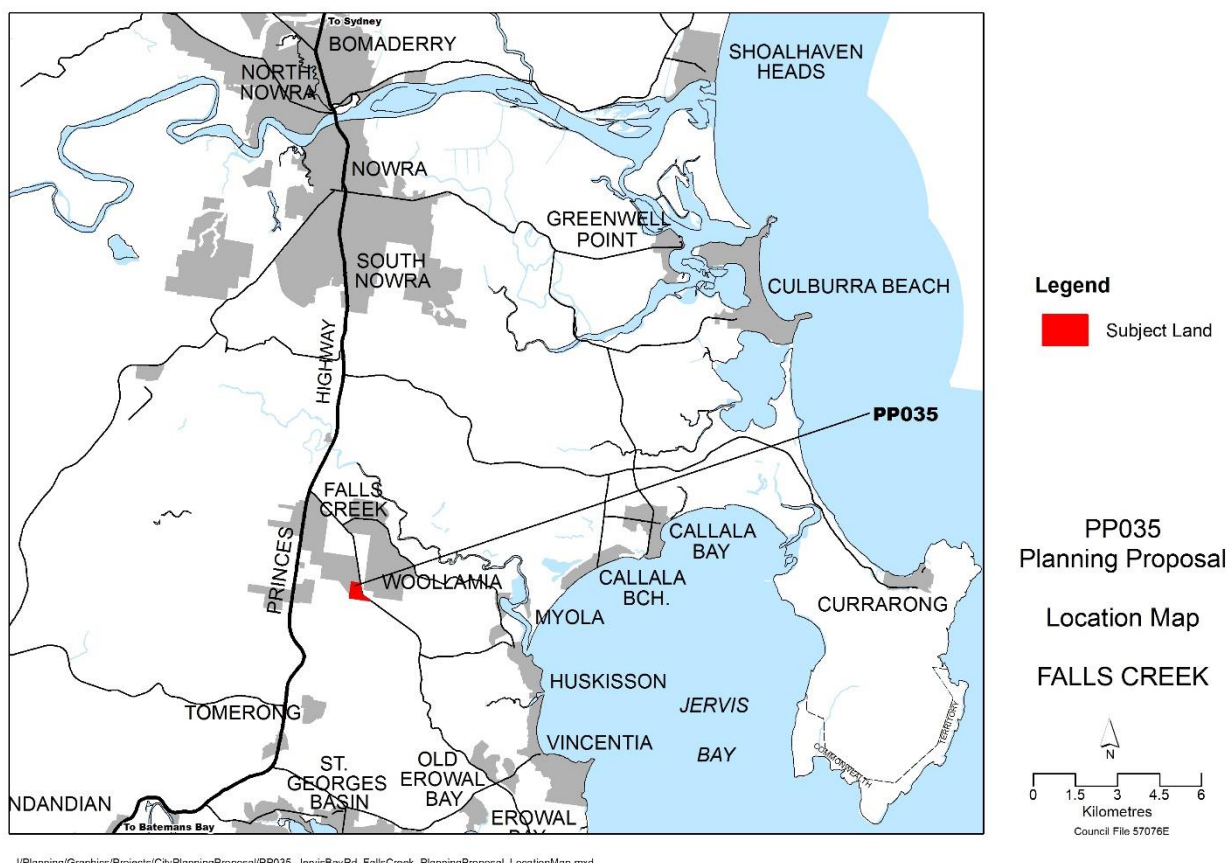


Figure 1: Location Map

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, part RU2. The land to the north is zoned R5. A wedge-shaped area of national park on the eastern side of Jervis Bay Road separates the subject land from R5 zoned land to the north east. The current zoning of the broader locality is provided in Figure 2.

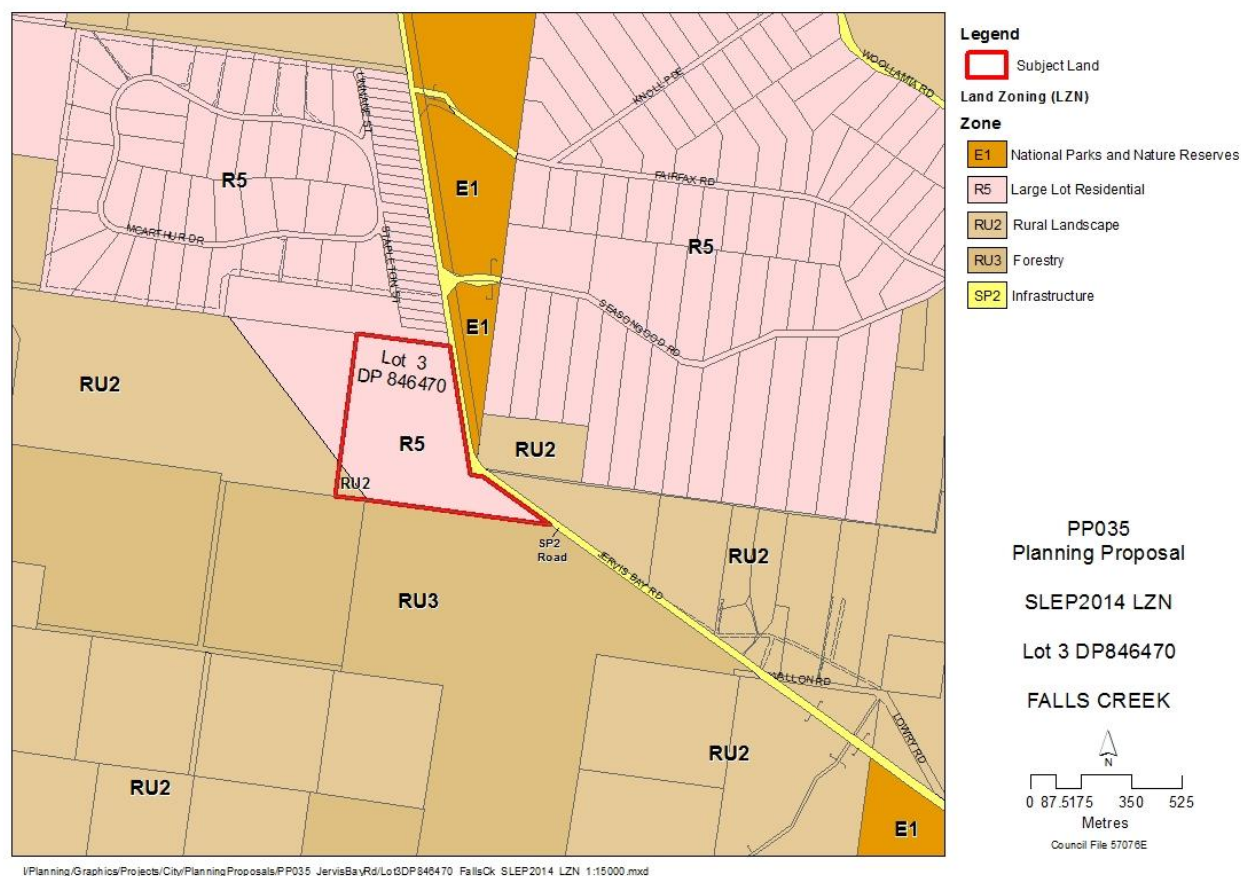


Figure 2: Current Land Use Zones

The subject land is currently zoned part RU2 - Rural Landscape (3%) and part R5 - Large Lot Residential (97%) under Shoalhaven LEP 2014. The objectives of the RU2 zone relate to conserving and maintaining rural landscape and facilitating primary industries. The objectives of the R5 zone relate to providing large lot housing while avoiding adverse environmental, social and economic impacts.

The RU2 zoned part of the site is mapped under SLEP 2014 as having biodiversity significance. (Refer to the existing Terrestrial Biodiversity map in section 5 of this PP.) This area is part of the Jervis Bay habitat corridor system.

The LEP prescribes a minimum lot size of 40 ha for the RU2 zoned part of the site and a potential 2 ha minimum lot size for the R5 zoned part of the site. (Refer to the existing Minimum Lot Size map in section 5 of this PP.) The proponent contends that this gives rise to a development potential of 12 lots for the 24.5 ha of R5 zoned land. However, this is only a theoretical maximum yield. The actual yield is likely to be lower given the site's constraints.

The subject land has distinct cleared and vegetated areas as can be seen in the aerial photograph provided below. The watercourse is located within the vegetated part of the site. The cleared part contains a dwelling house, outbuildings and two (2) earth dams.

An aerial photograph of the site is provided as **Figure 3** below.

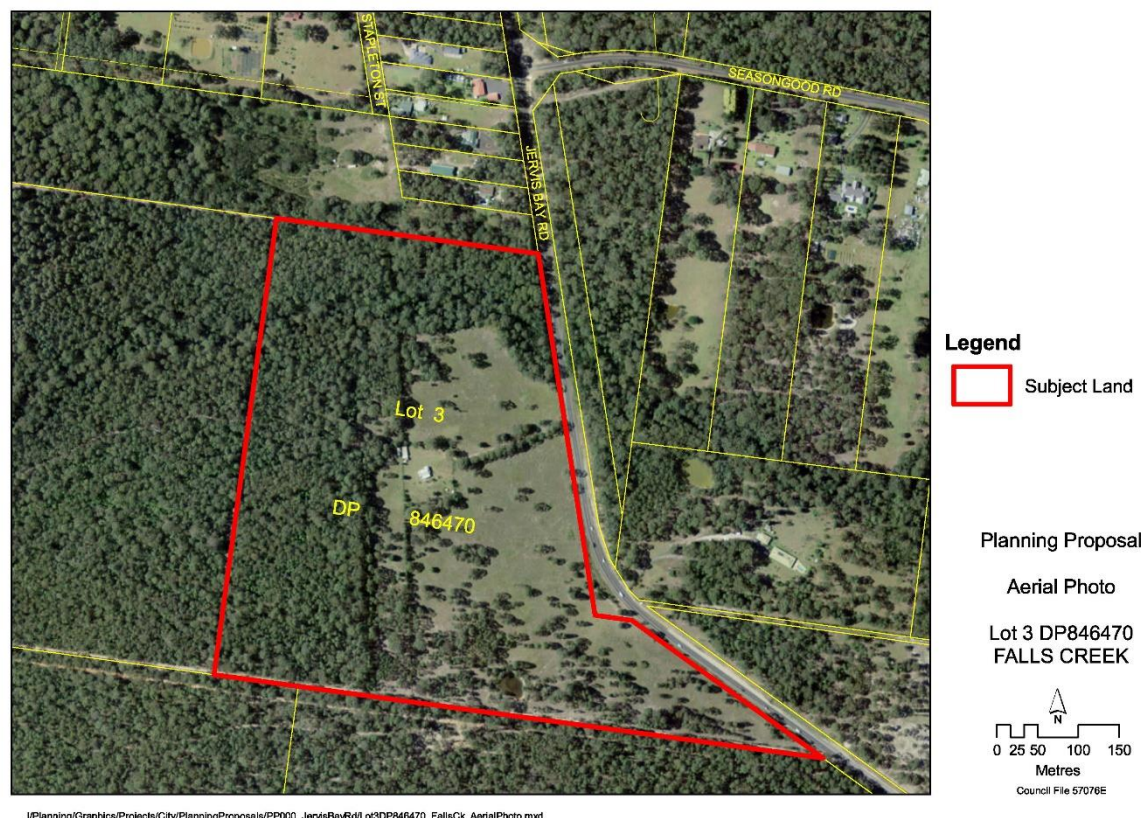


Figure 3: Aerial Photo

The proponent has provided a flora and fauna assessment of the site which is attached to this PP. 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 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 also identified on the flood planning area map that currently forms part of the LEP (see **Figure 4** below). 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.

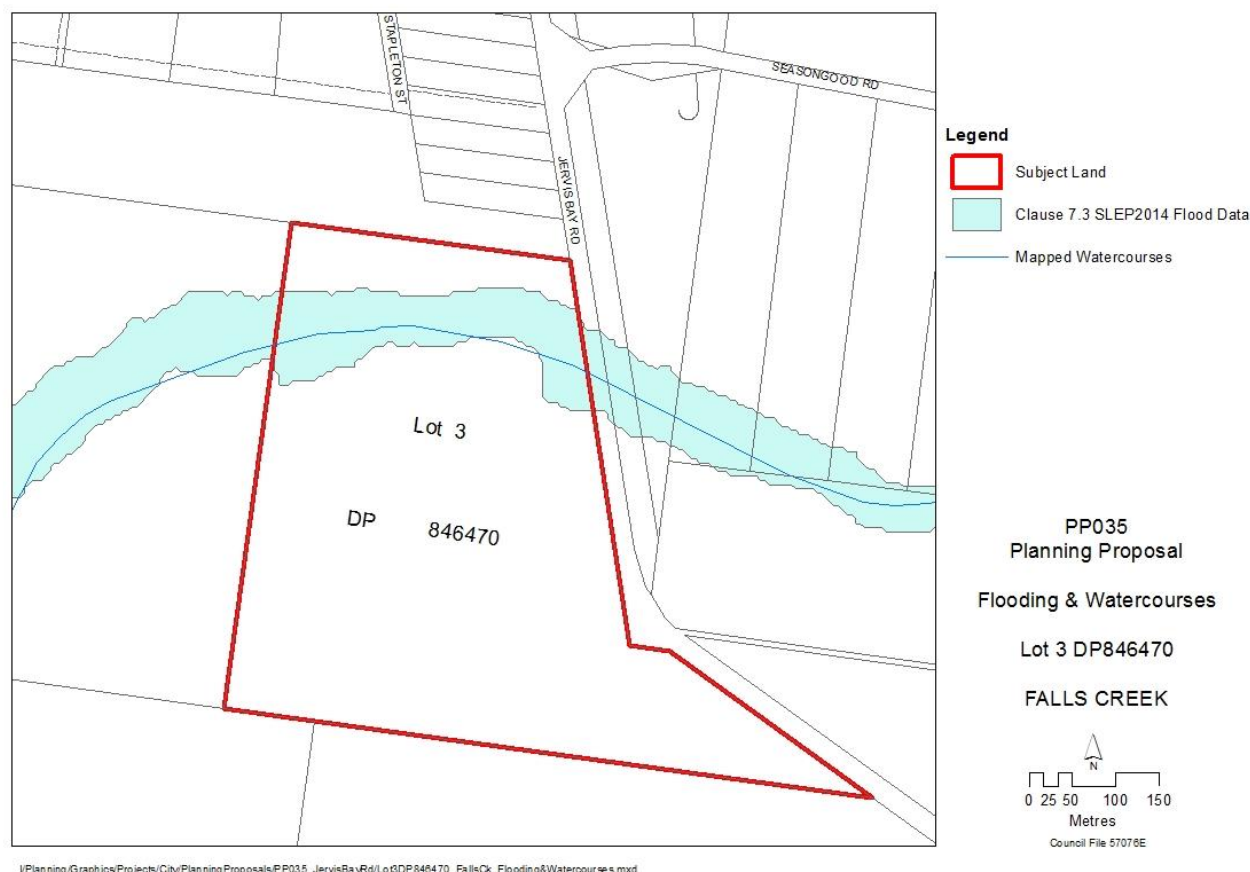


Figure 4: Flooding and Watercourses Map

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 Fall 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 amendment was finalised in 1999 (LEP Amendment No 127).

The Jervis Bay Settlement Strategy (2003) recognised the need to resolve the deferred areas, including the subject land. It provided at Part 10.4 that the deferred rural residential land “*will be further investigated for (its) potential to provide increased rural living opportunities for the Region*”. The intention of the JBSS is for lots to be no smaller than one (1) hectare (as had been proposed in the LEP Amendment No. 127) subject to the constraints of the land.

The Growth Management Strategy (GMS) adopted by Council in 2014 recognised that the situation was still unresolved and provided at part 5.2.4 that “*the existing rural residential deferred areas... to accommodate increased densities will be investigated and resolved*”. Some of these deferred areas were considered in the Falls Creek / Woollamia Deferred Areas PP that was finalised in April 2018. The subject land was not part of that PP.

The proponent's PP was received on 27 November 2017 from Cowman Stoddart Pty Ltd (on behalf of the owner T Pasialis) and seeks 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. The proponent's PP was accompanied by a Development Application (DA) that was also submitted for a 12-lot community title subdivision consistent with the PP.

On 13 March 2018, Council's development committee considered a report on the matter which included an amended version of the proponents PP. At that meeting 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.***
- 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.***

2 Part 1 – Intended Outcome

The intended outcome of this Planning Proposal is to allow the subject land to be subdivided by a community title scheme. The scheme would create a large lot residential precinct on the cleared part of the site and a community lot principally for environment conservation on the remainder of the land.

The yield and extent of the large lot residential precinct are to be determined following the completion of specialist studies.

3 Part 2 – Explanation of Provisions

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

1. Amend the Landuse Zoning Map to rezone land from RU2 Rural Landscape and from R5 Large Lot Residential to E2 Environmental Conservation.
2. Amend the Minimum Lot Size Map with the lot sizes to be determined prior to Public Exhibition.
3. Amend the Terrestrial Biodiversity Map to include all of the land to be zoned E2 as a habitat corridor.
4. Amend Clause 4.2B to:
 - a. Allow a community title subdivision of the land; and
 - b. Prohibit dwelling houses and dual occupancies on the resulting neighbourhood property

4 Part 3 – Justification

4.1 Need for the Planning Proposal (Section A)

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

YES

It is considered that the PP request is generally consistent with the underlying intent of the JBSS and GMS (subject to visual impact assessment). Thus, it is consistent with these guidelines.

4.1.2 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 mechanism to allow the community title subdivision to occur on the land. The actual detail of the PP and its provisions will need to be determined following the outcomes of specialist studies and with advice from the Department of Planning and Environment (DPE) and/or Parliamentary Counsel.

4.2 Relationship to strategic planning framework (Section B)

4.2.1 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Illawarra-Shoalhaven Regional Plan (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. It will achieve a biodiversity conservation outcome that is desirable under Goal 5 of this plan.

In so far as the proposal could be considered a new release area, 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.

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

Shoalhaven City Council's Integrated Strategic Plan

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

- 2.2 Plan and manage appropriate and sustainable development
- 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 development in the future, and strategic directions to guide the planning outcomes for these areas if they are rezoned or developed.

The 2014 GMS recognised that the situation was still unresolved and 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 recognised the unresolved situation that applied to the Falls Creek Rural Residential Deferred Areas. It provided at Part 10.4 that the deferred rural residential land *"will be further investigated for (its) potential to provide increased rural living opportunities for the Region"*. The intention of the JBSS is for lots to be no smaller than one (1) hectare (as had been proposed in the LEP Amendment No. 127) subject to the constraints of the land.

The JBSS considered in its discussion of density that an absolute minimum lot size of 1 ha should be allowed in the previously rural residential deferred areas. This PP would potentially result in a minimum lot size of 5000 m² on part of the site as part of a community title scheme. This is inconsistent with the 1 ha minimum expected by strategy. This could result in adverse and visual impacts on the landscape character in the locality.

This impact will need to be assessed as part of the process and the PP should only proceed if it is satisfactory in this regard.

Subject to the outcome of a visual impact assessment (yet to be undertaken) there is an argument that in a community title scheme the area of the neighbourhood property should be considered in determining the density of the development (i.e. lot averaging). In this case, better environmental outcomes would be achieved by this approach because the environmentally sensitive land will be managed under a community title scheme as opposed to it potentially being in fragmented private ownership. The merits of this argument will be informed by the investigations that will be undertaken if the PP receives a favourable gateway determination. If the lot averaging argument is accepted, most of the resulting lots will potentially be smaller than one lot per hectare limit contemplated by strategy, subject to detailed assessment.

In conclusion, the proposed minimum lot size is inconsistent with the 1 ha minimum noted in the JBSS/GMS for investigation. However, it is considered that the PP is consistent with the underlying intent of these strategies subject to the outcomes the detailed assessments and it will potentially result in a more desirable environmental outcome.

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

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The flora and fauna investigation submitted by the proponent found that:

“Potential Koala Habitat is defined as areas where the tree species listed under Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. The study area does not contain any listed feed tree species. Therefore, the study area does not constitute Potential Koala Habitat pursuant to SEPP 44. No further aspects of SEPP 44 apply to the proposal.”

This conclusion is adopted for the purposes of this PP.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 6 of SEPP 55 is not engaged by this PP as there is no land that is being rezoned in a way that would permit a use that is not currently permitted. There are no other provisions of this SEPP that apply to the PP.

State Environmental Planning Policy No. 62 – Sustainable Aquaculture

The site drains to Currumbene Creek which drains to the Jervis Bay Marine Park. The nearest aquaculture lease¹ is approximately 2.9 km from the outlet of Currumbene Creek into Jervis Bay. Any development of the site will need to achieve a satisfactory water quality outcome to protect the marine park. It is recommended that these matters be investigated and that this investigation also consider the impacts of developing the land on relevant aquaculture leases.

¹ As approved by the NSW Minister for Planning in SSI Application No. SSI-5657 on 2/11/2014.

State Environmental Planning Policy (Rural Lands) 2008

The site is predominately zoned R5 - Large Lot Residential. All of the existing RU2 – Rural Landscape zoned land is proposed to be zoned E2 – Environmental Conservation. The PP is consistent with the Rural Planning Principles in this SEPP and the SEPP more broadly.

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

2.1 Environment Protection Zones

The PP will place an E2 environmental protection zone over all environmentally sensitive parts of the site.

2.3 Heritage

The PP will decrease the area of R5 zoned land and zone the remainder of the site E2. The PP does not contain any provisions that would hinder the conservation of any heritage value that the site might have.

3.1 Residential Zones

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

4.3 Flood Prone Land

All flood prone land is to be zoned E2. There are no inconsistencies with this direction.

4.4 Planning for Bushfire Protection

Bushfire protection is to be considered in detail if a favourable Gateway determination is received. The PP should be referred to NSW RFS prior to exhibition for consideration.

5.2 Implementation of Regional Plans

The PP is not inconsistent with the ISRP as discussed earlier in this report.

6.3 Site Specific Provisions

Site specific provisions are proposed to facilitate the proponent's goal of creating a community title subdivision. These provisions would facilitate an additional development option for the site in accordance with Clause 4(a) of this direction. No plans for a particular development are included in this PP.

A plan was included in the proponent's PP that was submitted to Council. That submission is attached to this PP as Attachment 2. That plan is not part of this PP. It is not proposed to introduce controls that will restrict the future development to a particular design.

4.3 Environmental, Social and Economic Impact (Section C)

4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The site contains threatened fauna species and forms part of a habitat corridor. The conservation of this land is an outcome that is to be achieved 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.

The PP 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. This will give the consent authority the ability to condition a subdivision consent with requirements for the future community management statement to manage this land as a single parcel. If the environmentally sensitive land were in fragmented ownership then a consistent management regime is less likely to be realised.

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

Additional studies are required to consider the impacts of the proposal on water quality (both stormwater and domestic wastewater). A study is also needed to investigate the visual impacts of the proposal. These should be completed prior to any public exhibition of the PP.

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

A study is needed to investigate the visual impacts of the proposal and to demonstrate that the PP is satisfactory with regard to its impact on the landscape character of the locality, particularly given its proximity to Jervis Bay Road.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the Planning Proposal?

Broader infrastructure planning has been based on the status quo for the site (estimated at 12 dwellings from an infrastructure planning perspective). Any increase in dwelling yield on the site beyond this will need to be accompanied by suitable arrangements for public infrastructure. Shoalhaven Water has advised that reticulated sewer will not be provided to the land.

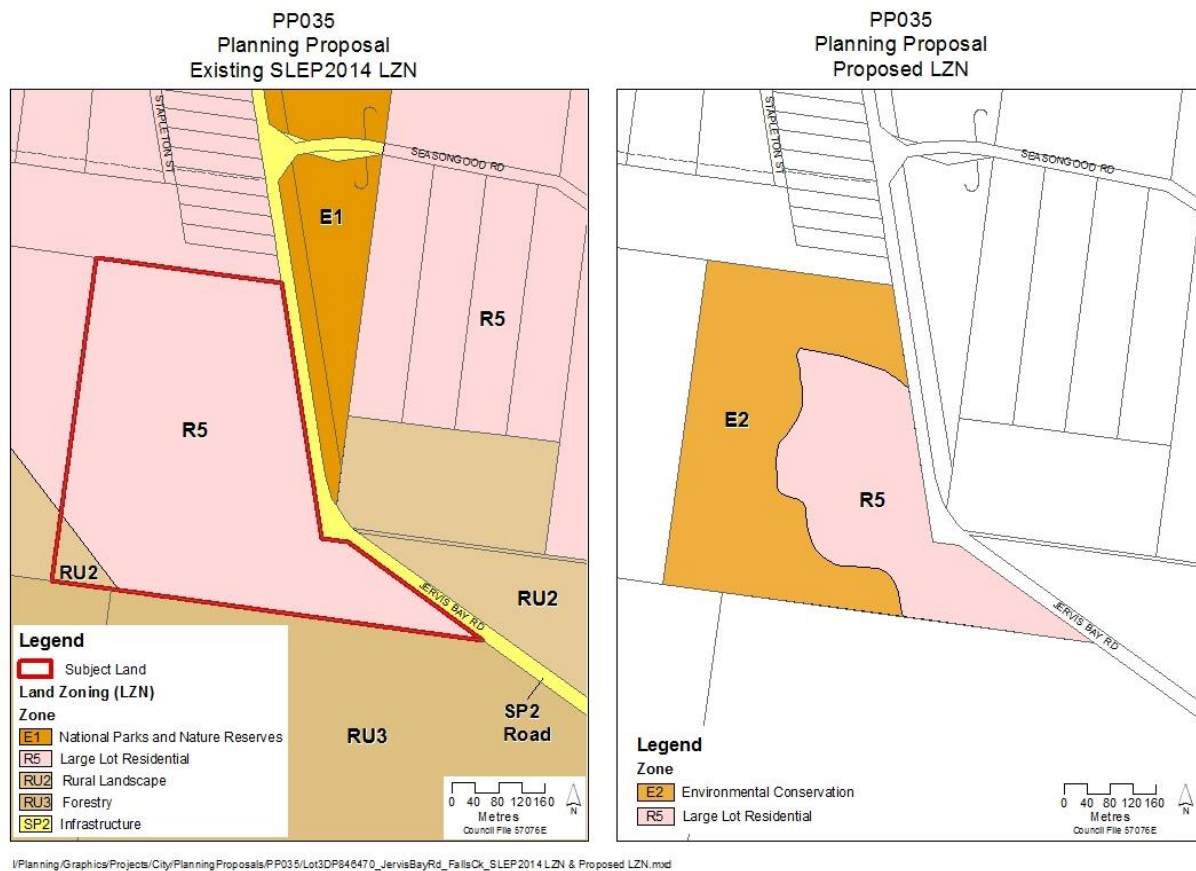
4.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

No consultation has been undertaken at this stage. Council considers the following agency consultation to be appropriate for this PP:

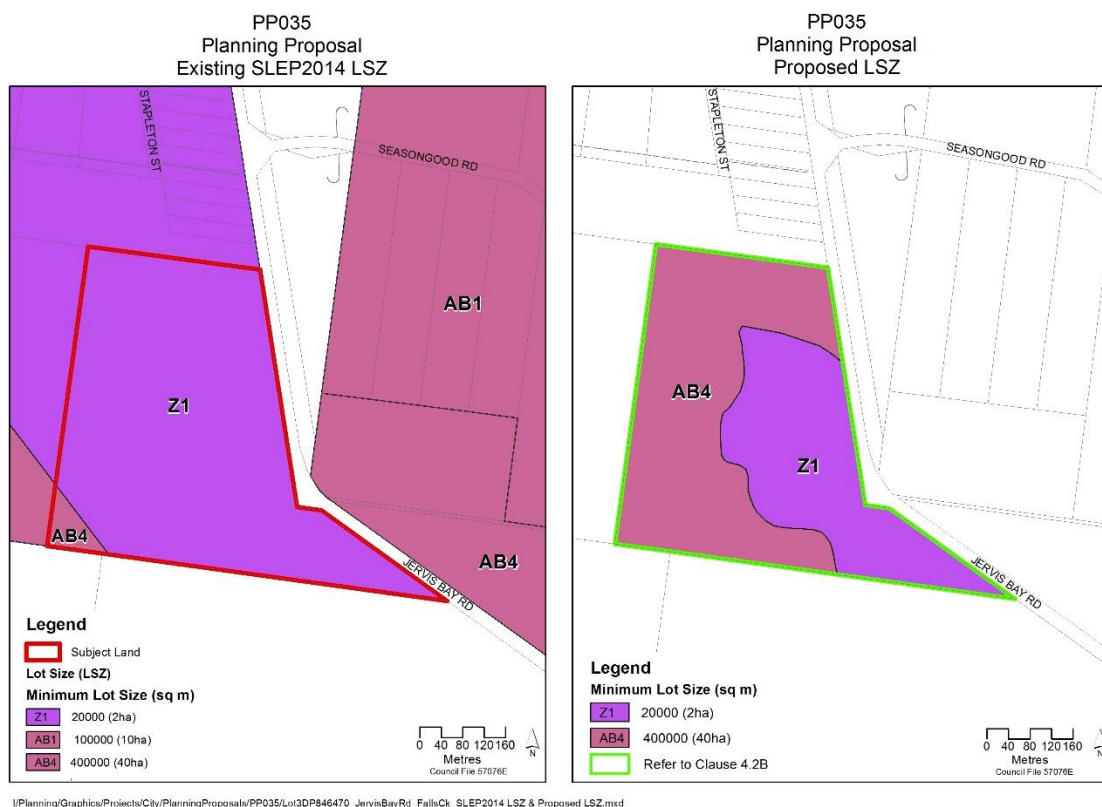
- NSW Rural Fire Service
- NSW Office of Environment and Heritage
- NSW Roads and Maritime Services
- NSW Department of Primary Industries – Water
- Endeavour Energy
- Shoalhaven Water

5 Part 4 – Mapping

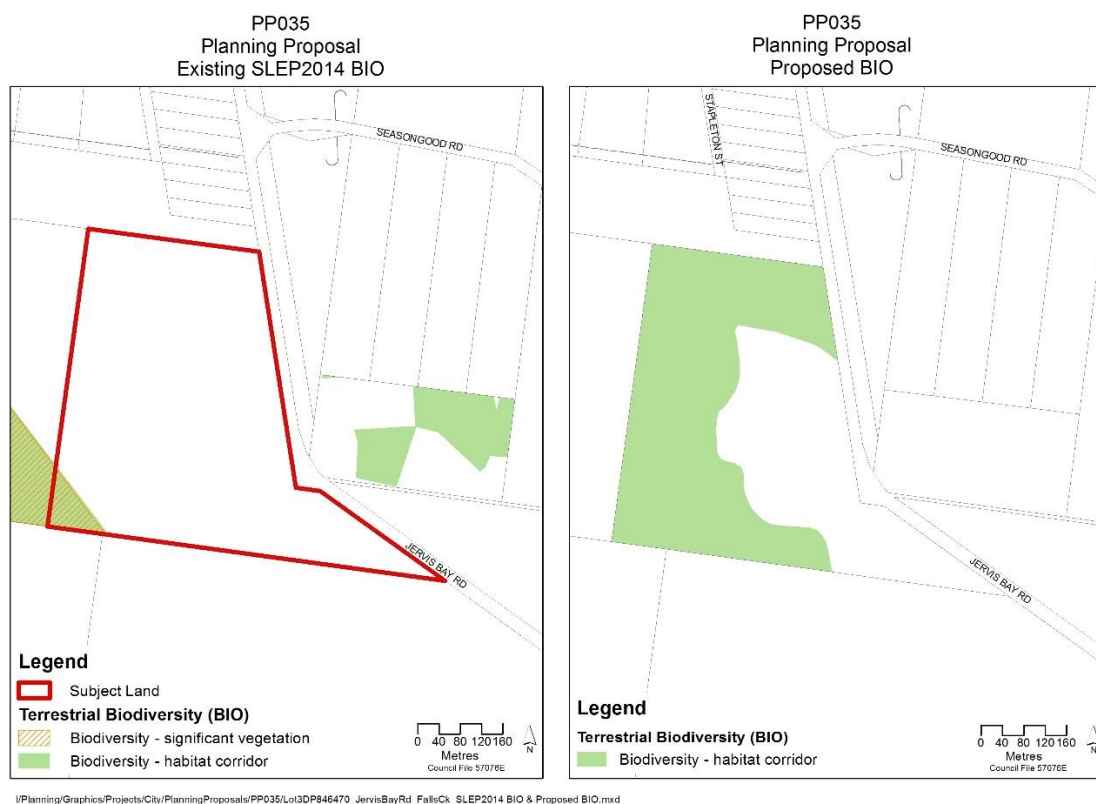
The PP proposes to amend the following LEP Maps as shown below. Note the boundary between the R5 and E2 zones is subject to final survey and may change.



Map 1: Existing and Proposed Land Use Zone Maps



Map 2: Existing and Proposed Lot Size Maps



Map 3: Existing and Proposed Biodiversity Maps

6 Part 5 - Community Consultation

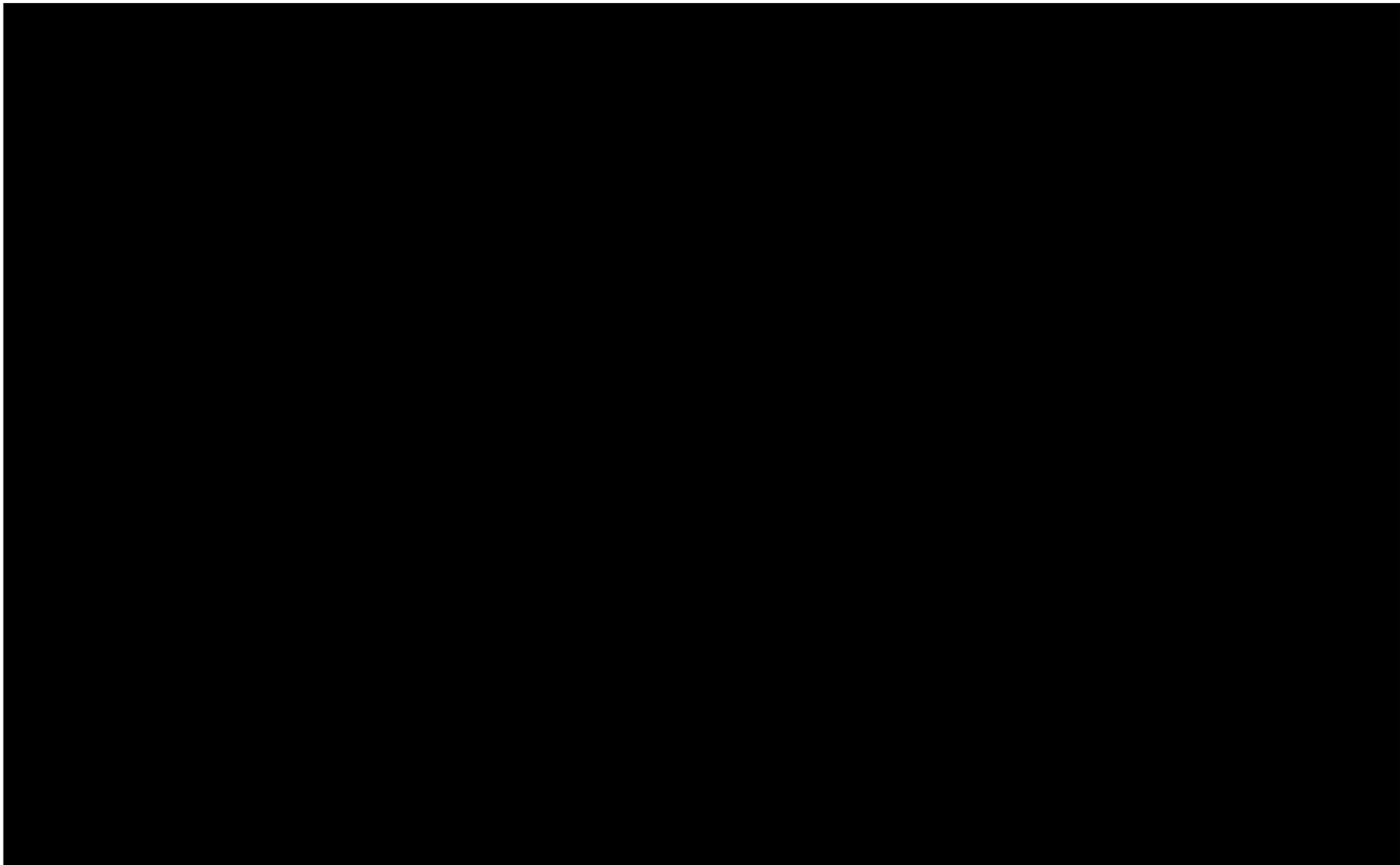
Council proposes to exhibit the planning proposal in accordance with the requirements of Section 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and any other requirements as determined by the Gateway process. It is intended that an exhibition period of 28 days apply.

Public notification of the exhibition would include notification in the local newspaper(s), and a notice on Council's website. Hard copies of the planning proposal would be made available at Council's Administrative Building in Nowra.

7 Part 6 – Project Timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	August 2018
Completion of Gateway determination requirements	April 2019
Public exhibition	June 2019
Consideration of submissions	August 2019
Post exhibition consideration of PP	September 2019
Finalisation and notification of Plan	February 2020

Attachment 1: Council Report and Resolution



**DE18.17 Proponent Initiated Planning Proposal - Lot 3 DP 846470 HPERM Ref: D18/7710
Jervis Bay Road, Falls Creek**

Recommendation (Item to be determined under delegated authority)

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.

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.

RESOLVED (Clr Wells / Clr Gartner)

MIN18.162

That Council:

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.
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.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Proudfoot and Russ Pigg

AGAINST: Clr Guile, Clr Pakes, Clr Watson and Clr Kitchener

CARRIED

DE18.17 Proponent Initiated Planning Proposal - Lot 3 DP 846470 Jervis Bay Road, Falls Creek

HPERM Ref: D18/7710

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Executive Summary - Proponent's Draft Planning Proposal [↓](#)
2. Proponents Draft Subdivision Layout [↓](#)

Purpose / Summary

Present a proponent initiated Planning Proposal (PP) that has been received to permit a community title subdivision at Lot 3 DP 846470 Jervis Bay Road, Falls Creek and obtain direction in this regard.

Recommendation (Item to be determined under delegated authority)

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.
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 - 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.
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.

Options

1. Request a Gateway determination for the PP that:

DE18.17

- a. Permits a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls; and
- b. Rezones the land to part R5 - Large Lot Residential and part E2 - Environmental Conservation.

Implications: This will enable the community title subdivision and provide a clear environmental outcome for the vegetated and/or environmentally sensitive land which comprises approx. 60% of the subject land. It is consistent with the approach taken by Council when 'lot averaging' was first introduced into the Shoalhaven LEP 1985. For example, Lot 5 Havilland Street, Conjola Park (Locality 7 in Shoalhaven Local Environmental Plan (LEP) 2014) is currently subject to a lot averaging provision and an environmental protection zone that limits where the smaller lots can be created. This option is the preferred option, noting that a decision on the number and size of the proposed will be made later in the process (i.e. prior to public exhibition) once all the required studies have been completed.

2. Request a Gateway determination for the PP that permits a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls without rezoning the residual land to E2.

Implications: This will allow the community title subdivision without increasing environmental protection for the majority of the land. This option is not preferred.

3. Not proceed with the PP.

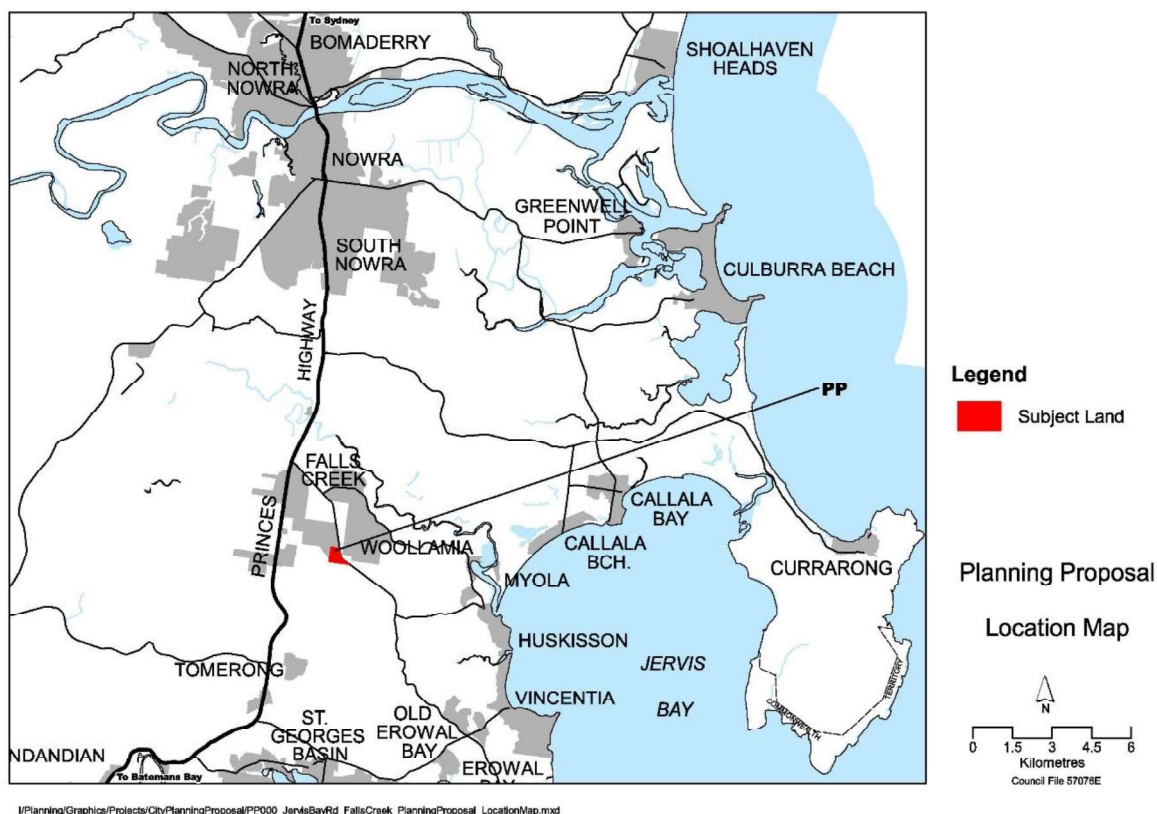
Implications: This will not allow the community title subdivision and the corresponding environmental outcome for the majority of the land. This option is not preferred.

Background

The Site

The subject land to which this proponent initiated PP relates is Lot 3 DP 846470 Jervis Bay Road, Falls Creek, which is located on the southern edge of the Falls Creek Large Lot Residential precinct. 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 zoned RU2 – Rural Landscape. The large lot residential precinct of Falls Creek adjoins the subject land to the north and east.

Maps showing the subject land and its location are provided below:



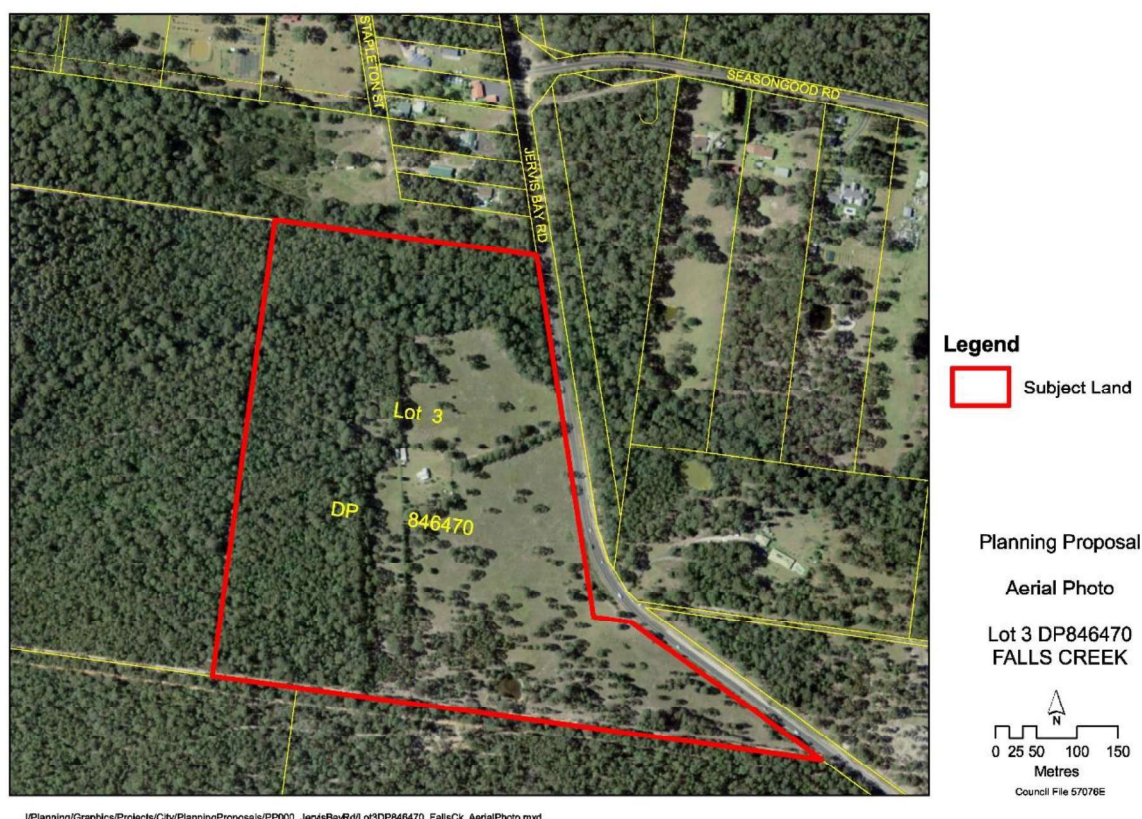
Subject Land – Location

The subject land is crossed by an east-flowing watercourse adjacent to its northern boundary. This watercourse is a tributary of Currumbene Creek, which flows into the Jervis Bay Marine Park.

The subject land has distinct cleared and vegetated areas as can be seen in the aerial photograph provided below. The watercourse is located within the vegetated part of the site. The cleared part contains a dwelling house, outbuildings and two (2) earth dams.

The proponent has provided a flora and fauna assessment of the site. 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 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.

DE18.17



Aerial Photograph – Lot 3 DP 846470

The Proponent's PP

The proponent's PP was received on 27 November 2017 from Cowman Stoddart Pty Ltd (on behalf of the owner T Pasialis) and seeks 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 are proposed to have a minimum area of 5,635 m². The PP was accompanied by a Development Application (DA) that was also submitted for a 12-lot community title subdivision consistent with the PP.

The proponent's submission includes a draft PP document, the executive summary of which is attached to this report (**Attachment 1**). This draft PP was accompanied by a Flora and Fauna Assessment, Bushfire Protection Assessment, Onsite Effluent Disposal Report, NSW Roads & Maritime (RMS) advice, and an Aboriginal Heritage Information Management System (AHIMS) search for the site.

The proponent also lodged a DA for the subdivision of the land concurrently with the PP. The assessment of this DA will occur in parallel with the PP process, but it will not be able to be approved prior to the making of a plan amendment.

Preliminary Planning Assessment

The following is an overview of relevant strategic planning documents that are relevant to this proposal.

- *Shoalhaven LEP 2014*

The subject land is currently zoned part RU2 Rural Landscape (3%) and part R5 Large Lot Residential (97%) under Shoalhaven LEP 2014. The objectives of the RU2 zone relate to

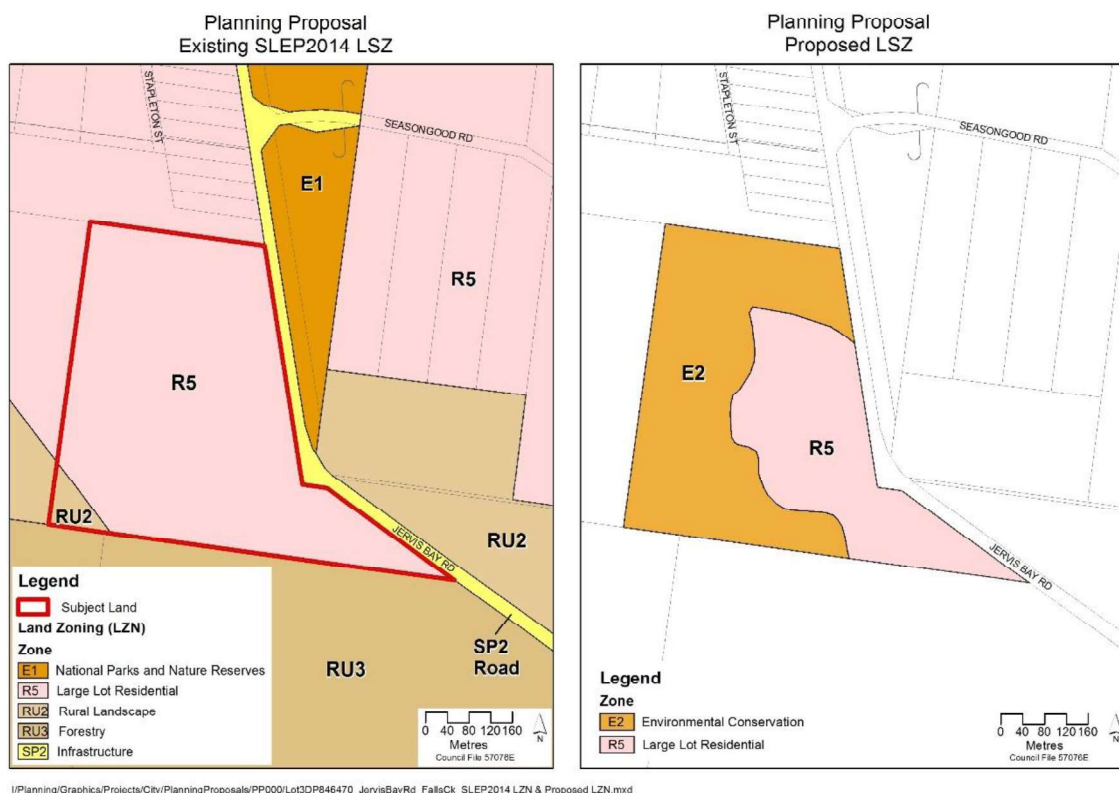
DE18.17

conserving and maintaining rural landscape and facilitating primary industries. The objectives of the R5 zone relate to providing large lot housing while avoiding adverse environmental, social and economic impacts.

The LEP prescribes a minimum lot size of 40 ha for the RU2 zoned part of the site and a potential 2 ha minimum lot size for the R5 zoned part of the site. The proponent contends that this gives rise to a development potential of 12 lots for the 24.5 ha of R5 zoned land. However, this is only a theoretical maximum yield. The actual yield is likely to be lower given the site's constraints.

The RU2 zoned part of the site is mapped under the LEP as having biodiversity significance. This area is part of the Jervis Bay habitat corridor system.

Parts of the subject land are also identified on the flood planning area map that forms part of the LEP. This relates to the watercourse that runs through the land.



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Existing and Proposed Zones– Lot 3 DP 846470

- *Illawarra-Shoalhaven Regional Plan*

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 GMS 2014, which is discussed below.

- *Shoalhaven Growth Management Strategy (GMS) and the Jervis Bay Settlement Strategy (JBSS)*

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 Department

DE18.17

of Urban Affairs and Planning, however, “deferred” the zoning of this site (amongst others) when the Rural Plan amendment was finalised in 1999 (LEP Amendment No 127).

The Jervis Bay Settlement Strategy (2003) recognised the unresolved situation that applied to the land. It provided at Part 10.4 that the deferred rural residential land *“will be further investigated for (its) potential to provide increased rural living opportunities for the Region”*. The intention of the JBSS is for lots to be no smaller than one (1) hectare (as had been proposed in the LEP Amendment No. 127) subject to the constraints of the land.

The 2014 GMS recognised that the situation was still unresolved and provided at part 5.2.4 that *“the existing rural residential deferred areas... to accommodate increased densities will be investigated and resolved”*. Some of these deferred areas were considered in the Falls Creek / Woollamia Deferred Areas PP that was adopted by Council in 2017. The subject land was not part of that PP.

The JBSS considered in its discussion of density that an absolute minimum lot size of 1 ha should be allowed in the previously rural residential deferred areas. This PP would potentially result in a minimum lot size of 5000 m² on part of the site as part of a community title scheme. This is inconsistent with the 1 ha minimum expected by strategy. This could result in adverse and visual impacts on the landscape character in the locality. This impact will need to be assessed as part of the process and the PP should only proceed if it is satisfactory in this regard.

Subject to the outcome of a visual impact assessment (yet to be undertaken) there is an argument that in a community title scheme the area of the neighbourhood property should be considered in determining the density of the development (i.e. lot averaging). In this case, better environmental outcomes would be achieved by this approach because the environmentally sensitive land will be managed under a community title scheme as opposed to it potentially being in fragmented private ownership. The merits of this argument will be informed by the investigations that will be undertaken should Council resolve to progress the PP. If the lot averaging argument is accepted, most of the resulting lots may be far lower than one lot per hectare limit contemplated by strategy, subject to detailed assessment.

The proponent’s use of the current minimum lot size to determine a theoretical yield of 12 lots is not consistent the intent of the GMS to review densities in the previously deferred areas. The investigation demanded by these strategies is to consider the potential of the land in the context of its constraints. Should Council resolve to support this PP, the ultimate lot size and yield will be informed by investigations into the land’s constraints and capability, consistent with the GMS and JBSS. This may be more or less than 12 lots depending on the outcomes of the investigation.

There is a comparable case at Lot 4 DP 608099, 50 Mortimer Road Falls Creek. This land was included in the same “deferred” area as the subject land and has a similar history. Rather than pursuing a lot averaging approach, via a PP, the owner obtained development consent for a subdivision in which each lot complied with the current 2 ha minimum lot size. The result was a four (4) lot subdivision of a 20 ha parcel (one lot per 5 ha). This density was the result of the constraints of that particular site. It is noteworthy, however, that each lot created had a developable area that was less than 1 ha, with the remainder of each lot being fragmented environmental land.

In conclusion, the proposed minimum lot size is inconsistent with the 1 ha minimum noted in the JBSS/GMS for investigation. However, it is considered that the PP is consistent with the underlying intent of these strategies subject to the outcomes the detailed assessments and it will potentially result in a more desirable environmental outcome.

It is considered that this PP can be supported as a consequence of the particular provisions in the GMS that relate to the Falls Creek/Woollamia Deferred Areas and given the particular historic circumstances of the case. Given this it will also not set a precedent for the rezoning of rural land elsewhere in the city.

- *Council's Planning Proposal (Rezoning) Guidelines*

These guidelines detail the circumstances when a PP is likely to be supported by Council and provide a range of detail on the PP process. The guidelines were adopted by Council in 2016 and note that Council is likely to support a PP in the following circumstances:

- Proposed amendment is supported by Council or State Government strategy or plan.
- Clear zoning anomaly exists on site.
- Proposed amendment is considered to be minor in nature and has been sufficiently justified to Council.

The guidelines also note that the proponents should have pre-lodgement dialogue with Council staff before formally lodging a PP. Some limited dialogue took place in this regard during 2015.

The guidelines make it clear that PP's that are not supported by a strategy or plan and are considered speculative will generally not be supported by Council.

As discussed above, it is considered that the PP request is generally consistent with the underlying intent of the JBSS and GMS (subject to visual impact assessment). Thus, it is consistent with these guidelines as a result.

NSW Guide to Preparing Planning Proposals

The NSW Guide to Preparing Planning Proposals provides an assessment framework for PP's. This framework requires the planning authority (Council) to answer a number of questions in determining the merit of a PP. These are considered below:

Q1. Is the Planning Proposal a result of any strategic study or report?

As discussed above, it is considered that the PP request is generally consistent with the underlying intent of the JBSS and GMS (subject to visual impact assessment). Thus, it is consistent with these guidelines as a result.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The PP process is the most appropriate mechanism to allow the community title subdivision to occur on the land. The actual detail of the PP and its provisions will need to be determined following the outcomes of specialist studies.

Q3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Illawarra-Shoalhaven Regional Plan is the relevant regional strategy. There is no relevant sub-regional or district plan for this area. The proposal is consistent with this plan as detailed earlier in this report.

Q4. Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan?

The JBSS and the GMS are the relevant local strategies. As discussed above, the proposal is generally consistent with these strategies.

Q5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

Various technical matters will need to be further investigated to demonstrate consistency with the relevant State Environmental Planning Policies. There are however no apparent inconsistencies at this stage.

Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?

No inconsistencies with any of the Ministerial Directions have been identified at this stage, noting that further investigations will be undertaken if Council resolves to progress the PP. It should also be noted that the proponent's proposed development footprint encompasses identified Green and Golden Bell Frog habitat. This report identifies a potential modified footprint which excludes this habitat.

Q7. 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 is an outcome that is to be achieved by this PP. The current extent of large lot residential development proposed by the proponent is considered to be unsatisfactory in this regard at present because it will isolate populations of Green and Golden Bell Frogs. The PP that is recommended adopts an altered footprint for rural residential development so that these frog habitats will be within the neighbourhood property that is to be used only for conservation purposes.

Q8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

A number of technical matters will need to be investigated to demonstrate that the PP is satisfactory with regard to a range of environmental effects.

Q9. Has the Planning Proposal adequately addressed any social and economic effects?

A number of technical matters will need to be investigated to demonstrate that the PP is satisfactory with regard to its impact on the landscape character of the locality.

Q10. Is there adequate public infrastructure for the Planning Proposal?

The infrastructure requirements for the PP will be determined by the number of lots into which the land can be subdivided. If the yield is substantial, then it may be necessary to prepare an infrastructure delivery strategy that would then be implemented with the development of the land.

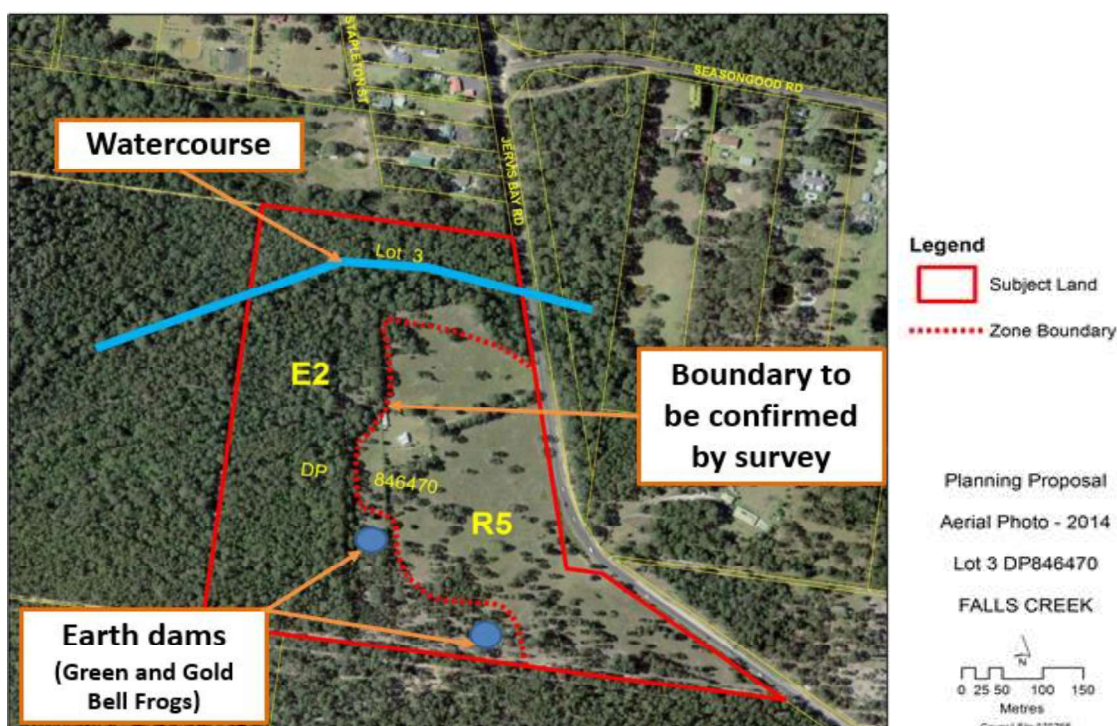
Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

The required consultation will be undertaken if the PP proceeds.

Conclusion

As detailed above, subject to the outcomes of detailed investigations, there is some merit in supporting this PP in an amended form. If Council supports advancing the PP, it is recommended that a Gateway determination be sought that provides for:

1. The permissibility of a community title subdivision of Lot 3 DP 846470 Jarvis Bay Road Falls into rural residential lots and a neighbourhood environmental conservation lot in terms similar to the existing “lot averaging” provisions of Clause 4.2B of the LEP.
2. The rezoning of part of the land to E2 - Environmental Conservation as shown in the figure below.
3. A requirement for a limit on the number of rural residential lots that may be created on the land based on the findings of the following specialist studies:
 - 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



Lot 3 DP 846470 - Aerial Photograph with Proposed Zone Boundary and key environmental features

Community Engagement

Upon receipt of the proponent's PP the surrounding landowners were notified in writing and provided an opportunity to review the documentation. No submissions were received.

DE18.17

If the PP proceeds, public exhibition will be required including advertising in a local newspaper and a mail out to surrounding landowners. The Gateway determination will also set required consultation requirements.

Policy Implications

It is considered that the PP will be consistent with the underlying intent of the JBSS and GMS (subject to visual impact assessment). Should this PP proceed Council will separately need to re-consider at the appropriate point the remaining area of R5 zoned land on the adjacent property to the west, given that this land will most likely be left isolated and difficult to develop.

Financial Implications

The PP will be prepared on a 100% cost recovery basis to be funded by the proponent. Infrastructure requirements for the proposal are to be thoroughly investigated in the PP process to ensure that there are no adverse impacts on Council's adopted budget and forward estimates.

DE18.17

Attachment 4: State Environmental Planning Policies

SEPP	Name	Applicable	Not inconsistent
		✓ / ✕	✓ / n/a
21	Caravan parks	✕	
26	Littoral rainforests	✕	
30	Intensive agriculture	✕	
33	Hazardous and Offensive development	✕	
36	Manufactured home estates	✕	
44	Koala habitat protection	✓	✓
50	Canal estate development	✕	
52	Farm Dams and Other Works in Land and Water Management Plan Areas	✕	
55	Remediation of land	✓	✓
62	Sustainable aquaculture	✓	✓
64	Advertising and signage	✕	
65	Design quality of residential apartment development	✕	
70	Affordable Housing (Revised Schemes)	✕	
	Coastal Management 2018	✕	
	Affordable Rental Housing 2009	✕	
	BASIX : 2004	✕	
	Educational Establishments and Child Care Facilities 2017	✕	
	Exempt and Complying Development Codes 2008	✕	
	Housing for Seniors or People with a Disability 2004	✕	
	Infrastructure 2007	✕	
	Mining, Petroleum Production and Extractive Industries 2007	✕	
	Rural Lands 2008	✓	✓
	State and Regional Development 2011	✕	
	State Significant Precincts 2005	✕	
	Sydney Drinking Water Catchment 2011	✕	
	Urban Renewal 2010	✕	
	Vegetation in Non-Rural Areas 2017	✕	

Attachment 5: 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		
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	x		
2.4	Recreation Vehicle Area	x		
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	✓	✓	Not inconsistent. This is discussed in detail in the PP.
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 Licensed Aerodromes	x		
4 Hazard and Risk				
4.1	Acid Sulphate Soils	x		
4.2	Mine Subsidence and Unstable Land	x		
4.3	Flood Prone Land	✓	✓	The PP incorporates adequate riparian buffers in this regard.
4.4	Planning for Bushfire Protection	✓	✓	Not inconsistent. This is discussed in detail in the PP.
5 Regional Planning				
5.2	Sydney Drinking Water Catchments	x		
5.10	Implementation of Regional Plans	✓	✓	The PP is not inconsistent with the regional plan or the relevant local plans.

6 Local Plan Making				
6.1	Approval and Referral Requirements	x		
6.2	Reserving Land for Public Purposes	x		
6.3	Site Specific Provisions	✓	✓	Not inconsistent. This is discussed in detail in the PP.