

DE19.128 Proponent Initiated Planning Proposal (Rezoning) - Lot 1 DP 1246435, 55 Wire Lane, Berry

HPERM Ref: D19/369173

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments:

1. Biophysical Strategic Agricultural Lands Map - 55 Wire Lane Berry [↓](#)
2. Biodiversity Corridor Mapping - Illawarra Shoalhaven Regional Plan 2015 - 55 Wire Lane Berry [↓](#)
3. Summary of Submissions - 55 Wire Lane Berry (under separate cover)

Reason for Report

Present a proponent-initiated Planning Proposal (PP) that has been received that seeks to rezone land at 55 Wire Lane, Berry (Lot 1 DP 1246435) for Council's consideration and to obtain direction in this regard.

Recommendation (Item to be determined under delegated authority)

That Council

1. Not proceed with a Planning Proposal to rezone 55 Wire Lane, Berry (Lot 1 DP 1246435) to an R5 Large Lot Residential zoning, with a 1 ha minimum lot size, and inform the proponent and submitters of this decision.
2. Advise the proponents of the Local Strategic Planning Statement process, invite them to engage with this process and any associated work on a rural land strategy and the review of the Growth Management Strategy.

Options

1. Not proceed with the PP.

Implications: This is the recommended option as it would maintain the existing planning controls for the site helping to protect an important rural resource by promoting primary production and preventing the fragmentation of the site through subdivision. This option confirms the strategic direction for the management of productive rural land set out in the suite of NSW Government and Council strategic land-use planning documents.

The proponent is however entitled to request an independent review of this decision, known as a Rezoning Review, carried out by the Regional Planning Panel. The most recent and only review of this type in Shoalhaven concerned a rural-residential development proposal for a nearby site. In considering that review, the Panel recommended no further rural residential subdivision be considered by Council until a rural-residential strategy had been developed and regionally significant agricultural lands identified.

Under this option the proponent will also have opportunities to provide feedback on the development of any relevant strategy and related documents (Local Strategic Planning Statement and Growth Management Strategy).

2. Proceed with the Planning Proposal as submitted.

Implications: The proponent's PP would be submitted to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway determination. Under this process the Minister (or delegate) decides whether the proposal or an amended version of it should proceed through the Gateway process.

This option is not recommended as the proposal is fundamentally inconsistent with long held Council and State Government policies regarding rezoning of rural land to enable ad-hoc rural residential development.

3. Proceed with an amended version of the Planning Proposal.

Implications: If there is support for an alternative outcome for the site, for example, a different land use zone(s) or lot sizes, an amended PP would be required. Advice would be provided based on any amendments proposed, for example such as an RU4 zoning or a minimum lot size of 10ha consistent with the adjacent land to the west.

Background

Subject Land

The subject land is Lot 1 DP 1246435, 55 Wire Lane, Berry and is located approximately 4.6km east of the Berry township (Figure 1). The subject land is approximately 41 hectares in area and is bounded to the north by Beach Road, to the east by the existing Campbell's Run rural residential estate, to the south by a comparatively sized rural lot, and the west by Wire Lane (Figure 2). The lot was created from a 1976 subdivision (DP 253806) that also yielded several additional lots each with a dwelling entitlement.

There is an existing dwelling and farm shed on the south-western corner of the site. It is understood to be currently used for cattle grazing

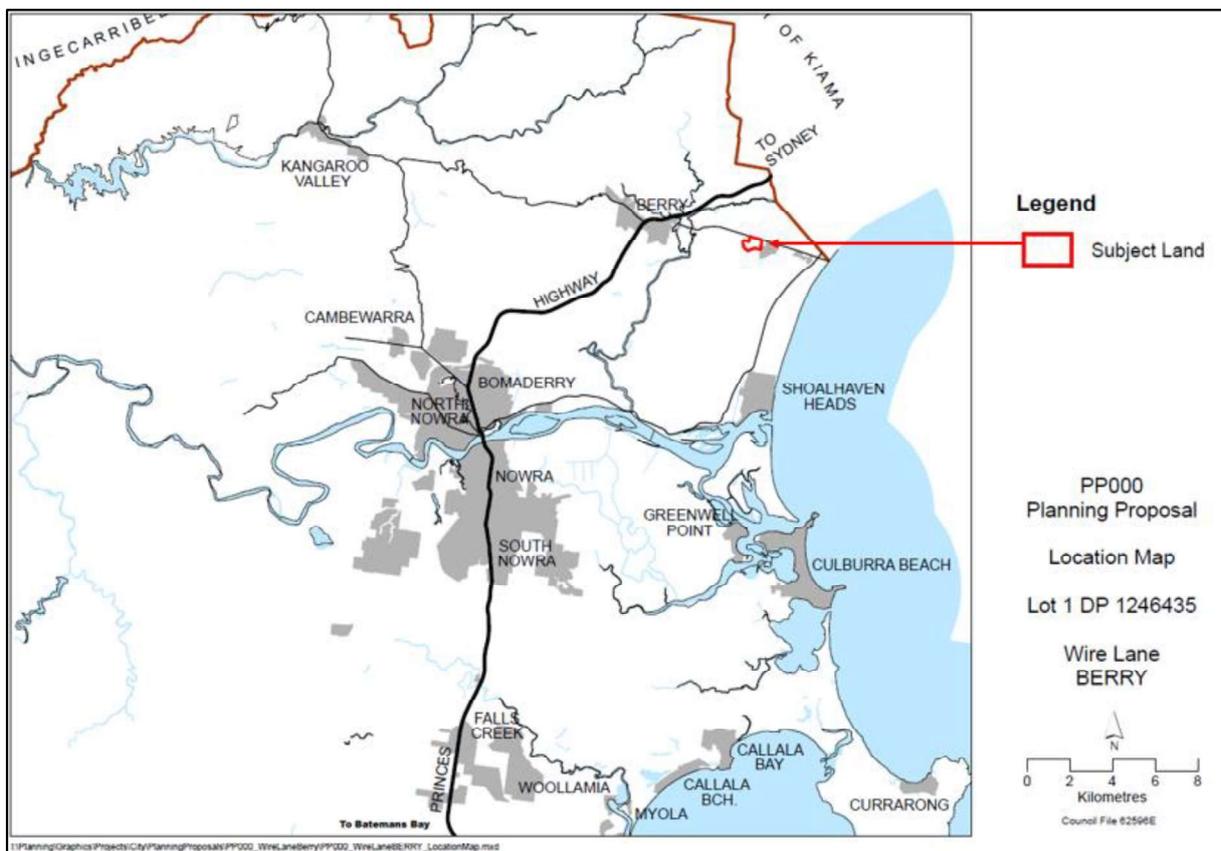


Figure 1: Subject Land - Location



Figure 2: Subject land - Mid-2019 aerial image

Shoalhaven Local Environmental Plan (LEP) 2014 and Related Background

The subject land is currently zoned predominantly zoned RU1 Primary Production with a minimum lot size for subdivision of 40ha under Shoalhaven Local Environmental Plan (LEP) 2014.

However, a small part of the subject land on its eastern edge adjacent to Wire Lane (~0.84ha) is zoned RU4 Primary Production Small Lots with a minimum lot size of 10ha. The RU4 zoned part was previously a separate lot (Lot 2 DP1217124) that was owned by Council. The previous Lot 2 was created through a road closure and transferred to the adjoining and current landowner. The subject land was then created through the consolidation of Lot 14 DP253806 and Lot 2 DP1217124, registered in October 2018.

Part of the subject land is also mapped on the biodiversity overlay in LEP 2014 as significant vegetation/habitat corridor/excluded land.

The broader locality has a complex planning history, specifically associated with consideration for rural residential development, that has resulted in a mix of existing zones and planning controls.

The land to the west of the subject land is zoned RU4 Primary Production Small Lots, with a minimum lot size of 10ha. This land is partially cleared with a historic rural character of diverse lots sizes and housing types, with most of the land subdivided between 1935 and 1991. There are significant stands of vegetation on most of the lots, which are also identified on the biodiversity overlay in LEP 2014.

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Prior to 2014, this western area was zoned Rural 1(c)(rural lifestyle) under Shoalhaven LEP 1985. The 1(c) zoning resulted from the Rural Plan Amendments (No.127) to LEP 1985 that were gazetted in 1999.

As part of the preparation of the Rural Plan, the subject land was mapped as proposed Rural 1(c) in a later exhibited version of the draft LEP amendment. It was also later mapped as part of 'Special Rural Lifestyle Area No.13' in the final draft LEP amendment that was submitted to the then NSW Department of Urban Affairs & Planning (DUAP) for gazettal.

Ultimately DUAP would not agree to the proposal for the subject land and other adjacent land (shown hatched on the map below). They requested it be zoned Rural 1(a)(agricultural production) – this appears to have been based on the fact that the lots in question had been added by the Council after the 1994 exhibition of the draft plan and concerns around regional values (prime crop and pasture land, etc). Council subsequently agreed to the adjustment and the LEP amendment was gazetted with the land zoned Rural 1(a).

DUAP also agreed to including 'Special Rural Lifestyle Area No.13' in the final gazetted plan as a Rural 1(c) zone – the following map is an extract from a September 1998 Council report showing the agreed outcome in this location, including for the subject land. The prevailing historic subdivision pattern noted above is clearly evident in this map.

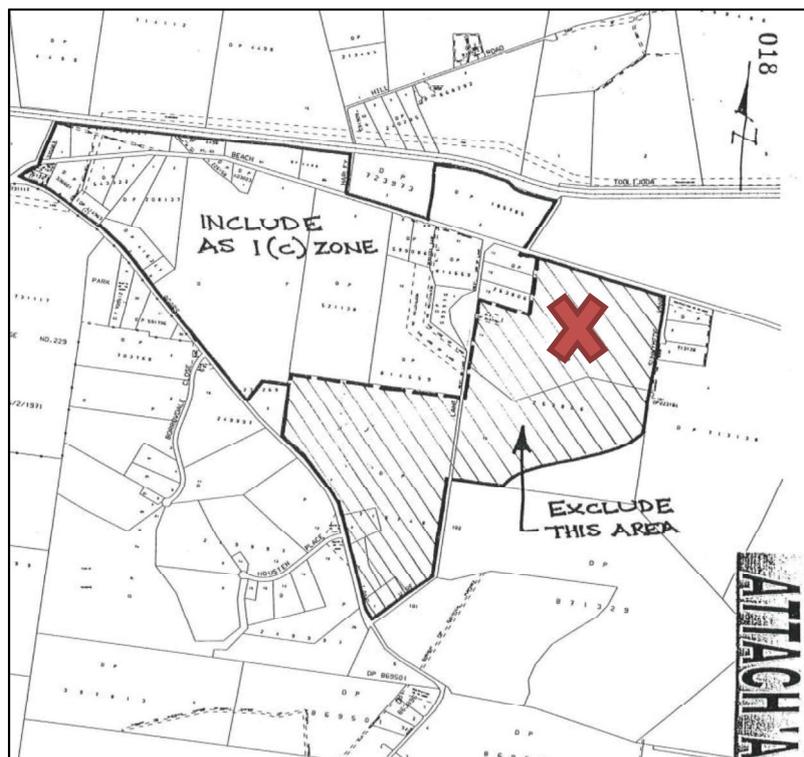


Figure 3: 1998 Council Report: Agreed Outcome – Rural Plan Finalisation
Red Cross - Current Subject Land

Schedule 13 was then subsequently inserted into LEP 1985 in 2002 (Amendment No.185) and set the subdivision lot density for certain of the 1(c) zones including the Beach Road area.

This LEP amendment was the subject of a detailed Public Hearing process run by the then NSW Commissioners of Inquiry for Environment & Planning that concluded in 2001. This LEP amendment and the process it followed considered the need for specific subdivision controls in relevant areas based on their characteristics, rather than a blanket minimum lot size.

The Public Hearing report noted that Council's specific objectives for the Beach Road 1(c) zone were as follows:

Conservation

Retail the conservation values of the remnant coastal forest vegetation in the area and to ensure that development does not reduce these values.

Lifestyle and Rural Character

Recognise the presence of prime crop and pasture land in the area and to provide opportunities for small scale part time farming

Prevent ribbon development along Beach Road and Agars Lane

Services

Provide only a basic level of services in the area in keeping with its low development potential and the potential impact on reticulated water supply on waste water volumes.

Based on the attributes of the land in the Beach Road 1(c) zone associated with prime crop and pasture land and conservation value, the Commissioner found that the subdivision performance criteria proposed by Council were appropriate.

This led to the following density standards in Schedule 13 of LEP 1985 for the Beach Road 1(c) zone:

Ensure that:

- (a) No lot is created is less than 10 hectares in area; and*
- (b) The overall density of lots to be created from a landholding is no greater than 1 lot per 10 hectares.*

Through the conversion to the new Shoalhaven LEP 2014, the density standards in this location were covered by the mapped minimum lot size of 10 ha. As a result of the long-standing planning controls for this land within the RU4 zone, there is a distinctly diverse rural character associated with this area, which is substantially different to other rural lifestyle subdivisions that are found along Beach Road to the east of the subject site.

Land to the immediate east of the subject site consists of 3 concessional lots created in 1985 (zoned RU1), and a rural-residential subdivision containing 28 lots between 1 and 4ha in size known as Campbell's Run. This subdivision was approved in 2002. The overall Campbell's Run subdivision covers two separate areas south of Beach Road that are now largely developed and zoned R5 Large Lot Residential under the LEP 2014.

The two parts of the Campbell's Run subdivision were originally rezoned to Rural 1(c)(rural lifestyle) via an Amendment (No. 166) to LEP 1985 which was gazetted on 7 July 2000. The objectives of that rezoning were to permit rural smallholding subdivision on the land to facilitate public acquisition of Coomonderry Swamp, to protect landscape values and to preserve as much of the existing forest cover as possible. This rezoning resulted in the transfer of relevant land to the NSW National Parks & Wildlife Service for addition to the Seven Mile Beach National Park.

It is noted that this Amendment No.166 was considered separately to the Rural Plan amendments to the LEP that were finalised around the same time as it had already been separately under consideration for some time (since 1991/92). On reviewing relevant background, it is apparent that preservation of the swamp was the driving priority in resolving this particular historic amendment.

The area to the east of the subject land between the two areas currently zoned R5 (Lot 4 DP834254, 510 Beach Road) is covered by another PP that has recently been finally adopted by Council and the resultant LEP Amendment is in the process of being finalised. This PP was supported for the following reasons:

- Considered to be in-fill – was located between two existing R5 zones and was previously identified for inclusion in the rezoning from which the two zoned areas resulted.
- Provided an opportunity to bring a further part of the Coomonderry Swamp wetland into public ownership
- Achieve outcomes consistent with the adjacent R5 zoned areas – zoning, minimum lot size and no dwellings within the catchment of the swamp.

The PP that was finally adopted by Council on 5 November 2019 will see the land that makes up the swamp zoned E1 National Parks & Nature Reserve, the area within the catchment of the swamp zoned E2 Environmental Conservation and the area adjacent to Beach Road zoned R5 Large Lot Residential. The mapped minimum lot size for the E2/R5 areas will be a mix of 1, 2 and 4 ha. In this regard it is noted that one of the maps in the proponent's PP (see Figure 6 below) overstates the area of this land that will actually be zoned R5.

Land to the north and south of the subject site is zoned predominantly *RU1 Primary Production* with a minimum lot size for subdivision of 40ha.

The planning and zoning background provided above is relevant to Council's consideration of this matter as it provides important context on the existing zones in this locality, including the subject land, and how they came to eventuate. In this regard it is specifically noted that the subject land was previously considered for a rural residential zoning through the Rural Plan amendments to LEP 1985 and this was ultimately not supported, based on advice from the NSW Government (DUAP).

The following map, Figure 4, provides an existing zoning map of the subject land and surrounding lands. As this map demonstrates, there is a distinct difference between the land zones and prevailing lot configurations of the RU4 area to the west of the subject site, and the R5 area to the east.

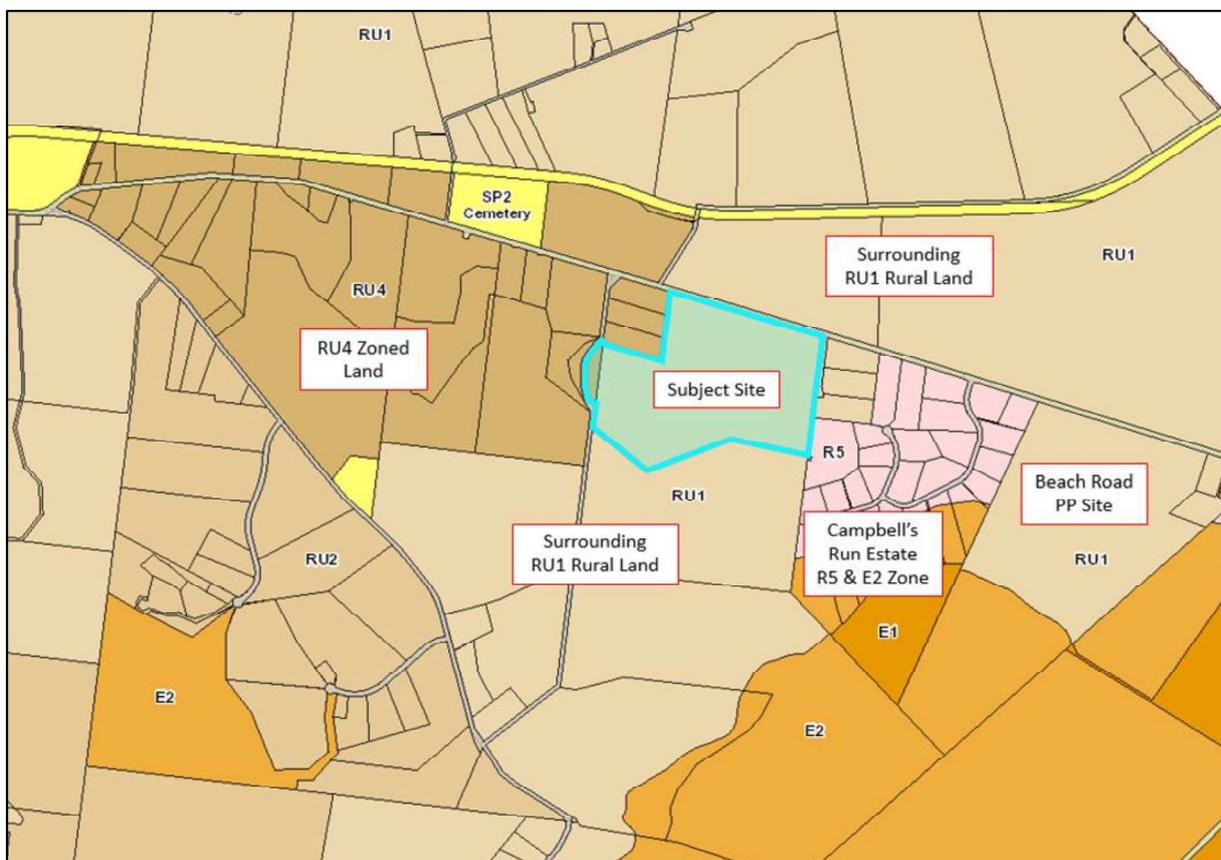


Figure 4: SLEP 2014 Zoning Map of the subject land and surrounding land.

The Proponent's PP

The proponent's PP document and accompanying technical studies were submitted to Council on 12 September 2019 by the landowners Merveilleux Pty Ltd. The PP document was prepared by Indesco Pty Ltd

The proposal seeks to amend LEP 2014 to enable a rural-residential development of potentially twenty-nine (29) 1-hectare lots. Figure 5 below is a concept subdivision layout that was provided as part of the PP document.

The proposal is described in the PP document as 'in-fill' development between two existing rural residential developments with the aim of meeting the market demand for 'prestigious' rural lifestyle properties in the Berry area. The changes proposed to the planning controls in the LEP include:

- Rezoning the entire site to R5 Large Lot Residential, and
- Reducing the mapped minimum lot size for subdivision of the entire site to 1 hectare.

The PP document is accompanied by several technical studies including:

- Land Supply and Demand Analysis Report.
- Agricultural Assessment.
- Ecological Constraints Assessment.
- Water Cycle Management Plan.
- Preliminary Site Investigation.
- Bushire Assessment.

All the documents can be viewed on Council's website at:

<http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D19/321948>

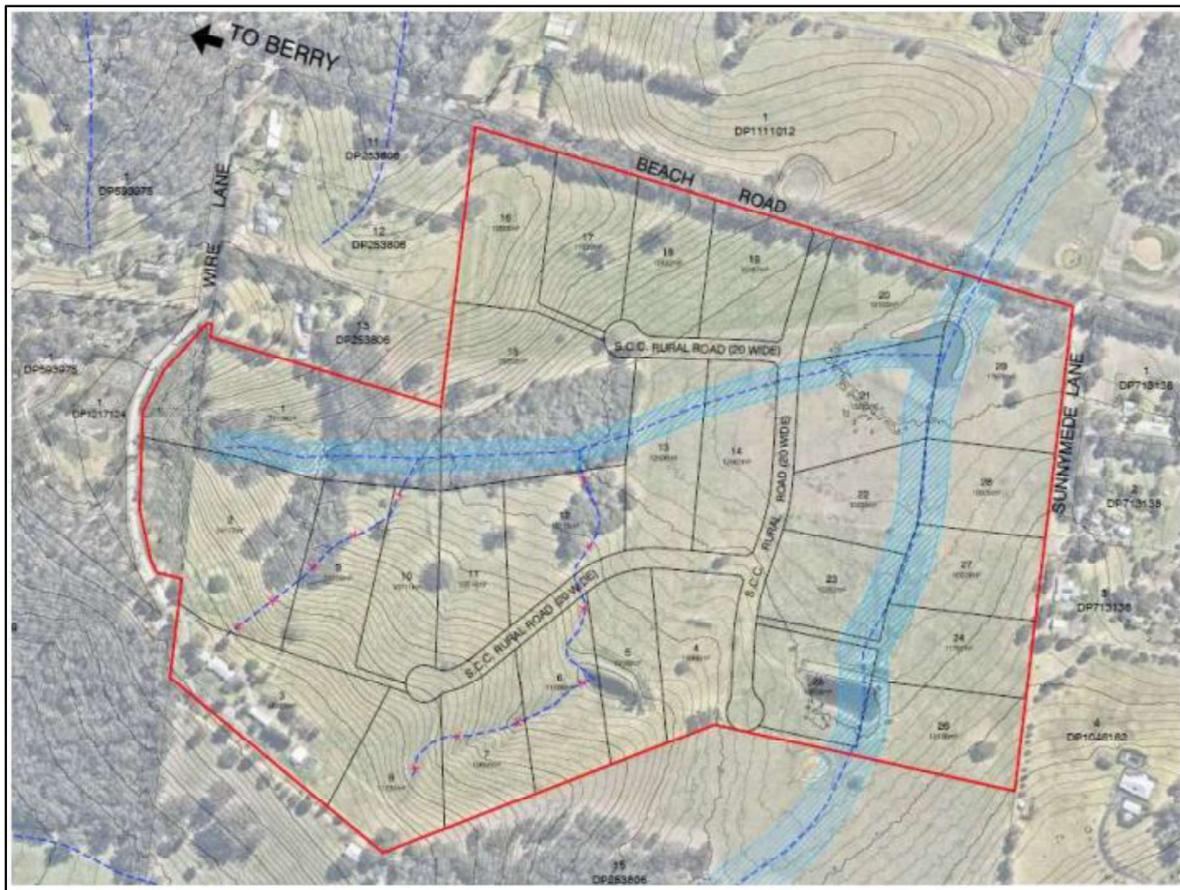
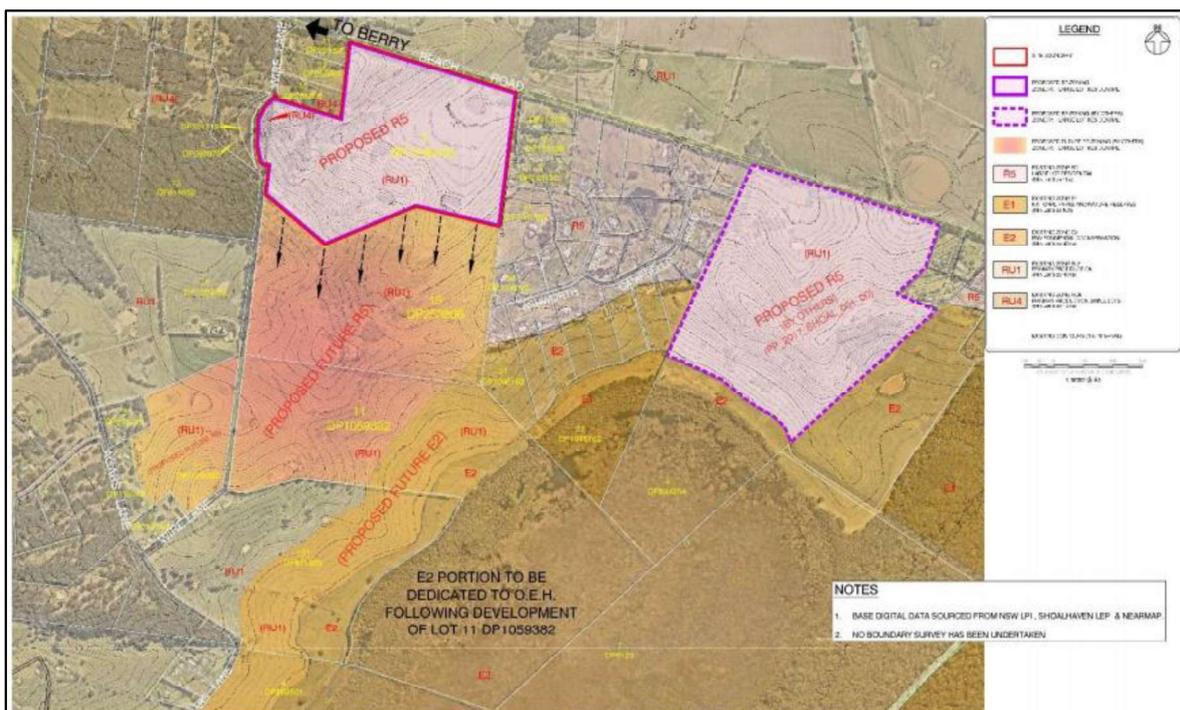


Figure 5: Concept lot layout (Water Cycle Management Study)

While the proposal seeks to change the planning controls applying to 55 Wire Lane, it also identifies a potential 10-year rural lifestyle land release (Figure 6) over the two lots south of the site (70 and 181 Wire Lane). The proposal indicates this would continue to meet a market demand for rural-residential living and help protect additional areas of Coomonderry Swamp.



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Figure 6: Potential long-term strategy for a rural lifestyle land release.

The subject land ('proposed R5') and part of the two additional parcels ('proposed Future R5') identified in Figure 6 were previously considered for rural residential zoning through the Rural Plan amendments to LEP 1985 and this was ultimately not supported, based on advice from the NSW Government (DUAP).

It is noted that Council staff received a request in December 2018 for advice/feedback on the broader rezoning proposal shown in Figure 6. The relevant feedback that was provided in response via email was as follows:

- *The current PP that we are progressing in this vicinity was only considered because of the circumstances of that case – was between two areas that had been previously rezoned to enable rural residential/large lot residential development.*
- *Importantly as part of this PP the proponent sought a 'pre gateway' review. As part of that the Joint Regional Planning Panel, whilst supporting the PP progressing given its "infill" nature, made findings/recommendations that are relevant to your request.*
- *Attached is a copy of the JRPP's report to the Minister.*
- *Thus, at present there is no strategic basis to consider further rural residential rezonings in this locality.*
- *Please note that Council has commenced a review of its Growth Management Strategy for Shoalhaven and one of the aspects that will be considered as part of that process is the need for additional rural residential (or similar) development in the City.*

A formal pre-lodgement meeting then occurred in March 2019, relating only to the subject land and not the broader proposal shown in Figure 6. At this meeting, Council staff again advised that it was unlikely they would recommend Council progress a PP as it did not demonstrate strategic merit, is not consistent with current strategic land-use planning documents, and pre-empts a broader body of work determining the value and future role of rural land in Shoalhaven. Council again provided a copy of the Regional Planning Panel's 2016 advice on the 'pre-gateway' review of the PP for 510 Beach Road given its relevance. This advice recommended no further rural residential subdivision be considered by Council until a rural-residential strategy had been developed and regionally significant agricultural lands identified. More detail on the outcome of this review and its relevance later in the report.

The pre-lodgement meeting notes that were subsequently provided to the proponent can be viewed on the internet at:

<http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D19/323550>

The Southern Regional Planning Panel's advice (report) to the Minister dated 22 November 2018 on the PP for 510 Beach Road can also be viewed on the internet at:

<https://www.jrpp.nsw.gov.au/DesktopModules/JRPP/getdocument.aspx?docid=19795>

Preliminary Assessment of the Proposal

The first step for any proposed change to planning controls is to demonstrate the 'strategic merit' or consistency with strategy of the proposed changes. This requires a review of the PP against strategic land-use planning policy documents including:

- Council's Planning Proposal (Rezoning) Guidelines 2017 and other land-use planning strategies.
- Planning Directions (Section 9.1) issued by the NSW Minister for Planning & Public Spaces (the Minister), and

- Illawarra-Shoalhaven Regional Plan 2015.
- NSW Government's Guide to Preparing Planning Proposals
- Other relevant advice or decisions.

The PP makes a series of assertions that, in the opinion of Council staff, are incorrect and/or inconsistent with prevailing state, regional and local policy. The following is an overview of strategic planning documents and directions relevant to this proposal and commentary where relevant.

1. Council's Planning Proposal (Rezoning) Guidelines

These adopted guidelines detail the circumstances when a PP is likely to be supported by Council, noting a proposal is likely to be supported 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 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.

The Proponents have argued that the PP is justified because the land has limited agricultural capacity and presents as an 'in-fill development' between two existing rural lifestyle areas. It also appears that the diagram included in their PP document (see Figure 6 above) and associated commentary is an attempt to put some strategy around the current request that does not currently exist. This is considered pre-emptive and does not provide a basis for concluding that this PP is consistent with strategy.

As indicated earlier in the report the subject land and the additional two lots (70 and 181 Wire Lane) that are covered by the proponents 'potential long-term strategy for a rural lifestyle land release' were previously discounted for rural residential rezoning through the Rural Plan process.

The suggestion that the PP presents an 'in-fill development' is also not supported based on the history and circumstances of the existing land use zones that exist to the west and east of the subject land. The proposed development outcome of an R5 zone is not consistent with the adjoining RU4 zone to the west, and the proposed minimum lot size of 1ha is significantly smaller than the mapped minimum lot sizes of 10ha to the both the west and east, irrespective of the prevailing lot sizes and configuration in these areas.

The PP is considered to be inconsistent with Council's guidelines because it does not meet any of the three identified criteria for support.

2. S9.1 Ministerial Planning Directions

The directions issued by the Minister cover a range of matters addressing employment and resource land, environment and heritage, urban development and infrastructure, hazard and risk, and administrative plan making. The directions which must be considered by this PP include:

- *Direction 1.2 Rural Zones* - aims to protect the agricultural production value of rural land by directing Councils to not rezone land from rural to residential unless justified by a study, strategy or in accordance with the Regional Plan.

The PP acknowledges a potential inconsistency with this Direction and provides an Agricultural Assessment which seeks to justify the proposal by asserting the land has limited agricultural capabilities.

This view is however not supported based on the land's identified agricultural value – it is currently mapped as 'prime crop and pasture land'. The importance of protecting this land for the future has been identified through previous zoning decisions that sit behind its current RU1 Primary Production zoning.

Additionally, it is questioned whether the Agricultural Study provided by the proponents with the PP can be construed as a 'study' for the purposes of this direction.

Irrespective of the above, the PP is considered to be inconsistent with the strategic direction to protect rural land set by the Illawarra-Shoalhaven Regional Plan which is discussed further below.

- *Direction 1.5 Rural Lands* - aims, amongst other things, to facilitate the orderly and economic use, management, protection and development of rural land for rural purposes. This direction sets several considerations that must be met before land use zones and development standards can be changed.

The PP again acknowledges a potential inconsistency with this Direction; however, asserts its consistency with the rural subdivision provisions of LEP 2014 based on the premise of 'in-fill development'. However, the PP does not address the underlying issues of rural land fragmentation and the lack of strategic merit/consistency with strategy.

In addition, the provisions in this direction are intended to manage development on appropriately zoned land, not to argue the case for rezoning of existing rural land.

- *Direction 5.10 Implementation of Regional Plans* - requires proposals to be consistent with the directions of the Regional Plan.

The PP asserts that it is 'not inconsistent' with this Direction. However, an assessment of the proposal against the Regional Plan identifies several inconsistencies, as detailed and discussed below.

3. Illawarra Shoalhaven Regional Plan 2015

The Regional Plan sets the strategic policy, planning and decision-making framework to guide the sustainable growth of the region, through a series of Goals, Directions and Actions.

The Directions within the Plan that are relevant to this proposal include:

- *2.1 Provide sufficient housing supply to suit the changing demands of the region.*
- *2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres.*
- *4.1 Protect regionally important agricultural lands as an asset to food and fibre production.*
- *5.1 Protect the region's environmental values by focusing development in locations with the capacity to absorb development.*

The PP states that it is consistent with Direction 2.1 as it will "address a specific market demand for rural-lifestyle lots in the northern Shoalhaven". While the accompanying *Land Supply and Demand Analysis Report* indicates strong demand for rural lifestyle lots, particularly in the Berry area, the proposed development will have a limited contribution to the number of new homes and does not address the underlying issues associated with housing location, affordability, or diversity – in short is additional rural residential zoning/development needed in Shoalhaven, if so in what location/s based on appropriate consideration and in what form?

The PP does not address Direction 2.2, which identifies the Berry township as a potential growth centre with opportunities for increased densities through dual occupancy development. The proposal is fundamentally inconsistent with this Direction as this out-of-

centre location will not make efficient use of existing infrastructure and services, or provide homes close to jobs, shops and services.

The PP claims Direction 4.1 does not apply as the site is not identified on the *Biophysical Strategic Agricultural Land (BSAL) Map* – the current tool used to identify regionally important resource land. However, a review of this map indicates the site is partially identified as strategic agricultural land “highly suitable for agriculture” and “capable of sustaining high levels of productivity” (**Attachment 1**). It is noted that this mapping was prepared for use in association with State Environmental Planning Policy (SEPP)(Mining, Petroleum Production and Extractive Industries) 2007. One of support documents in this regard notes the following:

- *As this land is mapped at a broad regional scale, there may be circumstances in which the maps do not fully reflect the existence of BSAL on the ground.*
- *A site verification process has been introduced to confirm whether a specific site does, in fact, contain BSAL, before proceeding through the Gateway process. (Note: Gateway process under the SEPP).*

Direction 4.1 also highlights the importance of agricultural land in Berry, noting it “is one of the features of the landscape that attracts both residents and tourists”. The PP provides no commentary in this regard.

The PP does not address Direction 5.1, which discusses the importance of protecting biodiversity corridors linking areas of high environmental value. The subject site is partially mapped as a biodiversity corridor connecting to and supporting the nearby Seven Mile Beach National Park and Coomonderry Swamp (**Attachment 2**), which are identified in the Regional Plan as areas of high environmental value. While the PP does not explicitly propose the removal of native vegetation and is accompanied by an Ecological Constraints Assessment, it does not consider the contribution of the site to the broader wildlife corridor identified in the Regional Plan.

4. NSW Government’s Guide to Preparing Planning Proposals

The NSW Government’s Guide to Preparing Planning Proposals provides an assessment framework for PPs. This framework requires the planning authority (Council) to consider/ answer 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?*

The existing strategic planning framework does not identify the subject land as a rezoning investigation area. No strategic study or report has been received that currently provides strategic justification for this PP.

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

At this point, a PP is the only means of achieving the proponent’s intended outcome.

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 consistency with the existing Regional Plan is discussed above.

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

The consistency with the Shoalhaven Growth Management Strategy is discussed below.

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

The PP suggests that it is 'not inconsistent' with SEPP No.55 Remediation of Land. A Stage 1 Preliminary Site Investigation (PSI) has been prepared and a single area of concern identified that has been suggested should be further assessed. The PSI concludes that the site may be considered suitable for the proposed use.

Interestingly, the PP does not comment on the Primary Production & Rural Development SEPP (2019) and only notes its relevance. One of the aims of this SEPP is to: 'reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources'.

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

The consistency, or otherwise, with relevant Ministerial Directions is discussed above.

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?

At this stage, given the significant inconsistency with strategy, the supporting reports provided by the proponents have not been reviewed in any detail by Council staff.

It is however noted that the provided 'Ecological Constraints Assessment' identified some areas of 'moderate' ecological constraint and no areas of 'high' ecological constraint.

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

At this stage given the significant inconsistency with strategy the supporting reports provided by the proponents have not been reviewed in any detail by Council staff. If the PP is supported to move forward, then appropriate technical reviews and assessments will be required.

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

The argument advanced by the proponent essentially relies on the benefit provided by the proposed additional rural lifestyle lots in northern Shoalhaven that would result from the PP

The broader social and economic effects that may result from the PP have not been addressed.

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

The Proponent has argued that there is adequate infrastructure for this low scale proposal.

If this PP were supported, this would be investigated in detail after a Gateway determination is issued.

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

No Gateway determination has been sought or issued at this stage and the views of any government authorities are unknown.

5. Regional Planning Panel Advice – PP at 510 Beach Road, Berry

As discussed earlier in this report, Council is currently finalising another proponent-initiated PP for 510 Beach Road, Berry with the aim of implementing the earlier plan of delivering a balanced rural-residential and environmental outcome associated with Coomonderry Swamp.

This PP was subject to an independent rezoning review (pre-gateway) carried out by the Regional Planning Panel. In its report to the Minister the Panel concluded the following:

- *Council has not undertaken a strategic exercise of identifying lands suitable for rural residential landscape and subdivision.*

- *It is the Panel's view that Council needs to address this strategically to avoid future ad hoc decisions.*

In this regard the Panel recommended that:

- *There should not be any further consideration of rezoning proposals for rural residential subdivision until Council has developed a rural residential strategy (it is understood that there is a current resolution to develop a new position on rural land) and has identified regionally important agricultural lands.*

The review report and its conclusions/recommendations were brought to the attention of the proponent as part of the pre-lodgement discussions. The proponent's PP is however silent in this regard.

The development of a new rural-residential strategy for Shoalhaven identifying the value and future use of rural land needs to be programmed and resourced, an outcome likely to be formalised in the first *Shoalhaven Local Strategic Planning Statement*.

The PP is however seeking an 'ad-hoc' outcome which is at odds with the recommendations of the Panel.

6. Shoalhaven Growth Management Strategy (GMS) 2014

The current GMS provides the strategic framework for growth in Shoalhaven for the next 20 years identifying the location and supply of new dwellings. It represents an endorsed position of the Council and NSW Government. This Strategy identifies five areas as potentially suitable for accommodating future population growth. Although Berry is identified as having some longer-term growth potential the confirmed locations for potential new dwellings are in areas immediately adjacent to the town expanding its urban footprint, and not at this point in rural areas. This Strategy also found enough capacity in existing rural-residential zones to meet the demands for rural lifestyle housing.

Work has started on the update of this Strategy to ensure Council continues to meet the housing needs of its growing communities. This includes estimates of the supply of rural-residential style lots indicating a supply of land (6,000 hectares) and potential lots (about 1,200) to meet the demand for this type of housing for several years. These figures are contested in the PP.

Initial community consultation on the GMS review indicates a strong connection to rural landscape values, particularly in the Berry area, and suggests a comprehensive body of work needs to be undertaken to guide future development of rural land, rather than an isolated one-off decision.

7. Other Planning Considerations

A range of other matters were reviewed, including:

- *Preparation of the Shoalhaven Local Strategic Planning Statement*

Council is currently preparing its *Local Strategic Planning Statement (LSPS)*, a new NSW Government requirement, with an anticipated completion of mid-2020. The LSPS will set a 20-year vision for strategic land use planning, setting planning priorities to be implemented through future amendments to the LEP and supporting documents.

It is highly likely the LSPS will identify the need for a contemporary rural land strategy to identify the future values and use of Shoalhaven's rural land and this PP pre-empts this important body of work.

From experience with the last Shoalhaven Rural Plan the task of preparing a new rural land strategy will not be an easy one and will be time consuming.

- *Planning Precedent*

The PP, if supported, is highly likely to set an undesirable precedent for similar rezoning requests.

The proponent attempts to justify the PP by suggesting that the proposal “presents as an in-fill of rural lands located between two existing rural residential subdivisions”. As discussed earlier in this report, this view is not supported by Council staff due to the inconsistencies of the proposal with the adjoining land zone to the west, and the substantial variation to the prevailing mapped minimum lot size of 10ha to both the east and west of the subject site.

The RU4 Primary Production Small Lots land to the west is a result of historic, ad-hoc subdivision patterns dating back to the mid-1930s onwards, which has resulted in a diversity of agricultural uses, dwelling types, lot sizes and configurations throughout this area. This is distinctly different to the Campbell’s Run Estate to the east of the subject site, which was created in 2002 and has subsequently developed with recognisably rural residential character. It is this style of rural residential development outcome that the PP seeks to achieve, albeit with a smaller lot size, which is considerably different to the RU4 area to the west. Thus, the proposal is not considered to be ‘in-fill development’.

Council has also received many similar requests/approaches during its strategic planning projects, particularly during the public exhibitions of the draft LEP and also on an ongoing basis. There are likely to a lot of land parcels in the Shoalhaven that, if the basis of this PP is accepted, could also argue that they are also ‘in-fill’ in nature.

The proposal itself indicates an intention for further rural-residential development immediately to the south of the site. When considered in its entirety, this intended development would potentially result in the loss of about 120 hectares of productive agricultural land.

Arrangements to protect Coomonderry Swamp on the targeted land are already understood to be in place via Property Vegetation Plan, registered on title, that commenced on 17 November 2015 and requires the protection of native vegetation. As such the transfer of the part of the swamp identified is not necessarily required to ensure its long-term protection.

- *Technical Studies*

The site-specific considerations of the proposal for matters such as land capability and environmental constraints has not been undertaken at this stage due to the proposal’s absence of strategic merit. No detailed comment is provided on the validity of the various supporting technical studies as a result.

The exception to this is the Agricultural Assessment. This document claims the current agricultural enterprise is not viable but does not balance this by identifying the type and viability of agricultural activities that could be suitable on the proposed lots. It also concludes that 40ha is too small to make a sustainable profit from cattle grazing which is the only form of agriculture that can be practiced on the property. The current 40ha standard for the general subdivision of rural land was identified by NSW Agriculture as the minimum viable lot size. At present, this has not been revisited locally. It is also noted that the RU4 zoned land to the west currently has a minimum lot size of 10 ha to specifically allow opportunities for other forms of agriculture on smaller lots.

Conclusion

The PP is inconsistent with long-standing Council and State Government Policy to retain and manage existing agricultural land and avoid making ‘ad-hoc’ planning decisions about rural residential development. The proposal is considered to lack the strategic justification to proceed through to the Gateway process as it is fundamentally inconsistent with Ministerial Directions for plan-making, the Regional Plan and Council’s own strategic land-use planning documents.

The Regional Planning Panel has relatively recently considered a similar PP in close proximity to this one, advising against additional ‘ad-hoc’ rural-residential rezonings, and recommending a strategic planning approach to determine the value and future use, including rural-residential development, of rural land in Shoalhaven.

This PP, and others of a similar nature seeking the rezoning of rural land to provide rural-residential development should not be considered or supported until a rural lands or similar strategy has been completed to identify the value and role of Shoalhaven’s rural land. It is intended to formalise this work through the development of the LSPS. The proponent is invited to engage with this process and associated work on any rural land strategy and the review of the Growth Management Strategy.

Community Engagement

Adjoining landowners and the Berry Forum, Council’s Community Consultative Body (CCB), were advised of the receipt of the PP. As a result of this notification 27 submissions were received, including one from the CCB, one from Berry Landcare Inc., with the remaining 25 from neighbouring landowners/residents.

26 of the submissions strongly objected to the proposal. The remaining submission did not object, instead raising concerns about potential traffic impacts.

The submissions are summarised in **Attachment 3** and copies of the actual submissions received will be available for review in the Councillors Room. Due to the length and detail of three of the submissions and associated challenge in summarising, they are provided in their entirety (relevant personal information redacted) at the end of this Summary Table.

The key concerns raised in the submissions included:

- Inconsistency with current strategic land-use policy documents and the advice of the Regional Planning Panel.
- Loss of productive rural land.
- Inadequate justification for ceasing agricultural activity and feasibility constraints.
- Incompatibility of the proposal with the prevailing rural character.
- Potential precedent for additional rezoning requests from other rural landholders.
- Negative impacts on scenic values, local amenity and rural character.
- Negative impacts on biodiversity corridors.
- Increased traffic and impacts on local infrastructure.
- Adequate capacity to manage wastewater; and
- Accuracy and adequacy of the technical information.

If the recommendation is adopted by Council, no further community consultation is required.

If an alternative resolution is made to proceed, the PP will be submitted to the NSW DPIE for consideration and review through the Gateway determination process, which will set further opportunities for community engagement.

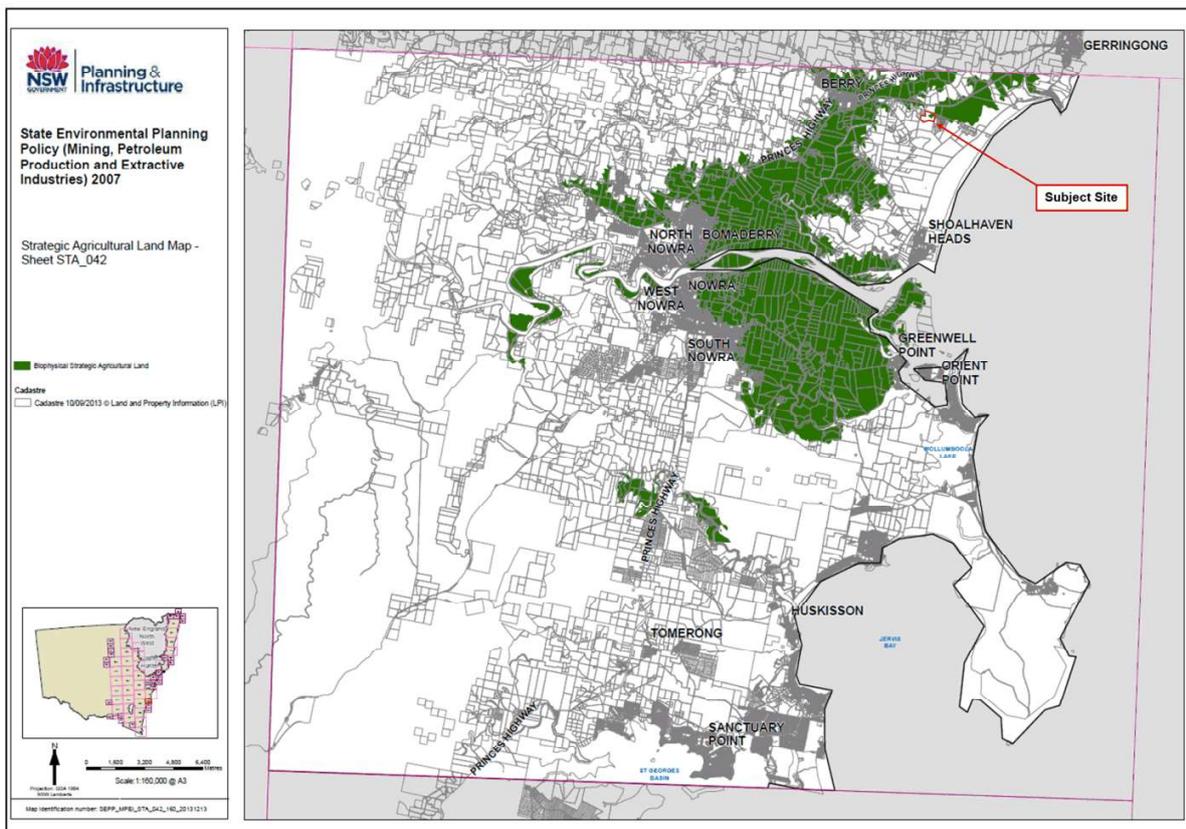
Policy Implications

The PP is inconsistent with inconsistent with Ministerial Directions for plan-making, the Regional Plan, and Council's own strategic land-use planning documents. Supporting this proposal would pre-empt future strategic planning work to identify the value and role of rural land in Shoalhaven. It would also potentially set a precedent for similar rezoning proposals.

Financial Implications

None if the PP is not supported, other than the Council staff time required to respond to any rezoning review that might eventuate.

If an alternative resolution to support the submitted or an amended PP is made, future work will be funded on a 100% cost recovery basis from the proponent in accordance with Council's adopted fees and charges.





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