

Purpose: To request that the Independent Planning Commission review the Gateway determination, considering the information provided by the proponent, and provide advice regarding the merit of the review request.

Dept. ref. no	PP_2020_SHOAL_003_00	
LGA	Shoalhaven	
LEP to be amended	Shoalhaven Local Environmental Plan 2014	
Address	55 Wire Lane, Berry	
Proposal	The planning proposal seeks to rezone 55 Wire Lane Berry from RU1 Primary Production and RU4 Primary Production Small Lots zones to R5 Large Lot Residential and E2 Environmental Conservation zones and establish a 1-hectare minimum lot size control for the site under the Shoalhaven LEP 2014.	
Review request made by	<input type="checkbox"/> The council	
	<input checked="" type="checkbox"/> A proponent	
Reason for review	<input checked="" type="checkbox"/>	A determination has been made that the planning proposal should not proceed.
	<input type="checkbox"/>	A determination has been made that the planning proposal should be resubmitted to the Gateway.
	<input type="checkbox"/>	A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Background information

Details of the planning proposal

The planning proposal (**Attachment F**) seeks to rezone 55 Wire Lane Berry (Lot 1 DP 1246435) from RU1 Primary Production and RU4 Primary Production Small Lots zones to an R5 Large Lot Residential and E2 Environmental Conservation zones and with a 1-hectare minimum lot size under the Shoalhaven LEP 2014. The proposed rezoning and minimum lot size amendments have the potential to develop 29 large lot dwellings on the site.

The 41-hectare rural site is located approximately 4.6km east of Berry and is bound by Beach Road and rural land to the north, rural residential development to the east, rural land to the south, and Wire Lane and small-lot rural land to the west (Figure 1 below).



Figure 1 – Site Map (source: Shoalhaven City Council, Report on planning proposal document)

The proposal also seeks to identify a longer-term strategy for rural residential development for adjoining land which also seeks to facilitate the transfer of a larger area of Coomonderry Swamp into public ownership (Figure 2, below). The planning proposal, however, does not seek to rezone the adjoining lots referred to in this strategy.

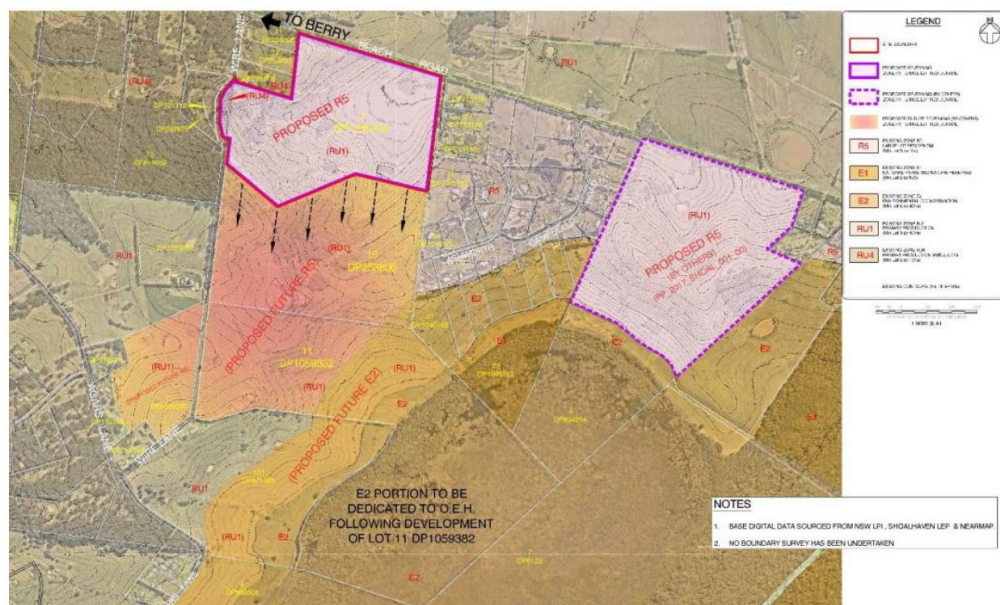


Figure 2: Longer-term strategy for rural residential development (source: planning proposal document, Indesco, March 2020)

Reason for Gateway determination

A Gateway determination (**Attachment B**) to not proceed was issued for the following reasons:

- The proposal is inconsistent with the Illawarra Shoalhaven Regional Plan and the Shoalhaven Growth Management Strategy.
- The proposal is inconsistent with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 3.1 Residential Zones and 5.10 Implementation of Regional Plans and the inconsistencies have not been adequately justified.
- The proposal is inconsistent with the Southern Regional Planning Panel's November 2016 report on the nearby Beach Road Rezoning Review which recommended "there should not be further consideration of rezoning proposals for rural residential subdivision until Shoalhaven City Council has developed a rural residential strategy (it is understood that there is a current resolution to develop a new position on rural residential land) and has identified regionally important agricultural lands."
- The proposal will lead to the loss of viable agricultural land on the site and may create a precedent for adjoining rural lots located south of the site under consideration for similar proposals.
- The proposal is not consistent with the planning controls or local character of the surrounding area.
- The rezoning of any rural land in this location should be considered through a Council led strategic approach rather than as a spot rezoning.

Council's view

Date Council advised of request	Council was advised of the proponent's request to review the Gateway determination on 23 July 2020.
Date of Council response	Council provided a response on 5 August 2020 (Attachment D).
Council response	Council has resolved to support the planning proposal proceeding through the Gateway and into the process for a range of reasons including those based on the position/justification presented by the proponents in their planning proposal

	<p>document, namely:</p> <ul style="list-style-type: none">• consistency with other development in the area;• historical zoning decisions in the locality; and• the need for additional residential land supply of the nature proposed. <p>Council has offered to provide additional information to the IPC as requested and answer any questions that may be of assistance.</p>
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Proponent's justification

Details of justification

The proponent requested a review of the Gateway determination on 20 July 2020 (**Attachment E**).

In a letter provided to the Hon Gareth Ward MP, Member for Kiama dated 9 July 2020 (**Attachment Letter from proponent**) justifying the reasons for the Gateway review, the proponent states that the proposal should be supported because it:

- is consistent with a number of key goals and directions of the Illawarra Shoalhaven Regional Plan;
- achieves strategic outcomes in the South Coast Regional Conservation Plan;
- is supported by agricultural land assessments and market analysis;
- was prepared following consultation with local community groups; and
- will provide economic benefits for the local community including employment, support for small businesses and provision of housing.

The justification for the terms of refusal outlined in the Gateway determination report and response provided by the proponent is provided below.

- *The proposal is inconsistent with the Illawarra Shoalhaven Regional Plan and the Shoalhaven Growth Management Strategy.*

Proponent's response:

The planning proposal is explicitly consistent with a number of key Goals and Directions outlined in the Regional Plan.

Direction 2.1 aims to provide a variety of housing choices to meet the needs and lifestyles of local communities. Specifically, the Direction states that '*...Councils are to plan for the mix of housing that suits the projected growth, changing demographics (such as an ageing population) and market demand particular to their area*'.

This planning proposal aims to address a specific market demand for rural lifestyle lots in the northern Shoalhaven consistent with the requirements of this direction. The planning proposal is supported by strategic Market Assessment which demonstrates that there is insufficient capacity to meet the demand for this type of housing product, and there is sufficient demand to warrant the rezoning of the subject land.

Direction 5.1 aims to ensure that development is located to avoid significant environmental impacts, to protect high environmental value lands and to protect the region's biodiversity corridors.

The planning proposal proposes development on land with the capacity to absorb development, as outlined in the land capability assessment and supporting environmental studies. Further, the planning proposal specifically achieves this Direction by not only protecting the significant Berry wildlife corridor, but also restoring, enhancing and creating new vegetated corridors between significant patches of vegetation within and adjoining the site.

The Gateway determination states the proposal is inconsistent with Direction 4.1 which seeks to protect regionally significant agricultural lands for food production. However, as outlined above, the planning proposal is supported by

an Agricultural Assessment of the subject site which found that there were significant physical constraints to the agricultural use of the site. Agricultural use of the land is limited to cattle grazing and the land has insufficient carrying capacity to allow for a viable agricultural operation on the site.

The size of the subject land is 40ha and is too small to make a sustainable profit from cattle grazing, which is the only form of agriculture that can be practised on the property given the physical constraints and limitations of the land. Given the above, the land is not considered to be regionally important agricultural lands, and the RU1 Primary Production Zone is not considered appropriate in this instance.

The Gateway determination quotes advice from DPI Agriculture (**Attachment DPI (Agriculture) advice**) which states that the land is considered Class 3 agricultural lands that is suitable for grazing and cropping in rotation. This advice appears to be based on a desktop analysis that ignores the physical constraints of the land including the size and slope of the land, which significantly limit the agricultural production values of the land.

Further, it is noted that the RU1 Primary Production zone in the Shoalhaven is generally reserved for Class 1 and Class 2 agricultural lands and the advice from DPI Agriculture further demonstrates that the land is incorrectly zoned.

DPIE response:

The Department's assessment that the planning proposal is inconsistent with the strategic planning framework provided by the Illawarra Shoalhaven Regional Plan and the Shoalhaven Growth Management Strategy remains unchanged.

In regard to Direction 2.1 "Provide sufficient housing supply to suit the changing demands of the region" of the Illawarra Shoalhaven Regional Plan the Direction specifically states (p.33) "there is enough potential for the market to supply housing types over the long-term therefore no new release areas are required for Wollongong, Shellharbour and Shoalhaven beyond those already identified under the Illawarra Urban Development Program and the Shoalhaven Growth Management Strategy".

This view is supported by Council's exhibited draft Local Strategic Planning Statement, which at page 22 states:

"Shoalhaven is well supplied with rural-residential properties – lots between 2,000-10,000m² on the urban fringe. The rezoning of rural land to create more rural-residential properties is not supported because of the loss of productive agricultural land and potential conflicts between agricultural and residential uses. This form of housing is often poorly located and does not make a useful contribution to housing supply or affordability. This issue is addressed by Planning Priority 9 Supporting agriculture and aquaculture."

Planning Priority 9 at page 42 of the LSPS states:

"Our land use planning must confirm the strategic direction for the management of productive rural land. This requires the identification and retention of agricultural land, protecting it from development that removes it as a resource, such as rural-residential subdivision. We also need to reduce its fragmentation and minimise potential land use conflicts (odour, noise, appearance) with other uses such as residential. The contribution of rural-residential subdivisions to Shoalhaven's dwelling supply needs to be reviewed, and no further subdivision of this kind will be supported until this strategic work is completed."

The reference in the Regional Plan that Councils are required to "plan for the mix of housing that suits the projected growth, changing demographics (such as an ageing population) and market demand particular to their area" is intended to

apply to land that has been identified for development under the Illawarra Shoalhaven Regional Plan and Shoalhaven Growth Management Strategy.

In relation to Berry, the Shoalhaven Growth Management Strategy (p.87) states:

- There is land surrounding the town that is identified as prime crop and pastureland that should be retained for agricultural purposes.
- There are existing opportunities for increasing densities within the existing urban framework acknowledging flooding constraints, without undermining landscape, rural and heritage values.
- It is expected that growth in the short to medium term will occur within the existing urban boundaries of the township and on the large parcel of residentially zoned land to the south-west of the town.
- There is some potential to consider additional long-term residential growth on the south western edge of the village and this has been identified as a long-term investigation area.

The site is not strategically identified for residential development in any strategy.

It is noted that neither the planning proposal nor the proponent's justification address Regional Plan Direction 2.2 "Support housing opportunities close to existing services, jobs and infrastructure in the region's centres". This Direction refers specifically to increasing housing activity in the Berry Centre.

The proposal is not consistent with this Direction as it proposes new residential development remote from Berry Centre.

In relation to Regional Plan Direction 4.1 "Protect regionally important agricultural lands as an asset to food and fibre production", the Department has received formal advice from Regional NSW (DPI Agriculture) confirming the site's regional agricultural value and advising that it objects to the planning proposal (**Attachment DPI (Agriculture) advice**). DPI's letter is summarised as follows:

- The subject land contains Biophysical Strategic Agricultural Land (BSAL); land with high quality soil and water resources capable of sustaining high levels of productivity, and critical to the State's agricultural industries. Resources such as BSAL supported agriculture contributing \$73 million to the economy of the Shire in 2016 (ABS Statistics 2016).
- The site currently functions to separate the existing R5 Rural Residential area from the RU4 Small Lot Primary Production area, providing an important buffer to prevent land use conflict.
- The adjacency of rural residential development to the subject land and the insufficient numbers of rural residential allotments in the Berry locality that are submitted as reasons to justify the proposal, are not supported. The rezoning of this land is not identified within the Illawarra Shoalhaven Regional Plan, any rural lands strategy or Local Strategic Planning Statement. Without strategic consideration it is unclear as to whether the location and size of such a proposal is appropriate. Any proposed rural residential development that is strategically assessed will consider a range of factors and localities across the Shire to identify where and whether rural residential development should be supported.
- The minimum lot size of 40ha size was agreed by a strategic process as part of the development of the Shoalhaven Local Environmental Plan 2014 (LEP) by Council to be an appropriate lot size to support agriculture in the Shire. Justifying the subdivision of land on the basis that the subject land (40ha) is too small to support agriculture would apply equally to all rural land across the local government area undermining Shoalhaven's entire

	<p>rural planning framework.</p> <p>The Regional Strategy (Direction 4.1) specifically mentions agricultural land in Berry is one of the features of the landscape that attracts both residents and tourists (p.47).</p> <p>The Department considers that the planning proposal is generally consistent with Regional Plan Direction 5.1 “Protect the region’s environmental values by focusing development in locations with the capacity to absorb development”. This is because the proposal seeks to protect part of the Berry wildlife corridor which is identified as important environmental land in the Regional Plan, via application of an E2 Environmental Conservation zoning. However, there would be the potential for far greater environmental benefits if a strategic approach was taken rather than the proposed spot rezoning.</p> <p>The Department’s assessment raised concern about potential impacts on environmental land from future clearing of vegetation around dwellings and other edge effects. Concern is also raised that the proposed 1ha minimum lot size proposed for the E2 zone would result in fragmentation of the environmental land on site and this is at odds with the intention of providing an environmental corridor.</p> <p>It is considered that the environmental benefits provided by the planning proposal do not provide sufficient strategic merit to justify the planning proposal given the negative impact the proposal would have on agricultural land.</p> <ul style="list-style-type: none"> • <i>The proposal is inconsistent with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 3.1 Residential Zones and 5.10 Implementation of Regional Plans and the inconsistencies have not been adequately justified.</i> <p>Proponent’s response:</p> <p><u>1.2 Rural Zones.</u></p> <p>The Planning Proposal is potentially inconsistent with the Direction in that it will result in a loss in rural zoned land. However, any inconsistency is considered to be minor in nature, as the proposal represents an infill type development and is reflective of the zoning of the adjoining land. In addition, the proposal is justified by a study prepared in support of the proposal, consistent with the requirements of this Direction.</p> <p>The planning proposal also seeks to alter the minimum lot size applicable to the subject land from 40 hectares to 1ha. However, this is considered to be of minor significance given this is consistent with the existing lot sizes of the adjoining rural residential development immediately to the east and only slightly smaller than the lots to the west.</p> <p>As outlined in this response, the Gateway assessment argues that the planning proposal is inconsistent with the adjoining lot sizes and therefore inconsistent with this Direction. As outlined in the response to Point 5 below, this is a clear error in the assessment as the immediately adjoining land is a large lot residential subdivision with 1ha lots, approved under previous provisions of the Shoalhaven LEP 1985. Further information on this Direction is provided in the Agricultural Assessment supporting the planning proposal.</p> <p><u>1.5 Rural Lands</u></p> <p>The planning proposal is potentially inconsistent with the Direction in that the proposal will result in a loss in rural zoned land through a rezoning, and reduction in the minimum lot size. However, the planning proposal is consistent with the Rural Planning Principles and Rural Subdivision Principles outlined in the Direction (previously contained within SEPP (Rural Lands) 2008. Further</p>
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information on this Direction is provided in the Agricultural Assessment supporting the planning proposal.

3.1 Residential Zones

This Direction specifically seeks to encourage a variety of housing types to provide for existing and future housing needs. The planning proposal seeks to address a specific demand for rural lifestyle lots in the northern Shoalhaven.

Further, the subject land is located between two existing rural residential areas and will utilise existing infrastructure networks and services. The planning proposal is not inconsistent with the terms of this direction.

5.10 Implementation of Regional Plans

The proponent has referred to information provided in the planning proposal in relation to consistency with the Illawarra Shoalhaven Regional Plan particularly Directions 2.1, 4.1 and 5.1 and consistency with the South Coast Regional Conservation Plan. This information is provided in the previous section in relation to consistency with the Illawarra Shoalhaven Regional Plan.

In relation to the South Coast Regional Conservation Plan, the applicant's justification states that the Berry Wildlife Corridor is mapped as regionally significant corridor in the South Coast Regional Conservation Plan (SCRCP). The SCRCP outlines a number of priority actions to protect, enhance and restore regionally significant wildlife corridors, to create vegetated linkages between significant patches of vegetation.

The planning proposal protects the existing mapped wildlife corridor in the western portion of the site in perpetuity consistent with the aims of the SCRCP, through an E2 Environmental Conservation one and the use of a voluntary management plan. The planning proposal also seeks to restore and enhance this corridor to provide a vegetated corridor associated with the riparian area running east-west through the site. Further the planning proposal seeks to enhance the corridor value of the Beach Road reserve, by providing a 15m deep vegetated corridor along the Beach Road frontage of the subject land.

The planning proposal also seeks to establish a new north-south corridor associated with the riparian area running north south through the site, providing a new vegetated link between the significant patches of vegetation to the south of the site, and a significantly improved environmental outcome in this area. The planning proposal significantly addresses the priority actions in the SCRCP to protect, enhance and restore important wildlife corridors.

DPIE's response:

Direction 1.2 Rural Zones:

The proposal's inconsistency with Direction 1.2 is not considered minor because the proposed R5 zoning of the site and 1ha minimum lot size will allow much denser development than the current zoning and minimum lot size controls on the site and on adjoining land zoned RU1 to the south and north which has a 40ha minimum lot size control.

It is common practice for minimum lot sizes to be applied that reflect the intended planning outcomes for an area rather than replicating the existing subdivision pattern. While the current minimum lot sizes may be larger than some of the existing lots in the area approved under historical subdivisions, it is clear that Council intends to limit subdivision potential in the RU1 zone.

With regard to the advice provided by DPI Agriculture, it is considered that the Agricultural Assessment prepared in support of the planning proposal does not provide adequate justification for the planning proposal's inconsistency with the Direction.

Direction 1.5 Rural Lands

The Department's assessment that the planning proposal is inconsistent with the Direction remains. In particular, the planning proposal does not meet a number of the requirements of the Direction including:

- consistency with the relevant strategic planning for the area (clause (4)(a));
- minimises fragmentation of rural land and reduces risk of land use conflict particularly between residential land uses and other rural land uses (clauses (4)(g) and (5)(a)).

This is because the proposal is not consistent with either the Illawarra Shoalhaven Regional Plan or the Shoalhaven Growth Management Strategy. The proposal does not minimize fragmentation of rural land or reduce the risk of land use conflict as it would result in additional residential development.

Section 3.1 Residential Zones

The Department's assessment that the planning proposal is inconsistent with the Direction remains the same. In particular, the proposal is not consistent with the requirement to reduce the consumption of land for housing and associated urban development on the urban fringe (clause 4(c)). It also does not make more efficient use of existing infrastructure and services (clause 4(b) because the site does not have access to municipal sewer and so future development would need to provide on-site waste-water treatment or require extension of the sewer.

Section 5.1 Implementation of Regional Plans

As discussed previously, it is considered that the proposal to zone the vegetation corridor located on the site that forms part of the Berry Wildlife Corridor to an E2 Environmental Conservation Zone is generally consistent with Direction 5.1 the Illawarra Shoalhaven Regional Plan.

The Department's assessment that the planning proposal is overall inconsistent with the Regional Plan (particularly Directions 2.1, 2.2 and 4.1) and therefore is also inconsistent with Section 9.1 Direction 5.1 Implementation of Regional Plans, remains unchanged.

- *The proposal is inconsistent with the Southern Regional Planning Panel's November 2016 report on the nearby Beach Road Rezoning Review which recommended "there should not be further consideration of rezoning proposals for rural residential subdivision until Shoalhaven City Council has developed a rural residential strategy (it is understood that there is a current resolution to develop a new position on rural residential land) and has identified regionally important agricultural lands."*

Proponent's response:

The last comprehensive review of rural lands in the Shoalhaven was completed in the 1990s and resulted in major amendments to the Shoalhaven LEP known as the Rural Plan. Among other things, the Rural Plan rezoned a number of rural areas to allow for residential development to occur.

As part of the preparation of the Rural Plan, our land was proposed by Shoalhaven City Council to be rezoned to a rural lifestyle zone (Rural 1(c) in a later exhibited version of the draft LEP amendment. It was also mapped as part of 'Special Rural Lifestyle Area No.13' in the final draft LEP amendment that was submitted to then Department of Urban Affairs and Planning (DUAP) for gazettal.

However, at the time DUAP did not agree to rezone our land (and other adjacent land to the south) as the lots in question had been added by the Council after the initial 1994 exhibition of the draft plan. Our land was ultimately zoned Rural

	<p>1(a), which reflects the current RU1 Zone under the Shoalhaven LEP 2014.</p> <p>Despite the assertions made in the Gateway determination, our land was proposed by Shoalhaven City Council to a rural lifestyle zone in the only comprehensive review of rural lands undertaken by Council since the introduction of the 1985 LEP. If it were not for the procedural errors on behalf of the Council at the time (not including our land in initial exhibited draft LEP), then our land would already be zoned either R5 Large Lot Residential or RU4 Small Lot Primary Production consistent with the adjoining zones.</p> <p>In July 2000, the land immediately east of our land was rezoned to facilitate a rural residential development despite not being proposed by Council in the Rural Plan process. The rezoning of the adjoining site ultimately resulted in our land being located between a rural residential development to the east and a small lot rural lot subdivision to the west. Therefore our land now presents as an infill rural area between two existing rural lifestyle developments, having previously been proposed by Council to be rezoned to a rural lifestyle zone.</p> <p>It is noted that the preparation and implementation of the Rural Plan process took approximately 16 years to complete. The Gateway determination recommends that the Planning Proposal not proceed until the next review of rural lands is completed by Shoalhaven Council, however, staff have indicated that this strategy is likely to be many years away from being completed. Given that our land has previously been identified and proposed by Council to be rezoned through the Rural Plan process, it is not considered appropriate to wait for this long-term project to be finalised while the market is demanding this housing product in the short term.</p> <p>Department's response:</p> <p>The Department's assessment remains unchanged. Council's proposed rezoning of the site, and adjacent sites, to a rural lifestyle zone during preparation of the Rural Plan amendments (Shoalhaven LEP 1985 (Amendment No. 127)) were not supported by the Department of Urban Affairs and Planning at the time because the Department was concerned about impacts on regionally important agricultural land. The Department requested that a rural zoning was applied to the site and adjacent sites to reflect the agricultural values of the land which Council subsequently agreed to.</p> <p>In relation to the large lot residential development adjoining the site to the east (known as the Campbell's Run subdivision – refer Figure 3 below), which was rezoned in 2000 via Shoalhaven LEP 1985 (Amendment No 166), this rezoning provided a significant public benefit as it included the dedication of part of Coomonderry Swamp and it's transfer to the National Parks Estate.</p>
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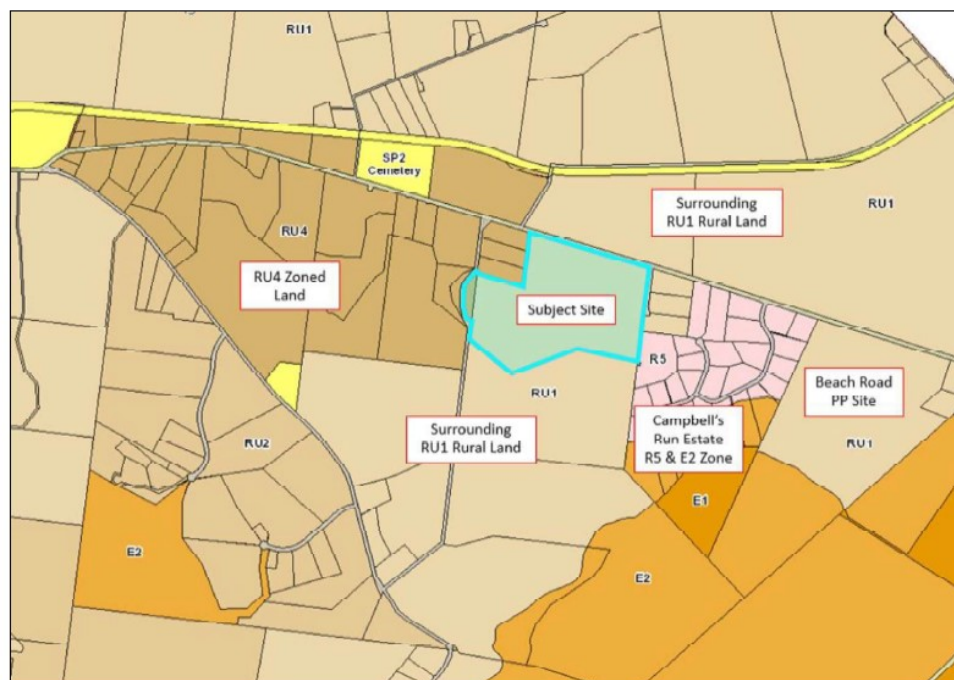


Figure 3 – Surrounding land map (source: Shoalhaven City Council Report on Planning Proposal document)

In considering the strategic merits of the Rezoning Review for the Planning Proposal at 510 Beach Road, which is located further east of the site (refer Figure 3 above), the Regional Planning Panel considered the key question of whether the achievement of strategic biodiversity objectives and the increase in rural residential land outweighs the strategic impact of the loss of agriculturally viable land (**Attachment - Joint Regional Planning Panel report on 510 Beach Road Berry Planning Proposal**).

The Panel determined that despite the agricultural value of the site, there was public benefit in ensuring an environmentally significant wetland (Coomonderry Swamp) is held in public ownership.

The Panel, however, identified that other rural sites in the area may also seek to rezone their land and identified that Shoalhaven City Council needed to address this strategically to avoid future ad-hoc decisions.

- *The proposal will lead to the loss of viable agricultural land on the site and may create a precedent for adjoining rural lots located south of the site under consideration for similar proposals.*

Proponent's response:

The size of the subject land is 40ha and 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 given the physical constraints and limitations on the land. Given the above, the land is not considered to be regionally important agricultural lands, and the RU1 Primary Production zone is not considered appropriate in this instance.

The Gateway determination quotes advice from DPI Agriculture which states that the land is considered Class 3 agricultural lands that is suitable for grazing and cropping in rotation. This advice appears to be based on a desktop analysis that ignores the physical constraints of the land including the size and slope of the land, which significantly limit the agricultural production values of the land.

Further, it is noted that the RU1 Primary Production Zone in the Shoalhaven is generally reserved for Class 1 and 2 agricultural lands, and the advice from DPI

Agriculture further demonstrates that the land is incorrectly zoned.

In relation to 'precedent', the land at 510 Beach Road (east of our land) was subject to a site-specific planning proposal to be rezoned to allow a large lot residential subdivision. This land was not identified by Council through the Rural Plan process, however, was ultimately supported by Council as it had previously been considered as part of LEP amendment known as Campbell's Run which rezoned the land immediately east of our property. It is noted that this planning proposal received a favourable Gateway determination despite not being identified through the Rural Plan process.

If precedent was a consideration in the assessment of Planning Proposals, then it is clear that a precedent has been established through the rezoning of 510 Beach Road. However, the difference between our site and 510 Beach Road is that our site was identified by Council through the Rural Plan process and specifically addresses key actions in the Regional Plan to protect and enhance regionally significant wildlife corridors (which 510 Beach Road does not).

Nevertheless, we are informed that the Department's Guidelines for Preparing Planning Proposals outline what is considered in the assessment of Planning Proposals. Based on the information in the Department's Guidelines, each planning proposal is to be considered on its own merits, and precedent is not a consideration in the assessment process as outlined in the Guidelines.

However, it is fair to say that decisions of both Council and the Department create expectations (rather than precedent), that there will be consistency in the assessment process. So we are shocked that our Planning Proposal was not supported, given that the proposal at 510 Beach Road was, despite not forming part of the Rural Plan process, having less strategic merit and not adequately addressing the agricultural capabilities of their land.

Department's response:

The Department's assessment that the planning proposal will lead to a loss of viable agricultural land on the site and the potential to create a precedent or expectation for rezoning of other rural land in the vicinity remains the same. This assessment is supported by the DPI (Agriculture) advice previously discussed.

The proposal itself identifies two nearby sites for future rural residential development in its long term rural residential strategy.

The Department's Gateway decision to refuse the planning proposal will assist to discourage similar ad-hoc proposals on surrounding RU1 zoned land prior to Council preparing a strategy for the area as recommended by the Regional Planning Panel.

- *The proposal is not consistent with the planning controls or local character of the surrounding area.*

Proponent's response:

This finding raises significant concerns about the adequacy of the assessment undertaken on the Planning Proposal. Not only do the assertions in the assessment report completely ignore the prevailing character and subdivision pattern of the locality, this finding is used to justify the reasons for not supporting the Planning Proposal throughout the assessment.

The Gateway determination states that the land is not consistent with the planning controls or local character of the surrounding area, as the land to the east and west of the site have mapped minimum lot sizes of 10ha under the Shoalhaven LEP. However, this assessment completely ignores the fact that the land to the east has an existing rural residential subdivision consisting of 28 lots (ranging from 1ha to approximately 4ha in size), and the land to the west of our land presents as a rural lifestyle development with a diverse mix of smaller lot

	<p>sizes (starting from 2ha) consistent with the previous rural lifestyle zoning over the land.</p> <p>The Gateway determination asserts that the land either side of our land contains lots with a minimum lot size of 10ha, which is not reflective of the existing subdivision patterns and character of the area. Our land presents as an infill development opportunity, located between an existing rural residential subdivision to the east and rural lifestyle subdivision to the west.</p> <p>If this simple error in the assessment was rectified, it is our view that there would be no justification for not issuing a Gateway determination for our Planning Proposal to proceed.</p> <p>Department's response</p> <p>The Department's assessment remains unchanged. The current subdivision pattern is varied with a mix of large and small lots and provides a diverse rural character of the area (Refer Figure 3 above). The planning proposal would fragment the site and convert it to rural residential development which would increase the density of development and impact on the prevailing rural character.</p> <p>The planning proposal would also raise expectation that adjoining rural lots located to the south and in the surrounding area generally would also be supported for further rural residential development.</p> <ul style="list-style-type: none"> <i>The rezoning of any rural land in this location should be considered through a Council led strategic approach rather than as a spot rezoning.</i> <p>Proponent response:</p> <p>We will be waiting years. The market is demanding this product now. This is not spot rezoning (refer to planning history and location).</p> <p>Department's response:</p> <p>The Department's position is unchanged. It is acknowledged that the demand for rural residential development is high in the Berry area due to its high amenity values and proximity to beaches and major urban areas such as Wollongong and Sydney.</p> <p>However, this does not justify the loss of productive rural land which contributes to the local economy via agricultural production as well as through tourism.</p> <p>Council has prepared a draft Local Strategic Planning Statement which provides an action to "prepare a rural lands strategy to identify strategically important resource lands and the land use planning mechanisms to support viable agricultural activities" to be prepared over the medium term. The LSPS also states that the Shoalhaven is already well supplied with rural residential properties.</p> <p>Council could consider staging the preparation of a rural land strategy, commencing with the Berry area, given the demand for development. It is important that this work is undertaken in consultation with relevant agencies, particularly DPI (Agriculture) and the Department of Planning, Industry and Environment and considers opportunities to protect important agricultural and environmental areas.</p>
Material provided in support of application/proposal	<p>The proponent has provided the following documents as part of their submission (Attachment - Letter from proponent):</p> <ul style="list-style-type: none"> Shoalhaven City Council Determination Planning Proposal document

	<ul style="list-style-type: none"> • Assessment Report Wire Lane • Proposed and Adjoining Development Plan • Concept Layout Plan • Proposed Zoning and VMP Plan • Gateway determination review application form
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Department's assessment

Assessment summary	<p>The Department's position remains unchanged and it is recommended that the planning proposal not proceed. The proposal does not demonstrate strategic merit to justify the loss of 40ha of viable agricultural land. It is considered that additional rural residential development is not needed at this stage and should be considered through a strategic approach.</p> <p>The Illawarra Shoalhaven Regional Plan (Regional Plan) identifies there is enough potential for the market to supply housing across a range of locations and housing types for the long term and that no new release areas are required for Shoalhaven beyond those already identified under the Shoalhaven Growth Management Strategy (GMS).</p> <p>The Regional Plan and the GMS identify the Berry centre as the focus for increased housing activity. The subject site is not strategically identified for housing.</p>
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COMMISSION'S RECOMMENDATION

Reason for review: A determination has been made that the planning proposal should not proceed.

Recommendation	<input type="checkbox"/>	The planning proposal should not proceed past Gateway.
	<input type="checkbox"/>	<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The planning proposal should proceed past Gateway in accordance with the original Determination.

Any additional comments: