



26 November 2018

Advice on Planning Proposal  
123 Golden Valley Road, Jamberoo  
(PP\_2017\_KIAMA\_004\_00)

## 1. INTRODUCTION

1. On 25 October 2018, the Independent Planning Commission NSW (**Commission**) received a request for advice from the NSW Department of Planning and Environment (**Department**) regarding a planning proposal to rezone land at 123 Golden Valley Road, Jamberoo (**site**).
2. Mr Branko Simicic (**Proponent**) seeks to amend the planning controls of the Kiama Local Environmental Plan 2011 (**KLEP 2011**) by rezoning land from rural to residential and amending the minimum lot size, floor space ratio (**FSR**) and building height controls.
3. The Commission has been requested by the Department, as delegate of the Minister for Planning (**Minister**), under section 3.34(5) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) to review the planning proposal and prepare advice concerning its merits. The Department requires the Commission's advice to contain a recommendation to the Minister confirming whether, in the opinion of the Commission, the planning proposal should proceed to finalisation and if the Minister determines that the planning proposal should proceed to finalisation what, if any, changes should be made to the proposal given the issues raised.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Mr Chris Wilson (Chair) and Mr John Hann to constitute the Commission for the request for advice.

### 1.1 Subject site

5. The site has an area of approximately 4.7 hectares (ha) and is legally described as Lot 2 DP 626183 at 123 Golden Valley Road, Jamberoo in the Kiama local government area (**LGA**).
6. The site is located at the south-eastern extent of Jamberoo village and is approximately 30 kilometres (km) south of Wollongong and 7 km north-west of Kiama. Jamberoo village is situated in a rural residential setting. The Illawarra Escarpment is located to the west of Jamberoo.
7. The site does not contain any significant vegetation and is periodically used for cattle grazing. There is a stock water supply dam located adjacent to the southern site boundary. Residential development is located along the northern and western boundaries of the site, generally comprising one and two-storey detached dwellings.
8. The site is identified in the Kiama Urban Strategy 2011 (**KUS**) as a location that may provide for approximately 47 residential lots comprising Stage 2 (5-10 years) of the greenfield expansion of Jamberoo. *Figure 1* identifies the location of the site.

Figure 1: Site location at 123 Golden Valley Road, Jamberoo (Base source: SIX Maps)



## 1.2 Department's request for Gateway Determination review

9. On 7 August 2017, the Department determined that the planning proposal should proceed and accordingly issued a Gateway Determination, subject to conditions (**Gateway Determination**).
10. The Commission has been requested to provide advice on the merits of the planning proposal and make a recommendation to the Minister on whether the Department should proceed to make the proposed amendment to the KLEP 2011.

## 1.3 Summary of Planning Proposal and Gateway Determination

11. The Gateway Determination relates to a planning proposal to amend the planning controls that apply to land at 123 Golden Valley Road, Jamberoo. The planning proposal specifically seeks to:
  - rezone the site from RU2 Rural Landscape to R2 Low Density Residential;
  - amend the lot size map from 40 ha to 800 square metres (m<sup>2</sup>);
  - introduce a maximum height of building control of 8.5 metres (m); and
  - introduce a FSR control of 0.45:1.

The proposed controls are the same as the current controls applicable to Jamberoo.

12. A chronology of the history of the planning proposal is provided below:
  - September 2016 – the Proponent lodged the planning proposal with Kiama Municipal Council (**Council**);

- 18 October 2016 – Council resolved to defer consideration of the planning proposal for one month to allow community input;
- November-December 2016 – Council conducted a non-statutory public exhibition process to allow community input into the planning proposal (see paragraph 13);
- 20 December 2016 – Council resolved to not support the planning proposal;
- 21 February 2017 – the Proponent submitted a request for a rezoning review to be conducted by the Southern Joint Regional Planning Panel (**JRPP**);
- 12 May 2017 – the JRPP determined the planning proposal should proceed to Gateway, subject to additional requirements to be considered as part of the Gateway Determination. The JRPP also invited Council to be the Relevant Planning Authority;
- 22 June 2017 – Council accepted the role of the Relevant Planning Authority;
- 13 July 2017 – Council referred the planning proposal to the Department for Gateway Determination;
- 7 August 2017 – the Department issued the Gateway Determination under delegation of the Minister with conditions;
- 20 November 2017-12 January 2018 – Council formally exhibited the planning proposal in accordance with Condition 2 of the Gateway Determination (see paragraphs 14, 15 and 16);
- 17 April 2018 – Council resolved to endorse the planning proposal and to request the Department make the amendments to the KLEP 2011;
- 18 April 2018 – Council formally requested the Department to amend the KLEP 2011; and
- 25 October 2018 – the Commission received a request from the Department to review the planning proposal and prepare advice concerning its merits.

#### **1.4 Exhibition of the Planning Proposal**

13. A total of 148 submissions were received by Council during the non-statutory public exhibition of the planning proposal between November and December 2016. Of these, 141 submissions objected to the planning proposal and 7 submissions provided support.
14. A total of 132 submissions were received by Council during the formal public exhibition of the planning proposal between November 2017 and January 2018, as required by Condition 2 of the Gateway Determination. Of these, 114 submissions objected to the planning proposal and 18 submissions provided support.
15. The key issues raised during the formal public exhibition in support of the planning proposal related to the:
  - site being identified for future urban expansion;
  - enhancement of the Jamberoo village character;
  - growth of Jamberoo village to support existing services;
  - additional residential lots to support an increasing population; and
  - size of the site which is unable to sustain livestock in isolation.
16. The key issues raised during the formal public exhibition in objection to the planning proposal related to:
  - Council's previous decision not to endorse the planning proposal;
  - the loss and fragmentation of agricultural land;
  - erosion of the Jamberoo village character;
  - impacts on Aboriginal cultural heritage;
  - traffic impacts; and

- impacts on biodiversity.

## 2. THE DEPARTMENT'S GATEWAY DETERMINATION REPORT

17. The Department's Gateway Determination report dated 31 July 2017 (**Gateway Determination Report**) states that the land is identified for urban release under the KLEP 2011. Further, the site forms a logical expansion of the existing urban area and proposes measures to form an appropriately defined and accessible southern boundary to Jamberoo village.
18. The Gateway Determination Report recommended the planning proposal proceed to Gateway with conditions as it has strategic and site-specific merit in that:
- *the site is identified in the Urban Strategy as a release area and will provide housing close to services, jobs and infrastructure;*
  - *there are no known significant environmental values, resources or hazards on the site;*
  - *whilst a small area of agricultural land will be removed from primary production, the site does not contain significant agricultural land;*
  - *the proposed extension of the existing residential area is not expected to create an unacceptable visual impact; and*
  - *infrastructure (water, sewer, electricity and telecommunications) can be provided to service up to 50 residential lots.*

### 2.1 Referral of Gateway Determination to the Commission

19. On 25 October 2018, the Commission received a request from the Department to review the planning proposal and prepare advice concerning its merits.
20. To assist the Commission in its review, the Department's referral included:
- Council's report recommending the proposed amendment be forwarded to the Department to make;
  - Council's written request that the planning proposal proceed;
  - the Department's planning proposal review report;
  - the Department's Gateway Determination Report and Gateway Determination; and
  - associated planning proposal documentation.

## 3. THE COMMISSION'S MEETINGS AND SITE INSPECTION

21. As part of the planning proposal review, the Commission met with the Department and the Proponent and undertook a site inspection.
22. All meeting transcripts and site inspection notes are available on the Commission's website.
23. On 2 November 2018, Council declined an invitation to meet with the Commission.

### 3.1 Meeting with the Department

24. On 14 November 2018, the Department met with the Commission to discuss the planning proposal and Gateway Determination. Key points of discussion included the following:
- the Department provided a history of the planning proposal including the rezoning

- review that was carried out by the JRRP;
- the Department confirmed the site forms part of several urban expansion sites identified in the KUS and that the proposal is consistent with the staging sequence outlined in the KUS;
  - the Department confirmed that there remains a lack of housing in the Kiama LGA;
  - the Department advised that the planning proposal provides an appropriate density and would not compromise the village character of Jamberoo; and
  - the Department confirmed that it was satisfied that the amendments made to the Kiama Development Control Plan 2012 (**Kiama DCP**) would address any site-specific constraints at the development assessment stage, including constraints relating to visual impacts and Aboriginal cultural heritage.

### 3.2 Meeting with the Proponent

25. On 14 November 2018, the Proponent met with the Commission to discuss the planning proposal. Key points of discussion included the following:
- the Proponent provided an explanation of the process that has been carried out to date and identified the key issues that have been considered in preparing the planning proposal;
  - the Proponent provided an overview of the economic assessment that was carried out in support of the planning proposal;
  - the Proponent advised that the future subdivision of the site would increase the population of Jamberoo by approximately 13 per cent and that the increase would help sustain services within Jamberoo;
  - the Proponent confirmed that future development on the site would be required to comply with the provisions of the Kiama DCP which would address the site-specific constraints including constraints relating to visual impacts and Aboriginal cultural heritage; and
  - the Proponent provided an overview of the community's views and the general response received in relation to the planning proposal.

### 3.3 Site inspection

26. On 14 November 2018, the Commission conducted an inspection of the site. The site inspection allowed the Commission to view the site and the surrounding rural residential environment in the context of the surrounding area. Notes of the site inspection are available on the Commission's website.

## 4. ADDITIONAL INFORMATION

27. On 14 November 2018, the Commission received additional information from the Proponent including a copy of an Economic Assessment prepared by Urbacity (2017).
28. On 15 November 2018, the Commission requested additional information from the Department including confirmation on whether the urban expansion sites identified in the KUS have been rezoned and confirmation on whether development has occurred on land adjacent to the site, located to the south west (identified as site 27(a)).
29. The Department provided this information to the Commission on 15 November 2018.

## 5. THE COMMISSION'S CONSIDERATION

30. In reviewing the Gateway Determination, the Commission has carefully considered the following material (the **Material**):
- Planning Proposal – Rezoning to R2 Low Density Residential, Lot 2 DP 626183, Golden Valley Road, Jamberoo prepared by TCG Planning and dated 21 September 2016;
  - Rezoning Review prepared by the JRPP and dated 12 May 2017;
  - Report to Council Seeking Final Endorsement of the Planning Proposal prepared by Council and dated 17 April 2018;
  - Gateway Determination Report endorsed by the Department and dated 31 July 2017;
  - Gateway Determination prepared by the Department and dated 7 August 2018;
  - Visual Impact Assessment (**VIA**) prepared by Chris & Charlotte Web and dated September 2017;
  - Planning Proposal Review report prepared by the Department and dated 29 June 2018;
  - Additional information received from the Proponent on 14 November 2018 (see paragraph 27); and
  - Additional information received from the Department on 15 November 2018 (see paragraph 28).

### 5.1 Strategic Context

#### Key Strategic Planning Documents

31. The Commission has identified the key strategic planning documents in reviewing the planning proposal as follows:

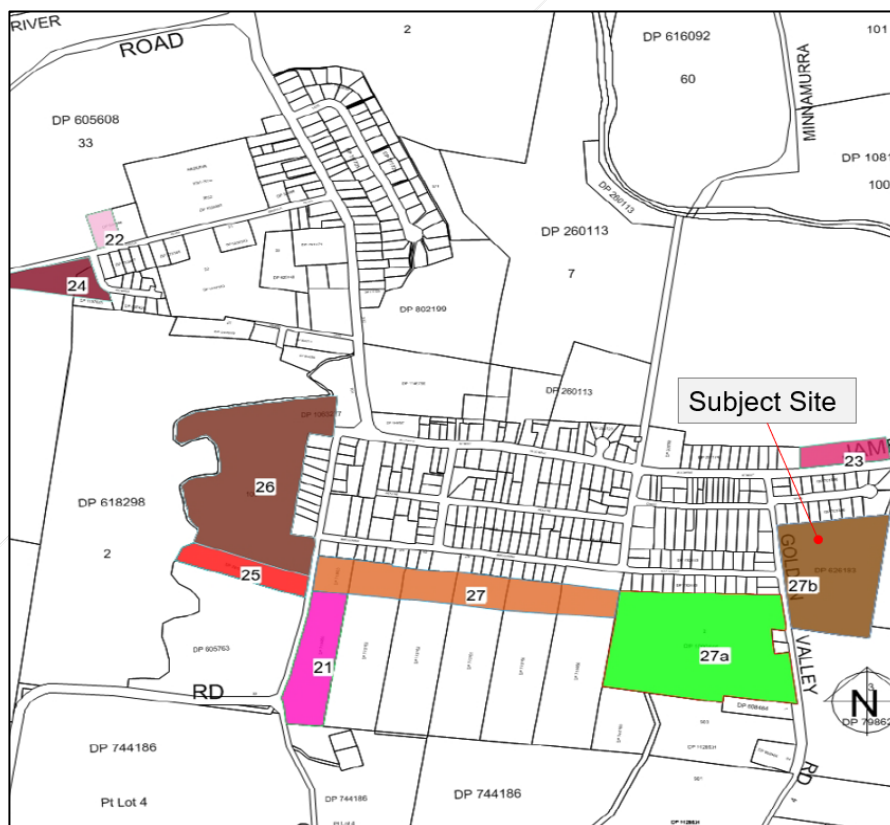
##### 5.1.1 Illawarra-Shoalhaven Regional Plan

32. The Illawarra-Shoalhaven Regional Plan 2015 (**Regional Plan**) provides the strategic policy, planning and decision-making framework to guide sustainable growth across the region over the next 20 years.
33. The Regional Plan identifies a projected housing need of 2,850 dwellings for the Kiama LGA over a 20-year period to 2036. The Regional Plan notes that there is not enough land or 'market ready' infill development in the planning pipeline to meet this demand.
34. Direction 2.1 of the Regional Plan aims to provide sufficient housing supply to suit the changing demands of the region. Further to this, Action 2.1.1 requires the NSW Government to collaborate with Council to review housing opportunities within the Kiama LGA so that it can respond to changing housing needs.
35. The Regional Plan also acknowledges the long-term importance to the economy of maintaining agricultural and resource production in the Illawarra-Shoalhaven region. Direction 4.1 of the Regional Plan aims to protect regionally important agricultural lands as an asset to food and fibre production.

### 5.1.2 Kiama Urban Strategy (2011)

36. The KUS was adopted by Council on 20 September 2011 to address population growth, housing needs and land release in the Kiama LGA. The KUS focuses on the protection of agricultural land and the natural environment while also considering urban infill and urban expansion options to address the Kiama LGA's future housing needs.
37. The KUS reflects the dwelling targets that were identified in the Illawarra Regional Strategy 2006-31 (**Regional Strategy**) to provide for the projected population growth throughout the region. The Regional Strategy has since been replaced by the Regional Plan.
38. The KUS identifies several greenfield urban expansion sites around Jamberoo that are to be included in a planning proposal. The subject site is identified as site 27(b) and is included from an urban design and village structure perspective as it would provide an appropriately defined and accessible southern boundary to Jamberoo village.
39. Site 27(b) is identified in the KUS as having an approximate dwelling yield of 47 lots comprising Stage 2 (5-10 years) of the greenfield expansion of Jamberoo. *Figure 2* identifies site 27(b) in relation to other sites in Jamberoo that are identified in the KUS for inclusion in a planning proposal.

*Figure 2: Sites identified for inclusion in a planning proposal (Base source: KUS)*



### Key Matters for Consideration

40. The key matters for consideration by the Commission in providing advice on the planning

proposal related to:

- its strategic merit; and
- site-specific issues including visual impact, Aboriginal cultural heritage impacts and connection to services and infrastructure.

### 5.1.3 Strategic merit

41. The Commission finds that the planning proposal is consistent with the Regional Plan as it will provide housing close to services, jobs and infrastructure. Further, the planning proposal would contribute to the Regional Plan's projected housing need for the Kiama LGA of an additional 2,850 dwellings over the next 20 years.
42. The Commission finds that the planning proposal is consistent with the KUS as the site is identified as an appropriately defined and accessible southern boundary to Jamberoo village that is contiguous to established residential development. Further, the site is identified in the KUS as an appropriate location for urban expansion comprising Stage 2 (5-10 years) of the greenfield expansion of Jamberoo, with an approximate yield of 47 residential lots.
43. The Commission notes that the JRPP's rezoning review also determined that the planning proposal has strategic merit because of the potential to contribute to strategic housing objectives for housing supply consistent with the Regional Plan and KUS.
44. The Commission also finds that the planning proposal does not compromise the strategic direction of the Regional Plan in relation to the protection of regionally important agricultural lands given the site is not mapped as Biophysical Strategic Agricultural Land under State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (**MPPEI SEPP**). Further, the site is identified under the MPPEI SEPP as a Future Residential Growth Area.
45. The Commission notes that the Department, in its Gateway Determination Report, acknowledges the proposal is inconsistent with the section 9.1 Directions under the EP&A Act (1.2 Rural Zones and 1.5 Rural Lands) as the planning proposal involves the rezoning of agricultural lands for residential development. However, the Commission accepts the Department's conclusion that these are minor and justifiable inconsistencies as the site is identified for future residential development under the KUS.
46. The Commission finds that the planning proposal has sufficient strategic merit as it would contribute to the future housing needs of the Kiama LGA and would not result in the loss of regionally important agricultural land.

### 5.1.4 Visual impact

47. The JRRP's rezoning review recommended a detailed visual assessment of the proposal be provided to ensure a landscape entry point to the village. Condition 1 of the Gateway Determination reflected the JRPP's recommendation and required the preparation of a visual analysis to address potential visual impacts.
48. The Proponent subsequently prepared a VIA that was publicly exhibited with the planning proposal. The VIA assessed the magnitude and sensitivity of visual impacts to be a Moderate to Moderate-Low impact. To mitigate the potential visual impacts, the VIA provided the following recommendations:



- ensure the subdivision reads as an extension to the existing Jamberoo urban area;
  - establish vegetation plantings to improve amenity and to reduce the apparent impact of the subdivision on external views into the developed site; and
  - implement planning controls to discourage the use of lightly-coloured and/or highly reflective roofing and building materials to assist in minimising the visual impact of the subdivision from a distance.
49. Chapter 33 of the Kiama DCP (Jamberoo Village) outlines requirements for development in residential and business zones in Jamberoo and incorporates the key recommendations of the VIA. A key objective of Chapter 33 is for development to be sympathetic to the existing and desired future low-density character of Jamberoo village.
50. The Commission notes that Chapter 33 specifies development controls to ensure that future development meets the desired future character of Jamberoo village. For development in the R2 Low Density Residential Zone, the following performance criteria are provided:
- the bulk and scale of new development shall be consistent with the desired future character of the Jamberoo village (Performance Criteria P6);
  - materials and finishes are to be sympathetic to the surrounding rural and natural settings (Performance Criteria P7);
  - adequate landscaping is to be provided to ensure the desired future character of the Jamberoo village is achieved (Performance Criteria P10); and
  - new development should be designed and located to preserve existing character and ensure views to farmland from the streetscape are maintained or introduced (Performance Criteria P19).
51. The Commission considers the performance criteria for development in the R2 Low Density Residential Zone, as specified under Chapter 33 of the Kiama DCP, reflect the recommendations for future development provided in the VIA.
52. The Commission finds that the potential visual impacts of the proposal have been adequately addressed through the planning proposal process and will be further addressed at the development assessment stage in accordance with the requirements of Chapter 33 of the Kiama DCP.

### 5.1.5 Aboriginal cultural heritage

53. In accordance with Condition 3 of the Gateway Determination, consultation was carried out by the Department with the relevant public authorities and organisations including the Office of Environment and Heritage (**OEH**) and the Illawarra Local Aboriginal Land Council (**ILALC**).
54. The OEH did not object to the planning proposal in principle and confirmed that two Aboriginal heritage sites (recorded as 52-5-0832 and 52-5-0833) identified on the site are now registered on the Aboriginal Heritage Information Management System (**AHIMS**) database and are therefore protected under the *National Parks and Wildlife Act 1974*.
55. The OEH recommended that Council and the Proponent consider measures to conserve site 52-5-0832 in particular through the appropriate siting of any future development, alternative zoning for areas of high significance and/or the incorporation of open space areas. Further to this, if harm to the recorded site cannot be avoided, the Proponent must then apply for an Aboriginal Heritage Impact Permit (**AHIP**). The Commission notes

that the requirement for an AHIP is triggered by the listing on the AHIMS.

56. While the ILALC did not object to the planning proposal, it raised concerns relating to the treatment of Aboriginal cultural heritage in Australia more broadly.
57. Draft Chapter 30 of the Kiama DCP (Heritage) is on exhibition until 26 November 2018 and aims to ensure Aboriginal cultural heritage is addressed as part of the development assessment process. Clause C3 of draft Chapter 30 requires an Aboriginal Cultural Heritage Assessment (**ACHA**) to be prepared for any development that is proposed on a site containing a recorded Aboriginal site or object.
58. The Commission notes that the two known Aboriginal heritage sites are now registered on the AHIMS database. Future development on the site would therefore require an ACHA to be prepared as part of the development assessment process and to satisfy the requirements of draft Chapter 30 of the Kiama DCP.
59. The ACHA must be prepared by a suitably qualified or experienced person and is to include background research relevant to the site, an on-ground site inspection and consultation with local Aboriginal people or organisations.
60. The Commission finds that the requirements relating to Aboriginal cultural heritage, as specified under draft Chapter 30 of the Kiama DCP, would ensure the protection of registered sites as part of any future development.

#### **5.1.6 Services and infrastructure**

61. The Commission notes that the planning proposal included a Services Feasibility Assessment that confirms water, electricity and telecommunications services can be provided to serve approximately 50 residential lots at the site.
62. The Commission notes that Sydney Water provided advice on the planning proposal and advised that the existing sewerage infrastructure at the site does not have capacity to accommodate future development on the site. The Commission acknowledges that the Proponent will be responsible for providing acceptable sewerage infrastructure to service the future residential lots and that this will be further evaluated at the development assessment stage.

#### **6. THE COMMISSION'S ADVICE**

63. The Commission has undertaken a review of the planning proposal, as requested by the Minister's delegate, as set out in paragraphs 19 and 20, and provides the following advice to the Department.
64. The Commission has reviewed and considered the Material set out in paragraph 30, met with the Department and the Proponent and carried out a site inspection.
65. For the reasons set out in paragraphs 41, 42 and 46, the Commission finds that the planning proposal demonstrates strategic merit and is consistent with the relevant strategic planning documents including the Regional Plan and KUS.
66. For the reasons set out in paragraphs 51 and 52, the Commission finds that visual impacts can be addressed as part of any future development assessment processes.

67. For the reasons set out in paragraphs 58, 59 and 60, the Commission finds that impacts on Aboriginal cultural heritage can be addressed as part of any future development assessment processes.
68. For the reasons set out in paragraphs 61 and 62, the Commission finds that the site can be adequately serviced.
69. The Commission recommends that the planning proposal proceed to finalisation in its current form.



**Chris Wilson (Chair)**  
Member of the Commission



**John Hann**  
Member of the Commission