

Planning Services

Planning proposal review

Dept. Ref. No:	PP_2017_KIAMA_004_00
LGA	Kiama Municipal Council
LEP to be Amended:	Kiama Local Environmental Plan 2011
Site / Address:	123 Golden Valley Road, Jamberoo
Proposal:	<p>The planning proposal (Attachment B) seeks to:</p> <ul style="list-style-type: none"> • rezone the site from RU2 Rural Landscape to R2 Low Density Residential; • reduce the minimum lot size from 40ha to 800m²; • introduce a maximum floor space ratio (FSR) of 0.45 to 1; and • introduce a maximum height of buildings of 8.5m. <p>The proposal is estimated to create an opportunity for 50 new residential allotments on the site, which has an area of 4.66ha.</p>
Reason for review request:	<p>The Department requests the advice of the Independent Planning Commission (IPC) regarding the merits of the planning proposal and if the Department should proceed to make the proposed amendment to the Kiama LEP 2011.</p> <p>The planning proposal was subject to a rezoning review as Council did not support the landholder's request to prepare a planning proposal. When Council first considered whether to submit the planning proposal to the Department for a Gateway determination, it deferred the matter to allow for non-statutory exhibition of the proposal in November – December 2016. There was considerable opposition to the proposal in response to the non-statutory exhibition. Council subsequently resolved to reject the proposal and the landowner lodged a rezoning review.</p> <p>The Southern Joint Regional Planning Panel determined that the proposal should be submitted for a Gateway determination because it demonstrated strategic and site-specific merit. Council accepted the role of planning proposal authority for the proposal.</p> <p>When the proposal was exhibited under statutory requirements following the Gateway determination, there were 132 submissions in total, of which 114 objected to and 18 supported the proposal.</p> <p>Council has requested that the Minister proceed to make the plan.</p>

1. SITE DESCRIPTION

The planning proposal applies to land at 123 Golden Valley Road, Jamberoo (Lot 2 DP 626183) (Figures 1 and 2, next page).

The site is 4.66ha, with its western boundary fronting Golden Valley Road.

The land is relatively flat, sloping to the south and east from a high point along the northern end of the lot. The groundcover is improved pastures with no native vegetation.

The land is used for cattle grazing and there is a stock water supply dam adjacent to the southern boundary.

The site is bounded on its northern and part western boundaries by the residential development of Jamberoo Village, which is typically low-density residential development of one-storey and two-storey dwelling houses.

To the east, south and part west are cleared rural lands used for grazing and dairying.



Figure 1: Locality map (source: Google Maps).



Figure 2: Site map (source: Google maps).

2. PURPOSE OF PLAN

The planning proposal (**Attachment B**) seeks to:

- rezone the site from RU2 Rural Landscape to R2 Low Density Residential;
- reduce the minimum lot size from 40ha to 800m²;
- introduce a maximum floor space ratio (FSR) of 0.45 to 1; and
- introduce a maximum height of buildings of 8.5m.

The proposal is estimated to create an opportunity for 50 new residential allotments on the site.

3. REZONING REVIEW

Background

Kiama Municipal Council considered the planning proposal on 18 October 2016 and deferred the matter to allow for community input before making a decision. Council staff had recommended the proposal proceed to Gateway. In response to the public exhibition of the proposal, there were 148 submissions (141 objections and seven submissions in support).

Council considered the matter again on 20 December and resolved not to support the planning proposal. Council considered that the issues of expansion of the Jamberoo Village boundary, village and rural character and rezoning of agricultural land should be revisited in light of the Illawarra-Shoalhaven Regional Plan and community sentiment. Council also resolved to engage with the Jamberoo community to locate areas suitable for development in Jamberoo and to assist the development of a Jamberoo-specific development control plan.

Rezoning review request

The landowner submitted a rezoning review request as Council did not support the request to prepare a planning proposal. The Southern Joint Regional Planning Panel (JRPP) determined that the proposal should be submitted for a Gateway determination because it had demonstrated strategic and site-specific merit.

The JRPP also recommended that the following additional requirements be considered as part of the Gateway determination:

- cumulative traffic impacts;
- DCP controls;
- visual analysis; and
- zoning and controls that provide an appropriate interface to agricultural lands and provide clear demarcation to the limits of the village.

The JRPP also recommended Council and the Department seek resourcing to prepare a rural lands strategy that identifies regionally significant rural lands. This issue has been addressed by Action 4.1.1 of the regional plan – to identify regionally important agricultural lands and reflect the outcomes in local planning controls.

Council accepted the role of planning proposal authority for the proposal and submitted it for a Gateway determination.

4. GATEWAY DETERMINATION

The Gateway determination issued on 7 August 2017 (**Attachment C**) determined that the proposal should proceed subject to conditions. The proposal was due for finalisation on 7 August 2018.

The Gateway required the preparation of a project time frame and a visual impact analysis. An analysis was prepared and addressed likely visual impacts of the proposal.

Plan-making powers were not delegated to Council as the planning proposal had been subject to a rezoning review.

All conditions included in the Gateway determination have been met.

5. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 20 November 2017 to 12 January 2018.

A total of 132 submissions were received from community members comprising 114 objections and 18 submissions supporting the proposal. Of the 114 objections, 95 were pro-forma.

Key issues raised in the 18 community submissions supporting the proposal included:

- the site has been identified for urban expansion since 1977;
- Jamberoo Village requires population growth to sustain services;
- Jamberoo Village DCP chapter will assist in managing future development; and
- a small area of the site cannot sustain agricultural production without other lands.

Key issues raised in the community submissions objecting to the proposal are as follows:

- Council and the community have voted to reject the proposal;
- concerns with the Kiama Urban Strategy, including that there was no public consultation when prepared, it should be updated before any more planning proposals are considered and there is more available land adjoining Kiama;
- a need to re-establish a boundary around Jamberoo Village;
- the loss of Jamberoo Village character;
- who will pay for the cost of infrastructure;
- visual impacts from the entrance to Jamberoo Village;

- the impacts on Aboriginal cultural heritage;
- further loss of prime agricultural land; and
- traffic issues.

Council has addressed the issues raised in its submissions report (**Attachment E**). As required by the Gateway conditions, a visual impact analysis was undertaken and concluded that the magnitude and sensitivity of the visual impact of the proposal, when viewed from Jamberoo Road and Golden Valley Road, was assessed as moderate to moderate-low (**Attachment F**).

The study recommendations have been incorporated into Council's DCP Chapter 33 – Jamberoo Village, including detailed subdivision and development controls on design, visual impacts, Aboriginal cultural heritage and buffers to agricultural lands. Any future development applications will need to address traffic management and infrastructure provision.

6. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the Department of Primary Industries – Land, Roads and Maritime Services, the Office of Environment and Heritage and the Illawarra Local Aboriginal Lands Council in accordance with the Gateway determination. Council has consulted with these authorities. Council also consulted with the Department of Primary Industries – Agriculture and Sydney Water. None of the authorities objected to the proposal.

Roads and Maritime Services (RMS)

RMS identified that Allowrie Street (a Kiama to Jamberoo road) is a regional classified road managed by Council. Council is responsible for determining during the assessment of a development application if proposed access arrangements are acceptable.

Comment

Council's engineer has confirmed that the road network can accommodate the additional traffic demand. Road and intersection upgrades would be determined during the assessment of a development application.

Office of Environment and Heritage (OEH)

OEH noted the two Aboriginal heritage sites on the site and recommended Council and the developer consider options for conservation of the sites.

Comment

Council has resolved to amend the DCP (Chapter 30 – Heritage) to strengthen the controls to better conserve Aboriginal cultural heritage. Council will work with the developer to develop a subdivision layout that best avoids the two sites.

Illawarra Local Aboriginal Lands Council

While not raising any issues specific to the proposal, the Lands Council raised general concerns with the treatment of Aboriginal cultural heritage in Australia.

Department of Primary Industries – Agriculture

DPI – Agriculture indicated the land is good quality and if it had not been identified for urban development, it should be maintained for agriculture. It noted that Council should consider mitigation measures from urban development on nearby agricultural lands.

Comment

Council will consider mitigation measures to manage urban impacts on the adjoining high-value agricultural lands during the assessment of a development application.

Sydney Water

Sydney Water noted at the time the planning proposal was prepared that its existing water infrastructure can service the proposal. However, existing sewage infrastructure does not have capacity to accommodate the proposal. The developer will need to lodge a feasibility application to Sydney Water to confirm the provision of sewerage infrastructure.

Comment

The planning proposal includes a Services Feasibility Assessment (**Attachment G**) including a feasibility letter from Sydney Water dated 23 February 2016. The letter confirms that the existing sewerage infrastructure cannot service the proposal. The developer will be responsible for developing and providing acceptable sewerage infrastructure for the site.

7. KEY ISSUES FOR CONSIDERATION

A discussion of key issues raised during the review of the planning proposal and in submissions is provided below:

Council and the community have voted to reject the proposal

Comment

Following receipt of the planning proposal on 20 July 2016, Council undertook non-statutory community consultation prior to Gateway determination, receiving seven submissions supporting and 141 submissions objecting to the proposal. Council subsequently resolved on 20 December 2016 to reject the planning proposal.

Concerns with the Kiama Urban Strategy

Concerns included that there was no public consultation when the strategy was prepared, that the strategy should be updated before any more planning proposals are considered and there is more land available for development adjoining Kiama.

Comment

The strategy is a local strategic planning document prepared by Council to inform the preparation of the Kiama LEP 2011.

Council has advised that the formulation of the strategy involved extensive community consultation from 17 September 2010 to 7 February 2011. A public presentation was made to the Jamberoo Valley Residents and Ratepayers Association on 8 December 2010.

The strategy includes the site for urban development and notes that a planning proposal would be required to facilitate the zoning change.

While not formally endorsing the strategy, the Department supported the preparation of planning proposals for sites identified in the strategy (including the subject site) to contribute to housing supply in Kiama.

Need to re-establish a boundary around Jamberoo Village

Comment

The Jamberoo Village boundary has been defined in the Kiama Urban Strategy and the Kiama LEP 2011. The subject site is not within the current boundary but is identified in the Kiama Urban Strategy as a site for urban expansion in the short term (within 5 years) to cater for population growth and housing needs.

Although the Kiama Urban Strategy was not endorsed in its entirety by the Department, it was acknowledged by the Department that Council had endorsed consideration of a number of potential rezonings to contribute to housing supply in the short term and the Department would be willing to consider planning proposals for those sites, including the current site.

Loss of Jamberoo Village character

Comment

Council has prepared Chapter 33 – Jamberoo Village of the DCP to ensure that any development that occurs on the site reflects the desired future character of Jamberoo Village. Any future subdivision of the site will need to comply with the controls in Chapter 33.

Who will pay for the cost of infrastructure

Comment

The landholder/developer of the site is responsible for providing water, sewerage and electricity infrastructure and contributing to any road upgrades.

Visual impacts from the entrance to Jamberoo Village

Comment

The visual impact analysis determined a moderate to moderate-low visual impact of the proposal when viewed from Jamberoo Road. It provided recommendations to minimise the visual impacts, including building design and form and vegetation plantings. These recommendations have been included in DCP Chapter 33.

Impacts on Aboriginal cultural heritage

Comment

The proposal identifies two Aboriginal heritage sites on the site. Council is amending Chapter 30 – Heritage of its DCP to strengthen the existing controls to better conserve Aboriginal cultural heritage. Council will work with the developer to develop a subdivision layout that best avoids sensitive areas.

Further loss of prime agricultural land

Comment

The proposal will result in the loss of 4.7ha of agricultural land. This is considered acceptable due to the strategic planning, which has identified the site as suitable for urban development. Council has identified that mitigation measures will be put in place to manage urban impacts from the site on adjoining high-value agricultural lands.

Traffic issues with proposal

Comment

Council has determined that the road network can accommodate the additional traffic demand from development of the site. Any future development application for subdivision of the site will determine if any road or intersection upgrades are required.

RMS raised no traffic concerns with the planning proposal.

Section 9.1 Directions

There are no unresolved section 9.1 Directions.

The planning proposal is consistent with section 9.1 Directions 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport and 5.10 Implementation of Regional Plans.

It is inconsistent with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands as agricultural lands are being rezoned for residential development.

Inconsistencies with Directions are allowable under the terms of the Directions, including if the site is justified by a strategy. This site has been identified for residential development under the Kiama Urban Strategy 2011.

The inconsistency with the section 9.1 Directions is considered minor and justified.

State environmental planning policies (SEPPs)

The draft LEP is consistent with SEPP No 55 – Remediation of Land.

The draft LEP is inconsistent with the rural planning principles in SEPP (Rural Lands) 2008 as agricultural lands will be lost to residential development. However, this is considered acceptable as the lands have undergone a strategic assessment and are endorsed for residential development in the Kiama Urban Strategy, as identified in justifying the inconsistency with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands.

State, regional and district plans

The planning proposal is consistent with the aims of the Illawarra-Shoalhaven Regional Plan as the site is identified in Council's adopted local housing strategy (Kiama Urban Strategy) and will provide housing close to services, jobs and infrastructure, and the site does not contain significant agricultural land.

8. MAPPING

The planning proposal involves the four following mapping amendments to the Kiama LEP 2011:

- amend the land zoning map – Sheet LZN_008 applying to Lot 2 DP 626183 from RU2 Rural Landscape to R2 Low Density Residential;
- amend the lot size map – Sheet LSZ_008 applying to Lot 2 DP 626183 to apply a minimum lot size of 800m²;
- amend the height of buildings map – Sheet HOB_008 applying to Lot 2 DP 626183 to apply a maximum height of 8.5m; and
- amend the floor space ratio map – Sheet FSR_008 applying to Lot 2 DP 626183 to apply a floor space ratio of 0.45:1

The maps and map cover sheet for the amendment have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel (**Attachments MCS and MAP**).

9. CONSULTATION WITH COUNCIL

Council was consulted on 14 May 2018 on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* and confirmed that it was satisfied with the draft LEP (**Attachment LEP**) and that the plan should be made (**Attachment H**).

10. PARLIAMENTARY COUNSEL OPINION

On 30 May 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

11. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Kiama State Electorate. Mr Gareth Ward MP is the State Member for Kiama.

The site falls within the Gilmore Federal Electorate. Mrs Ann Sudmalis MP is the Federal Member for Gilmore.

To the regional planning team's knowledge, Mrs Sudmalis has not made any written representations regarding the proposal.

Mr Ward has made representations to the Minister for Planning on behalf of Jamberoo residents and the Jamberoo Valley Ratepayers and Residents Association Inc on the proposal, the draft Jamberoo development control plan (DCP) and development within the Jamberoo Village boundaries. Mr Ward has not made any written views on the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

Attachments

Attachment	Title
B	Planning proposal
C	Gateway determination and report
D	Council request that the proposal proceed
E	Council minutes and post-exhibition report
F	Visual Impact Analysis
G	Services Feasibility Assessment
H	Section 3.36(1) consultation with Council
PC	Parliamentary Counsel's Opinion
LEP	Draft LEP
MCS	Map cover sheet
MAP	Draft LEP maps