



GATEWAY REVIEW

Justification Assessment

Purpose: To request that the Independent Planning Commission review the Gateway determination, taking into account information provided by Council and to provide advice regarding the merit of the review request.

DPE Ref. No:	GR-2022-18
LGA:	Nambucca Valley
LEP to be amended:	Nambucca Local Environmental Plan 2010
Proposal:	To prohibit caravan parks on land zoned RU2 Rural Landscape and R5 Large Lot Residential
Address / location:	All land zoned RU2 Rural Landscape and R5 Large Lot Residential pursuant to the Nambucca Local Environmental Plan 2010
Review request made by:	<input checked="" type="checkbox"/> The Council
	<input type="checkbox"/> A proponent
Reason for review:	<input 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 checked="" type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that council thinks should be reconsidered

Background information

Details of the planning proposal	<p>The objective of the planning proposal (Attachment PP) is to amend Nambucca LEP 2010 to prohibit caravan parks on land zoned RU2 Rural Landscape and R5 Large Lot Residential. Caravan parks will remain permissible on land zoned RU5 Village, SP3 Tourist, RE1 Public Recreation and RE2 Private Recreation.</p> <p>The planning proposal is not the result of an assured local strategic planning statement or Department-approved local housing strategy, employment strategy or strategic study or report. Rather, it is in response to a council resolution.</p> <p><u>Background</u></p> <p><i>Ingenia Lifestyle</i></p> <p>Ingenia Lifestyle develops land lease communities and entered into an option agreement regarding property at Way Way (in proximity to Scotts Head) with a view to submitting a development application for the construction of a caravan park. The subject land is zoned part RU1 Primary Production and part RU2 Rural Landscape.</p> <p>Prior to lodgement of a development application, Ingenia Lifestyle undertook preliminary community engagement regarding the proposed development including a community information day on 19 February 2022.</p>
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	<p>Ingenia submitted development application (DA2022/233) to Nambucca Shire Council on 15 July 2022.</p> <p><i>Council Notice of Motion, 17 March 2022</i></p> <p>A Notice of Motion was considered at the Nambucca Valley Council meeting of 17 March 2022 (Attachment B) with the objective of seeking to prohibit the construction of caravan parks on land zoned RU2 Rural Landscape and R5 Large Lot Residential in the Nambucca Valley local government area. The Notice of Motion states that this recommendation is in direct response to a proposed development in Scotts Head.</p> <p>Council resolved to receive a report on the legal implications of the Notice of Motion as well as staff comment on the broader implications of the prohibition of caravan parks on RU2 and R5 zoned land.</p> <p><i>General Manager's Report, 31 March 2022</i></p> <p>The General Manager's Report (Attachment C) was tabled on 31 March 2022 in response to the resolution regarding the Notice of Motion of 17 March 2022. The report discussed the merits of a planning proposal to prohibit the construction of caravan parks on land zoned RU2 Rural Landscape and R5 Large Lot Residential. Council resolved to forward a planning proposal to the Minister for Planning proposing to prohibit caravan parks on land outside the urban area (Attachment A).</p> <p><i>PP-2022-1501 and PP-2022-1782 – Prohibition of caravan parks on land zoned RU2 and R5</i></p> <p>PP-2022-1501 and PP-2022-1782 both proposed the prohibition of caravan parks on land zoned RU2 Rural Landscape and R5 Large Lot Residential pursuant to the provisions of the Nambucca LEP 2010. PP-2022-1501 was submitted to the NSW Planning Portal by Council on 26 April 2022, while PP-2022-1782 was submitted on 16 May 2022.</p> <p>Both planning proposals were returned to Council at lodgement. Additional strategic justification regarding the proposed amendments was required to be submitted in support of the applications.</p>
<p>Reason for Gateway determination</p>	<p>On 19 July 2022, a Gateway determination (Attachment Gateway) was issued which determined the planning proposal proceed subject to conditions for the following reasons:</p> <ul style="list-style-type: none"> • the proposal has been assessed to be consistent with the directions of the North Coast Regional Plan 2036 and draft North Coast Regional Plan 2041; • land zoned RU2 Rural Landscape and R5 Large Lot Residential within the Nambucca Valley local government area is not provided with adequate water and sewer infrastructure or public access roads to support the construction of caravan parks. Furthermore, this land is often affected by bushfire and flood hazards, biodiversity values and land use conflicts; • caravan parks will continue to be permitted in urban zones RU5 Village, SP3 Tourist, RE1 Public Recreation and RE2 Private Recreation under the Nambucca LEP 2010. These urban zones are capable of supporting additional development and have access to supporting infrastructure and social services such as schools, health facilities and public transport;

	<ul style="list-style-type: none"> • Council has undertaken a review of land within the RU5, SP3, RE1 and RE2 zones to ensure that sufficient sites remain on which to develop caravan parks. Over 55.5 hectares of land is available over 18 sites within the local government area which have the potential to accommodate a caravan park. These sites are both publicly and privately owned and are located in and around the urban areas of Scotts Head, Macksville, Nambucca Heads, Valla Beach and Bowraville. Adequate opportunity therefore exists for the provision of caravan parks in the local government area, which provide an important form of affordable residential accommodation; • the Nambucca Valley Council Local Strategic Planning Statement notes that there is a generous land supply available in the Nambucca Valley and that the local government area is well placed to meet the housing demand generated by population growth in the coming 20 years; • a range of tourist and visitor accommodation remains permissible on land zoned RU2 Rural Landscape and R5 Large Lot Residential including bed and breakfast accommodation, farm stay accommodation, camping grounds and eco-tourist facilities. <p>Among other things, the planning proposal was conditioned to require it be updated prior to consultation to:</p> <ul style="list-style-type: none"> • note the proposal is justifiably inconsistent with section 9.1 Direction 6.2 Caravan Parks and Manufactured Home Estates; and • include a savings provision which identifies that a development application for a caravan park made but not finally determined before the commencement of the LEP amendment must be finally determined as if the plan has not commenced.
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Council views

<p>Justification</p>	<p>Council initiated a Gateway determination review on 25 August 2022 (Attachment Request and Attachment Review).</p> <p>A summary of the Gateway review request justification is provided below.</p> <p><u>Savings provision (Condition 1 Point 4)</u></p> <ol style="list-style-type: none"> 1. The only DA the savings provision will apply to is the current DA lodged with Council for a caravan park at 11 Ocean Ridge Drive, Way Way (DA2022/233). Council requests that the savings provision condition be deleted from the Gateway determination for the following reasons: <ol style="list-style-type: none"> a) the applicant was aware of Council’s intention to amend the LEP to prohibit caravan parks on the land but proceeded to prepare a development application during the months following Council announcing its intentions on 31 March 2022. b) the applicant had been in contact with Council and was aware of the risk associated with proceeding past their preliminary stage to invest money in the preparation of a development application, given a planning proposal to prohibit the development on the land was being prepared.
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- c) the development application was submitted to Council on Friday 8 July 2022 at 5:01pm and not formally lodged until 21 July 2022. The Department's assessing officer finalised the assessment report before 8 July 2022. The final signoff from the Executive Director was on 19 July 2022, two days before the development application was formally lodged with Council under clause 24(3) of the Environmental Planning and Assessment Regulation 2021.
 - d) from lodgement of planning proposal PP-2022-2086 to the issue of the gateway determination was 43 days. This exceeds the 25-day assessment period set by the Department for a standard planning proposal.
 - e) it is contended that:
 - i) had the Gateway Determination been issued within expected timeframes or not referred to the Executive Director for final sign off in a manner consistent with other planning proposals, the savings provision would not be applicable to DA2022/233; and
 - ii) DA2022/233 is deemed to have been made 11 days before the commencement of the LEP amendment. Having regard to the applicant understanding the risk of continuing to prepare a development application, the delay referred to above, and the delays experienced as a result of dealing with an irrelevant matter referred to in Condition 1 – Point 1; Council does not consider that a savings provision in relation to DA2022/233 is reasonable.
2. Additional information is provided by Council in relation to the servicing of the land subject to DA2022/233.
 3. The vulnerability of caravan parks on RU2 and R5 zoned land to natural disasters is a key reason for the preparation of the planning proposal. The land subject to DA2022/233 is flood prone and highly bushfire prone. The intent of the planning proposal is to make a strategic decision to ensure caravan parks are located in the most appropriate areas to protect them from natural disasters.
 4. The site on which DA2022/233 is proposed is identified as an urban investigation area under the North Coast Regional Plan. Council has requested that this be removed from the current draft Plan.

Section 9.1 Direction 6.2 Caravan Parks and Manufactured Home Estates (Condition 1 Point 1)

This section 9.1 Direction states:

1. In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:

- (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land*

It is Council's view that the terms of the direction are to be applied to the LEP as a whole. The planning proposal identifies that the RU2 and R5 zones are not suitable for caravan parks and retains existing provisions in the LEP that permit development for the purposes of a caravan park to be carried out on land within the RE1 Public Recreation, RE2 Private Recreation, SP3 Tourist and RU5 Village zones. Retaining these provisions which permit caravan parks to be carried out on land is considered to be consistent with the Direction.

	<p><u>Exhibition of the planning proposal (Condition 2)</u></p> <p>Condition 2 of the gateway determination contains a requirement for exhibition of the planning proposal to commence within two months of the date of the gateway determination (19 September 2022).</p> <p>It is requested that this date be extended given the progression of the planning proposal is pending the outcome of this review.</p> <p><u>Completion date (Condition 5)</u></p> <p>The requirement in this condition for the LEP to be completed by 19 January 2023 should be extended given progress is subject to the findings of this review application. It is considered 6 months from the conclusion of the review is reasonable.</p>
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Assessment summary

<p>Department assessment</p>	<p>The Department notes the justification provided by Council officers in the Gateway review request and provides the following response:</p> <p><u>Savings provision (Condition 1 Point 4)</u></p> <ol style="list-style-type: none"> 1. DA2022/233 is identified to be the only development application that the savings provision currently affects. However, the provision will also relate to any new development application(s) for caravan parks lodged prior to the LEP being made. <ol style="list-style-type: none"> a) noted. b) noted. c) Council’s Development Application tracker indicates DA2022/233 was lodged on 15 July 2022 rather than 21 July 2022. Council posted a Notice of Development Application regarding DA2022/233 on their Facebook page on 18 July 2022, advising the development application had been lodged and would be on public exhibition from 23 July 2022 until 31 August 2022. The Department’s Gateway determination, dated 19 July 2022, was issued after DA2022/233 was lodged with Council. d) the Department’s Local Environmental Plan Making Guideline (December 2021) includes a benchmark timeframe of 25 working days for the determination of the standard category of planning proposal. The application was deemed to be adequate on 14 June 2022 and was determined on 19 July 2022, being a timeframe of 26 working days. e) the planning proposal was determined by the appropriate delegated officer within the Department. 2. Council has advised that, generally, land zoned RU2 Rural Landscape and R5 Large Lot Residential within the Nambucca Valley local government area is not provided with adequate water and sewer infrastructure to support the construction of caravan parks. The planning proposal was supported on this basis (among other reasons). <p>Site-specific matters such as those raised by Council in relation to water and sewer infrastructure required to service DA2022/233 are merit-based matters to be considered during the assessment of a development application.</p>
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	<p>While the Department supports the overall strategic direction of the proposal it is considered inappropriate the planning proposal process be used to determine the outcome of a specific development application.</p>
	<p>3. It is acknowledged that the planning proposal seeks to ensure that caravan parks are appropriately located in the local government area. Again, while the Department supports the overall strategic direction of the proposal it is considered inappropriate that the planning proposal process be used to determine the outcome of a specific development application. Matters pertaining to flooding and bushfire affectation should be considered as part of the development application's merit-based assessment process.</p> <p>4. Urban growth areas are included in the North Coast Regional Plan 2036 and draft North Coast Regional Plan 2041 as a result of their identification in Department-endorsed local growth management strategies prepared by councils.</p> <p>It is understood that Council lodged a submission regarding the amendment of the urban growth area boundary during the public exhibition period of the draft North Coast Regional Plan 2041. This matter will be addressed as part of the draft Regional Plan process.</p> <p>Nevertheless, while the land subject to DA2022/233 is identified to be within the urban growth area boundary in the North Coast Regional Plan 2036 and draft North Coast Regional Plan 2041 this does not negate the requirement to undertake a merit-based assessment of any planning proposal or development application.</p> <p>The Department does not consider Council's review to have provided justification or evidence for the amendment of Gateway Condition 1 Point 4.</p> <p><u>Section 9.1 Direction 6.2 Caravan Parks and Manufactured Home Estates (Condition 1 Point 1)</u></p> <p>It is the Department's position that a planning proposal is inconsistent with Direction 6.2 if the proposal:</p> <ul style="list-style-type: none"> • removes the opportunity for new caravan parks to be developed in the LGA, or • changes the zoning of land on which a caravan park already exists so that new caravan parks are no longer permitted on land in the zone. <p>DA2022/233 proposes the construction of a caravan park on land zoned RU2 Rural Landscape. As such, the planning proposal seeks to remove the opportunity for a new caravan park to be developed in the LGA, contrary to the objectives of this Direction.</p> <p>The Department does not consider Council's review to have provided justification or evidence for the amendment of Gateway Condition 1 Point 1.</p> <p><u>Exhibition of the planning proposal (Condition 2)</u></p> <p>The Department does not object to the amendment of this condition (Condition 2).</p> <p><u>Completion date (Condition 5)</u></p> <p>It is noted that Council proposed a four-month timeframe to complete the LEP in their planning proposal. The Department recommended a timeframe of six months to provide sufficient time for agency consultation.</p> <p>Nevertheless, the Department does not object to the amendment of this condition (Condition 5).</p>

Attachments

Material provided by Council	Attachment Request	Gateway review application form – 25/08/2022
	Attachment Review	Gateway review justification – 25/08/2022
	Attachment PP	Planning proposal submitted for Gateway – 06/06/2022
	Attachment A	Council resolution, 31 March 2022
Additional information	Attachment Gateway	Gateway determination and assessment dated 19/07/2022
	Attachment B	Council Notice of Motion and resolution, 17 March 2022
	Attachment C	General Manager’s Report, 31 March 2022

COMMISSION’S RECOMMENDATION

Reason for review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that council thinks should be reconsidered

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: