

Ref: SF3207  
Yr Ref: PP-2022-2086  
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25 August 2022

NSW Department of Planning & Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Sir/Madam

### **JUSTIFICATION FOR REVIEW OF GATEWAY DETERMINATION - PP-2022-2086**

Council has received the gateway determination from the NSW Department of Planning and Environment (the Department) for planning proposal PP-2022-2086 dated 19 July 2022. The planning proposal seeks to prohibit caravan parks on land zoned RU2 Rural Landscape and R5 Large Lot Residential. The Gateway Determination permits the proposed amendment to the Nambucca Local Environmental Plan 2010 (LEP) to proceed, subject to conditions.

As part of Council's consideration of the proposed amendment to the LEP on 31 March 2022, it was considered that there was planning merit in prohibiting caravan parks within the RU2 and R5 zones of the LGA. The reason for this was that it is not considered that the majority of the RU2 and R5 zoned land is suitably located to accommodate caravan parks for a number of reasons; including vulnerability to natural disasters, lower standard of public road access, and increased costs resulting from unplanned expansion of public infrastructure.

The above reasons were expanded on within the planning proposal submitted to the Department, with the Gateway Assessment Report and subsequent gateway determination supporting Council's position that there is no planning merit in having caravan parks permissible within the RU2 and R5 zones.

On review of the gateway determination Council requests that the following conditions be amended:

#### Condition 1 – Point 4

The fourth point of condition 1 requires a savings provision to be included within the planning proposal which will result in any Development Application (DA) for a caravan park in the RU2 or R5 zones made before the Gateway Determination but not yet determined must be assessed as if the gateway determination (draft LEP) had not been made. The only DA this 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 this savings condition be deleted from the gateway determination for the following reasons:

1. The Department have noted in their assessment report that the savings provision should be included because the applicant undertook a community information day on 19 February 2022 and submitted a development application to Council.

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. 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 giving a planning proposal to prohibit the development on the land was being prepared.

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. This is known having being told verbally by the assessing officer before 8 July 2022 that the assessment report had been sent to her supervisors for sign off and the first of three of her supervisors signing off on the assessment report on 8 July 2022. Further to this, it is noted that 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.

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 such as this. Council received verbal advice that the assessment report was finalised within the 25 day assessment period (30 June 2022) and that due to the political nature of the proposal the matter was to be determined by the Executive Director.

It is contended that:

- 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.
  - 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 below; it is not considered that DA2022/233 being captured by savings provision is reasonable.
2. A key reason for the preparation of the planning proposal to prohibit caravan parks in the RU2 and R5 zones was because of the impacts of unplanned expansion of public infrastructure, most notably water and sewer infrastructure. The Department's assessment report notes in a number of areas that the planning proposal appropriately directs caravan parks to urban areas which supports the efficient use of infrastructure.

DA2022/233 proposes 257 sites and community facilities which are to be connected to Council's main sewer. 255 of the sites are to be long term sites with 2-3 bedroom dwellings constructed on them. Having regard to Council's Integrated Water Cycle Management Strategy (IWCMS) and the current population of Scotts Head, there is insufficient capacity within the Scotts Head Sewerage Treatment Plant (STP) to support growth beyond existing zoned urban land inclusive of DA2022/233.

As stated in the IWCMS the STP has capacity to support 2,000 Equivalent People (EP). Population growth in Scotts Head has exceeded the IWCMS projections and is now shortening the anticipated life capacity of the STP.

The 2021 Census identifies 998 permanent residents residing in Scotts Head. The IWCMS anticipated this figure would not be reached until approximately 2037. This is not surprising given the growth experienced across the mid North Coast over the last 2 years in particular.

Of relevance for Scotts Head is the number of tourists staying in Scotts Head during peak season. A very conservative figure of 1,000 tourists currently stay in Scotts Head at any one time in peak season. In addition, there have been a number of new dwelling approvals over the last few years that have increased the Scotts Head population, ongoing development of existing greenfield residential land, as well as considerable capacity for infill growth within the 10ha of R3 Medium Density Residential zoned land.

As a result, these figures suggest there is a loading greater than 2,000 EP currently entering the STP during peak periods with increased pressure to be placed on the STP as part of ongoing growth within identified urban areas considered as part of the IWCMS. As such, the capacity of the STP is not capable of supporting any unplanned growth from outside the urban zoned areas. Note that the land the subject of DA2022/233 was not considered as part of the IWCMS.

To add to the above growth pressures, the recommendations in the IWCMS to deal with aging infrastructure have not yet been implemented by Council.

Having regard to these capacity issues and the intent of the planning proposal to promote the efficient use of infrastructure, it is inconceivable to think that the savings provision could be retained in the gateway determination so that the LEP amendment does not apply to DA2022/233.

3. The vulnerability of caravan parks on RU2 and R5 zoned land to natural disasters is another key reason for the preparation of the planning proposal. Not only was this reason supported by the Department in the Gateway Determination Assessment report, but it was also supported by the NSW State Government in their adoption of recommendation 25 of the recent NSW Independent Flood Inquiry which is:

*“That, to ensure that permanent residents of caravan parks and mobile housing estates are protected from flood, Government:*

- *prohibit permanent residency in caravan parks and mobile housing estates situated below the risk-based flood planning level. Caravan parks for holiday makers could still be on the floodplain with the provision that, if a flood is imminent, they need to be evacuated*
- *address the issues raised in the 2015 Discussion Paper (Improving the regulation of manufactured homes, caravan parks, manufactured home estates and camping grounds).”*

Not only is the land the subject of DA2022/233 flood prone, but it is highly bushfire prone. There are numerous examples of caravan parks located on bushfire and flood prone land which were impacted by the 2019 bushfires and recent flooding disasters. The NSW State Government has spent millions of dollars since those natural disasters providing infrastructure to better protect those caravan parks from future disasters and getting residents back into their homes.

Given the intent of the planning proposal was to make a strategic decision to ensure caravan parks are located in the most appropriate areas to protect them from natural disasters, it is considered appropriate to remove the savings provision for DA2022/233. Providing a savings provision will result in any approval for DA2022/233 selecting whatever the most achievable site specific protection measures are available for that development, noting that this method has failed in the past and has cost all levels of government millions of dollars following natural disasters. This method won't include the necessary strategic shire wide consideration of where the best places are for these sensitive use developments.

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.

With regards to these investigation areas, the Departments Gateway Determination Assessment report states that *“although it is conceivable that this land could be zoned for an urban use, this is yet to be assessed through the planning proposal process”*. This position is supported as the planning proposal process will provide the required strategic assessment of the suitability of the investigation areas for urban use.

However, the provision of a savings provision for DA2022/233 is at odds with this statement as it allows the establishment of a medium density development with 255 attached dwellings to be established as a gated community, contrary to the majority of the considerations in the North Coast Regional Plan and Councils Local Strategic Planning Statement, without any strategic consideration.

It is inconceivable to think that despite all of the above, a savings provision is applied to DA2022/233 because the applicants held a community consultation session, proceeded to prepare a development application knowing about the planning proposal, and submitted a development application months later 11 days before the draft LEP took effect.

#### Condition 1 – Point 1

The first dot point of condition 1 of the gateway determination requires the planning proposal to be updated to justify its inconsistency with section 9.1 Direction 6.2 Caravan Parks and Manufactured Home Estates.

The above s9.1 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”*

The Departments position is that the planning proposal is inconsistent with this Direction because it does not retain provisions that permit development for the purposes of a caravan park to be carried out on land zoned RU2 or R5.

It is Councils view that the terms of the direction are to be applied to the LEP as a whole. The terms of the Direction do not limit consideration solely to the RU2 and R5 zones.

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.

It is considered that the gateway determination should be amended by deleting the first dot point of condition 1.

It is noted that the primary reason for delays in the issuing of the gateway determination and the return of the two previous planning proposals (PP-2022-1501 & PP-2022-1782) was the Departments position that the prohibition of caravan parks within the RU2 and R5 zones is inconsistent with the above mentioned s9.1 Direction. Had the Departments interpretation been as per the terms of the Direction, these delays would not have been so extensive and would have resulted in the gateway determination being issued well before the submission of DA2022/233.

#### Condition 2

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).

It is requested that this date be extended given the progression of the planning proposal is pending the outcome of this review and still requires amendments once the review is complete.

Alternatively, this requirement could be deleted from condition 2 given condition 5 has a date the LEP should be completed by.

Condition 5

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.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D Walsh', written in a cursive style.

**Daniel Walsh**  
**MANAGER DEVELOPMENT & ENVIRONMENT**