



ORDINARY MEETING OF COUNCIL SUPPLEMENTARY ITEMS

To be held at 5pm on

Tuesday 16 July 2019

Council Chambers

11 Manning Street, KIAMA NSW 2533

Members

His Worship the Mayor

Councillor M Honey

Councillor A Sloan

Deputy Mayor

Councillor M Brown

Councillor N Reilly

Councillor K Rice

Councillor W Steel

Councillor D Watson

Councillor M Way

Councillor M Westhoff

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16 ADDENDUM TO REPORTS

16.1 Planning Proposal - South Kiama Drive - Planning Proposal Authority

CSP Objective: 2.0 Well planned and managed spaces, places and environment

CSP Strategy: 2.1 Maintain the separation and distinct nature of local towns, villages and agricultural land

Delivery Program: 2.1.1 Develop and implement appropriate land use plans

Summary

Council received a Planning Proposal (PP) on 4 July 2018 for the rezoning of land and amendment to applicable planning controls on land covering the following lots:

- Lot 1 DP 707300;
- Lot 5 DP 740252;
- Part of Lot 102 DP 1077617;
- Part of Lot 8 DP 258603.

The resulting development proposes 285 residential allotments, 140 small residential allotments and 30 townhouse sites.

At its March 2019 meeting, Council resolved not to endorse the subject PP to proceed to Gateway at this time.

On 26 March 2019 the proponent submitted a request for a Rezoning Review as Council had notified the proponent that the original request to prepare a PP had not been supported. As part of the Rezoning Review process the Southern Planning Panel assessed the strategic merit of the proposal against the Strategic Merit Test as well as undertaking a Site Specific Merit Test. The Planning Panel met with the proponent, Council staff, and Department of Planning, Industry and Environment as part of this process. The Planning Panel met on 19 June 2019 to assess and determine if the proposal should be submitted for a Gateway Determination.

On 10 July 2019 Council received correspondence from the Planning Panel that the Panel had determined that the proposal should proceed to Gateway Determination stage. As part of this correspondence Council was invited to be the Planning Proposal Authority (PPA) for this proposal.

This report recommends that Council accept the role of PPA and respond to the Planning Panel and proponent accordingly.

Finance

A fee structure for submittal and review of planning proposals has been developed by Council and is contained in Council's fees and charges schedule. Relevant fees have been paid, to date, in regard to this proposal.

Report of the Director Environmental Services

16.1 Planning Proposal - South Kiama Drive - Planning Proposal Authority (cont)

Policy

Consideration of requests for rezoning of land require consideration of a number of planning instruments, specifically the *Environmental Planning and Assessment Act 1979*, *Kiama Local Environmental Plan 2011*, Illawarra-Shoalhaven Regional Plan, Kiama Urban Strategy and the Kiama Planning Proposal Policy.

Communication/Community Engagement

The Gateway Determination issued by the NSW Department of Planning, Industry and Environment will outline the minimum requirements for consultation with government agencies and the community.

Attachments

- 1 Letter to Council advising of Panel's Decision [↓](#)
- 2 Southern Planning Panel's Record of Decision [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. Note the recommendation of the Southern Planning Panel;
2. Accept the role of the Planning Proposal Authority and respond to the Southern Planning Panel accordingly;
3. Notify the proponent that the Planning Proposal is to be updated in accordance with the recommendations of the Southern Planning Panel prior to being submitted to the Department of Planning, Industry and Environment for a Gateway Determination; and
4. Note that the delegation of the Minister to make the LEP amendment will not be granted to Council as this Proposal was subject to a Rezoning Review.

BACKGROUND

Council received a Planning Proposal (PP) on 4 July 2018 for the rezoning of land and amendment to applicable planning controls on land covering the following lots:

- Lot 1 DP 707300;
- Lot 5 DP 740252;
- Part of Lot 102 DP 1077617;
- Part of Lot 8 DP 258603.

The resulting development proposes 285 residential allotments, 140 small residential allotments and 30 townhouse sites.



Figure 1: Aerial Photograph of Subject Site.

At its March 2019 meeting, Council resolved not to endorse the subject PP to proceed to Gateway at this time.

On 26 March 2019 the proponent submitted a request for a Rezoning Review as Council had notified the proponent that the original request to prepare a PP had not been supported. Council was notified by the Department of Planning, Industry and Environment (DPIE) that the Rezoning Review process had commenced and was invited to provide a response detailing why the original request to Council was not progressed. It was also requested that Council confirm that the proposal submitted for a Rezoning Review is the same proposal that was considered by Council. Council staff reviewed the documentation and were able to confirm that the proposal submitted for a Rezoning Review is the same proposal that was considered by Council at its March meeting.

As part of the Rezoning Review process the Southern Planning Panel is required to assess the strategic merit of the proposal against the Strategic Merit Test as well as undertaking a Site Specific Merit Test. The Planning Panel met with the proponent, Council staff, and DPIE as part of this process. The Planning Panel met on 19 June 2019 to assess and determine if the proposal should be submitted for a Gateway Determination. Essentially the Panel assumed the role of Council in determining if a PP should be forwarded to the DPIE for a Gateway Determination.

Report of the Director Environmental Services

16.1 Planning Proposal - South Kiama Drive - Planning Proposal Authority (cont)

On 10 July 2019 Council received correspondence from the Planning Panel that the Panel had determined that the proposal should proceed to Gateway Determination stage. In making this decision, the Panel considered that the site has both strategic and site specific merit. The Panel determined that the proposal has strategic merit as it has been identified in the Kiama Urban Strategy (KUS) as a site for future residential development “if insufficient dwelling numbers are available”. The Panel was not convinced that other initiatives would meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan, particularly given existing projections rely heavily on progressing development of the West Elambra site which has not been rezoned to date. The Panel was therefore not convinced that “sufficient dwellings will be available” consistent with the KUS caveat on progressing development of this site.

The Panel did not endorse the subdivision layout or the lot yield submitted by the proponent. The Panel have recommended additional analyses and subsequent amendments to the Proposal prior to it being submitted to DPIE for a Gateway Determination:

- Additional constraints analysis that overlays environmental and heritage constraints over indicative subdivision – including identification of dry stone walls to be retained/removed.
- Further urban design analysis reflected in a structure plan that:
 - Identifies key principles for development of the site
 - Identifies appropriate interface with adjoining agricultural and environmental land
 - Landscape interface along the Princes Highway
 - Allows for implementation of a landscape buffer around the site
 - Reviews densities, lot and road layout to accommodate constraints and minimise visual impacts
 - Identifies and locates public reserves to service the new population
- Visual analysis from the Princes Highway and measures to ensure that the views from the highway are of landscape
- Broad identification of cut and fill and where, if any, retaining walls will be located – ensuring heights are minimised
- Amendments to layout that ensure no acoustic wall is required along the Princes Highway to mitigate noise impact
- Provision of zoning and controls that reinforces the outcomes of the urban design, visual and landscape analysis of the site

This report recommends that, as part of accepting the role of PPA, Council notify the proponent that the Planning Proposal is to be updated in accordance with the recommendations, listed above, prior to being submitted to the DPIE for a Gateway Determination

Report of the Director Environmental Services

16.1 Planning Proposal - South Kiama Drive - Planning Proposal Authority (cont)

It is noted that the Panel also recommended the preparation of site specific Development Control Plan (DCP) controls. The preparation of such controls is not part of the Gateway Determination process. If a Gateway Determination is issued by DPIE Council will liaise with the proponent regarding the preparation of site specific DCP controls

A copy of the Panel's correspondence is attached to this report. As part of this correspondence Council was invited to be the Planning Proposal Authority (PPA) for this proposal. The PPA is responsible for liaising with the proponent prior to Gateway Determination and consultation with public authorities and the community. If Council refuses to accept the PPA role these processes will be carried out to completion by the DPIE.

It should be noted that by accepting the role of PPA Council will be able to levy the applicable planning proposal fees, in accordance with Council's adopted fees and charges, and will retain a level of control over the process. It is likely that if Council was to refuse to accept the role of RPA it would still be required to carry out some of the administrative roles (ie community consultation) of the PP process without receiving any financial payment.

This report recommends that Council accept the role of PPA and respond to the Planning Panel and proponent accordingly.

Item 16.1



Mr Kerry McMurray
General Manager
The Council of the Municipality of Kiama
PO Box 75
KIAMA NSW 2533

Attn: Linda Davis (Director Environmental Services)

10 July 2019

Dear Mr McMurray

Request for a Rezoning Review - 2019STH006 – RR_2019_KIAMA_002

I refer to the request for a Rezoning Review for a proposal at Saddleback Mountain Rd & Weir St, South Kiama to amend the Kiama Local Environmental Plan 2011 to rezone land between Saddleback Mountain Road and Weir Street, South Kiama to permit the residential use of land.

The Southern Regional Planning Panel has recommended that the proposal should be submitted for a Gateway determination. In making this decision, the Planning Panel considered the request and advice provided by Council. A copy of the panel's decision is attached.

Consequently, Council is invited to be the Planning Proposal Authority (PPA) for this proposal and to advise the Planning Panels Secretariat within 42 days of the date of this letter whether it will undertake the role of PPA for this proposal. Should Council agree to be the PPA, it will need to prepare a planning proposal under section 3.33 (formerly section 55) of the *Environmental Planning and Assessment Act 1979* and submit it for a Gateway determination within 42 days after accepting this role.

If Council does not wish to progress this matter, the panel will be appointed to prepare the planning proposal.

If you have any queries on this matter, please contact Stuart Withington, Manager, Planning Panels Secretariat on (02) 8217 2062 or via email to stuart.withington@planning.nsw.gov.au

Yours sincerely

A handwritten signature in blue ink that reads 'Pam Allan'.

Pam Allan
Chair, Southern Regional Planning Panel

encl. Rezoning Review Record of Decision

Planning Panels Secretariat

320 Pitt Street Sydney | GPO Box 39 Sydney NSW 2001 | T 02 8217 2060 | www.planningpanels.nsw.gov.au



DATE OF DECISION	19 June 2019
PANEL MEMBERS	Pam Allan (Chair), Alison McCabe and Renata Brooks
APOLOGIES	None
DECLARATIONS OF INTEREST	Andrew Sloan, Michael Forsythe and Mark Honey declared conflicts of interest due to involvement in Kiama Municipal Council's consideration of the rezoning review.

REZONING REVIEW

2019STH006 – Kiama – RR_2019_KIAMA_002_00 – at land from Saddleback Mountain Road to south of Weir Street, South Kiama (AS DESCRIBED IN SCHEDULE 1)

Reason for Review:

- The council has notified the proponent that the request to prepare a planning proposal has not been supported
- The council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

PANEL CONSIDERATION AND DECISION

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:

- should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- should not** be submitted for a Gateway determination because the proposal has
 - not demonstrated strategic merit
 - has demonstrated strategic merit but not site specific merit

The decision was unanimous.

REASONS FOR THE DECISION

Overview

The Panel has been requested to undertake a Rezoning Review of Planning Proposal RR_2019_KIAMA_002_00 on land between Saddleback Mountain Road and Weir Street, Kiama. The land comprises 5 lots currently zoned RU2 rural landscape (majority), E3 Environmental Management and E2 Environmental Conservation. It is proposed to rezone the land to R2 low density residential and E2 environmental conservation. Minimum lot sizes are proposed to range from 300 – 450 sqm for the residential lots with an approximate yield of 455 lots.

The Panel had the benefit of a verbal report from officers of the Department of Planning, Council's written report and resolution and the applicant's Planning Proposal.

A written report from the Department of Planning was received on the 24th June 2019 and was reviewed by the Panel before determining this proposal.

The Panel also undertook a site visit and is familiar with the Kiama area. The Panel met with the representatives of the applicant, Council and the Department.

Strategic Merit

In considering the strategic merit the Panel noted advice regarding the local strategic planning framework for the subject lands and surrounding areas. In particular it was noted that:

- The 2011 Kiama Urban Strategy (KUS) is the most recent definitive document identifying future greenfield sites and this document identifies the subject lands as “to be considered if insufficient dwelling numbers are available”. Notwithstanding the fact that this strategy was not approved formally by the Department, the Panel was advised that it has guided consideration of proposals by the Department and was provided with evidence to support this.
- Under action 2.5.1 of the Illawarra Shoalhaven Strategic Plan, projections of land availability and monitoring of progress under the Illawarra Urban Development Program have consistently assumed that the West Elambra site would be developed and would contribute 355 lots. However this site has not been rezoned and rezoning does not appear to be imminent.
- Kiama Council has work on a Local Strategic Planning Statement well underway, with a draft due for completion by the end of 2019. This will encompass consideration of key themes including housing and growth; agriculture and resources.

The Panel noted Council’s advice on the outcome of community consultation undertaken to date to inform development of the Local Strategic Planning Statement and considered the option of not supporting the proposal to allow consideration of the future of this site to take place in the context of the Statement. On balance, however, the Panel considered that the proposal has strategic merit given:

- The site is identified in the Kiama Urban Strategy “if insufficient dwelling numbers are available”
- The Panel was not convinced that other initiatives being pursued by Council would meet projected housing needs identified in the Illawarra Shoalhaven Regional Strategy – particularly given existing projections rely heavily on progressing development of the West Elambra site which has not been rezoned to date. The Panel is therefore not convinced that “sufficient dwellings will be available” consistent with the KUS caveat on progressing development of this site.
- Gateway consideration can proceed in parallel with development of the LSPS, with the Council ultimately in a position to make a final decision in the context of directions articulated in the LSPS.

Site specific merit

The characteristics of the site which support the Planning Proposal include:

- Consistency with the Kiama Urban Strategy and broad Departmental endorsement for progressing Planning Proposals identified within it
- Capacity to address medium term housing supply and better meet market demand
- Presence of a natural buffer of E2 zoned land between most of the site and RU2 zoned land useable for agricultural purposes
- Constrained potential for commercial agricultural use due to topography and soil quality
- Alignment with the current western boundary of the town to the north

Constraints on the site include:

- The significant visual and landscape qualities of the site and its surrounds
- Significant Aboriginal and European heritage items on the site including the cemetery and dry stone walls
- Topography and associated service access challenges (water and sewerage)
- The need to establish the limits of the town and what that should look like.

On balance, the Panel considers the proposal has site specific merit provided the constraints are able to be addressed through further refinement and reduction in initial yields identified.

Mitigation of environmental impact

The Panel noted concerns expressed in Council's letter to the Department underpinning its refusal of the proposal, and advice on the outcome of general community consultation on desires and values in the context of the preparation of the Local Strategic Planning Statement.

It is the Panel's view that the current layouts and lot configuration have not been properly informed by an assessment of the visual and landscape qualities of the site and a proper urban design analysis that responds to the site's context and character. Further detailed analysis of the site is required before specific zonings, heights and densities can be determined.

The Panel recommends the Gateway process require:




- Additional constraints analysis that overlays environmental and heritage constraints over indicative subdivision – including identification of dry stone walls to be retained/removed.
- Further urban design analysis reflected in a structure plan that:
 - Identifies key principles for development of the site
 - Identifies appropriate interface with adjoining agricultural and environmental land
 - Landscape interface along the Princes Highway
 - Allows for implementation of a landscape buffer around the site
 - Reviews densities, lot and road layout to accommodate constraints and minimise visual impacts
 - Identifies and locates public reserves to service the new population
- Visual analysis from the Princes Highway and measures to ensure that the views from the highway are of landscape
- Broad identification of cut and fill and where, if any, retaining walls will be located – ensuring heights are minimised
- Amendments to layout that ensure no acoustic wall is required along the Princes Highway to mitigate noise impact
- A site specific Development Control Plan that identifies the future character of the area and the important attributes

The work will require a review of the extent of the R2 zoned land, lot yields and identification of a range of zonings that reflect the outcome of the studies.

The Panel does not endorse the subdivision layout or lot yield submitted with this proposal.

Recommendations

1. That the Planning Proposal proceed to a Gateway Determination
2. That the following additional requirements as outlined in this report be provided and considered as part of the Gateway Determination:
 - a) Further urban design analysis
 - b) Additional constraints analysis in terms of environmental, visual, landscape and heritage outcomes
 - c) Site specific Development Control Plan controls
 - d) Provision of zoning and controls that reinforces the outcomes of the urban design, visual and landscape analysis of the site

PANEL MEMBERS	
 Pam Allan (Chair)	 Alison McCabe
 Renata Brooks	

Item 16.1

Attachment 2

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	2019STH006 – Kiama – RR_2019_KIAMA_002_00 – at land from Saddleback Mountain Road to south of Weir Street, South Kiama (AS DESCRIBED IN SCHEDULE 1)
2	LEP TO BE AMENDED	Kiama Local Environmental Plan 2011
3	PROPOSED INSTRUMENT	The proposal seeks to amend the Kiama Local Environmental Plan 2011 to rezone land adjoining Greyleigh Drive and Old Saddleback Road, Kiama to enable a master planned development of the site (residential, public recreation and environmental conservation)
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Rezoning review request documentation • Briefing report from Department of Planning and Environment
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY	<ul style="list-style-type: none"> • Site inspection: 15 April 2019 <ul style="list-style-type: none"> ○ Panel members in attendance: Pam Allan, Alison McCabe and Renata Brooks ○ Department of Planning and Environment (DPE) staff in attendance: Graham Towers, Lisa Kennedy and Andrew Hartcher • Briefing with Department of Planning and Environment (DPE): 19 June 2019, 9:30 am <ul style="list-style-type: none"> ○ Panel members in attendance: Pam Allan, Alison McCabe and Renata Brooks ○ DPE staff in attendance: Graham Towers • Briefing with Council: 19 June 2019, 10:30 am <ul style="list-style-type: none"> ○ Panel members in attendance: Pam Allan, Alison McCabe and Renata Brooks ○ DPE staff in attendance: Graham Towers ○ Council representatives in attendance: Linda Davis and Edward Paterson • Briefing with Proponent: 18 June 2019, 11:30 am <ul style="list-style-type: none"> ○ Panel members in attendance: Pam Allan, Alison McCabe and Renata Brooks ○ Proponent representatives in attendance: Trevor Unicom, Graham Morcom