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Our ref: 13/15884

Mr Garry Fielding
Chair
Hunter & Central Coast Joint Regional Planning Panel
GPO Box 39
SYDNEY NSW 2001

Dear Mr Fielding

Request for Gateway Review – (Referral to JRPP for Review)

I am writing to advise the Hunter and Central Coast Joint Regional Planning Panel (JRPP) that a Gateway review request, dated 9 September 2013, has been submitted to the Minister for Planning and Infrastructure for consideration. Details of the planning proposal are summarised below:

Dept. Ref. No:	GDR_2013_WYONG_001_00 <i>quote on any reply</i>
LGA:	Wyong Shire
LEP to be Amended:	Wyong LEP 1991 or draft Wyong LEP 2013
Address/ Location:	2-10 Cams Boulevard, Summerland Point NSW 2259
Proposal:	The proposal seeks to rezone land at 2-10 Cams Boulevard from 5(a) Special Uses to 2(a) Residential by amending Wyong LEP 1991 to enable the subdivision of the site for residential allotments. Alternately should the Principal SI be finalised in advance of the planning proposal the land would be zoned from E2 Environmental Conservation to R2 Low Density Residential (PP_2013_WYONG_008_00).

The proponent is seeking a review of the Gateway determination issued on 31 July 2013 that the planning proposal should not proceed.

The role of the JRPP

The JRPP is requested to review the planning proposal and prepare its advice concerning the merits of the request for review. The advice should include a clear and concise recommendation to the Minister confirming whether or not, in the opinion of the JRPP, the planning proposal should proceed past Gateway to public exhibition in accordance with the original submission.

The advice and recommendation should be provided within 28 days of the date of this request for review and sent to the Gosford Regional Office of the Department of Planning and Infrastructure.

Enclosed supporting information

The following information and documents are enclosed to assist the JRPP in its review of the planning proposal:

- Proponent's request for review, together with application form, supporting information and relevant correspondence
- Department's justification assessment and recommendation to the A/Deputy Director General (A/DDG)
- A/DDG's endorsement
- JRPP advice and recommendation template

Further information on independent reviews

The department's '*A guide to preparing local environmental plans*' provides advice on procedures for the various stages in the independent review process. The guide is available on-line at

www.planning.nsw.gov.au/gateway-process.

Should you have any questions in regard to this matter, please contact Glenn Horal, of the Gosford Regional Office of the Department of Planning and Infrastructure on 4348 5000.

Dated 24th day of October 2013



Neil McGaffin
A/Deputy Director General
Planning Operations & Regional Delivery
Delegate of the Minister for Planning and
Infrastructure

Purpose: To outline the planning proposal, the reasons why the original Gateway determination was made, and the views of the council (if the review was proponent-initiated) and to consider and assess the request for a review of a Gateway determination.

Dept. Ref. No:	GDR_2013_WYONG_001_00	
LGA	Wyong Shire	
LEP to be Amended:	Wyong LEP 1991 or draft Wyong LEP 2013	
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Proposal:	The proposal seeks to rezone land at 2-10 Cams Boulevard from 5(a) Special Uses to 2(a) Residential by amending Wyong LEP 1991 to enable the subdivision of the site for residential allotments. Alternately should the Principal SI be finalised in advance of the planning proposal the land would be zoned from E2 Environmental Conservation to R2 Low Density Residential (PP_2013_WYONG_008_00). Note: Council identified the site as part of Lot 200 DP 1181286 and appears incorrect. The site is identified on SIX Maps as Lot 200 DP1181287 or Lot 100 DP1181286 and both property descriptions include the part of the site subject to the proposed rezoning.	
Review request made by:	☐ The council ☒ A proponent	
Reason for review:	☒	A determination has been made that the planning proposal should not proceed.
	☐	A determination has been made that the planning proposal should be resubmitted to the Gateway.
	☐	A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Background information

Details of the planning proposal	The planning proposal (Tag C) aims to enable a residential subdivision by rezoning 5(a) Special Uses - School land to an R2 Low Density Residential Zone.
Reason for Gateway determination	The Gateway Determination dated 31 July 2013 (Tag D), determined, following consideration of the Planning Team report (Tag E) and LEP Panel recommendation (Tag F), the planning proposal should not proceed for the following reasons: 1. The planning proposal does not include sufficient information on whether biodiversity matters can be satisfactorily addressed to allow development on the site. 2. Council has not sought comments from the Office of Environment and Heritage (OEH) and the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC) on the status of the vulnerable species on the site. Given the proposal will result in the removal of a vulnerable species population listed under Commonwealth legislation, the views of OEH and DSEWPC are to be obtained prior to further consideration of the proposal. The letter accompanying the Gateway Determination advised should Council wish to pursue the rezoning it should consult with OEH and DSEWPC and once their views are known and additional

	information regarding biodiversity matters has been obtained Council may submit an updated planning proposal including the additional information for consideration.
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Views of council

Date council advised of request:	17 September 2013
Date of council response:	19 September 2013
Council response: List issues / points provided in response	Council's response (Tag G) advised it had resolved to support the preparation of the planning proposal on 12 June 2013 (resolution by Council) and reiterates its support for the rezoning and refers to the Section 56 submission of the planning proposal to the department, dated 1 July 2013. No further comment in relation to the Gateway Determination review has been provided.

Proponent justification

Details of justification:	The proponent's justification correspondence (Tag H) considers the Gateway Determination should be reviewed and the planning proposal supported because: 1. Section 2.3 Part 3 of the Department's "A Guide to Preparing Planning Proposals" states investigations and agency consultation are generally not needed to be carried out before a Gateway Determination. 2. The planning proposal as provided by Council included a Fauna and Flora Assessment (Tag K) and Tetratheca juncea (TJ) Survey (Tag L) that identified a number of methods to manage TJ on site which included: a) undertake an assessment of significance to destroy TJ, the likely need to prepare a species impact statement and provide suitable offsets. b) undertake an assessment of significance to translocate TJ to an appropriate site in consultation with Council and prepare a suitable plan of management. c) obtain a biobanking statement to destroy TJ. Note: although the proponent states the Planning Proposal provided by Council included a Fauna and Flora Assessment and TJ Survey, these documents did not form part of the PP submitted to the department by the Council. Further, the summary of methods to manage TJ on the site referred to by the proponent appears different to what is contained in these documents. For example, the the Flora and Fauna Assessment (Tag K) recommends (page 42) that the area of the site containing TJ be transferred to Council for a bushland reserve managed by Council in accordance with a site specific management plan. The proponent contends there are a number of ways to deal with biodiversity matters on site and further investigation would be required. The proponent refers to a meeting between OEH and Council in which it was highlighted that ecological concerns could be resolved through offset options. Correspondence from OEH is provided (Tag I). 3. The Council resolution on 12 June 2013 in which Council resolved to write to OEH and DSEWPC requesting reconsideration of the threatened species status of TJ. The proponent has provided the letters from Council requesting delisting of TJ to OEH and DSEWPC (Tag J) and considers this is a separate issue which should not be connected to the planning proposal.
Material provided in	- Letter requesting Gateway Review including justification, ADW Johnson, 9

support of application/proposal:	September 2013. - Completed Gateway Determination Review Application Form, 9 September 2013 - Planning Proposal as submitted by Council (note aerial, zoning and lot size maps were not included). -Wyong Shire Council letter to the proponent advising of Council's resolution to proceed with the preparation of a planning proposal, 18 June 2013. - Wyong Shire Council letter to Office of Environment and Heritage requesting delisting of Tetratheca juncea from the Threatened Species Conservation Act 1999 Threatened Species List, 18 July 2013. -Wyong Shire Council letter to the Department of Sustainability, Environment, Water, Populations and Communities requesting delisting of Tetratheca juncea from the Threatened Species Conservation Act 1999 Threatened Species List, 18 July 2013. - Letter from Office of Environment & Heritage to ADW Johnson with comments regarding the planning proposal, 26 August 2013. -Tetratheca Juncea Survey, November 2012 - Fauna and Flora Assessment Report, November 2010.
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Assessment Summary

Department's assessment Provide a summary assessment of the department's position/views on the request for review	The proponent's request for the review is based on three main issues related to the conditions in the Gateway Determination which determined the matter should not proceed. The proponent considers the review is justified because: - as detailed in the Department's "A Guide to Preparing Planning Proposals" agency and technical studies and investigations are generally not needed to be carried out before the Gateway; - biodiversity matters are able to be resolved through offset conservation measures; - the status of vulnerable species on site is being addressed as a separate matter by Wyong Shire Council and should not affect the outcome of this site specific planning proposal. Assessment It is acknowledged agency views and further investigations are generally undertaken post Gateway, typically to establish the significance of environmental attributes within a site and to more clearly delineate between potential areas to be developed and those to be conserved. However in this case, although the conservation value of the whole site had been previously established, the submitted planning proposal intends to develop the whole site for residential purposes. A number of previous planning decisions have confirmed the significance of the site and the site has been used to facilitate offsets for development of adjoining land to the south: - This proposal is to rezone the northern 1/3 of a site currently zoned 5(a) school under Wyong LEP 1991 to residential. The site is no longer needed as a potential school site. - Wyong LEP 1991 (Amendment No 165) sought to rezone the southern 2/3 for residential development and the northern 1/3 conservation due to the presence of listed threatened flora. Council and the then owners (Department of Education and Training) agreed to these proposed zonings and the proposed LEP was exhibited but not finalised due to stalled negotiations in preparing a legal agreement to transfer the conservation land to Council. - In 2009 the Director General of the Department of Planning issued a site compatibility certificate for residential development of the southern 2/3 of the site. The application made by Landcom on behalf of the Department of Education and Training, and agreed to by Council, recognised development of the southern part of the site provided the opportunity to conserve and manage that part of the site (northern 1/3) containing threatened species. - Following the site compatibility certificate a subdivision consent was issued in 2011. This consent required the northern 1/3 to be transferred to the Council due to the presence of threatened species. The consent also required nest boxes to be installed as compensation for tree hollows lost on the southern part and 23 nest boxes were installed on the northern part (site of this proposal). - The draft Wyong SI LEP, which has been exhibited and submitted to the department for finalisation, proposes to zone the southern 2/3 R2 and the northern 1/3 E2 Environmental Conservation, a zone generally used to recognise land with a high conservation value. Based on this recent planning history, it is unclear whether any residential development of the northern 1/3 could occur and this was the main reason for the Gateway refusal. However, given that Council had resolved to approach OEH and DSEWPC about having the threatened species delisted, a potential pathway was suggested in the Gateway where the planning proposal could be resubmitted once the views of OEH/DSEWPC were known. The proponent considers biodiversity matters can be resolved through offsets and has provided a letter from OEH, dated 26 August 2013. The OEH letter provides comment on: - adverse impacts on threatened species <i>Tetratheca juncea</i> (Black Eyed Susan) and <i>Petaurus norfolcensis</i> (Squirrel Glider) on the site;
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	- adequacy issues related to the supporting flora and fauna studies including species presence or absence and the potential to have adverse impacts on 5 other species. - the range of biodiversity offset options available and the expectation that the proponent and council undertake collaboration for the best offset option for the site - advice that translocation, as proposed in the PP, would only be accepted in exceptional circumstances or for scientific purposes - a range of offset options. OEH does not specifically refer to the previous use of the site to offset the impacts of development on land to the south. OEH's views on this would be required given the proposal is to develop and offset a site previously used for the purpose of compensating biodiversity loss. The views of DSEWPC remain unknown. Conclusion: Based on an assessment of the information submitted with the request for review it is considered there is insufficient justification to progress the planning proposal past the Gateway to public exhibition and no amendments are suggested to the original Gateway Determination. It may be feasible to identify a development footprint within the site which retains the most environmentally sensitive areas while allowing a lesser development outcome, however this would require an amended planning proposal.
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RECOMMENDATION

Reason for Review: A determination has been made that the planning proposal should not proceed.

Recommendation:	☒	The planning proposal should not proceed past Gateway.
		☒ no amendments are suggested to original determination. ☐ amendments are suggested to the original determination.
	☐	The planning proposal should proceed past Gateway in accordance with the original submission.

Reason for Review: A determination has been made that the planning proposal should be resubmitted to the Gateway.

Recommendation:	☐	The planning proposal should be resubmitted to the Gateway
		☐ no amendments are suggested to original determination. ☐ amendments are suggested to the original determination.
	☐	The planning proposal should not be resubmitted and should proceed past Gateway in accordance with the original submission.

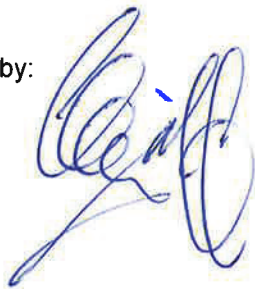
Reason for Review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Recommendation:	☐	Requirements should be imposed or variations made to the planning proposal
		☐ no amendments are suggested to original determination. ☐ amendments are suggested to the original determination.
	☐	The suggested requirements or variations of the original Gateway determination are not necessary and the planning proposal should proceed past Gateway in accordance with the original submission.

Any additional comments:

Prepared by:

Endorsed by:



24.10.13