

REPORT OF THE DIRECTOR OF ENVIRONMENTAL SERVICES

Submitted to the Ordinary Meeting
of Council held on 19 November 2013

1 Report to Council Supporting Initial Gateway Consideration of the Planning Proposal for part of Lot 20 DP 1151501 Caliope Street, Kiama

Summary

Council has received a planning proposal for consideration on part of Lot 20 DP 1151501 Caliope Street Kiama, referred to as site 16 in the Kiama Urban Strategy and was identified in this strategy as Lot 500 DP1064140. The property description was changed in January 2011 as a result of registration of easements on the property. This report overviews the reports submitted by the applicant against criteria outlined in Council's Planning Proposal Policy and recommends the Planning Proposal proceed to the Department of Planning and Infrastructure's "Gateway" process for a determination.

Finance

N/A

Policy

N/A

Reason for Report to Council

In accordance with adopted policy, Council is required to support the consideration of a Planning Proposal in order for the Proposal to proceed to the Department of Planning and Infrastructure for consideration.

Council's Vision and Goals

The relevant vision and goals are:

- a healthy, safe and inclusive community;
- well planned and managed spaces, places and environment;
- a diverse, thriving economy; and
- responsible civic leadership that is transparent, innovate and accessible.

Report Attachments and Councillor Enclosures

Enclosures

- Attachment 1 – Location Plan of the Subject Site.
- Attachment 2 – Subject site showing zoning anomaly.

Attachments

Nil

RECOMMENDATION

That:

- 1 Council endorse this Planning Proposal to proceed to the Department of Planning and Infrastructure for Gateway Determination.
 - 2 Staff prepare the Gateway Report, SEPP Compliance Report and Section 117 Direction Compliance Report in order for this Proposal to proceed to Gateway Determination.
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Item 1 Contd.**REPORT**

Council has received a Concept Planning Proposal (CPP) for consideration on part of Lot 20 DP 1151501 Caliope Street, (known hereafter as 'the subject site'). The subject site is identified as Site 16 in the Kiama Urban Strategy. Attachment 1 shows a location plan of the site.

The site was assessed as suitable for residential development as part of the Urban Strategy process, and the majority of the subject lot was zoned R2 Low Density residential under LEP 2011. However the R2 Low Density zoning and planning controls were not applied to the whole of the lot, leaving two irregular shaped portions of land on the southern and eastern boundary which are now zoned RU2 Rural Landscape (with a minimum lot size of 40 ha). It appears that the split zoning on the site occurred with the application of a cadastral update during LEP 1996 and this split zoning was carried through to LEP 2011.

The two portions of RU2 zoned land on the southern and eastern boundaries of the site total 1447 m² (out of a total 1.1 hectares), and have been left with a rural zoning and a minimum lot size of 40 ha.

This CPP aims to rectify this anomaly by applying the R2 zoning and associated planning controls to the whole of lot 20 DP 1151501.

In line with Council's Planning Proposal Policy, this report details the submitted CPP and provides an assessment of the specialist consultant reports.

Background

The adopted Kiama Urban strategy identifies both infill and urban expansion opportunities for the LGA. For sites that are identified for possible future urban expansion opportunities, Council may consider Planning Proposals to facilitate urban development.

A Planning Proposal is the mechanism utilised to amend Council's LEP and involves both Council and State Government in the processing of any proposal. In order for Council to consider a request to change the zone of an area, a Planning Proposal needs to be produced. Council has an adopted Planning Proposal Policy which outlines the steps involved in the production and assessment of all Planning Proposals. Such Policy assists in ensuring a clear and transparent process.

The Planning Proposal is a document that explains and justifies the effect of a proposed LEP and is the first step in the preparation of an LEP. Producing an LEP is a legal process involving the amendment or creation of statutory planning instruments. In line with the requirements of the Planning Proposal Policy, Council has received a Planning Proposal to consider rezoning part of Urban Strategy site 16: part of Lot 20 DP 1151501 Caliope Street, Kiama.

In relation to the subject site, the Urban Strategy states:

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Site16: "Zone Residential R2 as the land was supported in a previous environmental study. Included in draft LEP 2011."

Due to this zoning anomaly the whole of site 16 was not zoned for residential development.

Concept Planning Proposal Details

The applicant, Weriton Properties Pty Ltd, has submitted a CPP for the subject site. The CPP seeks to rezone the portions of the site that are currently zoned RU2 Rural Landscape to R2 Low Density Residential and apply associated planning controls (Height of Building, Minimum Lot Size, Floor Space Ratio) commensurate with the rest of the site.

The CPP seeks the following amendments to Council's Local Environmental Plan 2013 to ensure that the whole of the Lot 20 DP 1151501 is subject to the same planning controls:

Controls	Current controls	Proposed controls
Zone	Zone RU2 Rural Landscape	Zone R2 Low Density Residential
Floor Space Ratio (FSR)	FSR - none	FSR – C 0.45:1
Height of Building (HOB)	HOB – none	HOB - I 8.5
Lot Size	Lot size 40ha	Lot size - G 450 (sq m)

Review and Assessment of the Planning Proposal

The results of the review will be framed around the requirements of the Planning Proposal Policy.

Step 1: If the Proposal meets any of the following criteria Council staff may agree in principle that a concept Planning Proposal be prepared.

Criterion for proceeding to step 2	Compliance
Land is identified as a nominated area in the Urban Strategy.	Complies - Land is identified as site 16 in the Kiama Urban Strategy.
Land can be identified as assisting to meet Council's strategic direction.	Complies - Proposal will assist in meeting Councils' strategic direction in terms of lot numbers for the Kiama Area.
A clear zoning anomaly exists on site.	Complies - The R2 zone applied to the site with LEP 2011 did not extend to the whole of the site. The resultant thin slivers of land unless rezoned to R2 will impede development on site.

Item 1 Contd.**Step 2: Concept Planning Proposal presented to Council.**

In order to adequately assess the viability of the land for residential development a number of specialist consultant reports were required to be undertaken by the applicant. The results of these have been summarised below:

Planning Report – Prepared by Cowman Stoddart Pty Ltd

The majority of Lot 20 DP 1151501 was zoned R2 low density residential under LEP 2011. However the R2 zone and associated planning controls do not apply to the whole of the lot, leaving two small irregular portions of land on the southern and eastern boundary which are now zoned RU2 rather than R2. This has created a zoning anomaly on site which precludes this portion of the site for development and restricts the site from reaching its development potential. Lot 20 DP 1151501 is 1.1ha in size, however the CPP applies to approximately 1447 m² of this parcel.

The Planning Report addressed the relevant statutory instruments including the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, Threatened Species Conservation Act, Rural Fires Act, Water Management Act 2000, Native vegetation Conservation Act, National Parks and Wildlife Act 1974, Contaminated Land Management Act 1997, Kiama Local Environmental Plan 2011.

The Planning report also addresses the Sustainability Index Criteria from the Illawarra Regional Strategy, State Environmental Planning Policy criteria and Section 117 Directions.

The Planning report concludes that: *“the proposed modification of the lands zone boundary that affects the subject site will not have any significant adverse environmental or social impacts.”*

Comment

The Planning Report has addressed all of the relevant issues required, and has indicated that the proposed change will not have significant adverse impacts on environmental or social attributes on site.

Flora and Fauna Impact Assessment prepared by Southeast Engineering and Environmental

The consultants carried out a review of the site which included database and literature review, flora, fauna and habitat surveys and significance assessment under relevant legislation. The consultants concluded that there were:

- No threatened flora species on site.
- No endangered flora species recorded on site.
- No EEC's recorded on site.

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- The Assessment of Significance under Section 5A of the EP&A Act (seven-part test) concluded that the proposal is "*unlikely to have a significant effect on the Eastern Freetail Bat, Grey-Headed Flying-fox or Yellow-Bellied Sheathtail Bat*", (these are the species considered likely to occur on site). Therefore, this matter will not require referral to the NSW Director General."
- The assessment of significance under the Commonwealth Environment Protection & Biodiversity Conservation Act 1999 concluded that "it is unlikely that the action [proposed rezoning of subject site] would significantly impact on those threatened species assessed. Therefore, referral to the Commonwealth Minister is not recommended".
- The proposal will have "no impact on the two endangered flora species *Zieria granulata* and *Cynanchum elegans* which were found an adjacent site".

The results of this review concluded that the change in land use will not have any adverse detrimental effect on the existing flora and fauna on site.

Comment

Staff concur with this assessment. It is to be noted that there are 2 endangered species (*Zieria granulata* and *Cynanchum elegans*) in degraded Illawarra Subtropical rainforest EEC located on an adjoining lot approximately 40 metres from the site. Managing any impacts on these will need to be considered on any subsequent development application.

Aboriginal Heritage Assessment prepared by Myall Coast Archaeological Services

The report addressed due diligence by:

1. *Identifying whether or not Aboriginal objects are, or are likely to be, present in an area;*
2. *Determining whether or not their activities area likely to harm Aboriginal objects (if present); and*
3. *Determining whether an Aboriginal heritage Impact Permit (AHIP) application is required."*

The study found that the area is considered 'disturbed land' which mitigates risk for potential heritage. It concluded that "*given the disturbed nature of the study area, its lack of depositional qualities and infrequent occupation it is highly unlikely that Aboriginal objects exist on or below the land. It is therefore concluded that Aboriginal objects will not be harmed by existing activities but more importantly be the proposed planning proposal and subsequent activity.*"

Item 1 Contd.Comment

Council's Heritage Advisor supports the conclusions and recommendations contained in this report specifically that:

- "1) *The methodology undertaken in preparation of this report is acceptable.*
- 2) *The assessment notes that there is no archaeological potential within the subject site (pg. 7), and recommends that no further assessment from an Aboriginal heritage and Archaeological perspective is required (pg. 11).*

There is a further recommendation in the report which refers to discovery of Aboriginal objects and Authority notification requirements whilst undertaking works to the subject site. Council should consider this recommendation when formulating conditions for future development of the subject site."

It will be necessary to ensure that any future development applications are appropriately conditioned to reflect the recommendations of this study.

Contamination Assessment Report prepared by Strategic Environmental and Engineering Consulting

This report concluded that: *"there are no signs of past or present potentially contaminating activities on the subject land. We concluded that the risk of contamination is very low and the issue of contamination would not preclude re-zoning."* The consultants recommended that the sub floor area of the house be tested for organochloride and organophosphate pesticides and if present a remediation plan be required.

Comment

The above recommendation and any requirements relating to demolition of the existing house can be incorporated as conditions associated with any development application for demolition of the existing dwelling.

SEPP Compliance Report – Prepared by Cowman Stoddart Pty LtdComment

The SEPP Compliance Report prepared by Cowman Stoddart Pty Ltd will be attached to the Planning Report submitted for Gateway determination. It is considered best practice for Council to prepare an independent report addressing SEPP Compliance as a part of the Gateway report.

Item 1 Contd.**Section 117 Directions Compliance Report– Prepared by Cowman Stoddart Pty Ltd****Comment**

The Section 117 Directions Compliance Report prepared by Cowman Stoddart Pty Ltd will be attached to the Planning Report submitted for Gateway determination.

Council has a number of issues with this report in addressing compliance. It is considered best practice for Council to prepare an independent report addressing Section 117 Directions Compliance as a part of the Gateway Report.

Assessment Summary

Report	Considered appropriate to proceed to Gateway
Planning Report	✓
Annexure 2 Flora and Fauna Impact Assessment	✓
Annexure 3 – Aboriginal Heritage Assessment	✓
Annexure 4 - Contamination Assessment Report	✓

Conclusion

The Planning Proposal meets the criteria outlined in the Planning Proposal Policy as it is both an endorsed site, (Site 16) under the Kiama Urban Strategy, and has a clearly identified zoning anomaly on site.

The technical reports submitted by the applicant have provided sufficient information to enable Council staff to support this stage of the Concept Planning Proposal.