

Planning Services

Gateway Determination Report

LGA	Kiama
PPA	Kiama Municipal Council
NAME	144 Jamberoo Mountain Road, Jamberoo (1 dwelling, 0 jobs)
NUMBER	PP 2018 KIAMA 003 00
LEP TO BE AMENDED	Kiama LEP 2011
ADDRESS	144 Jamberoo Mountain Road Jamberoo
DESCRIPTION	Part Lot 1 DP 129766 and Part Lot 144 DP 751279
RECEIVED	16 March 2018 – revised 2 July 2018
FILE NO.	IRF18/4042
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

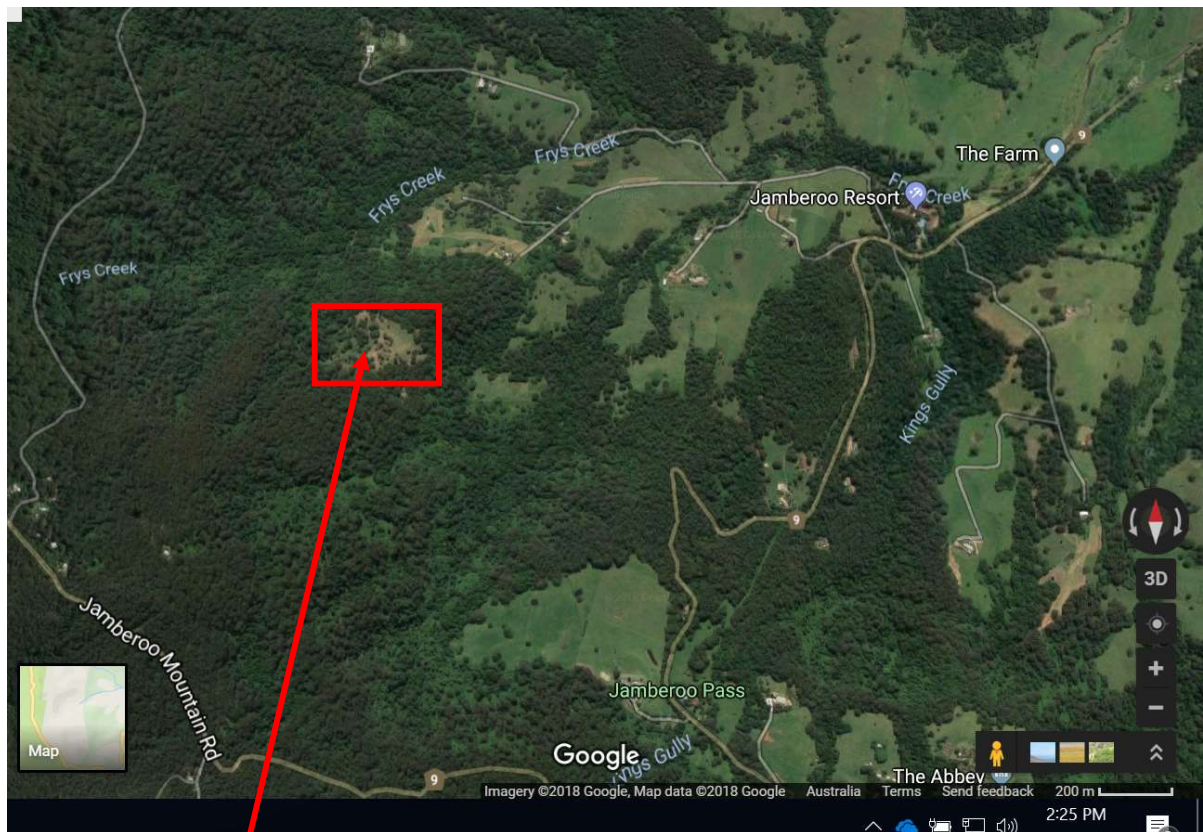
Description of planning proposal

The proposal seeks to rezone part of the subject land, being 4.5ha area, from E2 Environmental Conservation to E3 Environmental Management under the Kiama Local Environmental Plan 2011. The rezoning would make a dwelling permissible on the subject land.

Site description

The part of the site subject to rezoning is rectangular in shape, undulating and generally falling from the south west. It is approximately 4.5ha in area and forms part of a property known as 144 Jamberoo Road Jamberoo. The property is approximately 5.5km west south west of the Jamberoo township, includes 5 lots, being Lots 143, 144, 160 and 166 DP751279 and Lot 1 DP129766. The total land holding is approximately 66ha in area.

The subject site includes a large cleared area and surrounding areas of disturbed vegetation. Beyond these areas, the vegetation becomes more continuous extending into surrounding lands which are heavily vegetated. Further afield to the north and east, the land flattens to cleared grazing land.



Subject land (Source: Googlemaps)

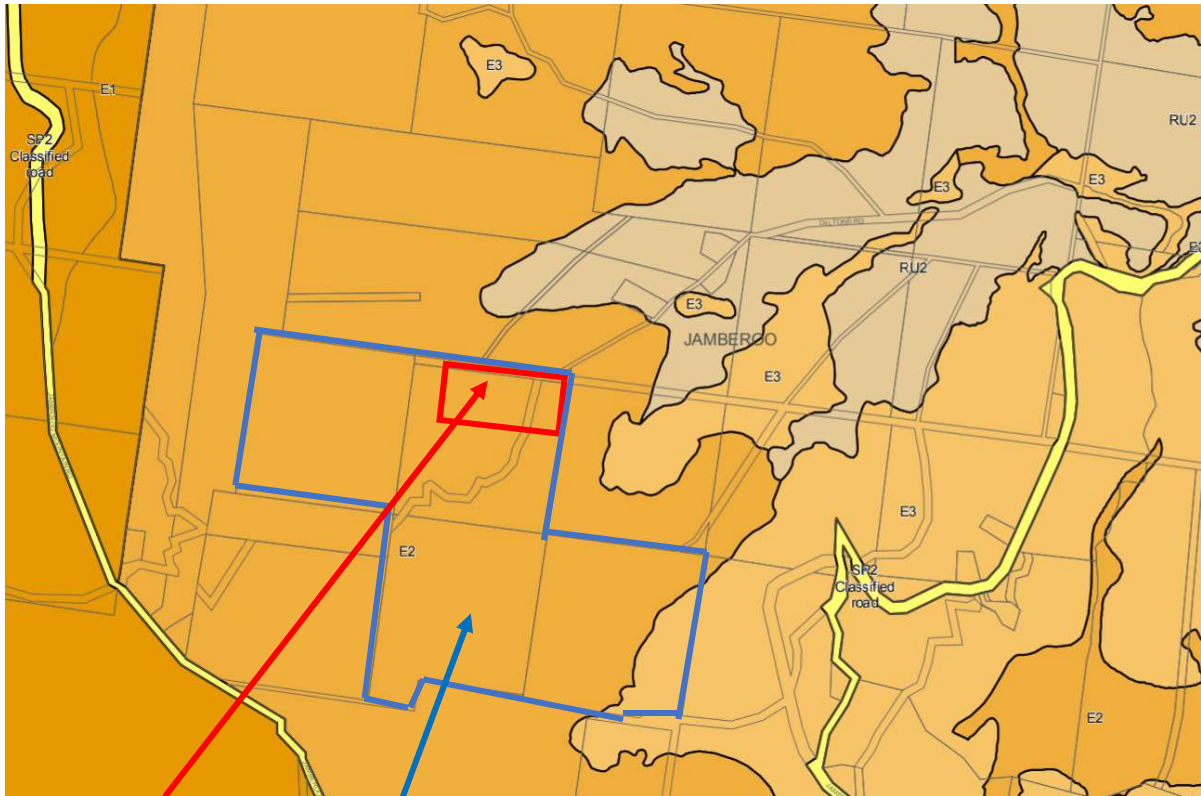
Existing planning controls

The subject land is currently zoned E2 Environmental Conservation under the Kiama LEP 2011.

Dwellings are not permissible within the E2 zone.

The parent property features a portion of land zoned currently E3 environmental Management on the eastern boundary. Dwellings are permissible within the E3 zone.

A 40ha minimum lot size standard applies to the entire property.



Zoning map: Subject Land

Land Holding (Source: www.legislation.com.au)

Surrounding area

The surrounding area is characterised by a mix of densely vegetated and steeply sloping escarpment landscapes, as well as more gently undulating, cleared grazing land predominantly used for dairy farming and rural lifestyle land uses. The site is located approximately 5km west south west of Jamberoo Village. See above locality and zoning maps.

Summary of recommendation

Proceed as per submitted – The proposal relates to a spot rezoning to apply a zone that reflects the environmental attributes of the subject land and to provide the opportunity to erect a dwelling. Consolidated, the property satisfies the minimum lot size applying to the land, and the only other area zoned to permit a dwelling cannot be accessed by vehicles. The subject land is largely cleared, with existing road access. It is considered, subject to approval from both OEH and NSW RFS that the site is suitable for rezoning and subsequent development assessment consideration for a new dwelling.

PROPOSAL

Objectives or intended outcomes

The objectives of the proposal identified by Council are to rezone the subject land from E2 Environmental conservation to E3 Environmental management to better reflect the ecological values of the land, and to make dwellings permissible on the site.

The objectives are considered clear and appropriate for community consultation.

Explanation of provisions

The proposal requires amendment of the Land Zoning Map applying to the part of Lot 1 DP129766 and Part Lot 144 DP751279 from E2 Environmental conservation to E3 Environmental management.

The provisions proposed to be amended are clearly described in the planning proposal.

Mapping

The mapping provided is to be amended prior to exhibition to improve the scale/legibility of the map showing the proposed zoning, and to more clearly identify the subject land. A clear 'current zoning map' of the same scale as the proposed zoning map should also be included to better illustrate the proposed zoning change.

Whilst the type of maps provided is satisfactory for consultation, Council will need to provide LEP standard maps prior to finalising the LEP.

NEED FOR THE PLANNING PROPOSAL

The proposal seeks to rezone the site to a zone considered to be more appropriate, reflecting environmental attributes present. The rezoning would also facilitate the permissibility of a dwelling on the subject land. The subject land is part of a larger holding of 5 lots with a total area of approximately 66ha. When consolidated, the land holding will satisfy the minimum 40ha lot size development standard applying to the land.

At present, should the lots be amalgamated, the only portion of the site where a dwelling is permissible is an area in the south-eastern corner that is currently zoned E3 Environmental Management.

Council has outlined that development of the existing E3 zoned portion of land is problematic due to significant access constraints, noting only unformed crown roads to access the site, and the need to provide a new connection to Jamberoo Mountain Road. The proposal discusses the difficulties of providing a safe connection to Jamberoo Mountain Road, and that the formalisation of crown roads would either require significant clearing, or dissect existing cleared grazing land.

The significant cleared land and surrounding disturbed areas on site provide a realistic opportunity to consider a dwelling without significant impact on the environment.

The proposal discusses the alternative option of allowing a dwelling house as a Schedule 1 - additional permitted use on the subject land, however Council considers that the proposed rezoning not only makes a dwelling permissible with development consent, but applies a zone that more appropriately reflects the environmental characteristics of the subject land, noting the significant existing cleared area and the lack of flora and fauna species present as identified by the study that accompanies the proposal.

The Regional Office agrees that the subject land is noticeably different from surrounding heavily vegetated and more highly constrained land also zoned E2. It is considered appropriate to allow the proposal to proceed to consultation with

government agencies including OEH and NSW RFS to consider the appropriateness of rezoning the land to E3 Environmental management.

The department also notes that Council has identified that a shed capable of being occupied is present on the subject land. Council has advised that this shed can either be the subject of a future Building Certificate to legalise the use of the shed as a dwelling or Council can issue an Order to have the fittings (kitchen, laundry, bathroom) removed so that it is no longer capable of separate occupation.

STRATEGIC ASSESSMENT

State

State strategic planning policy has limited relevance given the small scale of the proposed rezoning.

Regional / District

The subject land is mapped as part of a regionally mapped biodiversity corridor. The proposal discusses the broad scale of this mapping, and notes that the Flora and Fauna Assessment prepared to support the proposal concludes that the subject land is not characterised by high ecological value lands and that an Environmental Management (E3) zone is more appropriate than an Environmental conservation (E2) zone.

The Regional Office acknowledges the flora and fauna study and the cleared area on site. The validity of the study will be tested through consultation with the Office of Environment and Heritage, and Council will need to consider any comments when progressing the proposal. Any inconsistency at this stage is considered minor.

Local

Council notes that the planning proposal is not inconsistent with the current, nor revised exhibited draft Kiama Community Strategic Plans, nor is the site identified or explored in the Kiama Urban Strategy as no new dwellings are proposed.

The Regional Office is satisfied that the proposal is not inconsistent with Council's local strategic planning.

Section 9.1 Ministerial Directions

The following S9.1 Directions are relevant/apply to the planning proposal;

1.5 Rural Lands - Applicable as the proposal involves land in an existing environmental zone. The proposal does not alter or reduce the agricultural viability of the subject land and facilitates the orderly development of the land for rural and related purposes. Therefore, the proposal is considered to be consistent with the objectives of the Direction.

2.1 Environmental Protection Zones – The proposal is inconsistent with this Direction as the proposed rezoning will reduce the level of environmental protection. The proposal has been supported by a Flora and Fauna study that reaches the conclusion the proposed zoning more accurately reflects the environmental characteristics of the subject site. It is considered that unless OEH disagree with the findings of the study and/or object, inconsistency with this direction is minor given the size of the area affected.

4.4 Planning for Bushfire Protection – The subject land is mapped as bushfire prone land. A bushfire assessment has been prepared and is included in the planning proposal. Consistency with the Direction requires consultation with the Commissioner of the NSW Rural Fire Service. Consultation with NSW RFS prior to community consultation is to be a condition of the Gateway determination.

5.10 Implementation of Regional Strategies – The subject land is identified as being part of a regional biodiversity corridor. The proposal seeks to rezone a small area of largely cleared land to another environmental zone with a reduced level environmental protection and to permit a dwelling. The area has been studied and the proposal indicates that minimal to no impact on biodiversity will result. Noting that consultation with OEH is required as a Gateway condition, it is considered that any inconsistency with the regional plan, and subsequent Direction is considered minor significance unless OEH objects to the proposal.

Council is to be required to consult with the NSW Rural Fire Service and NSW Office of Environment and Heritage. Should no objection be received from these agencies, any inconsistency with Directions is considered minor and the planning proposal should be able to proceed. Should an objection be received, Council will need to consider/resolve any objections prior to proceeding with the proposal.

State environmental planning policies

Council has identified that SEPP 55 Remediation of Land and SEPP (Rural Lands) 2008 are relevant.

The Regional office is satisfied that the planning proposal is not inconsistent with these or any other SEPPs.

SITE-SPECIFIC ASSESSMENT

Social

The social impacts of this proposal are limited. The proposal is site specific and will result in the permissibility of a dwelling in an alternate location on the property to what could be undertaken under current planning provisions.

Environmental

The subject land, currently zoned E2 Environmental conservation is mapped in the Kiama LEP 2011 on the Terrestrial Biodiversity Map and is mapped as bushfire prone land.

The proposal includes discussions of the findings of a flora and fauna study prepared by OMVI Ecological. The assessment found that no threatened species were recorded during site surveys, however a vegetation community with attributes of two endangered ecological communities were present along the lower slopes and creek lines, and a potential habitat for several other mobile threatened fauna species was identified. The study concluded that no direct and indirect impacts would result from the rezoning.

It is noted that the large portion of the land proposed to be rezoned is characterised by a significant cleared area, and areas of highly disturbed vegetation, in comparison to the surrounding land which is more characterised by intact, heavily vegetated land.

The Regional Office is satisfied that the subject land is, by virtue of the existing environmental characteristics, distinctly different to the environmental attributes of surrounding land.

Economic

Council considers the proposal to provide a viable building envelope for the development of a dwelling on the land holding that includes the subject site. The existing alternate location for a dwelling has significant access issues.

The proposed rezoning would allow a building envelope of cleared land with existing road access and make development more viable. No further significant economic impacts are foreseen.

CONSULTATION

Community

Council has proposed a 14 day community consultation period. The Regional Office considers this period appropriate given the nature and scale of the proposal.

Agencies

Council has not identified any specific agencies for consultation, rather relying on those nominated by the Gateway determination.

Noting the current E2 zoning, and the heavily vegetated nature of surrounding areas, The Regional Office considers it appropriate that consultation with the Office of Environment and Heritage (OEH) having regard to the environmental zonings, and the NSW Rural Fire Service (RFS) to ensure consistency with s9.1 Direction 4.4.

TIME FRAME

Council has proposed to complete the LEP in 6 months.

This timeframe is considered optimistic, noting agency consultation required and having regard to approaching the end of year period. An additional 3 months is recommended to ensure that any delays will be able to be considered and the LEP be finalised after the Christmas period. A 9 month time frame for completion is recommended.

LOCAL PLAN-MAKING AUTHORITY

Council has requested delegation to finalise the making of this LEP.

Given the minor nature of the proposed amendment, and noting that no additional dwelling entitlements are being created by the proposal, the Regional office considers it appropriate for Council to be given delegation. It is noted that should either agency required to be consulted objects, delegation will no longer be valid and Council will be required to report to the Department to request the plan be made.

CONCLUSION

The planning proposal is supported to proceed subject to conditions.

- The rezoning largely reflects existing environmental attributes of the subject land
- No new dwelling entitlements are to be created

- A building envelope appears feasible with minimal to no clearing of existing vegetation
- The resulting consolidation of lots in these types of areas is considered a positive environmental outcome
- The proposal is considered appropriate to proceed to agency consultation to determine the environmental suitability of the proposed rezoning.

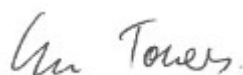
RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **agree** that any inconsistencies with section 9.1 Directions 2.1 Environmental Protection Zones, and 5.10 Implementing Regional Plans are minor or justified; and that the proposal will be consistent with Direction 4.4 Planning for Bushfire Protection following consultation with the NSW Rural Fire Service.

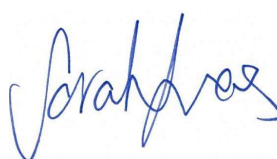
It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
 - Office of Environment and Heritage (OEH)
 - NSW Rural Fire Service (RFS).
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.



30/07/18

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03/08/2017

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