

17.1 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Clarifying Proposed LEP Amendments

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

CSP Strategy: 2.3 The principles of sustainable development and compliance underpin town planning and local development

Delivery Program: 2.3.1 Conduct development and building assessment/approval functions in accordance with statutory requirements, policies and procedures

Summary

At the 28 June 2021 Extraordinary Council Meeting, Council resolved to:

Committee recommendation that Council:

1. *support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.*
2. *provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.*

In accordance with the Local Government Act, Council staff acted upon the resolution of Council. Fees were requested from the proponent and the Planning Proposal was submitted to the Department of Planning, Industry and Environment for Assessment.

On 16 July 2021 Council received notification that the Minister's delegate had determined that the Proposal should not proceed to a Gateway Determination due to the following reason:

"There is no explanation of provisions in the planning proposal. The proposal states that feedback from the Council pre-lodgement meeting was not to include exact details on the changes as this approach will enable Council to determine the appropriate zoning and other potential amendments that may be required to the Kiama LEP 2011. Whilst the Council report identified three possible provisions, the Council resolution of 28 June 2021 only resolves to support the planning proposal. The planning proposal must clearly identify the proposed changes to the LEP including the proposed zoning or mechanism to allow industrial use of the site. Details on the provisions are required to ensure all other information in the planning proposal relates to and supports the use of the provisions. It is not possible to assess the planning proposal without knowing the proposed provisions."

This report seeks to clarify and obtain the information requested from the Department.

Financial implication

Council has adopted a fee structure for the submission and review of planning proposals. The relevant fees have been paid as required by Council's fees and

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Clarifying Proposed LEP Amendments (cont)

charges schedule. The fees required to be provided by the proponent have been submitted and paid.

Policy

The assessment of requests for the rezoning of land require the consideration of a number of Acts, Government Policies, Environmental Planning Instruments and planning documents.

Consultation (internal)

Consultation will be undertaken as required through the planning proposal process.

Communication/Community engagement

In accordance with the *Kiama Community Participation Plan (CPP) 2019*, pre-Gateway consultation was carried out from 28 April to 11 May (i.e. 14 days). Adjoining neighbours were directly notified, notification was provided to the South Precinct Committee, was advertised in The Bugle and placed on Council's website and social media platforms. Council received several requests for extensions to the submission period. It was confirmed that Council were happy to receive late submissions.

During the exhibition period 49 submissions were received, 17 of which were in support of the proposal, 31 opposing the proposal (including 7 late submissions) and one requesting that no decision is made before the upcoming Council elections.

Should a Gateway Determination be issued by the NSW Department of Planning, Industry and Environment it will outline the minimum requirements for consultation to be undertaken with government agencies and the community. All other community engagement will occur in accordance with the *Kiama Community Participation Plan*.

Attachments

- 1 Council report - 28 June 2021
- 2 Adequacy Assessment Decision Rationale

Enclosures

Nil

RECOMMENDATION

That Council

1. Council support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.
2. Prior to proceeding for a Gateway Determination, request that the proponent update the Planning Proposal so that it seeks to amend the *Kiama Local*

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Environmental Plan (KLEP) 2011 to include the site in Schedule 1 and list *general industries* and *landscaping material supplies* as additional permitted uses on the site.

3. Following receipt of the amended Planning Proposal, request a Gateway Determination from DPIE and provide advice that Council's preference for the proposed change to *KLEP 2011* is to amend Schedule 1. This option allows for the retention of the existing RU1 Primary Production zone.
4. Council provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.

OPTIONS/ALTERNATIVE RESOLUTIONS

Option 1 – Additional Permitted Use

Adopt the above recommendation to amend the *Kiama Local Environmental Plan (KLEP) 2011* to include the site in Schedule 1 and list *general industries* and *landscaping material supplies* as additional permitted uses on the site.

Implications

It is considered that the most appropriate option, would be to amend Schedule 1 of Kiama LEP. As with the Planning Proposal for Rose Valley, Council can amend Schedule 1 in such a way so as to, with a relatively high amount of certainty, ensure the outcome of any future development application.

For example, rather than simply listing *general industries* and *landscaping material supplies* as additional permitted uses on the site, Council could stipulate the specific business types and sizes of *general industries* and *landscaping material supplies* for this site.

This option would also ensure that the existing RU1 Primary Production zoning remained and as such, the rural objectives of the zone would be relevant when determining a development application.

This option would also ensure that Complying Development Certificates for industrial uses could not be issued and that Council would be the only determining authority for industrial uses on the site.

Option 2 – IN1 General Industrial Zoning

This option would include introducing the IN1 General Industry Zone into Kiama LEP 2011. It is mandatory to permit *general industries*, with consent, within the IN1 zone. Council can elect to also permit, with consent, *landscaping material supplies* and *industrial retail outlet* within the IN1 zone.

Alternative Resolution

That Council

- 1) Council support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and
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- Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.*
- 2) *Prior to proceeding for a Gateway Determination, request that the proponent update the Planning Proposal so that it seeks to amend the Kiama Local Environmental Plan (KLEP) 2011 to rezone the site to IN1 General Industrial and permit with consent landscaping material supplies and industrial retail outlet within the IN1 zone.*
 - 3) *Following receipt of the amended Planning Proposal, request a Gateway Determination from DPIE and provide advice that Council's preference for the proposed change to KLEP 2011 to rezone the site to IN1 General Industrial.*
 - 4) *Council provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.*

Implications

This option would introduce a new zone into the Kiama LEP 2011.

This option would allow Complying Development Certificates for industrial uses to be issued.

This option could result in further implications associated with the State Employment Zones Reform.

This option is not deemed appropriate as it would fail to meet the Strategic Merit Test (see below), as the relevant action under Planning Priority 5 of the LSPS has not been undertaken.

Option 3 – IN2 Light Industrial Zoning and Additional Permitted Use

Under this option the site would be rezoned to IN2 Light Industrial and the site would be included within Schedule 1 of Kiama LEP and list *general industries* as additional permitted uses on the site.

Alternative Resolution*That Council*

- 1) *Council support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.*
 - 2) *Prior to proceeding for a Gateway Determination, request that the proponent update the Planning Proposal so that it seeks to amend the Kiama Local Environmental Plan (KLEP) 2011 to rezone the site to IN2 Light Industrial and include the site in Schedule 1 and list general industries as additional permitted uses on the site.*
 - 3) *Following receipt of the amended Planning Proposal, request a Gateway Determination from DPIE and provide advice that Council's preference for the proposed change to KLEP 2011 is to rezone the site to IN2 Light Industrial and amend Schedule 1.*
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- 4) *Council provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.*

Implications

While this option would not make *general industries* a permissible land use for all land currently zoned IN2 Light Industrial zone across the Municipality it would still result in a rezoning of the site.

This option would allow Complying Development Certificates for industrial uses to be issued.

This option could result in further implications associated with the State Employment Zones Reform.

As outlined below, it is not considered that this would fail to meet the Strategic Merit Test (see below), as the relevant action under Planning Priority 5 of the LSPS has not been undertaken.

Option 4 – IN2 Light Industrial Zoning and Make General Industries permissible in zone

This option would include making *general industries* a permissible land use for all land currently zoned IN2 Light Industrial zone and rezone the site to from RU1 Primary Production to IN2 Light Industrial.

Alternative Resolution*That Council*

- 1) *Council support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.*
- 2) *Prior to proceeding for a Gateway Determination, request that the proponent update the Planning Proposal so that it seeks to amend the Kiama Local Environmental Plan (KLEP) 2011 to rezone the site to IN2 Light Industrial and permit with consent general industries within the IN2 zone.*
- 3) *Following receipt of the amended Planning Proposal, request a Gateway Determination from DPIE and provide advice that Council's preference for the proposed change to KLEP 2011 to rezone the site to IN2 Light Industrial and permit with consent general industries within the IN2 zone.*
- 4) *Council provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.*

Implications

This option would make general industries permissible in areas already zoned IN2. This obviously has broader implications than just a site specific Planning Proposal. It also diminishes the merit/need for rezoning the site. If *general industries* are

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permissible in all existing IN2 zoned areas, then this site does not need to be rezoned in order for the proponent to achieve his desires within the LGA.

This option would allow Complying Development Certificates for industrial uses to be issued.

This option could result in further implications associated with the State Employment Zones Reform.

This option is not deemed appropriate as it would fail to meet the Strategic Merit Test (see below), as the relevant action under Planning Priority 5 of the LSPS has not been undertaken.

BACKGROUND

As previously reported, Council received a request to adopt a Planning Proposal (PP) to amend *Kiama Local Environmental Plan (LEP) 2011* to facilitate general industrial development on Lot 40 DP 1230679 – 5 Sims Road Gerringong.

The PP seeks to amend Kiama LEP 2011 to permit *general industries* on the site. In the submitted PP, the proponent has indicated that the desired future uses on the site would include:

- Wholesale landscape supplies,
- Firewood business, and
- Fabrication/Manufacturing businesses.

At the 28 July 2021 Extraordinary Council Meeting, Council resolved to support the PP to amend *Kiama Local Environmental Plan (LEP) 2011* to facilitate general industrial development on Lot 40 DP 1230679 – 5 Sims Road Gerringong.

The recommendation of staff was to, prior to proceeding for a Gateway Determination, request the proponent to update the Planning Proposal so that it seeks to amend the *Kiama Local Environmental Plan (KLEP) 2011* to include the site in Schedule 1 and list *general industries* and *landscaping material supplies* as additional permitted uses on the site.

In resolving to support this Proposal through an alternative motion, Council removed the two components of the staff recommendation which outlined how the Kiama LEP 2011 was to be amended. These two components of the original recommendation were imperative in providing clear direction on how the LEP was to be amended.

Alternative recommendations have been provided in this report which provide Councillors with options to use to ensure the motion provides the clarity required. Staff are always able to provide clarity and alternative motions for Councillors should they wish for such advice/guidance to be provided, however this must be directly asked of staff on the floor of Council.

Staff however enacted the Council resolution in accordance with the resolution of Council as required and a Gateway Determination was requested 14 July 2021.

On 16 July 2021 (see attached) Council received notification that the Minister's delegate had determined that the Proposal should not proceed to a Gateway Determination. The Department has requested that additional information and

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clarification be provided to assist in understanding the intention and ultimate outcome sought via the planning proposal request.

This report seeks to clarify how the elected Council wish to amend the Kiama LEP 2011 as part of supporting this proposal.

As outlined above, there are four (4) ways the Kiama LEP 2011 could be amended in order to support this proposal:

- Option 1 – Additional Permitted Use
- Option 2 – IN2 Light Industrial Zoning and Additional Permitted Use
- Option 3 – IN1 General Industrial Zoning
- Option 4 – IN2 Light Industrial Zoning and Make General Industries permissible in zone

All options require the Planning Proposal, submitted by the proponent, to be updated to clearly identify the proposed changes to the Kiama LEP 2011 including the proposed zoning or mechanism to allow industrial use of the site. Council must also note the requirements to meet the strategic merit test and the strategic outcomes of the Planning Proposal Guidelines and our planning framework.

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement

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 has received a request to adopt a Planning Proposal (PP) to amend *Kiama Local Environmental Plan (LEP) 2011* to facilitate general industrial development on Lot 40 DP 1230679 – 5 Sims Road Gerringong.

The PP seeks to amend Kiama LEP 2011 to permit *general industries* on the site. In the submitted PP, the proponent has indicated that the desired future uses on the site would include:

- Wholesale landscape supplies,
- Firewood business, and
- Fabrication/Manufacturing businesses.

The Kiama LEP could be amended in several ways in order to achieve the intent of the PP.

While acknowledging the need for additional industrial/employment lands, the Kiama Local Strategic Planning Statement 2020 has not identified any particular sites as being suitable. Pre-Gateway consultation was carried out in accordance with the Kiama Community Participation Plan 2019. During the exhibition period 49 submissions were received which included:

- 17 were in support of the proposal;
- 31 opposing the proposal (including 7 late submissions); and
- 1 requesting that no decision is made before the upcoming Council elections.

The proposal meets both the strategic merit and site-specific merit tests. It is recommended that the PP proceed to the Department of Planning, Industry and Environment for a Gateway Determination.

Attachments

- 1 Planning Proposal - 5 Sims Road Gerringong - THL Rural Pty Ltd
 - 2 Planning Proposal - Visual Impact Statement - 5 Sims Road, Gerringong - THL Rural Pty Ltd
 - 3 Planning Proposal - Visual Impact Statement - Photomontages - 5 Sims Road, Gerringong - THL Rural Pty Ltd
 - 4 Planning Proposal - Agricultural Assessment - 5 Sims Road, Gerringong - THL Rural Pty Ltd
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EXTRAORDINARY MEETING

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Report of the Director Environmental Services

- 4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

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- 5 Planning Proposal - Environmental Noise Impact Statement Assessment - 5 Sims Road, Gerringong - THL Rural Pty Ltd
 - 6 Planning Proposal - Economic Impact Assessment - 5 Sims Road, Gerringong - THL Rural Pty Ltd
 - 7 Planning Proposal - Traffic and Parking Impact Assessment - 12 March 2021 - 5 Sims Road, Gerringong THL Rural Pty Limited_PP-2021-2803

Enclosures

- 1 Public Submissions - Planning Proposal - 5 Simms Road, Gerringong

RECOMMENDATION

That:

- 1) Council support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.
- 2) Prior to proceeding for a Gateway Determination, request that the proponent update the Planning Proposal so that it seeks to amend the *Kiama Local Environmental Plan (KLEP) 2011* to include the site in Schedule 1 and list *general industries* and *landscaping material supplies* as additional permitted uses on the site..
- 3) Following receipt of the amended Planning Proposal, request a Gateway Determination from DPIE and provide advice that Council's preference for the proposed change to *KLEP 2011* is to amend Schedule 1. This option allows for the retention of the existing RU1 Primary Production zone.
- 4) Council provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.

BACKGROUND

Council has received a request to adopt a Planning Proposal (PP) to amend *Kiama Local Environmental Plan (LEP) 2011* to facilitate general industrial development on Lot 40 DP 1230679 – 5 Sims Road Gerringong.

Site Details

The site is immediately adjacent to the west of the intersection between the Princes Highway and Belinda Street. The site is currently zoned RU1 Primary Production and was most recently used as an office/depot for the, former, Roads and Maritime Service (RMS) during the works associated with the Gerringong bypass. It is noted that the site is predominantly cleared (refer to Figure 1).

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

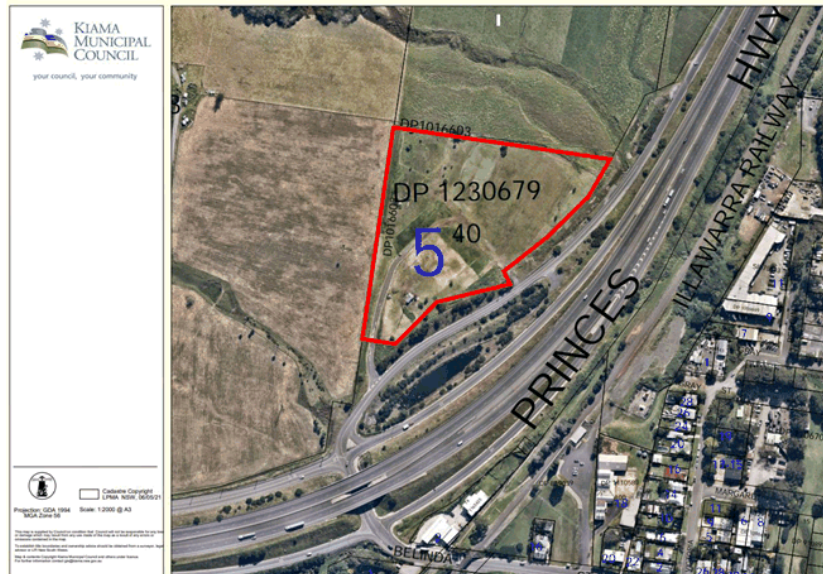


Figure 1: Subject Site

Intent of Planning Proposal

The PP seeks to amend Kiama LEP 2011 to permit *general industries* on the site. In the submitted PP, the proponent has indicated that the desired future uses on the site would include:

- Wholesale landscape supplies,
- Firewood business, and
- Fabrication/Manufacturing businesses.

Figure 2 shows an excerpt of the Concept Master Plan which has been submitted with the Proposal (attached). This Concept Master Plan has been used to prepare a Visual Impact Assessment as well as conceptually demonstrating the size and siting of future 'industrial' buildings on the site. The combined gross floor area of the buildings shown in the Concept Master Plan is 6,137m². This would result in a floor space ratio of 0.22:1.

On page 34 of the submitted Planning Proposal, the applicant has indicated a desire to amend Kiama LEP 2011 to enable an 11m maximum building height.

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

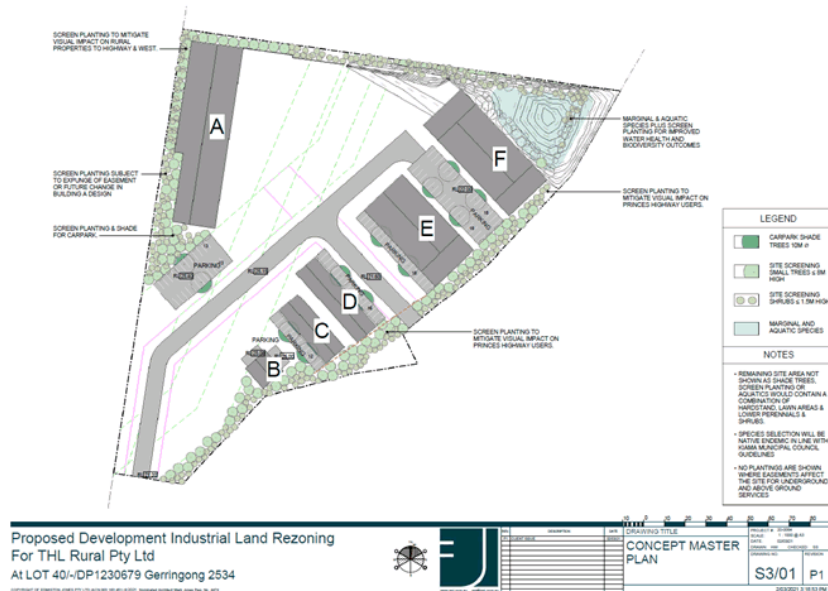


Figure 2: Concept Master Plan

These desired future uses would fall within the following definitions of Kiama LEP 2011:

- *Landscaping material supplies,*
- *Industrial retail outlet, and*
- *General industry.*

In order to achieve the proponent's desired future uses, Kiama LEP 2011 will need to be amended to permit both *landscaping material supplies* and *general industries*, in some form, on the site.

As *general industries* are currently prohibited in all zones, staff have advised the proponent not to specify a particular zoning for this site as further consultation will enable Council to determine the appropriate land zoning or if other amendments are more appropriate.

Kiama LEP could be amended in several ways in order to achieve the intent of the PP.

Options for Planning Proposal - Kiama LEP Amendment

1. Introduce IN1 General Industry Zone

This option would include introducing the IN1 General Industry Zone into Kiama LEP 2011. It is mandatory to permit *general industries*, with consent, within the IN1 zone. Council can elect to also permit, with consent, *landscaping material supplies* and *industrial retail outlet* within the IN1 zone.

The site could then be rezoned from RU1 Primary Production to IN1 General Industrial.

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

This option is not deemed appropriate as it would fail to meet the Strategic Merit Test (see below), as the relevant action under Planning Priority 5 of the LSPS has not been undertaken.

2. Rezone to IN2 Light Industrial Zone

This option would include making *general industries* a permissible land use for all land currently zoned IN2 Light Industrial zone and rezone the site to from RU1 Primary Production to IN2 Light Industrial.

Again, this option is not deemed appropriate as it would fail to meet the Strategic Merit Test (see below), as the relevant action under Planning Priority 5 of the LSPS has not been undertaken. Additionally, this option would alter the existing permissibility of other sites within the Municipality.

3. Amend Schedule 1

This option would include retaining the existing RU1 Primary Production zone and including the site within Schedule 1 of Kiama LEP and list *general industries* and *landscaping material supplies* as additional permitted uses on the site. This approach was taken with the Planning Proposal for the micro abattoir at Rose Valley.

It is considered that the most appropriate option, at this point in time, would be to amend Schedule 1 of Kiama LEP. As with the Planning Proposal for Rose Valley, Council can amend Schedule 1 in such a way so as to, with a relatively high amount of certainty, ensure the outcome of any future development application.

For example, rather than simply listing *general industries* and *landscaping material supplies* as additional permitted uses on the site, Council could stipulate the specific business types and sizes of *general industries* and *landscaping material supplies* for this site.

This option would also ensure that the existing RU1 Primary Production zoning remained and as such, the rural objectives of the zone would be relevant when determining a development application.

This option would also ensure that Complying Development Certificates for industrial uses could not be issued and that Council would be the only determining authority for industrial uses on the site.

State Employment Zones Reform

The NSW State Government is proposing amendments to replace the existing Business (B) and Industrial (IN) zones with five new employment zones and three supporting zones under Standard Instrument Principal Local Environmental Plan (2006) (SI LEP). These amendments are currently exhibition until 30 June 2021. A separate report is included in this Agenda detailing these amendments.

According to the draft Implementation Plan, published by the NSW Government these amendments, in whatever form they take, will come into effect July 2022. It is therefore likely that, if supported, the completion of this proposal will come into effect at a similar time to the State employment zone amendments.

These State amendments will have no effect on this site if Council resolve to amend Schedule 1 of the LEP.

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Pre-Gateway Exhibition Outcomes

In accordance with the *Kiama Community Participation Plan (CPP) 2019*, pre-Gateway consultation was carried out from 28 April to 11 May (i.e. 14 days). Adjoining neighbours were directly notified, notification was provided to South Precinct Committee, was advertised in The Bugle and placed on Council's website and social media platforms. Council received several requests for extensions to the submission period. It was confirmed that Council was happy to receive late submissions.

During the exhibition period 49 submissions were received, 17 of which were in support of the proposal, 31 opposing the proposal (including 7 late submissions) and 1 requesting that no decision is made before the upcoming Council elections.

It is noted that a 'petition' was also received during the Pre-Gateway consultation process. The petition was placed on Change.Org where approximately 600 individuals agreed with the statement "prevent loss of agricultural land in Gerringong". Petitions do not carry the same weight as submissions as they do not:

- disclose if the signatory has made any political donations or gifts to minimise any perception of undue influence; or
- clearly state reasons for any objection or support.

In the case of the submission received for this proposal, it would appear that the signatories agreed with the statement "prevent loss of agricultural land in Gerringong" rather than opposing or supporting the proposal.

All submissions were received from adjoining and adjacent landowners.

Engagement Summary

Submissions	Number	Key Issues
Submissions - For	17	1. Limited industrial land in Gerringong and broader Municipality. 2. More local jobs. 3. Proposal will support other local businesses.
Submissions - Against	31	1. Sufficient industrial land in Gerringong and broader Municipality. 2. Site should be used for agricultural purposes. 3. Undesirable precedent and associated development impacts.
Submissions - Neutral	1	No plans should be made before council elections in September
Precinct/Community Group Submissions	0	-

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Community Comments/Concerns

Topic	Key comments	Staff Response
Sufficient industrial land in Gerringong and broader Municipality	Unoccupied premises along Rowllins Road and behind Belinda Street.	The submitted Economic Impact Assessment has concluded that the PP is expected to generate an annual Gross Regional Production of \$20 Million to the local economy and will support approximately 115 full time equivalent jobs.
	Council has not carried out strategic planning to determine most suitable location/s for industrial uses.	This point is acknowledged. The site specific merits have been assessed below.
Site should be used for agricultural purposes	Rural dwelling has been approved on the site. This is what the site should be used for.	The consent for the rural dwelling lapses 15 June 2022. If consent expires a new Development Application will need to be submitted for a dwelling. Since the original approval was granted the LEP controls around rural dwellings have become more restrictive. Concurrence from DPIE would now need to be obtained. Therefore, there is no certainty that a dwelling would be permitted on this site.
	Site acts as a buffer between Princes Highway and surrounding farmland.	The submitted Agricultural Viability Assessment, prepared by Cowman Stoddart Pty Ltd, acknowledges this fact (see attached). The Agricultural Viability Assessment suggests that restoring the site to farmland is not virtually impossible due to the presence of rock and absence of topsoil. The Agricultural Viability Assessment has concluded that the development consent for a dwelling on the site (see above) increase the market value of the property to a point where it is unrealistic to consider the land to

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Topic	Key comments	Staff Response
		<p>ever become part of an adjoining property. Given its relatively small size, the property, in isolation does not have potential to be agriculturally viable.</p> <p>The Agricultural Viability Assessment has concluded that, given the site's proximity to the Princes Highway and its relatively small size, that industrial uses on the site will not adversely affect continued agricultural uses on adjoining properties.</p>
Undesirable precedent and associated development impacts.	High pressure gas main	<p>It is noted that a submission was received from Jemena Eastern Gas Pipeline Pty Ltd in regard to the high pressure gas main which traverses the site.</p> <p>Jemena has objected to the changing of the land zoning as this has the potential to increase the risk to the gas pipeline.</p> <p>Despite this, Jemena has requested a safety management study to ascertain the threats presented by the proposal. This request is considered appropriate and, if adopted, Council will request that this be included in any Gateway Determination.</p> <p>It is noted that, in the submitted Concept Master Plan, the buildings have been sited to avoid the Jemena easement.</p> <p>Jemena has noted that the proposal does not reference the Planning Circular PS18-010, Development Adjacent to high pressure pipelines transporting dangerous good.</p> <p>PS18-010 advises Councils and developers of the mandatory notification and assessment requirements for development near pipelines, as required by clause 66C</p>

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Topic	Key comments	Staff Response
		<p>of the <i>State Environmental Planning Policy (Infrastructure) 2007</i>. As clause 66C only applies as part of the Development Application process, Planning Circular PS18-010 is not relevant as part of this Planning Proposal.</p> <p>However, if adopted by Council, it is considered appropriate to formally consult with Jemena as part of the Gateway process.</p>
	Change of rural amenity - noise and visual impacts associated with large industrial buildings.	<p>The Environmental Noise Impact Assessment, prepared by Harwood Acoustics, took background noise readings between 14 and 22 January 2021 at 26 Victoria Street and 24 Princes Highway as the two nearest residential receptors to the site. The results of these readings are shown in Table 3 of the Assessment.</p> <p>To be considered intrusive, the level of noise, measured over a 15-minute period, must exceed the background noise by more than 5 dB.</p> <p>Table 6 of Assessment shows that only after 10pm will predicted noise levels exceed this threshold.</p>
	Possible industrial pollution into adjacent watercourses and agricultural land	<p>The site is downslope of the adjoining agricultural land so there is no possibility of pollutants being washed on agricultural land.</p> <p>A natural drainage channel flows from the site under the Highway and eventually merges with Union Creek adjacent to the Gerringong Railway Station.</p> <p>It is a requirement of both the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Protection of the Environment Operations Act 1997</i> to ensure pollution does not occur. This is a</p>

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Topic	Key comments	Staff Response
		matter for further consideration when a Development Application is lodged.
	Site is located at gateway to Gerringong	<p>It is acknowledged that the site is immediately adjacent to one of the two entrances to Gerringong off the Princes Highway.</p> <p>The submitted Visual Impact Assessment, prepared by Edmiston Jones, has concluded that there will be a range of likely impacts arising from this proposal on the Princes Highway, Rural Farmlands and Gerringong Urban zones. The Assessment has indicated that these impacts will be of a similar nature and scale to those experienced with the operation of the site as the RMS depot.</p> <p>It needs to be understood that the provisions of the <i>State Environmental Planning Policy (Exempt & Complying Development Codes) 2008</i> would enable all of the structures shown in the Concept Master Plan to be constructed without development consent, if used for agricultural purposes. In this regard, this Planning Proposal, in and of itself, will not result in any visual impacts that cannot currently occur.</p>
	Noise impacts associated with truck movements	The Environmental Noise Impact Assessment (see above) included truck movement.
	Inconsistent with Gerringong Charrette	The Gerringong Charrette is not a strategy/policy which is considered when assessing the merits of a Planning Proposal.
	Inconsistent with Kiama Development Control Plan (DCP) 2020.	The Kiama DCP 2020 is not a strategy/policy which is considered when assessing the merits of a Planning Proposal.

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Topic	Key comments	Staff Response
	Inconsistent with Kiama LEP 2011	The Kiama LEP 2011 is not a strategy/policy which is considered when assessing the merits of a Planning Proposal. This is specifically the case as Planning Proposals seek to amend the LEP.
	Inconsistent with Kiama Local Strategic Planning Statement (LSPS) 2022.	The Kiama LSPS 2020 is a strategy/policy which needs to be considered when assessing the merits of a Planning Proposal. This assessment has been carried out below.
	Inconsistent with Illawarra-Shoalhaven Regional Plan	The Regional Plan is a strategy/policy which needs to be considered when assessing the merits of a Planning Proposal. This assessment has been carried out below.
	Inconsistent with Ministerial Directions.	Ministerial Directions are a strategy/policy which needs to be considered when assessing the merits of a Planning Proposal. This assessment has been carried out below.
	Changing the zoning opens up unforeseen uses.	This has been addressed above when discussing the possible ways the LEP could be amended to facilitate this Proposal. It is due to this concern that the recommended method for amending the LEP is to amend Schedule 1 rather than rezoning the site.
	No reticulated infrastructure	The DPIE's 'Guide to Preparing Planning Proposals' requires all Planning Proposals to determine if there is adequate public infrastructure. The DIPE Guide outlines that this determination is

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Topic	Key comments	Staff Response
		usually required for Proposal which will result in residential subdivisions in excess of 150 lots etc. The submitted Planning Proposal, prepared by Allen Price & Scarratts Pty Ltd, outlines that the negotiation to connect to public infrastructure will occur as part of the Gateway process. This is consistent with DPIE's Guide.

The comments/concerns received during the public exhibition period have not resulted in changes being made to the Proposal.

Assessment of the Planning Proposal

The Department of Planning, Industry and Environment's (DPIE) 'A guide to preparing local environmental plans' outlines that an assessment to determine whether the proposal has strategic merit and, having met the strategic merit test, whether the site has site-specific merit. An assessment of the proposal's strategic merit has been carried out below.

Strategic Merit

When assessing the proposal's strategic merit, the following questions need to be answered:

- Does the proposal give effect to the Illawarra-Shoalhaven Regional Plan?

Illawarra-Shoalhaven Regional Plan 2036

The Illawarra-Shoalhaven Regional Plan (ISRP) 2036 is the NSW Government's strategy for guiding land use planning decisions for the region over the 20 years to 2036.

The applicants' PP has indicated that the PP is in part consistent with four of the five goals of the Regional Plan. Very little justification to individual actions is provided.

It needs to be acknowledged that a Proposal will never be consistent with all Goals or Actions of the Regional Plan. The question being asked is 'whether the proposal gives effect to the Regional Plan', not 'is the proposal consistent with all aspects of the Regional Plan'.

Action 1.4.2 of the Regional Plan is to support the development of new industrial land through ongoing collaboration between State and Local Government and servicing authorities, to coordinate infrastructure delivery. The Regional Plan outlines that, with access to a deep-water port, road and rail connections, and a skilled workforce, the region is a highly sought after location for industrial land. An industrial lands audit in 2014 revealed that only 19% of all industrial land in the region was vacant for new industries. This audit revealed that 95% of all industrial land in the region is currently constrained by bushfire or flooding.

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

The subject site is not identified as either bushfire or flood prone. The inclusion of this site for industrial uses is considered to give effect to Action 1.4.2 of the Regional Plan.

The draft Illawarra-Shoalhaven Regional Plan (ISRP) 2041 (soon to take effect) contains Objective 4 to 'activate regionally significant employment precincts to support new and innovative economic enterprises'. This Objective sits within the theme of 'A productive and innovative region'.

It is noted that the 2041 Regional Plan does not identify and regionally significant employment precincts within the Kiama Municipality. However, as part of Objective 4, the draft Regional Plan contains a Strategy to support new and innovative economic enterprises in local strategic planning and local plans by:

- Retaining and managing regionally significant employment lands and safeguarding them from competing pressures.
- Providing flexibility in local planning controls.
- Aligning infrastructure to support the rollout of employment land in the region.

It is considered that this Proposal will support new economic enterprises for the Municipality and therefore gives effect to this Strategy and Objective 4 of the draft Regional Plan.

- Does the proposal give effect to a local strategy that has been endorsed by the Department Planning, Industry and Environment?

Kiama Local Strategic Planning Statement 2020

At the June 2020 meeting, Council adopted the Kiama Local Strategic Planning Statement (LSPS) 2020. The Department have endorsed the Kiama LSPS by publishing it on the NSW Planning Portal.

The Kiama LSPS outlines that just 3.58 Hectares of land is zoned for industrial purposes, this represents 0.014% of the total area of the Municipality. The lack of available industrial land is forcing businesses that need additional space to relocate to industrial land and business parks in neighbouring local government areas. As part of Planning Priority 5 – Foster Economic Diversity, the LSPS contains the following action:

- *Identify land and propose appropriate zoning that is suitable for small scale service industrial uses in the short to medium term*

As previously discussed, it is acknowledged that this identification process has not yet occurred. However, as outlined below, the site is considered to be suitable for small scale service industrial uses due to its adjacency to the Princes Highway and its degraded state.

Amending Schedule 1 of the Kiama LEP gives effect to the action listed above and its associated Planning Priority to foster economic diversity, while not undermining the need to undertake the Municipal wide identification process.

- Does the proposal respond to a change in circumstances, such as an investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

No. The site was most recently used as an office/depot for the, former, Roads and Maritime Service (RMS) during the works associated with the Gerringong bypass. The submitted Agricultural Viability Assessment has concluded that the agricultural potential of the site no longer exists due to the soil and land disturbance associated with this previous use.

In light of the above, it is considered that the proposal meets the strategic merit test and should proceed to the DPIE for a Gateway Determination.

Site-Specific Merit

As the proposal meets the strategic merit test the site-specific merits of the proposal now need to be assessed.

To demonstrate the site-specific merits of the PP the proponent has submitted the following studies:

- Traffic and Parking Impact Assessment, prepared by McLaren Traffic Engineering

The submitted Traffic and Parking Impact Assessment has calculated that, based on the submitted concept master plan, the PP that the high range traffic generation of the site will be approximately 73 and 80 vehicle trips during the AM and PM peak hours, respectively. The submitted Traffic and Parking Impact Assessment has analysed, using SIDRA Intersection analysis, that the high range traffic generation would have negligible impact of the performance of both the intersection of Sims Road/Belinda Street/Princes Highway (northbound on & off ramps) and Belinda Street/Princes Highway (southbound on & off ramps).

- Environmental Noise Impact Assessment, prepared by Harwood Acoustics

As the future industrial uses are not known the submitted Environmental Noise Impact Assessment has theorised that potential noise sources are likely to include truck movements, yard machines (bobcats, etc), forklift movements, use of power tools and operation of mechanical plant such air compressors or air conditioning condensers.

The Environmental Noise Impact Assessment, prepared by Harwood Acoustics, took background noise readings between 14th and 22nd January 2021 at 26 Victoria Street and 24 Princes Highway as the two nearest residential receptors to the site. The results of these readings are shown in Table 3 of the Assessment.

To be considered intrusive, the level of noise, measured over a 15-minute period, must exceed the background noise by more than 5 dB.

Table 6 of Assessment shows that only after 10pm will predicted noise levels exceed this threshold.

- Visual Impact Assessment & Supporting Plans & Photomontages, prepared by Edminston Jones

The submitted Visual Impact Assessment has identified 3 unique vantage points to view the subject site:

1. Princes Highway,
2. Adjoining rural farmlands, and

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

3. Gerringong urban area.

The Visual Impact Assessment has concluded that there will be a range of impacts arising from future development on this site on the different vantage points. These impacts will be of a similar nature to those experienced with the most recent use of the site as an office/depot for the RMS.

It needs to be understood that the provisions of the *State Environmental Planning Policy (Exempt & Complying Development Codes) 2008* would enable all of the structures shown in the Concept Master Plan to be constructed without development consent, if used for agricultural purposes. In this regard, this Planning Proposal, in and of itself, will not result in any visual impacts that cannot currently occur.

- Agricultural Viability Assessment, prepared by Cowman Stoddart Pty Ltd

The submitted Agricultural Viability Assessment has stated that while the land is mapped as Class 3 agricultural land, by the Department of Agriculture's Agricultural Suitability Classification mapping, that is no longer the case due to the recent usage.

The Agricultural Viability Assessment suggests that restoring the site to farmland is not virtually impossible due to the presence of rock and absence of topsoil.

The Agricultural Viability Assessment has concluded that the development consent for a dwelling on the site (see above) increase the market value of the property to a point where it is unrealistic to consider the land to ever become part of an adjoining property. Given its relatively small size, the property, in isolation does not have potential to be agriculturally viable.

The Agricultural Viability Assessment has concluded that, given the site's proximity to the Princes Highway and its relatively small size, that industrial uses on the site will not adversely affect continued agricultural uses on adjoining properties.

- Economic Impact Assessment, prepared by Atlas Urban Economics

The submitted Economic Impact Assessment has concluded that the PP is expected to generate an annual Gross Regional Production of \$20 Million to the local economy and will support approximately 115 full time equivalent jobs.

The site's immediate proximity to existing land zoned IN2 Light Industry and B7 Business Park and its direct ingress and egress to the Princes Highway is highly desirable for this proposal (see Figure 3).

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)



Figure 3: Site's Proximity to Industrial Zoning

In light of the above, it is considered that the proposal meets the site-specific merit test and should proceed to the DPIE for a Gateway Determination.

Section 9.1 Ministerial Directions

Under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the Minister for Planning is able to issue directions that apply to the preparation of PP.

The applicants' PP has indicated that the PP is 'not inconsistent' with all relevant Ministerial Directions. This is refuted.

Direction 1.2 – Rural Zones

Direction 1.2 – Rural Zones states that a PP must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. A PP may be inconsistent with this direction if it is:

- Justified by a strategy which:
 - Gives consideration to the objectives of the direction;
 - Identifies the land which is the subject of the PP; and
 - Is approved by the Department of Planning; or
- Justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
- In accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- Is of minor significance.

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

This PP is not justified by a strategy, approved by the DPIE. This PP is in accordance with the Regional Plan (see commentary above).

The objective of this Direction is to protect the agricultural production value of rural land. The submitted Agricultural Viability Assessment has stated that while the land is mapped as Class 3 agricultural land, by the Department of Agriculture's Agricultural Suitability Classification mapping, that is no longer the case due to the recent usage. The Agricultural Viability Assessment has concluded that the agricultural potential of the site no longer exists due to the soil and land disturbance associated with this previous use.

Direction 1.5 – Rural Lands

Direction 1.5 – Rural Lands states that a PP that will affect land within an existing or proposed rural or environmental protection zone must:

- (a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement
- (b) consider the significance of agriculture and primary production to the State and rural communities
- (c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources
- (d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions
- (e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities
- (f) support farmers in exercising their right to farm
- (g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses
- (h) consider State significant agricultural land identified in *State Environmental Planning Policy (Primary Production and Rural Development) 2019* for the purpose of ensuring the ongoing viability of this land
- (i) consider the social, economic and environmental interests of the community.

Direction 1.5 – Rural Lands states that a PP that changes the existing minimum lot size on land within an existing or proposed rural or environmental zone must demonstrate that it:

- (a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses.
- (b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains.
- (c) where it is for rural residential purposes:

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Report of the Director Environmental Services

4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

-
- i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres;
 - ii. is necessary taking account of existing and future demand and supply of rural residential land.

A PP may be inconsistent with this direction if it is:

- Justified by a strategy which:
 - gives consideration to the objectives of this direction,
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and
 - is approved by the Director-General of the Department of Planning and is in force, or
- Is of minor significance.

It is considered that the PP is consistent with Direction 1.5. The PP is consistent the applicable regional plan and an Agricultural Assessment, which considers the significance of agriculture and primary production to the State and rural communities, has been submitted. The Agricultural Viability Assessment has considered all other points of Direction 1.5.

The PP is consistent with Direction 1.5.

Direction 5.10 – Implementation of Regional Plans

Direction 5.10 – Implementation of Regional Plans states that a PP must be consistent with a Regional Plan released by the Minister for Planning. A PP may be inconsistent with this direction if it is:

- Is of minor significance, and
- The planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.

The proponent has stated that the PP is generally consistent with the Regional Plan. As discussed above, Council agrees with this position. The PP is consistent with Direction 5.10.

State Environmental Planning Policies

With the repeal of clause 6 of the *State Environmental Planning Policy No 55 – Remediation of Land* on 13th December 2019 there are now no longer any State Environmental Planning Policies which apply when considering Planning Proposals.

Delegations

Council is able to request plan making delegation, under Section 3.32 of the *Environmental Planning and Assessment Act 1979*.

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4.3 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Commencement (cont)

Finance

Council has adopted a fee structure for the submission and review of planning proposals. The relevant fees have been paid as required by Council's fees and charges schedule.

Policy

The assessment of requests for the rezoning of land require the consideration of a number of Acts, Government Policies, Environmental Planning Instruments and planning documents.

Consultation (Internal)

Consultation will be undertaken as required through the planning proposal process.

Communication/Community Engagement

In accordance with the *Kiama Community Participation Plan (CPP) 2019*, pre-Gateway consultation was carried out from 28 April to 11 May (i.e. 14 days). Adjoining neighbours were directly notified, notification was provided to the South Precinct Committee, was advertised in The Bugle and placed on Council's website and social media platforms. Council received several requests for extensions to the submission period. It was confirmed that Council were happy to receive late submissions.

During the exhibition period 49 submissions were received, 17 of which were in support of the proposal, 31 opposing the proposal (including 7 late submissions) and 1 requesting that no decision is made before the upcoming Council elections.

Should Council support the concept PP, the Gateway Determination issued by the NSW Department of Planning, Industry and Environment will outline the minimum requirements for consultation to be undertaken with government agencies and the community. All other community engagement will occur in accordance with the *Kiama Community Participation Plan*.

Conclusion

Amending Kiama LEP 2011 to facilitate small-scale industrial use on 5 Sims Road gives effect and/or is consistent with the relevant Goals and Directions of the Regional Plan. This rezoning will assist in the delivery of the action under Planning Priority 5 of Kiama LSPS. The strategic and site-specific merits of the proposal adequately justify any inconsistencies with Ministerial Directions.

It is therefore recommended that the proposal be supported to proceed to the Department of Planning and Environment for a Gateway Determination.



Adequacy Assessment Decision Rationale

Planning Proposal PP reference
number: PP-2021-2803

Purpose

To recommend that the Director, as delegate of the Minister, determine that the planning proposal PP-2021-2803 should not proceed to gateway determination.

Analysis

There is no explanation of provisions in the planning proposal. The proposal states that feedback from the Council pre-lodgement meeting was not to include exact details on the changes as this approach will enable Council to determine the appropriate zoning and other potential amendments that may be required to the Kiama LEP 2011. Whilst the Council report identified three possible provisions, the Council resolution of 28 June 2021 only resolves to support the planning proposal. The planning proposal must clearly identify the proposed changes to the LEP including the proposed zoning or mechanism to allow industrial use of the site. Details on the provisions are required to ensure all other information in the planning proposal relates to and supports the use of the provisions. It is not possible to assess the planning proposal without knowing the proposed provisions.

It was noted that the watercourse on the Lot has been reconstructed north of the site and as such is no longer in the correct location on the Riparian Land and Watercourse Map in the LEP. Council may wish to update this map as part of the planning proposal and hence include an appropriate objective and provision.

It is noted in the proposal that the site does not have access to town water or reticulated sewer. The proposal must be updated to identify how this matter is to be addressed as industrial uses will generate demand for these services.

Recommendation

That the Director, as delegate of the Secretary:

reject the planning proposal

Approval

Director

Sarah Lees

17.1 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Clarifying Proposed LEP Amendments

A **Procedural motion** was moved by Councillor Steel and seconded by Councillor Brown that the committee recommendation be put.

For: Councillors Brown, Honey, Reilly, Steel, Watson and Way

Against: Councillors Rice and Sloan

The Motion on being put was CARRIED.

21/001OC

Committee recommendation that Council:

1. support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.
2. prior to proceeding for a Gateway Determination, request that the proponent update the Planning Proposal so that it seeks to amend the *Kiama Local Environmental Plan (KLEP) 2011* to include the site in Schedule 1 and list *general industries* and *landscaping material supplies* as additional permitted uses on the site.
3. following receipt of the amended Planning Proposal, request a Gateway Determination from DPIE and provide advice that Council's preference for the proposed change to *KLEP 2011* is to amend Schedule 1. This option allows for the retention of the existing RU1 Primary Production zone.
4. provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.

(Councillors Way and Brown)

For: Councillors Brown, Honey, Reilly, Steel, Watson and Way

Against: Councillors Rice and Sloan