



DATE OF DECISION	10 November 2023
DATE OF MEETING	5 October 2022
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Yvonne Weldon and Stephen Leathley
APOLOGIES	Anthony Tuxworth
DECLARATIONS OF INTEREST	None

INDEPENDENT ABORIGINAL REVIEW

IAR-2023-1 (RR-2023-22 & PP-2023-2340) – Central Coast LGA – Lot 481 DP1184693, 250 Reeves Street, Somersby (as described in Schedule 1)

Reason for Review:

- ☒ The Darkinjung Local Aboriginal Land Council has requested an Independent Aboriginal Review as the land is subject to the Darkinjung Development Delivery Plan 2022 made under the SEPP Planning Systems 2021.

PANEL CONSIDERATION AND DECISION

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

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

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

The decision was unanimous.

REASONS FOR THE DECISION

1.0 Overview and Background

The Panel has been requested to undertake an independent review of the Planning Proposal on land owned by the Darkinjung Local Aboriginal Land Council (DLALC) and included in the Darkinjung Development Delivery Plan 2022.

The DLALC has requested an independent review of the Planning Proposal consistent with the framework outlined in Planning Circular PS 22-001 Independent Review of Planning Proposals for Identified Aboriginal Lands.

The site has been the subject of a previous Planning Proposal – PP2021-526 which has since been withdrawn. That Planning Proposal had received a Gateway Determination and was relying on a Strategic Certification Process that was ultimately delayed.

This Planning Proposal is a revision of the one granted a Gateway Determination with updated reports and amendments in response to conditions of the Gateway Determination.

The Planning Proposal seeks to:

- Rezone part of the site from RU2 Rural Landscape to part C2 Environmental Conservation and part C4 Environmental Living;
- Rezone part of the site zoned C2 Environmental Conservation to C4 Environmental Living;
- change the minimum lot size from 20 hectares to 40 hectares for zone C2 Environmental Conservation; and
- propose a 1 hectare minimum lot size for the C4 Environmental Living zone.

The C4 Environmental Living zone would potentially yield up to 14 lots. However, the actual number of lots would be dependent on how the physical and ecological constraints of the site are addressed in future Development Applications.

The balance of the site is to be retained as protected environmentally significant land with the intention that it be bio certified in accordance with the Biodiversity Conservation Act 2016.

The Panel has considered the documentation lodged with the Planning Proposal and has been briefed by the applicant, Council and the Department of Planning and Environment.

The Strategic Merit Test and Site Specific Merit Test for Independent Reviews of Planning Proposals for Identified Aboriginal Lands is outlined in PPS 22-001 dated 26 January 2022 and addressed below.

2.0 Strategic Merit Test

In considering the Strategic Merit Test the Panel notes that:

- The proposal is consistent with the Darkinjung Development Delivery Plan 2022 and is identified as Site 3 Somersby Reeves Street;
- The proposal is consistent with Central Coast Regional Plan 2041, Objective 2 supports the right of Aboriginal residents to economic self-determination;
- Part of the land is identified as a residential investigation in the Narara District in proximity to the Somersby Regionally Significant Growth Area;
- The site provides an opportunity to secure regional biodiversity corridors; and
- The proposal is consistent with the Central Coast local strategic planning statement as it is identified on the housing precincts map.

The site is strategically important to the planning for the Darkinjung land holdings in a coordinated way, as well as supporting the core aims for greater self-determination and economic independence for local Aboriginal communities.

The Panel considers the site has strategic merit.

3.0 Site Specific Merit Test

The surrounding area is heavily vegetated but also supports pockets of rural residential development. Lands to the north of the site are zoned C3 Environmental Management, C2 Environmental Conservation and RU2 Rural Landscape. A 2 hectare minimum lot size control applies to the C3 zoned lands. Land further to the east at the corner of Reeves Street and Dawson Street also supports rural residential development with similar lot sizes. These lots appear to be between 1-2 hectares. The balance of the site and area supports vegetated areas and includes the RSPCA facility.

The Panel considers that the proposal has site specific merit when considered against the criteria in PPS22-001 as demonstrated below.

3.1 The social and economic benefit to the Aboriginal community facilitated by the proposal.

The planning proposal can provide social and economic benefit to the Aboriginal community through delivery of a number of housing lots in an environmentally sensitive setting and protect Aboriginal cultural heritage and environmentally sensitive lands.

3.2 The natural environment (including known significant environmental values, resources or hazard)

The proposal seeks to change a portion of the site to facilitate rural residential development - essentially dwellings on lots of 1 hectare (or more if constraints determine).

The Panel recognises that the site is heavily vegetated, and that the area proposed to be zoned C4 Environmental Living will result in the loss of some vegetation. However, the lands proposed to be zone C2 Environmental Conservation will ensure their conservation and offset any impacts.

The proposal has been supported by a flora and fauna assessment in a BCAR format and will form the basis of a BCAR moving forward. It is intended that a BCAR will be progressed and exhibited and finalised prior to the Planning Proposal being finalised. The lands zoned C2 Environmental Conservation are to be Bio certified and conserved. The area of C4 Environmental Living will facilitate this preservation.

The Panel also considered bushfire risks and the Strategic Bushfire Risk Assessment documents and considers that this can be appropriately managed with APZ. The Panel notes that the RFS raised no objection to the Planning Proposal, subject to meeting the recommendations in the Strategic Bushfire Risk Assessment.

3.3 The existing uses, approved uses and likely further use of the land in the vicinity of the land subject to the proposal.

The use of the lands for rural residential and environmental conservation is consistent with the nature of surrounding development.

Lands to the immediate north are zoned and developed for rural residential type uses as are lands further to the east on Dawson Street.

3.4 The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

There is no water or sewer available on site. Electricity can be provided to the site. Water will be supplied by water tanks. The existing road system is adequate to cater for the additional dwellings.

The proposal is supported by a Preliminary Stormwater and Servicing Report. The site has capacity to support an onsite sewerage management systems. However, the number of lots may need to be reduced to minimise impacts on Coastal Upland Swamp and sensitive receiving areas.

Because of the sensitivity of the adjoining C2 zoned lands there is a need for further soil and geotechnical analysis and analysis of the ground water regime.

4.0 Conclusion

The Panel has considered the matters raised in the Council submission. Given the environmental sensitivity of the site and the fact that the proposal relies on an onsite sewerage system near watercourses and sensitive ecological environment, additional investigation is required regarding soil analysis, geotechnical conditions and groundwater.

These technical reports will be needed to inform the capacity of the site to accommodate the density of development proposed i.e. the 1 hectare minimum subdivision lot size.



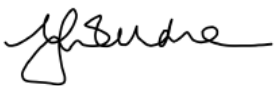

It is also critical that work progresses on the BCAR to ensure environmental outcomes in the terms of Bio Certification are considered and in place at the finalisation of the Planning Proposal. Ideally the BCAR would be exhibited at the same time as the Planning Proposal, however this is not critical provided it is in place and finalised at the same time as the Planning Proposal.

The Panel is of the view that there is no need for separate DCP controls as the Central Coast DCP 2022 contains adequate controls for this type of development.

The Panel considers that the site has both strategic and site specific merit.

Panel recommendations

1. The Panel recommends the Planning Proposal can proceed to Gateway Determination. However, prior to submitting the Planning Proposal for a Gateway determination, the Planning Proposal be informed by further technical reports relating to:
 - (i) Soil Analysis
 - (ii) Geotechnical Investigation
 - (iii) Groundwater Investigation
2. The BCAR work be progressed as a matter of urgency and is to be finalised and Bio Certification measures in place at the finalisation of the Planning Proposal.
3. Central Coast Council has advised (5 September 2023) that it will not accept the Planning Proposal Authority (PPA) role should the proposal proceed. In accordance with Section 3.32(1) of the Environmental Planning and Assessment Act 1979, the Planning Panel as delegate of the Minister for Planning has determined to appoint itself as the PPA for this Planning Proposal.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Yvonne Weldon	 Stephen Leathley

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	INDEPENDENT ABORIGINAL REVIEW – IAR-2023-1 (RR-2023-22 & PP-2023-2340) – Central Coast LGA – Lot 481 DP1184693 Reeves Street Somersby
2	LEP TO BE AMENDED	Central Coast Local Environmental Plan 2022
3	PROPOSED INSTRUMENT	<p>The revised Darkinjung Somersby Planning Proposal (updated & submitted July 2023) seeks to amend the Central Coast Local Environmental Plan 2022 by:</p> <ul style="list-style-type: none"> • Rezoning from part RU2 Rural Landscape to part zone C2 Environmental Conservation and part zone C4 Environmental Living; • Rezoning from part C2 Environmental Conservation to C4 Environmental Living; and • Changing the minimum lot size from 20ha to 1ha for proposed C4 zone, 20ha to 40ha for proposed C2 zone and from 40ha to 1ha for proposed C4 zone.
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Independent Aboriginal Review request documentation • Briefing report from Department of Planning and Environment, 21 September 2023
5	BRIEFINGS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection with Department of Planning and Environment (DPE): 10:25am – 11:30am, 5 October 2023 <ul style="list-style-type: none"> ○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Yvonne Weldon and Stephen Leathley ○ DPE staff in attendance: William Oxley, Nicole McNamara, Pia Gilfillan, Brendon Roberts, Kimberley Beencke & Lisa Kennedy ○ Key issues discussed: <ul style="list-style-type: none"> • Previous (PP-2021-526) and updated planning proposal • Area of proposed rural residential • Coastal upland swamps – vegetation & hydrology • Topography, water quality, groundwater • Character of locality (Crown Land & RSPCA facility) & existing rural residential subdivision layout and density • Briefing with Department of Planning and Environment (DPE): 1:00pm - 1:30pm, 5 October 2023 <ul style="list-style-type: none"> ○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Yvonne Weldon and Stephen Leathley ○ DPE staff in attendance: William Oxley, Nicole McNamara, Pia Gilfillan, Brendon Roberts, Kimberley Beencke, Lisa Kennedy & Taylah Fenning ○ Key issues discussed: <ul style="list-style-type: none"> • Previous (PP-2021-526) and updated planning proposal • Status of Central Coast Strategic Conservation Plan – stewardship site • Character of locality & existing rural residential subdivision layout and density (zoning & development controls) • Coastal upland swamps – vegetation, hydrology, proposed on-site effluent management (need for a Wastewater Management Report) • Proposed indicative rural residential subdivision • Proposed bushfire management - Asset Protection Zones and fire trails • Management of two Aboriginal sites

- **Briefing with Central Coast Council: 1:32pm - 1.56pm, 5 October 2023**
 - Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Yvonne Weldon and Stephen Leathley
 - DPE staff in attendance: William Oxley, Nicole McNamara, Pia Gilfillan, Brendon Roberts, Kimberley Beencke, Lisa Kennedy & Taylah Fenning
 - Council representatives in attendance: Bruce Ronan & Scott Duncan
 - Key issues discussed:
 - Requirement for a Wastewater Management Report at planning proposal stage not development application stage – existing site constraints for wastewater management, coastal upland swamps & 40m buffer, groundwater analysis required, potential contamination of downstream swamps
 - Not aware of noise complaints about adjoining RSPCA facility
 - Need for a Development Control Plan for the proposed development
 - Proposed bushfire management - Asset Protection Zones and fire trails
- **Briefing with Darkinjung Local Aboriginal Land Council (Proponent): 2:31pm – 3:46pm, 5 October 2023**
 - Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Yvonne Weldon and Stephen Leathley
 - DPE staff in attendance: William Oxley, Nicole McNamara, Pia Gilfillan, Brendon Roberts, Kimberley Beencke, Lisa Kennedy & Taylah Fenning
 - Proponent representatives in attendance: Blake Cansdale & Nathan Garvey
 - Key issues discussed:
 - Context & history of the planning proposals for the site
 - Biodiversity reports - Biodiversity Certification Assessment Report (BCAR), biocertification, further studies, stewardship sites, Biodiversity Offset Scheme
 - Coastal upland swamps – vegetation, hydrology, water quality, proposed on-site effluent management (need for a Wastewater Management Report)
 - Need for a Groundwater study
 - Character of locality & existing rural residential subdivision layout and density (zoning & development controls)
 - Affordable housing & policy to retain 10% housing for LALC members
 - Timeframe for additional reports and concurrent public exhibition with planning proposal
 - Management of two Aboriginal sites
- **Panel Discussion: 3:55pm – 4:10pm, 5 October 2023**
 - Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Yvonne Weldon and Stephen Leathley
 - DPE staff in attendance: William Oxley, Nicole McNamara, Pia Gilfillan, Brendon Roberts, Kimberley Beencke, Lisa Kennedy & Taylah Fenning