INDEPENDENT PROPOSAL REVIEW
RECORD OF DECISION
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DECISION	24 June 2020
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Tim Fletcher, Kyle MacGregor and Chris Burke
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton declared a conflict of interest as her employer, ADWJ, has represented the applicant in the past on matters relating to their landholdings in the Central Coast LGA. Ms Hutton did not participate in any discussion of this application.

INDEPENDENT PROPOSAL REVIEW
2020HCC004 – Central Coast Council - 300 Woy Woy Road, Kariong (AS DESCRIBED IN SCHEDULE 1)

Reason for Review:
- ☐ Local Aboriginal Land Councils can request an independent body to give advice on planning proposals if the land is subject to a development delivery plan made under the Aboriginal Land SEPP
- ☒ Local Aboriginal Land Councils can request an independent body to give advice on planning proposals if no development delivery plan has been published, the interim development delivery plan for the land, published on the Department's website

PANEL CONSIDERATION AND DECISION
The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections 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
  - ☐ has demonstrated strategic merit but not site specific merit

The decision was unanimous.

Reasons for Panel Decision:

1.0 Overview

The Panel have previously considered this matter at a meeting of 8 April 2020 and made the following recommendation:

1. *That a formal Planning Proposal be prepared that addresses the issues identified in Sections 4.0 and 5.2.*

2. *That the Planning Proposal be referred to the Hunter and Central Coast Regional Planning Panel prior to proceeding to Gateway*
3. *That a further report be prepared outlining how the Planning Proposal has addressed the outcomes of the studies, proposed zonings and subdivision controls.*
4. *That the matter be considered electronically.*
5. *That a strategic consideration of land to the north of the site be undertaken concurrently by Central Coast Council*

The Panel's previous decision is attached as Schedule 2 to this determination. It provided a detailed consideration of the information before the Panel at that time. The Panel was able to determine that the site had strategic merit but could not be satisfied on the information available that the site had site specific merit.

Since this determination the Panel has had the benefit of additional detailed material provided by letter dated 2 June 2020 from the Department of Planning, Industry and Environment. The package of information contained the following reports:

- Response to issues raised prepared by Barr Property and Planning dated 22 May 2020
- Biodiversity Certification Assessment Report – Woy Woy Road Kariong (Final) dated October 2019 prepared by Umwelt Environment and Social Consultants
- Preliminary Bushfire Risk Assessment Report - Woy Woy Road Kariong (Final) dated September 2019 prepared by Umwelt Environment and Social Consultants
- Woy Woy Road Kariong Aboriginal Cultural Heritage Assessment Report – Draft dated 28 April 2020 prepared by Heritage Now
- Traffic advice dated 19 May 2020 prepared by SECA Solution
- Kariong Planning Proposal Indicative Concept Plan – Option 1 dated 31 October 2019 prepared by Urbis

The Panel is of the view that there has been sufficient work undertaken to determine whether the proposal has site specific merit.

2.0 Site Specific Merit

The Panel's previous consideration at Schedule 2 provides a detailed consideration of the site specific merit and associated issues at Section 3 and 4 under key headings of Site Specific Merit (3), Urban Design (4.1), Environmental Consideration (4.2) and Servicing and Access (4.3). The following provides additional commentary on the key issues:

2.1 Urban Design and Planning Framework

The issues raised under Urban Design in our previous determination remain and will need to be addressed in the preparation of any Planning Proposal. As discussed, the appropriate suite of controls – zoning, lot sizes and building height, will need to be informed by the urban design outcomes envisaged for the site.

The Panel's view is that any development should be compatible with the form and scale of the surrounding low density residential environment and accordingly the controls chosen need to reflect this, and be informed by an urban design study and analysis of the site constraints. This would also form the basis of a site specific Development Control Plan that should be exhibited with any Planning Proposal.

A nuanced approach is needed to address the site constraints, interface with adjoining lands and desired future character. The current concept plan does not achieve this and therefore the Panel does not endorse the concept plan or minimum lot sizes referred to either in the Urbis report or the concept plan.

2.2 Environmental Consideration

The Panel understands the constraints of the site, and that a planning framework needs to be developed that responds appropriately to those constraints. An important issue that needs to accompany any Planning Proposal is the approach to management of environmental lands, environmental credits, an assessment of the bushfire risk and how impacts on aboriginal cultural heritage are managed. This can be done by further additional studies in preparing the Planning Proposal.

2.3 Servicing

This aspect needs to be analysed as part of the Planning Proposal, including potential options to link with lands to the north.

3.0 Other Matters

Lands to the North

The Panel's comments did not recommend that the Darkinjung Planning Proposal include these lands - but that they should be considered strategically and for that work to be undertaken by others, ideally concurrently.

4.0 Conclusion

The Panel understands that a detailed Planning Proposal needs to be prepared. It needs to be the product of consideration of Urban Design and environmental site constraints, which will inform the appropriate planning framework.

Any Planning Proposal prepared for the site needs to address the issues raised. This includes the matters raised in Schedule 2.

On review and consideration of the additional information provided the Panel is satisfied that the site has site specific merit and that a Planning Proposal can be prepared and submitted for a Gateway Determination.

5.0 Recommendation

The Panel recommends that:

1. A Planning Proposal could be prepared and submitted for a Gateway Determination. The following matters should be addressed in the Planning Proposal:

    a) Urban design principles and controls to guide the interface with adjoining land uses including:
        - Street frontage presentation
        - Indicative lot sizes and layouts
        - Minimum building setbacks

- Location and treatment of the APZ within the proposed R2 portion of the site – all north of the easement
- Landscape treatment along Woy Woy Road and appropriate zoning
- Building height
- Character statement

b) Access and connectivity principles to guide the identification of entry and exit points for pedestrian and vehicular movements to provide safe integration with the existing transport network
c) Landscape principles to create a visual transition between the vegetated gully and the proposed development and protect significant vegetation (where appropriate) and identify passive and local open space.
d) Principles for the treatment of areas of aboriginal cultural significance including buffers and setbacks.
e) Lands south of the easement not capable of accommodating built form.
f) Matters raised by Council.
g) Analysis of site constraints regarding bushfire and Aboriginal cultural heritage and how the proposal responds to those constraints.
h) Recommended zoning and development controls that respond to the site constraints.
i) Analysis of traffic impacts.
j) Management of Environmental Lands and credits.

2. A site specific Development Control Plan be prepared post Gateway to accompany the Planning Proposal and be included in any exhibition.

PANEL MEMBERS	
Alison McCabe (Chair)	Juliet Grant
Tim Fletcher	Kyle MacGregor
Chris Burke	

SCHEDULE 1		
1	**PANEL REF – LGA – DEPARTMENT REF - ADDRESS**	2020HCC004 – Central Coast Council - AT 300 Woy Woy Road, Kariong
2	**LEP TO BE AMENDED**	Gosford Local Environmental Plan 2014
3	**PROPOSED INSTRUMENT**	The proposal seeks to **r**ezone part of the site from E2 Environmental Conservation to R2 Low Density Residential while retaining approximately 54% of the environmental zone.
4	**MATERIAL CONSIDERED BY THE PANEL**	• Independent Proposal Review request documentation • Briefing report from Department of Planning, Industry and Environment • Additional information provided by Department of Planning, Industry and Environment on 2 June 2020
5	**BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY**	• **Site inspections were undertaken separately** o Alison McCabe (Chair): 1 April 2020 o Juliet Grant: 29 March 2020 o Kyle MacGregor: 3 April 2020 o Chris Burke: 7 April 2020 • **Briefing with Department of Planning, Industry and Environment (DPIE): 8 April 2020, 9:30am and 1:15pm** o Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Tim Fletcher, Kyle MacGregor and Chris Burke o DPE staff in attendance: Andrew Hill and Gary Hopkins • **Briefing with Council: 8 April 2020, 11:30 am** o Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Tim Fletcher, Kyle MacGregor and Chris Burke o Council representatives in attendance: Jenny Mewing and Lucy Larkins • **Briefing with Proponent: 8 April 2020, 2:15 pm** o Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Tim Fletcher, Kyle MacGregor and Chris Burke o DPE staff in attendance: Andrew Hill and Gary Hopkins o Proponent representatives in attendance: Matthew West and Michael Leavy • Papers were circulated electronically between 2 April 2020 and 24 April 2020 • **Briefing with Department of Planning, Industry and Environment (DPIE): 23 June 2020, 10:30am** o Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Tim Fletcher, Kyle MacGregor and Chris Burke DPE staff in attendance: Monica Gibson and Gary Hopkins • Papers were circulated electronically between 11 June 2020 and 25 June 2020

SCHEDULE 2

INDEPENDENT PROPOSAL REVIEW
RECORD OF DECISION

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DECISION	29 April 2020
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Tim Fletcher, Kyle MacGregor and Chris Burke
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton declared a conflict of interest as her employer, ADWJ, has represented the applicant in the past on matters relating to their landholdings in the Central Coast LGA. Ms Hutton did not participate in any discussion of this application.

INDEPENDENT PROPOSAL REVIEW

2020HCC004 – Central Coast Council - AT 300 Woy Woy Road, Kariong (AS DESCRIBED IN SCHEDULE 1)

Reason for Review:

☐ Local Aboriginal Land Councils can request an independent body to give advice on planning proposals if the land is subject to a development delivery plan made under the Aboriginal Land SEPP

☒ Local Aboriginal Land Councils can request an independent body to give advice on planning proposals if no development delivery plan has been published, the interim development delivery plan for the land, published on the Department's website

PANEL CONSIDERATION AND DECISION

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections 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 **at this stage** because the proposal has

- ☐ not demonstrated strategic merit
- ☒ has demonstrated strategic merit but not provided sufficient detail to determine site specific merit at this stage

The decision was unanimous.

1.0 Overview

The Panel has been requested to provide advice on the independent proposal review for the Darkinjung Local Aboriginal Council lands at 300 Woy Woy Road, Kariong. The land is one (1) of four (4) sites identified under the State Environmental Planning Policy (Aboriginal Land) 2019.

It is the Panel's understanding that the application before the Panel is not a finalised Planning Proposal and that further information needs to be provided. It is understood that the outcome of this review would (if supported) require the preparation of a formal Planning Proposal for consideration at Gateway. The purpose of this review is to provide direction as to the strategic merits of the proposal and identify a framework for moving forward or otherwise.

The Panel also understands that this process is not exactly the same as a Planning Proposal process by any other developer. The Strategic Merit Test and Site Specific Merit Test outlined in PS19-003 dated 6 February 2019 have additional matters for consideration.

The Panel had the benefit of inspecting the site and surrounding areas and briefings from Department of Planning, Industry and Environment officers, Council officers and the proponent.

2.0 Strategic Merit Assessment

In considering the strategic merit the Panel noted that:

- The proposal is consistent with the Interim Darkinjung Development Delivery Plan (February 2019).
- The Central Coast Regional Plan 2036 at Direction 6 seeks to strengthen the economic self determination of Aboriginal communities.
- The Central Coast Regional Plan 2036 at Direction 20 promotes growing housing choice in and around local centres.

While the Regional Plan addresses the more significant growth areas and corridors, infill and fringe additions to existing urban areas are more specifically addressed through local strategies.

The recently adopted Somersby to Erina Corridor Strategy acknowledges the consideration for potential development of Darkinjung lands – though does not provide specific detail. The lands are located on the edge of an existing urban area of Kariong and are a logical extension to this area subject to addressing site constraints.

The Panel recognises the need to facilitate a strategic consideration of Darkinjung land in a policy framework that balances environmental and urban design outcomes and the core aim and value for greater self determination and economic independence for local Aboriginal peoples.

Having regard to the above, the Panel is of the view that the site has strategic merit.

3.0 Site Specific Merit

The site is located on the edge of an urban area of Kariong. Between the edge of the urban area and the site is a bank of rural residential lots. These lots have been deferred from the current Gosford Local Environmental Plan 2014.

It is recognised that the site is heavily vegetated, currently zoned E2 Environmental Conservation and abuts a National Park on two (2) sides.

At the same time, it is on the fringe of a typical urban subdivision to the north, and west on the opposite of Woy Woy Road - these lands are zoned R2 Low Density Residential.

A change in zoning would result in a significant loss of vegetation and alter the visual catchment. How this loss of vegetation and the way it is mitigated is a key consideration in determining the appropriateness of the site for urban development.

The characteristics of the site which may support future urban expansion include:

- Location on the fringe of an urban area in close proximity to a range of services
- The potential to provide social and economic benefit to the Aboriginal community
- The potential to provide appropriate buffers to the National Park
- The proposal is generally consistent with the principles to guide Kariong rezoning proposal identified in the Interim Darkinjung Development Delivery Plan
- Potential to provide additional housing in close proximity to urban areas
- Potential to offset impacts on the natural environment and manage lands adjoining the National Park
- The range of potential uses on the site would be compatible with the existing approved and likely future uses in the vicinity of the site
- Services and infrastructure are able to be made available to service the development subject to some constraints and further resolution

The constraints on the site include:

- The vegetated nature of the site and the visual and landscape qualities
- The Aboriginal cultural heritage
- Topography of site and service and access limitations
- Bushfire risk to urban development
- Proximity to the National Park

On balance the Panel considers that the proposal may have site specific merit provided the constraints are able to be addressed through additional information and further assessment, that will potentially result in a different approach to density and access.

Our view has been based on the information provided to date which will need to be supplemented with the preparation of a formal Planning Proposal.

To understand and mitigate impacts that a change in zoning would result in, the following additional matters and studies are required to be addressed.

4.0 Mitigation of Environmental Impacts and Additional Studies

Notwithstanding the high level view that the site has strategic merit and possibly site specific merit - the Panel does not currently endorse the proposed zoning and indicative lot sizes. Key issues are discussed as follows.

4.1 Urban Design

The Panel is of the view that while the proposed urban zoning of the land is generally acceptable, further work needs to be done in respect to urban form and layout as well as appropriate landscape treatment.

The treatment of land adjoining the lands to the north need to provide a greater transition. 675m^2 lots are too small and are not compatible with larger lots adjoining the site.

The lands to the south abutting the green area noted as land within residential zone intended for non residential uses need to be larger lots than the 550m^2 to accommodate appropriate buffers and landscape treatment. Development of these lands should not rely on any APZ south of the easement.

The frontage to Woy Woy Road needs to maintain the landscape character and vegetated setting currently presenting to Woy Woy Road This again is likely to require large lots.

Details of passive and local open spaces need to be identified as part of a more detailed analysis.

Additionally, whether the development footprint extends south of the easement needs to be reviewed and tested – and ultimately minimised. Irrespective, lands currently identified south for development should be clearly distinguished as not capable of accommodating built form but limited to the infrastructure requirements. This approach may ultimately suggest a different zoning approach.

A site specific Urban Design Analysis for the whole site needs to be prepared that addresses the following:

1. Urban design principles and controls to guide the interface with adjoining land uses including:
    - Street frontage presentation
    - Indicative lot sizes and layouts

- Minimum building setbacks
- Location and treatment of the APZ within the R2 portion of the site – all north of the easement
- Landscape treatment along Woy Woy Road – possible Local Open Space Provision or other zone

2. Access and connectivity principles to guide the identification of entry and exist points for pedestrian and vehicular movements to provide safe integration with the existing transport network

3. Landscape principles to create a visual transition between the vegetated gully and the proposed development and protect significant vegetation (where appropriate)

4. Principles for the treatment of areas of aboriginal cultural significance including buffers and setbacks.

The appropriate zoning regime will be informed by this work. A site specific Development Control Plan also needs to be prepared and accompany the Planning Proposal – reflecting the outcome of the Urban Design Analysis

4.2 Environmental Considerations

Given the site constraints and vegetated nature of the site the following additional information needs to be included in any Planning Proposal documentation before it is referred to Gateway:

1. A Biodiversity Development Assessment Report (BDAR) for the proposed Development Footprint (proposed R2 zoned portion), prepared in accordance with the provisions of the Biodiversity Conservation Act 2016, which amongst other matters:
    - Illustrates the extent and location of sensitive vegetation communities (including any Endangered Ecological Communities) plus vulnerable and threatened fauna habitat, within the development footprint
    - Addresses the potential for any irreversible impacts on sensitive species
    - Establishes the quantity and nature of likely off-sets requirements associated with any biodiversity impacts

2. A comprehensive Bushfire Assessment Report prepared in accordance with the provisions of NSW Planning for Bushfire Protection 2018, which provides amongst other material, details of:
    - The location and extent of the required APZs which are to be utilised for future residential dwellings
    - The location of the perimeter road, others access ways or trails, plus any associated infrastructure, which form part, of the overall residential protection strategy

3. Aboriginal Cultural Heritage and appropriate management of sites and buffers. E.g. within public lands or other mechanisms.

4.3 Servicing and Access

A range of options for access need to be considered. It is important that there is more than one means of access into and out of the site.

The adjoining subdivision to the west does not have access off Woy Woy Road. All alternative means of access need to be investigated including access from the north east.

Lands that are constrained in terms of servicing may indicate a need for different density outcome and larger lot sizes.

5.0 Other Matters

5.1 Lands Adjoining the Site to the North

The Panel is of the view that the lands immediately to the north of the site should be considered as a concurrent matter with any Planning Proposal for the Darkinjung Lands. The Panel is of the view that such a consideration would offer a potential access solution to the site, as well as a strategic approach to planning for the broader area.

What occurs strategically with these lands will influence how this proposal needs to address the interface.

5.2 Council Comments

The Panel has had regard to Council comments. While holding a different view as to the strategic and possibly site specific merits of the proposal the Panel concurs with the need for further detailed information regarding:

- Built transition to the south and eastern faces i.e. large lots
- Provide for a range of lot sizes that respond to the site's constraints and adjoining context
- A revised Servicing Strategy
- Traffic Impact Assessment
- Aboriginal Cultural Heritage Assessment
- Bushfire Risk
- Sepp 55 Contamination Assessment
- Discussion with Council regarding use of land for access

5.3 Planning Proposal Document

The Panel understands a formal Planning Proposal needs to be prepared.

This document needs to include the information and assessment outlined in Sections 4.0 and 5.2.

The Panel is of the view that the Planning Proposal document should be referred back to the Panel for a decision to proceed to Gateway. At this point in time the Panel is of the view that the additional studies will better inform the site specific merits of the proposal.

5.4 Planning Authority

The Panel notes that the Central Coast Council by resolution at its Council meeting of 11 November 2019 does not want to take on the role of the Planning Authority for the Planning Proposal.

The Hunter and Central Coast Regional Planning Panel is the appropriate body in this instance to take on this role.

6.0 Decision

1. That a formal Planning Proposal be prepared that addresses the issues identified in Sections 4.0 and 5.2.
2. That the Planning Proposal be referred to the Hunter and Central Coast Regional Planning Panel prior to proceeding to Gateway
3. That a further report be prepared outlining how the Planning Proposal has addressed the outcomes of the studies, proposed zonings and subdivision controls.
4. That the matter be considered electronically.
5. That a strategic consideration of land to the north of the site be undertaken concurrently by Central Coast Council

PANEL MEMBERS	
Alison McCabe (Chair)	Juliet Grant
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SCHEDULE 1		
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