



<b>DATE OF DETERMINATION</b>	20 September 2024
<b>DATE OF DECISION</b>	12 September 2024
<b>PANEL MEMBERS</b>	Stephen O'Connor (Acting Chair), Cinnamon Dunsford, Stephen Leathley and Luke Musgrave
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Kiama Municipal Council's three local members are unable to sit on the panel due to a conflict of interest. Councillors Neil Reilly, Imogen Draisma, and Stuart Larkins voted on the matter at the Council meeting of 16 April 2024.

### REZONING REVIEW

#### RR-2024-21 – Kiama LGA – PP-2023-2833

177 Long Brush Road, Jerrara and 33 Greyleigh Drive and 103 Jamberoo Road, West Kiama (As described in Schedule 1).

#### Reason for Review:

- The council has notified the proponent that the request to prepare a planning proposal has not been supported.
- The council has failed to indicate its support 115 days after the proponent submitted a request to prepare a planning proposal.
- The council has not submitted the planning proposal for a Gateway determination within 28 days of indicating its support for the proposal.

### PANEL CONSIDERATION AND DECISION

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

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

- should** be submitted for a Gateway determination because the proposal has demonstrated strategic and subject to changes 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 with respect to the planning proposal's strategic merit was divided 2:2, with the Panel Chair providing a casting vote in the affirmative.

Luke Musgrave and Cinnamon Dunsford considered the planning proposal did not have strategic merit given the following reasons:

- The proposed site is not included in any current strategic planning (including Illawarra Shoalhaven Regional Plan, Kiama LSPS, or draft Kiama Growth & Housing Strategy).
- The proposal is inconsistent with the Illawarra Shoalhaven Regional Plan and the NSW Government's reform agenda that seeks to prioritise opportunities for new housing in existing centres, leveraging investment into infrastructure and services, with access to public transport,

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community facilities and commercial services. The Regional Plan specifically notes that this should be a specific focus for Kiama in developing its local housing strategy to plan for a larger proportion of housing stock in the existing centres of Kiama and Gerringong.

- The Illawarra-Shoalhaven Regional Plan identifies the need for Kiama Council to develop a local housing strategy to manage growth and identify opportunities to meet housing demand in the short, medium and long term.
- Council has recently exhibited a draft local housing strategy (Kiama Growth & Housing Strategy) which identified that additional supply is required to satisfy demand in the long term.
- Council has also undertaken an EOI process to understand opportunities for additional sites to be included in the draft strategy.
- The proposed site was submitted as an EOI and after assessment by Council, was not included in the draft strategy.
- Council is in the process of reviewing submissions and will seek to finalise the growth and housing strategy.
- Based on the information provided to date it is not clear whether the proposal responds to a change in circumstances that has not been recognised. Rather, there has been a substantial delay in Kiama Council delivering the local growth and housing strategy. The NSW housing crisis alone is not considered a justification for strategic merit. It is appreciated that the Illawarra Shoalhaven UDP Dashboard indicates an average completion rate of 106 dwellings/ year since 2018. However, with a forecast supply of 401 infill housing dwellings across the next 5 years, the recent development of South Kiama URA DCP, Dido Street precinct and other approved greenfield sites it is possible that Kiama LGA can meet its 900 new home target (without the inclusion of Bombo Quarry if this continues to be delayed), especially if demand in the LGA is as high as indicated by both Council and the proponent.
- The proposal is considered long term in terms of providing supply (especially based on site specific land constraints yet to be investigated) and will not contribute to Council meeting its 5-year housing target of 900 new homes. Council should be provided the opportunity to finalise its local housing strategy and the identification of long term housing supply.
- In August 2024, the Department advised Kiama Council that they are generally supportive of the draft local growth and housing strategy subject to the comments included in an attachment. The comments did not reference the subject site, indicating support for the strategy without the inclusion of the subject site.

The decisions with respect to the planning proposal's site specific merit was unanimous, with all Panel members voting that while the proposal has significant site specific challenges, it does have site specific merit, subject to recommended changes.

### **REASONS FOR THE DECISION**

The Panel considered the documentation, was briefed by the Department of Planning, Housing and Infrastructure, and heard extensively from Kiama Municipal Council and the proponent, Traders in Purple and their consultant Mecone.

#### **Strategic Merit**

Two of the Panel members, namely Stephen O'Connor (Acting Chair) and Stephen Leathley, agreed that the planning proposal had Strategic Merit given that:

- The planning proposal is generally consistent with applicable strategic planning documents, particularly as they relate to the general objectives for housing. These include the Illawarra Shoalhaven Regional Plan 2041 (the Regional Plan), Kiama Local Strategic Planning Statement 2020 (LSPS), Kiama Urban Strategy 2011, relevant State Environmental Planning Policies (SEPP) and relevant Section 9.1 Ministerial Directions.

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- Delivering housing supply is a priority for all levels of Government and the provision of additional housing in this location has strategic merit given its response to changing circumstances. Council has advised that Kiama is the most unaffordable regional area in NSW with a chronic shortage of social and affordable housing. This planning proposal seeks to significantly assist in addressing this issue by providing much needed additional housing supply in close proximity to existing facilities and services.

Two of the Panel members, Cinnamon Dunsford and Luke Musgrave did not agree that the planning proposal had Strategic Merit given that:

- The planning proposal does not consider Kiama Municipal Council's concurrent planning strategies currently underway with an aim of identifying growth opportunities and housing options for the local government area (LGA).
- The planning proposal did not include adequate justification that it has strategic merit given it is not included in the Illawarra Shoalhaven Regional Plan or Kiama LSPS. Further, Council are addressing the changing circumstances in housing supply needs for the area through its contemporary local growth and housing strategy (which in draft form does not include the subject land).
- The planning proposal was considered for inclusion in the draft Kiama growth and housing strategy through an EOI process but failed to meet the criteria for inclusion.
- Council should be afforded the opportunity to finalise its local growth and housing strategy to identify how it will meet long term housing demand. Council should be encouraged to continue to make the finalisation of its local growth and housing strategy a key priority.
- The planning proposal did not include sufficient information to justify consistency with all Section 9.1 Ministerial Directions.

### Site Specific Merit

The Panel agreed that the planning proposal should be able to achieve Site Specific Merit subject to revisions addressing site constraints and servicing noting that further work is required to satisfy the Panel with respect to:

- Government agency and authority consultation, including:
  - Transport for NSW to ensure traffic and transport matters are adequately addressed, including connectivity to the existing road network and the capacity of the road network to accommodate the traffic generated by the planning proposal;
  - Schools Infrastructure NSW to ensure adequate school infrastructure is in place to support the proposal, including clarifying the proposal to facilitate the development of a school within the proposed development;
  - Sydney Water to ensure adequate water and sewer services for the proposal;
  - NSW Rural Fire Service to ensure the proposal is compatible with any bushfire hazards;
  - NSW Department of Climate Change, Energy, the Environment and Water's (DCCEEW) Biodiversity, Conservation and Science (BCS) Group to adequately address the matters raised in their letter dated 22 March 2024, including stormwater management, clarifying whether biodiversity offsetting is proposed as part of the environmental conservation measures associated with the planning proposal and preparation of a suitable flood impact and risk assessment (FIRA);
  - State Emergency Service to confirm the proposal is compatible with any flooding hazards; and
  - Local Indigenous Land Council to confirm Aboriginal Cultural Heritage issues associated with the proposal have been adequately addressed.
- Feasibility analysis investigating increasing the amount of affordable housing proposed;
- Adequately address the future management arrangements for proposed conservation zones and other potentially 'public' or 'community' lands, including justification of community need for those lands and any associated infrastructure and mechanisms to provide for public access where appropriate;

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- Delivery of appropriate residential densities for the site and its topography as well as the surrounding context;
- The geotechnical capacity of the land to accommodate the proposed development;
- Addressing how the proposal will assist with providing for net zero outcomes;
- Clarification of the intended use of the 'activity areas' included; and
- Clarification of timing of delivery of housing on the site.

The Panel anticipates that addressing these issues will result in a reduction in the dwelling yield of the proposal, though the Panel does not require any specific reduction subject to these matters being adequately addressed.

### **Panel recommendations**

The Panel recommends that prior to submitting the Planning Proposal for a Gateway determination, the Planning Proposal is to be revised to address all the issues identified under the heading Site Specific Merit above.

The Panel considers that as the planning proposal progresses the issue of developer contributions and an appropriate DCP need to be appropriately resolved. Appropriate funding to ensure the timely delivery of suitable infrastructure and public amenity for the proposal will be essential. The Panel strongly encourages Council and the proponent to work closely to adequately address these matters as the proposal progresses.

Once the proposal has been adequately revised, the Panel requires to review the proposal before proceeding to a Gateway determination.

The Panel requires confirmation from the proponent that they agree to:

- a) revise the planning proposal to be consistent with the Panel's recommendations; and
- b) subsequently provide a revised planning proposal to address the Panel's concerns.

The proponent has up to two weeks from the date of this determination to confirm whether they agree to revise their planning proposal to be consistent with the Panel's recommendations. Should the proponent not agree to revise their planning proposal, then the Panel will reconvene to determine that the planning proposal does not have site specific merit and will not be submitted for a Gateway determination.

Should the proponent agree to revise their planning proposal to address the Panel's concerns, then the proponent has up to a further four months to provide the revised planning proposal, including supporting reports and studies to the Panel.

The Panel will reconvene two weeks following the receipt of the revised Planning Proposal to assess and determine whether the Planning Proposal has met the Panel's recommendations and has demonstrated site specific merit and is suitable for submitting to a Gateway determination.

Kiama Municipal Council resolved not to support the planning proposal, and thus are unable to accept the role of Planning Proposal Authority (PPA) for this planning proposal. 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.

Should the proponent fail to pay the PPA fee by the designated date, then the Panel will no longer proceed with the planning proposal and the making of a local environmental plan amendment.

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**PANEL MEMBERS**



Stephen O'Connor (Acting Chair)



Cinnamon Dunsford



Stephen Leathley



Luke Musgrave

SCHEDULE 1		
1	<b>PANEL REF – LGA – DEPARTMENT REF - ADDRESS</b>	RR-2024-21 – Kiama LGA – PP-2023-2833 – at 177 Long Brush Road, Jerrara and 33 Greyleigh Drive and 103 Jamberoo Road, West Kiama
2	<b>LEP TO BE AMENDED</b>	Kiama Local Environmental Plan (LEP) 2011
3	<b>PROPOSED INSTRUMENT</b>	<p>The proposal seeks to:</p> <ul style="list-style-type: none"> <li>• Rezone the part of the site zoned RU2 Rural Landscape (RU2) to part R2 Low Density Residential (R2), part R3 Medium Density Residential (R3); part E1 Local Centre (E1); and part RE1 Public Recreation (RE1);</li> <li>• Introduce maximum height of buildings of 8.5m for R2 zoned land; and 15m for the R3 and E1 zoned land;</li> <li>• Reduce the minimum subdivision lot size on part of the site from 40ha to 450sqm on R2 and R3 zoned land; and</li> <li>• Reduce the minimum subdivision lot size to 1,000sqm on RU2 zoned land on the southern portion of the site. Remaining RU2 zoned land (northern portion of the site) will retain its existing 40ha minimum lot size.</li> </ul>
4	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Rezoning review request documentation.</li> <li>• Department of Planning, Housing and Infrastructure, Rezoning Review Briefing Report, 30 August 2024.</li> <li>• Slide presentations from DPPI, 11 September 2024; Kiama Municipal Council, 6 September 2024; and Mecone, 11 September 2024.</li> </ul>
5	<b>SITE INSPECTIONS AND BRIEFINGS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• <b>Site inspection with Department of Planning, Housing and Infrastructure (DPHI): 9:30am – 10:45am, 12 September 2024</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Stephen O’Connor (Acting Chair), Cinnamon Dunsford, Stephen Leathley and Luke Musgrave</li> <li>○ DPHI staff in attendance: Louise McMahon, Kate McKinnon, Graham Towers and Andrew Hartcher</li> <li>○ Key issues discussed: <ul style="list-style-type: none"> <li>• Site topography</li> <li>• Existing surrounding land uses and development patterns</li> <li>• existing and proposed road network and connectivity</li> </ul> </li> </ul> </li> <li>• <b>Briefing with Department of Planning, Housing and Infrastructure (DPHI): 11:30am – 11:50am, 12 September 2024</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Stephen O’Connor (Acting Chair), Cinnamon Dunsford, Stephen Leathley and Luke Musgrave</li> <li>○ DPHI staff in attendance: Louise McMahon, Shruthi Sriram, Graham Towers, Andrew Hartcher, Kate McKinnon, Taylah Fenning and Adam Williams</li> <li>○ Key issues discussed: <ul style="list-style-type: none"> <li>• Private water and sewer provider</li> <li>• Staging of intended future development of the site</li> <li>• Heritage issues and proposed impact mitigation measures (Aboriginal and European)</li> </ul> </li> </ul> </li> </ul>

- **Briefing with Kiama Municipal Council: 12:00pm – 12:58pm, 12 September 2024**
  - Panel members in attendance: Stephen O’Connor (Acting Chair), Cinnamon Dunsford, Stephen Leathley and Luke Musgrave
  - DPHI staff in attendance: Louise McMahon, Shruthi Sriram, Graham Towers, Andrew Hartcher, Kate McKinnon, Taylah Fenning and Adam Williams
  - Council representatives in attendance: Jane Stroud, Cheryl Lappin and Melissa Ballinger
  - Key issues discussed:
    - Scale of planning proposal within historic and existing economic and environmental context of the LGA
    - Planning proposal’s lack of linkage to existing strategic plans for the LGA (Strategic Merit test)
    - Community views on the planning proposal
    - Agency consultation
    - Additional concerns with planning proposal including lack of sufficient studies on; employment lands study, road and traffic movement and linkages information, flood risk management plan, bushfire risk assessment, threatened species and biodiversity studies, open space (particularly active recreation), water quality and geotechnical analysis
  
- **Briefing with Mecone and Traders in Purple (Proponent): 1:35pm – 2:28pm, 12 September 2024**
  - Panel members in attendance: Stephen O’Connor (Acting Chair), Cinnamon Dunsford, Stephen Leathley and Luke Musgrave
  - DPHI staff in attendance: Louise McMahon, Shruthi Sriram, Graham Towers, Andrew Hartcher, Kate McKinnon, Taylah Fenning and Adam Williams
  - Proponent representatives in attendance: George Geagea, Thomas Zdun, Michael Teoh, Ben Hendriks, Chris Shannon, Joe Rowling and Michele Adair
  - Key issues discussed:
    - Description of site, planning proposal
    - Housing supply as argument for strategic merit
    - Rationale behind open space typology proposed
    - Traffic, transport and infrastructure serviceability
    - Community consultation and engagement with the DPHI, agencies and Kiama Shire Council
    - Affordable and community housing proposed
    - Masterplan changes arising from community consultation
    - Proposed space allocation for the provision of a school
    - Approach proposed to VPA

		<ul style="list-style-type: none"><li>• <b>Panel Discussion:</b> 2:15pm – 3:00pm, 12 September 2024<ul style="list-style-type: none"><li>○ Panel members in attendance: Stephen O’Connor (Acting Chair), Cinnamon Dunsford, Stephen Leathley and Luke Musgrave</li><li>○ DPHI staff in attendance: Louise McMahon, Shruthi Sriram, Graham Towers, Andrew Hartcher, Kate McKinnon, Taylah Fenning and Adam Williams</li></ul></li></ul>
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