

19 February 2024

Our Reference: 2200672

Planning Panels Secretariat
Department of Planning, Housing and Industry
12 Darcy Street,
Parramatta NSW 2150

Dear Secretariat,

PPSSTH-269 – Kiama – DA 10.2023.59.1
Lot 2 DP 805229 DIDO STREET, KIAMA

This submission has been prepared by Ethos Urban on behalf of the applicant PSEC Project Services (PSEC) and relates to DA 10.2023.59.1 for the subdivision and construction of 64 dwellings on Lot 2 DP 805229, Kiama. This letter should be read in conjunction with the following documents:

- Flood Evacuation Opportunities and Constraints Statement prepared by Rudy Vandrie (**Attachment A**)
- Amended Subdivision Masterplan prepared by PSEC (**Attachment B**);
- Draft Community Management Statement prepared by Dentons (**Attachment C**).

Development Application (DA) 10.2023.59.1 is proposed to be determined on the 20th of February 2024 meeting by the Southern Regional Planning Panel. Kiama Municipal Council's (Council) planning staff have recommended the DA is refused based on seven reasons outlined in their Section 4.15 Assessment Report.

NSW is in the middle of a housing crisis, and both the federal and state governments are working to try and deliver new homes quickly. The proposal, as proposed to be amended, will deliver 64 new dwellings, on land that has been recently rezoned for residential purposes in a manner that is generally compliant with the Kiama Local Environmental Plan 2011, and the Kiama Development Control Plan.

We understand that Council's primary reason for recommending refusal is the lack of flood free access/egress in the event of an emergency evacuation from the development during a defined flood. In this regard, Ethos Urban emailed the Panel Secretariat in January 2024, on behalf of PSEC, requesting the meeting be deferred to enable the provision of detailed flooding analysis and supporting information summarising NSW Land and Environment Court decisions where shelter in place strategies have been approved.

The purpose of this letter is to ask the Panel again to defer their determination to allow the Council to consider further information that demonstrates the proposed development is reasonable in the circumstances. It is hoped that deferring the determination will enable the Council and PSEC to resolve the outstanding matters and avoid a costly and time-consuming appeal process and facilitate the delivery of new homes in Kiama.

Table 1 below summarises how each of the reasons for refusal are resolvable. In this regard, we believe it is reasonable for the Panel to request Council review the additional information and provide an amended report.

We look forward to discussing this further with the Panel in the meeting.

Yours sincerely,

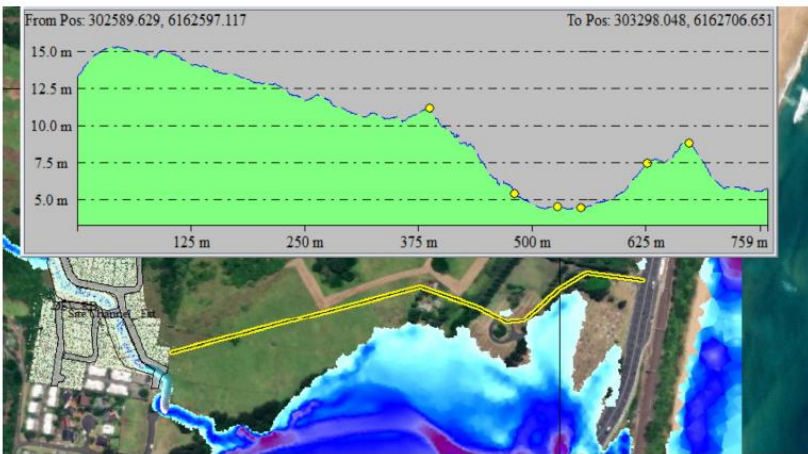


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Table 1 **Response to Council's reasons for recommending refusal**

| Reason for Refusal | Response |
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| <p><i>The lack of flood free access/egress in the event of an emergency evacuation from the development during a defined flood is unacceptable having regard to the EP&A Act S.4.15(1)(b) – social and economic impacts in the locality, and S.4.15(1)(c) the suitability of the site for the development.</i></p> | <p>PSEC's flood engineer has undertaken detailed modelling utilising 2019 flood methodology. The modelling reviewed 240 different flood durations and patterns for a 1% and 5% event. The modelling identified that in the worst-case scenario in either a 1% or 5% event, a defined flood inundates the Dido Street Bridge for a total of 117 minutes.</p> <p>PSEC's flood engineer concluded that a shelter in place strategy is an appropriate flooding response and an alternative evacuation strategy is unnecessary. This is consistent with the Council's own "Surf Beach Catchment – Kiama Floodplain Risk Management Study and Plan" 2017 which adopts a shelter in place strategy. It is also consistent with the Department of Planning and Environment's Draft Shelter-in-place Guideline.</p> <p>Further detail is provided at Attachment A.</p> |
| <p><i>The proposal does not provide flood free access/egress as required pursuant to Kiama Development Control Plan objective O:3.6.44 – Property Access</i></p> | <p>Objective 3.6.44 of the Kiama DCP states:</p> <p><i>"To enable rapid and safe evacuation of residents, and easy access to emergency services vehicles, in the case of a bush fire, flood or storm event or any other emergency requiring access to or evacuation of people from dwellings."</i></p> <p>As noted above, PSEC's flooding engineer has concluded that a shelter in place strategy is appropriate, as the worst-case scenario results in the bridge being inundated for 117 minutes.</p> <p>Notwithstanding the above, the Flood Evacuation Opportunity and Constraints Statement in Attachment A finds that flood free access can occur from Randle Street where an ambulance can wait to care and treat residents (pictured below).</p>  |
| <p><i>The proposed Planning Agreement submitted pursuant to S.7.4 of the EP&A Act to fund a flood free access study is considered inadequate to address the critical issue of flood free access/egress.</i></p> | <p>Detailed flood modelling has demonstrated that the bridge is inundated for a relatively short period of time and funding for improved flood free access is unnecessary. It is noted that the land was rezoned by Council without a requirement to upgrade the bridge.</p> |
| <p><i>The proposal is considered unsatisfactory having regard to S.4.15(1) (d) and (e) having regard to issues raised in submissions, and the public interest</i></p> | <p>Section 4.15(1)(d) and (e) relate to:</p> <ul style="list-style-type: none"> the suitability of the site for the development, and any submissions made in accordance with this Act or the Regulations. <p>These matters are addressed below.</p> |

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| | <p>Suitability of the Site</p> <p>Council's assessment report (page 18) states:</p> <p><i>"The Suitability of the Site for the Development</i></p> <p><i>The proposal fits within the locality and the site attributes are considered to be conducive to development. Notwithstanding, external constraints of flood affected access make the site unsuited to development at this point in time."</i></p> <p>The detailed flooding analysis concludes that access to the site is restricted for a maximum of 117 minutes during the worst-case scenario. PSEC's flood engineer has concluded that a shelter in place strategy is an appropriate mechanism in the circumstances and is consistent with other studies prepared by Council. The flooding analysis demonstrates that the site is flood constrained for relatively short periods of time which does not make the site unsuitable for the proposed development provided a shelter in place strategy is implemented.</p> <p>Submissions Made in Accordance with this Act or the Regulations</p> <p>Page 18 of the Report provides a summary of the submissions. The submissions identified the following items:</p> <ul style="list-style-type: none"> • flood free access/egress • pedestrian safety – no footpaths along Glenbrook Drive • impact on Bombo Lagoon downstream, plus increased incidents of sewage pollution on lagoon caused by new development (note sewage pollution an existing issue for lagoon) • impact of blasting from nearby quarry on site stability for sloping areas, • through private Community title road network • impact on large fig tree near south-western corner of site (landscape and nesting value) • impacts on neighbouring villas along southern boundary of site <p>The Council's report responds to each item and identifies that, apart from flood free access, all of the issues raised by the public can be addressed and managed, and are not grounds for recommending refusal.</p> |
| <p><i>The proposal does not satisfactorily demonstrate how protection and maintenance of terrestrial biodiversity will be achieved having regard to Clause 6.4 Terrestrial biodiversity of Kiama LEP 2011.</i></p> | <p>A detailed assessment of Clause 6.4 is provided on Page 12 of the Section 4.15 Assessment Report and states:</p> <p><u><i>"Clause 6.4 Terrestrial Biodiversity</i></u></p> <p><i>Two relatively small portions of the site are mapped as terrestrial biodiversity, located at the upper north-eastern corner and along the western boundary.</i></p> <p><i>In considering the requirements of cl.6.4, the proposal includes clearing of approximately 0.21ha of Illawarra subtropical rainforest which is identified in a degraded condition. Vegetation within the site study area is predominantly exotic grassland and weeds (3.01 ha) with clearing of this raising no concerns.</i></p> <p><i>The proposal also includes development of a riparian corridor (~0.47 ha), located to avoid and minimise hydrological impacts (surface and groundwater) and improve riparian and ecological functions through removal of exotic vegetation. The removal of the remaining degraded native and exotic vegetation is not considered to cause any significant adverse environmental impacts or adversely affect the significance of threatened flora and fauna in the locality.</i></p> <p>[emphasis added]</p> <p>The proposal seeks to facilitate the delivery of 64 new homes on residential zoned land. The amended Flora and Fauna Report submitted to Council in November 2023 concluded that site's terrestrial biodiversity values are low</p> |

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| | <p>and essentially there is no biodiversity that warrants protection and/or maintenance.</p> <p>Vegetation identified as worth retaining included the large <i>Ficus rubiginosa</i> located in the centre of the site which is proposed to be retained.</p> <p>The proposed layout and design have sought to protect and maintain existing vegetation where possible.</p> <p>The Council's assessment indicates that they are satisfied with the proposal regarding Clause 6.4 and its inclusion as a reason for recommending refusal appears to contradict Council's assessment.</p> |
| <p><i>The development requires an Asset Protection Zone over neighbouring land Lot 3 DP805229 with owners consent not obtained for this as required pursuant to cl.23 of the Environmental Planning and Assessment Regulation 2021.</i></p> | <p>The Bushfire Report submitted with the DA identified that Lot 1A requires an easement into Lot 11 DP 810839 to accommodate APZ requirements. Lot 11 DP 810839 is owned by Council and owners consent from Council has not been granted.</p> <p>PSEC have provided amended plans (Attachment B) which amalgamate proposed Lots 1A, 1B and 2A into a single residue lot without houses which removes any reliance on Council's lot, as all APZs will be contained within the site as illustrated on the amended master plan.</p> |
| <p><i>The proposal involving 67 Torrens title residential lots and one Community lot does not satisfactorily demonstrate binding arrangements for the maintenance of the Community lot drainage, roads and park, pursuant to the Community Land Development Act 2021 clause 8 Establishment of community scheme.</i></p> | <p>A Draft Community Management Statement was submitted to Council in October 2023 and demonstrates arrangements for maintenance of the community lots including drainage, roads and park infrastructure. As such, it is considered that suitable arrangements have been made under the Community Land Development Act. This document has been reattaching in Attachment C.</p> |