

Rezoning and Reclassification of land in Irvine Street, Kiama

Proposal Title : **Rezoning and Reclassification of land in Irvine Street, Kiama**

Proposal Summary : **The planning proposal seeks to rezone and reclassify surplus Council land in Irvine Street, Kiama (part of Lot 12 DP708075, Lots 36 & 45 DP263449 and Lot 38 DP630551) from RE1 Public Recreation Zone to R2 Low Density Residential Zone and adjust the building controls accordingly to allow the land to be used for one residential lot. The local heritage listing of part of Lot 12 DP708075 and the interests on all lots will be removed.**

PP Number : **PP_2016_KIAMA_004_00** Dop File No : **16/11240**

Proposal Details

Date Planning Proposal Received : **21-Sep-2016** LGA covered : **Kiama**

Region : **Southern** RPA : **The Council of the Municipality of Kiama**

State Electorate : **KIAMA** Section of the Act : **55 - Planning Proposal**

LEP Type : **Reclassification**

Location Details

Street : **Irvine Street**

Suburb : **Kiama** City : **Kiama** Postcode : **2533**

Land Parcel : **Part of Lot 12 DP 708075, Lots 36 and 45 DP 263449 and Lot 38 DP 630551**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Graham Towers**

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Land Release Data

Growth Centre : **N/A** Release Area Name :

Regional / Sub Regional Strategy : **Illawarra Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) : 0.06		Type of Release (eg Residential / Employment land) :	Residential
No. of Lots : 0		No. of Dwellings (where relevant) :	1
Gross Floor Area : 0		No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

The land is the last vacant lot amongst the established residential dwellings in Irvine Street. It is 563.27m² in area consisting of 177m² of part of Lot 12 DP708075, 181m² of Lot 36 DP263449, 18.77m² of Lot 45 DP263449 and 186.5m² of Lot 38 DP630551. The small area of Lot 12 is part of a 6.431ha lot covering the majority of the Kiama Quarry Sports Complex (also known historically as Pikes Hill Quarry).

The lots along Irvine Street, including the subject land, are elevated above the old quarry and are separated from the quarry edge by a strip of land within Lot 12.

It appears from aerial photographs and title records that the land has been generally vacant with possible farming from 1991 to 1984. Between 1984 and 2005, the site has been occupied by what seems like a children's playing area. The land currently contains some large rocks positioned on the site as features of open space.

On 15 April 2014, Kiama Council on the recommendation of its Revenue Sub-Committee, resolved to commence the reclassification/rezoning process for a number of lands, including the subject land. The Revenue Sub-Committee identified that the land 'does not have active community use and due to the size and location, provides restrictive community benefits. There are ongoing maintenance costs for the community'. The lands were identified as surplus to Council's needs and which if sold will provide income for capital works and/or assist in long term financial sustainability.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment :

The objective of the planning proposal is to:

- rezone part of Lot 12 DP708075, Lots 36 & 45 DP263449 and Lot 38 DP630551, Irvine Street, Kiama from RE1 Public Recreation to R2 Low Density Residential and adjust the building controls accordingly;
- reclassify the land from community to operational; and
- remove the local heritage listing on part of Lot 12 DP708075 to allow Council to sell the land for residential uses.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanations of provisions in the planning proposal are to amend the Kiama LEP 2011:**
*** Land Zoning Map – Sheet LZN_012 applying to the subject site from RE1 Public Recreation to R2 Low Density Residential;**
*** Lot Size Map – Sheet LSZ_012 applying to the subject site to introduce minimum lot sizes of G 450sqm;**
*** Height of Buildings Map - Sheet HOB_012 applying to the subject site to apply a maximum height of I 8.5m;**
*** Floor Space Ratio Map - Sheet FSR_012 applying to the site to apply an FSR of C 0.45:1;**
*** Heritage Map – Sheet HER_012 applying to Lot 12 DP 708075 to remove the Archaeological Item A103 from the portion of the lot proposed to be rezoned and reclassified;**
*** including the land under Schedule 4 Classification and reclassification of public land Part 2 land classified or reclassified as operational land – interests changed; and**
*** amending the lot details under Schedule 5 Environmental Heritage Part 1 Heritage Items No. A103.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA : **2.2 Coastal Protection**
2.3 Heritage Conservation
* May need the Director General's agreement **3.1 Residential Zones**
3.4 Integrating Land Use and Transport
5.1 Implementation of Regional Strategies
6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **SEPP No 55—Remediation of Land**
SEPP No 71—Coastal Protection

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **The planning proposal is consistent with the Illawarra Shoalhaven Regional Plan in that it is controlling urban growth and facilitating urban infill development to increase the density of the existing built-up areas.**

The planning proposal is consistent with the s117 Directions 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 5.10 Implementation of Regional Plans and 6.2 Reserving Land for Public Purposes. Although the site is within the Coastal Zone, the proposal will not impact upon the coast or the coastal zone. The part of Lot 12 DP708075 which is listed as having a local archaeological significance (Item A103 Pikes Hill Quarry) was not quarried and is positioned at an elevated height above the disused quarry. The LEP contains provisions relating to heritage conservation which are considered during the assessment of a development application.

The disused quarry is not identified as a State or regionally significant resource and so s117 Direction 1.3 Mining, Petroleum Production and Extractive Industries does not apply to the site.

The proposal is maximising the urban development potential along Irvine Street and will allow for the utilisation of existing residential infrastructure. The planning proposal

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is seeking the Secretary's approval to remove the zoning and reservations for public purposes on the lands.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Directions 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 5.10 Implementation of Regional Plans and 6.2 Reserving Land for Public Purposes.

Recommendation: The Secretary's delegate provide approval to remove the zoning and reservations for public purposes on the lands consistent with the S117 direction 6.2 Reserving Land for Public Purposes.

SEPPs

The planning proposal is consistent with SEPP55 Remediation of Land. A Stage 1 contamination assessment concluded there is a low risk of site contamination and the land was suitable for residential development. The contamination assessment report is attached to the planning proposal and will be included in the public exhibition materials.

The proposal is consistent with SEPP 71 Coastal Protection in that the proposal will not impact upon the natural, cultural, recreational or economic attributes of the coast.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : A draft map sheet for LZN_012 from the Kiama LEP 2011 has been provided in the planning proposal and is appropriate for public exhibition. Council is in the process of preparing the additional maps for LSZ_012, FSR_012, HOB_012 and HER_012 and will include the maps in the planning proposal prior to public exhibition. The maps will need to be prepared in accordance with the Department's 'Standard Technical requirements for Spatial Datasets and Maps, 2015'.

Recommendation: Council is to prepare draft lot size, floor space ratio, height of building and heritage maps and include in the planning proposal prior to public exhibition. The final maps should be prepared in accordance with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps, 2015.'

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council requests that the planning proposal be publicly exhibited for 28 days. Public notification of the exhibition will include local newspaper notifications, notice on Council's website, hard copies will be available at Council's administration buildings and notification letters to surrounding property owners.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons :

- a) In relation to the Director General's requirements regarding matters which must be addressed in the justification of all planning proposals to reclassify public land:
 - a) the planning proposal is not a result of a strategic study or report. The land has been identified by Council as surplus to Council's needs.
 - b) The planning proposal is consistent with Council's Kiama Urban Strategy where Council's aim is to accommodate growth as much as possible by infill development to increase the density of the existing built-up areas.
 - c) The planning proposal identifies that a Registrar General's Caveat is noted on Lots 36 and 45 DP263449 and Lot 38 DP630551. It goes on to state that the NSW Land and Property Information advise that 'A Registrar General's Caveat prohibits the registration

of certain dealings; it does not create an interest in the land.' Following gazettal of the amended LEP, Council will seek to remove the caveats.

Clarification from the Land and Property Information is that 'in the past, Registrar General's Caveats were entered where land vested in a local council was dedicated as a public reserve. The caveat was numbered K200000P. The caveat will be removed on registration of a dealing and be replaced with a notification – 'The land within described is public reserve' where the local council is remaining as registered proprietor'.

The Certificate of titles for Lots 36 and 45 DP263449 and Lot 38 DP630551 includes under Second Schedule 'Caveat by the Registrar General forbidding unauthorised dealing with public reserves'.

The Certificate of title for Lot 12 DP708075 includes under Second Schedule 'The land within described is public reserve'.

All four notations are encumbrances on the land and will need to be removed as part of the reclassification process.

The planning proposal will need to be revised to identify the encumbrances on the land and include an explanation of the reasons why the interests are proposed to be extinguished.

d) Council is both the land owner and relevant planning authority who has resolved to reclassify the land.

The Department's Practice Note PN09-003 sets out general requirements for reclassification of land through planning proposals. This includes a copy of the Practice Note and Council's response to the requirements listed in the Practice Note, being part of the material displayed during the public exhibition of the planning proposal.

Recommendation: Council is to prepare and exhibit the planning proposal in accordance with the Department's Practice Note PN09-003 Classification and reclassification of public land through a local environmental plan.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The planning proposal addresses the Department's "A guide to preparing planning proposals" and is considered adequate for a Gateway Determination with conditions.

Council has a project timeframe of six months to complete the rezoning process. It is considered appropriate to allow additional time to complete the planning proposal due to the need to conduct a public hearing for the reclassification of the lands.

Council has confirmed in its referral letter of 22 August 2016 that it is seeking Council Officer Delegation to prepare the draft LEP under Section 59 of the EP&A Act. Appendix 4 – Evaluation Criteria for the Delegation of Plan making Functions was submitted.

Delegation cannot be provided to councils for the reclassifications of council community land.

Recommendation: The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

Recommendation: Delegation to remain with the Secretary's delegate.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Kiama LEP was notified on 16th December 2011.**

Assessment Criteria

Need for planning proposal : **A planning proposal is the best means of facilitating residential development on the site. Amending the Kiama LEP to reclassify the land is the most appropriate way to achieve the objective of the planning proposal.**

Consistency with strategic planning framework : **The planning proposal is not the result of any strategic study or report. The planning proposal is consistent with the Illawarra Shoalhaven Regional Plan in that it is improving the consistency of land use controls and controlled urban growth and is facilitating urban infill development to increase the density of the existing built-up areas. It is also consistent with the Kiama Urban Strategy, as it is facilitating the use of suitable land within an existing residential area within the town boundaries for residential purposes.**

Environmental social economic impacts : **The site is not known or mapped to contain any environmental features. It is located within an existing and established residential locality. It is cleared, vacant mown grass. The planning proposal will result in the loss of a small area of open space accessed from Irvine Street. The open space is currently not well utilised. A setback is provided between the site and the quarry to the north below, such that a buffer is provided between the cliff edge and the site which is consistent with adjoining residential properties. Residents within the immediate locality can access the Kiama Quarry Sports Complex below via a pathway from Thompson Street, less than 400m from the site. Kiama Council's Plan of Management Sportsgrounds, 19 June 2001 includes the Kiama Quarry Sports Complex, however there are no specific actions for the land subject to the planning proposal. Lot 12 DP708075 is part of the Pikes Hill Quarry and is listed in the Kiama LEP 2011 under Schedule 5 Environmental Heritage Part 1 Heritage Items No. A103. Council has prepared an inventory report which identifies that Pikes Hill Quarry was started in c1863. The stone was used for building and metalling both locally and in Sydney. There are no identified items of significance on the land above the quarry walls. The planning proposal should have no impact on the heritage values of the Quarry. A Preliminary Geotechnical Assessment was undertaken which made recommendations for the type of construction of any future residential development on the site.**

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Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority Consultation - 56(2)(d)
:

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **Council proposes to consult with NSW Department of Environment and Heritage and the Department of Planning and Infrastructure. It is considered that consultation with the OEH on the proposal is unnecessary.**

Recommendation: No government agency consultation is required.

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Council has provided a number of reports/statements to support the planning proposal. These included a:
*** Stage 1 Contamination Assessment and Preliminary Geotechnical Assessment, Network Geotechnics Pty Ltd, 2015**
*** Planning Proposal, SET Consultants, 2015**

Recommendation: No further studies are required.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **The land is located within an existing residential areas where all utility services are available. It is not expected that there would be issues connecting to existing services nor for there to be any issues as a result of the minor increase in demand.**

Documents

Document File Name	DocumentType Name	Is Public
160822 Irvine Street Kiama planning proposal letter KMC to DoPE request gateway determination.pdf	Proposal Covering Letter	Yes
160822 Irvine Street Kiama planning proposal.pdf	Proposal	Yes
160829 Irvine Street Kiama planning proposal KMC Report 140415.pdf	Proposal	Yes
160829 Irvine Street Kiama planning proposal KMC Minutes meeting 140415.pdf	Proposal	Yes
160905 Irvine Street Kiama Planning Proposal Sportsgrounds Plan of Management.pdf	Proposal	Yes
160921 Irvine Street Kiama planning proposal land title details Lot 12 DP708075.pdf	Proposal	Yes
160921 Irvine Street Kiama planning proposal land title details Lot 36 DP263449.pdf	Proposal	Yes

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160921 Irvine Street Kiama planning proposal land title details Lot 38 DP630551.pdf	Proposal	Yes
160921 Irvine Street Kiama planning proposal land title details lot 45 DP263449.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 5.1 Implementation of Regional Strategies
- 6.2 Reserving Land for Public Purposes

Additional Information : **The Acting Director Regions, Southern as delegate of the Minister for Planning, determines under section 56(2) of the EP&A Act that an amendment to the Kiama Local Environmental Plan 2011 to rezone and reclassify part of Lot 12 DP708075, Lots 36 & 45 DP263449 and Lot 38 DP630551, Irvine Street Kiama to allow residential development should proceed subject to the following conditions:**

1. The planning proposal is to be revised to include proposed zoning and development control maps prior to its public exhibition.
2. Council is to prepare and exhibit the planning proposal in accordance with the Department's Practice Note PN09-003 Classification and reclassification of public land through a local environmental plan.
3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is to be made publicly available for 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing local environmental plans (Department of Planning and Infrastructure 2012).
4. No public authority consultation is required under section 56(2)(d) of the EP&A Act
5. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).
6. The LEP maps will be prepared in accordance with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps, 2015.'
7. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
8. The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Directions 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, and 5.10 Implementation of Regional Plans.
9. The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Direction 6.2 Reserving Land for Public Purposes and approves the proposal to alter the existing zoning of, and remove reservation for, land reserved for public purposes.
10. The Secretary's delegate can be satisfied that the planning proposal is consistent

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with all other relevant s117 Directions or that any inconsistencies are only of minor significance.

Supporting Reasons :

The planning proposal will provide Council with the opportunity to reclassify and rezone currently underutilised community land deemed surplus to Council's needs. If approved this will allow Council the opportunity of selling the land, the income from which can be used to support existing community facilities and programs.

Signature:

George Curtis A / Team Leader

Printed Name:

George Curtis Date: 30/9/16