

Planning Services

IRF18/6876

Gateway determination report

LGA	Kiama LGA
PPA	Kiama Municipal Council
NAME	2018 Housekeeping Amendments to Kiama LEP 2011 (0 homes, 0 jobs)
NUMBER	PP_2018_KIAMA_005_00
LEP TO BE AMENDED	Kiama LEP 2011
ADDRESS	LGA wide
DESCRIPTION	LGA wide
RECEIVED	22 November 2018 Adequate 17 January 2019
FILE NO.	IRF18/6876 and EF18/48324
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The 2018 Housekeeping Amendment planning proposal seeks to amend the Kiama LEP 2011 to improve the operation and accuracy of the Plan. The amendment responds to three administrative issues with the LEP.

Site description

The planning proposal applies to all affected land in the Kiama LGA including land in the IN2 zone, public lands and land in urban release areas.

Existing planning controls

The planning proposal relates to the following clauses:

- Land Use table IN2 Light Industrial Zone - Industrial Training Facilities is listed as both permitted with consent and prohibited;
- Schedule 2 Exempt Development has no additional activities listed.
- A clause requiring the provision of essential services as a mandatory consideration in the assessment of a development application was not carried across from the Kiama LEP 1996 to Kiama LEP 2011, as it was not a standard clause.

Surrounding area

N/A

Summary of recommendation

It is recommended that the planning proposal proceed as submitted.

PROPOSAL

Objectives or intended outcomes

The objectives of the planning proposal are:

- To rectify minor errors created in the original version of the LEP 2011;
- To ensure that adequate services are provided to all developments; and
- To help facilitate minor activities and events on public land that are generally temporary in nature.

The objectives are clear and concise.

Explanation of provisions

It is proposed to amend the Kiama LEP 2011 by:

- Removing Industrial Training Facilities as a prohibited use in the IN2 Light Industrial Zone land use table.
- Adding an essential services (referred to as public utility infrastructure in some LEP's) clause to Part 6 which would require the provision of essential services as a mandatory consideration in the assessment of a development application and includes the supply of water and electricity; disposal and management of sewage; stormwater detention or on-site conservation; and suitable vehicular access.
- Adding land uses of a minor nature that occur on public land to Schedule 2 - Exempt Development. Uses proposed include swimming schools, surf schools and personal or group fitness training; events; filming; and markets.

The explanation of provisions is clear and concise.

Mapping

The proposal does not require amendments to the LEP maps as it only seeks changes to LEP clauses.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is the only mechanism available for amending the current provisions – land use table and clauses, of the Kiama LEP. It is needed to ensure that the LEP operates as intended.

STRATEGIC ASSESSMENT

The Planning Proposal is not a result of any specific study or report but arose out of identified shortcomings of the LEP.

Regional

The planning proposal states that the three amendments will have no negative impacts on the implementation of the Illawarra Shoalhaven Regional Plan. It also identifies that the amendment to Schedule 2 will have a positive benefit in that it is consistent with the section of the plan relating to tourism in the Illawarra as it promotes activities that could support growth in the tourism sector.

It is considered that the amendments will also assist in satisfying Direction 3.3 – Build socially inclusive, safe and healthy communities by delivering housing with

supporting infrastructure and services and allowing a range of outdoor activities without consent. The proposal is considered consistent with the regional plan.

Local

The planning proposal it is not identified in any local strategic study. It is a result of identified shortcomings and/or errors within the LEP.

Section 9.1 Ministerial Directions

The planning proposal is consistent with the s9.1 Directions 1.1 Business and Industrial Zones; 1.2 Rural Zones; 1.5 Rural Lands; 2.1 Environment Protection Zones; 2.2 Coastal Management; 3.1 Residential Zones; 3.4 Integrating Land Use and Transport; 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans.

The planning proposal is correcting administrative errors ie clarifying that Industrial Training Facility is permitted in the IN2 Light Industrial Zone and reapplying an essential services clause which was not carried across from Kiama LEP 1996 to Kiama LEP 2011. The addition of minor activities and events on public land is streamlining the administrative process for activities and events which are currently allowed with development consent.

The proposed amendments may apply to mapped bushfire prone land and land within the Sydney drinking water catchment (western edge of the LGA). It is unknown whether the planning proposal is consistent or justifiably inconsistent with the s9.1 Direction 4.4 Planning for Bushfire Protection. Council has identified that it will consult with Rural Fire Services to meet the requirements of the Direction.

The proposal is inconsistent with Direction 5.2 - Sydney Drinking Water Catchments as Council has not yet consulted with Water NSW in preparing the proposal. It is consider that this inconsistency is minor and will be justified by the requirement for council to consult with Water NSW.

State environmental planning policies (SEPPs)

The planning proposal has identified that it is consistent with a number of SEPPs.

The planning proposal is consistent with the Exempt and Complying Development Codes 2007; Rural Lands 2008 and Sydney Drinking Water Catchment 2011 SEPPs. The Exempt and Complying Development Codes 2007 does not include the land uses which are proposed to be added to Schedule 2 Exempt Development. The essential services clause will assist in managing development on rural and environmental lands. Whilst the Sydney Drinking Water Catchment 2011 SEPP applies to the issuing of development consent and the concurrence role, the s9.1 Direction 5.2 requires consistency with the SEPP.

SITE-SPECIFIC ASSESSMENT

Social and Economic

The planning proposal states it is likely to have positive social and economic effects through the streamlined approval process for conducting minor activities including sporting activities on public land.

The proposal will also ensure that the provision of essential services for residential development is a mandatory consideration in the assessment of a development application. This would ensure that developers contribute towards services.

Environmental

The planning proposal does not anticipate any environmental impacts. The proposed exempt activities are temporary and will not be permitted to involve vegetation removal. They will be regulated by other legislation such as the Local Government Act 1993.

Whilst the exempt activities on Crown Land may occur in coastal, rural and environmental areas they are required to obtain a licence to operate, so Council and DPI – Crown Lands can still regulate the uses through an application.

Infrastructure

The planning proposal states that there will be no additional demand on public infrastructure as the minor activities to be listed as Exempt Schedule 2 can already be undertaken as Development permissible with consent.

It also states that the creation of an essential services clause will ensure that development either has existing access to infrastructure services or will be required to provide essential services, usually at the developer's cost.

CONSULTATION

Community

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. These arrangements are considered appropriate.

Agencies

The planning proposal identifies Council will consult with the NSW Rural Fire Service (in accordance with s9.1 Direction 4.4 Planning for Bushfire Protection), NSW Department of Industry – Crown Lands and NSW Office of Environment and Heritage.

Consultation is also required with NSW Water in accordance with s9.1 Direction 5.2 Sydney Drinking Water Catchment.

The Department does not require consultation with the NSW Office of Environment and Heritage due to the nature of the proposal.

TIME FRAME

Two project timeframes of four and twelve months to complete the rezoning process were provided for the planning proposal. Due to the administrative nature of the planning proposal – no required studies, limited agency consultation and applicable Standard Instrument model clause, 9 months is considered an appropriate time to complete the planning proposal.

LOCAL PLAN-MAKING AUTHORITY

Council has confirmed in its letter of 22 November 2018 that it is seeking local plan making authority from the Department. Due to the simple, local nature of the proposal and the proposed use of the model provision of services clause, it is considered appropriate to provide this authority to Council.

CONCLUSION

Preparation of the planning proposal is supported to proceed with conditions.

The planning proposal addresses the Department's "A guide to preparing planning proposals".

The planning proposal will improve the operation and accuracy of the Kiama LEP 2011 and will have social and economic benefits.

The planning proposal is generally consistent with applicable State, regional and local strategic planning.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 5.2 Sydney Drinking Water Catchment are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection and is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - NSW Water
 - Department of Primary Industry – Crown Lands.
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



7/2/19

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08/02/2019

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