

## Planning and Assessment

IRF19/6317

### Gateway determination report

<b>LGA</b>	Kiama
<b>PPA</b>	Kiama Municipal Council
<b>NAME</b>	Lot 2 DP 1018217 Dido Street (8 homes)
<b>NUMBER</b>	PP_2019_KIAMA_003_00
<b>LEP TO BE AMENDED</b>	Kiama Local Environmental Plan 2011
<b>ADDRESS</b>	Dido Street, Kiama
<b>DESCRIPTION</b>	Lot 2 DP 1018217
<b>RECEIVED</b>	25 September 2019
<b>FILE NO.</b>	IRF19/6317
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend Kiama Local Environmental Plan 2011 (Kiama LEP) to rezone land off Dido Street, Kiama and modify development standards (minimum lot size, floor space ratio and building height) to enable residential development of the site (8 lots).

### 1.2 Site description

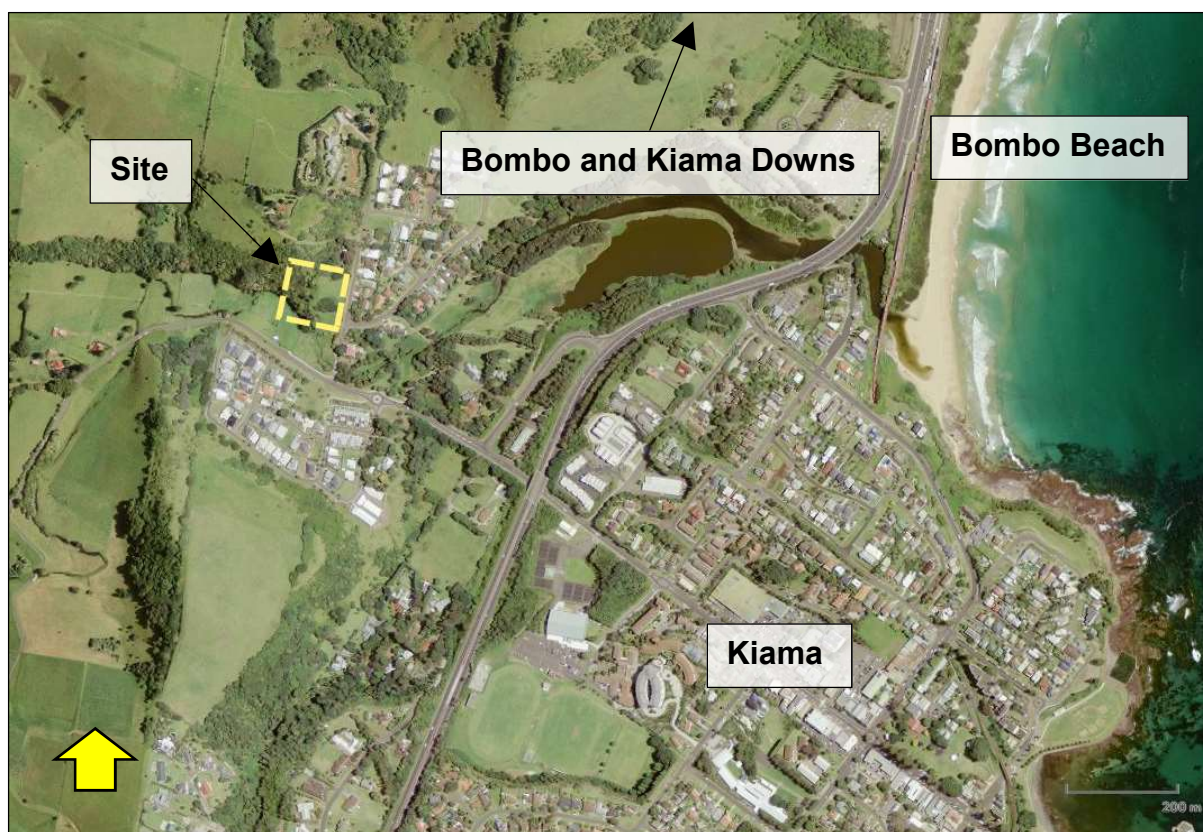
The site is located approximately 1 km to the north-west of the Kiama Town Centre (Figure 1) in the Kiama local government area. The site is on the western side of Dido Street, Kiama and is legally described as Lot 2 DP 1018217 (Figure 2).

The site has an area of approximately 1.021ha. The southern portion of the site is affected by a 30m wide transmission line easement and remnants of old dry-stone walls (listed local heritage items) are located along the northern boundary.

The site sits on the southern side of the lower hillslopes of the major ridgeline separating Kiama from Bombo and Kiama Downs to the north.

The south-western portion of the site contains land and associated vegetation zoned E2 Environmental Conservation. Spring Creek runs through this area of the site. Vegetation on the remainder of the site consists of weeds and exotic species.

The site can be accessed by vehicle off Dido Street.



**Figure 1: Site Context**



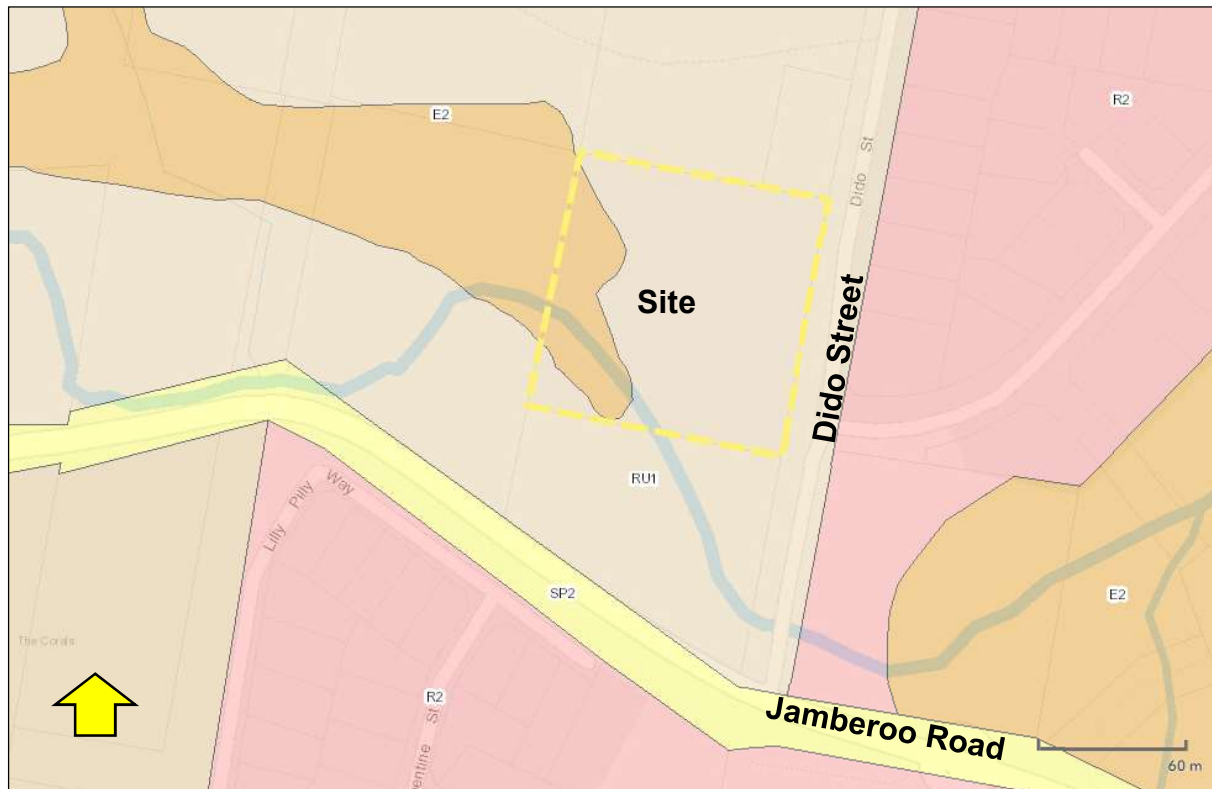
**Figure 2: Site Plan**



### 1.3 Existing planning controls

The site is currently zoned part E2 Environmental Conservation and part RU1 Primary Production under the Kiama LEP (Figure 3). The site has a minimum lot size of 40ha and there are no maximum building height or floor space ratio controls applying to the site.

The site contains remnants of dry-stone walls along the northern boundary which are generally listed as local heritage items in the Kiama LEP. The site is also identified as containing biodiversity land, acid sulphate soils (Class 5) and a Category 2 riparian watercourse and is subject to the associated clauses of the Kiama LEP.



**Figure 3: Existing Zoning Map**

### 1.4 Surrounding area

The site is surrounded by (Figure 2 and Figure 3):

- rural land (zoned RU1) to the north;
- Dido Street and low-density (R2) residential areas of Kiama to the east;
- a vacant lot (zoned RU1), Jamberoo Road and low-density (R2) residential areas of Kiama to the south; and
- E2 zoned vegetation and a riparian watercourse (Spring Creek) to the west.

### 1.5 Summary of recommendation

It is recommended that the planning proposal proceed as submitted as it is consistent with the intent of the KUS and provides sound and logical site-specific reasoning to support the rezoning. The planning proposal is also consistent with regional strategic planning objectives to provide greater housing supply and choice in suitable locations which are close to (and utilise) existing infrastructure and services.

## 2. PROPOSAL

### 2.1 Objectives or intended outcomes

The objectives of the planning proposal are to:

- rezone part of the site from RU1 Primary Production to part R2 Low Density Residential and part R5 Large Lot Residential (Figure 4);
- impose a minimum lot size of 450m<sup>2</sup> to the land zoned R2 and 800m<sup>2</sup> to the land zoned R5;
- impose a maximum building height limit of 8.5m to the land zoned R2 and R5; and
- impose a maximum floor space ratio of 0.45:1 to the land zoned R2 and R5.

The intended outcome of the planning proposal is to enable residential development of the site for up to 8 dwelling lots.

The Department considers the objectives and intended outcomes of the planning proposal to be clearly explained and suitable for public exhibition purposes.

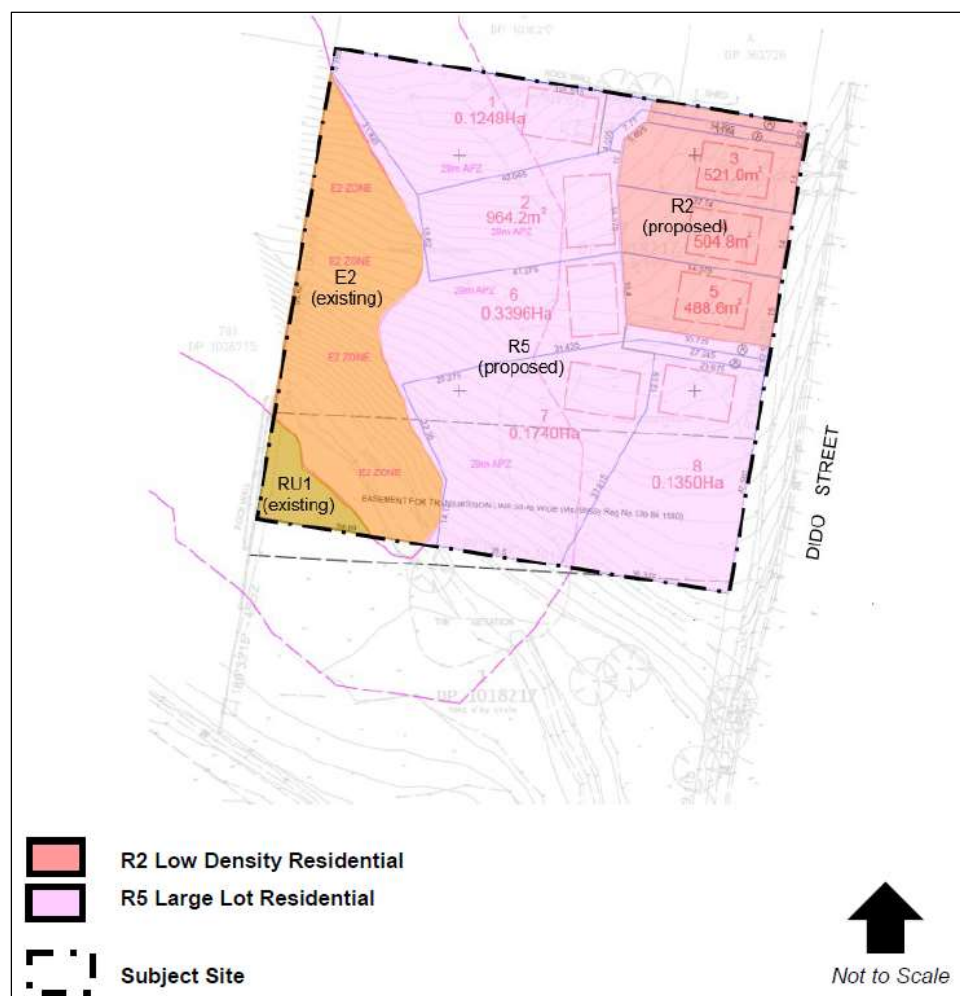


Figure 4: Proposed Zoning Map

## **2.2 Explanation of provisions**

The planning proposal is clear in identifying that the relevant Minimum Lot Size, Height of Buildings, Floor Space Ratio and Land Zoning Maps of the Kiama LEP will require amendment to achieve the objectives and intended outcomes of the planning proposal.

No changes to the applicable heritage, biodiversity, acid sulphate soils or riparian land and watercourses clauses of the Kiama LEP are proposed. Further, no change is proposed to the E2 zoned part of the site.

## **2.3 Mapping**

The proposal will require the amendment of the relevant Minimum Lot Size, Height of Buildings, Floor Space Ratio and Land Zoning Maps in the Kiama LEP. Draft maps are included in the planning proposal which are considered appropriate for exhibition purposes.

## **3. NEED FOR THE PLANNING PROPOSAL**

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The planning proposal is needed to enable low density residential development of the site consistent with regional strategic planning objectives to provide sufficient housing supply in suitable locations which are close to existing infrastructure, jobs and services in centres.

Council noted the site has a minimum lot size of 40ha and it is not possible to subdivide and develop it as proposed. Council considers the planning proposal and the proposed mechanism/s to be the best and only means of achieving the desired outcomes.

The Department considers a planning proposal of this nature is the best way to achieve the intended objectives and outcomes.

## **4. STRATEGIC ASSESSMENT**

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### **4.2 Illawarra Shoalhaven Regional Plan**

Key goals and directions of the Regional Plan relevant to the proposal include:

- Direction 2.1: Provide sufficient housing supply to suit the changing demands of the region
- Direction 2.2: Support housing opportunities close to existing services, jobs and infrastructure in the region's centres
- Direction 2.4: Identify and conserve biodiversity values when planning new communities

Council considered the planning proposal to be consistent with the Regional Plan for the following reasons:

- it will assist in meeting projected housing needs for Kiama identified in the Regional Plan consistent with Direction 2.1;
- the site is located in proximity to Kiama Town Centre and will provide housing close to these services consistent with Direction 2.2; and
- it will maintain the existing E2 Environmental Conservation zoning of the site and associated biodiversity protections in the Kiama LEP.

The Department agrees with Council and is satisfied the proposal is consistent with the Regional Plan.

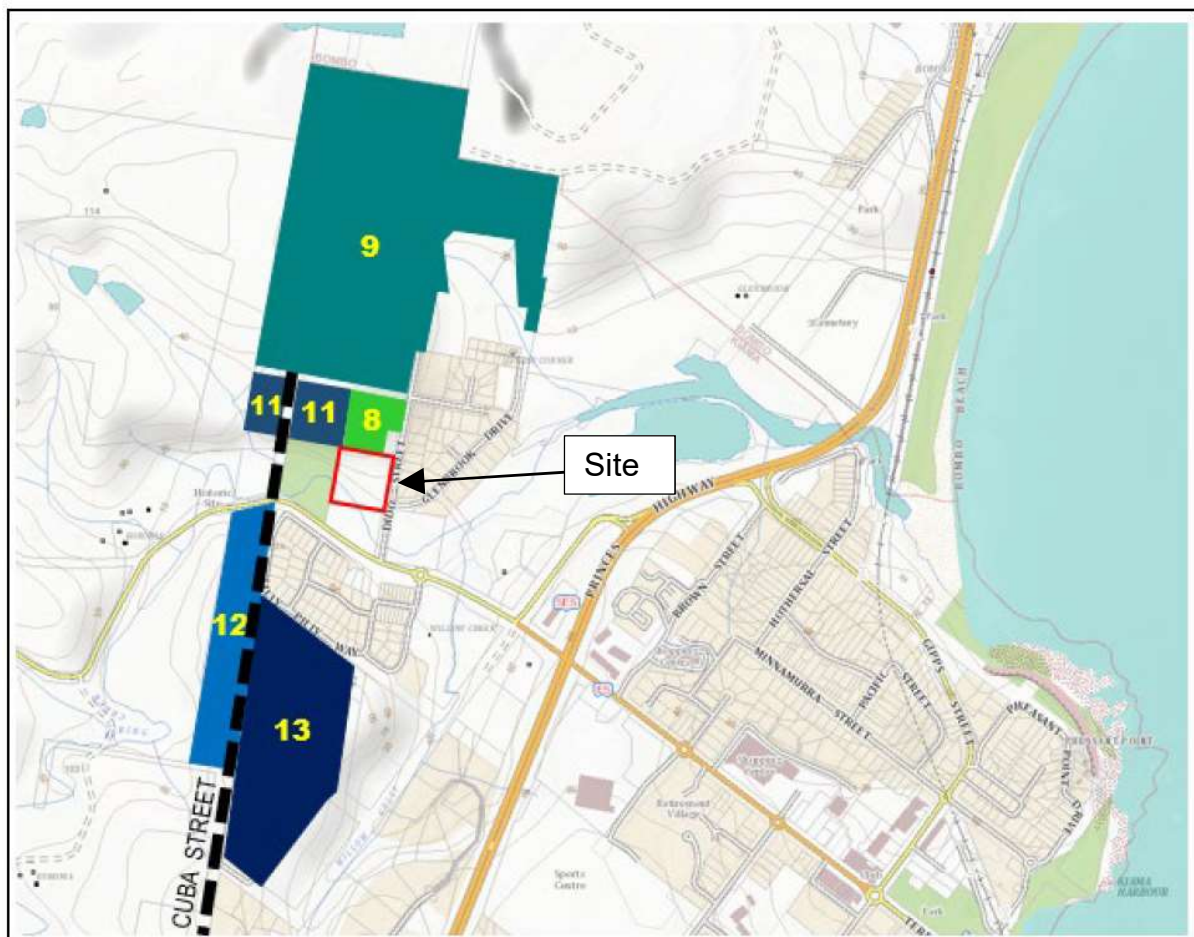
#### 4.3 Kiama Urban Strategy 2011

The Kiama Urban Strategy (KUS) was endorsed by Council in 2011 and identifies potential urban expansion areas to cater for the housing needs of the LGA.

The KUS is not a local strategy endorsed by the Department. However, the Department stated it was willing to consider planning proposals for areas identified for urban expansion in the strategy.

The site was not identified in the KUS and was not evaluated in terms of its suitability or unsuitability for urban expansion. The Council Report supporting the planning proposal indicates the site's absence from the KUS appears to be an anomaly and notes this may have been an oversight or because its inclusion was not specifically requested by the previous owner at that time.

Several sites (8, 9, 11, 12 and 13) adjoining and in proximity to the subject site were evaluated in the KUS (Figure 5). The planning proposal therefore seeks to evaluate the suitability of the site for urban expansion in the same manner as the KUS evaluated nearby sites.



**Figure 5: KUS Potential Sites Map**

The KUS recommended sites 8, 13 and the eastern portion of Site 11 be rezoned for residential purposes. Site 13 has been rezoned and a planning proposal has been lodged for site 8. Sites 9 and 12 were not supported. The western portion of Site 11

was also not supported as it lies west of the town boundary adopted by Council in this area (i.e. Cuba Street – see Figure 5).

The planning proposal notes the site has very similar characteristics to the supported Site 8 as it sits directly opposite residential development to the east on Dido Street. The site also sits lower on the hillside (with less visual prominence) than supported Sites 8 and 11 and unsupported Site 9. Site 9 was unsupported due to its highly visible ridgeline location. The planning proposal also states land immediately to the south of the site (adjoining Jamberoo Road) is heavily impacted by flooding and biodiversity constraints leaving the subject site as an isolated 'island' suitable for rezoning consideration.

The site also sits east of Cuba Street (Figure 5) which the planning proposal notes was adopted by Council as the western boundary of the Kiama township at its meeting on 17 October 2017.

Council considers the proposal to be consistent with the intent of the KUS and its strategic directions for greenfield urban expansion (as outlined in the KUS), particularly Directions 4.6.1, 4.6.3 and 4.6.6 as it would rezone land to meet regional housing targets and is located within the identified town boundaries referred to in the KUS (outside which Council has a strongly held policy position that residential development in Kiama shall not progress).

In addition to this, Council considers the RU1 zoning of the site is not appropriate largely because:

- only 4,700m<sup>2</sup> or 46% of the 1.021ha site is currently cleared making it unsuitable for agriculture;
- land adjoining the site to the south does not add significantly to the availability of cleared land and is almost entirely flood-prone;
- the small area of available cleared land, together with a shallow soil profile, severely limits the site potential for use for primary production purposes such as grazing or cropping;
- land to the east, north and north-west is either already developed, or being considered, for rezoning for residential purposes; and
- using the site for primary production has the potential to create land use conflicts with existing and future residential neighbours.

The Department is satisfied the planning proposal is consistent with the intent of the KUS and accepts the reasons put forward in the planning proposal (and summarised above) which provide sound and logical site-specific reasoning to support the rezoning.

#### **4.4 Section 9.1 Ministerial Directions**

The planning proposal has identified applicable section 9.1 Directions.

Directions of particular relevance are discussed below:

##### **Direction 1.2 Rural Zones**

This Direction seeks to protect the agricultural production value of rural land and applies where a planning proposal rezones rural land to residential.



As outlined in Section 4.3 of this report, the subject site has limited potential for use for primary production purposes. The Department is satisfied the planning proposal is consistent with the intent of the KUS (a local strategy) and provides sound and logical site-specific reasoning to support the rezoning.

The Secretary's delegate may therefore be satisfied that any inconsistency with this Direction is of minor significance.

#### Direction 1.5 Rural Lands

This Direction aims (inter alia) to protect the agricultural production value of rural land, facilitate the orderly and economic use of rural land and minimise the potential for land fragmentation and land use conflict in rural areas.

As outlined in Section 4.3 of this report, the subject site has limited potential for use for primary production purposes and is already fragmented from surrounding properties, the majority of which are already developed, or being considered, for rezoning for residential purposes in line with the KUS.

The Secretary's delegate may therefore be satisfied that any inconsistency with this Direction is of minor significance.

#### Direction 2.1 - Environment Protection Zones

This Direction seeks to protect and conserve environmentally sensitive areas.

The planning proposal would not affect the land and associated high value vegetation zoned E2 Environmental Conservation, or the applicable Terrestrial Biodiversity overlay.

The Secretary's delegate may therefore be satisfied that the proposal is not inconsistent with this Direction.

#### Direction 2.3 – Heritage Conservation

This Direction seeks to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

There are no known Aboriginal sites or places recorded or declared within 50m of the site.

The site contains remnants of dry-stone walls along the northern boundary which are generally listed as local heritage items in the Kiama LEP. The proposal does not seek to remove this listing. The site is also located diagonally opposite LEP listed heritage item no. 199 ("Fernleigh" residence – at No.2 Dido Street).

The Kiama LEP contains adequate provisions to facilitate the conservation of items of European and Aboriginal heritage significance. Further, the assessment of impacts on locally listed heritage items (including the retention and protection of dry stone-walls on site) will form part of the assessment of any future development application for the site.

The Secretary's delegate may therefore be satisfied that any inconsistency with this Direction is of minor significance.

#### Direction 3.1 Residential Zones

This Direction applies to planning proposals affecting residential zones and other zones on which significant residential development is permitted or proposed. The Direction aims to encourage housing to meet local demand, ensuring new housing



makes efficient use of existing infrastructure and services and minimises the impact of residential development on the environment.

The Department is satisfied the planning proposal is consistent with the aims of this Direction.

#### Direction 4.1 Acid Sulfate Soils

This Direction aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils (ASS).

The site is mapped in the Kiama LEP as potential Class 5 ASS (low probability).

The planning proposal states that given the elevation of the site, and the distance (~200m) from Class 1 and Class 2 ASS in the Spring Creek wetland area, it is unlikely that development of the site will disturb ASS.

The ASS provisions of the Kiama LEP would continue to apply to the site and potential ASS impacts and their management would be assessed in detail as part of any future development application for the site.

The Secretary's delegate may therefore be satisfied that any inconsistency with this Direction is of minor significance.

#### Direction 4.3 Flood Prone Land

The objectives of this Direction are to ensure development of flood prone land is consistent with NSW Government policy and LEP provisions suitably capture flood hazards.

The planning proposal includes flooding extent analysis drawings. These plans show that only the south-eastern corner of the site is flood prone and affected by the 1% AEP flood event.

The flood-affected areas coincide with Spring Creek and the E2 zoned area of the site which will be excluded from any development associated with the planning proposal.

The flooding assessment shows there is sufficient room for dwellings to be located on the site above the 1% AEP flood level and the Probable Maximum Flood (PMF) levels.

Given the nature of flood affectation, the Department is satisfied the site is capable of residential development without significant flooding impacts. Assessment of future development applications would require all dwellings to be sited outside of the relevant flood planning level.

The Secretary's delegate may therefore be satisfied that any inconsistency with this Direction is of minor significance.

#### Direction 4.4 Planning for Bush Fire Protection

The E2 zoned parts of the site and associated vegetation are mapped as bushfire prone land.

The planning proposal contains a Bushfire Hazard Assessment (BHA) which demonstrates the proposal can comply with the requirements of *Planning for Bushfire Protection 2006* and that adequate Asset Protection Zones can be accommodated.

Notwithstanding this, consultation has not occurred with the NSW Rural Fire Service (NSW RFS) and consistency with Direction 4.4 remains unresolved at this stage.

A Gateway condition has therefore been recommended requiring consultation with the NSW RFS to ensure any outstanding bushfire issues are resolved.

#### Direction 5.10 Implementation of Regional Plans

This Direction gives legal effect to the vision, directions and actions contained in regional plans. Planning proposals must be consistent with the relevant Regional Plan.

As identified earlier in this report, the planning proposal is consistent with the Illawarra Shoalhaven Regional Plan and this Direction.

### **4.5 State environmental planning policies (SEPPs)**

The planning proposal that only State Environmental Planning Policy No. 55 – Remediation of Land applies.

#### State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 provides a state-wide approach to the management of contaminated land and outlines the relevant considerations in preparing an environmental planning instrument to rezone land.

Council noted the site has been previously used for an activity (agriculture) listed in Table 1 of SEPP 55 guidelines and has advised a Preliminary Site Investigation (PSI) will be required.

Council is satisfied that the land is suitable (or will be suitable, after remediation) for the purposes of which the land in the zone concerned is permitted to be used and has committed to obtaining a PSI from the applicant prior to public exhibition.

## **5. SITE-SPECIFIC ASSESSMENT**

### **5.1 Social and Economic**

The planning proposal concludes it will have a positive socio-economic impact by providing additional housing to meet the housing needs of population growth and change in Kiama. The proposal would also lead to increased building activity during construction and increased demand for local goods and business services. Further, development contributions levied by Council would provide funding for identified projects.

### **5.2 Environmental**

Potential heritage, flooding, bushfire hazard and contamination impacts (including ASS) are addressed in Section 4.4 and 4.5 of this report. All other key environmental issues are considered below.

#### Ecology

The site contains E2 zoned land and associated vegetation and is mapped as biodiversity land under the KLEP 2011. A part of Spring Creek and its associated riparian area is also located in the south-west portion of the site.

The planning proposal is supported by an Ecological Assessment which found that while a desktop review indicated the site was covered in 'Subtropical Dry Rainforest',

field surveys determined that the on-site vegetation is dominated by weeds and exotics.

Land 20m either side of Spring Creek was identified as a high ecological constraint however the proposal does not seek to undertake any works in these zones (including Asset Protection Zones).

No threatened fauna or hollow bearing trees have been recorded in the study area.

The Department is satisfied the ecological impacts of the development could be effectively managed and notes further assessment will be undertaken at the development assessment stage.

#### Visual impacts

The planning proposal includes a visual assessment which found the site occupies an elevated hillside position on the lower slopes of a major west-east trending ridgeline. The ridgeline forms the dominant landscape element being clearly visible from the northern parts of Kiama township, the Princes Highway and South Coast Railway, and Bombo Beach.

The site sits below the ridgeline and is not as extensively exposed to view. The planning proposal concludes that as the site does not project above the ridgeline and most of the views of the site also contain existing residential development, the visual impact of the proposal is acceptable.

The Department concurs with the findings of the visual assessment.

#### Site stability

The planning proposal contains a Geotechnical Assessment which found the site has a very low to low risk of slope instability. The study recommended development take place on the moderately sloping ground in the north-eastern portion of the site. This generally corresponds with the cleared north-east portion of the site (Figure 2) where dwellings are proposed to be sited (Figure 5).

The Department is satisfied potential site stability issues are manageable.

#### Traffic

The site is accessed by vehicle off Dido Street via Jamberoo Road. The planning proposal estimates the proposed eight (8) lot subdivision would generate a up to 72 daily vehicle trips and 7 vehicle trips in the weekday peak hour.

The existing local road network is likely to have capacity to accommodate this low level of additional traffic generation. The Department is satisfied potential traffic issues are likely to be minor and can be dealt with through the development assessment process.

### **5.4 Infrastructure**

The planning proposal indicates that there is adequate public infrastructure and services (electricity, water, sewer, public transport, internet etc) available to service the site.



## **6. CONSULTATION**

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### **6.1 Community**

Council has proposed a 28-day community consultation period which is considered adequate having regard to the nature of the planning proposal.

### **6.2 Agencies**

Council is proposing to consult with the following agencies on the planning proposal:

- Sydney Water;
- Endeavour Energy;
- NSW Rural Fire Service;
- Office of Environment and Heritage; and
- Department of Primary Industries – Water.

The Department considers this appropriate having regard to the likely key issues associated with the planning proposal.

## **7. TIME FRAME**

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Council did not propose a time frame to finalise the LEP. It is recommended that a 12-month period be provided having regard to the nature of the planning proposal and in case issues arise during consultation or any other part of the process.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has asked for plan-making authority in relation to this proposal. This is considered appropriate, as the proposal is minor in nature, is of local significance and is not inconsistent with regional and local strategic planning.

## **9. CONCLUSION**

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The planning proposal is consistent with the intent of the KUS and provides sound and logical site-specific reasoning to support the rezoning. The planning proposal is also consistent with regional strategic planning objectives to provide greater housing supply and choice in suitable locations which are close to (and utilise) existing infrastructure and services.

It is therefore recommended that the planning proposal should progress as submitted.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.3 – Heritage Conservation, Direction 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and
2. note that the inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection remains unresolved and will require justification.

It is recommended that the delegate of the Minister 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:
  - Sydney Water;
  - Endeavour Energy;
  - NSW Rural Fire Service;
  - Office of Environment and Heritage; and
  - Department of Primary Industries – Water.
3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



**17/10/2019**

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