

**12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama**

CSP Objective: 2.0 Well planned and managed spaces, places and environment

CSP Strategy: 2.1 Maintain the separation and distinct nature of local towns, villages and agricultural land

Delivery Program: 2.1.1 Develop and implement appropriate land use plans

**Summary**

On 20 August 2019, Council resolved to prepare a Planning Proposal (PP) to rezone a portion of Lot 2 DP 1018217 from RU2 Rural Landscape to R2 Low Density Residential and R5 Large Lot Residential.

A Gateway Determination was issued by the NSW Department of Planning, Industry and Environment (DPIE) on 17 October 2019. The Gateway required consultation with 5 State Agencies and a public exhibition period of 28 days to occur once consultation with State agencies had been finalised. This consultation process has now been completed.

An analysis of the consultation process has been undertaken and the Strategic Merits of the site considered. This report outlines these findings and provides a recommendation for the PP to no longer proceed, given that the Strategic Merit of the proposal is no longer considered valid.

**Attachments**

- 1 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama - Plannex Environmental Planning
- 2 Gateway Determination - Lot 2 DP 1018217 Dido Street, Kiama
- 3 Alteration of Gateway Determination - Lot 2 DP 1018217 Dido Street, Kiama
- 4 RFS Determination Letter - Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama

**Enclosures**

Nil

**RECOMMENDATION**

That Council request an amended Gateway Determination from the NSW Department of Planning, Industry and Environment to no longer proceed with PP\_2019\_KIAMA\_003\_01 to rezone part of Lot 2 DP 1018217 Dido Street, Kiama.

**BACKGROUND****Site Details**

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

The subject site (Figure 1), is located at Dido Street, Kiama. Currently the site is predominantly zoned RU1 Primary Production under the provisions of Kiama LEP 2011. A portion of the site is zoned E2 Environmental Management (Figure 2).



Figure 1 – Subject Site (Source: Planning Proposal Report prepared by Plannex Environmental Planning)

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

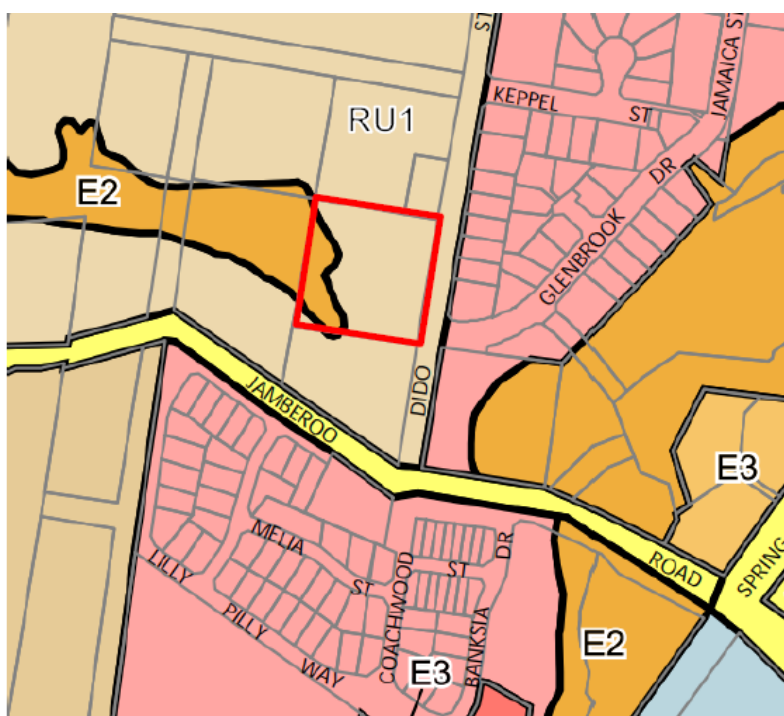


Figure 2 – Existing Zoning Lot 2 DP 805229 (Source: Planning Proposal Report prepared by Plannex Environmental Planning)

### Intent of Planning Proposal

A PP to rezone 1.2ha of a portion Lot 2 DP 1018217 from RU1 Primary Production to a mixture of R2 Low Density Residential and R5 Large Lot Residential was submitted by the property owner in April 2019.

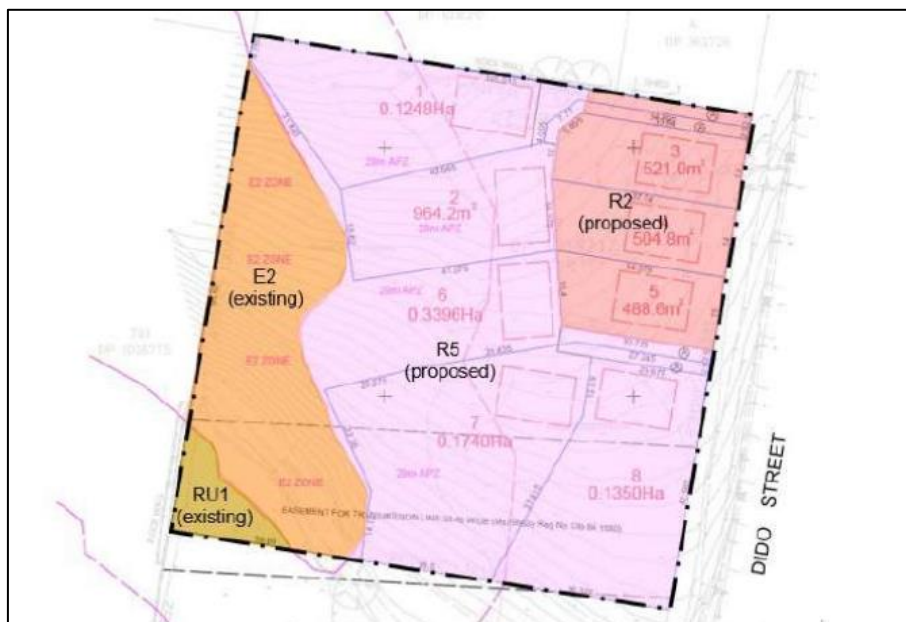


Figure 3 – Proposed Zoning Lot 2 DP 1018217 (Source: Planning Proposal Report prepared by Plannex Environmental Planning)

### Gateway Determination

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

---

A Gateway Determination was issued by the Department of Planning, Industry and Environment (DPIE) on 17 October 2019. The Gateway Determination required amendments to the PP and consultation with 5 State agencies prior to a public exhibition period of 28 days. All actions associated with the Gateway Determination were to be completed by 17 October 2020 (i.e. within 12 months).

Due to extensive time delays associated with the NSW Rural Fire Service, Council requested an extension to the 12-month timeframe prescribed by the Gateway Determination. On 24 September 2020 a 6-month extension was granted, meaning all actions were to be completed by 17 May 2021.

It is acknowledged that this timeframe has since expired. Clause 3.34(8) of the *Environmental Planning and Assessment Act 1979* confirms that a failure to meet the timeframes required by the Gateway Determination does not prevent the LEP amendment from being made or invalidate it once made.

**Previous Council Resolution**

At Council's meeting held on 20 August 2019, it was resolved to endorse this PP proceeding to the DPIE for a Gateway Determination.

Council resolved to support this PP as the site has similar characteristic to the adjoining Lot 3 DP 1018217, which, at the time, had received a Gateway Determination for residential rezoning. Rezoning the site in a similar fashion to Lot 3 was considered appropriate as it would allow for modest residential growth within the town boundaries as referred to in the Mayoral Minute of 17 October 2017 Council meeting. Additionally, the site's absence from the Kiama Urban Strategy (now repealed) appeared to be an anomaly.

At the Ordinary meeting held in December 2020, Council resolved to no longer proceed with the PP for Lot 3 DP 1018217 due to bushfire constraints and sought an amended Gateway Determination from the NSW DPIE.

**Assessment of Planning Proposal**

With the PP for Lot 3 DP 1018217 no longer proceeding the strategic merits of this Proposal are now questionable. The DPIE's 'A guide to preparing local environmental plans' outlines that an assessment to determine:

- whether the proposal has strategic merit and,
- having met the strategic merit test, whether the site has site-specific merit.

When assessing the proposal's strategic merit, the following questions need to be answered:

- Does the proposal give effect to the Illawarra-Shoalhaven Regional Plan?
- Does the proposal give effect to the Kiama Local Strategic Planning Statement?
- Does the proposal respond to a change in circumstances, such as an investment in new infrastructure or changing demographics trends that have not been recognised by existing planning controls?

The site was not included in the Kiama Urban Strategy (now repealed) and is therefore not identified by the Kiama Local Strategic Planning Statement (LSPS) 2020 as a

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

potential urban expansion area. In this regard, the site, in isolation, does not satisfy the Strategic Merit Test.

As previously outlined, Council resolved to support this PP as the site has similar characteristic to the adjoining Lot 3 DP 1018217, which at the time, had received a Gateway Determination for residential rezoning. As both Council and the DPIE have agreed not to proceed with the PP for Lot 3 the associated strategic merit of this site is now significantly diminished.

The concerns outlined in the below summary of the outcomes of the community consultation and agency consultation also need to be taken into account and overwhelmingly outline a number of issues that are yet to be resolved on the site.

In this regard, it is now the view of staff that this PP no longer satisfies the DPIE's Strategic Merit test and should therefore no longer proceed.

**State Agency/Organisation Referrals**

As required by the conditions of the Gateway Determination, the PP was referred to the prescribed agencies/organisations for comments for a period of 21 days from the 30 October 2019.

The following responses were provided by agencies.

Agency	Response
Sydney Water	<p>Sydney Water indicated that they were unable to confirm if the existing network could service development of the site on the basis that they were not aware of this growth area and therefore it was not included in their planning.</p> <p>This site is not currently identified within the Growth Servicing Plan and as such is not currently planned to be serviced.</p>
Endeavour Energy	<p>Endeavour Energy did not object to the PP. Any future Development Application (DA) for subdivision will be required to be submitted to Endeavour Energy for connection to Endeavour Energy's power supply network. <i>State Environmental Planning Policy (Infrastructure) 2007</i> requires a development application to be referred to the relevant electricity supply provider if the development is likely to affect an electricity transmission or distribution network. This PP does not alter these requirements or obligations.</p>
Department of Planning, Industry and Environment, Energy and Science Division	<p>NSW DPIE supported the retention of existing areas of native vegetation in E2 zoned land as well as supporting the retention of land identified as high environmental value land in the Illawarra-Shoalhaven</p>

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

Agency	Response
	Regional Plan (ISRP) 2015, which coincides with E2 zoned land under Kiama LEP 2011.
Department Primary Industries – Water (Natural Resources Access Regulator)	<p>NRAR did not object to the PP noting that a fourth order stream flows from the west in a south east direction. The stream is to be managed in accordance with <i>Guidelines for Controlled Activities</i>, including incorporation of appropriate riparian buffers.</p> <p>A future development application for the site is likely to be an integrated development under Section 4.46 of the EPA Act given the watercourse on site and NRAR's concurrence will be sought in accordance with the <i>Water Management Act 2000</i>. A future development application on this site will also need to satisfy Clause 6.5 of Kiama LEP 2011. The PP does not affect the applicability of these requirements.</p>
New South Wales Rural Fire Service (NSW RFS)	<p>After months of consultation the RFS has confirmed, on 12 April 2021 (see attached), that they do not object to the PP subject to a requirement that future subdivision of the land complies with Chapter 5 of <i>Planning for Bushfire Protection (PBP) 2019</i>. This includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Provision of Asset Protection Zones (APZs) within the proposed lots in accordance with Table 5.3a;</li> <li>• Access to be provided in accordance with the specifications set out in Table 5.3b including: <ul style="list-style-type: none"> <li>○ Provision of a perimeter road in accordance with the 'general layout of access' plan in the letter by Harris Environmental Consulting dated 7 April 2021.</li> </ul> </li> <li>• Services to be provided in accordance with Table 5.3c.</li> </ul> <p>Future applications will be integrated development and general terms of approval will be required to be obtained from NSW RFS.</p>

**Public Exhibition**

A public exhibition was held for three Planning Proposals in Dido Street concurrently, from 4 May 2020 to 1 June 2020.

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

This included:

No.	Lot and DP	Details
PP1	Lot 2 DP 805229	The subject site
PP2	Lot 3 DP 1018217	This planning proposal was subsequently discontinued due to the inability for bushfire requirements to be resolved on the site
PP3	Lot 2 DP 1018217	This planning proposal has been finalised and the rezoning approved

During public exhibition, a total of 5 submissions were received.

Four submissions were received from adjoining and adjacent landowners, and one submission was received from the Kiama Central Precinct Community Group.

Council staff also meet with representatives of the Central Precinct in April 2021 to hear their concerns. Following this meeting the updated Bushfire Assessment Report was provided to the Central Precinct. A further submission was provided on behalf of adjoining landowners following this meeting.

### Engagement Summary

Submissions	Number
Submissions for	0
Submissions against	5
Precinct/Community Group submissions	Central Precinct

### Submission Considerations

Topic	Key comments	Staff Response/Considerations
Traffic and Parking Congestion	Concerns have been raised regarding the potential impacts additional dwellings will have on the existing road network, stating that the current width of Dido Street is too	It is noted that development of the subject site will likely require upgrades to be made to the existing road network. In accordance with the <i>Environmental Planning and Assessment Act (the Act) 1979</i> , Council are able to levy Section 7.11 developer contributions which are allocated to funding the required upgrades. Traffic and parking are matters that will be considered at development application stage. Submissions have raised the potential of multiple dwellings being placed on each lot. Dual occupancies and secondary dwellings are



## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

	narrow and will not allow for kerbside parking and two-way access.	land uses permissible with consent in both the R2 Low Density Residential and R5 Large Lot Residential zones. As outlined previously, the impacts of additional dwellings on infrastructure are assessed at development application stage.  The existing carriageway width is insufficient and would need to be widened as part of any future application for subdivision of the site.
Inadequate Pedestrian Access	Concerns have been raised regarding the lack of pedestrian access along Dido Street and the potential impacts additional traffic will have on this.	As discussed in the 'Traffic and parking' section (see above), upgrades to the existing road network are likely to be required as a result of development on these subject sites. Council is able to levy Section 7.11 developer contributions to fund required upgrades.  A 3m wide mountable footpath area adjacent to carriageway would also be required as part of any future subdivision.
Flood Risk	Central Precinct's submission raises concerns regarding increased risks from flooding associated with residential development on the subject sites, specifically Lot 2 DP 1018217. As stated in the submitted PP Report for Lot 2 DP 1018217, a portion of the land is identified as being flood prone.	A Flood Impact Analysis was submitted with the PP showing that the south-west portion of the subject site is affected by flooding. This area coincides with areas of high ecological value that are being retained as E2 Environmental Conservation zoned land and mapped as terrestrial biodiversity in Kiama LEP 2011. This portion of the site is highly unlikely to be developed upon due to its highly constrained nature and is unlikely to impact upon the residential components of the land.  Stormwater management and flooding impacts are matters to be considered when assessing a future development application. This includes for the development of the site and individual allotments. to ensure pre-development flows are maintained.
Environmental Impacts	Submissions raised concerns regarding the potential impact	The PP seeks to retain and increase the portion of the land zoned E2 in accordance with the submitted Flora and Fauna Report. The land zoned E2 will also be mapped as



## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

	future development may have on areas of high ecological value.	<p>terrestrial biodiversity land under Kiama LEP 2011.</p> <p>The PP does not lessen or restrict environmental protection policies or remove the applicability of legislation such as the <i>Environmental Protection and Biodiversity Conservation Act 1999</i>, <i>Biodiversity Conservation Act 2016</i> and Clause 6.4 of Kiama LEP 2011. The potential impacts on flora and fauna are considered to be acceptable at this stage and will be assessed in future Development Applications.</p> <p>1. Regional Strategic Planning Objectives and Kiama's Housing Need</p> <p>It is assumed that the regional strategic planning objectives Central Precinct's submission refers to are those of which are contained within the Illawarra-Shoalhaven Regional Plan (ISRP). The Central Precinct submission raises concerns with the lack of evidence/justification for the need to rezone land to provide additional greenfield sites.</p>
Aboriginal and European Cultural and Built Heritage	It was noted that a historic stone wall is located on the boundary between Lot 2 and Lot 3 DP 1018217.	<p>Dry stone walls are identified as items of environmental heritage in Kiama LEP 2011 and consequently any proposal to demolish, damage, alter (including making breaks), dismantle, or destroy these walls (in whole or in part) requires Council's consent. Council may place restrictions on the Section 88B Instrument at subdivision stage to assist the conservation of dry stone walls.</p> <p>Further investigation of Aboriginal cultural heritage values may be warranted for each of the PP's at development application stage. As a minimum, a due diligence assessment under the <i>National Parks and Wildlife Act 1974</i> will be required to be undertaken and submitted. Depending on the outcome, an Aboriginal and Cultural Heritage Assessment Report may be required to be prepared and an Aboriginal Heritage Impact Permit (AHIP) may be required to be obtained.</p>
Strategic Merit	The strategic merit of the PP has been	The Strategic Merit of the proposal has been revisited as part of this report and conclusions

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

	questioned, with Central Precinct's submission stating that there is no evidence that the PP assists Kiama Council to meet the housing demands and population growth.	regarding merit are provided in the discussion outlined earlier in this report.
--	---	---

**Delegations**

As part of issuing the Gateway Determination, DPIE delegated plan functions for this PP to Council.

**Finance**

A fee structure for submittal and review of planning proposals has been developed by Council and is contained in Council's fees and charges schedule. As this Planning Proposal is being prepared internally no fees are applicable.

**Policy**

Planning Proposals require consideration of a number of Acts, Government policies, Council environmental planning instruments and planning documents. Specifically, the *Environmental Planning and Assessment Act 1979*, *Kiama LEP 2011*, Illawarra-Shoalhaven Regional Plan, Kiama Local Strategic Planning Statement 2020 and the Kiama Planning Proposal Policy.

**Consultation (Internal)**

The subject PP was reviewed internally by Council's Engineering staff.

**Communication/Community Engagement**

In accordance with the Kiama Community Participation Plan 2019, the subject PP was placed on public exhibition from 4 May to 1 June 2020 with an advert being placed in The Bugle, notification provided on Council's website and written notification sent to all affected property.

Council staff met, onsite with representatives of the Kiama Central Precinct in April 2021 to hear their concerns.

**Conclusion**

Council resolved to adopt the PP due to its similarity with Lot 3 DP 1018217, which, at the time, had received a Gateway Determination.

A Gateway Determination was issued for the PP with public exhibition and public authority consultation undertaken in accordance with the requirements.

## Report of the Director Environmental Services

## 12.4 Planning Proposal - Lot 2 DP 1018217 Dido Street, Kiama (cont)

---

The issues raised during consultation and public exhibition have been outlined above. As both Council and the DPIE have agreed not to proceed with the PP for Lot 3 DP 1018217 the associated strategic merit of this site no longer exists.

In this regard, the PP does not satisfy the DPIE's Strategic Merit test and should therefore no longer proceed.

As the planning proposal authority, Council are satisfied that the PP has been carried out in accordance with the conditions prescribed by the Gateway Determination.

As the site, now in isolation, fails to satisfy the Strategic Merit test it is recommended that Council request for an amended Gateway Determination from the NSW Department of Planning, Industry and Environment to no longer proceed with the Planning Proposal.