

August 2016

Planning Proposal to Amend LEP 2011



With respect to: Part of Lot 100 DP 1157883 & Lot 101 DP 1157883, 26 Drualla Road & 2A Downes Place Jamberoo

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Name of Planning Proposal:

Planning Proposal to amend Kiama Local Environmental Plan 2011 with respect to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883, 26 Drualla Road & 2A Downes Place, Jamberoo, NSW 2533 and to enable subdivision of allotments with multiple zones and minimum lot sizes.

Part 1 – Statement of objectives or intended outcomes

Council at its meeting held on 27 June 2016 resolved to endorse a Planning Proposal (PP) to rezone Part of Lot 100 DP 1157883 and Lot 101 DP 1157883, 26 Drualla Road & 2A Downes Place, Jamberoo, NSW 2533 (The site) to proceed to the Department of Planning and Environment for a Gateway Determination. The site is currently zoned RU2 Rural Landscape and E3 Environmental Living under the provisions of the *Kiama Local Environmental Plan (LEP) 2011.*

The intended outcome of this PP is:

- To rezone the site from RU2 Rural Landscape to R2 Low Density Residential and apply the associated controls in keeping with the adjacent land on Downes Place and Drualla Road.
- Include a clause in the LEP to enable the subdivision of allotments with multiple zones and minimum lot sizes.

Part 2 – Explanation of provisions

The rezoning will apply to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883, 26 Drualla Road & 2A Downes Place, Jamberoo exclusively. The site is located on the western edge of the Jamberoo Township. The site contains a dwellings and associated pool, outbuilding and landscaping on Lot 101 and open agricultural/farming land on Lot 100. The site is currently zoned RU2 Rural Landscape and E3 Environmental Protection under the provisions of the *Kiama Local Environmental Plan (LEP) 2011.* It is noted that the areas of Lot 100 not included in this PP contain a dwelling and the land zoned E3 Environmental Protection.

As a result of the internal review process staff noted that while the Concept PP would result in residential zoned land subdivision of the site in its entirety would not be possible under the current provisions of the LEP 2011. As a result of the Concept PP Lot 100 would be zoned R2 Low Density, RU2 Rural Landscape and E3 Environmental Protection under the provisions of the LEP 2011. A minimum lot size of 40Ha would be associated with the land zoned RU2 and E3 with a 800m² minimum lot size for the land zoned R2. Council would be unable to approve the subdivision of land zoned RU2 and E3 as it would have an area less than 40Ha. It is noted that this issue is not particular to the Kiama Municipality. A number of New South Wales (NSW) Councils have adopted provisions in their LEPs, through the planning proposal process, that enable the subdivision of lots with multiple zones. Accordingly, staff have drafted a clause for inclusion into the LEP 2011 based on the wording and formation of clauses that have been approved by the NSW Department of Environment and Planning in other LEPs.

To rectify this issue, the following clause is proposed for inclusion in LEP 2011 and will apply uniformly across the municipality:

4.1C Exceptions to minimum subdivision lot sizes for resulting lots

- (1) The objectives of this clause are as follows:
 - (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,
 - *(b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*
- (2) This clause applies to a lot (an original lot) that contains land in:
 - (a) a rural or environment protection zone, and
 - (b) one or more other zones.
- (3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if:
 - (a) in relation to an original lot containing land in more than one zone, one of the resulting lots will contain all of the land within a rural or environment protection zone, and:
 - (i) any existing dwelling, or
 - (ii) any land within any other zone with an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and
 - (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) whether or not the development is likely to maintain or improve the environmental values and agricultural viability of the land,
 - (b) the potential impact on the natural and physical constraints affecting the land, taking into account the long-term maintenance, management and protection of the land,
 - (c) the compatibility with existing or potential land uses and measures that are deemed necessary to avoid or minimise any potential for land use conflicts.

The figures below illustrate what subdivision is currently possible on lot with split zoning and what will be possible under the proposed provisions listed above.

•	 Current Scenario under LEP 2011 30ha parcel comprising 29Ha RU2 (min. lot size 40ha), and 1ha R2 (min. lot size 800m²) Existing dwelling R2 land cannot be subdivided out parcel as it will deliver a resulting lot of 29Ha (RU2) smaller than minimum lot size of 40Ha. 		 Outcome of clause 4.1C(3)(a)(i) Total of 13 lots/dwellings possible from lot size map Result in 12 x 800m² R2 lots and 1x 29.04Ha RU2 lot Result in 12 additional dwelling entitlements
	G RU2 Zone		
	R2 Zone		

Figure 2: Scenario 2 - Vacant lot with split zoning

Current Scenario under LEP 2011	Outcome of clause 4.1C(3)(a)(ii)
 30ha parcel comprising 29Ha RU2 (min. lot size 40ha), and 1ha R2 (min. lot size 800m²) R2 land cannot be subdivided out parce as it will deliver a resulting lot of 29Ha (RU2) smaller than minimum lot size of 40Ha. 	 lot size map To enable subdivision of R2 land, a section of R2 must be incorporated with RU2 land.
RU2 Zone	↑ 1 Future
R2 Zone	 ☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆

The following excerpt map from KLEP 2011 and context plan illustrate the current zoning and the positioning of the site within the broader context:

Figure 3: Current Land Zoning under the Kiama Local Environmental Plan 2011



Figure 4: Kiama LEP 2011 Zoning Map Sheet LZN_008 (Current Zoning)



The proposal will amend the KLEP 2011 in the following manner:

- Amend the Land Zoning Map Sheet LZN_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 from zone RU2 to zone R2.
- 2. Amend the Lot Size Map Sheet LSZ_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a minimum lot size of G 450 sqm.
- 3. Amend the Height of Buildings Map Sheet HOB_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a maximum height of I 8.5m.
- 4. Amend the Floor Space Ratio Map Sheet FSR_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a maximum floor space ratio of C 0.45
- 5. Include Clause 4.1C to enable the subdivision of allotments with multiple zones and minimum lot sizes across the Municipality.

Part 4 of this PP illustrates the proposed map inclusion to Kiama LEP 2011.

Part 3 – Justification

Q1: Is the planning proposal a result of strategic study or report?

The Kiama Urban Strategy (KUS), which was adopted by Council on 20 September 2011, identifies Kiama's overarching strategy to meet housing targets identified in the ISRP. The Site was identified in Council's adopted 'Kiama Urban Strategy' (KUS) as site 24 as it enabled an appropriate urban expansion of the Jamberoo Village. The KUS recommended that the Site "should be included in a Planning Proposal" to allow it to be rezoned for future residential development. The KUS outlined that:

Village character, heritage and agricultural land issues will be important considerations in determining the boundaries of Jamberoo. The Planning Proposal should address similar matters as described for Kiama and include a peripheral road to define the village boundary.

The KUS hypothesized that in conjunction with other sites within Jamberoo the Site would provide an additional 19 potential dwelling allotments within five (5) years of the adoption of the KUS (i.e. 2011). A conceptual subdivision layout indicates that 15 new dwelling allotments can be established as a result of this PP. In this case the PP is consistent with the KUS.

Q2: Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

In order to achieve the desired outcome of providing an additional supply of residential land in accordance with the KUS, the following options were available to Council:

Option A

To rezone the site from RU2 Rural Landscape to R2 Low Density Residential under the KLEP 2011, in order to provide additional residential land in accordance with the KUS, by:

- Amending the Land Zoning Map Sheet LZN_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 from zone RU2 to zone R2.
- Amending the Lot Size Map Sheet LSZ_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a minimum lot size of G 450 sqm.
- Amending the Height of Buildings Map Sheet HOB_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a maximum height of I 8.5m.
- Amending the Floor Space Ratio Map Sheet FSR_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a maximum floor space ratio of C 0.45
- Including Clause 4.1C to enable the subdivision of allotments with multiple zones and minimum lot sizes across the Municipality.

Comment

This is considered the best and only means of achieving the desired outcomes as the zoning of the land will reflect the desired residential uses outlined in the KUS.

Q3: Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The applicable regional strategy for the area is the Illawarra-Shoalhaven Regional Plan (ISRP). Goal 2 of the ISRP is focused on ensuring a variety of housing choices is provided within the region. Direction 2.1 outlines that an additional 2,850 houses are needed within the Kiama Local Government Area (LGA) between 2016 and 2036. The PP would result in the provision of residential land adjacent to an existing residential area and would not adversely impact the region's biodiversity values. In this regard as the PP will assist KMC in meeting residential development targets it is consistent with Directions 2.1, 2.2 and 2,4 of Goal 2 of the ISRP.

Q4: Is the Planning Proposal consistent with a council's local strategy or other local strategic document?

The Kiama Urban Strategy (KUS), which was adopted by Council on 20 September 2011, identifies Kiama's overarching strategy to meet housing targets identified in the ISRP. The Site was identified in Council's adopted 'Kiama Urban Strategy' (KUS) as site 24 as it enabled an appropriate urban expansion of the Jamberoo Village. The KUS recommended that the Site "should be included in a Planning Proposal" to allow it to be rezoned for future residential development. The KUS outlined that:

Village character, heritage and agricultural land issues will be important considerations in determining the boundaries of Jamberoo. The Planning Proposal should address similar matters as described for Kiama and include a peripheral road to define the village boundary.

The KUS hypothesized that in conjunction with other sites within Jamberoo the Site would provide an additional 19 potential dwelling allotments within five (5) years of the adoption of the KUS (i.e. 2011). A conceptual subdivision layout indicates that 15 new dwelling allotments can be established as a result of this PP. In this case the PP is consistent with the KUS.

Q5: Is the planning proposal consistent with applicable State Environmental Planning Policies?

The planning policy is consistent with applicable State Environmental Planning Polices (SEPP), in particular:

SEPP No 55 – Remediation of Land

Object of this Policy

- (1) The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.
- (2) In particular, this Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:
- (a) by specifying when consent is required, and when it is not required, for a remediation work, and

(b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and

(c) by requiring that a remediation work meet certain standards and notification requirements.

Assessment of Compliance

Table 1 of the 'Managing Land Contamination Planning Guidelines' nominates agricultural and horticultural activities as an activity that may cause contamination. In this regard the site may already be contaminated.

Clause 6 of the SEPP outlines specific matters that need to be considered as part of preparing an environmental planning instrument (i.e. a PP). An assessment against the provisions of Clause 6 has been carried out below.

6 Contamination and remediation to be considered in zoning or rezoning proposal

- (1) In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:
- (a) the planning authority has considered whether the land is contaminated, and
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.

Note. In order to satisfy itself as to paragraph (c), the planning authority may need to include certain provisions in the environmental planning instrument.

- (2) Before including land of a class identified in subclause (4) in a particular zone, the planning authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.
- (3) If a person has requested the planning authority to include land of a class identified in subclause (4) in a particular zone, the planning authority may require the person to furnish the report referred to in subclause (2).
- (4) The following classes of land are identified for the purposes of this clause:
- (a) land that is within an investigation area,

- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital land:
- (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
- (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Assessment of Compliance

As the site is considered to be land specified in subclause (4) a Stage 1 Contamination Assessment of the site was undertaken by Network Geotechnics Pty Ltd. The assessment on the subject site concluded that:

Based on the desk study, field investigation and laboratory test the following conclusions are made:

- The site is assessed to be of low risk of contamination. It is assessed that a Stage 2 Contamination Assessment is not required for the proposed subdivision.
- Stripping of topsoil for construction of the subdivision should be carried out under the supervision of an experienced consultant and any foreign objects/materials identified should be subjected to further investigation.
- The proposed building site are provided interim AS2870-2011 classification of Class H1 (Highly reactive) classification.

In this regard the Planning Proposal is consistent with the objectives of SEPP 55 – Remediation of Land as the land is not contaminated and no further remediation is required.

SEPP (Rural Lands) 2008	Assessment of Compliance
2 Aims of Policy The aims of this Policy are as follows:	
(a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,	The Site is located on the edge of the existing residentially zoned land. This PP would result in an extension to the residential land and would enable residential development consistent with the surrounding Jamberoo Village.
(b) to identify the Rural Planning Principles and the Rural Subdivision Principles so	See assessment against Planning Principles below.

as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State, (c) to implement measures designed to reduce land use conflicts,	Planning Proposal: Rezoning of Part of Lot 100 DP 1157883 and Lot 101 DP 1157883, 26 Drualla Road & 2A Downes Place, Jamberoo The PP is unlikely to result in land use conflicts. The perimeter road outlined in the conceptual subdivision layout will clearly define the zone boundary thus reducing the potential for land use conflicts.
 (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations, (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions. 	The site has not been identified as containing State significant agricultural land. The PP will not restrict this function.
7 Rural Planning Principles	·
The Rural Planning Principles are as	s follows:
a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,	As the PP seeks to rezone only the land adjacent to Downes Place and Drualla Road the remainder of the site will remain RU2 Rural Landscape. This land will continue to be utilised for agricultural purposes. In this regard the PP is

- b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,

consistent with this principle.

The planning proposal is sensitive to the importance of rural lands and as such reflects intentions for majority of Lot 100 DP 1157883 to remain zoned for RU2 Rural Landscape. The portion to be rezoned as R2 Low Density In this regard the PP is consistent with this principle.

The rezoning will allow the owner to subdivide off additional allotments for residential purposes, whilst maintaining the remaining agricultural

Planning Proposal: Rezoning of Part of Lot 100 DP 1157883 and Lot 101 DP 1157883, 26 Drualla Road & 2A Downes Place, Jamberoo

d) in planning for rural lands, to balance the social, economic and environmental interests of the community.

e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land.

f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,

 (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General. component. In this regard the PP is consistent with this principle.

Not applicable as the PP is not proposing the provision of additional rural lands.

The KLEP 2011 has identified areas of high quality biodiversity on the site. The concept plans submitted by the proponent indicate that future development would not occur within areas containing biodiversity/native vegetation. In this regard the PP is consistent with this principle.

The PP specifically seeks to enable the future subdivision of the site in order to provide additional housing opportunities. In this regard the PP is consistent with this principle.

The location of the additional housing associated with the PP is considered to be appropriate as it will formalize the village boundary. In this regard the PP is consistent with this principle.

The PP is considered to be consistent with both the Illawarra-Shoalhaven Regional Plan and the Kiama Urban Strategy. In this regard the PP is consistent with this principle.

Q5a: Is the planning proposal consistent with applicable deemed State Environmental Planning Policies?

It is noted that at the time of drafting the initial concept PP and the Council Report both the Illawarra Regional Environmental Plan No 1 (IREP1) and the Illawarra Regional Environmental Plan No 2 – Jamberoo Valley (IREP2) applied to the site. Since this time both IREP1 and 2 have been repealed and no longer apply to the site.

Q6: Is the planning proposal consistent with applicable Ministerial Directions (s 117 directions)?

A Section 117 Ministerial Direction - Compliance Checklist has been compiled and is included in Appendix 1.

Council required the applicant to complete a Bushfire Hazard Assessment and a Flood Impact Study in line with ministerial directions.

Council finds the proposal consistent with all applicable Section 117 Ministerial Directions.

Q7: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Given the lack of remnant vegetation on the subject site and the fact that part of it has been used for residential and ancillary purposes for a period of time, with the balance cleared and used for grazing for an even longer period of time, it is highly unlikely that there is any critical habitat or threatened species, populations or ecological communities, or their habitats, existing on the subject site.

However, given the existence of land mapped as terrestrial biodiversity land under the KLEP 2011 to the north and north-west of the subject site and the proximity of the dam and waterhole to the west, Wirrimbirra Environmental Consultants were engaged to undertake an ecological assessment of the PP.

The Flora & Fauna Assessment included a four day field survey of the site, including fauna trapping and biodiversity inspections. The survey conducted indicated that the proposal ensures that any disturbance or modification to the environment will occur in areas significantly ecologically degraded. The site is cleared pasture improved land. The Assessment found that, as a result of past disturbance, the vegetation on the land is significantly modified in species structure and composition. The field survey found that the subject site is ecologically degraded and considerably modified to the original ecological community. The subject site is part of a larger diary farm and is predominantly cleared and pasture improved. There is no understory and the dense groundcover species are exotic pasture grasses and weeds. Grazing of cattle is a regular feature on the site.

A total of 56 flora species (14 native) and 31 fauna species were noted on the subject site. Limited fauna was noted, with avifauna the most abundant.

A literature search found the Commonwealth Protected Matters Search Tool and NSW NPWS Wildlife Atlas listed 40 threatened fauna, 22 threatened flora, and three (3) endangered ecological communities (EEC), as occurring within 10km of the subject site. No threatened species were noted on the subject site and the site is unlikely to provide suitable habitat for any threatened species. The ecological assessment concluded that the proposed development would not have a significant impact on any endangered ecological community or threatened species and no further ecological assessments are recommended.

Clauses 6.4 and 6.5 of the KLEP 2011 contain controls for the protection critical habitat, threatened species, populations and ecological communities, or their habitats and watercourses and riparian areas respectively. Clause 5.9 also provides controls for the preservation of trees and vegetation within the municipality. The Planning Proposal, if implemented, will not contravene the provisions of Clauses 5.9, 6.4 or 6.5 of the KLEP 2011.

All aspects of the development being put forward by the Planning Proposal will be undertaken on cleared land that has been utilised predominantly for agricultural purposes. Given the absence of natural habitat within those parts of the subject site being contemplated for development, it is unlikely that any critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely impacted as a result of the Planning Proposal.

Q8: Are there any likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

In order to carry out due diligence with respect to processing this proposal, Council requested that the applicant provide a number of technical studies and complementary statements. These studies/statements looked at different potential environmental impacts which could result from the PP and include:

- Stage 1 Site Contamination Assessment & Preliminary Geotechnical Assessment
- Bushfire Hazard Assessment
- Flood Study
- Heritage Due Diligence Assessment

A review of these technical studies has indicated that there are likely to be environmental impacts associated with the additional permitted uses. However these studies have also outlined measures to ensure these impacts are managed appropriately.

A summary of the technical studies as well as any major findings has been reiterated below.

Stage 1 Site Contamination Assessment & Preliminary Geotechnical Assessment

An investigation of any geotechnical or contamination constraints associated with the site was undertaken by Network Geotechnics Pty Ltd on behalf of the applicant and accompanied the initial Concept PP. The Assessment included an investigation of subsurface soil and rock profiles across the site, geotechnical recommendations and lot classification as per AS2870-2011, recommendations on drainage and the potential for site contamination. The Assessment concluded that:

Based on the desk study, field investigation and laboratory tests the following conclusions are made:

- The site is assessed to be of low risk of contamination. It is assessed that a Stage 2 Contamination Assessment is not required for the proposed subdivision.
- Stripping of topsoil for construction of the subdivision should be carried out under the supervision of an experienced consultant and any foreign objects/materials identified should be subjected to further investigation.
- The proposed building sites are provided interim AS2870-2011 classification of Class H1 (Highly reactive) classification.

The report was peer reviewed by staff who agreed with the results and conclusion of the submitted Stage 1 Site Contamination Assessment & Preliminary Geotechnical Assessment and concluded that the PP could proceed.

Bushfire Hazard Assessment

A Bushfire Hazard Assessment was requested by staff after reviewing the initial Concept PP as it was identified that portions of Lot 110 contained bushfire prone land. A Bushfire Hazard Assessment was prepared by Wirrimbirra Environmental Consultants Pty Ltd on behalf of the applicant. The Assessment assessed the bushfire threat to the property and the capabilities of the site to provide safe residential development in accordance with the *Rural Fires Act 1997* and Planning for Bushfire Protection 2006. The Assessment recommended minimal asset protections zones (i.e. 10 metres) would need to be employed in order to achieve the lowest construction for bushfire attack level. A 1.8 metre high non-combustible fence around the perimeter of the subdivision will assist in minimising ember attack. The Assessment concluded that:

While the above measures will not guarantee that a building will not burn, they will increase the probability that it will survive a fire attack and that the safety to residents and fire fighters will experience a lower level of risk.

The report was peer reviewed by staff who agreed with the results and conclusion of the submitted Bushfire Hazard Assessment and concluded that the PP could proceed. As the land identified as bushfire prone is over 400 metres south of the development site the risk of bushfire is considered minimal.

Flood Study

An assessment on any flood constraints associated with the site that might impact upon the PP was requested by staff after reviewing the initial Concept PP. A Flood Study was prepared by Site Plus Pty Ltd on behalf of the applicant. The Flood Study assessed the hydrological and hydraulic characteristics of the catchment and addressed the current 100 year and Probable Maximum Flood (PMF) flooding for the site. The Flood Study concluded that:

...the flood waters only marginally effect the proposed land. Only inundating what would be half width of the proposed perimeter road with a low hydraulic hazard.

In the event of development of the site, freeboard of 0.5m must be maintained to all finished floor levels from the surface level of the 1% AEP event.

The report was peer reviewed by staff who agreed with the results and conclusion of the submitted Flood Study and concluded that the PP could proceed.

Heritage Due Diligence Assessment

A Due Diligence Assessment was carried out by Ainsworth Heritage on behalf of the applicant and accompanied the initial Concept PP. The Assessment was undertaken to investigate the potential for the site to contain items of Aboriginal heritage significance and if the proposed development will impact upon those items. The Assessment concluded that:

Following the steps of the Due Diligence process it was determined that the proposed development could Proceed with Caution and reference Chapter 8 (of the Due Diligence Assessment), due to impact upon known sites being avoided, no site being located in the development areas, and though the project possess features related to some archaeological potential, no sites were located in the areas to be impacted.

The Due Diligence Assessment that accompanied the initial Concept PP was peer reviewed by staff who requested clarification over some the terminology and recommendations contained within the assessment, specifically in regards to the ridgeline on site. Further amendments to the initial Concept PP included the requested clarifications and as such staff have since agreed with the results and conclusion of the submitted Due Diligence Assessment and concluded that the PP could proceed.

Q9: Has the planning proposal adequately addressed any social and economic effects?

The PP will provide additional residential land to be developed for future residential purposes assisting Kiama Municipal Council to meet the housing needs of future residents. The subject site is close to the amenities of the Jamberoo village centre, which includes shops and cafes, a bowling club, hotel, golf club, community centre, churches, swimming pool, recreational amenities, and public primary schools.

An Aboriginal archaeological Due Diligence assessment of the subject site has been undertaken by Ainsworth Heritage (2012). This assessment did not detect the existence of any known or potential Aboriginal sites on the subject site. The assessment has recommended that the proposal may proceed with caution. An update to the original Due Diligence assessment was prepared to respond to specific comments made by Council as a result of its initial review of the PP, and provides clarification of those matters.

The PP will lead to increased development and building activity throughout the subdivision and dwelling construction phases. The broader population base will increase the demand for goods and services which will benefit local businesses and service providers. Section 94 and 94A Contributions levied by Council at both the subdivision and building stages, will provide funding for identified Council projects.

In this regard the PP has adequately addressed any social and economic effects.

Q10: Is there adequate public infrastructure for the planning proposal?

The existing dwelling house on the subject site is currently connected to Sydney Water's reticulated water supply system and to Endeavour Energy's electricity grid. These services can be extended and/or augmented to service the future residential subdivision of the subject site.

The existing dwelling house on the subject site is not connected to Sydney Water's reticulated sewerage system. However, the existing residential development in Downes Place and Drualla Road, to the east of the subject site, is connected to the reticulated sewerage system. The development of the subject site for residential purposes will require the extension of the sewer main along Drualla Road and across to the western side of Downes Place.

Downes Place is a fully constructed, bitumen-sealed public road and Drualla Road is constructed and sealed to a point just beyond its intersection with Downes Place. It is expected that the construction of Drualla Road will need to be extended further to the west in order to facilitate access to the future subdivision of the subject site.

Q11: What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Pre Gateway consultation

Initial consultation has been undertaken with NSW Department of Primary Industries – Water (DPI – Water) in order to determine minimum riparian zone setback requirements to the dam and out flow. DPI – Water has advised that:-

- The watercourse running the site is a 2nd order tributary of Hyams Creek.
- A minimum setback of 10m is required from the dam.
- A minimum setback of 20m is required from the watercourse downstream of the dam in accordance with the NSW Office Water Controlled Activity Guidelines.
- Required riparian setbacks can be offset within the adjoining residual lot in accordance with the NSW Office of Water Controlled Activity Guidelines. Offset areas would require revegetation as part of the subdivision proposal.
- The Office of Water are in agreement with the possible relocation of the spillway to the West of the dam wall.

The PP has been prepared having regard to the above comments.

Post Gateway consultation

It is proposed that the following State authorities would be consulted following Gateway determination.

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

Council requests that Gateway nominates any other State or Commonwealth authorities required for consultation. All identified authorities/stakeholders will be notified during the exhibition period.

Part 4 – Mapping

The following map illustrates the proposed mapping amendments to Kiama LEP 2011 for the subject site. These maps are indicative only. The maps below are reproduced in Appendix 2 on the paper size noted on the scale.

Current Land Zoning Map - Sheet LZN_008



Proposed Land Zoning Map - Sheet LZN_008

Amend the Land Zoning Map – Sheet LZN_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 from zone RU2 to zone R2.



Lot Size Map - Sheet LSZ_008

Amend the Lot Size Map – Sheet LSZ_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a minimum lot size of G 450 sqm.



Height of Building Map - Sheet HOB_008

Amend the Height of Buildings Map – Sheet HOB_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a maximum height of I 8.5m.



Floor Space Ratio Map - Sheet FSR_008

Amend the Floor Space Ratio Map – Sheet FSR_008 applying to Part of Lot 100 DP 1157883 and Lot 101 DP 1157883 to apply a maximum floor space ratio of C 0.45.



Part 5 – Community Consultation

Council requests that the planning proposal be exhibited for a period of 28 days and include:

- Advertisement in Local Newspaper,
- Hard copies made available at the Council Administration Building and relevant libraries,
- Electronic copy on Council's website,
- Notification letters to adjoining and surrounding property owners,
- Notification letters to relevant State agencies and other authorities/agencies nominated by the Department of Planning and Infrastructure.
- Other if required

Part 6 – Timeframe

The following project timeline will assist with tracking the progress of the planning proposal through the various stages of consultation and approval. It is estimated that the amendment to the Kiama Local Environmental Plan 2011 will be completed by January 2017.

Stage	Timeframe	Possible Date
Submit planning proposal to NSW Department of Planning & Environment (DP&E) seeking a Gateway Determination		Mid-August 2016
Receive Gateway Determination	4 weeks from submission date	Mid-September 2016
Preparation of any outstanding studies (if required)	6 weeks from notification of Gateway determination.	May extend timeframe by 6 weeks
Public exhibition and public authority consultation of planning proposal	4 weeks after gateway determination	Mid-October 2016
Date of Public Hearing (if applicable)	Unknown	May extend timeframe by 2 weeks
Review of submissions and preparation of report to Council	First available Council meeting after review period (allow 4 weeks from end of public exhibition period)	Mid-December 2016
Drafting of instrument and anticipated submission to DP&E	4 weeks from Council meeting	Mid-January 2016
Amendment to Kiama Local Environmental Plan 2011 legally drafted and made	Unknown	February 2017

Appendix 1 - Section 117 Ministerial Directions – Compliance Checklist prepared by Kiama Municipal Council

	Ministerial Direction	Comment
1	Employment and Resources	
1.1	Business and Industrial Zones	This direction does not apply to the Planning Proposal
1.2	Rural Zones A planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.	This Planning Proposal is inconsistent with this direction. This inconsistency is considered warranted as it is justified by the Kiama Urban Strategy and the Illwarra-Shoalhaven Regional Plan.
1.3	Mining, Petroleum Production and Extractive Industries	This direction does not apply to the Planning Proposal
1.4	Oyster Aquaculture	This direction does not apply to the Planning Proposal
1.5	Rural Lands A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.	 This direction applies as the Planning Proposal will affect land within an existing rural zone. As the PP is consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> it is consistent with Direction 1.5 – Rural Lands.
2	Environment and Heritage	
2.1	Environment Protection Zones A planning proposal must include provisions that facilitate the protection and	The site is not zoned Environmental Protection. The Planning Proposal does not seek to alter the provisions made for Environmental Protection Zones.
	conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of	The Planning Proposal is consistent with Direction 2.1 – Environment Protection Zones.

	Direction 1.5 "Rural Lands".	
2.2	Coastal Protection	This direction does not apply to the Planning Proposal as the site is not within the Coastal Zone.
2.3	 Heritage Conservation A planning proposal must contain provisions that facilitate the conservation of: (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people. 	The site is not known to contain any items of heritage significance and is not protected for Aboriginal heritage. The site has predominantly been used for agricultural purposes post European settlement. To date use of this site in this manner has not resulted in any archaeological discoveries. A search of the Office of Environment and Heritage Aboriginal Heritage Information Management System (AHIMS) Web Service has shown that there are no known Aboriginal sites or places are recorded or have been declared in or within 50 meters of the site. Clause 5.10 of KLEP 2011 contains provisions relating to heritage conservation including provisions for assessment of development on land that is within the vicinity of a heritage item. The Planning Proposal does not seek to alter this clause nor does the Planning Proposal seek to alter the list of heritage items contained within the KLEP 2011. The Planning Proposal is consistent with Direction 2.3 – Heritage Conservation.
2.4	Recreation Vehicle Areas	This direction does not apply to the Planning Proposal is not for the purpose of a recreation vehicle area
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	This direction does not apply to the Kiama Local Government Area.
3	Housing, Infrastructure and Urban Development	
3.1	Residential Zones A planning proposal must include provisions that encourage the provision of housing that will: a) Broaden the choice of building types and locations available in	The Planning Proposal would result in land being zoned for residential purposes with controls under the KLEP 2011 matching that of surrounding residential land.
	the housing market, and b) Make more efficient use of	The site is located within adjacent to an existing residential locality with access to appropriate

	 existing infrastructure and services, and c) Reduce the consumption of land for housing and associated urban development on the urban fringe, and d) Be of good design, A planning proposal must, in relation to land to which this direction applies: a) Contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and b) Not contain provisions which will reduce the permissible residential density of land. 	existing infrastructure and services. The Planning Proposal will result in a larger residential site area which will broaden the choice of housing design for the site. The Planning Proposal is consistent with Direction 3.1 – Residential Zones.
3.2	Caravan Parks and Manufactured Home Estates	This direction does not apply as the Planning Proposal does not include land suitable for caravan parks.
3.3	Home Occupations Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.	The PP will rezone the site from RU2 to R2. Home Occupations are permitted without consent within the R2 zone under the KLEP 2011. The Planning Proposal would not alter this permissibility.
		The Planning Proposal is consistent with Direction 3.3 – Home Occupations.
3.4	Integrating Land Use and Transport	This direction does not apply as the Planning Proposal does not provide sufficient land for integrating land use and transport.
3.5	Development Near Licensed Aerodromes	This direction does not apply as the Planning Proposal does not relate to land in the vicinity of a licensed aerodrome.
3.6	Shooting Ranges	This direction does not apply as the Planning Proposal does not relate to land adjacent to or adjoining an existing shooting range.
4	Hazards and Risk	
4.1	Acid Sulfate Soils	This direction does not apply as the Planning Proposal does not relate to land containing acid sulfate soils.
4.2	Mine Subsidence and Unstable Land	This direction does not apply as the Planning Proposal does not relate to land is within a Mine Subsidence District or to land that has been identified as unstable in a study, strategy or other assessment.

4.3	Flood Prone Land	
	A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).	The NSW Flood Prone Land Policy, which forms part 1 of the Floodplain Development Manual 2005, refers to 1% AEP flood event plus 0.5m freeboard. Council's existing Development Control Plan (DCP) 2012 ensures all development to comply with this requirement. The submitted Flood Assessment concludes that the 1% AEP flood event would only inundate half of the proposed perimeter road and not the individual residential allotments. In this regard future development on the site would comply with the Manual.
	A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.	The Planning Proposal does not seek to rezone land.
	 A planning proposal must not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. 	The Planning Proposal does not seek to intensify the land uses permissible without consent in potential flood land. Any future development on the site will need to comply with Council's DCP and the NSW Flood Prone Land Policy. This will ensure that future development on the site does not result in flood impacts to other properties.
	A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a	The Planning Proposal does not seek to impose flood related development controls.

	Planning Proposal: Rezoning of Part of Lot 100 DP 1157883 and Lot 101 DP 1157883, 26 Drualla Road & 2A Downes Place, Jamberoo
relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).	
For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005	As discussed above the submitted conceptual subdivision layout indicates that the dwellings within the proposed allotments will be able to comply with the Floodplain Development Manual 2005 requirements.
(including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that	In this regard it is considered that the Planning Proposal is consistent with Direction 4.3 – Flood Prone Land.
Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).	
4.4 Planning for Bushfire Protection In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community	As the site contains bushfire prone land consultation with the NSW Rural Fire Service will be required following the receipt of a gateway determination.
 consultation in satisfaction of section 57 of the Act, and take into account any comments so made A planning proposal must: (a) have regard to Planning for Bushfire Protection 2006, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: 	The concept Planning Proposal was accompanied by a Bushfire Hazard Assessment Report which outlined that future development located within the bushfire prone land on the site could comply with the requirements of Planning for Bushfire Protection (PBP) 2006. The proposed residential uses are not considered to be inappropriate uses on the site.
 (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: an Inner Protection Area bounded by a perimeter 	The submitted Bushfire Hazard Assessment Report outlines that appropriate APZs can be achieved as part of the proposed perimeter road.

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road or reserve which circumscribes the haz side of the land intend development and has building line consister the incorporation of an APZ, within the prope and ii. an Outer Protection A managed for hazard reduction and located the bushland side of t perimeter road, (b) for infill development (that development within an all subdivided area), where a appropriate APZ cannot b achieved, provide for an appropriate performance	t is ready an
appropriate performance standard, in consultation the NSW Rural Fire Serve the provisions of the plan proposal permit Special F Protection Purposes (as defined under section 100 the Rural Fires Act 1997) APZ provisions must be complied with, (c) contain provisions for two	ice. If ning Fire OB of , the
access roads which links perimeter roads and/or to trail networks,	to subdivision layout are all two-way.
(d) contain provisions for ade water supply for firefightin purposes,	connected to Sydney Water's reticulated water supply.
(e) minimise the perimeter of area of the land interfacir hazard which may be developed,	
(f) introduce controls on the placement of combustible material in the Inner Prote Area.	•
	In this regard it is considered that the Planning Proposal is consistent with Direction 4.4 – Planning for Bushfire Protection.
5 Regional Planning	
5.1 Implementation of Regional Strategies	This direction does not apply as there are no listed regional strategies that apply to the site.
Planning proposals must be consistent with a regional stra released by the Minister for Planning.	
5.2 Sydney Drinking Water	This direction does not apply as the Planning

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	Catchments	Proposal does not relate to land within the Sydney drinking water catchment.
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	This direction does not apply as the Planning Proposal does not relate to land mapped as State significant, regionally significant or significant non-contiguous farmland.
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	This direction does not apply as this Planning Proposal as it is not on the North Coast.
5.8	Second Sydney Airport: Badgerys Creek	This direction does not apply as the Planning Proposal does not relate to land shown on the map entitled "Badgerys Creek-Australia Noise Exposure Forecast-Proposed Alignment-Worst Case Assumptions".
5.9	North West Rail Link Corridor Strategy	This direction does not apply as the Planning Proposal does not relate to land within the North West Rail Link Corridor.
5.10	Implementation of Regional Plans Planning proposals must be consistent with a Regional Plan released by the Minister for	As previously outlined the Planning Proposal is consistent with the Illwarra-Shoalhaven Regional Plan, which was released by the Minister in 2015.
	Planning.	In this regard it is considered that the Planning Proposal is consistent with Direction 5.10 – Implementation of Regional Plans.
6	Local Plan Making	
6.1	 Approval and Referral Requirements A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and 	The PP does not propose any additional provisions that would require the concurrence, consultation or referral of future development applications to a Minister or public authority.
	 (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: i) the appropriate Minister or public authority, and ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and 	The PP does not propose the inclusion of any additional provisions that would require the concurrence, consultation or referral of future development applications to a Minister or public authority.

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6.2	 (c) not identify development as designated development unless the relevant planning authority: i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act. Reserving Land for Public Purposes A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public 	The PP will rezone the site from RU2 to R2. Under the KLEP 2011 there are no forms of development permitted by the R2 zone that could be classified as designated development. The Planning Proposal would not alter this permissibility. The Planning Proposal is therefore consistent with Direction 6.1 – Approval and Referral Requirements.
	 authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director- General). When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must: (a) reserve the land in accordance with the request, and (b) include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director- General), and (c) identify the relevant acquiring 	The Planning Proposal does not involve any reservations of land for public purposes.

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authority for the land.	
 When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must: (a) include the requested provisions, or (b) take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired. 	The Planning Proposal does not include any provisions that relate to the use of land reserved for public purposes.
When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone	The Planning Proposal does not include any provisions that relate to the use of land reserved for public purposes. The Planning Proposal is therefore consistent
and/or remove the relevant reservation in accordance with the request.	with Direction 6.2 – Reserving Land for Public Purposes.
 6.3 Site Specific Provisions A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either: (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or 	The ultimately goal of the Planning Proposal is to enable residential development on the site. By rezoning the site to R2 Low Density Residential this goal will be achieved.

	any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. A planning proposal must not contain or refer to drawings that show details of the development proposal.	While conceptual subdivision plans have been provided by the proponent they have only been utilized to support other reports (i.e. Bushfire Hazard Assessment and Flood Impact Statement). The Planning Proposal is consistent with Direction 6.3 – Site Specific Provisions.
7	Metropolitan Planning	
7.1	Implementation of A Plan for Growing Sydney	This direction does not apply to the Kiama Local Government Area.
7.2	Implementation of Greater Macarthur Land Release Investigation	This direction does not apply to the Kiama Municipality.

Appendix 2 – Proposed Amendments to KLEP Mapping

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