

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Kiama LGA
<b>PPA</b>	Kiama Municipal Council
<b>NAME</b>	Planning proposal to amend Kiama LEP 2011 to allow residential development on Lot 3 DP1018217, Dido Street, Kiama. (10 homes, 0 jobs)
<b>NUMBER</b>	PP 2018 KIAMA 002 00
<b>LEP TO BE AMENDED</b>	Kiama Local Environmental Plan 2011 (LEP)
<b>ADDRESS</b>	Dido Street, Kiama
<b>DESCRIPTION</b>	Lot 3 DP1018217
<b>RECEIVED</b>	14 May 2018, Additional information 9 July 2018
<b>FILE NO.</b>	IRF18/3796 (EF18/8397)
<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.

#### INTRODUCTION

##### Description of planning proposal

- The planning proposal seeks to amend the Kiama LEP 2011 to allow residential development on Lot 3 DP1018217 Dido Street, Kiama (**Attachment B1**).
- The proposal seeks to rezone land from RU1 Primary Production to R2 Low Density Residential and introducing building controls for minimum lot size, building height and floor space ratio.
- The planning proposal includes a concept subdivision layout of 10 lots. Under the proposed R2 Zone, dual occupancy would be a permissible form of development and the dwelling yields may increase.
- The planning proposal and supporting technical studies have been prepared by the landholder.
- Kiama Council has provided clarification of information within and in addition to the planning proposal. Council has advised that the objectives, explanation of provisions and mapping may change as a result of further technical studies triggering a redesign of the concept subdivision layout.

##### Site description

- Lot 3 is approximately 8,870m<sup>2</sup> with direct frontage to Dido Street and the Spring Creek residential area.
- The site is vacant. Prior to the subdivision, which created the lot, the site formed part of a larger rural property used for agricultural, dairying and grazing purposes.



Subject site and locality plan

(Source: Planning Proposal Lot 3 Dido Street, Kiama Bushfire Risk Assessment, SET Consultants)



Subject site

(Source: Planning Proposal Lot 3 Dido Street, Kiama Bushfire Risk Assessment, SET Consultants)

- The site is constrained by its steep topography. It rises sharply to the north west with an average slope of approximately 30%. The land drains to the east to Spring Creek and Spring Creek Lagoon (SEPP14 wetland).
- Dense growing vegetation, surrounded by open kikuyu pasture, extends across the land.
- The majority of the vegetation is regrowth forming a 'Closed Exotic Shrubland' of Broad-leaved privet, African Olive, Sweet Pittosporum and Maiden's Wattle.
- In the south west corner of the lot is an area of 130m<sup>2</sup> of Illawarra Subtropical Rainforest Endangered Ecological Community (ECC).
- A 3.5m right of carriage way and easement for services runs east/west across the centre of the Lot providing benefits to the three properties to the west.

### **Existing planning controls**

- The site is currently zoned RU1 Primary Production with a minimum lot size of 40ha under the Kiama LEP 2011.

### **Surrounding area**

- The site is directly adjacent to the Spring Creek residential land to the east with Dido Street forming the western boundary to the residential development.
- To the north and west are large lot rural residential dwellings and rural land to the west and south.
- The site is located to the east of a ridgeline used to visually separate Kiama from rural land to the west.
- Spring Creek Lagoon is approximately 250m to the east of the site.
- The site can be viewed from the Princes Highway, South Coast Railway Line and Bombo Beach to the east.

### **Summary of recommendation**

- It is recommended that the planning proposal should proceed as submitted with conditions.

## **PROPOSAL**

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### **Objectives or intended outcomes**

- The objective of the planning proposal is to amend the Kiama Local Environmental Plan (LEP) 2011 to allow low density residential development on the land.
- Council has further advised that the objective is to allow some form of residential development on the site. The type of residential development will be determined by the recommendations from the technical studies.
- Further clarification of the objectives will need to be included in the planning proposal and endorsed by the Department prior to public exhibition.
- It is noted that Dido Street is zoned RU1 Primary Production with a 40ha minimum lot size. Consistent with the Practice Note (PN 08-002) Zoning for Infrastructure in LEPs, Council may wish to consider including Dido Street in the planning proposal to rezone from RU1 to R2 Low Density Residential and change the minimum lot size from 40ha to 450m<sup>2</sup>.



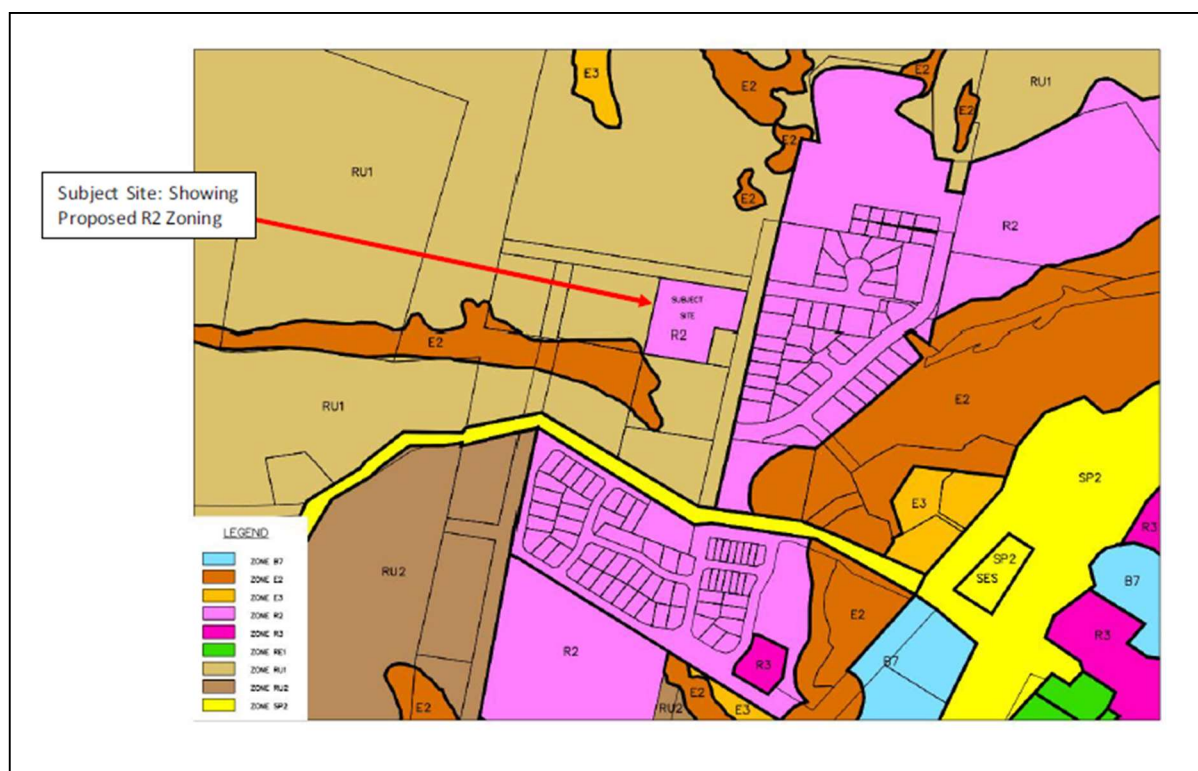
## Explanation of provisions

It is proposed to amend the Kiama LEP 2011 by:

- Amending the Land Zoning Map to rezone the land from RU1 Primary Production to R2 Low Density Residential;
- Amending the Lot Size Map to reduce the minimum lot size from 40ha to 450m<sup>2</sup>;
- Amending the Floor Space Ratio Map by introducing a floor space ratio of 0.45:1; and
- Amending the Height of Buildings Map to apply a maximum height of 8.5m.
- The building controls are consistent with the current controls for the adjoining low density residential lands.
- Further investigation of the status of the Illawarra Subtropical Rainforest EEC may result in a revision of the proposed explanation of provisions for the land zoning and minimum lot size. Any changes to the provisions will need to be included in the planning proposal and endorsed by the Department prior to public exhibition.

## Mapping

- The existing and proposed zoning, minimum lot size, floor space ratio and height of buildings maps are included in the planning proposal (**Attachment B2**).
- Should changes be made to the explanation of provisions subsequent changes may be required to the maps. Any changes to the maps will need to be included in the planning proposal and endorsed by the Department prior to public exhibition.



Subject site showing proposed site zoning and current surrounding land zoning  
(Source: Planning Proposal Lot 3 Dido Street, Kiama Bushfire Risk Assessment, SET Consultants)

## **NEED FOR THE PLANNING PROPOSAL**

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- The site is identified in the Kiama Urban Strategy for further investigations as to its suitability for residential development.
- The planning proposal is the only mechanism available for amending the current land use and development control provisions applying to the land to achieve residential development on the land.
- The planning proposal considered rezoning some of the land R3 Medium Density Residential or amending the minimum lot size to 350m<sup>2</sup> to allow for multi dwelling or to increase the lot yield. However, given the site's topography and its high visibility on the adjoining landscape, the resultant built form was not considered appropriate.
- The planning proposal also discusses rezoning the area of Illawarra Subtropical Rainforest EEC to E2 Environmental Conservation. This was not pursued as the landholder considers such a small pocket of E2 land within the R2 zone would be unusual and unnecessarily hinder subdivision layouts.
- Council has provided clarification that further technical studies may trigger a redesign of the concept subdivision layout and result in larger residential lots. This may lead to the consideration of alternate land zones and minimum lot size.

## **STRATEGIC ASSESSMENT**

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The planning proposal is the result of the Kiama Urban Strategy. The lot is identified as Site 8 where a planning proposal is recommended to determine the extent of residential development.

### **Regional - Illawarra Shoalhaven Regional Plan 2015**

- The planning proposal is consistent with the aims of the Illawarra Shoalhaven Regional Plan (the Plan) as the site is identified in Council's adopted local housing strategy (Kiama Urban Strategy) and will provide housing close to services, jobs and infrastructure.
- The Plan takes a balanced approach to housing that utilises development potential in both existing urban areas and new urban areas to provide housing choice and address affordability issues.
- The Plan indicates that there is not enough land or market ready infill development in the planning pipeline to meet the projected demand of 2,850 new homes in Kiama up to 2036.
- The Plan (Action 2.1.1) commits the NSW Government to work with Kiama Council to monitor and review the potential of the area to accommodate housing demand.

### **Kiama Urban Strategy 2011**

- The Kiama Urban Strategy 2011 (the Strategy) was prepared by Kiama Council to inform the preparation of the Kiama LEP 2011.
- The Department supported the preparation of planning proposals for sites identified in the Strategy (including the subject site) in order to contribute to housing supply in Kiama. However, the Strategy was not formally endorsed by the Department mainly on the grounds that it did not provide sufficient yields to meet the projected housing needs of Kiama.

- The Strategy aims to maintain and protect agricultural lands and ecologically sensitive areas and identify opportunities and options for urban expansion and infill to cater for future housing needs.
- The owner of the subject site made a submission to the draft Kiama Urban Strategy to have the site rezoned from Rural to Residential. As site specific studies had not been carried out on the land at the time it was not considered as part of the Kiama LEP 2011.
- The Strategy considered the site as having potential for urban development. The site was identified as a Stage 2 priority for urban expansion (five to 10 years).
- The Strategy recommends the site be included in a planning proposal. 'The planning proposal should assess whether the land is suitable for residential zoning having regard to land stability, natural environment, Aboriginal and European cultural heritage and scenic landscape considerations; establish a more accurate lot yield potential and density; and identify any environmental and physical constraints to development which should be met'.
- The Planning Proposal is consistent with the Kiama Urban Strategy and meets the priority staging timeframes for urban expansion in Kiama.

### **Section 9.1 Ministerial Directions**

- The planning proposal is consistent with the s9.1 Directions 2.2 Coastal Management, 2.3 Heritage Conservation, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils and 5.10 Implementation of Regional Plans. The LEP contains heritage, coastal and acid sulfate soils provisions, the site adjoins existing residential development and the proposal will provide housing within the Kiama township boundaries.
- The planning proposal is inconsistent with s9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands. This inconsistency is justified by the site's inclusion in the Kiama Urban Strategy for future residential development. No further consideration of these Directions is required.
- The planning proposal is inconsistent with s9.1 Direction 3.1 Residential Zones in that neither the planning proposal nor Kiama LEP 2011 contain a 'requirement that residential development is not permitted, until the land is adequately serviced'. Council is preparing a planning proposal to insert an essential services clause. This inconsistency is of minor significance as the site adjoins existing residential development where infrastructure is available. No further consideration of this Direction is required.
- The planning proposal is inconsistent with s9.1 Direction 2.1 Environmental Zones which 'requires the inclusion of provisions to facilitate the protection and conservation of environmentally sensitive areas'. The site includes a small area of Endangered Ecological Community which is proposed to be cleared. Further investigation is required to determine the significance of the vegetation and whether the planning proposal is consistent or inconsistent with the s9.1 Direction.
- The north-west corner of the land is mapped as bushfire prone. It is unknown whether the planning proposal is consistent or justifiably inconsistent with the s9.1 Direction 4.4 Planning for Bushfire Protection. Any potential inconsistency remains unresolved until consultation with the Rural Fire Service has been undertaken.

## **State environmental planning policies**

- The planning proposal recommends the preparation of a Stage 1 Contamination Report consistent with SEPP55 Remediation of Land, to ensure the site is suitable or can be remediated to be suitable for residential use.
- The Coastal Management SEPP does not require consideration of matters at a rezoning stage.
- The planning proposal is inconsistent with the Rural Planning Principles in the SEPP Rural Lands however due to the small area of the land and surrounding residential land uses, it is unlikely to be used for agriculture.

## **SITE-SPECIFIC ASSESSMENT**

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### **Social**

- The development of the site for housing will contribute to meeting housing availability and diversification demands in the Kiama LGA.
- The planning proposal identifies that development of the site will alter the existing views of the hills to the west of Kiama township. A Visual Impact Analysis concludes that the capacity for visual impact is considered low.
- Development of the land may impact on views gained from the existing dwelling on Lot 4 to the west.
- The Planning Proposal is not proposing to extinguish the right of carriage way or easement for services which serves the 3 properties to the west. Repositioning of the access route and easement may occur at the time of subdivision.
- The additional traffic generation from any development of the land along Dido Street may require an upgrade of the intersection with Jamberoo Road. Council proposes to assess traffic impacts at the DA stage.
- An Aboriginal heritage search has revealed no Aboriginal sites or places in or near the site.

### **Environmental**

- The land is not mapped as biodiversity land.
- A Flora and Fauna Constraints Assessment was undertaken which recorded no threatened fauna and a low likelihood of threatened flora species. It did identify that the site has a medium potential to be used by a number of highly mobile threatened fauna as non-limiting foraging and dispersal habitat.
- 130m<sup>2</sup> of Illawarra Subtropical Rainforest (an Endangered Ecological Community) was identified in the south west corner of the site. It was recorded to be in a low condition but of a high constraint to the development of the land. A larger area of the Rainforest adjoins the south west corner of the site and extends westwards across seven lots. The Assessment recommends the Rainforest be retained.
- The Planning Proposal states that 'retention of the EEC is possible, however would have significant impacts on the lot yield as a result of its location, potential buffer and bushfire implications'.
- The site is mapped as bushfire prone land. A Bushfire Report has been prepared which found that a dwelling could be erected on each of the proposed lots which if constructed and maintained in accordance with the Report's recommendations would comply with the performance requirements in Planning for Bushfire Protection.

- The site is not affected by or affects other lands mapped as acid sulfate soils.

### **Economic**

- The planning proposal has not addressed economic impacts.
- The proposal would have a positive economic benefit in providing additional housing opportunities and short-term construction jobs.

### **Infrastructure**

- Utility services are available in the existing residential development to the east.
- Consultation with service providers will confirm that status of services for development of the lot.
- The provision of any required infrastructure will be the responsibility of the developer of the land.

## **CONSULTATION**

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### **Community**

- Council has advised that the planning proposal is to be publicly exhibited for 28 days. Public notification will include local newspaper notifications, notice on Council's website, hard copies of the planning proposal provided at Council's administration buildings and notification letters to surrounding property owners. This is considered appropriate.

### **Agencies**

- The Planning Proposal identifies consultation with the NSW Rural Fire Service to meet requirements under section 9.1 Direction 4.4 Planning for Bushfire Protection.
- Agency consultation is also required with the Office of Environment and Heritage, Sydney Water and Endeavour Energy.

## **TECHNICAL STUDIES**

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- The Planning Proposal includes a:
  - Flora and Fauna Constraints Assessment by Biosis
  - Bushfire Risk Assessment by SET Consultants
  - Visual Impact Assessment by SET Consultants
- As recommended in the Flora and Fauna Constraints Assessment, a Flora and Fauna Assessment (BAM Assessment) is to be prepared in accordance with Biodiversity Conservation Act 2016.
- As recommended by the Planning Proposal a Stage 1 Contamination Report consistent with SEPP55 Remediation of Land and a Preliminary Geotechnical Assessment are to be prepared.

## **TIME FRAME**

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- Council has proposed a 12-month project timeframe to complete the rezoning process.



- This is considered appropriate as the majority of studies have been completed, there's limited agency consultation and the proposed development controls are consistent with residential development in Kiama.

## **LOCAL PLAN-MAKING AUTHORITY**

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- Council has requested in its letter of 14 May 2018 Council Officer Delegation to prepare the draft LEP under Section 59 of the Act. Appendix 4 – Evaluation Criteria for the Delegation of Plan Making Functions was submitted.
- Due to the simple, local nature of the proposal and its consistency with the Kiama Urban Strategy and Illawarra Shoalhaven Regional Plan, it is considered appropriate to provide delegations to Council.

## **CONCLUSION**

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- Preparation of the planning proposal is supported to proceed with conditions.
- The planning proposal addresses the Department's 'A guide to preparing planning proposals'.
- The planning proposal has strategic and local merit given its ability to provide residential development.
- The planning proposal will assist in providing housing for the Kiama LGA.
- Further studies will confirm the significance of the Illawarra Subtropical Rainforest EEC and whether the planning proposal is consistent or inconsistent with the s9.1 Direction 2.1 Environmental Zones.
- Delegation of plan making functions are recommended to be given to council.

## **RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that the inconsistencies with section 9.1 Directions s9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands and 3.1 Residential Zones are justified by the site's inclusion in the Kiama Urban Strategy for future residential development. No further consideration of these Directions is required; and
2. note that the consistency with section 9.1 Directions 2.1 Environmental Zones and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

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

1. A Flora and Fauna Assessment (BAM Assessment), Stage 1 Contamination Report and Preliminary Geotechnical Assessment are to be prepared and exhibited with the proposal.
2. The Planning Proposal is to be revised if necessary to reflect the outcomes of the technical studies. The revised proposal is to be submitted to the Southern Region of the Department for consideration prior to public exhibition.

3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the NSW Rural Fire Service in accordance with the Act and s9.1 Direction 4.4 Planning for Bushfire; Office of Environment and Heritage, Sydney Water and Endeavour Energy.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should be the local plan-making authority.



17/7/18

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23/07/18

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