

16 July 2021

Mr Trevor Unicomb
Unicomb Development Services Pty Ltd

Dear Trevor

South Kiama Planning Proposal letter of advice – Aboriginal heritage

Our Ref: Matter 35621

Biosis Pty Ltd (Biosis) was commissioned by Unicomb Development Services Pty Ltd on behalf of White Constructions Pty Ltd to undertake an Aboriginal Cultural Heritage Assessment (ACHA) of a planning proposal for an announced re-zoning in South Kiama NSW (the study area). The study area includes Lot 1 Deposited Plan (DP) 707300, Lot 5 DP 740252 Lot 101 DP 1077617, Lot 102 DP 1077617 and Lot 8 DP 258605. This report was completed on 18 December 2020.

Biosis received a request from Trevor Unicomb of Unicomb Development Services on 24 June 2021 for advice and comment in regards to a meeting from Kiama Municipal Council (Council) in relation to the Planning Proposal (Council document attached as Appendix 1 to this letter).

Summary

Council has not endorsed the Planning Proposal in 2019 and sought a review of the decision via the Southern Regional Planning Panel. The Southern Planning Panel determined that the Proposal satisfied the Strategic Merit and Site-Specific Merit tests and recommended that a Gateway Determination be issued. A Gateway Determination was issued by the NSW Department of Planning, Industry and Environment (DPIE) on 4 December 2019. The consultation requirements of the Gateway determination has been completed.

Council undertook an analysis of the consultation process and the Strategic Merits of the site were considered. The Council report (Appendix 1) provides a recommendation for the Planning Proposal to no longer proceed as the Strategic Merit and Site-Specific Merits of the proposal is no longer considered valid.

Aboriginal heritage concerns from Council

Ministerial Directions 2.3

The following has been taken from sections of the Council letter. Page 348 under 'Recommendations' states that:

Council write to the Minister for Planning and Public Spaces to:

1) Inform the Minister that the proponent lead Planning Proposal, PP_2019_KIAMA_004_00, for land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the

Princes Highway now fails to satisfy the Strategic Merit and Site-Specific Merit Tests for the following reasons:

- *the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements;*

Illawarra Local Aboriginal Land Council response

Page 355 under the heading 'Heritage' states:

The Site Constraints Plan, contained in the Masterplan, indicates that portions of heritage listed dry stone walls and identified Aboriginal artefacts will be destroyed in order for the proposed lot layout to be achieved. The Illawarra Local Aboriginal Land Council and the Kiama and District Historical Society have both objected to this proposal (see below).

As previously outlined, Council has committed to preparing and adopting a Housing Strategy to define the limits of the Kiama township.

In this regard, it is now the view of staff that this PP no longer satisfies the DPIS's Site-Specific Merit test and should therefore no longer proceed. This is particularly the case noting the Southern Planning Panel's conclusion that the site would have Site-Specific merit through further refinement and reduction in initial yields. This has not satisfactorily occurred.

The comments from the Illawarra Local Aboriginal Lands Council (ILALC) in response to the Planning Proposal on pages 356-357 state:

On 8 June 2020, the ILALC objected to the proposal (see enclosed) and have raised the following concerns:

- *Residential development in the area based on current anticipated demand would not warrant a development of this size;*
- *The cultural landscape from an Aboriginal and European heritage perspective, associated with the land concerned has not been factored into any assessment to this proposal;*
- *This is potential for significant Aboriginal heritage items to be present on the sites concerned and while mitigation measures may be able to be implemented avoidance of impact is always the preferred course of action.*

In raising these concerns, the ILALC has confirmed that they believe that this development will have a significant impact on the cultural landscape associated with the area. Cultural landscape in this instance includes both a significant Aboriginal perspective with obvious European Heritage. It is their view that there has been an inadequate evaluation of the cultural landscape across the development site and surrounding areas.

The ILALC have suggested that the development is not required to address a current demand and therefore, as per the Burra Charter, the avoidance of impact is the preferred course of action. Therefore, the preferred course of action should be to not proceed with this development.

To address these concerns, it was requested that an Aboriginal Cultural Heritage Assessment (ACHA) be prepared and submitted. On 18 December 2020 an ACHA was submitted (see enclosed). As part of preparing this ACHA, Biosis Pty Ltd consulted with a number of Aboriginal Parties, including the ILALC. The submitted ACHA contains seven (7) recommendations:

1. *Continued consultation with the registered Aboriginal parties*

2. Avoidance of Aboriginal sites and sensitive landforms. Any potential works should and/or minimise impacts to Aboriginal sites and sensitive landforms, however in the instance they cannot be avoided, Recommendations 3 to 7 should be implemented.

3. Application for an Aboriginal Heritage Impact Permit

4. Curation of collected artefacts

5. Cultural Heritage Management Plan

6. Stop work provision for any potential heritage sites identified during construction

7. Stop work provision for any potential discovery of human remains.

The submitted Masterplan demonstrates that the proponent has not sought to avoid Aboriginal sites and sensitive landforms. It would appear that only two of the eight identified artefacts will be avoided. It has been argued that avoidance of these artefacts can occur at Development Application stage. However, best practice, as suggested by the ILALC, would be to not zone areas containing Aboriginal heritage or sensitive landforms for residential purposes. As this has not occurred it is considered that the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation.

Biosis response

Biosis completed an ACHA, Aboriginal community consultation and test excavations in line with the relevant legislation and guidelines, including:

- Kiama Local Environmental Plan 2011
- Environmental Planning and Assessment Act 1979 NSW (EP&A Act)
- National Parks and Wildlife Act 1974 (NPW Act)
- Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (DECCW 2010a) (consultation requirements)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (DECCW 2010)
- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH 2011)

The ACHA identified four Aboriginal heritage sites within the study area (Figure 1). These sites were low density artefact scatters assessed as having low scientific, aesthetic and historical significance, and high cultural significance. Their statements of significance can be seen in Table 1 below. There were no previously recorded sites registered on the Aboriginal Heritage Information Management System (AHIMS) within the study area.

Table 1 Statement of scientific significance for archaeological sites recorded within the study area

Site name	Statement of significance
South Kiama-01 (AHIMS)	South Kiama-01 is a low density sub-surface archaeological deposit located upon a mid to lower slope consisting of four artefacts of predominately chert material. The site extends across an area of 120 metres by 50 metres. The lower stratigraphy is considered in situ, however the topsoil has been partially

Site name	Statement of significance
#52-5-0970)	removed and the higher levels of stratigraphy has been disturbed via human agents, namely vegetation removal and use of the land for agricultural purposes. Therefore the site has low aesthetic significance. There have been few excavations in the area on the same type of landform near the coastline in which to compare the frequency of the site, however transitory areas typically contain low density scatters. Consultation with RAPs reflect that the site possesses high cultural significance due to the strong connections members of the community have with the area as the site is representative of their continued occupation of the area where they have resided for generations. This site is not connected to any historical event or personage and has low historical significance. South Kiama-01 is considered to have low scientific research potential. The scientific significance of this site has been assessed as low.
South Kiama-02 (AHIMS #52-5-0971)	South Kiama-02 is a low density sub-surface archaeological deposit located upon a mid to lower slope consisting of three artefacts of chert, silcrete and mudstone material. The site extends across an area of 40 metres by 15 metres. The lower stratigraphy is considered in situ, however the topsoil has been partially removed and the higher levels of stratigraphy has been disturbed via human agents, namely vegetation removal and use of the land for agricultural purposes. Therefore the site has low aesthetic significance. There have been few excavations in the area on the same type of landform near the coastline in which to compare the frequency of the site, however transitory areas typically contain low density scatters. Consultation with RAPs reflect that the site possesses high cultural significance due to the strong connections members of the community have with the area as the site is representative of their continued occupation of the area where they have resided for generations. This site is not connected to any historical event or personage and has low historical significance. South Kiama-02 is considered to have low scientific research potential. The significance of this site has been assessed as low.
South Kiama-03 (AHIMS #52-5-0972)	South Kiama-03 is a low density sub-surface archaeological deposit located upon a flat landform next to a creekline consisting of two artefacts of chert material. The site extends across an area of 5 metres by 5 metres. The lower stratigraphy is considered in situ, however the topsoil has been partially removed and the higher levels of stratigraphy has been disturbed via human agents, namely vegetation removal and use of the land for agricultural purposes. Therefore the site has low aesthetic significance. There have been few excavations in the area on the same type of landform near the coastline in which to compare the frequency of the site, however transitory areas typically contain low density scatters. Consultation with RAPs reflect that the site possesses high cultural significance due to the strong connections members of the community have with the area as the site is representative of their continued occupation of the area where they have resided for generations. This site is not connected to any historical event or personage and has low historical significance. South Kiama-03 is considered to have low scientific research potential. The significance of this site has been assessed as low.
South Kiama-04 (AHIMS #52-5-0973)	South Kiama-04 is a low density sub-surface archaeological deposit located upon a mid to lower slope consisting of seven artefacts of predominately quartz and silcrete material. The site extends across an area of 5 metres by 5 metres. The lower stratigraphy is considered in situ, however the topsoil has been partially removed and the higher levels of stratigraphy has been disturbed via human agents, namely vegetation removal and use of the land for agricultural purposes. Therefore the site has low aesthetic significance. There have been few excavations in the area on the same type of landform near the coastline in which to compare the frequency of the site, however transitory areas typically contain low density scatters. Consultation with RAPs reflect that the site possesses high cultural significance due to the strong connections members of the community have with the area as the site is representative of

Site name	Statement of significance
	<p>their continued occupation of the area where they have resided for generations. This site is not connected to any historical event or personage and has low historical significance. South Kiama-04 is considered to have low scientific research potential. The significance of this site has been assessed as low.</p>



Figure 1 Aboriginal sites located within the study area

Ministerial Directions 2.3

Ministerial Directions issued under Section 9.1(2) of the EP&A Act states that planning proposals must contain provisions that facilitate the conservation of:

- (4)(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 recommendations outlined by Biosis in the ACHA outline several ways in which the Aboriginal heritage of the area can be conserved and to mitigate the impacts of the development on Aboriginal cultural heritage. This includes continued consultation with the Aboriginal community, avoiding Aboriginal sites and sensitive landforms, application for an Aboriginal Heritage Impact Permit (AHIP) prior to works, curation of collected artefacts, and Cultural Heritage Management Plan and stop works provisions.

The Master Plan assessed as part of the ACHA proposed total impact to two Aboriginal heritage sites (AHIMS #52-5-0970, and 52-5-0973). One Aboriginal heritage site was proposed for partial impact (AHIMS # 52-5-0971), and one Aboriginal site was able to be avoided by the design (AHIMS # 52-5-0972) (see Table 2).

Table 2 Summary of potential archaeological impact of Master Plan

AHIMS site no.	Site name	Significance	Type of harm	Degree of harm	Consequence of harm
52-5-0970	South Kiama-01	Low	Direct	Total	Total loss of value
52-5-0971	South Kiama-02	Low	Direct	Partial	Partial loss of value
52-5-0972	South Kiama-03	Low	None	None	No loss of value
52-5-0973	South Kiama-04	Low	Direct	Total	Total loss of value

The updated masterplan document (provided to Biosis on 7 July 2021) (Appendix 2) adopts avoidance and minimisation strategies as outlined in the ACHA to avoid a greater portion of South Kiama-02 (AHIMS #52-5-0971). In the masterplan originally assessed as part of the ACHA, two of the eight test pit areas (one quarter of the site) was being avoided, whereas the updated masterplan avoids four of the eight test pit areas (one half of the site).

South Kiama-03 (AHIMS #52-5-0972) will continue to be completely avoided and will have no loss of value, while South Kiama-01 and South Kiama-04 (AHIMS #52-5-0970, and 52-5-0973) will be directly impacted with total loss of value.

Discussions with Unicom Construction Pty Ltd (Trevor Unicom 15/07/2021) have indicated that this Master Plan is subject to change as the project is still at the Planning Proposal stage. Further conservation outcomes may therefore be possible through future design plan changes. Future design changes have the

potential to continue to adopt avoidance and mitigation strategies to protect Aboriginal heritage within the study area. Should total avoidance not be possible through redesign, an Aboriginal Heritage Impact Permit (AHIP) will be necessary to harm the Aboriginal sites within the study area.

Illawarra Local Aboriginal Land Council response

Heritage NSW *Guidelines to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011) specify the importance of considering cultural landscapes when considering potential subsidence impacts to Aboriginal heritage values. The principle behind a cultural landscape is that 'the significance of individual features is derived from their inter-relatedness within the cultural landscape'. This means that sites or places cannot be 'assessed in isolation' but must be considered as parts of the wider cultural landscape. Hence the site or place will possibly have values derived from its association with other sites and places.

It is acknowledged that Aboriginal people are the primary determiners of the cultural significance of Aboriginal cultural heritage. As part of the Consultation Requirements, Biosis sent project information and the proposed methodology as Stage 2 to the Registered Aboriginal Parties (RAPs) which included the ILALC. As part of Stage 3 consultation Biosis requested any information about cultural significance of the site. The draft ACHA and Archaeological Report (AR) was sent as Stage 4 consultation to the RAPs for comment. No comments in response to Stages 2, 3 or 4 were received by Biosis from the ILALC as part of this consultation. There were also no responses in regards to the Aboriginal cultural landscape associated with this area. As this information was not provided to Biosis it was not included in the report and the impacts of the proposal in this regard could not be analysed in the ACHA or AR.

The ILALC commented that the masterplan in the ACHA only avoided two of the eight test pit areas (one quarter) of the site South Kiama-02. The updated masterplan (Appendix 2) avoids four out of the eight test pit areas in which artefacts were uncovered (one half of the site). This redesign has adopted the avoidance and minimisation strategies presented as mitigation strategies from the ACHA. South Kiama-03 will continue to be completely avoided and will have no loss of value, while South Kiama-01 and South Kiama-4 will be directly impacted with total loss of value.

It was also noted in client conversations (15/07/2021) that additional Aboriginal sites may be avoided as part of the masterplan redesign, as the masterplan presented as part of the Planning Proposal was an indicative plan as the application was for rezoning only. Should total avoidance not be possible through redesign, an AHIP will be necessary to harm the Aboriginal sites within the study area.

Conclusion

The avoidance and minimisation of harm recommendations in the ACHA and AR have been implemented in redesigning the updated masterplan. Other recommendations in the ACHA include continued consultation with the Aboriginal community, application of an AHIP prior to works, curation of collected artefacts, Cultural Heritage Management Plan and stop works provisions.

The Master Plan submitted to Council was indicative only. While it is indicative the redesign reduced the impact to Aboriginal sites within the study area. Conversations with Unicomb Constructions Pty Ltd have indicated that redesigns of the Master Plan have the potential to further reduce harm to Aboriginal heritage within the study area.

Please contact me if you have any enquiries.

Yours sincerely



Maggie Butcher
Consultant Archaeologist

Appendix 1 Council letter

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation

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 19 March 2019, Council resolved not to endorse a Planning Proposal (PP) to rezone land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the Princes Highway, Kiama to R2 Low Density Residential. The proponent subsequently sought a review of this decision via the Southern Regional Planning Panel.

On 10 July 2019, the Southern Planning Panel determined that the Proposal satisfied the Strategic Merit and Site-Specific Merit tests and recommended that a Gateway Determination be issued.

On 16 July 2019, Council resolved to accept the role of Planning Proposal Authority and as such be responsible for the administration processes associated with any Gateway processes associated with this Proposal. Council did not receive plan making delegations from the Minister of Planning and Public Spaces for this proposal. Any recommendation of Council would therefore be forwarded to the Minister for a final determination.

A Gateway Determination was issued by the NSW Department of Planning, Industry and Environment (DPIE) on 4 December 2019.

The Gateway required consultation with seven 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 and Site-Specific Merits of the proposal is no longer considered valid.

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.

Policy

Planning Proposals require consideration of several 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.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Communication/Community Engagement

Community Engagement was carried out by Council on behalf of the proponent in accordance with the delegations provided by DPIE. In accordance with the Kiama Community Participation Plan 2019, the subject PP was placed on public exhibition from 19 April to 31 May 2021 with an advertisement being placed in The Bugle, notification provided on Council's website and social media platforms. Written notification was sent to approximately 250 affected property owners and the following Precinct Committees/Community Associations:

- Minnamurra Progress Association;
- North Precinct Committee;
- Central Precinct Committee;
- Kiama Heights Residents Group;
- Jamberoo Valley Residents and Ratepayers Association;
- South Precinct Committee;
- Gerroa Community Association.

The Manager Strategic Planning also attended the Central Precinct Committee's April 2021 meeting to answer community questions about the proposal and Council's role in the Gateway process.

Consultation (Internal)

The subject PP was reviewed internally by relevant staff of Council.

Attachments

- 1 Southern Planning Panel's Record of Decision - Rezoning Review - South Kiama [↓](#)
- 2 Gateway Determination [↓](#)
- 3 Planning Proposal - South Kiama - White Constructions [↓](#)
- 4 Planning Proposal - South Kiama - Masterplan - White Constructions [↓](#)
- 5 Planning Proposal - South Kiama - Extract from Flood Study - White Construction [↓](#)

Enclosures

- 1 NSW RFS - Determination Letter - Planning Proposal - Saddleback Mountain Road & Weir Street, Kiama
- 2 Division of Biodiversity & Conservation - Comments - Planning Proposal - South Kiama
- 3 Department of Education - Comments - Planning Proposal - South Kiama
- 4 Illawarra Local Aboriginal Lands Council - Comments - Planning Proposal - South Kiama
- 5 Transport for NSW - Comments - Planning Proposal - South Kiama

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- 6 Sydney Water - Comments - Planning Proposal - South Kiama
- 7 Aboriginal Cultural Heritage Assessment - Planning Proposal - South Kiama - White Construction
- 8 Public Submissions - Planning Proposal - South Kiama

RECOMMENDATION

That Council write to the Minister for Planning and Public Spaces to:

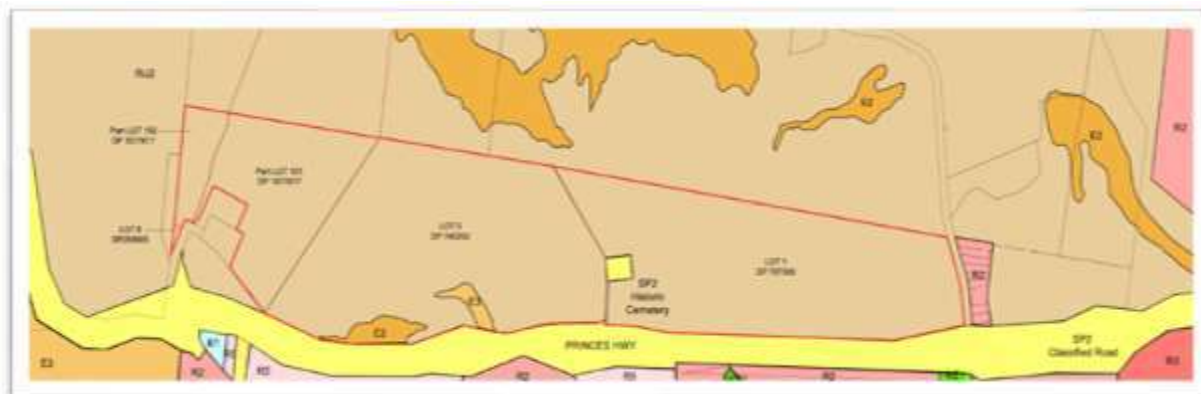
- 1) Inform the Minister that the proponent lead Planning Proposal, PP_2019_KIAMA_004_00, for land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the Princes Highway now fails to satisfy the Strategic Merit and Site-Specific Merit Tests for the following reasons:
 - other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan. This includes:
 - the planning proposal for Henry Parkes Drive, Kiama Downs
 - the planning proposal for 48 Campbell Street, Gerringong
 - completion of the Local Strategic Planning Statement and
 - the commitment to prepare and adopt a Local Housing Strategy by 30 June 2022;
 - the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements;
 - the amount of fill the proponent considers necessary to make the site suitable is excessive and completely outside Council's policy framework and provisions. The proposed cut and fill in fact suggests that the site is in not suitable for this level of development, noting the Southern Planning Panel's conclusion that the site would have site-specific merit through further refinement and reduction in initial yields (with no reduction of yields provided in this application)
 - there remains significant community opposition to the proposed development and this development is not deemed to be within the public interest.
- 2) Recommend that the NSW Department of Planning, Industry and Environment issue an amended Gateway Determination to no longer proceed with PP_2019_KIAMA_004_01 to rezone multiple Lots between Saddleback Mountain Road, Weir Street and the Princes Highway, Kiama.

BACKGROUND**Site Details**

The subject site (Figure 1), is located immediately west of and adjacent to the Princes Highway between Saddleback Mountain Road and Weir 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).



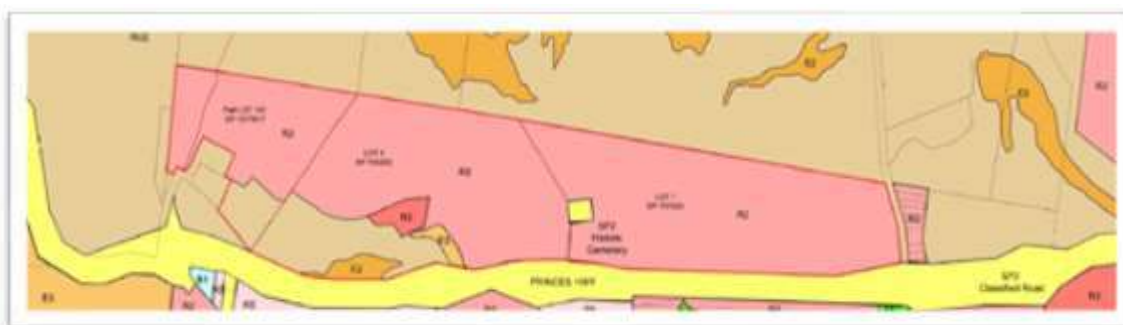
Figure 1 – Subject Site
(Source: Masterplan prepared by Unicom Development Services Pty Ltd)

**Figure 2 – Existing Zoning**

(Source: Masterplan prepared by Unicomb Development Services Pty Ltd)

Intent of Planning Proposal

A PP to rezone 41ha of a portion of the following lots from RU2 Rural Landscape to a mixture of R2 Low Density Residential and R5 Large Lot Residential was submitted by White Constructions in July 2018.

**Figure 3 – Original Proposed Zoning (Source: Planning Proposal Report – Version 1. prepared by Unicomb Development Services Pty Ltd)****Previous Council Resolution**

At its Ordinary Meeting held on 19 March 2019, Council resolved not to endorse this PP proceeding to Gateway at this time. Council resolved not to endorse this PP as Council was due to commence preparation of the Kiama Local Strategic Planning Statement (LSPS). Once adopted the LSPS would identify if new housing is required for the Municipality and where such housing should be developed. Concerns with traffic impacts, particularly around Kiama High School and the Manning Street and Bonaira Street intersection, and Sydney Water servicing abilities, were also part of the reason for the decision of Council at this time.

Southern Planning Panel

On 26 March 2019 the proponent submitted a request for a Rezoning Review as Council had notified the proponent that the original request to prepare a PP had not been supported.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

As part of the Rezoning Review process the Southern Planning Panel assessed the strategic merit of the proposal against the Strategic Merit Test as well as undertaking a Site-Specific Merit Test. The Planning Panel met with the proponent, Council staff, and Department of Planning, Industry and Environment as part of this process.

The Planning Panel met on 19 June 2019 to assess and determine if the proposal should be submitted for a Gateway Determination. On 10 July 2019 Council received correspondence from the Planning Panel that the Panel had determined that the proposal should proceed to Gateway Determination stage.

The Panel noted Council's advice on the outcome of community consultation undertaken to date to inform development of the LSPS and considered the option of not supporting the proposal to allow consideration of the future of this site to take place in the context of the Statement. Despite this, the Panel considered that the proposal had strategic merit given:

- *The site is identified in the Kiama Urban Strategy “if insufficient dwelling numbers are available”*
- *The Panel was not convinced that other initiatives being pursued by Council would meet projected housing needs identified in the Illawarra Shoalhaven Regional Strategy – particularly given existing projections rely heavily on progressing development of the West Elambra site which has not been rezoned to date. The Panel is therefore not convinced that “sufficient dwellings will be available” consistent with the KUS caveat on progressing development of this site.*
- *Gateway consideration can proceed in parallel with development of the LSPS, with the Council ultimately in a position to make a final decision in the context of directions articulated in the LSPS.*

On balance, the Panel considered the proposal had site specific merit providing the constraints can be addressed through further refinement and reduction in initial yields identified.

On 16 July 2019 Council resolved to accept the role of Planning Proposal Authority and in doing so acknowledged its responsibility to represent the views of the community in relation to the Planning Proposal.

Gateway Determination

A Gateway Determination was issued by the Department of Planning, Industry and Environment (DPIE) on 4 December 2019. The Gateway Determination required major amendments to the PP, including the following:

- Revised technical studies covering all parts of the subject site;
- A review of the master plan to:
 - Cover the entire site;
 - Identify the key principles for development of the site;
 - More fully address constraints, visual impacts, environmental outcomes, heritage outcomes and landscape outcomes;

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- Identify zonings, densities and heights that reflect the outcomes of the studies and master plan;
- Terrestrial biodiversity mapping; and
- Details on consistency with section 9.1 Directions, community and agency consultation and a project time frame.

The Gateway Determination required consultation with seven State agencies prior to a public exhibition period of 28 days. All actions associated with the Gateway Determination were to be completed by 4 June 2021 (i.e. within 18 months).

The timeframe for these actions to be completed has expired due to time delays associated with the proponent providing the revised technical studies and master plan and addressing concerns raised by State agencies.

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.

Assessment of Planning Proposal

Planning Proposal

The original PP, reported to March 2019 Council meeting, proposed rezoning the majority of the site, with the exception of the existing E2 Environmental Conservation and E3 Environmental Management zoned land and the low lying RU2 Primary Production to R2 Low Density Residential and a small area of R3 Medium Density Residential. This proposal would achieve approximately 285 standard residential allotments, 140 small residential allotments and 30 townhouse sites (i.e. a total of 455 allotments).

As part of addressing the Gateway requirements and State agencies' comments the proposed zoning has significantly changed from what was originally reported to Council in March 2019.

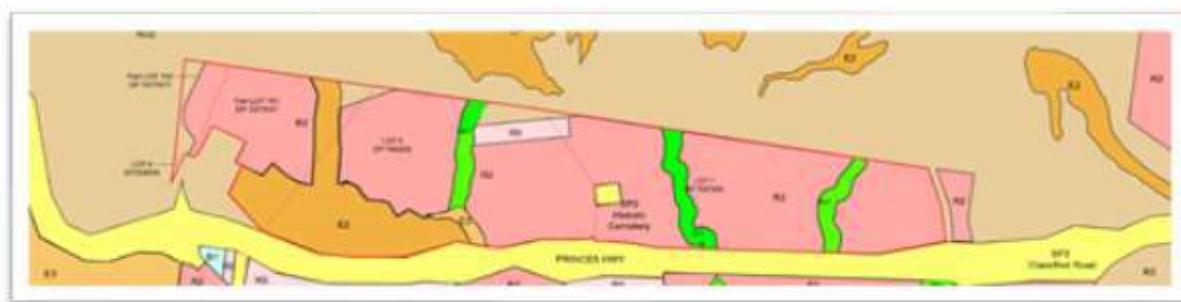


Figure 4 – Final Proposed Zoning (Source: Planning Proposal Report – Version 4. prepared by Unicomb Development Services Pty Ltd)

The current proposal, which was publicly exhibited and attached to this report, rezones the low lying RU2 land to E2 to capture the entirety of the Munna Munnora Creek. The other drainage channels within the site will be rezoned to RE1 Public Recreation. The highly visible parts of the site will retain their existing RU2 zoning. Another area towards the top of the hill will be rezoned R5 Large Lot Residential with a 7.5m max building height rather than 8.5m.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

The proposal no longer includes any R3 zoning. The Biodiversity land will also increase.

According to the submitted Planning Proposal, this proposal would achieve approximately:

- 285 standard residential allotments
- 156 small residential allotments
- 3 large lots
- With a total of 444 allotments



Figure 4 – Site Constraints Plan (Source: Planning Proposal Report – Version 4. prepared by Unicomb Development Services Pty Ltd)

Strategic Merit Test

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 uniquely identified by the Kiama Urban Strategy (now repealed). Point 6.1.4 of the Kiama Urban Strategy (KUS) outlines that this site should only be considered if housing needs exceed the capacity identified by the KUS. Of interest this site was not supported for inclusion by the then (DOP) Department of Planning.

Initiatives- Projected Housing Needs

1. Since the Southern Planning Panel recommendation, Council has progressed two (2) additional Planning Proposals these include:
 - At the Ordinary April 2021 meeting, Council endorsed a Planning Proposal for 48 Campbell Street, Gerringong to progress to the DPIE for a Gateway Determination. This has occurred and Council are awaiting the receipt of a Gateway Determination.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- At the Ordinary June 2021 meeting, Council endorsed the finalisation of the Planning Proposal for Henry Parkes Drive, Kiama Downs. Finalisation of this LEP amendment is currently underway

These 2 proposals will provide approximately 200 new allotments to the Municipality's housing supply. In this regard, other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan.

2. Since the Southern Planning Panel recommendation, the 2019 NSW Population Projections have been published. These projections indicate that the population of the Municipality is estimated to increase by 4,000 people between 2016 and 2040. This is a decrease from previous projections.
3. In adopting the Kiama LSPS 2020, Council has committed to preparing a Housing Strategy to detail how and where housing will be provided in the Municipality. This Housing Strategy is to be prepared and adopted by 30 June 2022.

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.

Site-Specific Merit Test

When assessing the proposal's site-specific merit, the Planning Authority must have regard to the following:

- The natural environment (including known significant environmental values, resources or hazards);
- The existing use, approved uses and likely future uses of land in the vicinity of the land subject to a proposal;
- The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

In their assessment, the Southern Planning Panel identified the following constraints on the site:

- The significant visual and landscape qualities of the site and its surrounds
- Significant Aboriginal and European heritage items on the site including the cemetery and dry stone walls
- Topography and associated service access challenges (water and sewerage)
- The need to establish the limits of the town and what that should look like.

1. Earthworks

In order to make the site suitable for residential development, the proponent is proposing to import fill to site. The Bulk Earthworks Plan, contained in the Masterplan, indicates that approximately 222,000 cubic metres of soil will be brought onto site in order for the proposed lot layout to be achieved. In some instances, this will increase the height of already highly visible areas of the site by a further 3-4m. The Bulk Earthworks Plan shows retaining walls with a maximum height of 4.8m onsite.

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

The importation of this level of fill would be defined as both Designated Development and a Scheduled Activity for the purposes of the *Environmental Planning and Assessment Act 1979* and the *Protection of the Environment Operations Act 1997* respectively. Ministerial Direction 6.1 – Local Plan Making outlines that a planning proposal must minimize the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority and to not identify development as designated development.

2. Visual Assessment

The submitted Visual Assessment has not taken into consideration these increases in ground level and therefore the amount the site which will be visually prominent will increase. Similarly, the submitted Traffic Noise Intrusion Assessment has not taken into consideration these increases in ground level, particularly on sites within 150m of the Highway where the ground level will be increased by 3-4m, bringing them level with the Highway.

Heritage

The Site Constraints Plan, contained in the Masterplan, indicates that portions of heritage listed dry stone walls and identified Aboriginal artefacts will be destroyed in order for the proposed lot layout to be achieved. The Illawarra Local Aboriginal Land Council and the Kiama and District Historical Society have both objected to this proposal (see below).

As previously outlined, Council has committed to preparing and adopting a Housing Strategy to define the limits of the Kiama township.

In this regard, it is now the view of staff that this PP no longer satisfies the DPIE's Site-Specific Merit test and should therefore no longer proceed. This is particularly the case noting the Southern Planning Panel's conclusion that the site would have Site-Specific merit through further refinement and reduction in initial yields. This has not satisfactorily occurred.

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 5 May 2020.

The following responses were provided by agencies.

Agency	Response
Sydney Water	On 3 June 2020, Sydney Water raised no objection to the planning proposal (see enclosed). Sydney Water have requested that future developers within the site submit a feasibility application to Sydney Water to ensure that their development is consistent with the allowances made in the upgrade works.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	Sydney Water have indicated that additional infrastructure, such as lead in mains or amplifications, may be required.
Endeavour Energy	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.
Illawarra Local Aboriginal Lands Council	<p>On 8 June 2020, the Illawarra Local Aboriginal Lands Council (ILALC) objected to the proposal (see enclosed) and have raised the following concerns:</p> <ul style="list-style-type: none"> • Residential development in the area based on current anticipated demand would not warrant a development of this size; • The cultural landscape from an Aboriginal and European heritage perspective, associated with the land concerned has not been factored into any assessment to this proposal; • This is potential for significant Aboriginal heritage items to be present on the sites concerned and while mitigation measures may be able to be implemented avoidance of impact is always the preferred course of action. <p>In raising these concerns, the ILALC has confirmed that they believe that this development will have a significant impact on the cultural landscape associated with the area. Cultural landscape in this instance includes both a significant Aboriginal perspective with obvious European Heritage. It is their view that there has been an inadequate evaluation of the cultural landscape across the development site and surrounding areas.</p> <p>The ILALC have suggested that the development is not required to address a current demand and therefore, as per the Burra Charter, the avoidance of impact is the preferred course of action. Therefore,</p>

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Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>the preferred course of action should be to not proceed with this development.</p> <p>To address these concerns, it was requested that an Aboriginal Cultural Heritage Assessment (ACHA) be prepared and submitted.</p> <p>On 18 December 2020 an ACHA was submitted (see enclosed). As part of preparing this ACHA, Biosis Pty Ltd consulted with a number of Aboriginal Parties, including the ILALC. The submitted ACHA contains seven (7) recommendations:</p> <ol style="list-style-type: none"> 1. Continued consultation with the registered Aboriginal parties 2. Avoidance of Aboriginal sites and sensitive landforms <p>Any potential works should and/or minimise impacts to Aboriginal sites and sensitive landforms, however in the instance they cannot be avoided, Recommendations 3 to 7 should be implemented.</p> <ol style="list-style-type: none"> 3. Application for an Aboriginal Heritage Impact Permit 4. Curation of collected artefacts 5. Cultural Heritage Management Plan 6. Stop work provision for any potential heritage sites identified during construction 7. Stop work provision for any potential discovery of human remains. <p>The submitted Masterplan demonstrates that the proponent has not sought to avoid Aboriginal sites and sensitive landforms. It would appear that only two of the eight identified artefacts will be avoided. It has been argued that avoidance of these artefacts can occur at Development Application stage. However, best practice, as suggested by the ILALC, would be to not zone areas containing Aboriginal heritage or sensitive landforms for residential purposes. <u>As this has not occurred it is considered that the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation.</u></p>
Transport for NSW	On 10 September 2020, Transport for NSW (TfNSW) outlined that they do not support the planning

Item 4.4

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>proposal in its current form. In their submission (see enclosed), TfNSW raised the following concerns:</p> <ul style="list-style-type: none"> • Impact of State road network <p>TfNSW requested clarification on whether this land will be identified as an Urban Release Area under the Kiama LEP, thereby ensuring satisfactory arrangements are made for State public infrastructure prior to the subdivision of land.</p> <ul style="list-style-type: none"> • Walking, cycling and public transport <p>TfNSW is not convinced that the central underpass of the Princes Highway is wide enough to accommodate a travel lane and a footpath.</p> <ul style="list-style-type: none"> • Noise <p>TfNSW remains concerned with the level of detail shown in the noise assessment provided. TfNSW believes noise mounding or barriers are likely to be required at this location to adequately mitigate noise levels for future residential development. This is supported by Section O:5.1.53 of the Kiama Council DCP which states, 'Acoustic rear boundary fencing will be required in most circumstances for residential lots abutting an arterial or sub-arterial road.' TfNSW's expectation is that any noise barriers would be located within private land and not within the road reserve.</p> <p><u>Council Response</u></p> <p>Council has confirmed that, should this proposal proceed, the site will be identified as an Urban Release Area and provisions similar to Part 6 of the Wollongong LEP 2009 be incorporated into the Kiama LEP.</p> <p>Council are of the opinion that the width of the central underpass is sufficient to accommodate a travel lane and a footpath. Despite this, this location is not considered suitable for pedestrian connectivity of the proposal side to the broader Kiama pedestrian network. It is noted that Council has strategic pedestrian linkages in Stewart Place and that, should this proposal proceed, investigations of a pedestrian footbridge over the Princes Highway to Stewart Place should be undertaken as part of any future DA.</p>

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Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>Council shares TfNSW's concerns regarding noise barriers. As discussed above, the submitted Traffic Noise Intrusion Assessment has not taken into consideration the proposed increases in ground level, particularly on sites within 150m of the Highway where the ground level will be increased by 3-4m, bringing them level with the Highway. The conclusions/recommendations of the Noise Intrusion Assessment are therefore potentially flawed.</p>
<p>Department of Planning, Industry and Environment - Energy and Science Division</p>	<p>The Energy and Science Division of DPIE supported the updated zoning and riparian layers of the PP, reflecting the expanded area of E2 at Munna Munnora Creek and the east-west riparian corridors traversing the site (see enclosed).</p> <p>The Division provided several rounds of commentary on this proposal, specifically related to floodplain risk management.</p> <p>Following several amendments to the proposal the Division consider that the planning proposal is inconsistent with the objectives of Section 9.1 Direction 4.3 Flood Prone Land, in particular Clauses 5 & 6, as well as the NSW Floodplain Development Manual (FDM) 2005. The above issues are not minor and should be of concern to Council to satisfactorily address.</p> <p>The Division considers the environmental, public safety and flood impacts associated with the proposed filling of the floodplain to the top of the creek bank can be resolved by applying setback provisions within Kiama LEP 2011 flood planning and riparian land framework. We consider that Council now has adequate information to resolve this matter by aligning the planning proposal with the objectives of KLEP 2011, Section 9.1 Direction 4.3 & the FDM.</p> <p><u>Council Comments</u></p> <p>It is noted that the submitted Flood Study, prepared by SitePlus, makes no on the impact of the proposed cut and fill and retaining walls on the movement of flood waters on the site.</p> <p>The Flood Mapping, extracted from the Flood Study and attached to this report, use the term 'Proposed Development Scenario'. It is therefore presumed that SitePlus's conclusion that the rezoning will allow for a</p>

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Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>safe development in contingent on the significant earthwork.</p> <p>As indicated above, the significant earthworks outlined in this proposal are not supported for a number of reasons. If the earthworks do not proceed then the conclusions contained in the Flood Study are not valid.</p> <p><u>In this regard, it is considered that the proposal is inconsistent with Ministerial Direction 4.3 Flood Prone Land.</u></p>
Department Primary Industries – Water (Natural Resources Access Regulator (NRAR))	<p>Despite numerous attempts to illicit a response from NRAR no response was received.</p> <p>It is extremely disappointing that still, to date, NRAR have not provided a response. This is particularly the case as a result of the subdivision layout will potentially result in on-site detention basin/s occurring on site. NRAR are the approval body for on-site detention basins.</p>
New South Wales Rural Fire Service (NSW RFS)	<p>After months of consultation the RFS has confirmed, on 1 April 2021 (see enclosed), that they do not object to the PP subject to a requirement that future subdivision of the land complies with <i>Planning for Bushfire Protection (PBP) 2019</i>. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • Provision of Asset Protection Zones (APZs) within the proposed lots in accordance with Table 5.3a; • Access to be provided in accordance with the specifications set out in Table 5.3b including; and • Services to be provided in accordance with Table 5.3c. <p>Additionally, with regard to these requirements, the following comments were made in relation to the referenced concept plan:</p> <ul style="list-style-type: none"> • <u>Site Ingress Paths</u> <p>To ensure adequate access and timely response times to all incidents, at a minimum, the central underpass of the motorway must be made available for a Category 1 appliance to enter the proposal site.</p>

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>The existing road network may be required upgrade to facilitate this traffic movement.</p> <p>To ensure that future subdivision development can be supported by NSW RFS, at the strategic planning stage prior to approval of the PP, the consent authority shall be satisfied that the above access provision can occur at future development stages.</p> <ul style="list-style-type: none"> • <u>Consultation with emergency service providers</u> <p>NSW RFS recommend that comments are received from all emergency service providers during the consultation period regarding the adequacy on ingress paths proposed.</p> <p><u>Council Response</u></p> <p>Future applications will be integrated development and general terms of approval will be required to be obtained from NSW RFS.</p> <p>The current dimensions of the central underpass of the Princes Highway appears to allow for a Category one appliance to enter the site. Further investigation would be required as part of any future DA.</p>
Department of Education	<p>While not a requirement of the Gateway Determination, Council sought comments from the NSW Department of Education (DoE) at the request of the community.</p> <p>The DoE have determined, considering the latest DoE Student by Area projections for Kiama, that the Kiama Primary School and Kiama High School will both be able to accommodate the future students associated with the proposal.</p>

Public Exhibition

In accordance with the Kiama Community Participation Plan 2019, the subject PP was placed on public exhibition from 19 April to 31 May 2021 (i.e. a total of 42 days) with an advert being placed in The Bugle, notification provided on Council's website and social media platforms. Written notification was sent to approximately 250 affected property owners and the following Precinct Committees/Community Associations:

- Minnamurra Progress Association
- North Precinct Committee
- Central Precinct Committee
- Kiama Heights Residents Group

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- Jamberoo Valley Residents and Ratepayers Association
- South Precinct Committee
- Gerroa Community Association

The Manager Strategic Planning also attended the Central Precinct Committee's April 2021 meeting to answer community questions about the proposal and Council's role in the Gateway process.

During public exhibition, a total of 300 submissions were received.

A total of 296 submissions were received from individual community members, and 4 submissions were received from the following community groups:

- Kiama Central Precinct Committee
- Kiama Heights Resident Group
- Kiama & District Historical Society
- Kiama High School P&C.

Engagement Summary

Submissions	Number	Key Issues
Submissions - For	16	1. Increase the supply of housing. 2. Support local jobs during construction.
Submissions - Against	284	1. Strategic Merits. 2. Traffic & Parking Impacts. 3. Loss of rural landscape. 4. Flooding Issues. 5. Heritage Impacts 6. Infrastructure Capacity

Submission Considerations

Topic	Key comments	Staff Response/Considerations
Strategic Merit	The strategic merit of the PP has been questioned, with several submission stating that there is no evidence that the PP assists Kiama	The Strategic Merit of the proposal has been previously revisited as part of this report. This report has outlined that the proposal fails to satisfy the Strategic Merit test for numerous reasons.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Topic	Key comments	Staff Response/Considerations
	Council to meet the housing demands and population growth.	
Traffic and Parking Congestion	Concerns have been raised regarding the potential impacts additional dwellings will have on the existing road network, particular at the intersections of Saddleback Mountain Road and South Kiama Drive and Manning and Bonaira Streets.	<p>The submitted Traffic Impact Assessment, prepared by Bitzios Consulting, has analysed the potential traffic impacts associated with the proposal. The Traffic Impact Assessment has identified that the main intersection to be impacted by the proposal is Saddleback Mountain Road and South Kiama Drive, particularly between 8am and 9am, due to the presence of Kiama High School.</p> <p>When analysing the impact of the proposal, Bitzios have assumed a compounding growth rate of 1.5% per annum on the 2016 traffic data. Bitzios's analysis has concluded that intersection of Saddleback Mountain Road and South Kiama Drive performs satisfactorily in terms of Degree of Saturation (DOS), Level of Service (LOS), average delay and the 95th percentile que.</p> <p>This is, however, no denying that this proposal will have wider reaching impacts on the Kiama road network. The Bitzios report has calculated that the rezoning could result in, worst case scenario, 525 trips in the AM peak hours. Bitzios has suggested that 368 (i.e. 70%) of these trips will be exiting the site and of these 309 will be heading north. All north born trips will need to travel through the intersections of Saddleback Mountain Road and South Kiama Drive and Manning and Bonaira Streets.</p> <p>Until such time as the Kiama Traffic and Parking Study is complete it is difficult to fully understand the implications of this proposal.</p>
	On and off ramps for the site to access Princes Highway required.	TfNSW are the roads authority for the Princes Highway and have confirmed that no additional on or off ramps will be considered for this proposal.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Topic	Key comments	Staff Response/Considerations
Loss of Rural Landscapes	Concerns have been raised regarding the negative visual effect the proposal will have on the surrounding locality.	Visual impacts associated with this proposal have been previously revisited as part of this report. This report has outlined that the submitted Visual Assessment has not taken into consideration the increases in ground level, associated with the substantial filling proposed, and therefore the amount the site which will be visually prominent will increase.
Flood Issues	Submissions raised concerns regarding the likelihood of increased flood events associated with the proposal and the Flood Assessment lack of proposed mitigation measures.	Flood issues associated with this proposal have been previously revisited as part of this report. This report has outlined that the proposal is inconsistent with Ministerial Direction 4.3 Flood Prone Land.
Infrastructure Capacity	Submissions raised concerns regarding Sydney Water's ability to service the site.	As previously discussed, Sydney Water raised no objection to the planning proposal (see enclosed). Sydney Water have indicated that additional infrastructure, such as lead in mains or amplifications, may be required. In this regard the Sydney Water are confident of their ability to service the site.
	Submissions raised concerns regarding the existing Primary and High Schools' capacity to accommodate student growth associated with this proposal.	In their response, the DoE has confirmed that their Student by Area projections take into account all future/potential urban expansion areas, including this site, identified by the Kiama LSPS 2020. In this regard the DoE are confident that they can accommodate student growth associated with this proposal.
Aboriginal and European	Kendall's Cemetery and	This fact is not refuted.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Topic	Key comments	Staff Response/Considerations
Cultural and Built Heritage	the numerous dry stone walls on the site are listed as heritage items and need to be protected. All development should be setback at least 20m from Kendall's Cemetery.	It is acknowledged that, as part of the indicative lot layout, the proponent has attempted to retain all dry stone walls on the site. However, some of the walls are proposed to be demolished as part of the indicative lot layout. This indicative lot layout, and therefore the associated zoning etc. is inconsistent with Ministerial Directions 2.3 Heritage Conservation.

Item 4.4

Delegations

As this PP was subject to a Rezoning Review (i.e. involvement of Southern Planning Panel) Council has not received plan making delegations, from the Minister of Planning and Public Spaces, for this Proposal.

Any recommendation of Council will be forwarded to the Minister for a final determination.

Conclusion

In recommending that the DPIE issue a Gateway Determination for this proposal, the Southern Planning Panel considered that the proposal had strategic merit given:

- *The site is identified in the Kiama Urban Strategy "if insufficient dwelling numbers are available"*
- *The Panel was not convinced that other initiatives being pursued by Council would meet projected housing needs identified in the Illawarra Shoalhaven Regional Strategy – particularly given existing projections rely heavily on progressing development of the West Elambra site which has not been rezoned to date. The Panel is therefore not convinced that "sufficient dwellings will be available" consistent with the KUS caveat on progressing development of this site.*
- *Gateway consideration can proceed in parallel with development of the LSPS, with the Council ultimately in a position to make a final decision in the context of directions articulated in the LSPS.*

Following receiving input from the relevant State Agencies and significant involvement from the community, Council is of the opinion that this proposal now fails to satisfy the Strategic Merit and Site-Specific Merit Tests for the following reasons:

- other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan, including planning proposals for Henry Parkes Drive, Kiama Downs and 48 Campbell Street, Gerringong and the commitment to prepare and adopt a local housing strategy by 30 June 2022,

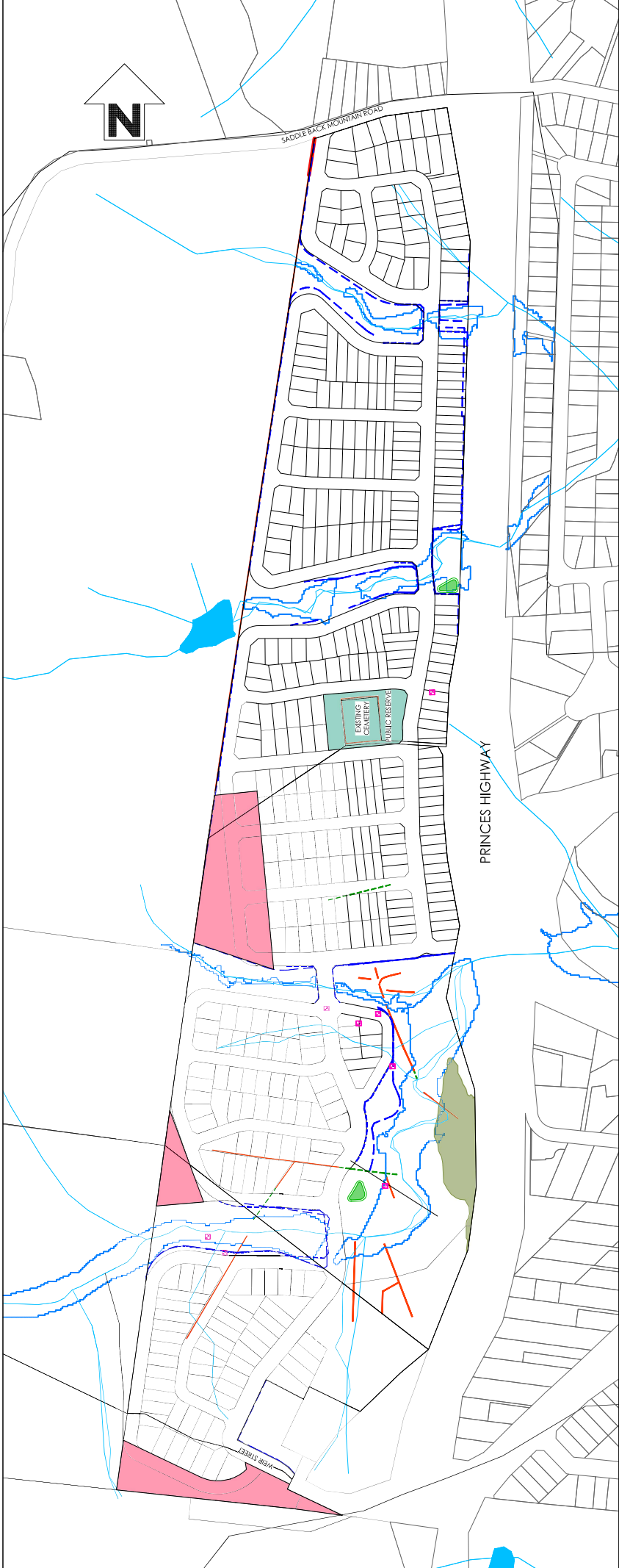
Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

-
- the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements,
 - the amount of fill the proponent considers necessary to make the site suitable in fact suggests that the site is in fact not suitable for this level of development, noting the Southern Planning Panel's conclusion that the site would have Site-Specific merit through further refinement and reduction in initial yields. This has not satisfactorily occurred, and

As Council has not received plan making delegations, from the Minister of Planning and Public Spaces, for this Proposal, the Minister will need to make the final decision on this proposal. It is therefore recommended that the Minister be informed that this proposal now fails to satisfy the Strategic Merit and Site-Specific Merit Tests and that the NSW Department of Planning, Industry and Environment issue an amended Gateway Determination to no longer proceed with PP_2019_KIAMA_004_01 to rezone multiple Lots between Saddleback Mountain Road, Weir Street and the Princes Highway, Kiama.

Appendix 2 Uppdated masterplan



LEGEND

- APPROXIMATE LOCATION OF HERITAGE STACKED ROCK WALLS TO BE RETAINED
- APPROXIMATE LOCATION OF HERITAGE STACKED ROCK WALLS TO BE REMOVED
- LOCATION OF PROPOSED RETAINING WALLS
- LOCATION OF ARTEFACTS PRESENT
- 100yr FLOOD EXTENTS
- VEGETATION FROM BIODIVERSITY STUDY
- VISUALLY EXPOSED AREAS

SITE CONSTRAINTS PLAN

SCALE 1:2,250



SCALE: -1:2,250 @ A1
-1:4,500 @ A3

No.	REVISIONS	DESCRIPTION	APP	DATE	siteplus				Client file		Design file		Ref & Draw No
					planning	engineering	landscape	design	management	Height Survey	Weight	Drawn	
1		PART LOT 102 ADDED	A.C.	10/12/19						A.H.D			15158.RZ.SC01
J		REVISED TO COUNCIL COMMENTS	A.C.	09/01/20						A.C			Sheet No 01 of 01
K		REVISED ROAD RESERVE BOUNDARY	A.C.	07/04/20						A.C			Scale 1:2,250 @ A1
L		LAYOUT AMENDED	A.C.	21/08/20						Checked			Date 19/05/2018
M		LAYOUT AMENDED	A.C.	10/02/21						Approved			Rev A1
					APPROVAL		KIAMA		WHITE CONSTRUCTIONS		PROPOSED SUBDIVISION		
											SOUTH KIAMA LOT 1 DP707300,		
											LOT 5 DP740252 & LOT 101 DP1077617		
											SITE CONSTRAINTS PLAN		

16 July 2021

Mr Trevor Unicomb
Unicomb Development Services Pty Ltd

Dear Trevor

South Kiama Planning Proposal letter of advice – Historical heritage

Our Ref: Matter 35621

Biosis Pty Ltd (Biosis) was commissioned by Unicomb Development Services Pty Ltd on behalf of White Constructions Pty Ltd to undertake a Historical Heritage Assessment (HHA) of a planning proposal for an announced re-zoning in South Kiama NSW (the study area). The study area includes Lot 1 Deposited Plan (DP) 707300, Lot 5 DP 740252 Lot 101 DP 1077617, Lot 102 DP 1077617 and Lot 8 DP 258605. This report was completed on 12 February 2020.

Biosis received a request from Trevor Unicomb of Unicomb Development Services on 28 June 2021 for advice and comment in regards to a meeting from Kiama Municipal Council (Council) in relation to the Planning Proposal (Council document attached as Appendix 1 to this letter).

Summary

Council has not endorsed the Planning Proposal in 2019 and sought a review of the decision via the Southern Regional Planning Panel. The Southern Planning Panel determined that the Proposal satisfied the Strategic Merit and Site-Specific Merit tests and recommended that a Gateway Determination be issued. A Gateway Determination was issued by the NSW Department of Planning, Industry and Environment (DPIE) on 4 December 2019. The consultation requirements of the Gateway determination has been completed.

Council undertook an analysis of the consultation process and the Strategic Merits of the site were considered. The Council report (Appendix 1) provides a recommendation for the Planning Proposal to no longer proceed as the Strategic Merit and Site-Specific Merits of the proposal is no longer considered valid.

Historical heritage concerns from Council

Ministerial Directions 2.3

The following has been taken from sections of the Council letter. Page 348 under 'Recommendations' states that:

Council write to the Minister for Planning and Public Spaces to:

1) Inform the Minister that the proponent lead Planning Proposal, PP_2019_KIAMA_004_00, for land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the

Princes Highway now fails to satisfy the Strategic Merit and Site-Specific Merit Tests for the following reasons:

- *the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements;*

Submission Considerations

Page 355 under the heading 'Heritage' states:

The Site Constraints Plan, contained in the Masterplan, indicates that portions of heritage listed dry stone walls and identified Aboriginal artefacts will be destroyed in order for the proposed lot layout to be achieved. The Illawarra Local Aboriginal Land Council and the Kiama and District Historical Society have both objected to this proposal (see below).

As previously outlined, Council has committed to preparing and adopting a Housing Strategy to define the limits of the Kiama township.

In this regard, it is now the view of staff that this PP no longer satisfies the DPIS's Site-Specific Merit test and should therefore no longer proceed. This is particularly the case noting the Southern Planning Panel's conclusion that the site would have Site-Specific merit through further refinement and reduction in initial yields. This has not satisfactorily occurred.

The key comments in the table outlining submission considerations in regards to historical heritage states:

Kendall's Cemetery and the numerous dry stone walls on the site are listed as heritage items and need to be protected. All development should be setback at least 20m from Kendall's Cemetery.

The staff response and considerations are:

It is acknowledged that, as part of the indicative lot layout, the proponent has attempted to retain all dry stone walls on the site. However, some of the walls are proposed to be demolished as part of the indicative lot layout.

This indicative lot layout, and therefore the associated zoning etc. is inconsistent with Ministerial Directions 2.3 Heritage Conservation.

Ministerial Directions 2.3

Ministerial Directions issued under Section 9.1(2) of the EP&A Act states that planning proposals must contain provisions that facilitate the conservation of:

(4)(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 recommendations outlined by Biosis in the HHA outline several ways in which the historical heritage of the area can be conserved and to mitigate the impacts of the development on the historical heritage. This includes recommending setbacks from both the cemetery and the dry stone walls, retaining portions of dry stone walls assessed as being in average to good condition, establishing acceptable impacts to portions of walls assessed as being in poor condition, preparation of a Conservation Management Plan and Statement of Heritage Impact (SoHI) to support any Development Application.

Council has acknowledged that as part of the indicative layout of the planning proposal the design has attempted to retain all dry stone walls on the site. Some parts of the dry stone walls may be demolished for roads, however should the majority be kept and Kendalls Cemetery be retained, this would be in line with the Ministerial Directions 2.3. However, this can only be confirmed when the masterplan has been finalised and impacts to the heritage can be assessed by a qualified heritage professional in a SoHI.

Submission Considerations

The key comment for the submission considerations is in line with the recommendations from the HHA, in that there should be a minimum 20 metre setback from Kendall's Cemetery.

The staff response is contradictory in its content, as it states that while all dry stone walls on the site have attempted to be retained, a small portion are proposed to be demolished and that this is inconsistent with the Ministerial Directions 2.3 Heritage Conservation. In the current masterplan, the only dry stone walls that will be demolished are where the roads will be, and as Council stated the majority will be retained. In addition to this Kendall Cemetery will also be retained. This preservation of as much historical heritage as possible within the study area is consistent with the Ministerial Directions 2.3 Heritage Conservation.

Biosis response

Biosis completed a HHA in line with the relevant legislation and guidelines, including:

- *Kiama Local Environmental Plan 2011 (LEP)*
- *Environmental Planning and Assessment Act 1979 NSW (EP&A Act)*
- *NSW Heritage Act 1977*

The HHA identified that two items listed on the Kiama LEP, these are:

- Kendalls Cemetery, (Kiama LEP listed item No. 144), South Kiama Drive, Lot 3 DP258605.
- Dry stone walls, (Kiama LEP listed item No. 64), Kiama.

This assessment has found that both heritage items listed within the study area are of local heritage significance for their aesthetic significance and close association with the Kendall family and the early settlement of Kiama. Kendalls Cemetery also holds a high degree of spiritual significance. There was one area of archaeological potential within the study area, this was within the curtilage of Kendalls Cemetery (see Figure 13 in Biosis Pty Ltd 2020, p.41).

Conclusion

The recommendations in the HHA have been proposed in order to minimise any impacts on historical heritage or archaeology from the Planning Proposal. This includes recommending setbacks from both the

cemetery and the dry stone walls, retaining portions of dry stone walls assessed as being in average to good condition, establishing acceptable impacts to portions of walls assessed as being in poor condition and the preparation of a Conservation Management Plan and SoHI to support any Development Application.

Attempts have been made to reduce the impacts to historical heritage by designing around Kendall's Cemetery and attempting to keep all dry stone walls. Unfortunately some parts of the dry stone walls have been proposed to be demolished, however the majority will remain (in the last received copy of the masterplan (dated 10 February 2021)). As it proposed that the majority of the stone walls will remain, and that Kendall's Cemetery will also remain, the indicative lot layout and therefore associated zoning is consistent with Ministerial Directions 2.3 Heritage Conservation.

Please contact me if you have any enquiries.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Maggie Butcher', with a long horizontal flourish extending to the right.

Maggie Butcher
Consultant Archaeologist

Appendix 1 Council letter

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation

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 19 March 2019, Council resolved not to endorse a Planning Proposal (PP) to rezone land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the Princes Highway, Kiama to R2 Low Density Residential. The proponent subsequently sought a review of this decision via the Southern Regional Planning Panel.

On 10 July 2019, the Southern Planning Panel determined that the Proposal satisfied the Strategic Merit and Site-Specific Merit tests and recommended that a Gateway Determination be issued.

On 16 July 2019, Council resolved to accept the role of Planning Proposal Authority and as such be responsible for the administration processes associated with any Gateway processes associated with this Proposal. Council did not receive plan making delegations from the Minister of Planning and Public Spaces for this proposal. Any recommendation of Council would therefore be forwarded to the Minister for a final determination.

A Gateway Determination was issued by the NSW Department of Planning, Industry and Environment (DPIE) on 4 December 2019.

The Gateway required consultation with seven 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 and Site-Specific Merits of the proposal is no longer considered valid.

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.

Policy

Planning Proposals require consideration of several 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.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Communication/Community Engagement

Community Engagement was carried out by Council on behalf of the proponent in accordance with the delegations provided by DPIE. In accordance with the Kiama Community Participation Plan 2019, the subject PP was placed on public exhibition from 19 April to 31 May 2021 with an advertisement being placed in The Bugle, notification provided on Council's website and social media platforms. Written notification was sent to approximately 250 affected property owners and the following Precinct Committees/Community Associations:

- Minnamurra Progress Association;
- North Precinct Committee;
- Central Precinct Committee;
- Kiama Heights Residents Group;
- Jamberoo Valley Residents and Ratepayers Association;
- South Precinct Committee;
- Gerroa Community Association.

The Manager Strategic Planning also attended the Central Precinct Committee's April 2021 meeting to answer community questions about the proposal and Council's role in the Gateway process.

Consultation (Internal)

The subject PP was reviewed internally by relevant staff of Council.

Attachments

- 1 Southern Planning Panel's Record of Decision - Rezoning Review - South Kiama [↓](#)
- 2 Gateway Determination [↓](#)
- 3 Planning Proposal - South Kiama - White Constructions [↓](#)
- 4 Planning Proposal - South Kiama - Masterplan - White Constructions [↓](#)
- 5 Planning Proposal - South Kiama - Extract from Flood Study - White Construction [↓](#)

Enclosures

- 1 NSW RFS - Determination Letter - Planning Proposal - Saddleback Mountain Road & Weir Street, Kiama
- 2 Division of Biodiversity & Conservation - Comments - Planning Proposal - South Kiama
- 3 Department of Education - Comments - Planning Proposal - South Kiama
- 4 Illawarra Local Aboriginal Lands Council - Comments - Planning Proposal - South Kiama
- 5 Transport for NSW - Comments - Planning Proposal - South Kiama

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- 6 Sydney Water - Comments - Planning Proposal - South Kiama
- 7 Aboriginal Cultural Heritage Assessment - Planning Proposal - South Kiama - White Construction
- 8 Public Submissions - Planning Proposal - South Kiama

RECOMMENDATION

That Council write to the Minister for Planning and Public Spaces to:

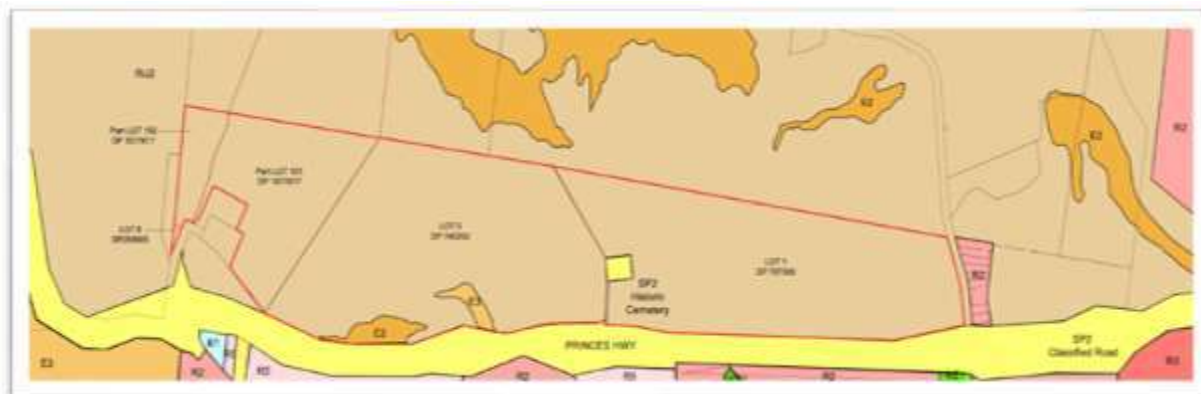
- 1) Inform the Minister that the proponent lead Planning Proposal, PP_2019_KIAMA_004_00, for land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the Princes Highway now fails to satisfy the Strategic Merit and Site-Specific Merit Tests for the following reasons:
 - other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan. This includes:
 - the planning proposal for Henry Parkes Drive, Kiama Downs
 - the planning proposal for 48 Campbell Street, Gerringong
 - completion of the Local Strategic Planning Statement and
 - the commitment to prepare and adopt a Local Housing Strategy by 30 June 2022;
 - the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements;
 - the amount of fill the proponent considers necessary to make the site suitable is excessive and completely outside Council's policy framework and provisions. The proposed cut and fill in fact suggests that the site is in not suitable for this level of development, noting the Southern Planning Panel's conclusion that the site would have site-specific merit through further refinement and reduction in initial yields (with no reduction of yields provided in this application)
 - there remains significant community opposition to the proposed development and this development is not deemed to be within the public interest.
- 2) Recommend that the NSW Department of Planning, Industry and Environment issue an amended Gateway Determination to no longer proceed with PP_2019_KIAMA_004_01 to rezone multiple Lots between Saddleback Mountain Road, Weir Street and the Princes Highway, Kiama.

BACKGROUND**Site Details**

The subject site (Figure 1), is located immediately west of and adjacent to the Princes Highway between Saddleback Mountain Road and Weir 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).



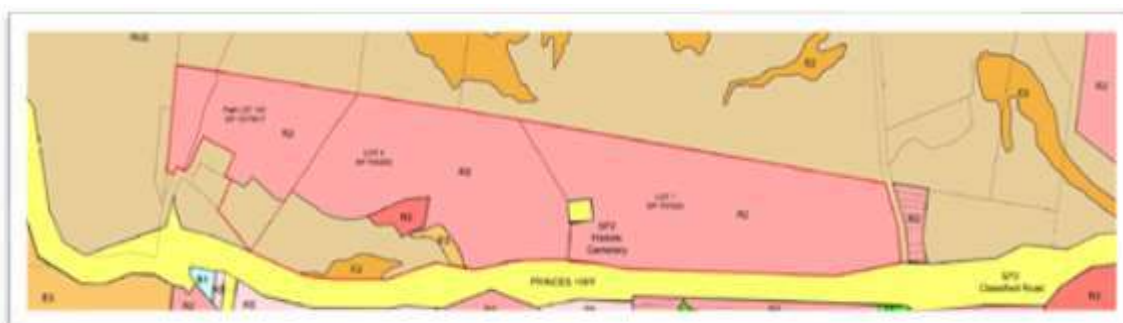
Figure 1 – Subject Site
(Source: Masterplan prepared by Unicom Development Services Pty Ltd)

**Figure 2 – Existing Zoning**

(Source: Masterplan prepared by Unicomb Development Services Pty Ltd)

Intent of Planning Proposal

A PP to rezone 41ha of a portion of the following lots from RU2 Rural Landscape to a mixture of R2 Low Density Residential and R5 Large Lot Residential was submitted by White Constructions in July 2018.

**Figure 3 – Original Proposed Zoning (Source: Planning Proposal Report – Version 1. prepared by Unicomb Development Services Pty Ltd)****Previous Council Resolution**

At its Ordinary Meeting held on 19 March 2019, Council resolved not to endorse this PP proceeding to Gateway at this time. Council resolved not to endorse this PP as Council was due to commence preparation of the Kiama Local Strategic Planning Statement (LSPS). Once adopted the LSPS would identify if new housing is required for the Municipality and where such housing should be developed. Concerns with traffic impacts, particularly around Kiama High School and the Manning Street and Bonaira Street intersection, and Sydney Water servicing abilities, were also part of the reason for the decision of Council at this time.

Southern Planning Panel

On 26 March 2019 the proponent submitted a request for a Rezoning Review as Council had notified the proponent that the original request to prepare a PP had not been supported.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

As part of the Rezoning Review process the Southern Planning Panel assessed the strategic merit of the proposal against the Strategic Merit Test as well as undertaking a Site-Specific Merit Test. The Planning Panel met with the proponent, Council staff, and Department of Planning, Industry and Environment as part of this process.

The Planning Panel met on 19 June 2019 to assess and determine if the proposal should be submitted for a Gateway Determination. On 10 July 2019 Council received correspondence from the Planning Panel that the Panel had determined that the proposal should proceed to Gateway Determination stage.

The Panel noted Council's advice on the outcome of community consultation undertaken to date to inform development of the LSPS and considered the option of not supporting the proposal to allow consideration of the future of this site to take place in the context of the Statement. Despite this, the Panel considered that the proposal had strategic merit given:

- *The site is identified in the Kiama Urban Strategy "if insufficient dwelling numbers are available"*
- *The Panel was not convinced that other initiatives being pursued by Council would meet projected housing needs identified in the Illawarra Shoalhaven Regional Strategy – particularly given existing projections rely heavily on progressing development of the West Elambra site which has not been rezoned to date. The Panel is therefore not convinced that "sufficient dwellings will be available" consistent with the KUS caveat on progressing development of this site.*
- *Gateway consideration can proceed in parallel with development of the LSPS, with the Council ultimately in a position to make a final decision in the context of directions articulated in the LSPS.*

On balance, the Panel considered the proposal had site specific merit providing the constraints can be addressed through further refinement and reduction in initial yields identified.

On 16 July 2019 Council resolved to accept the role of Planning Proposal Authority and in doing so acknowledged its responsibility to represent the views of the community in relation to the Planning Proposal.

Gateway Determination

A Gateway Determination was issued by the Department of Planning, Industry and Environment (DPIE) on 4 December 2019. The Gateway Determination required major amendments to the PP, including the following:

- Revised technical studies covering all parts of the subject site;
- A review of the master plan to:
 - Cover the entire site;
 - Identify the key principles for development of the site;
 - More fully address constraints, visual impacts, environmental outcomes, heritage outcomes and landscape outcomes;

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- Identify zonings, densities and heights that reflect the outcomes of the studies and master plan;
- Terrestrial biodiversity mapping; and
- Details on consistency with section 9.1 Directions, community and agency consultation and a project time frame.

The Gateway Determination required consultation with seven State agencies prior to a public exhibition period of 28 days. All actions associated with the Gateway Determination were to be completed by 4 June 2021 (i.e. within 18 months).

The timeframe for these actions to be completed has expired due to time delays associated with the proponent providing the revised technical studies and master plan and addressing concerns raised by State agencies.

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.

Assessment of Planning Proposal

Planning Proposal

The original PP, reported to March 2019 Council meeting, proposed rezoning the majority of the site, with the exception of the existing E2 Environmental Conservation and E3 Environmental Management zoned land and the low lying RU2 Primary Production to R2 Low Density Residential and a small area of R3 Medium Density Residential. This proposal would achieve approximately 285 standard residential allotments, 140 small residential allotments and 30 townhouse sites (i.e. a total of 455 allotments).

As part of addressing the Gateway requirements and State agencies' comments the proposed zoning has significantly changed from what was originally reported to Council in March 2019.

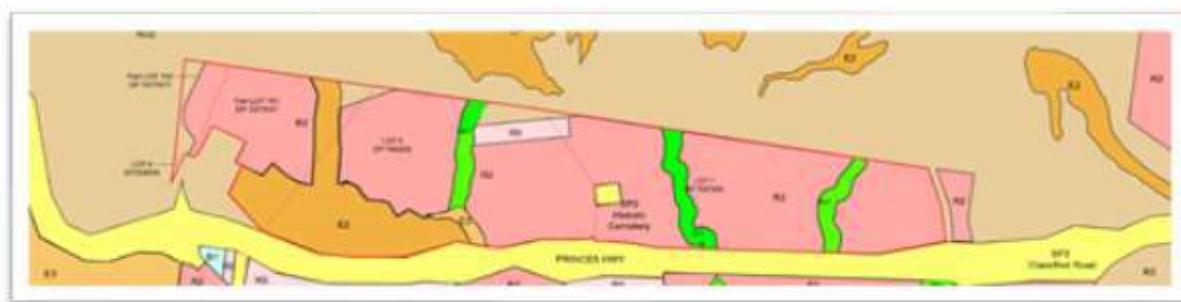


Figure 4 – Final Proposed Zoning (Source: Planning Proposal Report – Version 4. prepared by Unicomb Development Services Pty Ltd)

The current proposal, which was publicly exhibited and attached to this report, rezones the low lying RU2 land to E2 to capture the entirety of the Munna Munnora Creek. The other drainage channels within the site will be rezoned to RE1 Public Recreation. The highly visible parts of the site will retain their existing RU2 zoning. Another area towards the top of the hill will be rezoned R5 Large Lot Residential with a 7.5m max building height rather than 8.5m.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

The proposal no longer includes any R3 zoning. The Biodiversity land will also increase.

According to the submitted Planning Proposal, this proposal would achieve approximately:

- 285 standard residential allotments
- 156 small residential allotments
- 3 large lots
- With a total of 444 allotments



Figure 4 – Site Constraints Plan (Source: Planning Proposal Report – Version 4. prepared by Unicomb Development Services Pty Ltd)

Strategic Merit Test

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 uniquely identified by the Kiama Urban Strategy (now repealed). Point 6.1.4 of the Kiama Urban Strategy (KUS) outlines that this site should only be considered if housing needs exceed the capacity identified by the KUS. Of interest this site was not supported for inclusion by the then (DOP) Department of Planning.

Initiatives- Projected Housing Needs

1. Since the Southern Planning Panel recommendation, Council has progressed two (2) additional Planning Proposals these include:
 - At the Ordinary April 2021 meeting, Council endorsed a Planning Proposal for 48 Campbell Street, Gerringong to progress to the DPIE for a Gateway Determination. This has occurred and Council are awaiting the receipt of a Gateway Determination.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- At the Ordinary June 2021 meeting, Council endorsed the finalisation of the Planning Proposal for Henry Parkes Drive, Kiama Downs. Finalisation of this LEP amendment is currently underway

These 2 proposals will provide approximately 200 new allotments to the Municipality's housing supply. In this regard, other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan.

2. Since the Southern Planning Panel recommendation, the 2019 NSW Population Projections have been published. These projections indicate that the population of the Municipality is estimated to increase by 4,000 people between 2016 and 2040. This is a decrease from previous projections.
3. In adopting the Kiama LSPS 2020, Council has committed to preparing a Housing Strategy to detail how and where housing will be provided in the Municipality. This Housing Strategy is to be prepared and adopted by 30 June 2022.

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.

Site-Specific Merit Test

When assessing the proposal's site-specific merit, the Planning Authority must have regard to the following:

- The natural environment (including known significant environmental values, resources or hazards);
- The existing use, approved uses and likely future uses of land in the vicinity of the land subject to a proposal;
- The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

In their assessment, the Southern Planning Panel identified the following constraints on the site:

- The significant visual and landscape qualities of the site and its surrounds
- Significant Aboriginal and European heritage items on the site including the cemetery and dry stone walls
- Topography and associated service access challenges (water and sewerage)
- The need to establish the limits of the town and what that should look like.

1. Earthworks

In order to make the site suitable for residential development, the proponent is proposing to import fill to site. The Bulk Earthworks Plan, contained in the Masterplan, indicates that approximately 222,000 cubic metres of soil will be brought onto site in order for the proposed lot layout to be achieved. In some instances, this will increase the height of already highly visible areas of the site by a further 3-4m. The Bulk Earthworks Plan shows retaining walls with a maximum height of 4.8m onsite.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

The importation of this level of fill would be defined as both Designated Development and a Scheduled Activity for the purposes of the *Environmental Planning and Assessment Act 1979* and the *Protection of the Environment Operations Act 1997* respectively. Ministerial Direction 6.1 – Local Plan Making outlines that a planning proposal must minimize the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority and to not identify development as designated development.

2. Visual Assessment

The submitted Visual Assessment has not taken into consideration these increases in ground level and therefore the amount the site which will be visually prominent will increase. Similarly, the submitted Traffic Noise Intrusion Assessment has not taken into consideration these increases in ground level, particularly on sites within 150m of the Highway where the ground level will be increased by 3-4m, bringing them level with the Highway.

Heritage

The Site Constraints Plan, contained in the Masterplan, indicates that portions of heritage listed dry stone walls and identified Aboriginal artefacts will be destroyed in order for the proposed lot layout to be achieved. The Illawarra Local Aboriginal Land Council and the Kiama and District Historical Society have both objected to this proposal (see below).

As previously outlined, Council has committed to preparing and adopting a Housing Strategy to define the limits of the Kiama township.

In this regard, it is now the view of staff that this PP no longer satisfies the DPIE's Site-Specific Merit test and should therefore no longer proceed. This is particularly the case noting the Southern Planning Panel's conclusion that the site would have Site-Specific merit through further refinement and reduction in initial yields. This has not satisfactorily occurred.

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 5 May 2020.

The following responses were provided by agencies.

Agency	Response
Sydney Water	On 3 June 2020, Sydney Water raised no objection to the planning proposal (see enclosed). Sydney Water have requested that future developers within the site submit a feasibility application to Sydney Water to ensure that their development is consistent with the allowances made in the upgrade works.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	Sydney Water have indicated that additional infrastructure, such as lead in mains or amplifications, may be required.
Endeavour Energy	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.
Illawarra Local Aboriginal Lands Council	<p>On 8 June 2020, the Illawarra Local Aboriginal Lands Council (ILALC) objected to the proposal (see enclosed) and have raised the following concerns:</p> <ul style="list-style-type: none"> • Residential development in the area based on current anticipated demand would not warrant a development of this size; • The cultural landscape from an Aboriginal and European heritage perspective, associated with the land concerned has not been factored into any assessment to this proposal; • This is potential for significant Aboriginal heritage items to be present on the sites concerned and while mitigation measures may be able to be implemented avoidance of impact is always the preferred course of action. <p>In raising these concerns, the ILALC has confirmed that they believe that this development will have a significant impact on the cultural landscape associated with the area. Cultural landscape in this instance includes both a significant Aboriginal perspective with obvious European Heritage. It is their view that there has been an inadequate evaluation of the cultural landscape across the development site and surrounding areas.</p> <p>The ILALC have suggested that the development is not required to address a current demand and therefore, as per the Burra Charter, the avoidance of impact is the preferred course of action. Therefore,</p>

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Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>the preferred course of action should be to not proceed with this development.</p> <p>To address these concerns, it was requested that an Aboriginal Cultural Heritage Assessment (ACHA) be prepared and submitted.</p> <p>On 18 December 2020 an ACHA was submitted (see enclosed). As part of preparing this ACHA, Biosis Pty Ltd consulted with a number of Aboriginal Parties, including the ILALC. The submitted ACHA contains seven (7) recommendations:</p> <ol style="list-style-type: none"> 1. Continued consultation with the registered Aboriginal parties 2. Avoidance of Aboriginal sites and sensitive landforms <p>Any potential works should and/or minimise impacts to Aboriginal sites and sensitive landforms, however in the instance they cannot be avoided, Recommendations 3 to 7 should be implemented.</p> <ol style="list-style-type: none"> 3. Application for an Aboriginal Heritage Impact Permit 4. Curation of collected artefacts 5. Cultural Heritage Management Plan 6. Stop work provision for any potential heritage sites identified during construction 7. Stop work provision for any potential discovery of human remains. <p>The submitted Masterplan demonstrates that the proponent has not sought to avoid Aboriginal sites and sensitive landforms. It would appear that only two of the eight identified artefacts will be avoided. It has been argued that avoidance of these artefacts can occur at Development Application stage. However, best practice, as suggested by the ILALC, would be to not zone areas containing Aboriginal heritage or sensitive landforms for residential purposes. <u>As this has not occurred it is considered that the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation.</u></p>
Transport for NSW	On 10 September 2020, Transport for NSW (TfNSW) outlined that they do not support the planning

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Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>proposal in its current form. In their submission (see enclosed), TfNSW raised the following concerns:</p> <ul style="list-style-type: none"> • Impact of State road network <p>TfNSW requested clarification on whether this land will be identified as an Urban Release Area under the Kiama LEP, thereby ensuring satisfactory arrangements are made for State public infrastructure prior to the subdivision of land.</p> <ul style="list-style-type: none"> • Walking, cycling and public transport <p>TfNSW is not convinced that the central underpass of the Princes Highway is wide enough to accommodate a travel lane and a footpath.</p> <ul style="list-style-type: none"> • Noise <p>TfNSW remains concerned with the level of detail shown in the noise assessment provided. TfNSW believes noise mounding or barriers are likely to be required at this location to adequately mitigate noise levels for future residential development. This is supported by Section O:5.1.53 of the Kiama Council DCP which states, 'Acoustic rear boundary fencing will be required in most circumstances for residential lots abutting an arterial or sub-arterial road.' TfNSW's expectation is that any noise barriers would be located within private land and not within the road reserve.</p> <p><u>Council Response</u></p> <p>Council has confirmed that, should this proposal proceed, the site will be identified as an Urban Release Area and provisions similar to Part 6 of the Wollongong LEP 2009 be incorporated into the Kiama LEP.</p> <p>Council are of the opinion that the width of the central underpass is sufficient to accommodate a travel lane and a footpath. Despite this, this location is not considered suitable for pedestrian connectivity of the proposal side to the broader Kiama pedestrian network. It is noted that Council has strategic pedestrian linkages in Stewart Place and that, should this proposal proceed, investigations of a pedestrian footbridge over the Princes Highway to Stewart Place should be undertaken as part of any future DA.</p>

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Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>Council shares TfNSW's concerns regarding noise barriers. As discussed above, the submitted Traffic Noise Intrusion Assessment has not taken into consideration the proposed increases in ground level, particularly on sites within 150m of the Highway where the ground level will be increased by 3-4m, bringing them level with the Highway. The conclusions/recommendations of the Noise Intrusion Assessment are therefore potentially flawed.</p>
<p>Department of Planning, Industry and Environment - Energy and Science Division</p>	<p>The Energy and Science Division of DPIE supported the updated zoning and riparian layers of the PP, reflecting the expanded area of E2 at Munna Munnora Creek and the east-west riparian corridors traversing the site (see enclosed).</p> <p>The Division provided several rounds of commentary on this proposal, specifically related to floodplain risk management.</p> <p>Following several amendments to the proposal the Division consider that the planning proposal is inconsistent with the objectives of Section 9.1 Direction 4.3 Flood Prone Land, in particular Clauses 5 & 6, as well as the NSW Floodplain Development Manual (FDM) 2005. The above issues are not minor and should be of concern to Council to satisfactorily address.</p> <p>The Division considers the environmental, public safety and flood impacts associated with the proposed filling of the floodplain to the top of the creek bank can be resolved by applying setback provisions within Kiama LEP 2011 flood planning and riparian land framework. We consider that Council now has adequate information to resolve this matter by aligning the planning proposal with the objectives of KLEP 2011, Section 9.1 Direction 4.3 & the FDM.</p> <p><u>Council Comments</u></p> <p>It is noted that the submitted Flood Study, prepared by SitePlus, makes no on the impact of the proposed cut and fill and retaining walls on the movement of flood waters on the site.</p> <p>The Flood Mapping, extracted from the Flood Study and attached to this report, use the term 'Proposed Development Scenario'. It is therefore presumed that SitePlus's conclusion that the rezoning will allow for a</p>

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Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>safe development in contingent on the significant earthwork.</p> <p>As indicated above, the significant earthworks outlined in this proposal are not supported for a number of reasons. If the earthworks do not proceed then the conclusions contained in the Flood Study are not valid.</p> <p><u>In this regard, it is considered that the proposal is inconsistent with Ministerial Direction 4.3 Flood Prone Land.</u></p>
Department Primary Industries – Water (Natural Resources Access Regulator (NRAR))	<p>Despite numerous attempts to illicit a response from NRAR no response was received.</p> <p>It is extremely disappointing that still, to date, NRAR have not provided a response. This is particularly the case as a result of the subdivision layout will potentially result in on-site detention basin/s occurring on site. NRAR are the approval body for on-site detention basins.</p>
New South Wales Rural Fire Service (NSW RFS)	<p>After months of consultation the RFS has confirmed, on 1 April 2021 (see enclosed), that they do not object to the PP subject to a requirement that future subdivision of the land complies with <i>Planning for Bushfire Protection (PBP) 2019</i>. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • Provision of Asset Protection Zones (APZs) within the proposed lots in accordance with Table 5.3a; • Access to be provided in accordance with the specifications set out in Table 5.3b including; and • Services to be provided in accordance with Table 5.3c. <p>Additionally, with regard to these requirements, the following comments were made in relation to the referenced concept plan:</p> <ul style="list-style-type: none"> • <u>Site Ingress Paths</u> <p>To ensure adequate access and timely response times to all incidents, at a minimum, the central underpass of the motorway must be made available for a Category 1 appliance to enter the proposal site.</p>

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Agency	Response
	<p>The existing road network may be required upgrade to facilitate this traffic movement.</p> <p>To ensure that future subdivision development can be supported by NSW RFS, at the strategic planning stage prior to approval of the PP, the consent authority shall be satisfied that the above access provision can occur at future development stages.</p> <ul style="list-style-type: none"> • <u>Consultation with emergency service providers</u> <p>NSW RFS recommend that comments are received from all emergency service providers during the consultation period regarding the adequacy on ingress paths proposed.</p> <p><u>Council Response</u></p> <p>Future applications will be integrated development and general terms of approval will be required to be obtained from NSW RFS.</p> <p>The current dimensions of the central underpass of the Princes Highway appears to allow for a Category one appliance to enter the site. Further investigation would be required as part of any future DA.</p>
Department of Education	<p>While not a requirement of the Gateway Determination, Council sought comments from the NSW Department of Education (DoE) at the request of the community.</p> <p>The DoE have determined, considering the latest DoE Student by Area projections for Kiama, that the Kiama Primary School and Kiama High School will both be able to accommodate the future students associated with the proposal.</p>

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Public Exhibition

In accordance with the Kiama Community Participation Plan 2019, the subject PP was placed on public exhibition from 19 April to 31 May 2021 (i.e. a total of 42 days) with an advert being placed in The Bugle, notification provided on Council's website and social media platforms. Written notification was sent to approximately 250 affected property owners and the following Precinct Committees/Community Associations:

- Minnamurra Progress Association
- North Precinct Committee
- Central Precinct Committee
- Kiama Heights Residents Group

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

- Jamberoo Valley Residents and Ratepayers Association
- South Precinct Committee
- Gerroa Community Association

The Manager Strategic Planning also attended the Central Precinct Committee's April 2021 meeting to answer community questions about the proposal and Council's role in the Gateway process.

During public exhibition, a total of 300 submissions were received.

A total of 296 submissions were received from individual community members, and 4 submissions were received from the following community groups:

- Kiama Central Precinct Committee
- Kiama Heights Resident Group
- Kiama & District Historical Society
- Kiama High School P&C.

Engagement Summary

Submissions	Number	Key Issues
Submissions - For	16	1. Increase the supply of housing. 2. Support local jobs during construction.
Submissions - Against	284	1. Strategic Merits. 2. Traffic & Parking Impacts. 3. Loss of rural landscape. 4. Flooding Issues. 5. Heritage Impacts 6. Infrastructure Capacity

Submission Considerations

Topic	Key comments	Staff Response/Considerations
Strategic Merit	The strategic merit of the PP has been questioned, with several submission stating that there is no evidence that the PP assists Kiama	The Strategic Merit of the proposal has been previously revisited as part of this report. This report has outlined that the proposal fails to satisfy the Strategic Merit test for numerous reasons.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Topic	Key comments	Staff Response/Considerations
	Council to meet the housing demands and population growth.	
Traffic and Parking Congestion	Concerns have been raised regarding the potential impacts additional dwellings will have on the existing road network, particular at the intersections of Saddleback Mountain Road and South Kiama Drive and Manning and Bonaira Streets.	<p>The submitted Traffic Impact Assessment, prepared by Bitzios Consulting, has analysed the potential traffic impacts associated with the proposal. The Traffic Impact Assessment has identified that the main intersection to be impacted by the proposal is Saddleback Mountain Road and South Kiama Drive, particularly between 8am and 9am, due to the presence of Kiama High School.</p> <p>When analysing the impact of the proposal, Bitzios have assumed a compounding growth rate of 1.5% per annum on the 2016 traffic data. Bitzios's analysis has concluded that intersection of Saddleback Mountain Road and South Kiama Drive performs satisfactorily in terms of Degree of Saturation (DOS), Level of Service (LOS), average delay and the 95th percentile que.</p> <p>This is, however, no denying that this proposal will have wider reaching impacts on the Kiama road network. The Bitzios report has calculated that the rezoning could result in, worst case scenario, 525 trips in the AM peak hours. Bitzios has suggested that 368 (i.e. 70%) of these trips will be exiting the site and of these 309 will be heading north. All north born trips will need to travel through the intersections of Saddleback Mountain Road and South Kiama Drive and Manning and Bonaira Streets.</p> <p>Until such time as the Kiama Traffic and Parking Study is complete it is difficult to fully understand the implications of this proposal.</p>
	On and off ramps for the site to access Princes Highway required.	TfNSW are the roads authority for the Princes Highway and have confirmed that no additional on or off ramps will be considered for this proposal.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Topic	Key comments	Staff Response/Considerations
Loss of Rural Landscapes	Concerns have been raised regarding the negative visual effect the proposal will have on the surrounding locality.	Visual impacts associated with this proposal have been previously revisited as part of this report. This report has outlined that the submitted Visual Assessment has not taken into consideration the increases in ground level, associated with the substantial filling proposed, and therefore the amount the site which will be visually prominent will increase.
Flood Issues	Submissions raised concerns regarding the likelihood of increased flood events associated with the proposal and the Flood Assessment lack of proposed mitigation measures.	Flood issues associated with this proposal have been previously revisited as part of this report. This report has outlined that the proposal is inconsistent with Ministerial Direction 4.3 Flood Prone Land.
Infrastructure Capacity	Submissions raised concerns regarding Sydney Water's ability to service the site.	As previously discussed, Sydney Water raised no objection to the planning proposal (see enclosed). Sydney Water have indicated that additional infrastructure, such as lead in mains or amplifications, may be required. In this regard the Sydney Water are confident of their ability to service the site.
	Submissions raised concerns regarding the existing Primary and High Schools' capacity to accommodate student growth associated with this proposal.	In their response, the DoE has confirmed that their Student by Area projections take into account all future/potential urban expansion areas, including this site, identified by the Kiama LSPS 2020. In this regard the DoE are confident that they can accommodate student growth associated with this proposal.
Aboriginal and European	Kendall's Cemetery and	This fact is not refuted.

Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

Topic	Key comments	Staff Response/Considerations
Cultural and Built Heritage	the numerous dry stone walls on the site are listed as heritage items and need to be protected. All development should be setback at least 20m from Kendall's Cemetery.	It is acknowledged that, as part of the indicative lot layout, the proponent has attempted to retain all dry stone walls on the site. However, some of the walls are proposed to be demolished as part of the indicative lot layout. This indicative lot layout, and therefore the associated zoning etc. is inconsistent with Ministerial Directions 2.3 Heritage Conservation.

Item 4.4

Delegations

As this PP was subject to a Rezoning Review (i.e. involvement of Southern Planning Panel) Council has not received plan making delegations, from the Minister of Planning and Public Spaces, for this Proposal.

Any recommendation of Council will be forwarded to the Minister for a final determination.

Conclusion

In recommending that the DPIE issue a Gateway Determination for this proposal, the Southern Planning Panel considered that the proposal had strategic merit given:

- *The site is identified in the Kiama Urban Strategy "if insufficient dwelling numbers are available"*
- *The Panel was not convinced that other initiatives being pursued by Council would meet projected housing needs identified in the Illawarra Shoalhaven Regional Strategy – particularly given existing projections rely heavily on progressing development of the West Elambra site which has not been rezoned to date. The Panel is therefore not convinced that "sufficient dwellings will be available" consistent with the KUS caveat on progressing development of this site.*
- *Gateway consideration can proceed in parallel with development of the LSPS, with the Council ultimately in a position to make a final decision in the context of directions articulated in the LSPS.*

Following receiving input from the relevant State Agencies and significant involvement from the community, Council is of the opinion that this proposal now fails to satisfy the Strategic Merit and Site-Specific Merit Tests for the following reasons:

- other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan, including planning proposals for Henry Parkes Drive, Kiama Downs and 48 Campbell Street, Gerringong and the commitment to prepare and adopt a local housing strategy by 30 June 2022,

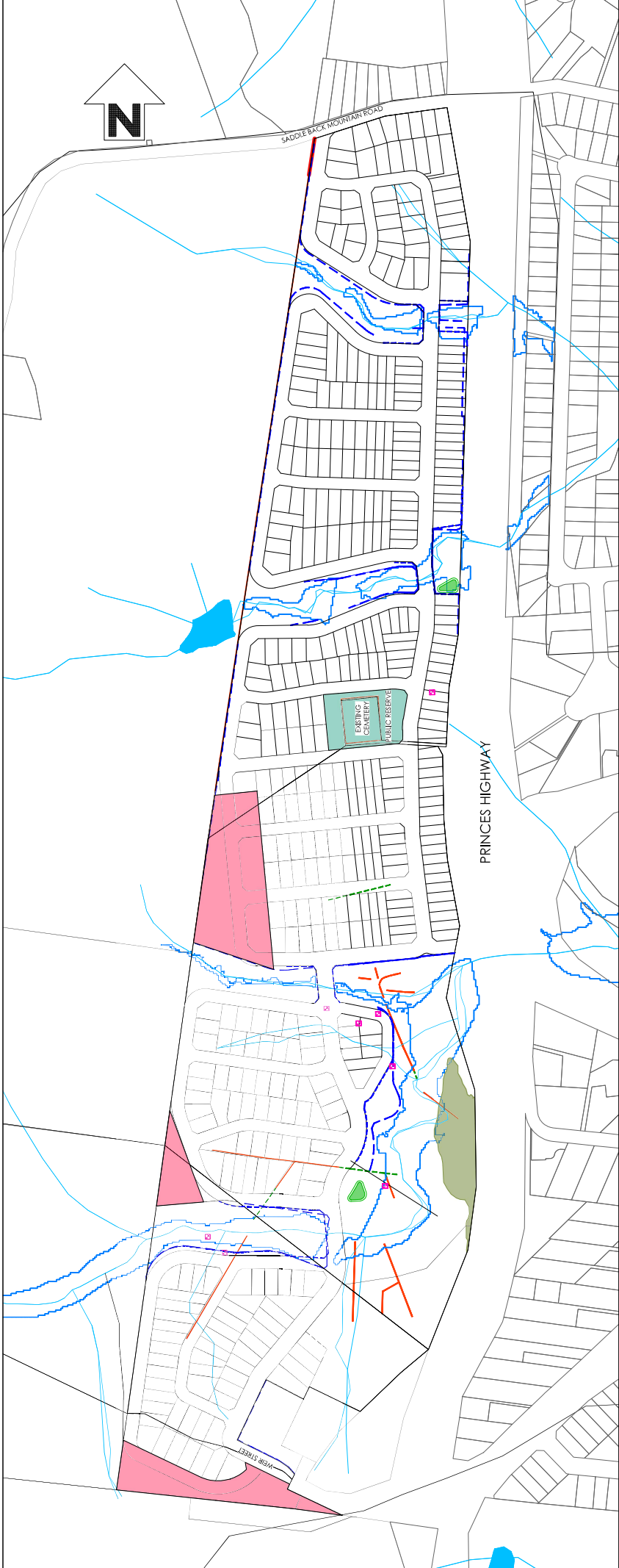
Report of the Director Environmental Services

4.4 Planning Proposal - Multiple Lots - South Kiama - Finalisation (cont)

-
- the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements,
 - the amount of fill the proponent considers necessary to make the site suitable in fact suggests that the site is in fact not suitable for this level of development, noting the Southern Planning Panel's conclusion that the site would have Site-Specific merit through further refinement and reduction in initial yields. This has not satisfactorily occurred, and

As Council has not received plan making delegations, from the Minister of Planning and Public Spaces, for this Proposal, the Minister will need to make the final decision on this proposal. It is therefore recommended that the Minister be informed that this proposal now fails to satisfy the Strategic Merit and Site-Specific Merit Tests and that the NSW Department of Planning, Industry and Environment issue an amended Gateway Determination to no longer proceed with PP_2019_KIAMA_004_01 to rezone multiple Lots between Saddleback Mountain Road, Weir Street and the Princes Highway, Kiama.

Appendix 2 Uppdated masterplan



LEGEND

- APPROXIMATE LOCATION OF HERITAGE STACKED ROCK WALLS TO BE RETAINED
- APPROXIMATE LOCATION OF HERITAGE STACKED ROCK WALLS TO BE REMOVED
- LOCATION OF PROPOSED RETAINING WALLS
- LOCATION OF ARTEFACTS PRESENT
- 100yr FLOOD EXTENTS
- VEGETATION FROM BIODIVERSITY STUDY
- VISUALLY EXPOSED AREAS

SITE CONSTRAINTS PLAN

SCALE 1:2,250



SCALE: -1:2,250 @ A1
-1:4,500 @ A3

No.	REVISIONS	DESCRIPTION	APP	DATE	siteplus				Client file			Design file			Ref & Draw No		
					planning	engineering	landscape	design	management	Height Survey	Approval	Local Authority	White Constructions	Proposed Subdivision	Sheet No	Sheet	Scale
1		PART LOT 102 ADDED	A.C.	10/12/19						Drawn					15158.RZ.SC01	01	01
J		REVISED TO COUNCIL COMMENTS	A.C.	09/01/20						Designed							
K		REVISED ROAD RESERVE BOUNDARY	A.C.	07/04/20						Checked							
L		LAYOUT AMENDED	A.C.	21/08/20													1:2,250 @ A1
M		LAYOUT AMENDED	A.C.	10/02/21						Approved		KIAMA		SITE CONSTRAINTS PLAN			Date 09/05/2018 Rev K A1