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Dear Graham,

## **PP\_2019\_KIAMA\_004\_00 - SADDLEBACK MOUNTAIN ROAD WEIR STREET SOUTH KIAMA – RESPONSE TO COUNCIL MEETING**

This submission has been prepared by Urbis on behalf of White Constructions Pty Ltd (**the Proponent**) in relation to the planning proposal (**proposal**) for the rezoning of Saddleback Mountain Road and Weir Street, South Kiama (**the site**). The Proponent appreciates your review of this submission prepared in response to the resolution by Kiama Municipal Council (**Council**) on 28 June 2021 to not support the finalisation of the proposed rezoning of the site.

### **1 INTRODUCTION**

The Proponent is concerned that Council has inadvertently mis-interpreted the proposal and overlooked its strategic merit and site-specific merit. Further Council has underestimated the opportunity for this proposal to contribute housing supply that is in high demand in Kiama. It is the Proponent's view that the proposal has already demonstrated merit through various planning processes since late 2019 and are concerned that the recent Council resolution is inconsistent with strategic planning documents prepared and adopted by Council in 2020.

Council's resolution of 28 June has the potential to jeopardise the significant work and progress this proposal has achieved so far. We ask that the Department of Planning Industry and Environment (**DPIE**) progress the rezoning of the site based on the planning justification presented in this submission.

This submission is structured as follows:

- **Background:** An overview of the site, proposal and planning process since 2018
- **Council Meeting – 28 June 2021:** An overview of Council's recent resolution
- **Planning response:** Planning justification for support of the planning proposal in response to Council's recommendations and resolution, divided into:
  - **Strategic merit**
  - **Site specific merit**
  - **Public benefit**
- **Conclusion**

This submission has been prepared to be read in conjunction with the provided **Attachments**.

## 2 BACKGROUND

### 2.1 THE SITE

DPIE will recall the site is formally identified as Lot 1 DP707300, Lot 5 DP740252, Part of Lot 102 DP1077617 and Part of Lot 8 DP258603. Below is a brief overview of the site's features:

- The site is regular in shape and approximately 40 hectares (**ha**). The site is undulating and adjoins existing urban development in South Kiama and the Princes Highway.
- The majority of the site is currently zoned RU2 Rural Landscape under the Kiama Local Environmental Plan 2011 (**KLEP**). The site also contains a historic cemetery in the central portion of the site, zoned SP2 Infrastructure. A small, vegetated section of the site is zoned E2 Environmental Conservation.
- The site is traversed by four creeks in a general west to east direction. Munna Munorra Creek is a category 2 creek, and the other three creeks are category 3 under the KLEP.
- A small part of the site containing Munna Munorra Creek just upstream of the culvert under the Princes Highway, is zoned E3 Environmental Management.

### 2.2 DEVELOPMENT PROPOSAL

The planning proposal submitted to the Council in July 2018 (**Attachment A**) described the following development proposal in support for rezoning as:

- *Three separate road connections to the site*
- *The retention and embellishment of the four main creeks through the site*
- *Retention of the remnant rainforest in the south eastern corner of the site*
- *Rehabilitation and retention of the main dry stacked walls within the site*
- *Rehabilitation, retention and protection of the historic cemetery in the middle of the site*
- *Protection of the E3 Environmental Conservation zoned wetlands in Munna Munnora Creek within the lower sections of the site*
- *Approximately 285 residential allotments, 140 small residential allotments and 30 townhouse sites.*

To support the future development proposal, the proposed amendment to the KLEP involves:

- Rezoning of RU2 Rural Landscaped zoned land to R2 Low Density Residential for residential lots, and several larger split zoned lots which are part R2 Low Density Residential and part E2 Environmental Conservation or part R2 Low Density Residential and part RU2 Rural Landscape
- Retention of SP2 Infrastructure zoned land containing the heritage cemetery
- Retention and rehabilitation of riparian corridors
- Retention and protection of E3 Environmental Management zoned land
- Expansion of E2 Environmental Conservation zoned land to incorporate regrowth of rainforest areas and wetlands
- Amendment to planning controls within KLEP and Kiama Development Control Plan 2011 (**KDCP**) to guide future residential development on site

## 2.3 PREVIOUS DECISION MAKING

The following provides a high-level overview of the progress of the proposal since its submission.

### Council assessment - 2019

- Proposal lodged in late 2018.
- Council's planning report dated 19 March 2019 concluded that the site had previously been included in the Kiama Urban Strategy (**KUS**) as potentially suitable for residential development if additional housing supply is needed, and that the proposal did not raise any significant issues that would preclude the rezoning.
- Proposal was reported to the Council's Ordinary meeting of 19 March 2019 with a recommendation to **SUPPORT** and proceed to gateway, as extracted below (**Attachment B**):

#### RECOMMENDATION

That:

- 1) Council support the rezoning of the subject site from a predominantly RU2 Rural Landscape zone to zonings that support urban purposes, however the following amendments are recommended prior to the PP being forwarded to the Department of Planning and Environment for Gateway Determination:
  - The PP maps are amended to include the riparian corridors as RE1 Public Recreation;
  - The minimum lot size maps are amended to change the minimum lot size to 450m<sup>2</sup> for the entire proposed R2 Low Density Residential area.
- 2) The proponent begin the process of preparing a site specific Development Control Plan in consultation with Council.

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- Council did not adopt the staff recommendation and **REFUSED** the proposal.

### Southern Regional Planning Panel - 2019

- Following the resolution by Council, the Proponent sought a review and the proposal was considered by Southern Regional Planning Panel 2019STH006 – Kiama – RR\_2019\_Kiama\_002\_00 at a meeting of 19 June 2019 where it determined the planning proposal **SHOULD PROCEED** to gateway as it demonstrated site specific and strategic merit (**Attachment C**).

### Gateway Determination - 2019

- Gateway was **ISSUED** by DPIE on 4 December 2019.
- 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 for the proposal.
- Council did not receive plan making delegations from the Minister. Any recommendation of Council would therefore be forwarded to the Minister for a final determination.
- Following Gateway determination, Council completed a community consultation process and a review of the proposal.
- Council's planning report dated 28 June 2021 states it contains findings to support a recommendation for the proposal to no longer proceed, primarily on the basis that the strategic merit and site-specific merits of the proposal "are no longer considered valid".

The Council supported the below recommendation and resolved to **NO LONGER PROCEED** with the rezoning of the site.

### **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.

### 3 PLANNING RESPONSE

The following responds to the Council report on the proposal and the Council resolution of 28 June 2021 and provides comments and planning justification in support of progressing the proposal at this time, contrary to the Council resolution.

#### 3.1 STRATEGIC MERIT TEST

##### 3.1.1 Strategic planning context

1. Council's planning report (**Council report**) dated 28 June 2021 (**Attachment D**) included a Strategic Merit test (refer to Page 353) to determine if the proposal was consistent with and gave effect to planning policies adopted by the NSW Government and Council. These being the Illawarra-Shoalhaven Regional Plan 2041 (**Regional Plan**) and the Kiama Local Strategic Planning Statement (**LSPS**).
2. The Council report refers to and appears to rely on the KUS (now repealed) and states that the site should only be considered if housing needs exceed the capacity identified by the KUS.
3. The Kiama LSPS was prepared by Council in 2020, following extensive community consultation in 2018 and 2019. The LSPS was endorsed by Council on 23 June 2020 and repealed and replaced the KUS.
4. Section 10.0 of the LSPS identifies the site as Greenfield site "5", for potential future urban expansion (refer to **Figure 1**). In relation to greenfield sites, Section 10.0 of the LSPS also states that the sites "...have been the subject of community consultation and discussion". We note that the LSPS does not indicate timeframes or number of lots anticipated for these greenfield sites.
5. The LSPS indicates the site has strategic merit for rezoning and the proposal will give effect to the planned outcomes of the LSPS. However, the Council report does not consider the proposal in context of the LSPS. As such, Council's assessment appears inconsistent with its own strategic planning policy for future housing opportunities.

Figure 1 Extract of greenfield sites map in the Kiama LSPS



Source: Kiama LSPS

6. The strategic planning assessment within the Council report has also overlooked the proposal's strategic merit in meeting relevant objectives of the Regional Plan. The Regional Plan contains key strategies relevant to the future of Kiama as shown in Table 1. The proposal is consistent with the relevant strategies to provide additional housing.

Table 1 Relevant strategies and directions on housing supply in the Regional Plan

Regional Plan	Extract from Regional Plan	Proposal
Strategy 1.5	<p><i>The Regional Plan supports regionally significant centres by:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Identifying and removing barriers to housing supply in Kiama and Milton Ulladulla</i></li> </ul>	Consistent
Direction 2.1	<i>Provide sufficient housing supply to suit the changing demands of the region.</i>	Consistent
Direction 5.1	<i>Protect the region's environmental values by focusing development in locations with the capacity to absorb development.</i>	Consistent
Strategy 18.1	<i>Identify urban growth boundaries and facilitate opportunity to support ongoing supply of housing in appropriate locations.</i>	Consistent
Strategy 19.1	<i>Continue to provide for and encourage a range of housing choices.</i>	Consistent

### 3.1.2 Projected housing needs

7. Discussion in the Council report (extracted below) indicates that alternative initiatives have been supported by Council to achieve projected housing needs, and that these initiatives indicate the proposal no longer satisfies strategic merit and therefore should not proceed.

#### Initiatives- Projected Housing Needs

- 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.
    - 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.
  - 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.
  - 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.

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8. It is considered that this reasoning is flawed and that the initiatives identified in the Council report are not certain to contribute to housing supply in the future. The nominated sites are discussed below.

#### **48 Campbell Street, Gerringong (part of the West Elambra Estate)**

9. Council's resolution to endorse a Planning Proposal for 48 Campbell Street, Gerringong to progress to the DPIE for a Gateway Determination in order to demonstrate the rezoning of Saddleback Mountain Road and Weir Street, South Kiama lacks strategic merit and overlooks the fundamental elements of the strategic merit test namely that the planning proposal:

- Is consistent with the relevant regional plan
- Is consistent with a relevant local strategy that has been endorsed by the Department
- Is responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls

The submitted proposal for the site is as demonstrated in this submission, consistent with both the current Regional Plan and LSPS and further will provide housing supply, housing choice and affordability (as discussed below).

10. The planning proposal for 48 Campbell Street proposes rezoning of land for 166 residential lots. This land has been identified as a potential urban expansion area in the LSPS in the same manner as the site subject to this submission. We note that the planning proposal for 48 Campbell Street is in pre-exhibition phase and has not yet received gateway approval. As such, it should not be used as justification for not supporting the planning proposal at Saddleback Mountain Road and Weir Street, South Kiama.
11. The Proponent does not comment on the merit of the proposal for 48 Campbell Street. However, it is inconsistent and illogical to resolve that the proposal of the site not proceed as it no longer demonstrates strategic merit, yet at the same time seeks to support a new planning proposal for another site which is similarly identified in the LSPS as a potential urban expansion area. The proposal for the site and arguably the planning proposal for 48 Campbell Street, Gerringong have the capacity to meet the short and medium term housing demands in the local government area. Particularly as it is noted that the Council's long-term strategic planning for housing delivery heavily relies on the rezoning of the Bombo Quarry site, which does not appear to be imminent or certain.

#### **Henry Parkes Drive, Kiama Downs**

12. Council's reference to endorsing the finalisation of a Planning Proposal for Henry Parkes Drive, Kiama Downs is also an unreasonable basis on which to base a decision that the proposal not proceed to finalisation. Similar to the Planning Proposal for 48 Campbell Street the Henry Parkes drive site has been identified as a potential urban expansion area in the LSPS. However, this proposal includes the rezoning of E2 – Environmental Conservation land to R2 Low Density Residential, which should have a higher order of conservation than the RU2 Rural Landscape zoned land in the subject site.
13. The Council's assessment of the strategic merit of the proposal is inconsistent with more recently submitted planning proposals and fails to address the key criteria as noted above. The Council report dated 15 June 2021 in relation to the Henry Parkes Drive site identifies that the planning proposal was supported based on the strategic merit of the proposal and the identification of the parcel within the repealed KUS. It is unfair and unreasonable to support one proposal based on strategic merit of being identified in a strategic document, and challenge the strategic merit of the subject site that is identified in an endorsed strategic document.



## Housing supply

14. Council's conclusion that the planning proposals for 48 Campbell Street and Henry Parkes Drive to provide approximately 200 new allotments will be enough to meet housing supply and therefore the subject planning proposal is not required, is flawed. Council's resolution does not provide any certainty over supply or timing of delivery of new housing supply.
15. Without a robust pipeline of residential land supply as supported by the proposal, the Kiama LGA is likely to progress in a deficit to the projected housing supply requirements to 2036 and beyond.
16. The Regional Plan projects that 2,850 additional houses are needed in Kiama between 2016 and 2036 to cater for demand. Council claims that the 2019 NSW Population Projections have been published and that population projections have been lowered to approximately 2,052 additional houses needed in Kiama between 2016 and 2036. The new projection equates to an adjustment from 143 new dwellings per year to 103 new dwellings per year to 2036 for the Kiama LGA.
17. The adjustment in projections may appear a reasonable reduction. However, there is no data to confirm whether the dwelling supply required between 2016 and 2021 have been achieved. Without new housing supply from this site, we anticipate that Council will be unable to meet the projected targets for 2036.
18. It must be remembered that the 2019 NSW Population projected figures were prepared prior to the events of Covid-19. We note that DPIE has provided insights on the projected population movement in 2020 and onwards. The 2020 Population Insights report (**Attachment E**) reviewed the regional impacts. The report identified that vacancy rates have fallen substantially in some regional areas, suggesting that some people may be moving farther from Sydney during the pandemic. The report also states that this may become a long-term shift, especially if businesses can maintain flexible work arrangements. If flexible working remains, population growth may increase in regional areas. The LSPS has informed the preparation of the Regional Plan and the housing targets contained therein. The Regional Plan recognises the long-term importance of the Bombo Quarry site for future housing supply as well as the limited number of identified greenfield sites. The subject site is one of those identified greenfield sites for potential urban expansion.
19. The 2020 Population Insights report identifies that housing prices in regional NSW rose by 3% between April and December 2020 alone. As such, the 2020 Population Insights report supports the trend that housing supply in Kiama has become further strained than originally projected in the Regional Plan and LSPS and has resulted in recent significant increased housing prices in Kiama. We note that the Regional Plan appears to reference the NSW 2019 Population projection data, rather than the findings of the 2020 Population Insights report.
20. The Proponent has been monitoring the Kiama housing market and notes that since 2017, there have only been one small subdivision at Jamberoo, a 30 lot subdivision off South Kiama Drive and a few small infill developments in Kiama. This lack of new supply in a period of high demand for dwellings has resulted in significant increase in land prices. For example, lots 78 and 89 in the Cedar Grove estate which sold for \$350,000 and \$345,000 in February 2017, have recently sold for \$903,600 and \$1,010,000 respectively. The valuation of the lots before the auctions were \$750,000 and \$800,000 respectively. This shows an almost tripling of the original sale price in only four years.
21. The 200 new allotments identified by Council as achieving the Regional Plan's housing projection will only yield supply to achieve two years of housing supply, if developed quickly. As identified in item 15, it is likely that Council will fall further behind in housing supply without support for further development. The finalisation of the rezoning of the South Kiama site would help to provide a pipeline of housing supply in tandem with other sites to meet the new dwelling supply required in the short to medium term consistent with the adopted LSPS. This will meet housing demand and housing choice while the longer-term housing and employment opportunities in the Bombo Quarry site are explored.



22. While Council has committed to prepare a local housing strategy in 2022, it is unreasonable and a poor planning outcome for the proposal not to proceed to finalisation at this time on a site that has been recognised as having strategic merit in the LSPS, has received gateway approval and as demonstrated below, has site specific merit.
23. The Proponent is concerned that Council's strategic merit assessment is flawed and relies on poor assumptions; is inconsistent with its own endorsed strategic planning documents; and unfairly supports other developments that have the same (or potentially lessor) strategic merit as the proposal. We request that DPIE reject Council's position that the planning proposal no longer has strategic merit. Our planning justification is consistent with the Southern Regional Planning Panel's conclusion in 2019 that:

*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.*

## 3.2 SITE-SPECIFIC MERIT TEST

The following provides a response to Council's site-specific merit assessment in the Council report and resolution dated 28 June 2021.

### 3.2.1 Earthworks

24. Council's report assesses the Bulk Earthworks Plan for the concept masterplan presented in support of the planning proposal in 2018. Council identifies that the proposal would require approximately 222,000m<sup>3</sup> of fill to raise the height of the site to facilitate residential development. Council concludes that 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 (EP&A Act)* and the *Protection of the Environment Operations Act 1997 (POEO Act)* respectively.
25. Council's conclusion that the indicative level of fill would be classified as designated development is incorrect. Earthworks of this scale are not identified as designated development in the EP&A Act or in Schedule 3 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regs)*. Further, clause 6.2 of the KLEP contains provisions for development consent of earthworks ancillary to other development (i.e residential subdivision).
26. Council's assertion that the proposed earthworks should be classified as scheduled activity under the POEO Act is also incorrect. The objects of the POEO Act are related to pollution, waste management and monitoring of environmental quality. There are no provisions concerning scheduled activity related to the volume of earthworks or import of fill on sites in support of a development.
27. Council's interpretation of the Bulk Earthworks Plan is incorrect. Based on the cut to fill plan in the planning proposal, the importation of fill for the entire development would be 110,000m<sup>3</sup>.
28. Council's conclusion that the proposed fill is excessive and therefore does not have site-specific merit, is premature. The Planning Proposal submitted in 2018 noted that all designs are preliminary and were simply to indicate one way the site could be developed. The Proponent also prepared options that only required a total of 29,716m<sup>3</sup> of imported fill across the entire site and removed any requirement of high retaining walls and deep filling along the northern section of the site adjacent to the Princes Highway. A copy of this plan is provided at **Attachment F**.
29. We note that section 9.1 Ministerial Directions required for consideration during rezoning contain no requirements for strictly assessing volume of bulk earthworks (assessment in relation to flood planning is addressed in Section 4.2.4 of this submission). Site-specific earthworks should be

assessed during a detailed development application in accordance with section 4.15 of the EP&A Act and relevant environmental planning instruments. The conceptual details demonstrate the physical capacity of the site to be developed for residential and conservation purposes with detailed engineering to be undertaken at development application stage.

30. Further, 29,716m<sup>3</sup> of imported fill for a 440 lot subdivision over several stages would not (as suggested by Council) trigger excessive concurrence, consultation or referrals beyond what would normally be required for a greenfield residential development. As such, we believe the planning proposal satisfies the requirements of Ministerial Directions 6.1 Approval and Referral Requirements.
31. Council's comments on visual assessment related to ground levels is also irrelevant at this time as comments are based on conceptual ground levels that are subject to change. Measures to mitigate any visual impact can be addressed during development assessment once a detailed design has been prepared. The Proponent is willing to commence preparation of a site-specific Development Control Plan (**DCP**) if required and at the suitable time to provide Council with greater confidence that a positive development outcome can be achieved on the site.

### 3.2.2 Heritage

32. The Council report concludes that 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 (**ILALC**) and the Kiama and District Historical Society have both objected to this proposal.
33. The Council report identifies that the ILALC objects to the proposal based on the following:
  - 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.
34. The comments of the ILALC are noted. The comment in relation to housing supply however is inconsistent with the Council's strategic planning policy and the demand for and need to unlock Housing supply in the Kiama LGA as recognised in the Regional Plan.
35. ILALC's comments on potential impacts on the cultural landscape from an Aboriginal and European heritage perspective are acknowledged. In preparing the proposal, the Proponent commissioned an Aboriginal Cultural Heritage Assessment (**ACHA**) report, prepared by Biosis. Consultation with Registered Aboriginal Parties (**RAPs**) identified the site has low scientific and aesthetic value. However, the site was identified as having high cultural significance of the site to the RAPs as the site is representative of their continued occupation of the area.
36. The Proponent respects the cultural significance of the site and believes suitable design solutions can be developed to recognise and maintain the cultural significance of the site, which includes the retention and rehabilitation of the watercourse on site and retention and protection of the vegetated areas and wetlands within the site. Further consultation with RAPs will be undertaken in consideration of the *Connecting with Country Draft Framework*.
37. The ACHA report has also identified the Aboriginal Heritage Impact Permit (**AHIP**) process under the *Heritage Act 1977* whereby any impacts that cannot be avoided are appropriately assessed. However, the Proponent emphasises that the four aboriginal sites identified within the study area are in clear locations that can be further addressed at detailed design stage, where there is opportunity to incorporate areas containing artefacts into protected riparian corridors.

38. Page 357 of Council's report states that *"the submitted masterplan demonstrates that the proponent has not sought to avoid Aboriginal sites and sensitive landforms"*. The Proponent disagrees with Council's statement based on the following:
- The masterplan was amended following the recommendations of the ACHA report so that four of the eight artefact sites are within the riparian area. This change has resulted in an improved outcome compared to the original design, which previously proposed two of the eight sites being located within the riparian areas. The advice letter from Biosis provides greater detail on this solution (**Attachment G**).
  - The rehabilitation of the creeks will provide both a visual and physical connection through the site and to the treed areas on the higher land to the west of the site.
39. Council's comments that the lot layout and associated rezoning is inconsistent with Ministerial Directions 2.3 Heritage Conservation is flawed. In relation to European heritage, the proposal has always sought to rehabilitate and protect the historic cemetery on the site, and rehabilitate and retain the main dry stacked walls within the site. The Proponent believes the development of the site will provide a greater conservation outcome for the heritage items within the site.

### 3.2.3 Transport for NSW comments

40. The Council report identified that Transport for NSW (**TfNSW**) objected to the proposal in its current form due to concerns on impact of State road network; walking, cycling and public transport; and noise.
41. TfNSW's concerns are noted. However, the issues raised are all capable of being addressed at detailed design stage for future development applications. The discussion within the Council report has provided solutions to concerns raised by TfNSW, which demonstrates these matters can be addressed at DA stage.
42. We note that the initial Traffic Impact Assessment for the proposal was undertaken in accordance with the requirements of Council, which sought an assessment only of the Saddleback Mountain Road/South Kiama Drive intersection. Following receipt of the comments from TfNSW, further traffic analysis was completed to:
- Analyse the Weir Street/South Kiama Drive and the underpass of the Princes Highway/South Kiama Drive intersections
  - Provide comment on cycleway/pathway linkages and roadworks that maybe required.
43. As a precautionary approach, the traffic assessment supporting the proposal was modelled with a yield of 670 lots as a maximum case scenario if every 450m<sup>2</sup> lot was developed as a dual occupancy. This scenario is extremely unlikely. The actual proposed maximum yield of the site is 450 lots.
44. The Proponent is concerned that this precautionary approach has been incorrectly interpreted by Council and the community as representing the future development outcome for the site and have used this unrealistically high lot yield to demonstrate that traffic from this development would create an unacceptable impact on the surrounding road network. Notwithstanding, it is noted that even with the maximum potential lot yield considered, the traffic assessment demonstrates that all adjacent intersections to the site would operate at the highest level of service possible. In summary, the proposed development would not create adverse impact on the road network and there are no traffic impacts that would prevent the proposal from proceeding to finalisation.
45. Should Council's future Traffic and Parking study show that upgrades are required to road infrastructure or the provision of additional parking due to new population in this proposal and other proposals, these costs should be accommodated in an updated s7.11 or s7.12 local contributions plan.

### 3.2.4 DPIE: EES comments

46. The Council report identifies comments received from the Environment, Energy and Science Division (**EES**) of DPIE, noting that updated plans were **SUPPORTED**. The Council report also identifies that following several amendments to the proposal, EES consider that the planning proposal is inconsistent with the objectives of Section 9.1 Direction 4.3 Flood Prone Land.
47. EES commented that concerns regarding flooding are not minor and should be of concern to Council to satisfactorily address. However, EES states that 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 KLEP and that Council now has adequate information to resolve this matter.
48. The Council report concludes that *"...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. In this regard, Council considered that the proposal is inconsistent with Ministerial Direction 4.3 Flood Prone Land"*.
49. The Proponent notes EES's comments in relation to flooding identified issues, but critically, EES provided Council with recommendations on how matters can be resolved. The Proponent is also concerned that not all of EES's comments were shared with the Proponent during meetings with Council. It now appears that EES's concerns were the proposed filling along the northern section of the site, believing this filling was providing detention for storm events through the catchment or was filling flood prone land. The Proponent is also concerned that the Council report states that Council does not support the proposal "for a number of reasons". These reasons are not articulated further and Council's assumptions that are identified, are incorrect.
50. We note that prior to submission of the final documentation for the planning proposal in February 2021, the Proponent held a meeting with Council's Manager of Design and Development to discuss the final flood study. He advised EES and Council were concerned with some filling in the lower section of Munna Munnora Creek and creek offset throughout the development. The Proponent identified the filling in the original design was acceptable as flood modelling completed by Siteplus had shown no increase to flood levels downstream of the site for all flood events up to the designated flood event (1 in 100 year) and that the proposed creek offset was acceptable as the overall riparian corridor met the width requirements in KLEP. However, rather than arguing the points the plans were amended to remove the fill and widened the riparian corridor to ensure compliance with the overall widths and the offset from each bank within KLEP. The flood assessment submitted with the proposal was revised to address the above comments. A letter from Siteplus confirming this, is provided as **Attachment H**.
51. Following the Council report being advertised, the Proponent spoke to Council's Manager Design and Development. Council advised the flood assessment was satisfactory and that we would need to talk to the planners regarding comments in the Council report regarding flooding being affected by filling. Based on the assessment within Council's report, we are unsure if Council's Planners are aware that the revised flood assessment removed the filling from Munna Munnora Creek and increased the widths of the riparian zones.
52. The Proponent notes the following key points in response to EES and Council comments on flooding (**with consideration of the revised flood assessment and amended design**):
  - There is no filling in the Flood Planning Area (1% AEP flood level plus 500mm freeboard).
  - No part of the Flood Planning Area is proposed to be rezoned R2 Low Density Residential.
  - Setbacks from top of banks for all the creeks satisfy the requirements of clause 6.5 of KLEP.
  - The flood study shows no increase to downstream properties up to the designated flood.

- The filling along the motorway has no effect on the flood levels or flows on the site. The Siteplus Flood Assessment is compatible with the Bulk Earthworks Plan and complies with the requirements of Ministerial Direction 4.3 Flood Prone Land.
- The proposal does not include development that is inconsistent with Ministerial Direction 4.3 Flood Prone Land that would reasonably preclude the rezoning of the broader site for residential purposes. There is ample opportunity to resolve flood management solutions during detailed design in consultation with Council and EES.

### 3.3 OTHER COMMENTS

#### Education facilities

53. The Proponent disagrees with Council's comments that the proposal will have impact on local education facilities, particularly Kiama High School and Primary School. Referral of this planning proposal to the Department of Education (**DoE**) was not required by the Gateway Determination. Notwithstanding, DoE have determined that:

*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.*

54. The Proponent also notes:

- The majority of high school students would be able to walk to school from the site.
- Council in consideration of the planning proposal for 48 Campbell Street, Gerringong, raised no concerns that high school students would need to be bused or driven to school.

#### Sydney Water

55. The Council report has raised concerns over Sydney Water's ability to service the site. It is noted that Sydney Water raised no objection to the proposal. Sydney Water indicated that additional infrastructure, such as lead in mains or amplifications may be required. However, Sydney Water is confident of the ability to service the site.

56. The Proponent notes that Council did not raise any concerns on Sydney Water's capacity to service the Gerringong Planning Proposal. It is reasonable to assume that some level of additional infrastructure will be required by Sydney Water to meet Kiama's growth in the next 20 years as projected in the LSPS and Regional Plan. As such, unconfirmed concerns by Council over Sydney Water infrastructure capacity should not be reason to refuse the proposal at this time.

## 4 PUBLIC BENEFIT

The Proponent wishes to reiterate that the proposal not only exhibits strategic and site-specific merit, but it will also provide the following public benefits:

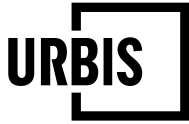
- Contribute to meeting the demand for a mix of new residential lots as identified in the Regional Plan and LSPS, which will relieve the extreme housing pressure being experienced in Kiama that is likely placing undue negative impacts on the community due to housing affordability.
- Accommodate additional population that will support local retail and commercial development in Kiama, boosting its economy and vibrancy.
- Result in a significant development contributions payment in accordance with Council's local infrastructure contribution plan, that can be used to provide new or embellish existing infrastructure that will boost amenity for the community.

- Facilitate a contained and compact growth to the Kiama township without need for excessive higher density within Kiama town centre that would change its character.
- Facilitate the conservation and embellishment of heritage and biodiversity on the site through protection and rehabilitation works.

## 5 CONCLUSION

We thank you for considering the matters raised in this submission prepared on behalf of the Proponent for the rezoning of the site at Saddleback Mountain Road and Weir Street, South Kiama. In summary, we ask that DPIE not support or adopt the Council's resolved position and instead work with the Proponent to progress the rezoning of the site to finalisation. This submission has demonstrated that:

- The proposal has satisfied the requirements established in *A guide to preparing planning proposals*.
- The proposal has already demonstrated merit through various planning processes, including receiving Gateway approval in 2019. Since that time the proposal and development concept have been refined to address technical issues raised by Council, the community and agencies.
- The proposal has strategic merit:
  - It is consistent with the strategic housing directions of the Regional Plan and the site is mapped as a greenfield site in the LSPS suitable for future urban expansion.
  - It can provide new dwellings to contribute to the housing supply required in NSW Population projections and meet local housing demand in an undersupplied housing market.
  - As it will provide Council adequate time to plan for the future rezoning of Bombo Quarry targeted to meet the longer term housing objectives for Kiama while being part of the solution in meeting the short to medium term demands.
- The site has site-specific merit as:
  - The site is physically capable of accommodating the proposed development with limited environmental, cultural and visual impacts.
  - It is well located on the periphery of Kiama township and is only 2kms from Kiama train station.
  - Referral comments from Government agencies have broadly supported the proposal or provided recommendations to resolve matters in the future related to infrastructure, road network, flooding and visual impacts.
  - Comments on the concept Masterplan and perceived inconsistency with Ministerial Directions are misplaced and should not preclude the opportunity for the site to be rezoned. The proposal is consistent with the relevant section 9.1 Directions and any technical matters are capable of being resolved through detailed design.
- Council's recommendation to not proceed with the proposal is inconsistent with past strategic planning assessment, recommendations and gateway approval.
- DPIE is requested to finalise this planning proposal as Council has not completed its delegated actions as instructed in Gateway, and:
  - Council's strategic merit assessment is flawed and relies on poor assumptions; and is inconsistent with its own endorsed strategic planning documents.
  - Council's site-specific merit assessment contains poor assumptions and mis-interpreted the concept masterplan and supporting documentation in relation to bulk earthworks, traffic assessment, and flood assessment.



- Council's assessment has mis-interpreted or incorrectly assessed the proposal against section 9.1 Ministerial Directions, including:
  - 2.3 Heritage Conservation
  - 4.3 Flood Prone Land
  - 6.1 Approval and Referral Requirements
- Council's assessment of earthworks has incorrectly referred to provisions within the EP&A Act and POEO Act, including identifying development as designated development and scheduled activity respectively, and overlooked the function of clause 6.2 in the KLEP.

We thank you again for reviewing this submission and considering the planning justification in support of the rezoning the site at Saddleback Mountain Road and Weir Street, South Kiama. We welcome the opportunity to discuss the matters raised in this submission and consulting with DPIE during the conclusion of this planning process.

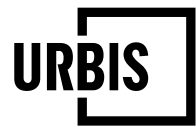
In the interim, please do not hesitate contacting Richard Barry or myself on 02 8233 9900, [cbrown@urbis.com.au](mailto:cbrown@urbis.com.au) or [rbarry@urbis.com.au](mailto:rbarry@urbis.com.au) should you require any additional information.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Clare Brown". The signature is fluid and cursive, with the first name "Clare" and last name "Brown" clearly distinguishable.

Clare Brown  
Director  
+61 2 8233 7678  
[cbrown@urbis.com.au](mailto:cbrown@urbis.com.au)

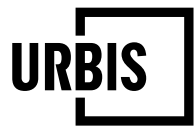




# **ATTACHMENT A      PLANNING PROPOSAL FOR SADDLEBACK MOUNTAIN ROAD AND WEIR STREET, SOUTH KIAMA**



## **ATTACHMENT B      COUNCIL'S ORDINARY MEETING REPORT, 19 MARCH 2019**



## **ATTACHMENT C**

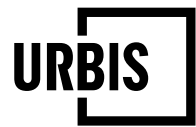
## **SOUTHERN REGIONAL PLANNING PANEL REPORT, 19 JUNE 2019**



## **ATTACHMENT D      COUNCIL'S EXTRAORDINARY MEETING REPORT, 28 JUNE 2021**

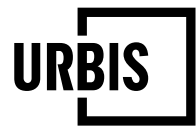


## **ATTACHMENT E      NSW DPIE 2020 POPULATION INSIGHTS REPORT**



## **ATTACHMENT F**

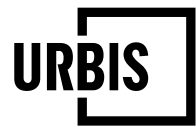
## **ALTERNATIVE BULK EARTHWORKS PACKAGE**



## **ATTACHMENT G**

## **HERITAGE ADVICE LETTERS FROM BIOSIS**





## **ATTACHMENT H      FLOODING ADVICE LETTER FROM SITEPLUS**