

## **Independent Review**

South Kiama Planning Proposal  
Saddleback Mountain Road & Weir Street,  
South Kiama

Proposed Residential Rezoning

Submitted to Department of Planning,  
Industry & Environment

February 2022 | Job No: 21095

**Insite Planning Services Pty Ltd**  
ABN 63 109 684 648  
PO Box 93, Cessnock NSW 2325  
(ph.) 4991 4793  
(email) [stephen@insiteplan.com.au](mailto:stephen@insiteplan.com.au)

#### QUALITY ASSURANCE

This document has been prepared, checked and released in accordance with the Quality Control Standards established by Insite Planning Services Pty Ltd

Issue	Date	Description	Initial
1	01/02/2022	Draft Completed	SL
2	02/02/2022	QA & finalise	SL

Copyright © Insite Planning Services Pty Ltd



This document has been authorised by: \_\_\_\_\_

Stephen Leathley B.urb.Reg.Plan; MBA; Registered Planner (Fellow)

**Date:** 2 February 2022

#### Disclaimer

This report has been prepared based on the information supplied by the client and investigation undertaken by Insite Planning Services Pty Ltd & other consultants. Recommendations are based on Insite Planning Services Pty Ltd professional judgement only and whilst every effort has been taken to provide accurate advice, Council and any other regulatory authorities may not concur with the recommendations expressed within this report. This document and the information are solely for the use of the authorised recipient and this document may not be used, copied or reproduced in whole or part for any purpose other than that for which it was supplied by Insite Planning Services Pty Ltd. Insite Planning Services Pty Ltd makes no representation, undertakes no duty and accepts no responsibility to any third party who may use or rely upon this document or the information.

#### Confidentiality Statement

All information, concepts, ideas, strategies, commercial data and all other information whatsoever contained within this document as well as any and all ideas and concepts described during the presentation are provided on a commercial in confidence basis and remain the intellectual property and Copyright of Insite Planning Services Pty Ltd and affiliated entities.  
This document has been registered with our solicitors along with a copy of all previous material

# TABLE OF CONTENTS

1. INTRODUCTION .....	1
1.1 Reviewer – Stephen Leathley .....	1
1.2 Planning Proposal Details .....	1
1.3 Terms of Reference .....	3
1.4 Review Documents .....	4
1.5 Planning Proposal Timeline .....	6
1.6 Site Inspection.....	7
2. CONSIDERATION OF COUNCIL REPORTS AND RESOLUTIONS.....	8
2.1 Council March 2019 Meeting .....	8
2.2 Council July 2019 Meeting.....	12
2.3 Council June 2021 Meeting .....	13
2.3.1 Proponent Rebuttal.....	16
2.4 Council October 2021 Meeting.....	18
3. REPORT AND RECOMMENDATIONS FROM THE SOUTHERN REGIONAL PLANNING PANEL MEETING MAY 2019 .....	20
4. GATEWAY DETERMINATION .....	23
5. COMMUNITY CONSULTATION .....	27
6. STATE GOVERNMENT AGENCY CONSULTATION .....	28
7. DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT BRIEFING NOTES AND DRAFT FINALISATION REPORT .....	31
7.1 DPIE Briefing Note Recommending Planning Proposal be placed on public exhibition .....	31
7.2 DPIE Briefing Note Recommending Proceeding with Planning Proposal .....	32
7.3 Plan Finalisation Position Paper.....	33
8. FINDINGS AND RECOMMENDATIONS OF THE REGIONAL HOUSING TASK FORCE.....	36
9. REVIEWERS ASSESSMENT .....	38
9.1 Does the Planning Proposal Pass the Strategic Merit Assessment Test .....	38
9.2 Does the Planning Proposal Pass the Site Merit Assessment Test .....	40
9.3 Consistency with Ministerial Directions .....	48
10. REPRESENTATIONS .....	50
11. CONCLUSION.....	53
10.1 Recommendations.....	54
ATTACHMENT 1 .....	55

# 1. INTRODUCTION

## 1.1 Reviewer – Stephen Leathley

1. My name is Stephen Leathley, and I am a qualified Town Planner holding a Bachelor of Urban and Regional Planning from the University of New England. I am also a Register Planner by the Planning Institute of Australia (PIA #5456) and have been afforded the status of 'Fellow' by the PIA due to my service to the profession and experience. I also hold a Master of Business Administration, also from the University of New England, majoring in Local Government and Strategic Management. I was the founding Chair of the PIA Local Government Planning Network and Chaired those committees at a state (Divisional) and National level. I was the editor of the PIA journal New Planner for five years (1996 – 2001). I have fifteen (15) years' experience (1988 – 2003) working for five (5) Local Government Areas (Wyang, Port Stephens, Blue Mountains, Hawkesbury, and Cessnock) where I was employed in positions ranging from Student Town Planner (Wyang) to Director of Environmental Services (Cessnock). I have since been working in my own consultancy which I established in October 2003, Insite Planning Services.

I have significant experience with a variety of strategic and statutory projects with our consultant base including both public and private sector clients. I am regarded as having several areas of expertise in planning including environmental planning, development assessment, strategic planning, social planning and stakeholder engagement, urban release area planning, as well as significant experience in tourism, hospitality and resources sectors, and visual impact assessment.

I have also been appointed on behalf of the Minister for Planning to Chair Local Planning Panel's (LPP's), and as an expert Town Planner sitting on both Local and Regional Planning Panels. I am currently appointed as an expert for the Central Coast and Blue Mountains LPP's, and I am an alternate Chair for the Hawkesbury and Wingecarribee LPP's. In terms of the RPP's, I have been sitting as an alternate on the Hunter Central Coast and Northern RPP's. I have also provided expert town planning evidence to the Land & Environment on numerous occasions over the last 30 years.

## 1.2 Planning Proposal Details

2. I have been engaged by the Department of Planning, Industry and Environment (the Department) to undertake an Independent Review of the Departments decision to proceed to rezone land located between Saddleback Mountain Road and south of Weir Street, South Kiama (refer to figure 1) being Lot 1 DP 707300, Lot 5 DP 740252, Part Lot 101 DP 1077617 and Part Lot 102 DP 1077617 and part of road reserve (the site) from the RU2 Rural Landscape Zone to:

- R2 Residential
- R5 Residential
- RE1 Public Recreation, and
- E2 Environmental Conservation.

The Planning Proposal which sets out the above rezoning also seeks to make other related amendments to the Kiama Local Environmental Plan 2011 (KLEP 2011) to facilitate the residential development of the subject site. It is also noted that Council and the Department have agreed to identify the site as an Urban Release Area. Council has included a URA clause in the Housekeeping Kiama LEP planning proposal (PP-2021-3041).

3. The current and proposed zonings are illustrated on figures 2 & 3 respectively.



Figure 1: Site Location (Source: Planning Proposal)

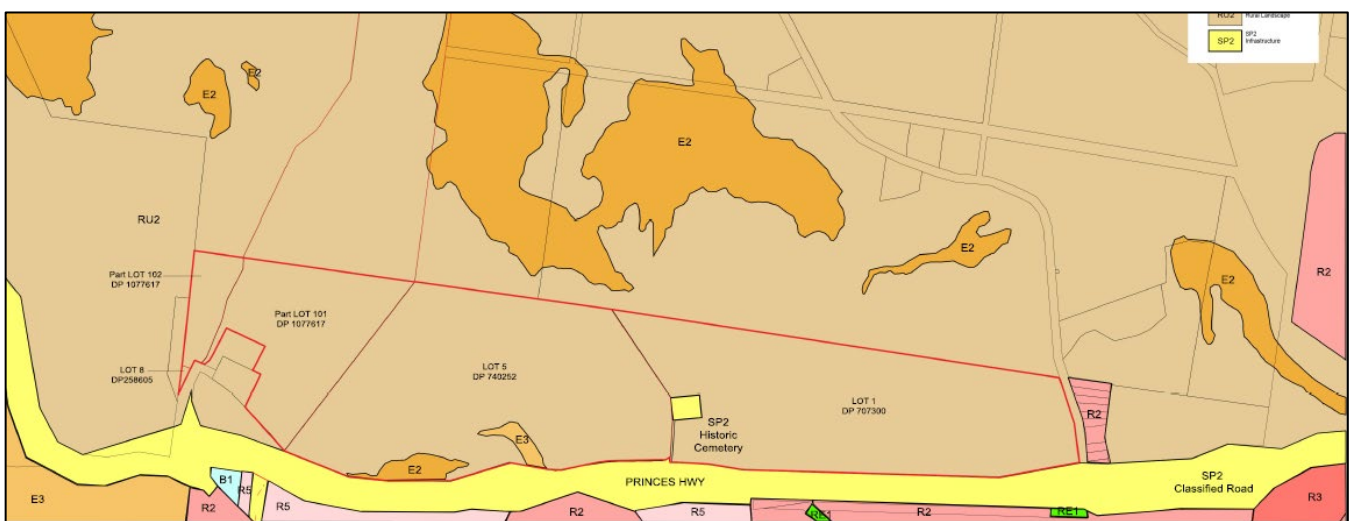


Figure 2: Current Landuse Zoning Structure KLEP 2011 (Source: Planning Proposal)



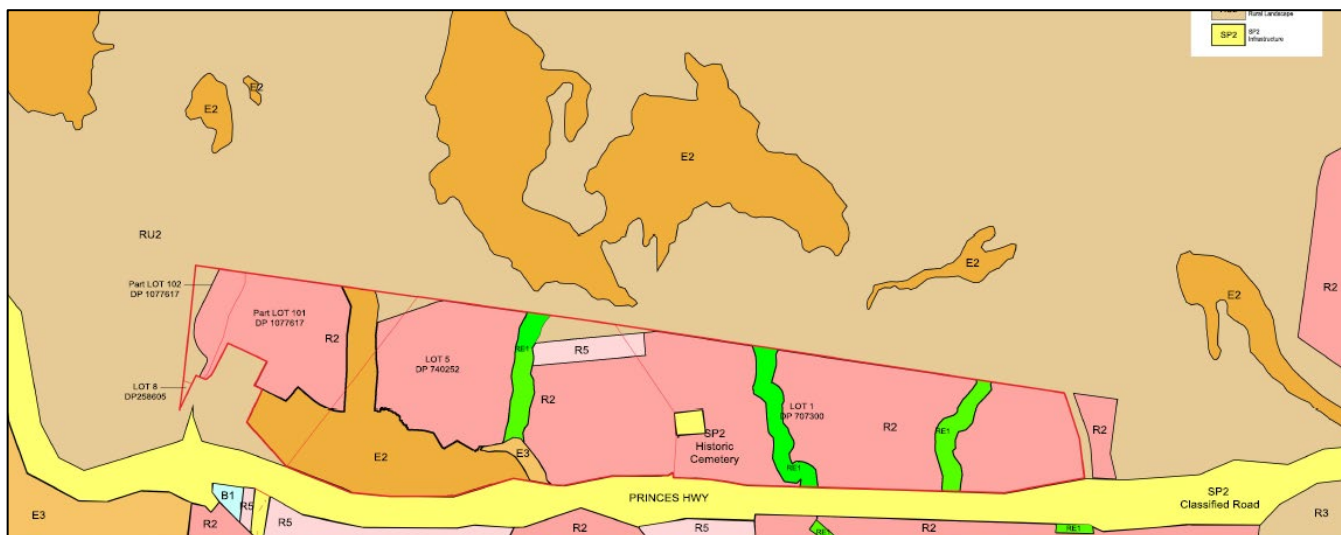


Figure 3: Proposed Land Use Zoning Structure (Source: Planning Proposal)

### 1.3 Terms of Reference

4. The purpose of the review, as set out in the Terms of Reference (TOR), is to *"provide advice and a recommendation in the Reviewer's opinion, whether the proposal has merit, whether further matters need to be investigated and whether the proposal should proceed to be finalised."*
5. The **scope of the review**, as set out in the TOR, are that *"the Reviewer must consider:*
  - *The planning proposal and supporting documentation as submitted to the Minister's delegate for consideration as part of the finalisation process.*
  - *The report and recommendations of the Southern Regional Planning Panel in 2019.*
  - *Gateway Determination*
  - *Council reports and resolutions relevant to the planning proposal including Reports to Council in March 2019, July 2019, and June 2021*
  - *Submissions and correspondence received from the community during the public exhibition period.*
  - *Submissions and correspondence received from state agencies that are relevant to the Department's consideration of the planning proposal.*
  - *Kiama Council's Local Strategic Planning Statement 2020.*
  - *Illawarra Shoalhaven Regional Plan 2041.*
  - *The Department's guide to preparing local environmental plans.*
  - *Any correspondence between the Department and Council relating to the consideration of Ministerial Directions.*
  - *Ministerial Directions.*
  - *Findings and Recommendations of the Regional Housing Task Force.*
  - *Departmental Briefing Notes and draft finalisation report."*
6. In terms of **consultation** with stakeholders the TOR state that I *"may choose to invite parties involved in the process to date to present their views on the planning proposal."*

A copy of the Terms of reference is provided at Attachment 1.

7. The TOR require that I undertake a **site visit** as part of the process.
8. A copy of the Terms of Reference is provided at **Attachment 1** to this report.

## 1.4 Review Documents

9. I have been provided with briefing material from Sarah Lees and Graham Towers, the former and current Director Southern Region of the Department. I have also liaised with Lisa Kennedy, the Planning Assessment officer who processed the Planning Proposal from the Department's perspective.
10. In undertaking this review, I have been provided with the following documents which I have reviewed and considered:

Document	Prepared by	Dated
Planning Proposal – Lodged with KMC, considered by KMC, DPIE & JRPP	No author	July 2018
Council report recommending that Council support the Planning Proposal & Council resolution not to support	Director of Environmental Services, Kiama Municipal Council (KMC)	19 March 2019
DPIE Rezoning Review – Briefing Report (considered by JRPP)	Lisa Kennedy, Planner, Southern Region, DPIE	28 March 2019
Southern Regional Planning Panel Rezoning Review Determination	Southern Regional Planning Panel (Pam Allan Chair)	19 June 2019
Ordinary Council Meeting Report & Minutes	Director of Environmental Services, KMC	16 July 2019
Gateway Determination Report	Graham Towers, A/Director Southern Region, DPIE	21 November, 2019
Gateway Determination & Letter from DPIE to KMC	Monica Gibson, Executive Director, Local and Regional Planning, Planning and Assessment, DPIE	4 December 2019
Emails between the Department and KMC	Offices from the Department and KMC	27 February to 12 March 2020
DPIE Briefing Note – Recommending Planning Proposal be placed on public exhibition	Lisa Kennedy, Planner, Southern Region, DPIE	19 March 2020
Correspondence from DPIE to KMC authorising exhibition	Director, Southern Region, DPIE	19 March 2020
Planning Proposal – Exhibited including: <ul style="list-style-type: none"> <li>- LEP Maps and Preliminary Development Plans</li> <li>- Flora and Fauna Assessment</li> <li>- Geotech Report</li> <li>- Traffic Noise Intrusion Assessment</li> <li>- Site Contamination Assessment</li> <li>- Bushfire Protection Report</li> <li>- Flood Study</li> <li>- Stormwater Management Report</li> <li>- Aboriginal Due Diligence Report</li> </ul>	SitePlus  EcoLogical Australia  Douglas Partners Harwood Acoustics  Douglas Partners  EcoLogical Australia SitePlus SitePlus  Biosis	23 January 2020  13 January 2020  December 2019 7 March 2018  January 2020  16 January 2020 November 2018 May 2018  16 October 2017

<ul style="list-style-type: none"> <li>- Historical Assessment Report</li> <li>- Traffic Impact Assessment</li> <li>- Preliminary Road Design Plans</li> <li>- Sydney Water Feasibility Letter</li> <li>- Endeavour Energy Advice Letter</li> <li>- Visual Assessment photos from Motorway</li> <li>- Visual Assessment photos</li> <li>- Visual Assessment table</li> <li>- Masterplan Development Report</li> </ul>	<p>Biosis</p> <p>Bitzios Consulting SitePlus</p> <p>Sydney Water</p> <p>Endeavour Energy</p> <p>No Author</p> <p>No Author</p> <p>No Author</p> <p>No Author</p>	<p>12 January 2020</p> <p>8 November 2018 2 March 2016</p> <p>7 November 2018</p> <p>26 November 2015</p> <p>No Date</p> <p>No Date</p> <p>No Date</p> <p>January 2020</p>
Council Post Exhibition Report & Council Resolution not to proceed including enclosure documents	Director of Environmental Services, Kiama Municipal Council (KMC)	28 June 2021
<p>Government Agency Responses from:</p> <ul style="list-style-type: none"> <li>- NSW Rural Fire Services</li> <li>- DPIE, Division of Biodiversity &amp; Conservation</li> <li>- Transport for NSW</li> <li>- Sydney Water</li> <li>- NSW Education</li> <li>- Illawarra Local Aboriginal Land Council</li> </ul>	<p>Team Leader, Development Assessment and Planning Senior Team Leader, Planning (Illawarra)</p> <p>Land Use Manager Growth Intelligence Manager Director Statutory Planning CEO</p>	<p>1 April 2021</p> <p>4 November 2020</p> <p>10 September 2020 3 June 2020 3 August 2020 8 June 2020</p>
KMC letter to DPIE advising Council resolution not to proceed with Planning Proposal	Ed Paterson, Manager Strategic Planning, KMC	6 July 2021
<p>Landowner Submission to DPIE including attachments:</p> <ul style="list-style-type: none"> <li>- NSW DPIE 2020 Population Insights Report</li> <li>- Alt Bulk Earthworks Package</li> <li>- Heritage Response</li> <li>- Flooding Response</li> </ul>	<p>URBIS (Clare Cook)</p> <p>DPIE</p> <p>Andrew Craddock, SitePlus</p> <p>Maggie Butcher, Consultant Archaeologist, Biosis Andrew Craddock, SitePlus</p>	<p>9 August 2021</p> <p>December 2020</p> <p>12 Feb 2021</p> <p>16 July 2021</p> <p>28 July 2021</p>
DPIE Briefing Note – Recommending to proceed with Planning Proposal	Graham Towers, A/Director Southern Region, DPIE	20 September 2021
Council Report following DPIE advice the Planning Proposal would proceed	Unknown	19 October 2021
DPIE Plan finalisation position paper – PP-2021-379	Graham Towers, A/Director Southern Region, DPIE	22 December 2021



11. I have also reviewed the following documents in the context of the Planning Proposal and this review process:

- DPIE Guide to Preparing Local Environmental Plans, dated December 2018
- Illawarra Shoalhaven Regional Plan 2041, prepared by DPIE and Dated May 2021
- Kiama Local Strategic Planning Statement 2020, prepared by Kiama Municipal Council
- Minister for Planning Section 9.1 Directions
- Regional Housing Taskforce Findings Report, September 2021
- Regional Housing Taskforce Recommendations Report, September 2021

12. As part of this review process, I have watched the following **Council meetings** – public access meeting 18 April 2019, Council Ordinary meeting 19 March 2019, public access meeting 28 June 2021 and 28 June 2021 Extraordinary Council meeting, and Council Ordinary Meeting dated 19 October 2021.

## 1.5 Planning Proposal Timeline

13. The processing of the Planning Proposal is summarised as follows:

- **4 July 2018** – Planning Proposal submitted to KMC by White Constructions Pty Ltd. Council undertook an assessment of the Planning Proposal which resulted in Council seeking further information from the applicant on two occasions with final documentation submitted by the proponent ~4 March 2019.
- **19 March 2019** – Council report recommending support of the Planning Proposal,
- **19 March 2019** – KMC resolved to not support the Planning Proposal
- **28 March 2019** – Proponent submitted to the Department a request for a 'Rezoning Review'
- **19 June 2019** – A report was prepared by officers from the Department to the Southern Planning Panel who determined that the Proposal satisfied the Strategic Merit and Site-Specific Merit tests and recommended that a Gateway Determination be issued.
- **16 July 2019** – KMC resolved to accept the role of Planning Proposal Authority and be responsible for the administration processes associated with the Gateway processes
- **10 September 2019** – the local State Member, the Honourable Gareth Ward MP, makes representations to the Minister for Planning advising that he shares his constituent's concerns around the planning proposal including size, location, and safety issues (DPIE Report dated 21/12/2021).
- **4 December 2019** – Gateway Determination that the Planning proposal (version 2 July 2018) should proceed subject to conditions
- **25 February 2020** – Mr Ward and the Kiama Combined Community Action Group met with the Minister to discuss the Group's concerns regarding zoning, population numbers and dwelling projections (DPIE Report dated 21/12/2021).
- **27 February 2020** – KMC sought the Department's support to place a revised planning proposal on public exhibition.
- **19 March 2020** – Following an update of the Planning Proposal in line with the Gateway Determination, the Department advised KMC that the Planning Proposal met the requirements of Condition 1 of the Gateway determination and Council could proceed with public exhibition
- **19 April to 31 May 2021** – Planning Proposal publicly exhibited with a total of 300 community submissions being received, comprising of 284 objections and 16 submissions supporting the proposal

- **5 May 2020** – Planning Proposal referred to government agencies included in the Gateway Determination including NSW Rural Fire Service, Division of Biodiversity & Conservation – DPIE, (Transport NSW), Sydney Water, Endeavour Energy, Natural Resources Access Regulator, and the Illawarra Local Aboriginal Land Council. Council also consulted with the NSW Department of Education.
- **28 June 2021** – KMC consider a report from the Director of Environmental Services that recommends that the Planning Proposal “now fails to satisfy the Strategic Merit and Site-Specific Merit Tests” and that it be recommended to the Department it “issue an amended Gateway Determination to no longer proceed” with the Planning Proposal.
- **6 July 2021** – Council requested the Department to alter the Gateway determination to no longer proceed with the planning proposal as per its 28 June 2021 resolution.
- **9 August 2021** – On behalf of the proponent, URBIS lodge a submission with the Department seeking to rebut the issues raised in the Council 28 June 2021 report on which the subsequent resolution was based.
- **20 September 2021** – DPIE Briefing Note recommending proceeding with Planning Proposal
- **13 October 2021** – DPIE advised KMC that it had concluded the Planning Proposal has strategic and site-specific merit and issues raised during consultation can be addressed. As such, the Department decided that it intended to rezone the site for residential development and environmental protection and would not be amending the Gateway determination.
- **27 October 2021** – Council resolved to work proactively with the proponent to seek early input and improved outcomes for the development of the site for the benefit of the community and to continue to work collaboratively and provide planning expertise to the Department to assist with finalising the required mapping to support the development
- **4 November 2021** – Mr Ward and concerned locals also met with Minister Stokes where the Minister decided to initiate this review of the Department’s intention to make the plan (DPIE Report dated 21/12/2021).
- **22 December 2021** – DPIE Plan Finalisation Position Paper.

## 1.6 Site Inspection

14. A site inspection was undertaken on the morning of Wednesday 12 January 2022 in the presence of the owner’s representative, Mr Trevor Unicomb. I inspected the site from three vantage points:
  - The northern boundary on Saddleback Mountain Road, Kiama
  - The centre of the site via the underpass of the Princess Highway into the cemetery and surrounding paddocks, and
  - From the private accessway within 11 Wier Street, Kiama Heights.
15. Having undertaken the site inspection, I concur with the description of the site and locality provided in the Planning Proposal, and the Council and Department reports. I do not believe that there is any disagreement on the relevant considerations in relation to the site.
16. I also visited other residential areas by myself located west of the Princess Highway, as well as other areas identified within the Kiama Local Strategic Planning Statement for potential urban release. Mr Unicomb took me to a newer subdivision that the proponent had undertaken also south of Jamberoo Road on the western side of the Princess Highway.
17. What I concluded from my site inspection was that the landform of the subject site was not that dissimilar to the landform of existing residential areas found west of the Princess Highway Motorway at Kiama, and that it was, subject to urban, environmental, and civil design, suitable for urban development.

## 2. CONSIDERATION OF COUNCIL REPORTS AND RESOLUTIONS

18. The Planning Proposal was reported to Council on three occasions as follows:

- 28 March 2019 on whether the Planning Proposal should be forwarded to the Department for a Gateway Determination – Council Officers report recommends support for the Planning Proposal; however, Council resolves not to support the Planning Proposal.
- 16 July 2019 on whether to accept the role as the Planning Proposal Authority – Council Officers report recommends Council accept the role, and Council supports that recommendation.
- 19 July 2021 follows the community consultation, agency consultation and compliance with the Gateway Determination – Council Officers report does not support the Planning Proposal and recommends that Council recommend to the Department that it not rezone the land. Council adopts an amended version of that recommendation.
- 27 October 2021 Council Report following DPIE advice the Planning Proposal would proceed

The following sections deal with each of the above reports and Council resolutions.

### 2.1 Council March 2019 Meeting

19. Council considered a report from the Director of Environmental Services and resolved as follows:

*"The Council does not endorse the Planning Proposal proceeding to Gateway at this time and notify the applicant of this decision"*

20. The Livestream recording of the meeting shows Councillors debating the merits of residential development of the subject site, and specific debate around the inclusion of the words *"at this time"* as part of the resolution. From the comments made by Councillors it would appear that this was based on Councillors having received a large number of emails objecting to the rezoning the evening before the meeting, some Councillors feeling they needed more information, others speaking passionately against any rezoning of the land and questioning the need for more residential zoned land, and others appearing to support the rezoning. In particular, it appeared the Council wanted to complete their Local Strategic Planning Statement before proceeding with the Planning Proposal, although that is not reflected in their resolution.

21. The Council report prepared by the Director Environmental Services supported the Planning Proposal making the following statements:

*"The PP is considered to be consistent with the mayoral minute from the Ordinary meeting of Council 17 October 2017 which recommended that Council not support any planning proposals that involve new residential land outside the identified town boundaries referred to in the adopted urban strategy areas.*

*The location of the proposed rezoning is within the town boundaries outlined in the Kiama Urban Strategy which is consistent with the Mayoral minute."* (pg. 186)

22. In relation to the adoption of the **Kiama Urban Development Strategy**, which was adopted by Council in September 2011, the report noted as follows:

*"The community panel established to guide the development of the KUS recommended against significant urban expansion and considered that the land below, which includes the subject site, could cater for any future greenfield expansion needs in the foreseeable future."* (pg. 189)

Further, the report noted formal written advice from the Department that stated:

*"... the DG did confirm in writing that he was "pleased the Council has endorsed the consideration of a number of potential rezonings to contribute to housing supply in Kiama in the short term. I can confirm the Department is willing to consider planning proposals for these sites." (pg. 189)*

In relation to the subject site covered by the Planning Proposal the report stated as follows:

*"The endorsed Kiama Urban Strategy identifies the sites contained within this PP as sites 3 and 14 and small parts of sites 4 and 5. Recommendation 8.1a of the adopted KUS states that:*

*Sites 3 and 14 should only be considered further if insufficient dwellings are able to be supplied to meet the Illawarra Regional Strategy requirements. Small parts of Sites 4 and 5 should be included in any planning proposal for the purposes of road access with some possible inclusion of land adjoining the road for minimal lot creation.*

*Consideration of this application for Planning Proposal therefore requires an assessment of housing supply to meet projected housing demand." (pg. 189)*

23. The report includes discussion on compatibility of the Planning Proposal with **the Illawarra-Shoalhaven Regional Plan 2015**. The report notes as follows:

*"In response to concerns about the availability of housing supply in Kiama to meet projected demand, the Plan includes a specific action (2.1.1) which commits the NSW Government to work with Kiama Municipal Council to monitor and review the potential of the area to accommodate demand. Discussion on this issue notes that Kiama should be able to accommodate 2,850 new homes up to 2036, to meet expectations for greater housing choice. However, analysis indicates that there is not enough land or 'market ready' infill development in the planning pipeline to meet this demand, and this may constrain the mix of housing available for first-home buyers, young families and retirees, and to people who want to age in their homes."*

*"It is anticipated that the NSW Government will use the Local Strategic Planning Statement process as the vehicle to work with Council to review housing opportunities that can respond to changing needs. It is noted that the sites within this proposed PP are included in the Council endorsed KUS and the DPE has confirmed its willingness to consider such sites." (pg. 191)*

24. The report also notes the Kiama Housing Activity and Forecast Supply and makes the following concluding statement after examining supply and uptake:

*"The submitted Planning Proposal suggests that there is currently insufficient dwelling capacity in Kiama to meet the requirement of the Regional Plan and that the rezoning of this site should be supported consistent with Recommendation 8.1a of the adopted Kiama Urban Strategy. This position is accepted given the housing supply data presented above." (pg. 192)*

25. Following is a summary of the Council assessment of the Planning Proposal against relevant **Ministerial Directions**:
26. Compliance with **Direction 1.2 – Rural Zones**: *"This PP is consistent with the KUS and the sites identified in the KUS were supported by the Department as outlined in a letter received from the Director-General dated 15 February 2012.*  
  
*As this site provides Kiama with additional greenfield development capacity and is identified in the adopted KUS, it is considered to be consistent with the ISRP and therefore is justified against Direction 1.2."* (pg. 192)
27. Compliance with **Direction 1.5 Rural Lands**: *".... it is noted that the soil composition and general topography is not conducive to viable agricultural practices. The land would be considered, at best, Class 3 agricultural land on the flatter portions only. The land is identified in the KUS of which the sites to be rezoned residential were supported by the DPE. On this basis the PP does comply with the direction."* (pg. 193)
28. Compliance with **Direction 2.1 – Environment Protection Zones**: *"The high value environmental areas are not within the proposed development areas, however there is potential for impact on these areas from sites works, runoff and the like. For this reason, it is accepted that the PP is consistent with Direction 2.1, however careful consideration of issues such as on-site detention and revegetation will be required to negate any impact on these areas."* (pg. 193)
29. Compliance with **Direction 2.3 Heritage Conservation**: *"The dry stone walls located in various locations throughout the site have the potential to be impacted by the development and the proponent has submitted a report which recommended a number of actions to be taken to minimise the impact on the walls. All of the recommended actions were endorsed by Council's independent Heritage advisor.*  
*The directions are considered to be addressed as there is appropriate legislation in place to protect the Aboriginal Heritage items, the dry stone walls and Kendalls Cemetery as listed in Schedule 5 of the Kiama LEP 2011."* (pg. 194)
30. Compliance with **Direction 3.1 Residential Zones**: *"The PP will be of a density that is consistent with the general residential nature of the Kiama urban area and will provide for a range of residential uses that are permissible within the R2 Low Density Residential zone. Servicing has been addressed in the PP and has been confirmed with the utility infrastructure providers. The site is also justified by the KUS. The PP is deemed to be consistent with this direction."* (pg. 195)
31. Compliance with **Direction 3.4 – Integrating Land Use and Transport**: *"The PP provides a road design that appears to be suitable for public transport, specifically the local bus network. The PP does not include any evidence of any discussions with public transport operators and therefore can only be considered partly consistent with the Direction. Further consultation can occur during the PP process should Council endorse the PP. As this PP is consistent with the KUS & ISRP, it is consistent with this Direction."* (pg. 196)
32. Compliance with **Direction 4.4 Planning for Bush Fire Protection**: *"The PP was supported by a Bush Fire Assessment report which concluded that the site can comply with the requirements of PBP 2006. Consultation with the NSW RFS will form part of the consultation process should Council endorse the PP to Gateway Determination."* (pg. 196)

33. Compliance with **Direction 5.10 Implementation of Regional Plans:** *"The PP addressed its consistency with the ISRP and is considered to comply with this Direction as it will assist in supplying additional housing in the Kiama LGA on a site that was identified in a relevant land use strategy (KUS)."*
34. The report also confirms compliance with Directions 6.1 and 6.2 which deal with Approval and Referral Requirements and Reserving Land for Public Purposes respectively.
35. In summary, the March 2019 Council report prepared by the Director of Environmental Services confirms compliance of the Planning Proposal with all relevant Ministerial Directions.
36. The report also provides an assessment of the Planning Proposal against relevant **State Environmental Planning Policies**. In relation to SEPP 55 the report notes that a Preliminary Contamination Assessment was submitted with the Planning Proposal agreeing that the site can be made compatible for proposed residential landuse from a contamination perspective. The report also addressed SEPP (Rural Lands) 2007 which has since been repealed and is no longer of relevance. (pg. 198 – 199)
37. In terms of individual site issues, the report makes the following statement:
38. In relation to **Heritage**, the report quotes the Councils independent Heritage Advisor who reviewed the Planning Proposal and accompanying Aboriginal Cultural Heritage assessment and a Historical heritage assessment of the site and stating *"I have no objection to the proposed rezoning of the subject site, and support the conclusions and recommendations of the Aboriginal due diligence report. I support Recommendation 3 of the Historical Heritage Assessment."* The concluding statement in the Council report is: *"It is considered that the impact on heritage is acceptable subject to the above recommendations being adopted."* (pg. 199)
39. In relation to **Traffic**, the Council report states as follows: *"Council's Development Engineer .... concluded that there are no outstanding matters that would preclude development of the site and that further detail can be addressed at development application stage."* (pg. 200)
40. In terms of **Servicing** the site with water, wastewater and electricity infrastructure, the report concludes following consultation with Sydney Water and Endeavour Energy that the site can be serviced.
41. In terms of **Bushfire**, as noted above in the commentary on Ministerial Direction 4.4, the report notes that consultation was, at that stage, yet to occur with the RFS which would determine adequacy of the assessment or not. The report did not raise any potential threshold issues related to bushfire that might prevent the Planning Proposal from proceeding.
42. In relation to **Flooding and Stormwater** the report quotes the Council Development Engineer who concluded following assessment of the relevant reports that accompanied the Planning Proposal *"that there is nothing that would preclude the approval of this PP from an engineering perspective"* (pg. 201)
43. The Council report did not contradict the specialist reports dealing with **Site Stability** (Geotechnical report), **Visual Impact/Amenity** and **Agricultural Land**. It did not raise any issues with these considerations that would deny the processing of the Planning Proposal.



44. The Council report prepared by the Director of Environmental Services to the Council meeting 19 March 2019 concluded as follows:

*"The subject land has been previously included in the KUS as being potentially suitable for residential development if additional housing supply is needed. The PP and supporting documents have not raised any significant issues that would preclude the rezoning of the site to predominantly residential purposes and any issues that have been raised can be addressed through an amended PP or at Development Application stage. It is therefore recommended that the PP be endorsed to be forwarded to the Department of Planning and Environment subject to the following amendments."*

- *The PP maps are amended to include the riparian corridors as RE1 Public Recreation prior to being forwarded to the Department of Planning and Environment for Gateway Determination;*
- *The minimum lot size maps are amended to change the MLS to 450m<sup>2</sup> for the entire R2 Low Density Residential area prior to being forwarded to the Department of Planning and Environment for Gateway Determination;*
- *The proponent begin the process of preparing a site specific Development Control Plan in consultation with Council."*(pg. 202)

## 2.2 Council July 2019 Meeting

45. Following the Southern Planning Panel (SPP) recommendation that the Planning Proposal be submitted for a conditional Gateway Determination, the Department wrote to KMC on 10 July 2019 inviting the Council to be the Planning Proposal Authority (PPA). A report was then submitted to the Ordinary Meeting of KMC on 16 July providing a summary of the process to date and providing details on the outcomes from the SPP recommendation.
46. From the minutes of the Council meeting there was debate on whether Council accept the PPA role with a motion put that Council does not accept the role. This was defeated 5/4.
47. The following motion was then adopted on the same vote, that Council:
- 1. Notes the recommendation of the Southern Planning Panel (SPP).*
  - 2. Advises the SPP that the Council strongly objects to the recommendation of the Panel to proceed to Gateway Determination for the Planning Proposal.*
  - 3. Notwithstanding its objection to the recommendation of the Panel, accepts the role of the Planning Proposal Authority (PPA) and respond to the SPP accordingly. In accepting the role of PPA, Council acknowledges its responsibility to represent the views of the community in relation to the Planning Proposal.*
  - 4. Notifies the proponent that the Planning Proposal is to be updated in accordance with the recommendations of the SPP prior to being submitted to the Department of Planning, Industry and Environment (DPIE) for a Gateway Determination.*
  - 5. Requests the DPIE, in preparing a Gateway Determination for the Planning Proposal, to consider:*
    - a) the need for additional studies to address traffic impacts from the proposal on Kiama streets including in the Kiama Town Centre; and*
    - b) liaise with Sydney Water regarding servicing and system augmentation requirements*
  - 6. Notes that the delegation of the Minister to make the Local Environmental Plan amendment will not be granted to Council as this Proposal was subject to a Rezoning Review.*
48. The outcome then was that Council accept the PPA role.

## 2.3 Council June 2021 Meeting

49. Council considered a report from the Director of Environmental Services and resolved in line with the recommendation of that report with the inclusion of the 5<sup>th</sup> dot point identifying the significant concerns relating to various matters. The resolution is as follows:

*"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*
- *there also remains significant concerns relating to the following matters:*
  - *impacts on local educational facilities particularly Kiama High School and Primary School to be able to support the additional population resulting from this proposal*
  - *significant impacts on traffic and movement particularly the intersection between Saddleback Mountain Rd and South Kiama Drive and local roads leading from there to the Princes Highway. A full traffic assessment and modelling is still required and needs to be associated with Council's Kiama Traffic and Parking Study*
  - *reservations remain regarding the ability for the site to be serviced by Sydney Water, given lack of forward planning that has occurred by Sydney Water to date.*

*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."*

50. The Livestream recording of the meeting shows Councillors debating the additional items at point 5 above as well as their general concerns regarding a rezoning of the site.

51. The Council report prepared by the Director Environmental Services made the following statements in relation to the assessment of the Planning Proposal:

52. In relation to the Strategic Merits of the Proposal (pg.'s. 353 – 354) the report states:

*"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." (pg. 353)*

53. The comment that the Department did not support this site being included in the KUS appears to be at odds with the commentary provided in the March 2019 report (refer para 22.) where the indication was a positive response from the Department to the KUS.

54. The report notes that Council has progressed two rezoning's at Gerringong and Kiama Downs that would produce ~200 allotments. The South Kiama Planning Proposal will produce 444 residential allotments. The report states further that *"other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan."* (pg. 354) No details are provided and there is no analysis or evidence to substantiate this statement.

55. Supporting its case that the proposal no longer has Strategic merit, the Council report states that the Department's population projections have decreased, and that Council is preparing a Housing Strategy:

*"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."*

56. The Council report is also critical of the site being suitable for residential development raising issues with the amount of earthworks required to make the site suitable, visual impacts and impacts on heritage. Specifically, the report states:

*"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" (pg. 354)*

57. The report then goes on to state that this level of earthworks would trigger Designated Development provisions and Scheduled Activity in respect to the Protection of the Environment Operations Act 1997 and as this would require concurrence, the proposal then fails "Ministerial Direction 6.1 – Local Plan Making" that 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.

58. The report then states that both the Visual Impact Assessment and the Traffic Noise Intrusion Assessment have not taken this level of filling into account with the inference being that they cannot be relied upon as being accurate. (pg. 355)

59. The report also raises issues with Heritage Impacts stating:

*"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." (pg. 355)*

60. In relation to the "Site Specific Merits Test, the Council officers report states:

*"..... 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." (pg. 355)*

61. The Director Environmental Services Report also addresses the responses from the State Government Agencies and other Stakeholders, which is covered in section 6 of this report. The outcome of the submissions received during the public consultation process is addressed at section 5.

62. The Council report prepared by the Director of Environmental Services to the Council meeting 28 June 2021 concluded as follows:

*"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 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 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,*
- 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." (Pg's. 265-366)*

63. **Comment:** There are two reports on record from the Director of Environmental Services, the first from March 2019 is a relatively comprehensive report recommending support for the Planning Proposal. I consider this report to be a fair and impartial assessment of the Planning Proposal. In comparison, the June 2021 does not contain any substantive or persuasive evidence to support the submissions against the Planning Proposal, some even contradictory in nature to the March 2019 Council report. The report also fails to prosecute a case against the SRPP findings that supported the Planning Proposal. Consequently, I place limited weight to it in my consideration of the Planning Proposal other than a factual exercise of the submissions received from government agencies and stakeholders, and the community.

### 2.3.1 Proponent Rebuttal

64. The proponent, via their consultants URBIS, made a submission to the Department, dated 9 August 2021, as a rebuttal to the Council report and resolution. In relation to the issues raised by Council in resolving to recommend to the Department that the Planning Proposal not proceed, URBIS made the following submissions

- **Strategic Merit Test** – *"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. Section 10.0 of the LSPS identifies the site as Greenfield site "5", for potential future urban expansion. 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. 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.*
  - *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 ..... The proposal is consistent with the relevant strategies to provide additional housing."*
- **Projected Housing Needs** – In relation to the Council position 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, the URBIS submission examines each and responds as follows:
  - **48 Campbell Street, Gerringong** – *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. ....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** - 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. .... 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** - 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.
  - 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.
  - 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.
  - 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.
  - 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.
  - 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.
  - 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.



- **Site Specific Merit Test:** The URBIS submission also addresses issues relevant to the Site-Specific Merit test addressing issues raised in the Council report related to:
- **Earthworks** – The submission states that *"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 110,000m3."*
  - *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).*
  - *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.*
  - The submission also makes comments regarding concurrence, consultation or referrals required due to the extent of fill and on the visual impacts that will occur because of the level of fill.
- **Heritage** – In terms of aboriginal cultural heritage, the proponent submits that:
  - *"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."*
  - 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.

The submission also addresses Transport for NSW comments, DPIE EES comments as well as the public benefit of the proposal and issues relating to educational facilities and Sydney Water.

## 2.4 Council October 2021 Meeting

65. Following correspondence from the Department dated 13 October 2021 which advised Council that *"the Department has concluded the proposal has strategic and site-specific merit and issues raised during consultation can be addressed. As such the Department has decided that it intends to rezone the site for residential development and environmental protection."* The report outlines the process involved in finalising the Planning Proposal. It also sets out the options available to Council and an overview of the considerations that need to be made in relation to the resources provided to Department from Council for the finalisation of the proposal.
66. The Livestream recording of the meeting shows Councillors debating their desire to have a meeting with the Department officers and the Minister to outline the Council concerns and establish a process of working with the Department to ensure the communities concerns are addressed through planning and development process to follow. Councillors again highlight concerns

regarding the town's infrastructure to cope with the residential development, the impact on the scenic rural character of the town and the impacts of traffic.

67. The report sets out the status of the Planning Proposal at that time, Council's role in the process, what actions have been taken, the administrative support required by Council to finalise the Planning Proposal process and what the preceding steps in the process will be.

68. Council resolution is as follows:

*"that Council:*

- 1. express on behalf of the community our disappointment about the decision of the State Government relating to Department of Planning Industry and Environment approval for a development proposal at South Kiama PP\_2019\_KIAMA004\_00 and the intention to rezone rural land west of the Princes Highway between Saddleback Mountain Road and south of Weir Street for residential purposes and environmental conservation.*
- 2. note and reiterate for the public record, the previously stated resolutions from the 28 June 2021 report where specific concerns were cited in relation to the proposed development known as South Kiama which remain, including -*
  - impacts of traffic*
  - access to the highway*
  - impact on the local schools*
  - impact on rural landscapes*
  - the adequacy of current infrastructure for the development and future residents.*
- 3. respectfully issue an invitation to the New South Wales Minister for Planning and Public Spaces to present to Council and share the reasoning for the decision and discuss enhanced outcomes for our community.*
- 4. request a meeting with Senior Department Planning Industry and Environment in order to further discuss Council's concerns about the impacts of the development.*
- 5. prepare an advocacy strategy for the needs of the community in respect to growth needs to inform State and Federal Governments.*
- 6. following the finalisation of the Housekeeping Amendment to Kiama Local Environmental Plan note that the urban release areas clause will apply and that there will be a requirement for a site-specific Development Control Plan.*
- 7. delegate to the Chief Executive Officer to work proactively with the proponent to seek early input and improved outcomes for the development of the site for the benefit of the community.*
- 8. delegate to the Chief Executive Officer operational responsibility to continue to work collaboratively and provide planning expertise to the Department of Planning Industry and Environment using Council's Major Projects team model, in order to assist with finalising the required mapping to support the development outlined at resolution 1. Above."*

### 3. REPORT AND RECOMMENDATIONS FROM THE SOUTHERN REGIONAL PLANNING PANEL MEETING MAY 2019

69. A request for a 'Rezoning Review' was submitted by the proponent on the 28<sup>th</sup> of March 2019. The process for Independent Reviews of plan making decisions is set out in Planning Circular PS 18-012 dated 14 December 2018. There are two types of review – a 'Rezoning Review' and a 'Gateway Review'. This Planning Proposal was subject to a *Rezoning Review* as KMC had notified the proponent that the original request to prepare a PP had not been supported.
70. The Planning Circular sets out that the relevant Planning Panel is to recommend whether a Planning Proposal be submitted for a Gateway Determination under Section 3.34 of the Environmental Planning & Assessment Act. In this case, the Southern Regional Planning Panel (the Panel) was the relevant Planning Panel.
71. In making its determination, the circular states that *"the key factor in determining whether a proposal should proceed to a Gateway determination should be its strategic merit, and that Planning Proposal will be assessed to determine if they are:*
- *consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or*
  - *consistent with a relevant local strategy that has been endorsed by the Department; or*
  - *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.*
72. The Planning Circular then sets out that if the Planning Proposal has satisfied the Strategic Merit Test, it must then satisfy a site-specific merit test with the consideration including:
- *the natural environment (including known significant environmental values, resources or hazards);*
  - *the existing uses, approved uses and likely future uses of land in the vicinity of the land subject to the proposal; and*
  - *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.*
73. Following lodgement of the Rezoning Review application, Department officers prepared a Briefing Report on the Planning Proposal covering issues related to both the Strategic Merit Test and the Site-Specific Merit Test. The report is factual in nature, being a briefing report, not proffering a view on whether the proposal meets the relevant tests.

74. **Strategic Merit Test:** The Panel found that the Planning Proposal has strategic merit on the following basis:

- *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.*

75. **Site Specific Merit Test:** The Panel recognised the characteristics of the site that support the Planning Proposal, as well as the site constraints finding ultimately that *"the proposal has site specific merit provided the constraints are able to be addressed through further refinement and reduction in initial yields identified."*

76. In terms of the need to mitigate environmental impacts the Panel found:

*"It is the Panel's view that the current layouts and lot configuration have not been properly informed by an assessment of the visual and landscape qualities of the site and a proper urban design analysis that responds to the site's context and character. Further detailed analysis of the site is required before specific zonings, heights and densities can be determined.*

*The Panel recommends the Gateway process require:*

- *Additional constraints analysis that overlays environmental and heritage constraints over indicative subdivision – including identification of dry stone walls to be retained/removed.*
- *Further urban design analysis reflected in a structure plan that:*
  - *Identifies key principles for development of the site*
  - *Identifies appropriate interface with adjoining agricultural and environmental land*
  - *Landscape interface along the Princes Highway*
  - *Allows for implementation of a landscape buffer around the site*
  - *Reviews densities, lot and road layout to accommodate constraints and minimise visual impacts*
  - *Identifies and locates public reserves to service the new population*
- *Visual analysis from the Princes Highway and measures to ensure that the views from the highway are of landscape*
- *Broad identification of cut and fill and where, if any, retaining walls will be located – ensuring heights are minimised*
- *Amendments to layout that ensure no acoustic wall is required along the Princes Highway to mitigate noise impact*
- *A site-specific Development Control Plan that identifies the future character of the area and the important attributes*

*The work will require a review of the extent of the R2 zoned land, lot yields and identification of a range of zonings that reflect the outcome of the studies.*

*The Panel does not endorse the subdivision layout or lot yield submitted with this proposal.*

77. Ultimately the Panel recommended that the Planning Proposal proceed to Gateway Determination as follows:

*"1. That the Planning Proposal proceed to a Gateway Determination*

*2. That the following additional requirements as outlined in this report be provided and considered as part of the Gateway Determination:*

*a) Further urban design analysis*

*b) Additional constraints analysis in terms of environmental, visual, landscape and heritage outcomes*

*c) Site specific Development Control Plan controls*

*d) Provision of zoning and controls that reinforces the outcomes of the urban design, visual and landscape analysis of the site"*

## 4. GATEWAY DETERMINATION

78. The Gateway Determination was issued on 4 December 2019. This proceeded a Gateway Determination Report (the Report) signed off by the Director, Southern Region Local and Regional Planning on the 25 November 2019.

79. **Strategic Merit Test:** The Report addressed the Strategic Merits of the Planning Proposal concluding as follows following consideration of the *Illawarra Shoalhaven Regional Plan*:

*"The planning proposal is consistent with key directions and actions identified in the regional plan by providing additional housing to meet the changing demands and projected needs of the region."* (pg. 9)

80. The Report also addressed the *Kiama Urban Strategy* noting the following commentary which is of relevance:

*"The strategy has not been formally endorsed by the Department, mainly on the grounds that it does not provide sufficient yields to meet the projected housing needs of Kiama. Notwithstanding this, the Department wrote to Council in 2012 confirming it is willing to consider planning proposals over land that is identified in the strategy for urban expansion. The landowners of Lots 1, 5, 101 and 102 made submissions to the draft strategy to have their land rezoned from rural to residential. Council's assessment of the landowners' requests was that the lots "should be considered together only if insufficient dwelling numbers are available from other sources". The sites were subsequently not included in the strategy for greenfield urban development within the next 10+ years.*

*.....  
The Department is satisfied the proposal is consistent with the Kiama Urban Strategy."* (pg. 9)

81. **Section 9.1 Ministerial Directions:** The Report found that the Planning Proposal is consistent with section 9.1 Directions 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans, and identified several non-compliances with the following Ministerial Directions:

- Direction 1.2 Rural Zones noting that the *"inconsistency is justified as the site is identified in the Kiama Urban Strategy for consideration as a greenfield site"* and consequently that *"no further consideration of this Direction is required"*.
- Direction 6.3 Site Specific Provisions noting again that the *"inconsistency is of minor significance as the site requires master planning and the development of a site-specific DCP to identify the future character of the area and important attributes. The panel identified that a detailed analysis of the site is required before specific zonings, heights and densities can be determined. No further consideration of this Direction is required."*

82. The report also concluded that it could not make a determination on the Planning Proposals consistency with section 9.1 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones and 4.4 Planning for Bushfire Protection due to the technical studies not covering the entire site. It also noted that any potential inconsistency with Direction 4.4 Planning for Bushfire Protection remains unresolved until consultation with the NSW Rural Fire Service has been undertaken. The report concluded that *"Consistency with these Directions will require further consideration."* (pg. 10)



83. **State Environmental Planning Policies:** In relation to the relevant SEPP's the report advises:

- SEPP 55 Remediation of Land – that the report submitted with the Planning Proposal does not include the entire area covered by the Planning Proposal and that this report will need to be updated to ensure consistency with SEPP 55.
- Coastal Management SEPP – not required to be addressed at rezoning stage.
- Primary Production SEPP – not required to be addressed at rezoning stage.
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007 – site is not mapped as containing biophysical strategic agricultural land (BSAL).

84. **Site Specific Merit Test:** In relation to the relevant considerations, the report notes as follows:

- **Social and economic impacts** – The Planning Proposal has not addressed this consideration deferring to Council to address as part of the Contribution Plan process.
- **Aboriginal Heritage** – A Cultural Heritage Report is required, and land south of Weir Street needs to be investigated.
- **European Heritage** – Confirmation is required as to whether there are any dry stone walls on the lands south of Weir Street, otherwise the Report notes the recommendations of the heritage assessment submitted with the Planning Proposal and management required to address potential impacts.
- **Traffic Management** – A review of the assessment is required to address traffic issues from the development on the land south of Weir Street. The Report also notes that Council has requested the Gateway determination consider the need for additional studies to address traffic impacts from the proposal on Kiama streets, including Kiama Town Centre.
- **Traffic Noise** – The Report notes the Traffic Noise Intrusion Assessment was undertaken recommending that dwellings within 150m of the Princess Highway would require acoustic treatment. The Report also noted that the Panel recommended that the layout of the development be amended to ensure no acoustic wall is required along the Princes Highway to mitigate noise impacts and that the proponent had confirmed that an acoustic wall is not required.
- **Visual Impacts** – The Report noted the Panel recommendation that *"the Gateway determination require visual analysis from the Princes Highway and measures to ensure the views from the highway are of landscape. The proponent has provided a further visual assessment of the site from along the Princes Highway and Weir Street and a landscape interface plan, which will reduce views to the site. Council will consider whether this level of information is adequate in progressing the proposal."* (pg. 12)
- **Topography** – The Report noted the Panel recommendation that *"the broad identification of cut and fill and where, if any, retaining walls will be located to ensure heights are minimised."* The Report advised that the proponent had provided a proposed cut-and-fill plan, noting that this plan would need to be updated should the zoning, lot yield and lot layout be amended.
- **Flora and Fauna** – The Report notes the biodiversity of the site, and its conservation status (as an EEC or like). It also notes that where clearing is to occur, it will be offset with revegetation of the major watercourses. Ultimately, the report concludes the need for consultation with the Department's Environment, Energy and Science Group to confirm the status of the biodiversity on the site, and management requirements.

- **Agricultural Land** – The Report does not raise any issues with the Planning Proposal regarding this consideration.
- **Bushfire** – The Report notes that the Bushfire Assessment report will need to be updated to include land covered by the Planning Proposal, but not covered by the Bushfire Report at that time.
- **Flooding** – The Report does not raise any issues with the Planning Proposal regarding this consideration.
- **Infrastructure** – The only outstanding issue at the Gateway Determination stage was again the need for further consultation with service providers to confirm infrastructure is available for the land south of Weir Street.

85. **Consultation:** The Report noted that:

- **Community Consultation** – That Council advised that the planning proposal would be publicly exhibited for 28 days, which the Report deemed *appropriate*.
- **Agencies** – The Report recommended that consultation occur with the following agencies:
  - NSW Rural Fire Service
  - Division of Biodiversity & Conservation, DPIE
  - Roads and Maritime Services
  - Sydney Water
  - Endeavour Energy
  - Illawarra Local Aboriginal Land Council
  - Natural Resources Access Regulator

86. **Time Frame:** The Report noted that KMC nominated an 18-month time frame to complete the rezoning process. This was deemed appropriate given the additional work required to be undertaken.

87. **Local Plan Making Authority:** The report noted that *"Council did not request authorisation to be the plan-making authority. Due to the planning proposal being subject to a rezoning review and the potentially contentious nature of the proposal, it is considered appropriate that delegations remain with the Department"*. (pg. 16)

88. **Report Conclusion:** *"It is recommended that the planning proposal proceed as submitted with conditions.*

*The planning proposal will assist in meeting housing targets identified in regional and local planning strategies.*

*The proposed Gateway determination is consistent with the panel's findings and recommendations.*

*The proposed amendments to the Kiama LEP 2011 will be supported by a master plan and DCP for residential development and subdivision of the site."* (pg. 16)

**89. Gateway Determination:** Was issued on 4 December 2019 and is consistent with the recommendation in the Gateway Determination Report:

I, the Executive Director, Local and Regional Planning at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Kiama Local Environmental Plan (LEP) 2011 as described above should proceed subject to the following conditions:

1. The planning proposal is to be revised prior to public exhibition to include the following:
  - a) revised technical studies covering all parts of the subject site;
  - b) 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;
  - c) identify zonings, densities and heights that reflect the outcomes of the studies and master plan;
  - d) terrestrial biodiversity mapping; and
  - e) details on consistency with section 9.1 Directions, community and agency consultation and a project time frame.

The revised proposal is to be submitted to the Southern Region of the Department for consideration prior to public consultation.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
  - NSW Rural Fire Service;
  - Division of Biodiversity & Conservation – DPIE;
  - Roads and Maritime Services;
  - Sydney Water;
  - Endeavour Energy;
  - Natural Resources Access Regulator; and
  - Illawarra Local Aboriginal Land Council.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The time frame for completing the LEP is to be 18 months following the date of the Gateway determination.

Dated 4<sup>th</sup> day of December 2019.



Monica Gibson  
Executive Director, Local and  
Regional Planning  
Planning and Assessment  
Department of Planning, Industry and  
Environment

Delegate of the Minister for Planning  
and Public Spaces

## 5. COMMUNITY CONSULTATION

90. In relation to understanding the communities' views on the Planning Proposal, I have undertaken the following:

- Reviewed the Council and Department summary of issues raised during the exhibition period 19 April to 31 May 2021 from the 300 submissions received in the respective reports.
- Watched the public access and Council meetings on Council website (see para. 12).
- Reviewed a sample of the submissions themselves. I did not read all 300 submissions as it was clear from the sample that I read that the issues had been adequately summarised in the Council and Department reports.

91. From the 300 submissions received, the Council and Department reports note that 284 are objecting to the Planning Proposal with the remaining 16 in support.

92. For those in the community objecting to the Planning Proposal, the primary concerns regarding the Planning Proposal are related to:

- Traffic impacts on the local road network of Kiama including a view that a northbound ramp onto the Motorway to service the traffic generated from the residential development of the land. There was also concern was around the capacity of the existing road network, and with the intersections of Saddleback Mountain Road and South Kiama Drive and Manning and Bonaira Streets around the High School
- Impact on the rural character of Kiama which is known for its beaches and rolling green hills.

The submissions did raise other issues including that the proposal lacked strategic merit, that the proposal is not consistent with Ministerial Direction 4.3 Flood Prone Land, that Sydney Water could not service the development, that the schools did not have capacity to accommodate the additional children and concerns of the heritage listed dry stone walls on the site needing protection and buffers.

93. Those in favour of the Planning Proposal did so based on an increase in the supply of housing and supporting local businesses and jobs during the construction period.

## 6. STATE GOVERNMENT AGENCY CONSULTATION

94. As noted in section 4 of this report, the Gateway determination required consultation with the following State government agencies and stakeholders:

- NSW Rural Fire Service
- Division of Biodiversity & Conservation, DPIE
- Roads and Maritime Services (Now referred to as 'Transport for NSW')
- Sydney Water
- Endeavour Energy
- Illawarra Local Aboriginal Land Council
- Natural Resources Access Regulator

The Department's Finalisation report (December 2021) states that there are no outstanding agency objections.

95. **NSW Rural Fire Services (RFS):** Dated 1 April 2021. The RFS do not object to the Planning Proposal with the only caveat being that it be confirmed before the rezoning occurs that the central underpass of the motorway is available for a category 1 appliance to enter the site, and that the existing road network *"may be required to be upgraded to facilitate this traffic movement"*.

96. The Council report (28 June 2021) states that *"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."* This effectively satisfies the RFS caveat.

97. The RFS response also includes a standard advice that future development applications for subdivision will be required to comply with Planning for Bushfire Protection 2019.

98. The response also recommends that comments are received from all emergency service providers during the consultation period regarding the adequacy on ingress paths proposed. There is no evidence that this has occurred.

99. **DPIE, Division of Biodiversity & Conservation (BCD):** Dated 4 November 2020. The BCD advice relates to three areas – biodiversity and flooding.

100. **Biodiversity** – BCD state that the Planning Proposal is *"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."* They have also suggested a conservation agreement be implemented for the management of the remnant *Illawarra Subtropical Rainforest and Freshwater Wetlands on Coastal Floodplains* and areas containing the threatened flora species *Zieria granulate*. Council did not respond in their report to this suggestion.

101. **Flooding** – BCD note that the Flood Study accompanying the Planning Proposal *"continues to demonstrate that there will be downstream flood impacts"* and that *"this includes increase flood levels, frequency and duration over the full range of possible flood events and increased flood risk."* and as a consequence 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."*

102. BCD that advises that they consider *"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."*
103. **DPIE, Aboriginal Heritage Branch (AHB):** The Department's Plan finalisation position paper notes that the AHB recommend a full Aboriginal Cultural Heritage Assessment occurs at the planning proposal stage to assist in addressing Section 9.1 Direction 2.3 Heritage Conservation. Therefore, KMC requested that an Aboriginal Cultural Heritage Assessment (ACHA) be prepared and submitted. An ACHA was submitted on 18 December 2020.
104. **Transport for NSW (TfNSW):** Dated 10 September 2020. TfNSW advised KMC that they do *"not support the Planning Proposal in its current form"*. This is due to three reasons, the impact on the State Road network, the provision of walking, cycling and public transport support infrastructure and noise impacts from the Princess Highway motorway on future residential development within the site.
105. **Impact on State Road network** – the TfNSW response is critical of the Planning Proposal as it does not detail *"how the proponent will address the broader impacts of the rezoning on the State road network, and nor does it identify a legally binding planning mechanism to secure any upgrades or contributions."* The response 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.
106. **Walking, cycling and public transport** – The TfNSW response provides technical advice relating to the strategic design in relation to footpath designs, pedestrian refuges, and is not convinced that the central underpass of the Princes Highway is wide enough to accommodate a travel lane and a footpath.
107. **Noise** – The TfNSW response is that the agency *"remains concerned with the level of detail shown in the noise assessment. 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 the Kiama 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.
108. **Sydney Water (SW):** Dated 3 June 2020. SW raise no objection to the Planning Proposal. The response provides advice that a feasibility application will need to be submitted to Sydney Water to ensure that development is consistent with the allowances made in upgrade works which have been programmed by SW to be completed in September 2021. The advice also notes that additional infrastructure, such as lead in mains or amplifications, may be required.



109. **Endeavour Energy (EE):** I have not been provided with a copy of this response, but note the KMC June 2021 report which states: *"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. State Environmental Planning Policy (Infrastructure) 2007 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."*
110. **Illawarra Local Aboriginal Land Council (ILALC):** Dated 8 June 2020. The ILALC have formally advised that they are opposed to the Planning 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; and*
  - *There is potential for significant Aboriginal heritage items to be present on the site and while mitigation measures may be able to be implemented, avoidance of impact is always the preferred course of action."*
111. **Natural Resources Access Regulator (NRAR):** The KMC June 2021 report states that NRAR did not respond to the Council request for a response to the Planning Proposal.
112. **Department of Education (DoE):** Dated 3 August 2020. Council sought comments from DoE following submissions from the community that the local schools would not have capacity for additional students. The DoE response states that their Student by Area projections take into account all future/potential urban expansion areas, and that *"the Kiama Primary SCG and Kiama Secondary SCG will both be able to accommodate the future students associated with the proposal."*

## 7. DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT BRIEFING NOTES AND DRAFT FINALISATION REPORT

113. I have been provided with the following reports and briefing notes from the Department:

- Rezoning Review Briefing Report
- Gateway Determination Report
- DPIE Briefing Note Recommending Planning Proposal be placed on public exhibition
- DPIE Briefing Note Recommending proceeding with Planning Proposal
- DPIE Plan Finalisation Position Paper

114. The **Rezoning Review Briefing Report** is dealt with in section 3 of this report.

115. The **Gateway Determination Report** is dealt with in section 4 of this report.

### 7.1 DPIE Briefing Note Recommending Planning Proposal be placed on public exhibition

116. The DPIE Briefing Note Recommending Planning Proposal's be placed on public exhibition is dated 19 March 2020 and signed off by the DPIE Director, Southern Region. It provides an assessment of the Planning Proposal and the accompanying plans and reports as to their compliance with the Gateway determination. It concludes by stating that the revised Planning Proposal has met the conditions of the Gateway determination to proceed to public exhibition, and that the revised Planning Proposal is consistent with S9.1 directions 2.3 Heritage Conservation and 3.1 Residential Zones and no further approval is required.

117. The report notes that condition 1 a) of the Gateway Determination had been complied with in that revised technical studies had been completed and the Planning Proposal updated accordingly, however it also noted that the *"Traffic Impact Assessment has not been updated to cover the land south of Weir Street. Council will need to be satisfied that the reports have been adequately updated prior to exhibition commencing."*

118. The letter to Council enabling exhibition dated 19 March 2020 states *"Council will need to ensure that the reports, particularly the Flora and Fauna Assessment, Bushfire Protection Assessment and Traffic Impact Assessment have been adequately updated to enable consideration of relevant S. 9.1 Directions."*

119. The Traffic Report that was placed on exhibition is dated 8 November 2018, predating the Gateway Determination, does not appear to include the land south of Weir Street. It therefore appears that this report was not updated prior to exhibition. In my view that is inconsequential as this area is unlikely to produce more than 15 residential lots and therefore unlikely to impact on the outcome of the traffic impact assessment. It will be dealt with further at the DA stage.

120. The report also notes in relation to the revised Masterplan required by item 1. B) of the Gateway Determination that *"A masterplan has been prepared for the site and the masterplan site plan updated to reflect the findings of the technical reports and the constraints, visual impacts and environmental, heritage and landscape outcomes. The masterplan is adequate for public exhibition."* (pg. 2)

121. In relation to item 1 c) of the Gateway Determination relating to the Planning Proposal being revised to identify zonings, densities and heights that reflect the outcomes of the studies and master plan, the report states *"Following the preparation of the masterplan, the planning proposal has been updated to include a variety of zones, densities and heights for residential development"* and that the *"Planning Proposal includes proposed maps for zoning, lot size, floor space ratio, building height and biodiversity."* (pg. 3)
122. In relation to item 1 d) of the Gateway Determination relating to the Planning Proposal being revised to include terrestrial biodiversity mapping, the report states *"A terrestrial biodiversity map is included in Appendix 1 of the planning proposal. The map has been titled existing and proposed but is the proposed map. This map titling can be corrected prior to public exhibition."* (pg. 3). The letter to Council providing conditional approval to place the Planning Proposal on exhibition did not include the above requirement and, therefore, this was not actioned prior to exhibition. This item still appears to have not been fixed.
123. In relation to item 1 e) of the Gateway Determination relating to the Planning Proposal being revised to include details on consistency with section 9.1 Directions, community and agency consultation and a project time frame, the report states *"Following the completion of the required studies the planning proposal has been revised to address consistency with S9.1 Directions. The revised planning proposal remains consistent or of a minor inconsistency with the S9.1 Directions that the Minister's delegate previously agreed with..... The proposed community and agency consultation has been included in the revised planning proposal and is considered appropriate for this type of rezoning"*.
124. The report also notes that determination on the Planning Proposals consistency with Section 9.1 Directions 1.5 Rural Lands and 2.1 Environment Protection Zones *"until the technical studies cover the land south of Weir Street and consultation has occurred with the Division of Biodiversity and Conservation to confirm the proposed clearing of the Illawarra Sub-Tropical EEC."* Further, that it is also *"unknown if the planning proposal is consistent with 4.4 Planning for Bushfire Protection until consultation has occurred with the Rural Fire Service."* And finally, that *"The planning proposal should be updated to reflect the above inconsistencies with the S9.1 Directions. Direction 6.3 Site Specific Provisions should be listed as being inconsistent of minor significance."* (pg. 3) The letter to KMC (dated 19 March 2020) providing approval to place the Planning Proposal on exhibition notes that *"Council may still need to obtain agreement of the Department's Secretary to comply with the requirements of S9.1 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones and 4.4 Planning for Bushfire Protection prior to the plan being made."*

## 7.2 DPIE Briefing Note Recommending Proceeding with Planning Proposal

125. DPIE Briefing Note Recommending proceeding with Planning Proposal is dated 20 September 2021 and signed off by the DPIE Director, Southern Region. This report:
- Confirms agency consultation occurred with NSW RFS, DPIE Division of Biodiversity & Conservation, Illawarra Local Aboriginal Land Council, Transport for NSW, Sydney Water, Endeavour Energy and the Natural Resources Access Regulator and that agency feedback resulted in further revisions to the planning proposal and supporting reports.

- That the Planning Proposal was exhibited from 19 April 2021 to 31 May 2021, that 300 public submissions were received - 284 objection submissions and 16 submissions supporting the proposal.
- That KMC resolved not to support the Planning Proposal proceeding and that the Gateway Determination be amended accordingly.

126. The Briefing Note provides an assessment that the Department remains supportive of the proposal and stating:

*"The Department has assessed Council's request to alter the Gateway determination to no longer proceed with the planning proposal and has concluded that the proposal has strategic and site-specific merit. It is considered that the issues raised during consultation have been or can be addressed.*

*The planning proposal is consistent with the Gateway determination and all conditions under the Gateway determination have been adequately addressed.*

*Council made no changes to the planning proposal following consultation. Council did confirm in the Post-exhibition Report (Attachment C1) that, should the proposal proceed, the site will be identified as an Urban Release Area (URA) and provisions similar to Part 6 of the Wollongong LEP 2009 be incorporated into the Kiama LEP. These provisions require arrangements to be made for State infrastructure and a DCP to be in place for the site before the site can be subdivided for urban purposes.*

*The Department supports a URA provision (State infrastructure and DCP) applying to the site as it will assist in obtaining a better and more coordinated development outcome for the site.*

*The plan finalisation report is being prepared. Drafting instructions have been sent to Legal Branch and the Department will liaise with Council to progress the amending maps." (pg. 2).*

### 7.3 Plan Finalisation Position Paper

127. The DPIE 'Plan Finalisation Position Paper' is dated 22 December 2021 and signed off by the DPIE Acting Director, Southern Region. This report provides a summary of the Planning Proposal, provides a summary of the Gateway determination and subsequent alterations to the Planning Proposal, summarises the exhibition process before providing a 'detailed assessment' of the Planning Proposal.

128. The report notes that there have essentially been three iterations of the Planning Proposal:

- Version 1 was report to Council in March 2019
- Version 2 considered for Gateway Determination in December 2019
- Version 5 placed on public exhibition

The report notes that the proposed controls, particularly the zoning, have changed through each iteration. Table 2 of the report provides a summary of the changes.

129. In relation to the Detailed Assessment, I note the following:

130. **The Southern Regional Planning Panel recommendations** – the report provides a summary of the Panel's recommendation noting that the proponent and Council provided further details including further studies and master planning, consultation with the relevant government agencies and updating the Planning Proposal provisions. The report notes that at the end of this process:

*"The further studies and master planning has resulted in a slight reduction of the lot yield. The majority of retaining walls and corresponding fill levels have been retained from version 2 to version 5 of the proposal and the revised bulk earthworks plan. There is potential to review the level of landscape modification and prepare a subsequent subdivision pattern in the DCP and subsequent applications." (pg. 19)*

131. **Section 9.1 Ministerial Directions** – The report notes that the Planning Proposal is consistent with the following Section 9.1 Directions:

- 2.6 Remediation of Contaminated Land
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.4 Planning for Bushfire Protection
- 5.10 Implementation of Regional Plans

132. The report notes that there is minor or justified inconsistencies in relation to the following Section 9.1 Directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.3 Heritage Conservation
- 6.3 Site Specific Provisions

The primary issue relates to issues regarding the protection of cultural heritage values on the site.

133. The report notes that in relation to Direction 4.3 Flooding that *"Further consideration on consistency with Direction 4.3 Flooding will be given prior to finalisation of the plan. As discussed previously, there is no evidence to suggest that flooding issues on the site cannot be addressed or that impacts on downstream properties cannot be managed."* (pg. 20)
134. There are also issues regarding the Planning Proposal to include the RE1 Public Recreation zone into the site and consistency with S. 9.1 Direction 6.2 Reserving Land for Public Purposes. The report notes that the Planning Proposal seeks *"to close and redevelop the public pathway from the Princes Highway to Kendall's Cemetery, introduces a RE1 Public Recreation zoning for the watercourses and proposes a public reserve around Kendall's Cemetery. Approval from Kiama Council for this alteration and creation of land for public purposes has not been sought and as such the planning proposal is inconsistent with S9.1 Direction 6.2 Reserving Land for Public Purposes."* The report states that Council does not support *"the proposed RE1 Public Recreation zoning along the watercourses as the quantity of land to be dedicated and the risks associated with the retaining walls have not been considered or approved by Council. To ensure consistency with 6.2 Reserving Land for Public Purposes it is proposed to continue discussions with Council on an appropriate zoning – perhaps retain these sites with their current RU2 Rural Landscape zone. A subsequent planning proposal could consider rezoning any land dedicated to Council."* (pg. 20 & 21)

135. **Social & Economic Impacts** – The report notes that the proposal *"will provide a much needed source of greenfield housing supply for Kiama in relatively close proximity to existing services and facilities"* as well as investment and jobs during construction.

136. **Environmental Impacts** – *"The planning proposal will result in the protection of important environmental assets within the site through zoning. It is considered that relevant environmental impacts either have been addressed by the proposal and supporting studies or can be satisfactorily addressed through preparation of a DCP and subsequent development assessments."* (pg. 21)

137. **Infrastructure** – *"The site can be serviced for the proposed urban use."* (pg. 21)

138. **Recommendation:**

*"that the Minister's delegate as the local plan-making authority continue to finalise the draft LEP under clause 3.36(2)(a) of the Act because:*

- The draft LEP has strategic merit being consistent with the Illawarra Shoalhaven Regional Plan 2041 and Kiama Local Strategic Planning Statement 2020.*
- The site is considered to have site specific merit for the intended urban uses.*
- It is consistent with the Gateway Determination.*
- Issues raised during consultation have been addressed or can be addressed through minor modifications to the planning proposal and further planning processes, including the preparation of a Development Control Plan and development assessment.*
- There are no outstanding agency objections to the proposal.*
- The site can be serviced."*

## 8. FINDINGS AND RECOMMENDATIONS OF THE REGIONAL HOUSING TASK FORCE

139. The Regional Housing Taskforce (the Taskforce) was established in June 2021 by the Hon. Rob Stokes MP, the then Minister for Planning and Public Spaces. The Taskforce was instructed to identify technical barriers in the planning system that are preventing the delivery of housing supply, including affordable housing, and to formulate recommendations to improve housing outcomes in regional NSW via the planning system and other government levers. Kiama is located in regional NSW, so this report and its findings and recommendations are of direct relevance to this Planning Proposal. The Findings report was released in September 2021, and the Recommendations Report in October 2021. The Terms of Reference of the Taskforce are summarised at page 6 of the Findings report as follows:

- *"To undertake consultation with local government and experts from the development and housing sectors to identify barriers in the planning system to new supply and develop potential solutions*
- *To advise the Minister for Planning and Public Spaces on the findings of the consultation and research and recommendations to achieve better housing outcomes for regional NSW through the planning system*
- *To contribute to the evidence base identifying housing challenges and planning barriers to housing delivery, building on existing background work to inform future government housing initiatives and provide advice to the Housing Expert Advisory Panel (when established).*

*The focus of the Taskforce is on how the planning system and other government levers can be utilised to stimulate housing supply that addresses housing needs, including the need for affordable housing, both through the removal of impediments within existing policies and processes and through the introduction of new potential planning mechanisms or government housing initiatives."*

140. The **findings** of relevance to the Planning Proposal of the Taskforce can be summarised as follows:

- *While housing issues in regional NSW need to be understood in the context of broader housing trends, there are also unique factors and challenges in regional housing markets that frustrate the delivery of the right types of homes in the right locations and at the right time.*
- *There is a need for improved upfront strategic planning to resolve issues earlier in the planning process, including better alignment of the work of planning and other State agencies, to ensure that subsequent planning processes can be streamlined, and that development can be timely and well-coordinated.*
- *Regional housing markets are vulnerable to spikes in demand, including from temporary and seasonal workers, short-term holiday letting, and planning needs to better anticipate and respond to these impacts. (pg.'s 3 – 5)*

141. The Taskforce findings highlighted issues with demand for and supply of land, including a number of factors that would appear to be of specific relevance to Kiama including inward migration during the COVID-19 pandemic creating increased demand within the local property market and impact from the short-term rental accommodation industry also reducing supply.

142. There were also issues of relevance in terms of the planning system and process with delays in rezonings and providing certainty around the process being two factors of relevance to this Planning Proposal given the site was supported in the KUS for residential development, and that the proposal was lodged in July 2018 so has been going through the process for over 3.5 years.

143. The Taskforce findings also highlighted the need for more 'Upfront' Strategic Planning and to this end the Department is now introducing initiatives that include a 'structure planning' process including more stakeholder and community engagement, which the process for the rezoning of this site would have benefitted. This process will undoubtedly allow for more streamlined approvals in the future and providing greater 'outcome' clarity for all stakeholders on the intended future use of land and management of environmental constraints and provision of infrastructure.
144. The work of the taskforce also highlighted relevant principles including the investment "*in upfront, place-based strategic planning to improve decision-making, provide certainty and enable more efficient assessments,*" which goes to the finding noted in the point above. This Planning Proposal process would have benefitted by being preceded by such a process as it would have provided a mechanism for better stakeholder engagement and resolution of issues thereby reducing the tension in the planning process and providing a more efficient process. For this Planning Proposal, that part of the planning process will now have to occur in the next stage when the DCP and Contributions are determined for the site.
145. Other principles considered to be of relevance to this Planning Proposal include the following:
- Provide a more transparent and certain supply pipeline and activate latent supply by addressing infrastructure requirements and resolving site constraints
  - Ensure new housing is appropriately located, well-designed, fit for purpose, and better provides for the diversity of housing needs, including strengthening planning and approval pathways for innovative typologies and tenures
146. The **recommendations** of relevance to the Planning Proposal of the Taskforce can be summarised as follows:
- Support measures that bring forward a supply of "development ready" land
  - Provide more certainty about where, when and what types of homes will be built



## 9. REVIEWERS ASSESSMENT

147. As set out in paragraph 4, the TOR require this review to *"provide advice and a recommendation in the Reviewer's opinion, whether the proposal has merit, whether further matters need to be investigated and whether the proposal should proceed to be finalised."* In particular, this review is to consider:

- *the strategic merits of the planning proposal and consistency with local and regional strategies, and*
- *the consistency with Ministerial Directions.*

148. The preceding sections of this report have set out the case of the Proponent, the Council, the community, relevant government agencies, stakeholders, and Department officers on the above considerations. I have taken all those views/submissions/positions etc into consideration in undertaking my assessment.

### 9.1 Does the Planning Proposal Pass the Strategic Merit Assessment Test

149. The Planning Proposal is consistent with the now repealed Kiama Urban Strategy, the Kiama Local Strategic Planning Statement, and the Illawarra Regional Plan 2041 and therefore clearly has established strategic merit.

150. At the time the Planning Proposal was original assessed by Council officers, the Department and the SRPP, all respective professional planning officers considered that it was of strategic merit on the basis that it was consistent with the Kiama Urban Strategy and the Illawarra Shoalhaven Regional Plan 2041.

151. The proposal is consistent with the (now repealed) **Kiama Urban Strategy** (KUS). The Planning Proposal site is identified as sites 3 and 14 and small parts of sites 4 and 5 in the KUS. Recommendation 8.1a of the adopted KUS states that:

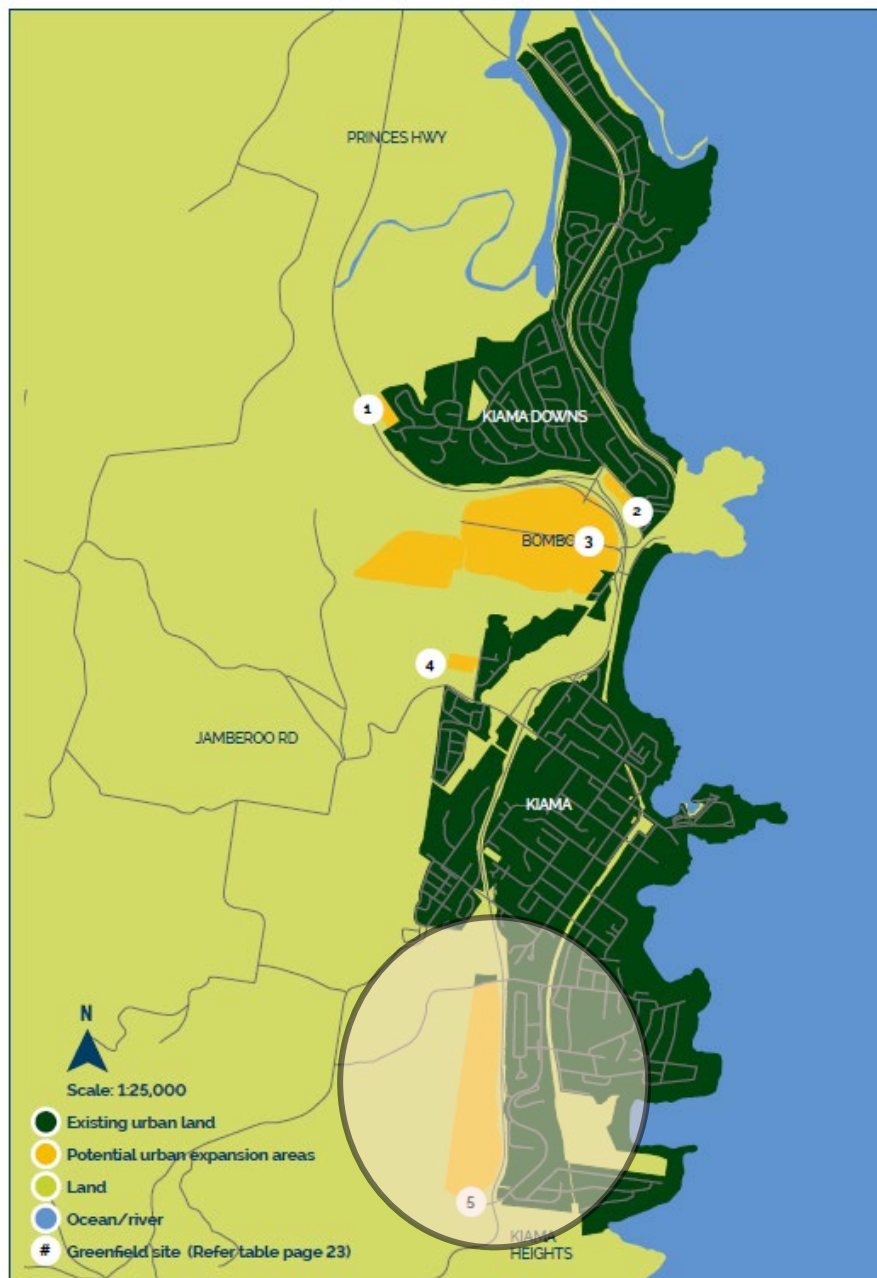
*The KUS states that sites 3 and 14 should only be considered further if insufficient dwellings are able to be supplied to meet the Illawarra Regional Strategy requirements.*

152. The Planning Proposal was therefore required to undertake an assessment of housing supply to meet projected housing demand. The proponent has made submissions on this issue in their rebuttal to the final Council report (refer section 2.3 and 2.3.1) which, from my investigations, I accept. There is currently limited supply of land for residential development within the KMC area, and it is unlikely that the Council will reach the required targets within the Regional Plan without the rezoning of this site. I also note the comments of the SRPP that it was *"not convinced that sufficient dwellings will be available" consistent with the KUS caveat on progressing development of this site.*" (Refer paragraph 74)

153. In terms of the **Kiama Local Strategic Planning Statement** (KLSPS), which has been adopted by Council since the Planning Proposal was first considered by KMC in March 2019, the Planning Proposal is identified in that strategic document as a Greenfill site *"identified for possible future expansion. These areas have been identified through the Kiama Urban Strategy and have been the subject of community consultation and discussion."* The Planning Proposal is therefore consistent with the KLSPS. The subject site is identified as Greenfield Site 5 in the KLSPS reflected in the table of Greenfield sites below, and the map within the document on the following page:

Greenfield Site	Property Description	Property Address
1	Part of Lot: 442 DP: 1201831	Henry Parkes Drive, Kiama Downs
2	Part of Lots: 101 & 102 DP: 1110563	Riversdale Drive, Kiama Downs
3	Lot: 8 DP: 31576	Bombo Quarry
	Lot: 7 DP: 1121098	
	PT: 4 DP: 553706	
	Lot: 0 SP: 62590	
	Lot: 5 DP: 1135747	
	Lots: 52-54 DP: 1012601	
	Lots: 100 & 101 DP: 1121118	
	Part of Lots: 101 & 102 DP: 1110563	
4	Lots 3 & 4 DP: 1018217	17 Dido Street, Kiama
5	Lot: 1 DP: 707300	Weir Street, Kiama
	Lot: 5 DP: 740252	
	Lot: 102 DP: 1077617	
	Part of Lot: 1 DP: 625748	
	Part of Lot: 101 DP: 1077617	

Greenfield opportunities Map 1: Kiama



154. In terms of the Planning Proposal being consistent with the **Illawarra Regional Plan 2041**, I agree with the Council officer's assessment from March 2019, I accept the Departments response in their various reports, and I accept the commentary in the Planning Proposal itself at section 3.2.1 that the Planning Proposal is consistent with the Regional Plan.

155. The June 2021 Council report makes a case based on revised Population projections from the Department in 2019 that reduced expected population growth for Kiama, combined with the rezoning of other land that was proceeding, and those factors would negate the need for additional residential supply ahead of the Council Housing Strategy due for completion in the middle of 2022.

It is not a convincing case. Based on the evidence provided in the Regional Housing Task Force, which is supported by local data showing a 39.3% increase in the median house price for Kiama over the last 12 months (CoreLogic), the migration shift that is occurring from city to coastal areas like Kiama since the COVID-19 pandemic began, and a perusal of the various real estate platforms that show limited housing or land stock currently on the property market in the Kiama area, it is expected that when these projections are done again, they will increase. In any case, evidence from the market would indicate a limited supply adversely impacting on affordability now in the Kiama area, which should be seen as a market indicator that more residential zoned land is required.

## 9.2 Does the Planning Proposal Pass the Site Merit Assessment Test

156. The site is located adjacent to the existing urban areas of Kiama, it can be serviced, the land is largely cleared, and while there is certainly work to finalise in terms of the visual impact assessment and Master Planning process as well as dealing with environmental constraints and hazards through the development assessment process, it is my view that the Planning Proposal passes a site merit assessment test. The relevant issues can be summarised as follows:

- Biodiversity
- Watercourse Management
- Flooding & Stormwater Management
- Site Grade and Earthworks
- Aboriginal Archaeology & Connection to Country
- European Heritage Impacts
- Bushfire
- Motorway Noise
- Infrastructure Capacity
- Traffic Impacts
- Visual Impact

157. **Biodiversity** – Noting the BCD support for the updated zoning and riparian layers of the Planning Proposal, reflecting the expanded area of E2 at Munna Munnora Creek and the west-east riparian corridors traversing the site, and that Council does not appear to be providing a case to the contrary, the biodiversity impacts and their management as noted above are settled. Further, biodiversity impacts have not been a significant issue for the community, and it is proposed to revegetate the riparian areas which will have a positive biodiversity outcome for the site.

158. **Watercourse Management** – NRAR have not responded to the referral as part of the Planning Proposal process, noting they will be required to comment as part of the future development application process as the future subdivision will trigger integrated development provisions. The proposal is to rezone the low lying RU2 land to E2 to capture the entirety of the Munna Munnora Creek with the other drainage channels within the site to be rezoned to RE1 Public Recreation is supported as noted above by BCD.
159. **Flooding & Stormwater Management** – BCD have raised issues in their November 2020 referral with the Flood Study stating that there will be downstream flood impacts. (Refer paragraph 101 & 102). Council is critical of the Flood Study in that it *"makes no assessment on the impact of the proposed cut and fill and retaining walls on the movement of flood waters on the site"* and that the proposal fails Ministerial Direction 4.3. While BCD also agree with this position, they clarify this by stating that *"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."*
160. The proponent in their rebuttal of the Council June 2021 report includes a submission from the project flood engineers which states:
- *"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."*
161. The Department's response to the issue is that *"There is no evidence to suggest that flooding issues on the site cannot be addressed or that impacts on downstream properties cannot be managed. Flooding issues can also be addressed in more detail through the DCP and subsequent development applications."*
162. After reviewing the Flood Study, I accept the SitePlus submission that the flood study shows no increase in flooding to downstream properties up to the designated flood. In any case, that is a threshold matter for the development application, that the subdivision of the land does not impact on downstream properties which is dealt with via detail design of the stormwater management system. As the Department points out above, this is an issue where the threshold test of no downstream impact is applied through the DCP and complied with at the DA stage. I agree with the Department's summation, and while there will need to be provisions in the DCP and detail provided at the DA stage, I am satisfied that the issue is resolved as far as the Planning Proposal process and rezoning the site is concerned.
163. **Site Grade and Earthworks** – Council's June 2021 report raises this matter as a significant issue, that the site topography is such that it will require significant earthworks involving cut and fill to the extent that the site is not suitable for residential development. The Department have addressed this in their Finalisation report (December 2021) as have the proponents in their rebuttal (August 2021) with both effectively concluding that the level of cut and fill is not significant and can be addressed at the DA stage.

164. In terms of the **Site Grade**, there are no plans accompanying the Planning Proposal showing what the existing grades are across the site, or the expected finished grades. There is also no landscape/landform analysis of the site to inform the Masterplanning process. During my site inspection I noted that some parts of the site were relatively steep, and that the site contained a variety of landform elements. While I noted the cut and fill plan, which included some relatively significant areas of cut and fill across the site, subsequent residential development of the future residential lots would require further earth works, and this is a consideration in respect to the visual impact.
165. Reference is made to drawing 3 of the Geotechnical report by Douglas Partners which outlines the slope instability assessment. I am not concerned about the areas on the site mapped as high risk, as these are in and around the watercourses and are not proposed to be rezoned for residential development. I am also not concerned with the low-risk areas of the site along the motorway for reasons that are self-evident. I note that significant areas in the southern, western, and northern sections of the site are mapped as moderate risk and moderate to high risk. While the report states that *"preliminary geotechnical assessment has indicated that the site is geotechnically suitable for a residential subdivision"*, it does appear conditional on the moderate risk areas where it states:

*"May be tolerated in certain circumstances (subject to regulator's approval) but requires investigation, planning and implementation of treatment options to reduce the risk to Low. Treatment options to reduce to Low risk should be implemented as soon as practicable."*

166. I have contacted the geotechnical engineer who undertook the investigations and wrote the report from Douglas Partners, Mr Arthur Castrissios, to further discuss whether the moderate risk and moderate to high-risk areas were suitable for residential development with lot sizes down to 450m<sup>2</sup> and whether site coverage was a consideration. Mr Castrissios advised that Lot size and increased residential density was not a relevant factor impacting on landslide risk, the issue was dealt with via geotechnical design at the subdivision and dwelling design phases. He also advised that the moderate to high-risk areas could, subject to works, be dialled back to moderate risk areas. Based on that expert advice, I am satisfied that the zonings and lot size maps are appropriate from a geotechnical perspective.
167. **Aboriginal Archaeology & Connection to Country** – The Aboriginal Archaeology investigation includes an *Aboriginal Archaeology Due Diligence* report and a subsequent *Aboriginal Cultural Heritage Report* (ACHR). The ACHR included consultation with the local aboriginal community as per the guideline requirements, and it identified four (4) Potential Archaeological Deposits (PAD's). Of these four Pads', three conflict with the current version of the Masterplan. In their Finalisation report (December 2021) the Department state:

*"The Aboriginal Cultural Heritage Assessment recommends the avoidance of four Aboriginal sites and sensitive landforms. The four sites have high cultural significance. In particular, site 1 is the largest site on the lower slopes/floodplain of Munna Munnora Creek.*

*The Department is working with Council to consider protection of the sites which may involve widening of the riparian corridors or applying a zoning to incorporate sites.*

*The Kiama LEP contains heritage provisions (Clause 5.10 Heritage Conservation) that will apply to development applications and require consideration of the effects of development on Aboriginal and European places and sites of heritage significance. ....*

*The preparation of a DCP provides an opportunity to develop guidelines and controls to incorporate Aboriginal cultural issues - Connect with Country, Design for Country and Care for Country.*

*.....*

*It is noted that the indicative lot layout is not approved as part of the planning proposal and the final layout would be subject to further planning processes."* (pg. 11)

168. The above assessment and conclusions of the Department are supported, and certainly more work needs to be undertaken to ensure any sensitive sites are protected. If destruction of any site is proposed, it will be the subject of an AHIP process.
169. In terms of the **Illawarra Local Aboriginal Land Council submission**, it highlights concerns regarding the impacts on the cultural landscape and that meaningful engagement with the local aboriginal community has not occurred. The submission notes that while the proponent may have undertaken the required studies and reports to satisfy this consideration as far as the Planning Proposal is concerned, if the planning process is about embracing the principles of reconciliation and adopting connection to country and Indigenous place making, proposals such as this one need to do better. This comes down to the Council requiring proponents to undertake Aboriginal community stakeholder engagement at the front end of the process. The significance of this issue is highlighted in the ILALC submission which included the following statement that should be reflected on by all involved in the process to date:

As an Aboriginal community we find that the process of assessment of our sites and their value being reflected in relation to their scientific classification as being completely inappropriate and offensive. This position fails the human test. Aboriginal people are not scientific experiments. Our heritage belongs to us. Our dislocation from our land, our country, our stories belongs to everyone and we need to take responsibility as a community for this. To place the tangible connection to Our Lands and Our Country in the realm of scientific understanding is another slap in the face and a devaluing of our human rights and our identity. It is time for Governments and Industry to understand and accept this, and not give it lip service and skirt the legislation that has been enacted to return the dignity and identity to Aboriginal communities. We find it offensive that these reports on Aboriginal cultural heritage are undertaken in this white paradigm of science and interpreted through the lens of white privilege that provides a token understanding of what real connection and belonging to Country is about.

The Illawarra Local Aboriginal Land Council would also like to emphasise that, our culture is a living culture and our heritage surrounds us every day. Science is not what we live for or aim to contribute too. We strongly believe that the wider community as well as archaeologists and anthropologists need to appreciate and resolve to support the recognition of Aboriginal cultural heritage as part of a living and continually evolving society and place an emphasis on highlighting and celebrating this heritage rather than recording whether it has scientific value.

All heritage has high importance to our community and we point out that this importance relates to the tangible and the intangible aspects, values, identity and connection between places, "The Cultural Landscape", which is not scientific but a value belonging to Aboriginal people as humans. To deny this, is to again place Aboriginal people back in the category of flora and fauna that can be exploited by white colonial privilege.

170. As part of the Masterplan process, the proponent needs to engage meaningfully with the local Aboriginal community in a genuine attempt to understand their culture and build that into the Masterplan as part of an Indigenous place-making exercise.

171. While the ILALC submission is critical of the Planning Proposal, it is not specific as to why the site is significant from an Aboriginal cultural heritage perspective. It submits that *"the potential impact which will be attributed to this project does not align with the cost that will be borne by the aboriginal community through the potential loss of such a significant landscape."* The submission does not elaborate on what elements of this landscape are significant, and that is where engagement with the aboriginal community could have elicited detail in this regard. Notwithstanding, the ILALC submission doesn't appear to contradict any of the heritage work undertaken in support of the Planning Proposal.
172. In relation to the cultural landscape and engagement with the local aboriginal community, the proponent's rebuttal response (dated August 2021) states:
- "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."*
173. This is not an issue that stops the Planning Proposal in my view. However, meaningful engagement needs to occur with the local aboriginal community as part of the Masterplanning process, and not just those aboriginal representatives involved in the RAP process. The proponent must also consult with the ILALC as part of this process.
174. I support the Department's view that through the preparation of a DCP for the site, guidelines and controls can be adopted to incorporate Aboriginal cultural issues and ensure that principles of *Connect with Country, Design for Country and Care for Country* are embraced moving forward. It is also clear from the above response from the proponent that they have committed to this process.
175. **European Heritage Impacts** – While Council and the Kiama & District Historical Society have objected to the rezoning in part due to the part removal of the heritage listed dry stone walls located on the site, I am of the view that the Masterplanning process to date has illustrated that these can be largely retained. It is also noted from the Department's finalisation report that *"the Site Constraints and Master Plan show the creation of a larger public reserve around Kendall's Cemetery. This is to incorporate the Cemetery's existing dry stone walls and landscaping. Council has suggested zoning this proposed public reserve as RE1 Public Recreation."* (pg. 11). It is also noted that heritage provisions are included already in the Kiama LEP (Clause 5.10 Heritage Conservation) and these will need to be addressed in future development applications. It is also noted that Kendall's Cemetery and dry stone walls across the LGA are already listed as heritage items in the KLEP 2011. Consequently, provided the Department, Council and the proponent can agree on a satisfactory buffer around the cemetery, and that the Masterplan responds appropriately to its location on the site, I am of the view that the issue is resolved as far as the Planning Proposal is concerned.
176. **Bushfire** – The RFS have advised that they do not object to the Planning Proposal subject to certain conditions being satisfied. These are set out at paragraph 95 – 98 and should be included in the DCP.



177. **Motorway Noise** – A Noise Intrusion Assessment report supports the Planning Proposal. It concludes that dwellings located within 150m of the motorway will require *"acoustical treatment (that) will not be significantly onerous"*. The report provides examples of these treatments.
178. TfNSW have advised that they are concerned with the level of detail shown in the noise assessment. 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 the Kiama 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.
179. This is a Masterplanning issue and overlaps with the visual impact assessment. There may be some merit in including a landscaped mound along the open section of the motorway to both mitigate visual impacts and address noise impacts. This issue requires further consideration as part of the Masterplanning and DCP process.
180. **Infrastructure Capacity** – While the community and Council have raised concerns over the capacity of the existing sewerage treatment infrastructure to cater for additional loads, it is noted from the agency consultation process that Sydney Water have advised that they have capacity to service the residential development of the site. Endeavor Energy have also confirmed that the site can be serviced from the existing network. The consultation therefore confirms that the site can be serviced and is therefore suitable from a servicing perspective for residential development.
181. **Traffic Impacts** – The community and Council have raised significant concerns over the local road networks capacity to deal with the traffic generated from the residential development of the site. In their June 2021 report Council have stated:
- "(There) 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.*
- Until such time as the Kiama Traffic and Parking Study is complete it is difficult to fully understand the implications of this proposal."* (pg. 363)
182. The proponent's rebuttal submission (August 2021) states that in doing the traffic impact assessment a worst-case scenario has been used based on an "unrealistically high" yield of 670 lots. It is agreed that the site would not produce that number of dwellings given site constraints and Masterplan process to date. Notwithstanding, the proponent's submission quotes the Traffic Study supporting the Planning Proposal as concluding that even based on this worst-case scenario the road network does not fail.
183. The Department in their finalisation report (December 2021) state:
- "Council is currently considering the draft Kiama Traffic and Parking Study. The Study has examined traffic proposals for the Kiama Town Centre Study, assessed regional growth effects on the town centre over the next decade and analysed public and active transport routes in the area. The Study didn't consider the specific impacts of traffic generation from the greenfield sites in the LSPS."* (pg. 9)



184. The Development Control Plan (DCP), Development Contributions Plan and future development applications for subdivision will further assess local traffic impacts in more detail, and if upgrades are required with a Nexus to subdivision of this site, then contributions or conditions can be applied. Given the main intersection being Saddleback Mount Road/ Kiama Drive does not fail in the peak hour on a worst case/unrealistic traffic generation scenario, it is concluded that the local road network can cater for the additional traffic generated by the residential development of the site.

185. **Visual Impact** – This issue is one that has been raised by the community and Council as a primary reason for opposing the Planning Proposal. The landscape of the site is one of “rolling green foothills” that is consistent with the rural landscape character of the broader region and in particular, the Kiama hinterland. The subject site is also highly visible from the Princess Motorway, so it is my view that it has a relatively high visual sensitivity. The issue was also raised as an area requiring more attention by the SRPP:

*“Further urban design analysis reflected in a structure plan that:*

- Identifies key principles for development of the site*
- Identifies appropriate interface with adjoining agricultural and environmental land*
- Landscape interface along the Princes Highway*
- Allows for implementation of a landscape buffer around the site*
- Reviews densities, lot and road layout to accommodate constraints and minimise visual impacts*
- Identifies and locates public reserves to service the new population*

*Visual analysis from the Princes Highway and measures to ensure that the views from the highway are of landscape”*

186. It is my view that the Visual Impact Assessment that has been submitted with the Planning Proposal is inadequate. It is a series of photos taken from various vantage points in the area looking into the site, with commentary on what can be seen and recommendations. That work does not constitute a visual impact assessment and is inadequate to inform a Masterplanning exercise. Point 188 of this Review provides information on how an adequate Visual Impact Assessment would effectively assess the potential impacts and possible mitigating measures.

187. The Planning Proposal itself makes the following statement:

*“The development is located at lower elevations and separated visually and physically from the most scenic land and visually prominent features being the treed areas and interspersed grasslands above the site, surrounding ridgelines and various intermediate land, ocean and vegetation view lines.*

*The following works will also ameliorate the visual intrusion of the site from the Princes Motorway and adjacent areas.*

- (i) Landscaping along the Princes Motorway frontage of the site. These works will shield views to the development from the Motorway especially along the northern section of the site*
- (ii) Revegetation of the four creeks that traverse the site and the provision of approximately 500 street trees. The visual impact of the development will be softened by these works*
- (iii) Rehabilitation and expansion of the Illawarra Subtropical Rainforest community in the south eastern corner of the site, and*
- (iv) The provision of larger lots > 1,000m<sup>2</sup> with maximum building heights of 7.5m on the more visually prominent areas of the site.*

*Due to the above we believe the development will not impose an unacceptable visual intrusion on existing or future residents or to motorists using the Princess Motorway."*

188. In relation to the above statement, there is no visual analysis, and therefore no evidence-based planning on which to base these submissions. A Visual Impact Assessment process involves:

- Identification of the different Landscape Character types that make up the region.
- Objective assessment of the relative aesthetic value of the landscape, defined as Visual Quality and expressed as high, medium, or low. This assessment generally relates to variety, uniqueness, prominence and naturalness of the landform, vegetation, and water forms within each character type.
- Determination of the landscapes ability to absorb different types of development based on physical and environmental character.
- An assessment of viewer sensitivity to change. This includes how different groups of people view the landscape (for example, a resident as opposed to a tourist), and how many people are viewing and from how far.
- The undertaking of a viewpoint analysis to identify areas likely to be affected by development of the site and a photographic survey using a digital camera and a handheld GPS unit to record position and altitude.
- An assessment of visual impacts; and the preparation of recommendations for impact mitigation and suggestions for suitable development patterns that would maintain the areas visual quality.

The purpose of the above methodology is to reduce the amount of subjectivity entering into visual impact assessment and to provide sufficient data to allow for the verification of results.

189. The second stage of the assessment involves a quantitative approach. The quantification of the visual impacts is defined by methods including:

- Digital terrain modelling for the site including its visual catchment.
- View shed analysis to determine visibility of The Proposal.
- Preparation of survey accurate photomontages depicting The Proposal and mitigation measures. In this regard, how the site will appear in the landscape when it is fully developed with residential development.

190. The motorway does not provide a barrier separating urban development on its eastern side, from the rural landscape on the western side, therefore this Planning Proposal is not setting a precedent for residential development on the western side of the motorway. On that basis, I conclude that the site is suitable for residential development from a visual impact assessment perspective.

191. However, the form of that development underpinned by the site Masterplan and DCP provisions needs to be informed by a Visual Impact Assessment prepared by a qualified and experienced professional who uses a professionally accepted methodology like the one I have set out above. It is recommended that this work be done prior to Council exhibiting the draft DCP.

192. In particular this work needs to focus on the elevated parts of the site on the southern, western and northern boundaries which also interface largely with undeveloped land.

## 9.3 Consistency with Ministerial Directions

193. It is my view that the Planning Proposal is consistent with all the relevant Section 9.1 Ministerial Directions except for two that require inconsequential variations, and another which should be able to be resolved with KMC.

194. Having taken the Council and Departmental assessments into consideration, and examining the matters myself, I consider that the Planning Proposal is consistent with the following Ministerial Directions:

- 2.3 Heritage Conservation – the items of aboriginal and European heritage significance confirm through the Planning Proposal process are already afforded protection under Clause 5.10 of the KLEP 2011. The Planning Proposal does not compromise existing protections afforded to these items.
- 2.6 Remediation of Contaminated Land
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.3 Flooding – refer to paragraph's 159 - 162
- 4.4 Planning for Bushfire Protection
- 5.10 Implementation of Regional Plans
- 6.1 Approval & Referral Requirements
- 6.3 Site Specific Provisions – the Masterplan and subdivision layouts contained in the Planning Proposal have not been endorsed by the SRPP, Council or the Department, they are indicative plans of the style of development that could occur on the site that assist in determining the site-specific merit of the Planning Proposal. Therefore, it is not 'the development proposal' (refer subclause (5)).

195. I consider that the variations to the following Directions are either minor or justified as set out in the Department's December 2021 Plan Finalisation Report:

- 1.2 Rural Zones
- 1.5 Rural Land
- 6.3 Site Specific Provisions – the Masterplan and subdivision layouts contained in the Planning Proposal have not been endorsed by the SRPP, Council or the Department, they are indicative plans of the style of development that could occur on the site that assist in determining the site-specific merit of the Planning Proposal.

196. In terms of Direction 6.2 Reserving Land for Public Purposes, I note the advice contained within the Department's December 2021 report that the inconsistency is based on KMC advice that they would not support the *"proposed RE1 Public Recreation zoning along the watercourses as the quantity of land to be dedicated and the risks associated with the retaining walls have not be considered or approved by Council."*

197. My response to the position of KMC is as follows:

- In relation to the issue of the quantity of land to be dedicated; examining the existing zoning maps for Kiama I note several other drainage reserves that are zoned RE1 Public Recreation. Consequently, zoning the watercourses similarly on this site would be consistent with the existing land management regime of stormwater drainage areas through residential areas of Kiama.
- In relation to the second point that there are *"risks associated with the retaining walls"*; given the land, and the retaining walls, would revert to Council ownership post subdivision, it would

be consistent the Newbury Principles for Council to include a condition on any consent for the subdivision requiring the proponent to obtain the approval (or consent) of Council to the design of any retaining walls, and them being certified once constructed.

- It is also noted that the Council resolution of October 2021 delegates these matters to the Council's CEO.

## 10. REPRESENTATIONS

198. Following my drafting of this report, I was requested to attend a meeting at the offices of Minister for Planning and the Minister for Homes, Mr Anthony Roberts MP at Parliament House to meet with Gareth Ward MP and Kiama Central Precinct Chair Mark Greaves who were opposing the Planning Proposal. Following that meeting I was requested to further meet with the proponent at the Newcastle offices of the Department of Planning and Environment. Given personal circumstances I attended that meeting via electronic video link.
199. **Meeting with Ward and Greaves:** This meeting was held on Tuesday 8 March at Minister Roberts offices in Parliament House from 11am to 12 noon. In summary, Mr Ward and Mr Greaves made representations on behalf of those in the local community who were opposed to the Planning Proposal. The issues they raised can be summarised as follows:
200. **Housing strategy** – That the Planning Proposal should be deferred until the Kiama Housing Strategy (KHS) is complete. Mr Ward submitted that the Illawarra Regional Plan “required” KMC to prepare a Housing Strategy and that the KHS would provide the answers to the future housing supply in Kiama.
201. Mr Ward further stated that he considered it to be ‘ad-hoc planning’ to allow the rezoning of a significant greenfield urban release area within Kiama ahead of Council finalising its housing strategy, which he indicated was due for completion by the middle of the year.
202. **Response to Submission:** I don’t support this submission. It is well established that there is an urgent need across the state to increase housing supply, and it would also appear to be a critical issue for Kiama given the significant increases in median house prices in the recent past. Furthermore, the preparation of a Housing Strategy for Kiama is hardly unique as Councils across the state are preparing housing strategies, and on that basis I consider that it would set an undesirable precedent and create great uncertainty, reducing confidence within the property industry if a Planning Proposal, such as this one, was to be deferred for potentially another twelve (12) months given the length of time the Planning Proposal has been ‘in the system’ (July 2018). I am more than satisfied that the site has strategic merit through a number of strategic documents dating back to the (now repealed) Kiama Urban Strategy, and that both Mr Ward and Mr Greaves indicated that they expected the site to remain nominated within the KHS, I consider that it would be a particularly poor outcome if the Planning Proposal was deferred at this stage.

I also note that the Regional Plan does not “*require KMC to prepare a Housing Strategy*”, it certainly encourages the preparation of one and commits the State government to work collaboratively with the Council in its preparation on the basis that KMC is seeking to meet its housing supply targets largely through infill development.

203. **Housing Supply** – Whilst acknowledging that the South Kiama site was identified within the KLSPS and the previous KUS, Mr Ward and Mr Greaves submitted that:
- It was only required to be rezoned if KMC was not meeting its housing supply targets,
  - Kiama was meeting its housing supply targets largely through infill development and therefore the rezoning of the site was not warranted, and
  - Bombo Quarry is the panacea to the housing supply challenges for the Kiama LGA.
204. **Response to Submission:** The Kiama LSPS has effectively ‘signed off’ on South Kiama as an “urban expansion area”. It makes no reference to it being reviewed as part of the Housing Strategy and makes no reference to it only being required if housing supply targets are not being met. In fact,

one of the Actions is "Review and investigate planning proposals submitted to Council for those greenfield dwelling opportunities identified in the town maps attached to this LSPS." Further, the LSPS states:

*"Kiama's capacity to meet projected housing demand requires consideration of housing supply areas, strategically identified by the recently repealed Kiama Urban Strategy 2011, including future new release areas in the planning pipeline. It is considered that the existing greenfield dwelling opportunities within Kiama are sufficient for the short to medium term."*

Refer to paragraph 153 where South Kiama is identified as a Greenfield site #5. In summary:

- 1,400 new dwellings required for Kiama between 2021-2041 - (Kiama LSPS)
- 812 (58%) infill development - (Kiama LSPS - based on historical dwelling completion data over 10 years)
- 588 (42%) greenfield sites - (Kiama LSPS - based on historical dwelling completion data over 10 years)

The current pipeline of greenfield subdivisions is as follows:

- Campbell Street Gerringong - **166 Lots** (Subject to Planning Proposal which has not been exhibited as yet)
- Golden Valley Road, Jamberoo - **47 Lots** (DA currently being assessed - Issues with inability to connect to Jamberoo sewerage services)
- Drualla Road, Jamberoo - **15 Lots** (DA approved - subdivision has not proceeded due to inability to connect to Jamberoo sewerage services)
- Henry Parkes Drive, Kiama Downs **37 Lots** (DA currently being assessed).

There is no certainty about any of the above site providing land supply in the short term, and they will only supply potentially 265 of the 588 required lots. On that basis South Kiama would have a high priority to assist in meeting housing supply targets for the Kiama LGA.

There is clearly nothing in the Kiama LSPS to support the claims that the South Kiama site is only required in the event housing supply targets are not being met. There is also nothing in the Regional Plan or any other current plan. The only plan that makes that statement is the repealed KUS, which was subject to community consultation at the time which supported the South Kiama site for future urban development.

In terms of the submission that Bombo Quarry is the answer to the future housing supply challenges for the Kiama LGA, I note that it is still active, and my enquires confirm that it is uncertain when it could be considered as a source of housing through planning processes.

205. **Motorway on ramp** - On the basis of a conservative estimate of some 650+ residential lots being produced, it was submitted that the rezoning should only proceed if there is an on-ramp constructed onto the Motorway.

206. **Response to Submission:** I explained to Mr Ward and Mr Greaves in the meeting that this was an issue for Transport for NSW (TfNSW), and that the issue would be resolved post the rezoning phase with safeguards provided through Part 6 of the KLEP with the site being identified as an URA and subject to those provisions. That effectively requires that a development application cannot be approved unless satisfactory arrangements have been made in respect to the provision of state infrastructure, and that would include the need, or otherwise, for an onramp onto the

Motorway. The issue is then resolved following the Masterplanning process which confirms the lot yield for the site, which would then be articulated through a Development Control Plan, and that document would be the subject of consultation with relevant state government agencies including TfNSW.

207. **Local Road network** – Mr Greaves in particular seemed concerned about the traffic likely to be generated by a future subdivision of the land on the local road network. His view was that the Saddleback Mountain Road/ South Kiama drive/ Manning Street intersections and sections of roads would not have capacity to cater for this traffic, and that it would create a dangerous situation along the Saddleback Mountain Road frontage of the Kiama High School.
208. **Response to Submission:** While I believe Mr Greaves has genuine concerns in this regard, they are simply not supported by the Traffic Study that accompanied the Planning Proposal, Council engineers who originally assessed the proposal or TfNSW. As I explained in the meeting, again Part 6 of the KLEP requires a DCP and Development Contribution Plan (CP); once the Masterplan is complete, the Traffic Study will be refined in line with the Kiama Traffic Study Council is currently preparing, and if the subdivision generates traffic that require upgrading to the local road network, these will be addressed through the CP process.
209. Other issues were also raised by Mr Ward and Mr Greaves that were raised in the public submissions during the exhibition phase which are addressed elsewhere in this report including, but not limited to the impact on rural character, the capacity of the local schools and the capacity of the water and in particular the sewerage network.
210. **Meeting with Proponent:** On Tuesday 15 March I met with the proponent, Graham Morcom, and his consultants Clare Brown and Trevor Unicomb. This meeting was held at the Department of Planning and Environment offices in Newcastle from 12pm to 1pm. In summary, the proponents sought to address the issues that had been raised by Mr Ward and Mr Greaves from which they were aware from media coverage, and Ms Brown gave a lengthy presentation in line with the Urbis submission that responded to the Council report following Council decision not to proceed with the Planning Proposal. There was nothing new presented.
211. The proponent then asked what I considered to be the major issues in which I highlighted the strategic merit test, and the site strategic merit test. Specifically, I highlighted what I consider to be the sites visual sensitivity, the sloping nature of the site around the western, southern and northern boundaries, the need for a robust visual impact assessment undertaken by a qualified and experienced professional using an industry accepted methodology. I also highlighted the need for a Masterplan that is driven by an urban designer and not from an engineering approach, and that more effort needs to be placed into consultation and engagement with the local community and the local aboriginal community.
212. The proponent's response was not encouraging with neither Mr Morcomb or Mr Unicomb in my view having a realistic handle on the significance of the issues, or an understanding of how to approach their resolution. The need for a Masterplanning approach that sympathetically responds to the site constraints, and in particular the visual sensitivities of the site, the impact on the rural character and the need for a more inclusive engagement strategy. The proponent would be well served to allow Ms Brown, or someone of her calibre, to manage the Masterplanning, DCP etc process going forward. While no doubt Mr Unicomb is a qualified and highly experienced engineer, it is not those skills that are required to resolve the planning and design issues which will provide a positive design response for this site.

## 11. CONCLUSION

213. From the review I have undertaken I cannot support the Council or community submissions that the Planning Proposal should not be support for reasons related to:
214. **Impacts of traffic** – Council have not put up any evidence to support the proposition that the Planning Proposal should not proceed due to impacts of traffic from the future residential development of the land. The Council Development Engineer is quoted in the March 2019 report as stating that *"there are no outstanding matters that would preclude development of the site and that further detail can be addressed at development application stage"*. The TfNSW referral does not raise impacts on the local road network as an issue. It is noted that Council is currently considering the draft Kiama Traffic and Parking Study. If works are proposed as part of that study, Council will have the opportunity to impose a developer contribution on this development to cover the costs of those works, in line with the establish planning principles for developer contributions of course.
215. **Access to the highway** – The residential development of this site is not, in my opinion, going to generate the traffic levels to warrant the provision of another access onto the motorway. I base that opinion on the Traffic Report that accompanies the Planning Proposal which uses very conservative traffic generation rates.
- I note the TfNSW initial objection to the proposal based in part to the *"impacts on the state road network"*. However, in the same submission they indicate that objection would be withdrawn if the KLEP 2011 inserts Clause 6.3 from the standard LEP and that the site is identified as a URA. It has been confirmed that both of those pre-conditions have been satisfied in this and the House Keeping LEP currently being finalised. TfNSW will need to be further consulted in the finalisation of the Masterplan for the site and the development of the DCP for the site, so if it is deemed necessary to have an on-ramp at Saddleback Mount Road, it will be dealt with at the DA stage.
216. **Impact on the local schools** – Refer to paragraph 112 where I note the advice from the NSW Depart of Education *"that their Student by Area projections take into account all future/potential urban expansion areas, and that "the Kiama Primary SCG and Kiama Secondary SCG will both be able to accommodate the future students associated with the proposal."*
217. **Impact on rural landscapes** – I agree that there will be impact on the rural landscape. However, given my comments at paragraph 190 above and that the Planning Proposal is consistent with the KLSPS and the IRP, that impact is an expected outcome. What does need to occur though is a more rigorous visual impact assessment to ensure that the urban residential form of the site compliments the adjoining rural landscape as far as practically possible. I am not satisfied this has been achieved, however, it can be picked up through the finalisation of the Masterplan and the DCP process (refer paragraph 191).
218. **The adequacy of current infrastructure for the development and future residents** – Council has provided no evidence to support this proposition and the advice from the relevant service authorities who are responsible for servicing the site is clearly to the contrary (refer paragraph's 108 & 109).
219. **Strategic Merit Test** – There should be no debate that the Planning Proposal satisfies the Strategic Merits Test. The Planning Proposal is clearly consistent with the Councils Local Strategic Planning Statement which includes this site as a 'Greenfield Site'. It is also agreed that the proposal is consistent with the Illawarra Regional Plan, especially given the lack of supply of new residential land in the Kiama LGA.



220. **Site Merit Assessment Test** - The Planning Proposal has also done enough to satisfy the Site Merit Assessment Test. Detail design and final subdivision layout has not been determined as yet, so it is understandable that issues like flooding and stormwater management, and traffic impacts have not been formalised, however there is enough evidence in the supporting reports and initial assessment from Council engineers to support the conclusion that these matters are capable of satisfactory resolution at the DA stage.

## 10.1 Recommendations

221. That Kiama Local Environmental Plan 2011 (Amendment No. 20) be finalised once the issue relating to the RE1 zone issues have been resolved with Council.

222. **Masterplan:** More work does need to be undertaken to finalise the Masterplan for the site, and there are several items that require further attention.

- a. Firstly, a new Visual Impact Assessment needs to be undertaken by a qualified and experienced professional who uses an industry accepted methodology. The introduction of an urban residential form into a rural landscape will impact on the rural character of the site, and what it should be aiming to do is to recommend strategies to reduce the impact on the adjoining rural and natural landscapes and mitigate the visual impact from public places, in particular the highly trafficked motorway. The current VIA appears to over rely on vegetation screening as a means of ameliorating visual impact, and that is not always appropriate. There are other mechanisms available such as modifying density of the subdivision in visually sensitive parts of the site (the elevated areas along the southern, western and northern sections of the site), site landscaping as well as controls on building materials and colours. In this regard, an Urban Design professional, not a civil engineer, should be used to complete the Masterplanning process.
- b. Secondly, there needs to be connection with the local aboriginal community. They need to be engaged actively in the Masterplanning process. They need to be consulted on what should happen with the PAD's as well as having input into other elements of the Masterplan process in line with the 'Connecting with Country Draft Framework'.
- c. Other issues requiring resolution as part of the finalisation of the Masterplanning process include:
  - Further consultation also needs to occur with TfNSW in relation to the noise attenuation measures, and resolution of any outstanding issues that relate to the state road network.
  - RFS issues related to the site design, layout, and access provisions.
  - Pedestrian and cyclist connectivity to the broader movement network of Kiama.
  - Resolution of the buffer to Kendall Cemetery and ongoing management of the dry-stone walls.
  - Strategy for the ongoing management of the E2 Conservation zoned areas around Munna Munnora Creek, and the RE1 Public Recreation areas of the site.
  - Finalise a stormwater management strategy and flood control once the design has been settled.

223. **Ministerial Direction** - The only outstanding Direction is 6.2 Reserving Land for Public Purposes. As set out at paragraph 196, this should be capable of being resolved with the Council before the LEP is made. Otherwise, I am satisfied that the proposal is consistent with the relevant Directions, or only minor and justifiable variations to Directions is required (1.2 & 1.5).

# ATTACHMENT 1

# **South Kiama Planning Proposal**

## **Independent Review - Terms of Reference**

### **1. Purpose of the Review**

In July 2021, Kiama Municipal Council resolved not to support a planning proposal to rezone rural land west of the Princes Highway between Saddleback Mountain Road to south of Weir Street, South Kiama to allow for residential development and environmental protection. Council subsequently wrote to the Department of Planning, Industry and Environment (Department) with a request that the proposal should not proceed. In October 2021, the Department wrote to Council and the proponent to advise that it intended to proceed to rezone the site following review of the strategic and site-specific merits of the proposal.

The purpose of the review is to provide an independent assessment of the Department's decision to proceed to rezone the site and provide advice and a recommendation in the Reviewer's opinion, whether the proposal has merit, whether further matters need to be investigated and whether the proposal should proceed to be finalised.

### **2. Scope of the Review**

The review is to consider:

- the strategic merits of the planning proposal and consistency with local and regional strategies, and
- the consistency with Ministerial Directions.

In undertaking the review, the Reviewer must consider:

- The planning proposal and supporting documentation as submitted to the Minister's delegate for consideration as part of the finalisation process.
- The report and recommendations of the Southern Regional Planning Panel in 2019.
- Gateway Determination
- Council reports and resolutions relevant to the planning proposal including Reports to Council in March 2019, July 2019, and June 2021
- Submissions and correspondence received from the community during the public exhibition period.
- Submissions and correspondence received from state agencies that are relevant to the Department's consideration of the planning proposal.
- Kiama Council's Local Strategic Planning Statement 2020.
- Illawarra Shoalhaven Regional Plan 2041.
- The Department's guide to preparing local environmental plans.
- Any correspondence between the Department and Council relating to the consideration of Ministerial Directions.
- Ministerial Directions.
- Findings and Recommendations of the Regional Housing Task Force.
- Departmental Briefing Notes and draft finalisation report.

### 3. Consultation

In undertaking the review, the Reviewer may choose to invite parties involved in the process to date to present their views on the planning proposal.

The Reviewer will also be required to undertake a site visit.

### 4. Reporting

The final report and recommendation is due to the Minister within 4 weeks from the date of engagement.

### 5. Confidentiality

The Reviewer must maintain the confidentiality of all non-public information it receives from all parties, unless otherwise agreed in writing.

## Appendix A - Background to the planning proposal

### Timeline

- Late 2018 - Planning Proposal for the site was lodged with Kiama Municipal Council.
- 19 March 2019 - Council resolved not to support the proposal. Council staff had recommended that rezoning of the site should be supported. A Rezoning Review request was subsequently lodged by the proponent.
- 19 June 2019 - Southern Regional Planning Panel determined that the proposal should be submitted for a Gateway determination as it has demonstrated strategic and site-specific merit.
- 16 July 2019 - Council resolved to accept the role of Planning Proposal Authority.
- 4 December 2019 - Gateway determination issued by the Department. Council did not receive delegation to finalise the proposal as it had been subject to a rezoning review. Council subsequently coordinated the studies required under the Gateway and exhibited the proposal.
- 28 June 2021 - Council resolved not to support the planning proposal as it considered that the proposal did not demonstrate strategic or site-specific merits.
- 6 July 2021 - Council wrote to the Department advising of its decision and seeking the Department's agreement that the proposal should not proceed.
- 13 October 2021 - Department wrote to both Council and the proponent advising that after careful consideration of Council's position, submissions and planning strategies, the Department has concluded the proposal has strategic and site-specific merit and issues raised during consultation can be addressed. As such the Department has decided that it intends to rezone the site for residential development and environmental protection.
- 19 October 2021 - Council resolved to allow its staff to prepare the LEP maps and to provide advice to the Department in relation to finalisation of the amendment.

### Community Submissions

There were 296 submissions received from individuals and 4 from community organisations (Kiama Central Precinct Committee; Kiama Heights Resident Group; Kiama & District Historical Society; and Kiama High School P&C). Of the submissions, 284 objected to the proposal (95% of total), and 16 supported the proposal (5% of total).

The main objections raised included:

- Lack of evidence that the proposal assists in meeting housing demand
- Traffic and parking concerns
- Loss of rural landscape
- Likelihood of increased flood events
- Heritage impacts
- Impact on infrastructure

### Councils' view

On 28 June 2021, Council resolved not to support the planning proposal to rezone the land on the basis that it fails to satisfy the Strategic Merit and Site-Specific Merit Tests and subsequently asked the Department to agree that the proposal should no longer proceed.

Council has formed this view on the basis of:

- other initiatives that have since been pursued by Council including planning proposals for Henry Parkes Drive, Kiama Downs and 48 Campbell Street, Gerringong which will provide 200 new lots, completion of the Kiama Local Strategic Planning Statement and the commitment to prepare and adopt a local housing strategy by 30 June 2022
- decreased population projections
- inconsistencies with S9.1 Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land & 6.1 Approval and Referral Requirements
- the amount of fill required to make the site suitable, and
- significant community opposition.

#### Department's assessment

The Department considers that the proposal does have strategic and site-specific merit and the issues raised during consultation can be addressed.

The Department has formed this view on the basis that:

- the proposal has been subject to detailed review and assessment through the Rezoning Review process undertaken by the Southern Regional Planning Panel, who determined that the proposal demonstrated strategic and site-specific merit
- the site is identified in Council's Local Strategic Planning Statement (June 2020) as potential for Greenfield development (along with the Henry Parkes Drive and Campbell Street sites). The site was also previously identified as suitable for investigation for urban development in the Kiama Urban Strategy
- the *Illawarra Shoalhaven Regional Plan 2041* identifies the need to remove barriers to housing supply in Kiama while protecting agricultural land, hard rock resources lands and sensitive estuaries – the Department is of the view that this planning proposal achieves this balance
- the planning proposal presents an opportunity to unlock new housing in an area adjacent to existing residential land and is not mapped as important agricultural land, and
- issues relating to heritage conservation, final landform and flooding can be addressed through good design principles during preparation of a site specific development control plan and at the development application stage for subdivision.