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Plan finalisation report – PP-2021-379 (PP_2019_KIAMA_004_00)

Kiama LEP 2011 Map Amendment 1 - Proposed
residential development between Saddleback
Mountain Road & Weir Street, South Kiama

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Kiama Local Environmental Plan 2011 (Map Amendment No. 1).

Kiama Municipal Council has prepared a planning proposal on behalf of the proponent White Constructions Pty Ltd, to amend planning controls to enable residential development and environmental protection on rural land situated west of the Princes Highway between Saddleback Mountain Road and south of Weir Street, South Kiama (Lot 1 DP 707300, Lot 5 DP 740252, Part Lot 101 DP 1077617, Part Lot 102 DP 1077617, Lot 8 DP 258605 and part of unnamed road reserve).

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (version 5 – February 2021) (Attachment A) applies to land between Saddleback Mountain Road and south of Weir Street, South Kiama. (Lot 1 DP 707300, Lot 5 DP 740252, Part Lot 101 DP 1077617 and Part Lot 102 DP 1077617 and part of road reserve).
Type	Site
Council / LGA	Kiama Municipal Council
LGA	Kiama Local Government Area

The site is bounded by Saddleback Mountain Road to the north, the Princes Highway to the east, farmland and heritage-listed dry-stone walls to the west and extends south to include land south of Weir Street, South Kiama. (Figure 1).

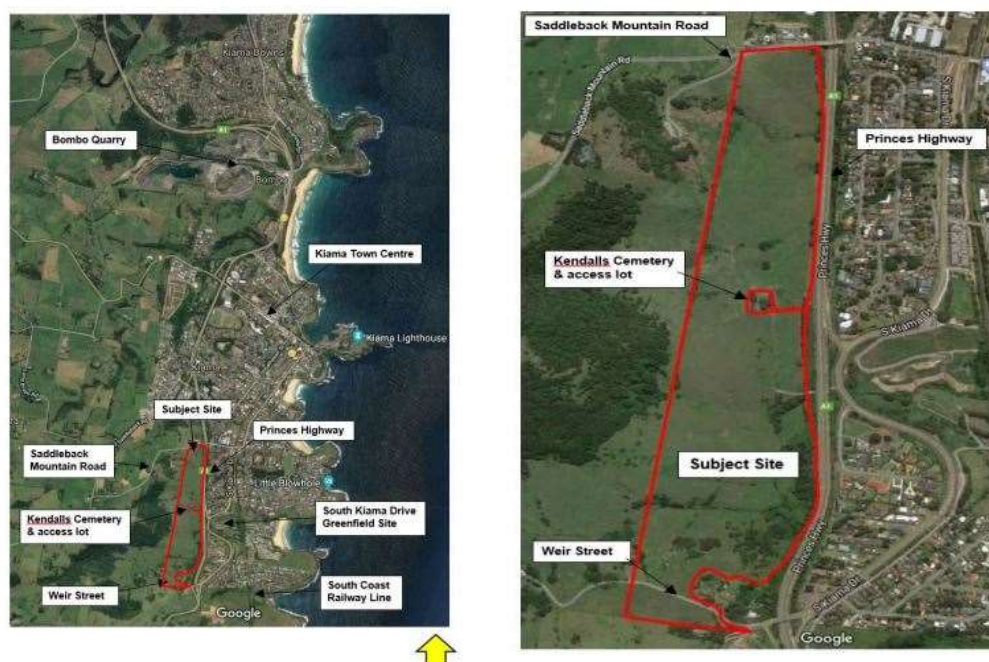


Figure 1 Subject site – location and site

The site is approximately 1.6km to the south-west of Kiama Town Centre. The proposal (versions 1 to 4) originally covered six parcels of land legally described as Lot 1 DP 707300, Lot 5 DP 740252, Part Lot 101 DP 1077617, Part Lot 102 DP 1077617, Lot 8 DP 258605 and a 3m-wide access/part of the Princes Highway road reserve from the Highway to Kendall's Cemetery which does not have a legal descriptor.

The planning proposal for exhibition (version 5) refers to the walkway as part of Lot 3 DP 258605. Lot 3 DP 258605 is Kendall's Cemetery and does not include the walkway. Council has confirmed that the pathway forms part of a longer pathway which goes under the Princes Highway and back to Stewart Place off Hillview Circuit.

The site is approximately 41ha in area. It is irregular in shape and has approximate dimensions of 1550m north-south and 360m east-west. It consists of two easterly-facing catchments on the mid to lower slopes of Saddleback Mountain Escarpment. The land is undulating, with surface levels falling in an easterly direction towards the Princes Highway. Steeper sections are adjacent to the four watercourses that traverse the site in a west to east direction.

The main watercourse is Munna Munnora Creek in the southern catchment of the site, which flows to Easts Beach. The northern catchment has two unnamed watercourses which flow to Kendalls Beach.

On the broad crest separating the two catchments is Kendall's Cemetery. The Cemetery is delineated by dry stone walls and landscaping. It is not part of the planning proposal. It is listed as a heritage item in the Kiama LEP.

The site comprises predominantly cleared grazing land originally supporting dairying and later beef cattle. Most of the site contains improved pastures, with some pockets of remnant rainforest vegetation. The land also has agricultural improvements with internal rural fencing, stockyards and three farm dams.

Dry stone walls also feature across the site and were used as property boundaries and yard walls. Dry stone walls are listed as heritage items in the Kiama LEP. There is the likelihood of Aboriginal relics being present on parts of the site. Four Aboriginal sites and sensitive landforms with high cultural significance have been identified.

The land is not mapped as being bushfire prone but is near bushfire-prone land to the west.

1.1.3 Purpose of plan

The purpose of the plan is to amend planning controls to enable residential development and environmental protection on the land.

As part of addressing the Gateway determination conditions and State agencies' comments, the proposed controls, particularly zoning, have changed from what was originally proposed in the planning proposal (version 1) reported to Council in March 2019 and the version considered for a Gateway determination in December 2019 (version 2) to the controls which were included in the planning proposal for public exhibition (version 5).

The table below outlines the current and proposed controls at Gateway determination, exhibition and finalisation stages for the LEP. The finalisation controls have considered community and agency consultation, further information provided by Council and the proponent and the findings and recommendations of the Independent Review of the South Kiama Planning Proposal.

Table 2 Current and proposed controls

Control	Current	Proposal at Gateway determination stage	Exhibited proposal	Finalisation of map amendment
Zone	RU2 Rural Landscape	R2 Low Density Residential; and E2 Environmental Conservation - Increase the area subject to E2 zoning to incorporate regrowth rainforest and wetlands as identified in the flora and fauna assessment	RU2 retained for highly visible parts of site. R2 Low Density Residential R5 Large Lot Residential – area towards top of hill E2 Environmental Conservation - Increase area subject to E2 zoning to incorporate regrowth rainforest and wetlands as identified in the flora and fauna assessment and to capture Munna Munnora Creek. RE1 Public Recreation – other drainage channels	RU2 retained for highly visible parts of site & drainage channels. R2 Low Density Residential R5 Large Lot Residential – area towards top of hill C2 Environmental Conservation - Increase area subject to C2 zoning to incorporate regrowth rainforest and wetlands as identified in the flora and fauna assessment and to capture Munna Munnora Creek and its riparian corridors. C3 – Environmental Management – protection of Aboriginal site and sensitive landform on the lower slopes/floodplain of Munna Munnora Creek.
Zone	E2 Environmental Conservation and E3 Environmental Management	No change	No change	No change

Control	Current	Proposal at Gateway determination stage	Exhibited proposal	Finalisation of map amendment
Minimum lot size	40ha	450m ²	R2 – 300m ² , 450m ² , 40ha R5 – 1,000m ² RU2 & part E2 – 40ha RE1, part E2 & E3 – no minimum lot size	R2 – 300m ² and 450m ² R5 – 1,000m ² RU2, E2 & E3 – 40ha
Maximum height of the building	None	Apply a height limit for R2 – 8.5m	Apply a height limit for: R2 – 8.5m R5 – 7.5m	Apply a height limit for: R2 – 8.5m R5 – 7.5m
Floor space ratio	None	Apply an FSR for R2 - 0.45:1	Apply an FSR for R2: lots > 450m ² – 0.45:1 lots > 300m ² – 0.6:1 Apply an FSR for R5 – 0.45:1	Apply an FSR for R2: lots > 450m ² – 0.45:1 lots > 300m ² – 0.6:1 Apply an FSR for R5 – 0.45:1
Heritage Map & Schedule 5 Environmental Heritage	Dry stone walls on the site are listed in schedule 5 of the LEP as item (No. I64) of local heritage significance	No change	No change	No change
Terrestrial Biodiversity Map	A small area on the south-eastern side of Lot 5 is identified on the terrestrial biodiversity maps as 'biodiversity land'	Adjust the location of mapped biodiversity land on the site in accordance with the flora and fauna assessment	Adjust the location of mapped biodiversity land on the site in accordance with the flora and fauna assessment and E2 zone.	Adjust the location of mapped biodiversity land on the site in accordance with the flora and fauna assessment and E2 zone.
Riparian Lands & Watercourses Map	The watercourses on the site are identified as category 2 and 3 watercourses on the riparian land and watercourses maps	No change	No change	No change
Urban Release Area Map	No map in LEP	No map in LEP	No map in LEP	Insert a new URA Map into the LEP and identify the site on the map.

Control	Current	Proposal at Gateway determination stage	Exhibited proposal	Finalisation of map amendment
Number of dwellings/lots	5	Based on concept plan 455 – 285 standard residential lots, 140 small residential lots, 30 townhouse lots	Based on concept plan 444 – 285 standard residential lots(>450m ²), 156 small residential lots (>300m ²), 3 large lots (>1,00m ²)	Unknown until further master planning and subdivision design. Expecting a reduced lot yield due to changes to zone boundaries.
Number of jobs	N/A	N/A	N/A	N/A. However it is noted that construction jobs would be created as well as opportunities for home employment.

Detailed discussion on the finalisation of map amendment controls is provided in section 3.3.1 Post-exhibition The Department's recommended changes. A brief outline to the changes is provided below.

The exhibited zoning map and riparian corridor plan do not align. The exhibited proposed zoning along the two southern watercourses did not include all the proposed vegetation riparian zone areas in either an E2 or RE1 zone. This has been corrected with areas along Munna Munnora Creek being zoned E2 and an area along the first order tributary of Munna Munnora Creek being included within the area proposed RE1.

The exhibited area of proposed E3 Environmental Management has been enlarged to include an area of the proposed vegetation riparian zone and identified Aboriginal sites and sensitive landforms of high cultural significance on the lower slopes/floodplain of Munna Munnora Creek.

The exhibited proposed E2 zoning along the upper reaches of Munna Munnora Creek has been extended to the maximum conservation width (being 40m from the top of bank) due to the third order ranking of Munna Munnora Creek and the best opportunity the Creek provides for riparian connectivity and function within the catchment. Extending the width of the E2 zoning also has the benefit of including an identified Aboriginal site and sensitive landform of high cultural significance.

Council staff did not support the exhibited, proposed RE1 zoning along the watercourses as the quantity of land to be dedicated and the risks associated with the retaining walls had not been considered or approved by the elected Council. The existing RU2 Rural Landscape zone has been retained and an alternate zone may be considered, if required at a future time.

Mapping errors on the exhibited Minimum Lot Size (MLS), Floor Space Ration (FSR) and Height of Building (HOB) maps, were corrected to align with the proposed zoning layer.

The site has been mapped onto a new Urban Release Area map for the Kiama LEP 2011. Council has included a URA clause into Part 7 of the LEP (Clauses 7.1-7.3) and a definition of URA into the LEP via the Housekeeping Amendment No. 21, (notified on 17 December 2021). Part 7 introduces the need for the Planning Secretary and consent authority to assess the provision of State and public utility infrastructure in development proposals prior to providing concurrence and development consent. There is also a requirement for a Development Control Plan to be in place before consent is granted to subdivide the site.

The existing and proposed E2 Environmental Conservation and E3 Environmental Management zones have been corrected to the new Standard Instrument Conservation zones – C2 Environmental Conservation and C3 Environmental Management.

Council staff suggested zoning the proposed public reserve around Kendell's Cemetery, as identified in the Site Constraints and Master Plan Maps as RE1 Public Recreation. This potential change can be considered during further master planning and development of the Development Control Plan for the site.

1.1.4 State electorate and local member

The site falls within the Kiama state electorate. The Honourable Gareth Ward MP is the State Member. Mr Ward opposes the rezoning. He has also made numerous written representations on behalf of local constituents to the Minister for Planning and Minister for Homes, and the then Minister for Planning and Public Spaces in relation to the planning proposal.

Mr Ward wrote to the then Minister for Planning and Public Spaces on 10 September 2019 (**Attachment B**) to advise he shares his constituent's concerns around the planning proposal including the size of the development, location, impact on roads, sewerage disposal and community infrastructure.

Mr Ward and the Kiama Combined Community Action Group met with the then Minister on 25 February 2020 to discuss the Group's concerns regarding zoning, population numbers and dwelling projections.

Mr Ward and the Kiama Central Precinct Group also met with the then Minister on 4 November 2021 where the Minister decided to initiate a review of the Department's intention to make the plan and appoint an Independent Reviewer.

Mr Ward attended and spoke at a community rally against the South Kiama rezoning on 22 January 2022 where he advised the community he had invited the Minister for Planning and Minister for Homes to attend the rally and inspect the development site, and he encouraged constituents to write to the Minister. Mr Ward stated that he is also angry that local communities are not being allowed to make local decisions.

On 8 March 2022, Mr Ward and the Kiama Central Precinct Chair met the Independent Reviewer at the Minister's office to further discuss their concerns with the planning proposal.

The site falls within the Gilmore federal electorate. Fiona Phillips MP is the Federal Member. To the Department's knowledge, Ms Phillips has not made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 4 December 2019 (**Attachment C**) determined that the Planning proposal (version 2 July 2018) should proceed subject to conditions.

In accordance with the Gateway determination conditions, the planning proposal was updated prior to public exhibition to include revised technical studies, a master plan and updated explanation of provisions and maps - zoning, densities and heights, that reflect the outcomes of the studies and master plan.

On 19 March 2020, the Department advised Council that the updated planning proposal (version 3 January 2020) and supporting information had met the requirements of Condition 1 of the Gateway determination and Council could proceed with public exhibition.

In accordance with the Gateway determination the proposal was due to be finalised on 4 June 2021.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 19/04/2021 to 31/05/2021, for a period of 43 days, as required by section 29 of the *Local Government Act 1993*.

A total of 300 community submissions were received, comprising of 284 objections and 16 submissions supporting the proposal (**Attachment D**).

Council considered the issues raised during agency consultation (**Attachment E**) and public exhibition in an Exhibition Report (**Attachment F**) and resolved on 28 June 2021 that it does not support the proposal (**Attachment G**).

On 6 July 2021, Council requested that the Gateway determination be amended to no longer proceed with the planning proposal (**Attachment H**).

On 9 August 2021, the Department received additional information from the proponent addressing issues and concerns in Council's Post Exhibition Report (**Attachment I**).

On 13 October 2021, the Department advised Council that after careful consideration of Council's position, submissions and planning strategies, the Department concluded the proposal has strategic and site-specific merit and issues raised during consultation can be addressed. As such the Department advised it intended to rezone the site for residential development and environmental protection and would not be amending the Gateway determination' (**Attachment J**).

On 27 October 2021, in response to the Department's advice of 13 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 in order to assist with finalising the required mapping to support the development (**Attachment K**).

The Department has held discussions with Council staff to clarify Council's concerns with the planning proposal (Version 5) (**Attachment L**).

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

There were 300 submissions received from individuals (296) and organisations (4) Kiama Central Precinct Committee; Kiama Heights Resident Group; Kiama & District Historical Society; and Kiama High School P&C.

Due to the considerable number of submissions received, Council did not record the issues raised in each individual submission.

Of the 300 submissions, 284 objected to the proposal (95% of total), and 16 supported the proposal (5% of total).

The 16 submissions supporting the proposal were based on the following grounds:

1. Increase the supply of housing.
2. Support local jobs during construction.

3.1.2 Submissions objecting to and/or raising issues about the proposal

Table 3 Summary of Key Issues

Issue raised	Council response and Department assessment of adequacy of response
<p>Strategic Merit - no evidence the PP assists in meeting housing demands & population growth</p>	<p>Council Response:</p> <p>The proposal fails to satisfy the Strategic Merit test for numerous reasons.</p> <ul style="list-style-type: none"> • 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 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. • The 2019 NSW Population Projections indicate an increase of 4000 people between 2016-2040 for the Kiama LGA which is a decrease from previous projections. • The proposal is inconsistent 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 is excessive and outside Council's policy framework and provisions. • There remains significant community opposition to the proposal. The development is not within the public interest. <p>Department Response:</p> <p>The Planning Proposal has strategic merit as identified in:</p> <ul style="list-style-type: none"> • Southern Region Planning Panel findings 19/6/2019 - the Panel considered that the proposal has strategic merit given: <ul style="list-style-type: none"> • 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. • From Gateway Determination Assessment - The planning proposal will assist in meeting housing targets identified in regional and local planning strategies. • Illawarra Shoalhaven Regional Plan 2041 – The planning proposal is consistent or has the potential to be consistent with Objective 18 – provide housing supply in the right locations and Objective 19 - Deliver housing that is more diverse and affordable. The plan identifies that 'Kiama is only likely to play a supporting role in regional housing supply and has a limited supply of identified new greenfield areas. Council has committed to developing a Local Housing Strategy and the Government will work collaboratively with

	<p>Council so it can respond to changing housing needs in line with the community's vision.'</p> <ul style="list-style-type: none"> • Kiama Local Strategic Planning Statement 2020 – The site is listed and mapped as Site 5 for potential urban expansion – one of only nine sites across the LGA. The LSPS states that 'these areas have been identified through the Kiama Urban Strategy and have been the subject of community consultation and discussion.' As acknowledged by the proponent, the LSPS does not indicate timeframes or number of lots anticipated for these greenfield sites. <p>Council is currently preparing the Kiama Housing Strategy which is considering issues such as demographic factors, the supply and demand for housing, and local land use opportunities and constraints. The Strategy is due to be adopted by Council by the end of June 2022.</p>
Traffic & Parking Congestion – on existing road network and particular intersections	<p>Council Response:</p> <p>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. TfNSW have confirmed that no additional on or off ramps will be considered for this proposal.</p> <p>Department Response:</p> <p>Transport for NSW has not identified concerns with impacts on the State or Regional road system.</p> <p>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.</p> <p>The retention of a pathway from Kendall's Cemetery under the Princes Highway to Hillview Circuit could be expanded into a pedestrian/cycleway track to facilitate a non-vehicular option of travel to Kiama High School.</p> <p>The Planning Proposal identifies that the traffic report highlights some improvements are required to the adjacent local road network as a consequence of the development.</p> <p>The preparation of a Development Control Plan (DCP), Development Contributions Plan and subsequent development applications for subdivision and housing on the site will consider local traffic issues in more detail. There are no traffic impacts expected from the proposal that would prevent rezoning of the site.</p>
Loss of rural landscape - negative visual effect on the surrounding locality	<p>Council Response:</p> <p>The Visual Assessment has not taken into consideration the increases in ground level, associated with the substantial filling proposed, and therefore the amount the site which will be visually prominent will increase. Sites within 150m of the Princes Highway are proposed to have the ground level increased by 3-4m, bringing them level with the Highway.</p> <p>Department Response:</p> <p>Urban development on the site will have significant visual impacts on the existing rural landscape. However, measures can and have been implemented to reduce some visual impacts of urban development.</p>

	<p>The proposed retention of the RU2 Rural Landscape zoning for the visually prominent higher sections of the site will assist in reducing visual impacts. A strip of R5 Large Lot Residential with a larger minimum lot size of 1,000m² downslope of the RU2 area towards top of hill in the centre of the site, will also assist in providing an interface between the residential development and rural landscape.</p> <p>The creation of a larger public reserve around Kendall's Cemetery, on the broad crest separating the two catchments has the potential to retain a component of the rural landscape. The reserve will incorporate the existing dry stone walls and landscaping. The expansion of public land beyond the Cemetery's walled boundaries offers opportunities to supplement the landscaping. Passive recreational facilities could be incorporated with design and material reflective of those used in a rural landscape.</p> <p>The Planning Proposal includes landscaping along the watercourses and Princes Highway to mitigate visual impacts and to retain a corridor between the vegetated escarpment and native vegetation along Munna Munnora Creek and the Princes Highway.</p> <p>The proponent has submitted a revised bulk earthworks plan which has reduced the proposed level of fill. This concept plan can be further refined to reduce proposed fill levels and retaining wall heights which will mitigate the visual impacts of the development.</p> <p>The final landform can be further considered through master planning, the development of a DCP and assessment of subsequent development applications for subdivision and housing.</p>
<p>Flooding Issues - likelihood of increased flood events associated with the proposal and the lack of proposed mitigation measures.</p>	<p>Council Response:</p> <p>The proposal is inconsistent with Ministerial Direction 4.3 Flood Prone Land.</p> <p>Council has provided further advice that the Flood Study shows under the existing scenario there are areas within the site which are within the Flood Planning Area. It is acknowledged by Council that the Flood Study demonstrates that these areas will not be within the Flood Planning Area if the proposed earthworks and subdivision design occurs.</p> <p>Department Response:</p> <p>It is not unusual for urban release areas to require a cut and fill regime to ensure that areas are flood free and suitable for development.</p> <p>The proponent's flood consultant has advised 'there is no proposed fill within the Flood Planning Area and the proposed residential zone is outside the Flood Planning Area. Flooding during the 1% Annual Exceedance Probability won't be increased on the adjoining downstream properties. The site is suitable for residential development'</p> <p>The proponent's flood consultant has also advised that the fill originally proposed to be imported onto the site was not required to deal with flooding, but rather was proposed in order to utilise a gravity fed sewer main.</p> <p>There is no evidence to suggest that flooding issues on the site cannot be addressed or that impacts on downstream properties cannot be managed.</p> <p>The Department's changes to the E2 and E3 zone boundaries along Munna Munnora Creek and its tributary will remove some low lying lands from proposed residential development.</p>

	<p>Flooding issues can also be addressed in more detail through the DCP and subsequent development applications.</p>
<p>Heritage Impacts - Aboriginal and European Cultural and Built Heritage – Kendall's Cemetery and the numerous dry stone walls are listed as heritage items and need to be protected. All development should be setback at least 20m from Kendall's Cemetery.</p>	<p>Council Response:</p> <p>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 Kiama and District Historical Society objected to the proposal.</p> <p>The indicative lot layout, and therefore the associated zoning etc. is inconsistent with Ministerial Directions 2.3 Heritage Conservation.</p> <p>Department Response:</p> <p>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.</p> <p>The Department has worked with Council to protect three of the sites by widening the riparian corridors of Munna Munnora Creek to include sites 2 and 3 and extending the conservation management zone to include site 1.</p> <p>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 Kiama LEP lists Kendall's Cemetery and dry stone walls across the LGA as heritage items.</p> <p>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.</p> <p>As identified earlier, 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. This can be considered during further master planning and preparation of the development control plan.</p> <p>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.</p>
<p>Infrastructure Capacity – ability of Sydney Water to service the site & capacity of primary and High Schools' capacity to accommodate student growth associated with the proposal</p>	<p>Council Response:</p> <p>Additional infrastructure may be required however Sydney Water are confident of their ability to service the site. The Department of Education are confident that they can accommodate student growth associated with this proposal.</p> <p>Department Response:</p> <p>There are no outstanding infrastructure capacity issues. All relevant authorities have advised that the land can be serviced for the proposed development.</p>

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the feedback. Agency feedback on the Planning proposal (version 4) resulted in further revisions to the Planning Proposal (version 5) and supporting technical studies.

Table 4 Advice from public authorities

Agency	Advice raised	Council response
NSW Rural Fire Service (RFS)	<p>Do not object subject to a requirement that future subdivision of the land complies with Planning for Bushfire Protection 2019 including APZs, access and services.</p> <p>At a minimum the central underpass of the motorway must be made available for a category 1 appliance to enter the site. The existing road network may require upgrade to facilitate the required traffic movement.</p> <p>To ensure that future subdivision development can be supported by NSW RFS, at the strategic planning stage prior to approval of the planning proposal, the consent authority shall be satisfied that the above access provision can occur at future development stages.</p> <p>NSW RFS recommends that comments are received from all emergency service providers during the consultation period regarding the adequacy on ingress paths proposed.</p>	<p>Future development applications will be integrated development and general terms of approval will be required from NSW RFS.</p> <p>The current dimensions of the central underpass of the Princes Highway appears to allow for a Category one appliance to enter the site. Further investigation would be required as part of any future DA.</p> <p>Department Response:</p> <p>There are no outstanding matters for the planning proposal.</p>

<p>DPIE Division of Biodiversity & Conservation including comments from the Aboriginal Heritage Branch now in Heritage NSW</p>	<p>Support 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.</p> <p>Suggest that a conservation agreement be implemented for the management of the E2 zoned threatened ecological communities and areas containing the threatened flora species <i>Zieria granulata</i>.</p> <p>Consider that the planning proposal is inconsistent with the objectives of Section 9.1 Direction 4.3 Flood Prone Land, in particular Clauses 5 & 6, as well as the NSW Floodplain Development Manual (FDM) 2005. This issue is not minor and should be of a concern to Council to satisfactorily address.</p> <p>The flood assessment has not addressed matters raised and discussed in previous advice and continues to demonstrate there will be downstream flood impacts. This includes increase flood levels, frequency and duration over the full range of possible flood events and increased flood risk.</p> <p>The Division considers the environmental, public safety and flood impacts associated with the proposed filling of the floodplain to the top of the creek bank can be resolved by applying setback provisions within Kiama LEP 2011 flood planning and riparian land framework. We consider that Council now has adequate information to resolve this matter by aligning the planning proposal with the objectives of KLEP 2011, Section 9.1 Direction 4.3 & the FDM.</p> <p>The Aboriginal Heritage Branch 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.</p>	<p>Noted by Council. No comment on the suggestion for a conservation agreement.</p> <p>Council notes the Flood Study makes no comment on the impact of the proposed cut and fill and retaining walls on the movement of flood waters on the site.</p> <p>Council presumes that the Study's conclusion that the rezoning will allow for a safe development is contingent on the significant earthworks.</p> <p>Council does not support the proposed earthworks. If the earthworks do not proceed then the conclusions contained in the Flood Study are not valid.</p> <p>Council therefore considers that the proposal is inconsistent with Section 9.1 Direction 4.3 Flood Prone Land.</p> <p>Council requested that an Aboriginal Cultural Heritage Assessment (ACHA) be prepared and submitted. An ACHA was submitted on 18 December 2020,</p> <p>The ACHA recommends the avoidance of Aboriginal sites and sensitive landforms.</p> <p>Council notes the Masterplan demonstrates that the proponent has not sought to avoid Aboriginal sites and sensitive landforms. It appears only two of the eight identified artefacts will be avoided. The Masterplan argues that avoidance of these artefacts can occur at Development Application stage. However, best practice, as suggested by the LALC would be to not zone areas containing Aboriginal heritage or sensitive landforms for residential purposes. As this has not occurred Council considers that the proposal is inconsistent with Section 9.1 Direction 2.3 Heritage Conservation.</p> <p>Department Response:</p> <p>Refer to the relevant comments in Table 3. The Department has worked with Council to better</p>
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Agency	Advice raised	Council response
		resolve flooding and Aboriginal heritage issues.
Illawarra Local Aboriginal Lands Council	<p>Opposed to the development at this point in time based on concerns that:</p> <ul style="list-style-type: none"> • Residential development in the area based on current anticipated demand would not warrant a development of this size; • The cultural landscape from an Aboriginal and European heritage perspective, associated with the land concerned has not been factored into any assessment to this proposal; 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. <p>The LALC has confirmed they believe that this development will have a significant impact on the cultural landscape associated with the area.</p>	<p>To address the LALC's concerns, Council requested that an Aboriginal Cultural Heritage Assessment (ACHA) be prepared and submitted.</p> <p>Council considers that the proposal is inconsistent with Section 9.1 Direction 2.3 Heritage Conservation.</p> <p>Department Response:</p> <p>Refer to the relevant comments in Table 3. The Department has worked with Council to include Aboriginal sites within riparian/ environmental protection areas.</p> <p>Further consideration of Aboriginal cultural heritage will be required in future planning processes – DCP and subdivision applications.</p>

Agency	Advice raised	Council response
Transport for NSW	<p>Do not support the planning proposal in its current form. Raised the following concerns:</p> <ul style="list-style-type: none"> • Impact of State road network - 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. • Walking, cycling and public transport - is not convinced that the central underpass of the Princes Highway is wide enough to accommodate a travel lane and a footpath. • Noise - 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. 	<p>Council has confirmed that, should the proposal proceed, the site will be identified as an Urban Release Area. Council has included a URA clause in the Housekeeping Kiama LEP planning proposal (PP-2021-3041).</p> <p>Council are of the opinion that the width of the central underpass is sufficient to accommodate a travel lane and a footpath. Despite this, this location is not considered suitable for pedestrian connectivity of the proposal side to the broader Kiama pedestrian network. It is noted that Council has strategic pedestrian linkages in Stewart Place and that, should this proposal proceed, investigations of a pedestrian footbridge over the Princes Highway to Stewart Place should be undertaken as part of any future DA.</p> <p>Council shares TfNSW's concerns regarding noise barriers. The Traffic Noise Intrusion Assessment has not taken into consideration the proposed increases in ground level, particularly on sites within 150m of the Highway where the ground level will be increased by 3-4m, bringing them level with the Highway. The conclusions & recommendations of the Noise Intrusion Assessment are therefore potentially flawed.</p> <p>Department Response:</p> <p>Refer to the relevant comments in Tables 2 & 3, including the inclusion of a URA map in the planning proposal.</p> <p>The proponent's revised earthworks plan has reduced the level of fill along the northern section of the Princes Highway. Further consideration of transport issues and noise barriers in conjunction with TfNSW will be required in future planning processes – DCP and subdivision applications.</p>

Agency	Advice raised	Council response
Sydney Water	<p>No objection to the planning proposal.</p> <p>Requested that future developers within the site submit a feasibility application to Sydney Water to ensure that their development is consistent with the allowances made in the upgrade works.</p> <p>Additional infrastructure, such as lead in mains or amplifications, may be required.</p>	<p>No comment by Council</p> <p>Department Response:</p> <p>Water and sewer can be provided to the site.</p>
Endeavour Energy	<p>Did not object to the planning proposal.</p> <p>Any future Development Application for subdivision will be required to be submitted to Endeavour Energy for connection to Endeavour Energy's power supply network.</p>	<p>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.</p> <p>The planning proposal does not alter these requirements or obligations.</p> <p>Department Response:</p> <p>Electricity can be provided to the site.</p>
<p>Department of Education (DoE)</p> <p>While not a requirement of the Gateway determination, Council sought comments from DoE at the request of the community.</p>	<p>DoE have determined, considering the latest DoE Student by Area projections for Kiama, that Kiama Primary and Kiama High Schools will both be able to accommodate the future students associated with the proposal.</p>	<p>No comment by Council.</p> <p>Department Response:</p> <p>DoE have confirmed that the Local public school can accommodate future students.</p>
Natural Resource Access Regulator	No response provided	<p>Despite numerous attempts to illicit a response from NRAR no response was received.</p> <p>The proposed subdivision layout will potentially result in on-site detention basins which will require approval from NRAR.</p> <p>Department Response:</p> <p>The proposed development involves activities on waterfront land – riparian zone setbacks, piping of watercourses, placement of fill, construction retaining wall, on-line detention basins, culverts and bridges, which will require approval from the NRAR as part of future applications.</p>

3.3 Post-exhibition changes

Council made no post-exhibition changes to the planning proposal following public exhibition as it resolved not to support the proposal and to no longer proceed with the planning proposal.

The Department has made changes to the planning proposal (Version 5) post-exhibition in order to address community, agency and Council submissions and concerns. The final controls have considered community and agency consultation, further information provided by Council and the proponent and the findings and recommendations of the Independent Review of the South Kiama Planning Proposal.

It is recommended that these amendments be endorsed without requiring further exhibition as they do not change the intent of the planning proposal as exhibited. Further detail regarding the suitability of these changes is discussed below.

3.3.1 The Department's recommended changes

Following the receipt of the planning proposal from Council, the Department has made changes as follows:

- The exhibited zoning map and riparian corridor plan do not align. There are areas of proposed vegetation riparian zone along the two southern watercourses which have not been included in either an E2 Environmental Conservation or RE1 Public Recreation zone and have been zoned either R2 Low Density Residential or RU2 Rural Landscape. This has been corrected with areas along Munna Munnora Creek being zoned E2 and an area along the first order tributary of Munna Munnora Creek being included within the RE1 zone.
- The exhibited area of proposed E3 Environmental Management along the first order tributary of Munna Munnora Creek, has been enlarged to include an area of proposed vegetation riparian zone as well as identified Aboriginal sites and sensitive landforms of high cultural significance on the lower slopes/floodplain of Munna Munnora Creek (known as Aboriginal Site 1 from Figure 7 in the Aboriginal Cultural Heritage Assessment). The Aboriginal Cultural Heritage Assessment recommended the avoidance of the Aboriginal sites and sensitive landforms.
- The exhibited proposed E2 zoning along the upper reaches of Munna Munnora Creek has been extended to the maximum conservation width (being 40m from the top of bank) as identified on the exhibited riparian corridor plan. This change has been made due to Munna Munnora Creek being the most substantial watercourse on the site, (a third order watercourse), and as it provides the best opportunity for riparian connectivity and function within the catchment. Extending the width of the E2 zoning has also captured an identified Aboriginal site and sensitive landform of high cultural significance (known as Aboriginal Site 2 from Figure 7 in the Aboriginal Cultural Heritage Assessment).
- Council staff did not support the exhibited proposed RE1 zoning along three of the watercourses as the quantity of land to be dedicated and the risks associated with the retaining walls had not be considered or approved by the elected Council. The existing RU2 zone has been retained and an alternate zone may be considered at a future time.
- The exhibited proposed Minimum Lot Size (MLS) map was changed to:
 - Reflect and align with the changed zones and zone boundaries.
 - Allocate a 40ha MLS to the area to be zoned E2.
 - Remove the proposed 300m² MLS for Kendalls Cemetery which is not subject to the planning proposal.
- The exhibited proposed Floor Space Ration (FSR) map was changed to reflect and align with the changed zones and zone boundaries.

- The exhibited proposed Height of Building (HOB) map was changed to reflect and align with the changed zones and zone boundaries.
- The site has been mapped onto a new Urban Release Area map for the Kiama LEP 2011. Council has included a URA clause into Part 7 of the LEP (Clauses 7.1-7.3) and a definition of URA into the LEP via the Housekeeping Amendment No. 21, (notified on 17 December 2021). Part 7 introduces the need for the Planning Secretary and consent authority to assess the provision of State and public utility infrastructure in development proposals prior to providing concurrence and development consent. There is also a requirement for a Development Control Plan to be in place before consent is granted to subdivide the site.
- The existing and proposed E2 Environmental Conservation and E3 Environmental Management zones have been corrected to the new Standard Instrument Conservation zones – C2 Environmental Conservation and C3 Environmental Management.

In undertaking its assessment of the exhibited maps, the Department noted the following queries, however no changes were made to the maps at this time.

- The exhibited proposed FSR map had the same proposed FSR of 0.45:1 for the 450m² R2 Low Density Residential lots and the larger 1000m² R5 Large Lot Residential lots.
- The exhibited proposed Terrestrial Biodiversity and Zoning Maps do not align to the proposed E2 zone boundary.

3.3.2 Justification for post-exhibition changes

The Department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by the public authorities, community, local member and Council.
- Ensure that matters are further addressed following rezoning and through further master planning, the preparation of a Development Control Plan and the development application assessment process.
- Do not alter the intent of the planning proposal and are minor amendments to the planning proposal.
- Reflect the findings and recommendations of the Independent Review (refer to point 4.2).

4 Department's assessment

The proposal has been subject to detailed review through the Rezoning Review process undertaken by the Southern Regional Planning Panel, the Department's Gateway determination (**Attachment C**) and subsequent planning proposal processes. It has also been subject to a high level of agency and public consultation and engagement.

The then Minister for Planning's also required an independent review of the Department's assessment of the proposal. The review was to provide advice and a recommendation regarding the merit of the proposal, matters requiring investigation, and whether the proposal should proceed. The findings and recommendations of the Independent Review are discussed in point 4.2 below.

The following section reassesses the proposal against relevant Section 9.1 Directions, SEPPs, the Illawarra Shoalhaven Regional Plan and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal.

As outlined in the Gateway determination report (**Attachment M**), the planning proposal submitted to the Department by Council:

- Remains consistent with the Illawarra Shoalhaven Regional Plan 2041
- Remains consistent with the Council's Local Strategic Planning Statement 2020.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 5 Summary of strategic assessment

	Consistent with Gateway determination report Assessment
Regional Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Southern Planning Panel recommendation	<input checked="" type="checkbox"/> Yes, generally <input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

Table 6 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment
Social and economic impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal.

Southern Regional Planning Panel Recommendations

The Southern Regional Planning Panel assessment identified the following constraints on the site:

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

In addition to determining that the planning proposal demonstrated strategic and site specific merit, the Panel also stated, "it is the Panel's view that the proposed 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 analyses 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 recommended the following additional requirements be considered as part of the Gateway determination:

- further urban design analysis;
- additional constraints analysis in terms of environmental, visual, landscape and heritage outcomes;
- site-specific development control plan (DCP) controls; and
- the provision of zoning and controls that reinforce the outcomes of the urban design, visual and landscape analysis of the site.

During the Gateway determination assessment, Council and the proponent provided further details as part of the planning proposal (version 2) on how the Panel's requirements would be addressed by:

- further review and finalisation of a master plan for the site that identifies the key principles for development of the site and management options to accommodate constraints and minimise visual impacts;
- consultation with agencies to determine whether further studies to identify constraints are required during the preparation of the master plan and planning proposal or by subsequent development applications;
- Council working with the proponent to carry out more detailed master planning work and prepare a site-specific DCP to identify the desired zonings and development controls. This work will be carried out in parallel with the making of the LEP; and
- the planning proposal's provisions and mapping being updated to identify a range of zonings, densities and heights that reflect the outcomes of the studies and master plan.

The further studies and master planning has resulted in a slight reduction of the conceptual lot yield. There is potential to review the level of landscape modification and prepare a subsequent subdivision pattern in the DCP and subsequent applications.

Section 9.1 Ministerial Directions

Consistency at Gateway determination stage (planning proposal version 2) and prior to public exhibition (planning proposal version 3):

The planning proposal was considered to be consistent with the following:

Gateway determination stage:

- 3.4 Integrating Land Use and Transport
- 4.3 Flood Prone Land (now named Flooding)
- 5.10 Implementation of Regional Plans

Prior to public exhibition:

- 2.3 Heritage Conservation
- 3.1 Residential Zones

Justified and/or minor inconsistency at Gateway determination stage (planning proposal version 2) and prior to public exhibition (planning proposal version 3)

The planning proposal was considered to be inconsistent of minor significance or justified with the following Directions at:

Gateway determination stage:

- 1.2 Rural Zones
- 6.3 Site Specific Provisions

Unknown status of consistency at Gateway determination stage (planning proposal version 2) and prior to public exhibition (planning proposal version 3)

The planning proposal's consistency was unknown for the following Directions at Gateway determination stage (planning proposal version 2) and prior to public exhibition (planning proposal version 3), until further studies and/or agency consultation was undertaken.

- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 4.4 Planning for Bushfire Protection

Consistency for plan finalisation (planning proposal 5, further information and changes)

- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 2.6 Remediation of Contaminated Land
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.3 Flooding
- 4.4 Planning for Bushfire Protection
- 5.10 Implementation of Regional Plans
- 6.2 Reserving Land for Public Purposes

The proposed changes to the exhibited land zoning maps, to extend the widths of the riparian zone along Munna Munnora Creek and capture the areas of proposed vegetation riparian zone and the identified Aboriginal sites and sensitive landforms of high cultural significance within an environmental zone, will afford better protection to these identified values of the site. Refer to the discussion in Tables 3 and 4 and under point 3.3.1 for further details. These changes have addressed the planning proposal's consistency with S9.1 Directions 1.5 Rural Lands – (clause 4(c) refers to identifying and protecting cultural heritage), 2.1 Environment Protection Zones and 2.3 Heritage Conservation.

The Gateway determination assessment report recommended that the contamination investigation needed to be updated to cover Lot 8 and confirm whether the planning proposal is consistent with SEPP 55 Remediation of Land. An updated report was prepared which concluded 'there is potential for localised contamination to exist that requires further investigation to assess whether the site is compatible with its proposed residential development and what remediation works may be required. It is considered that the site can be made compatible with its proposed residential land use.'

The planning proposal (version 5) for public exhibition is considered to be consistent with S9.1 Direction 2.6 Remediation of Contaminated Land.

As discussed previously, there is no evidence to suggest that flooding issues on the site cannot be addressed in more detail through the DCP and subsequent development applications or that impacts on downstream properties cannot be managed. The planning proposal is now consistent with S9.1 Direction 4.3 Flooding.

The planning proposal is now consistent with S9.1 Direction 4.4 Planning for Bushfire Protection following agency consultation with the NSW Rural Fire Service, preparation of appropriate reports and modifications to the planning proposal.

The exhibited planning proposal (Version 5) confirms the proposal 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 had not been sought.

As discussed in Table 1 and section 1.1.3, 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 this land is to retain its current RU2 Rural Landscape zone. Further discussion on the proposed public reserve around Kendall's Cemetery and the management of the public pathway is to occur during the preparation of the Development Control Plan for the site. The planning proposal is now consistent with S9.1 Direction 6.2 Reserving Land for Public Purposes.

Justified and/or minor inconsistency for plan finalisation (planning proposal 5, further information and changes)

1.2 Rural Zones

6.3 Site Specific Provisions

Social and economic impacts

The planning proposal will provide a much needed source of greenfield housing supply for Kiama in relatively close proximity to existing services and facilities.

It will also provide a source of employment and investment during construction which is likely to be staged over several years.

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.

Infrastructure

The site can be serviced for the proposed urban use.

4.2 Independent Review of Planning Proposal

On 10 December 2021, Mr Stephen Leathley, Insite Planning Services, was appointed as an Independent Reviewer in accordance with the Minister's South Kiama Planning Proposal Independent Review Terms of Reference. The Terms of Reference sought advice and a recommendation regarding the merit of the proposal, matters requiring investigation, and whether the proposal should proceed.

On 2 February 2022, Mr Leathley submitted his first report to the Department. He was subsequently requested to meet with the community and proponent to discuss their concerns to ensure these are considered in the independent review findings.

Mr Leathley attended a meeting on 8 March 2022 at the Minister's office with the local member Gareth Ward MP and Kiama Central Precinct Chair. Following that meeting, Mr Leathley met with the proponent on 15 March 2022.

On 22 March 2022, Mr Leathley submitted his final report having considered further the concerns of the local member and community. A copy of the Final Independent Review Report is at **Attachment N**.

The Independent Review Report concludes that the independent reviewer cannot support the Council, local member or community submissions that the planning proposal should not be supported.

The Independent Review recommends:

- That the amendment to the Kiama LEP be finalised once the issue of proposed public open space zones has been resolved with Council. Comment – this has been resolved.
- More detailed master planning for the site be carried out to inform a future development application (but not prior to rezoning) including:
 - a new visual impact assessment,
 - engagement with the local Aboriginal community in the master planning process,
 - noise attenuation from the highway,
 - pedestrian and cyclist connectivity,
 - bushfire issues relating to site design, layout and access provisions,
 - resolution of the buffer around Kendalls Cemetery and on-going management of dry-stone walls,
 - on-going management of conservation and public recreation areas, and
 - finalisation of a stormwater management strategy and flood control.
- an outstanding Ministerial Direction - 6.2 Reserving Land for Public Purposes, should be capable of being resolved with Kiama Council before the LEP is made. Comment – this has been resolved.

The Department has carefully considered the Independent Review Report and supports the recommendation that the planning proposal can be finalised. The Department notes that matters identified in the Report requiring further analysis can be satisfactorily addressed following rezoning and through further master planning, the preparation of a Development Control Plan and the development application assessment process.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

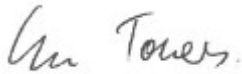
Table 7 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Eleven maps have been prepared by the Department's ePlanning team and meet the technical requirements. (Attachment O) .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment P) . Council confirmed on 30/06/2022 that the draft maps and plan reflect the planning proposal and raised no issues of concern (Attachment Q) .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Legal Services Branch, Department of Planning & Environment	On 30/06/2022, the Department's Legal Services Branch issued the final Map Amendment (Attachment LEP) .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make 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 and be suitable for the intended uses.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed through minor changes to the planning proposal and/or can be addressed in 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.
- The proposal has been the subject of two independent reviews which found it had merit.



11/7/22

Graham Towers

Manager, Southern Region



12/7/22

Daniel Thompson

Director, Southern Region

Attachments

Attachment	Document
A1 & A2	Planning Proposal (version 5) February 2021
B	Mr Ward's letter (10/9/19) to the Minister for Planning
C	Gateway determination (4/12/19)
D	Public Submissions on Planning Proposal (version 5)
E	Agency submissions on Planning Proposal (version 3 & 4)
F	Council Post Exhibition Report (28/6/21)
G	Council's resolution not to proceed (28/6/21)
H	Council's letter Gateway determination alteration request (6/7/21) not to proceed
I1-I4	Proponent's letter (9/8/21) to Department with further information
J	Department's letter (13/10/21) to Council to finalise LEP
K1 & K2	Council report & resolution (27/10/21) to assist in finalising the LEP
L1-L3	Council emails with further information on issues
M	Gateway determination assessment report
N	Independent Review of South Kiama Planning Proposal
O1-O11	Maps
P	Department's email to Council consulting on the Draft LEP and maps
Q	Council's email to Department noting Draft LEP and maps
LEP	Kiama LEP 2011 Map Amendment 1