



APP

Property and Infrastructure Specialists

STRATEGY > DEFINITION > DELIVERY > TRANSITION

Proposed Amendment to Kiama Local Environmental Plan 2012 Spring Creek, Kiama

March 2020

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1. Introduction

This planning proposal is submitted to Kiama Municipal Council (Council) in support of an amendment to Kiama Local Environmental Plan 2011 (Kiama LEP 2011). The proposal relates to a 0.69 hectare parcel of land at Dido Street, Spring Creek (hereafter referred to as the site). The site is currently zoned RU1 Primary Production and E2 Environmental Conservation under Kiama LEP 2011.

It is proposed to rezone a small area within the north-eastern and north-western portions of the site that is currently zoned RU1 Primary Production (0.27 ha) to E2 Environmental Conservation and the remainder of RU1 Primary Production land to R2 Low Density Residential, so that the larger site, being a single parcel of land generally has a more rational zoning that better aligns with its cadastre boundary and facilitates more rational building and development boundaries for future development.

The site forms part of the broader 'Spring Creek Urban Release Area' in the Kiama Urban Strategy 2011 which was adopted by Council on 20 September 2011. The release area includes land owned by Boral Resources (NSW) Pty Ltd (Boral) and Council. The release area is earmarked to deliver some 160 dwellings of which approximately 50 dwellings are shown on Boral land. The site is also identified as 'urban land' under the Illawarra-Shoalhaven Regional Plan 2015.

The proposed amendment will provide for more efficient development on the site, contributing to additional homes and greater housing choice close to Kiama Town Centre and beach, outcomes that are consistent with both the Kiama Urban Strategy and Illawarra-Shoalhaven Regional Plan.

This report has been prepared by APP Corporation Pty Ltd (APP) on behalf of Boral and is based on plans and information provided by Design IQ and supporting technical documents (refer to Table of Contents). It has been prepared in accordance with the Department of Planning, Industry and Environment's (the Department) 'A Guide to Preparing Planning Proposals' (December 2018) and includes the following:

- Part 1 – Objectives or the intended outcomes of the proposed rezoning and subsequent LEP amendments.
- Part 2 – A plain-English explanation of the legislative provisions that would apply to the site under the proposed instrument.
- Part 3 – Justification of the proposed amendment including the objectives, outcome and process for implementation. This part will also contain the strategic planning framework, environmental and social impact and identification and discussion of any relevant State or Commonwealth interests.
- Part 4 – Mapping to depict the proposed LEP amendment.
- Part 5 – Community Consultation that is to be undertaken in respect of the planning proposal as it progresses through to the Gateway process.
- Part 6 – Project timeline of the proposed amendment.

The planning proposal also addresses the matters that must be addressed as set out in Division 3.4 of Part 3 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

Background

The planning proposal (as amended) was endorsed by Council at its Ordinary Meeting on 18 December 2018, where the following recommendation was endorsed:

Committee recommendation that Council:

- 1. Endorse this Planning Proposal, without the inclusion of the E2 rezoning, to proceed to the Department of Planning and Environment for a Gateway determination.*
- 2. Request plan making delegations for this proposal as a part of the Gateway determination.*
- 3. On receipt of the Gateway Determination, proceed with recommendations including requesting any further studies and public exhibition*

On 19 October 2019, the Department issued a Gateway Determination (with conditions) under section 3.34(1) of the EP&A Act in respect of the planning proposal to rezone part of the site and modify development standards to enable residential development and environmental protection of the site.

Key conditions of the Gateway Determination include:

- 1. A Bushfire Assessment for the site is to be prepared and exhibited with the proposal.*
- 2. The Planning Proposal is to be revised to reflect the application of the proposal to only part of Lot 2. This would include updating the outcomes and provisions, and proposed maps. The planning proposal should also include details on consistency with Section 9.1 Directions, community consultation and a project timeframe. The revised proposal is to be submitted to the Southern Region of the Department for consideration prior to public exhibition.*

A revised planning proposal was submitted to Council on 2 December 2019. On 16 December 2019, Council advised that the planning proposal needed to be further amended to address the Gateway Determination conditions, particularly in relation to the zoning of endangered ecological communities on the site.

Community Consultation

Consultation will be undertaken with the following public authorities/organisations:

- NSW Rural Fire Service
- Department of Planning, Industry and Environment – Environment, Energy and Science Division

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

The planning proposal will be exhibited for 28 days and available via the following:

- Advertisement in the Local Newspaper;
- Hard copies made available at the Council Administration Building and relevant libraries;
- Electronic copy on Council's website; and
- Notification letters to relevant State agencies and other authorities/agencies nominated by the Department of Planning, Infrastructure and Environment.

Project Timeframe

The timeframe for the planning proposal is that, from the date of Gateway Determination to date of submission to the Department, the LEP be finalised within 12 months.

	Timeframe	Responsibility
Anticipated commencement date	March 2020	Department
Preparation of any outstanding studies (if required)	N/A	
Consult with State/ Commonwealth agencies	2 weeks after Gateway issued	Agencies
Exhibition of PP and technical studies (assuming no requirements to return to Gateway post additional studies)	Immediately following consultation with State/Commonwealth agencies	Council
Date of Public Hearing	N/A	Council
Review of Submissions and Preparation of report to Council	2 weeks	Council
Report to Council following exhibition	First available round after completion of review of submissions (8 weeks)	Council
Final Maps and Planning Proposal documents prepared	4 weeks from Council meeting	Council
Submission to DPIE for finalisation of LEP	4 weeks from Council meeting	Council
Anticipated date Council will forward final Planning Proposal to DPIE for notification	3 months from Department finalisation notification	Council
Anticipated date LEP will be notified	Unknown	Parliamentary Counsel and the Department

2. Site Analysis

2.1 Site Location and Context

The site and land to which the planning proposal relates, is on the western side of the Princess Highway, approximately 1.4 km north-west of Kiama Town Centre, 800 m to Bombo Beach and approximately 40 kilometres south of Wollongong (refer to Figure 1).

The site has good transport connectivity, with the Princess Highway and South Coast Train Line running within close proximity. The site is currently vacant, comprising predominantly cleared grazing land.



Figure 1 Land to which the Planning Proposal Relates

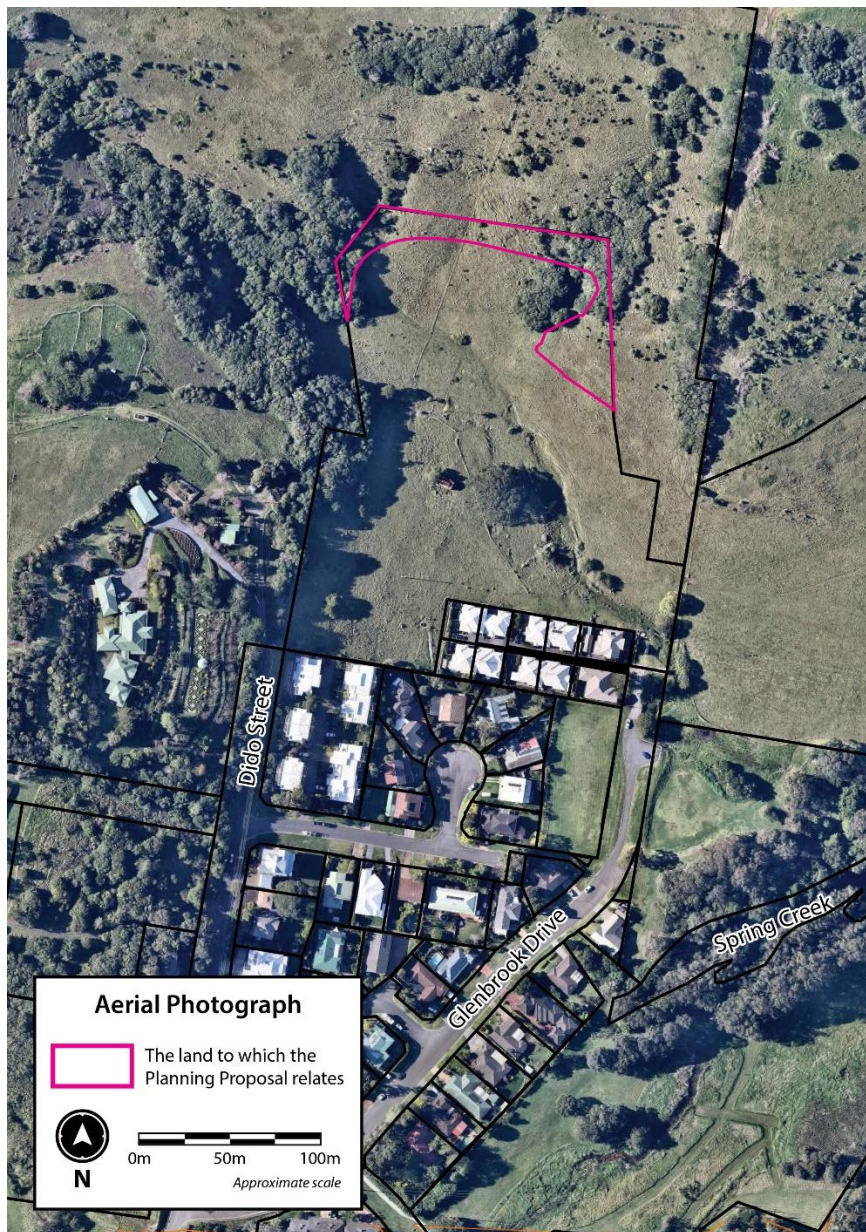


Figure 2 | Aerial photograph

2.2 Legal Description and Ownership

The site is legally described as part Lot 2 in DP 805229 and is owned by Boral Resources (NSW) Pty Ltd.

2.3 Surrounding Development

Land to the immediate north of the site comprises a rural land and forms part of Boral's Bombo Quarry and surrounding buffer lands. The Illawarra-Shoalhaven Regional Plan notes that this quarry is near the end of its extractive life and presents an opportunity to master plan this land to secure more land for residential, commercial and/or industrial purposes in the future.

To the south of the site is vacant land zoned R2 Low Density also owned by Boral. Further south on adjoining lots is a mix of detached dwellings, attached villa style dwellings, dual occupancy and multi-unit dwellings (refer to Figures 3 and 4). Newer residential development is located on the opposite side of Jamberoo Road and comprises large dwellings on standard 450-500m² lots and attached dwellings on 230m-240m² lots (refer to Figure 5).

To the east of the site is residential zoned land owned by Council. This land also forms part of the Spring Creek Urban Release Area. To the west of the site is rural land comprising a large residential estate and land for livestock / grazing.



Figure 3 Surrounding development



Figure 4 Photographs of surrounding development



Figure 5 Photographs of existing development to the south of Jamberoo Road

3.3 Existing Zoning and Development Standards

The site is currently zoned RU1 Primary Production and E2 Environmental Conservation under Kiama LEP 2011 (refer to Figure 6).

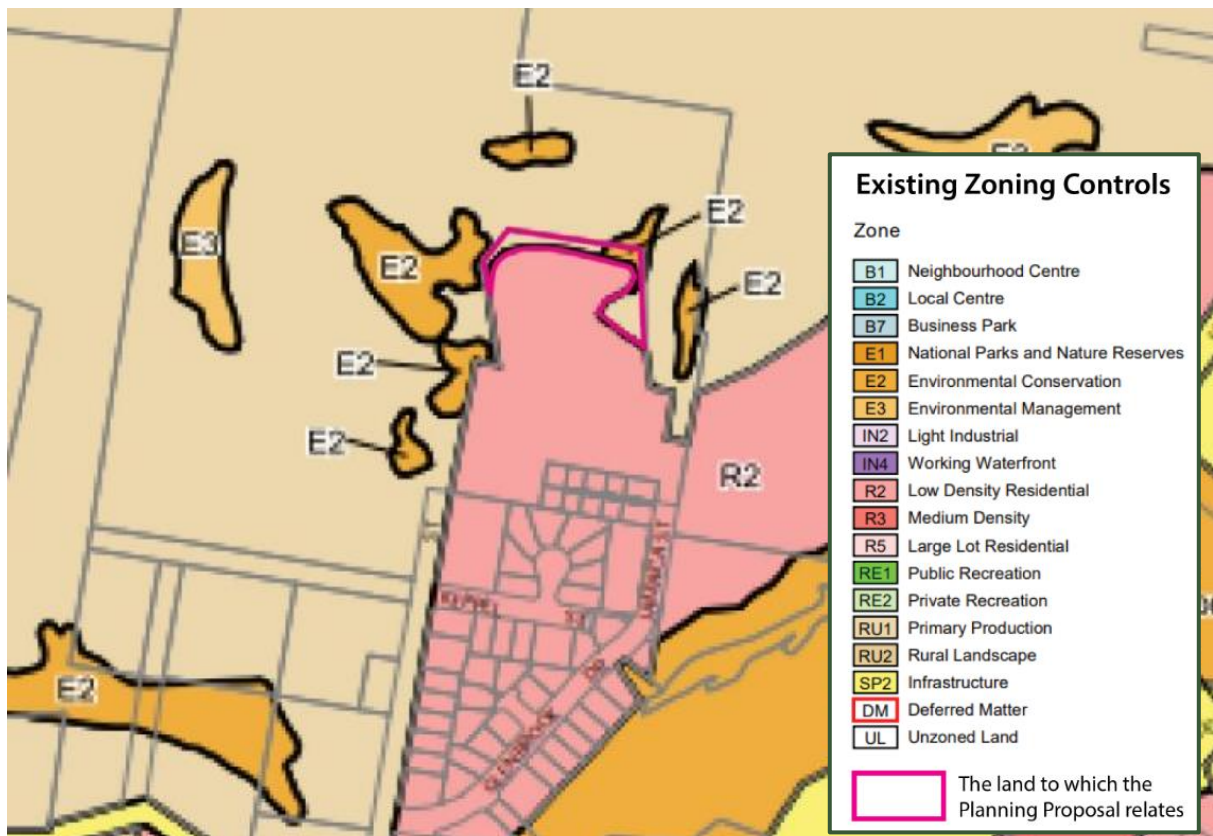


Figure 6 Existing Zoning Controls (Kiama LEP 2011)

The zone objectives, land uses and key development standards applying to the site is summarised in Table 1.

Table 1 Zone objectives, land uses and key development standards

Clause	Provision
RU1 Primary Production	<p>The objectives of the RU1 Primary Production zone are to:</p> <ul style="list-style-type: none"> encourage sustainable primary industry production by maintaining and enhancing the natural resource base; encourage diversity in primary industry enterprises and systems appropriate for the area; minimise the fragmentation and alienation of resource lands; minimise conflict between land uses within this zone and land uses within adjoining zones; protect agricultural land for long term agricultural production; and provide opportunities for employment-generating development that adds value to local agricultural production through food and beverage processing.
	<p>1. Permitted without consent <i>Environmental protection works; Extensive agriculture; Home occupations</i></p>
	<p>2. Permitted with consent <i>Agricultural produce industries; Air transport facilities; Animal boarding or training establishments; Aquaculture; Building identification signs; Business identification signs; Cellar door premises; Dwelling houses; Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Highway service centres; Home-based child care; Home businesses; Home industries; Home occupations (sex services); Industrial retail outlets; Intensive livestock agriculture; Intensive plant agriculture; Open cut mining; Recreation areas; Roads; Roadside stalls; Secondary dwellings; Stock and sale yards; Water supply systems</i></p>
	<p>3. Prohibited <i>Any development not specified in item 2 or 3</i></p>
Minimum Lot Size (Clause 4.1)	<p>40 hectares</p> <p>Note. This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.</p>

Clause	Provision
E2 Environmental Conservation	<p>The objectives of the E2 Environmental Conservation zone are to:</p> <ul style="list-style-type: none"> ▪ protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values; ▪ prevent development that could destroy, damage or otherwise have an adverse effect on those values; and <p>ensure adequate environmental buffers are provided, maintained or rehabilitated in the vicinity of high ecological value areas and waterways.</p> <hr/> <p>1. Permitted without consent <i>Environmental protection works</i></p> <p>2. Permitted with consent <i>Environmental facilities; Recreation areas; Roads</i></p> <p>3. Prohibited <i>Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3</i></p> <hr/> <p>Minimum Lot Size (Clause 4.1)</p> <p>40 hectares</p> <p>Note. This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.</p>

2.4 Topography and Hydrology

The site consists of undulating land. A minor tributary of Spring Creek traverses in a diagonal direction through part of the site. This tributary is generally dry but acts as a flood conveyance system for the upstream catchment during all storm events. The flood storage / conveyance is generally contained within the riparian corridor. The site does not contain any flood prone land.

2.5 Access

Access to the site is available via Glenbrook Drive, at its northern end. Glenbrook Drive is a local two-lane, undivided road. Although the lot has frontage to Dido Street, no access to the site is available from Dido Street.

Pedestrian and cycle access to the site is available from Glenbrook Drive or via an existing informal pathway which runs along the southern side of Riddell Street through Spring Creek Wetland and then onto Glenbrook Drive. Pedestrian access is also potentially available at the northern end of Dido Street.

In terms of public transport, bus route 701 between Jamberoo and Kiama Station provides bus connectivity in the site and broader area. Route 701 operates from Kiama Railway Station to Jamberoo School of Arts with two services extending to Minnamurra Falls, west of Jamberoo. The closest stops are on Jamberoo Road at its intersection with Dido Street. Bombo Train Station is 800 m to the east.

2.6 Ecological Characteristics and Values

An ecological constraints analysis of the site was undertaken by WSP as part of a larger study for the Spring Creek Urban Release Area and is included at **Appendix A**. Due to historic and ongoing agricultural use and surrounding residential dwellings, the biodiversity values of the area in general and site have been heavily impacted and degraded. The majority of remnant native vegetation in and around the site is in a disturbed condition due to historical clearing, cattle grazing, fragmentation, small patch size and the absence of protective buffers due to adjacent land managed for residential subdivisions and agricultural tenures.

Small isolated patches of Whalebone Tree – Native Quince dry sub-tropical rainforest (0.42 ha) (PCT 1300) occur within the north-east and north-western portions of the site. These patches are consistent with the Illawarra Subtropical Rainforest in the Sydney Basin threatened ecological community and listed as an endangered ecological community under the NSW *Biodiversity Conservation Act 2017* (refer to Figure 7). In September 2019, the Illawarra Subtropical Rainforest was listed as a critically endangered ecological community under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

In March 2020, an EPBC Act condition assessment of native vegetation on the site was prepared by WSP. A copy of the assessment is included at **Appendix A**. The purpose of the assessment was to evaluate the potential ecological community against the EPBC Act key diagnostics (e.g. canopy cover, ground cover and species richness) and condition thresholds (for e.g. patch size, and biotic thresholds) to determine whether this vegetation warranted zoning from RU1 Primary Production to E2 Environmental Conservation, consistent with the Gateway Determination dated 19 October 2019 and advice from Council dated 31 January 2020.

The following was concluded:

- North eastern patch - The rainforest vegetation in the north eastern section of the site is contiguous with vegetation outside the site, however majority of this patch of vegetation is dominated by exotic species such as *Olea europea* ssp. *cuspidata* and *Notolaea venosa* with emergent *Acacia maidenii* and is separated from other remnants by exotic grassland. The size of this vegetation area is relatively small comprised of 0.1-1 ha. The margins of this patch also consist of *Olea europea* ssp. *cuspidata* overstorey and groundcover of exotic grasses including *Ehrharta erecta* with low diversity of native understorey species including *Hibbertia scandens*, *Pseuderanthemum variabile* and *Pittosporum* species. Only a small portion of vegetation within this patch identifies as PCT1300 which meets the relevant conditions under the EPBC Act and is therefore considered to be of medium-high ecological condition. The remainder of vegetation does not meet the relevant conditions and thresholds.
- North western patch – The rainforest vegetation in the western section is contiguous with vegetation to the west of the site, which forms a patch that is greater than 1 ha in size. The north western patch is dominated by species including *Notolaea venosa*, as well as *Pittosporum undulatum*, *Glochidion ferdinandi* and *Ficus macrophylla*. A portion of this patch identifies as PCT1300 which meets the relevant conditions under the EPBC Act and is therefore considered to be of medium-high ecological condition. The margins of the forest vegetation are dominated by exotic species including *Olea europea* ssp. *cuspidata*, *Lantana* spp., *Rubus* sp. and exotic grasses including *Ehrharta erecta* and *Paspalum dilatatum*.

Figure 7 identifies the vegetation areas considered to be consistent with both the BC Act and the EPBC Act listing and therefore its zoning to E2 Environmental Conservation under Kiama LEP 2011 considered warranted. The remainder of the site comprises highly disturbed areas with no or limited native vegetation, consisting predominantly of grazed exotic grassland.

In terms of fauna habitats, most vegetation communities do not occur as old-growth forms and important fauna habitat attributes, such as hollows, plentiful fallen timber, connectivity and large patch size are lacking. The general lack of these important habitat attributes reduces the site's capacity for supporting a wide diversity of local native species, including threatened species, in isolation from other higher quality habitats in the locality.

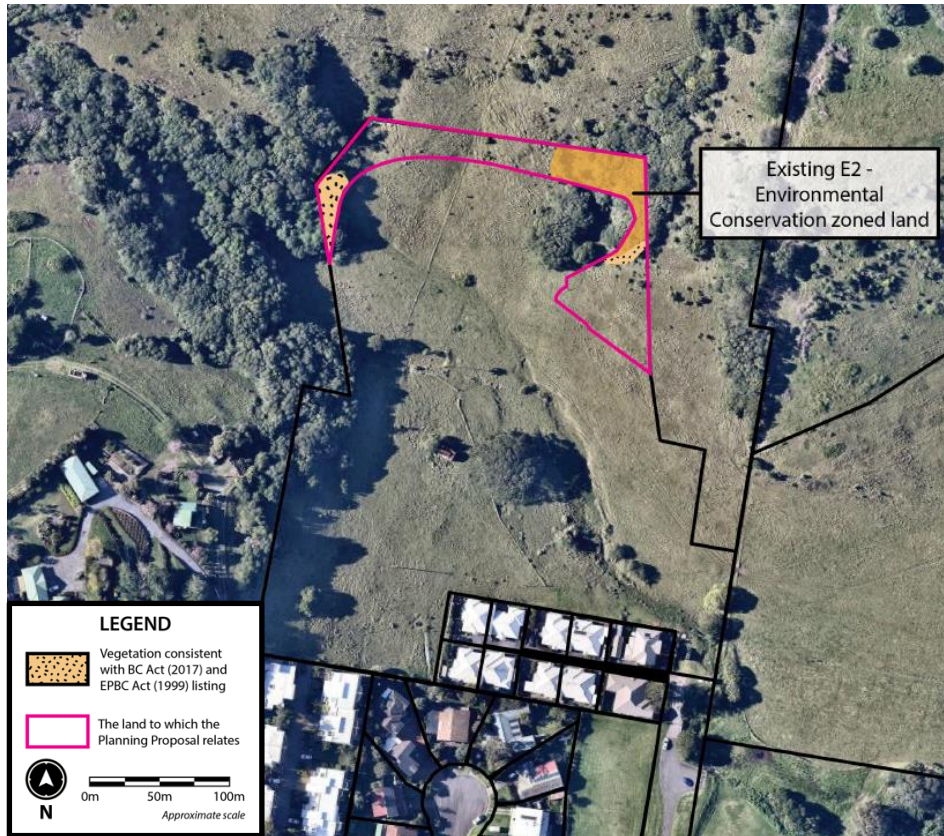


Figure 7 Vegetation consistent with BC Act (2017) and EPBC Act (1999) listing

2.8 Bushfire

A Bushfire Protection Assessment was prepared by Eco Logical in May 2018 for the broader Spring Creek Kiama Master plan including the site (refer to **Appendix B**). The proposal was assessed in accordance with Section 100B of the *Rural Fires Act 1997* and 'Planning for Bushfire Protection 2006'.

Part of the western boundary of the site is identified as Bushfire Prone Land – Vegetation Category 2 and Vegetation Buffer on the NSW Government Planning Portal website (refer to Figure 8). The Bushfire Protection Assessment recommends suitable Asset Protection Zones, for the identified bushfire hazard. Any future residential development will be required to provide suitable bushfire setbacks or asset protection zones. Notwithstanding, the identified bushfire risk on the site is relatively minor and can be mitigated as part of any future development proposal.

The Bushfire Protection Assessment found that the proposed master plan subdivision for the site complies with either the acceptable or performance solutions within 'Planning for Bushfire Protection 2006'.

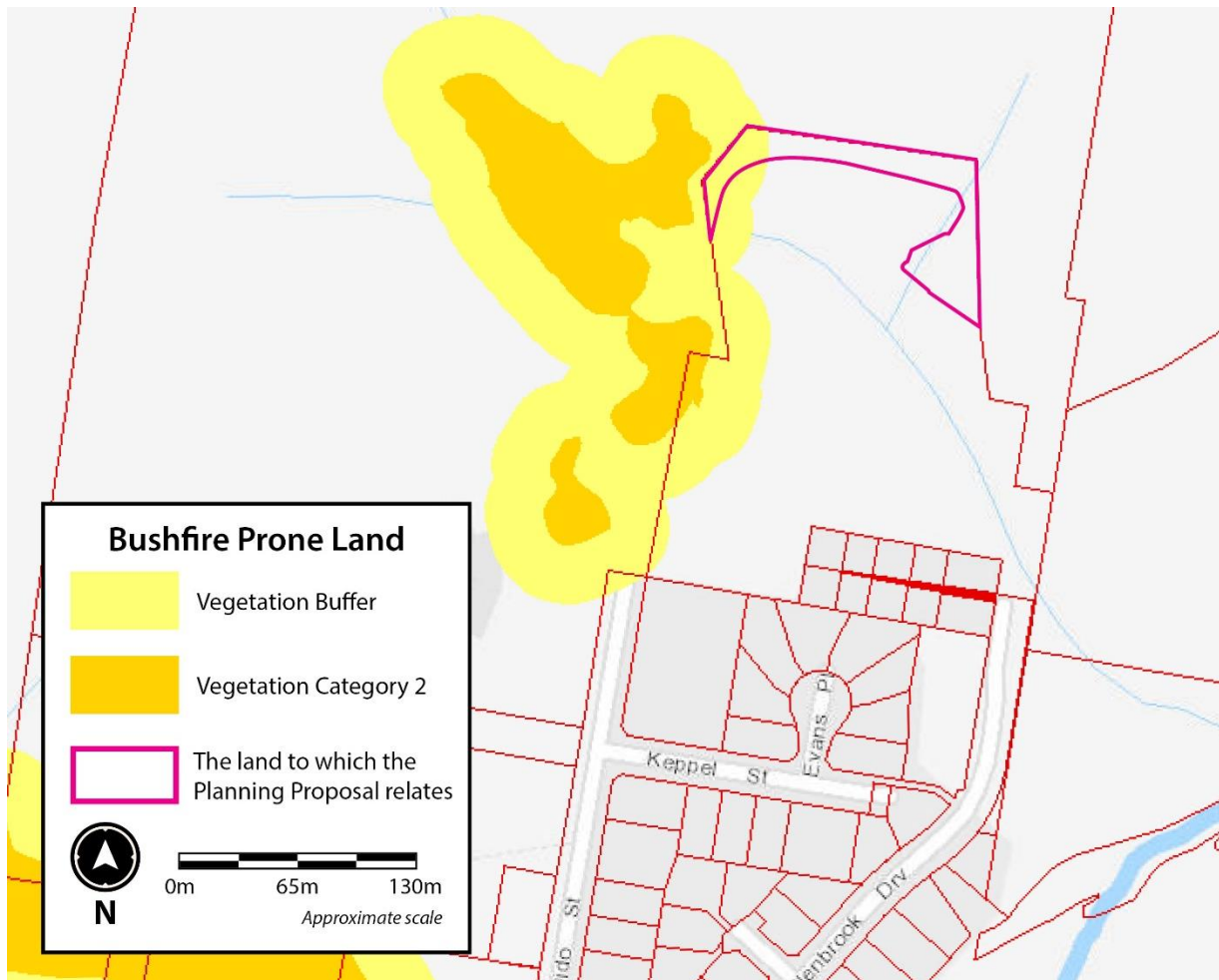


Figure 8 Bushfire prone land

2.9 Contamination

A preliminary site investigation has been undertaken for larger Boral land holding which includes the site. This assessment takes into consideration surrounding potentially contaminating land uses including Kiama Cemetery and Bombo Quarry. The investigation concluded that contamination risk on the larger Boral land holding is low. In relation to acid sulphate soils, Council's Acid Sulfate Soil Map in Kiama LEP 2011, identifies the site as comprising Class 5 acid sulphate soils and is suitable for residential development.

2.10 Heritage

The following section contains information relating to European and Indigenous Heritage as it relates to the site.

2.10.1 European

The site contains several partially intact dry-stone walls. The dry-stone walls are heritage items of local significance under Schedule 5 of LEP 2011. The site is not located within a heritage conservation area. Surrounding heritage items include:

- Kiama Cemetery (lots 7029 and 7030 in DP 1026774) to the north-east of the site (I111 – Local);
- Fernleigh residence (former guest house), approximately 250 m to the south-west of the site at Dido Street (I99 – Local);
- Bombo Railway Station group building approximately 790 m to the east of the site (I2 – State); and
- Stone arched culvert, Willow Creek, Jamberoo Road, approximately 300 m to the south of the site (I107 – Local) (refer to Figure 9).

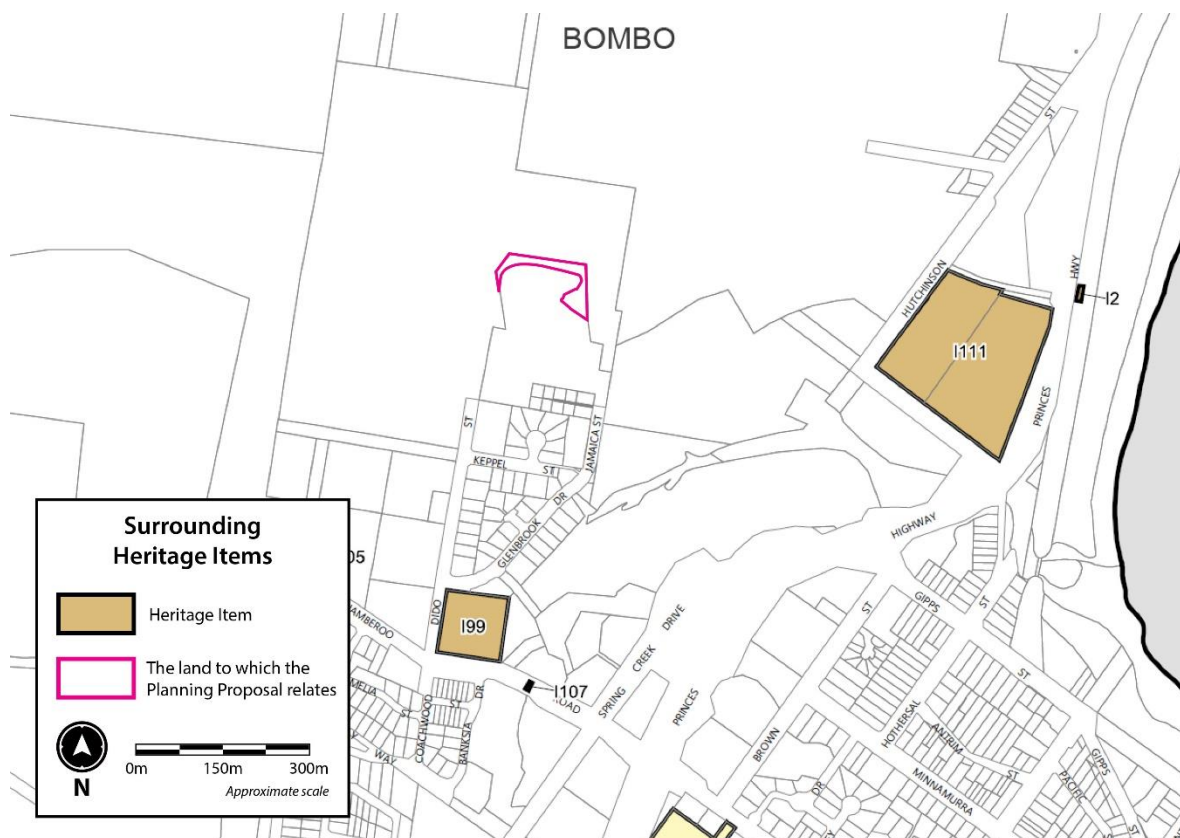


Figure 9 Surrounding heritage items

2.10.2 Indigenous

An Aboriginal Heritage due diligence assessment for the Spring Creek Urban Release Area (including the site) was prepared by Kelleher Nightingale in March 2018 (refer to **Appendix C**). This assessment found no previously recorded Aboriginal archaeological sites on the site (refer to Figure 10). The visual inspection did not observe any Aboriginal objects or archaeological sites.

The existing fig tree located within the central portion of the broader site (i.e. not on land to which the planning proposal relates) may have cultural significance to local Aboriginal people. Future consultation with the local Aboriginal Land Council should be undertaken in order to assess its significance. The existing fig tree is proposed to be retained on the broader Boral land holding.

Based on the results of this assessment, the proposal is unlikely to impact on Aboriginal heritage and according to the OEH Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales and best practice guidelines, any future works could proceed with appropriate management measures in place.

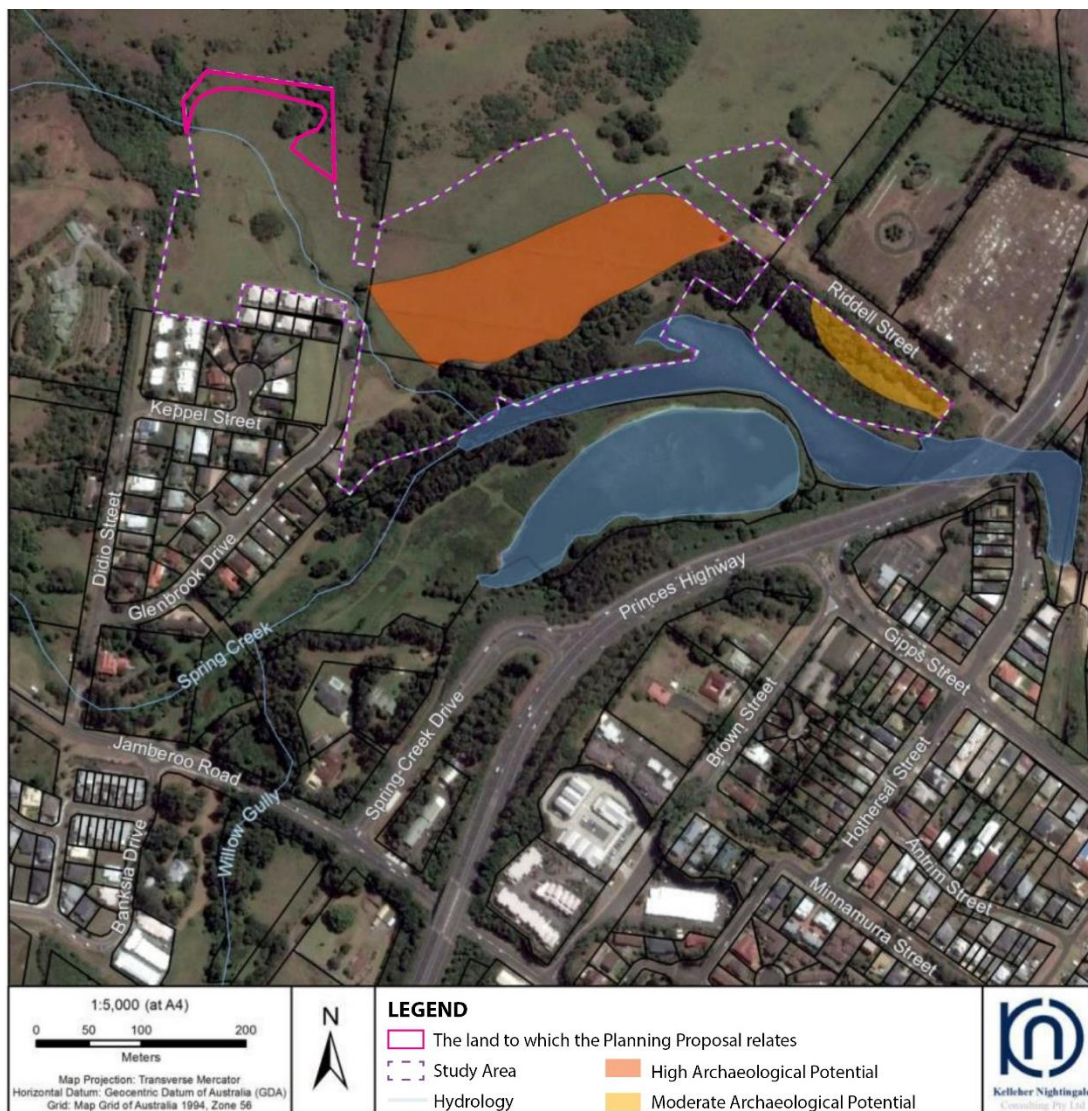


Figure 10 Indigenous Heritage

3. Master Plan

A master plan for the broader Boral land holding including the site has been prepared by Design IQ. The purpose of this master plan is to demonstrate the capability of the broader site to accommodate the proposal and to guide future planning (refer to Figure 11). The key features of the master plan are:

- approximately 2.8 hectares of residential land;
- new roads and infrastructure; and
- 0.6 hectares of passive open space in the form of an integrated passive recreation area within a riparian corridor network.

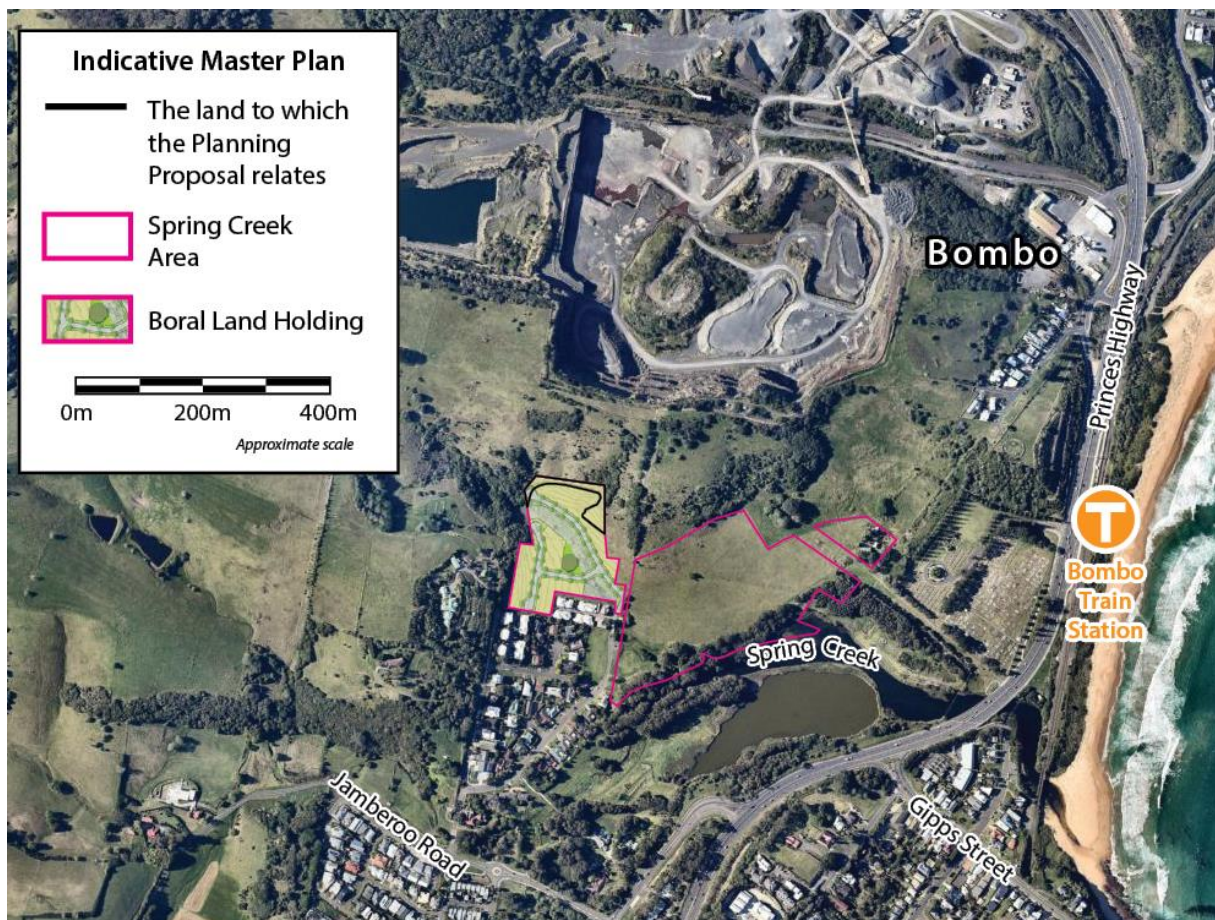


Figure 11 Indicative Master Plan

4. Proposed LEP Amendment

4.1 Land to which the LEP amendment will apply

A draft Land Application Map is provided in Figure 12. The draft Land Application Map illustrates the land that is to be included in the LEP Amendment, identified as part of Lot 2 in DP 805229.

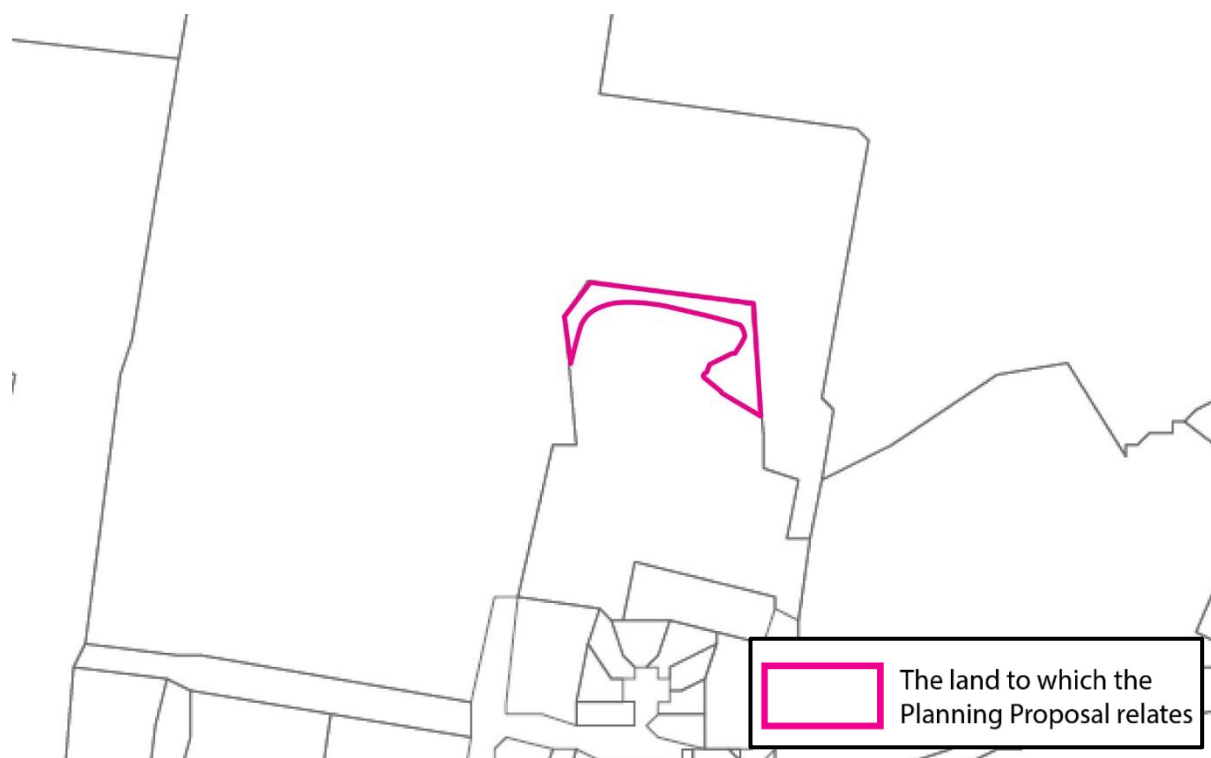


Figure 12 Draft Land Application Map

4.2 Proposed Land Use Zone and Permissible Uses

It is proposed to rezone two small areas within the north-eastern and north-western portions of the site that are currently zoned RU1 Primary Production to E2 Environmental Conservation - to protect patches of the critically endangered Whalebone Tree – Native Quince dry sub-tropical community that are in high ecological condition. The remainder of the site that is currently zoned RU1 Primary Production is proposed to be rezoned to R2 Low Density - to facilitate more rational building and development boundaries for future development.

A draft Land Zoning Map is provided at Figure 13.

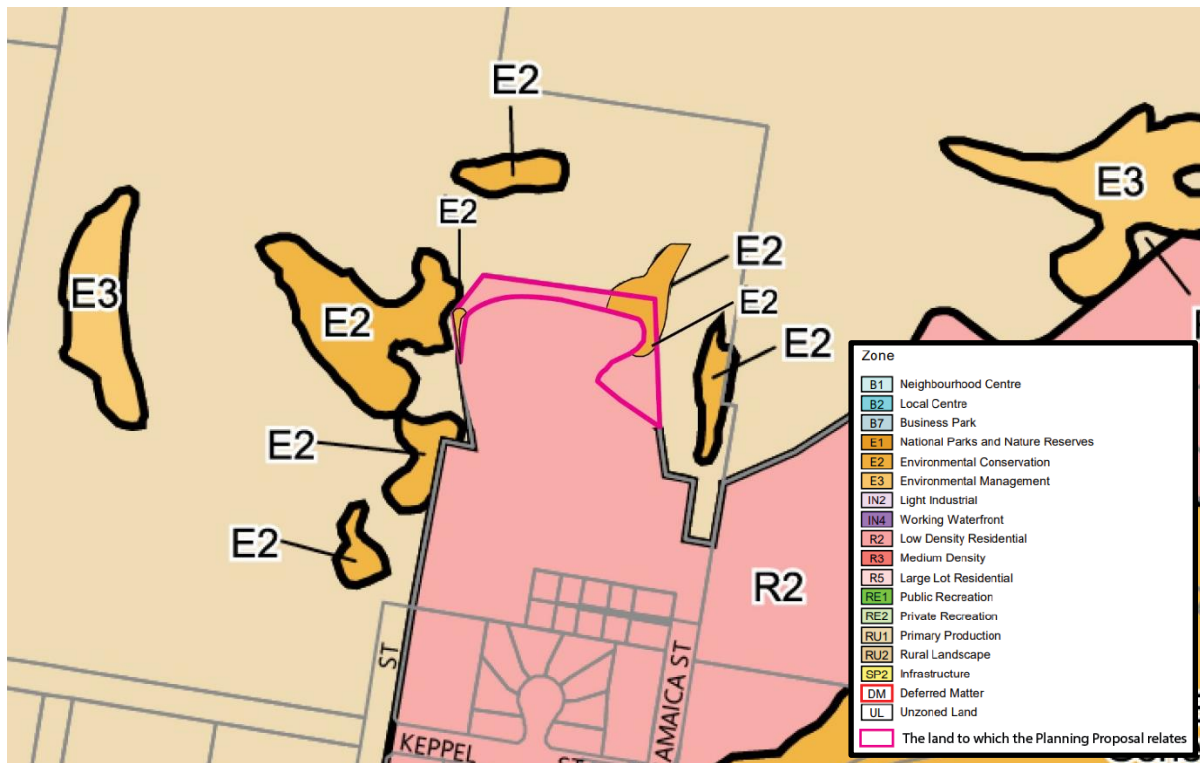


Figure 13 Draft Zoning Map

4.3 Removal of the RU1 Primary Production zone

It is proposed to remove the RU1 Primary Production zone overlay across the balance of the site to facilitate the proposed zoning for the following reasons:

- The proposal will further protect 0.025ha (237m²) of native vegetation within an E2 Environmental Conservation zoning.
- Notwithstanding the patches of land proposed to be rezoned to E2 Environmental Conservation (to protect the critically endangered vegetation on the site), the RU1 Primary Production zone boundary does not align with the site's cadastre boundary and comprises two separate and irregular shaped portions. The proposal will result in the site having a more practical zoning boundary, with one predominant land use zoning.
- There is no difference between that part of the site zoned RU1 Primary Production and R2 Low Density zoned portions of the site in terms of topography, geology, heritage, use, ecological characteristics and values or access. There is no apparent reason why parts of the site are zoned RU1 Primary Production and why the majority of the remainder is zoned R2 Low Density.
- The minimum lot size for land zoned RU1 Primary Production land is 40 hectares. The portion of the site that is currently zoned RU1 Primary Production is 0.27 hectares. Whilst Kiama LEP 2011 allows a lot to be created that is less than 40 hectares it does not enable the erection of a new dwelling on it. Redeveloping the site under the site's current split zonings does not facilitate rationale building and development boundaries.

4.4 Terrestrial Biodiversity Map

Subsequent to the proposed rezoning of the two small areas within the north-eastern and north-western portions of the site that are currently zoned RU1 Primary Production to E2 Environmental Conservation - to protect patches of the critically endangered Whalebone Tree – Native Quince dry sub-tropical community, an amendment to the Terrestrial Biodiversity Map is also required to identify these areas as Biodiversity land.

A draft Terrestrial Biodiversity Map is provided at Figure 14.

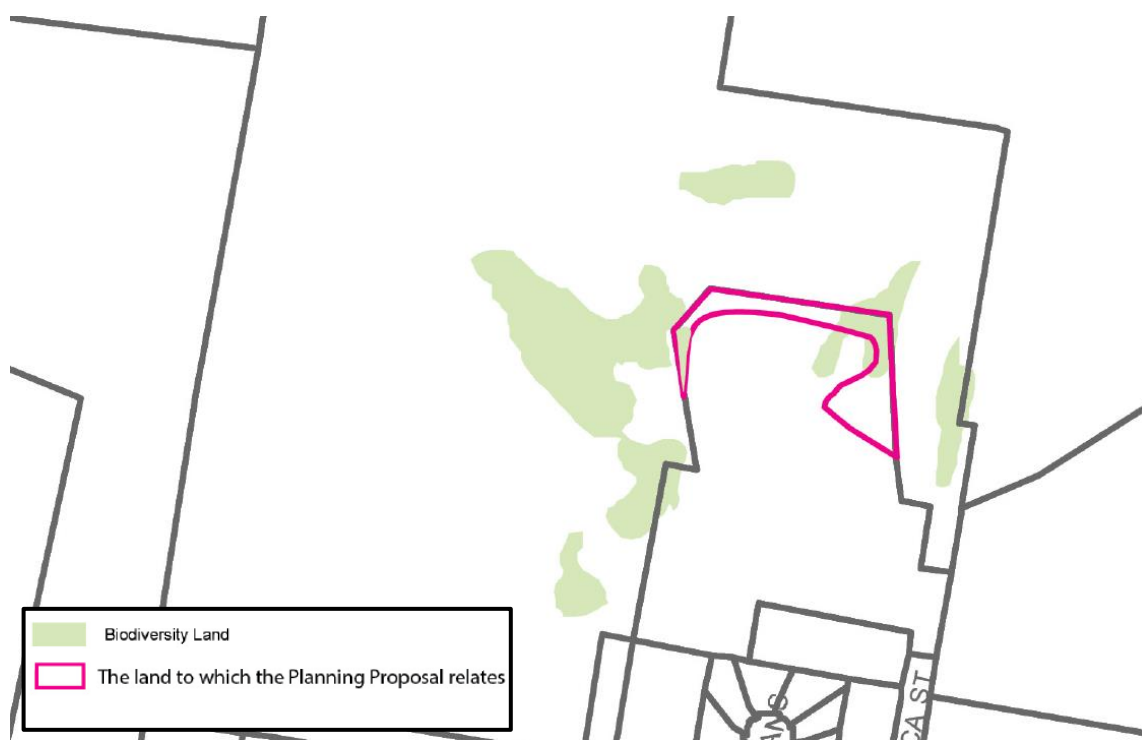


Figure 14 Draft Terrestrial Biodiversity Map

4.5 Principal Development Standards

4.5.1 Minimum Lot Size

The current Minimum Lot Size Map under Kiama LEP 2011 shows that the minimum lot size for the R2 Low Density residential zoned component of the site is 450m². The proposal seeks to apply the 450m² minimum lot size development standard to the entire area to be rezoned to R2 Low Density Residential. It is also proposed to remove the minimum lot size for land zoned E2 Environmental Conservation on the site to facilitate a more logical future subdivision pattern whilst still ensuring native vegetation is protected. A draft Minimum Lot Size Map is included at Figure 15.

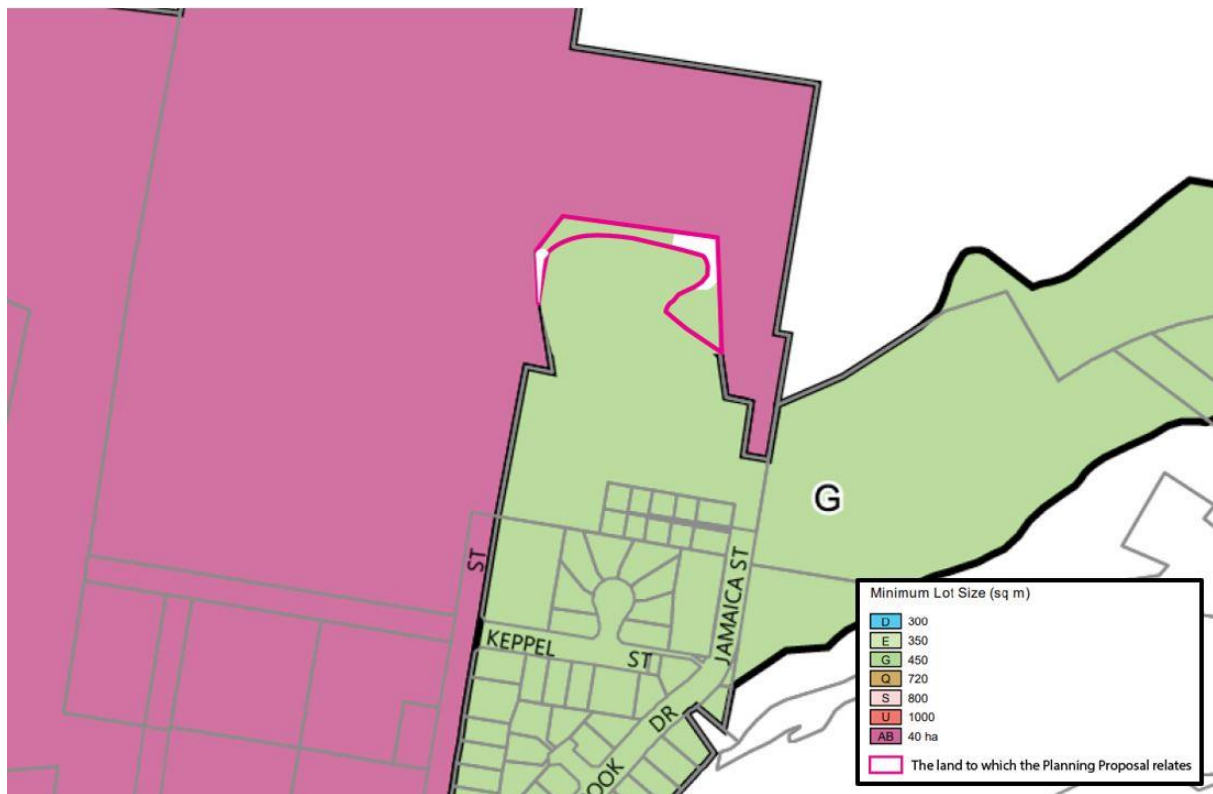


Figure 15 Draft Minimum Lot Size Map

4.5.2 Exceptions to minimum lot sizes for development in Zone R2 Low Density Residential and additional permitted uses

Clause 4.1A of Kiama LEP 2011 applies to land within the R2 Low Density Residential and R3 Medium Density Residential zones by allowing exceptions to the minimum lot size clause to encourage housing diversity without adversely impacting on residential amenity.

Clause 4.1A states:

4.1A Exceptions to minimum lot sizes for development in Zone R2 and Zone R3

- (1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.
- (2) This clause applies to development on land in the following zones:
 - (a) Zone R2 Low Density Residential Zone,
 - (b) Zone R3 Medium Density Residential Zone.
- (3) Despite clause 4.1, development consent may be granted to a single development application for development on land to which this clause applies if the development is both:
 - (a) the subdivision of land into 3 or more lots:

- (i) each lot being equal to or greater than 50% of the minimum size shown on the Lot Size Map in relation to the land if the land is in Zone R2 Low Density Residential, or*
- (ii) each lot being equal to or greater than 150 square metres if the land is in Zone R3 Medium Density Residential, and*
- (b) the erection of an attached dwelling, a semi-detached dwelling or a dwelling house on each lot resulting from the subdivision.*

No change to this provision is proposed. That is, it is proposed to apply the existing provision to the entire area to be rezoned.

4.5.3 Maximum Building Height

The current Height of Building Map under Kiama LEP 2011 shows that the maximum building height for the R2 Low Density residential zoned component of the site is 8.5m. The proposal seeks to apply the 8.5 m building height standard to the area proposed to be rezoned to R2 Low Density Residential. A draft Building Height Map is included at Figure 16.

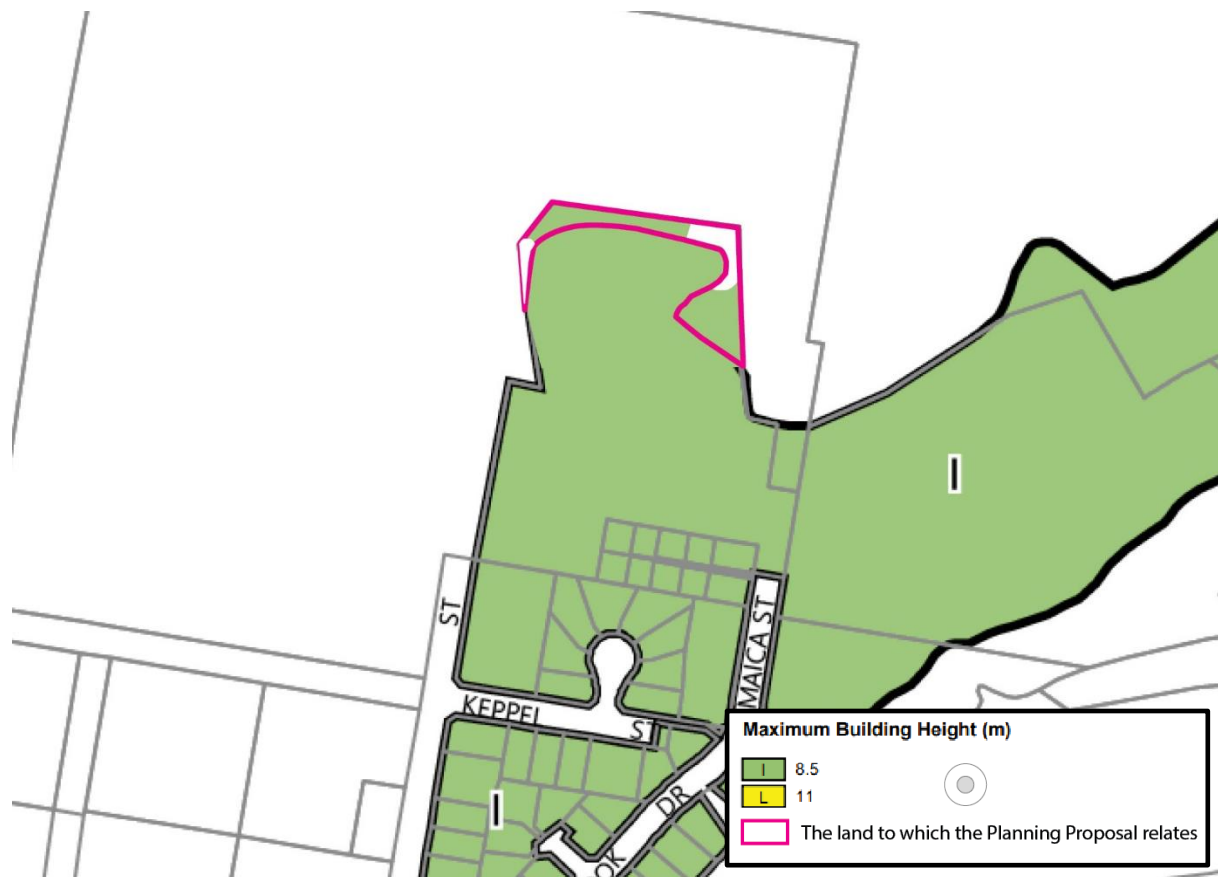


Figure 16 Draft Height of Buildings Map

4.5.4 Floor Space Ratio

The current Floor Space Ratio Map shows that the maximum floor space ratio (FSR) for the site is 0.45:1. The proposal seeks to apply the 0.45:1 FSR development standard to the entire site area to be rezoned for low density residential purposes. A draft FSR Map is included at Figure 17.

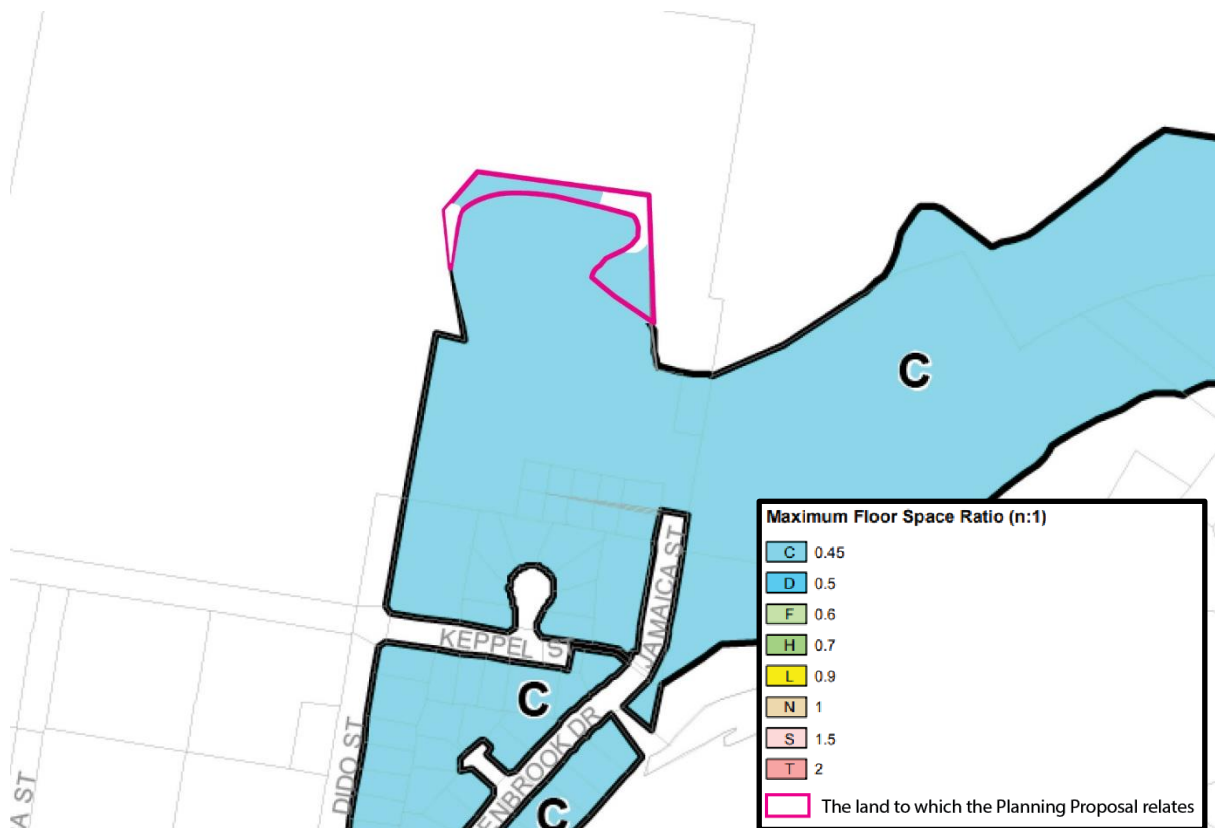


Figure 17 Draft Floor Space Ratio

5. Strategic Justification

The strategic justification for the rezoning of the broader site has previously been demonstrated by the identification of Spring Creek in the Kiama Urban Strategy 2011, which was adopted by Council on 20 September 2011. This strategy identifies for the provision of approximately 50 dwellings on the site. A discussion on the proposal consistency with the Illawarra Shoalhaven Regional Plan (2015) and Section 9.1 Ministerial Directions is provided below.

5.1 Illawarra Shoalhaven Regional Plan

The NSW Government's Illawarra-Shoalhaven Regional Plan (the Regional Plan) released in 2015 provides the strategic policy, planning and decision-making framework to guide the region to sustainable growth over the next 20 years. Within the Regional Plan, Spring Creek is referred to as an urban release area. The proposed rezoning is consistent with the vision and goals for the Illawarra as set out in the Regional Plan, in that:

- The majority of the site is zoned R2 Low Density Residential. The existing RU1 Primary Production zone impedes the site's ability to provide some 50 dwellings as identified within the Kiama Urban Strategy and contributing to the projected 2,850 dwellings required in Kiama by 2036 (refer to Action 2.1.1 of the Regional Plan).
- The proposal will protect 0.025ha (237m²) of BC Act and EPBC Act listed native vegetation currently zoned RU1 Primary Production to E2 Environmental Conservation zone – further securing its protection.
- The proposal provides opportunities for a mix of low and medium density housing in proximity to the Spring Creek Wetlands Walk and Bombo Beach.
- The proposal supports healthier environments by increasing densities in proximity to existing pedestrian and cycle networks, consistent with the vision for the Illawarra Region.
- By 2036, the population of the Illawarra-Shoalhaven is predicted to grow by just over 60,000 people and the make-up of the population is to include a greater proportion of people ages 65 years+ and one-two person households. The proposal delivers more diverse housing to meet the needs of singles, families and the aged and increasing the supply of affordable housing within Kiama. The proposal also responds to market demand for the area, consistent with Directions 2.1 and Action 2.1.1 of the Regional Plan.
- The proposal takes a balanced approach to housing that provides choice, affordability, and supports the orderly supply of land for development, consistent with Direction 2.1 of the Regional Plan. The site's current split zoning does not provide for the orderly or efficient use of land.
- The site has good access to Kiama Town Centre, jobs and the Bombo Train Station, consistent with Direction 2.2 of the Regional Plan which supports housing opportunities close to existing services, jobs and infrastructure within the Kiama Town Centre and Wollongong which is approximately 25 km to the north of the site.

- The 0.27ha hectares of RU1 Primary Production land is not of a sufficient size, shape, location or slope to be used for prime agricultural production. The proposed rezoning will not result in a significant impact of regionally important agricultural and resource lands, as required in Direction 4.1 of the Regional Plan.
- The proposal will not have an impact on any significant water bodies including Spring Creek, which is some 250 m to the south-east of the site and will be separated by future residential development on adjoining R2 Low Density Residential zoned lots. Future development will be required to comply with Council's controls in relation to stormwater management to ensure the water quality and ecological function of the wetlands is not adversely impacted upon, consistent with Direction 5.4 of the Regional Plan.

5.2 Kiama Urban Strategy (2011)

The site forms part of a larger urban release area referred to as Spring Creek in the Kiama Urban Strategy. In 2011, the site is identified as comprising R2 Low Density Residential land. The Kiama Urban Strategy provides for 1,890 dwellings within Kiama, of which 50 dwellings are envisaged to be accommodated on the site (Boral land). It is noted that the NSW Government's Regional Plan released in 2015 identifies a need to provide a more diverse range of housing including affordable housing. The proposal is consistent with the Kiama Urban Strategy.

5.3 State Environmental Policies

5.3.1 State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)

In accordance with Clause 6 of SEPP 55, a planning authority is to consider whether the land to which a planning proposal relates is contaminated and if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purposes for which the land is proposed to be used.

A preliminary site investigation has been undertaken for the larger Spring Creek site, which includes the site. This assessment takes into consideration surrounding potentially contaminating land uses including Kiama Cemetery and Bombo Quarry. The investigation concluded that contamination risk on the site is low. In relation to acid sulphate soils, Council's Acid Sulfate Soil Map in Kiama LEP 2011, identifies the site as comprising Class 5 acid sulphate soils and is suitable for residential development.

5.3.2 State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP)

The Primary Production and Rural Development SEPP applies to the site. The proposal is consistent with the aims and objectives of the Primary Production and Rural Development SEPP in that it will facilitate the orderly and economic use and development of land. The proposed 0.25ha hectares of RU1 Primary Production land that is proposed to be rezoned to R2 Low Density Residential is not of a sufficient size, shape, location or slope to be used for prime agricultural purposes. The site is identified in the Kiama Urban Strategy as comprising R2 Low Density Residential land.

5.3.3 State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)

The Coastal Management SEPP applies to land within the Kiama LGA and repeals the former SEPP 14 – Coastal Wetlands and SEPP 71 – Coastal Protection. This policy aims to promote land use planning that is located within the coastal zone in a manner that is consistent with the *Coastal Management Act 2016* including the management of objectives for each coastal management area.

Under the Coastal Management SEPP, the site is mapped as a ‘Coastal Environmental Area’ and must comply with Clause 13- Development of Land within the Coastal Environmental Area. Any development located on the Coastal Environmental Area cannot be granted consent unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on that land. It is proposed to rezone a small area within the north-eastern portion of the site that are currently zoned RU1 Primary Production (0.27 ha) to part R2 Low Density Residential and part E2 Environmental Conservation. The proposal does not involve any physical works. Any future development application on the land will require an assessment against the provisions of the Coastal Management SEPP.

5.3.4 Section 9.1 Ministerial Directions

An assessment of the proposal in relation to the relevant Section 9.1 Ministerial Directions is provided in **Appendix D**.

6. Environmental, Social and Economic Impacts

This section addresses the environmental assessment of the planning proposal in respect to the relevant matters for consideration under section 3.33 of the EP&A Act.

6.1 Ecology

The proposal includes the rezoning of 0.025ha (237m²) of RU1 Primary Production land to E2 Environmental Conservation under Kiama LEP 2011.

A detailed ecological constraints analysis of the site and land to which the planning proposal relates was undertaken by WSP in 2018 and March 2020. Due to historic and ongoing agricultural use and surrounding residential dwellings, the biodiversity values of the area in general and site have been heavily impacted and degraded. The majority of remnant native vegetation in and around the site is in a disturbed condition due to historical clearing, cattle grazing, fragmentation, small patch size and the absence of protective buffers due to adjacent land managed for residential subdivisions and agricultural tenures.

The site does contain small isolated patches of Whalebone Tree – Native Quince dry sub-tropical rainforest (0.025ha) (PCT 1300) within the north-east and north-western portions of the site that are considered to be of moderate-high ecological condition. These patches are consistent with the Illawarra Subtropical Rainforest in the Sydney Basin threatened ecological community and listed as an endangered ecological community under the NSW BC Act. In September 2019, the Illawarra Subtropical Rainforest was listed as a critically endangered ecological community under the EPBC Act.

As identified previously, an ecological assessment was undertaken by WSP in March 2020 to evaluate the potential ecological community on part of the site against the EPBC Act key diagnostics (e.g. canopy cover, ground cover and species richness) and condition thresholds (for e.g. patch size, and biotic thresholds) to determine whether this vegetation warranted the application of an E2 Environmental Conservation zoning - consistent with the Gateway Determination dated 19 October 2019 and advice from Council dated 31 January 2020.

The following was concluded:

- North eastern patch - The vegetation in the north eastern portion of the site is contiguous with vegetation outside the site. Much of this vegetation is dominated by introduced species including *Olea europea* ssp. *cuspidata* and *Erythrina x Skyessii* and separated from other remnants by exotic grassland. The size of this vegetation area is relatively small being 0.1-1 ha. The north eastern patch is dominated by *Olea europea* ssp. *cuspidata* and *Notolaea venosa* with emergent *Acacia maidenii*. The margins of this patch, including the investigation areas, consisted of *Olea europea* ssp. *cuspidata* overstorey and groundcover of exotic grasses including *Ehrharta erecta* with low diversity of native understorey species including *Hibbertia scandens*, *Pseuderanthemum variabile* and *Pittosporum species*. Only a small portion of vegetation within this patch was considered to meet the relevant conditions under the EPBC Act, with the remainder of vegetation below the medium-high threshold.
- North western patch – The rainforest vegetation in the north western portion of the site is contiguous with vegetation to the west of the site, which forms a patch that is greater than 1

ha in size. The margins of this forest are dominated by exotic species including *Olea europea* ssp. *cuspidata*, *Lantana* spp., *Rubus* sp. and exotic grasses including *Ehrharta erecta* and *Paspalum dilatatum*. The north western remnant is dominated by *Notolaea venosa*, *Pittosporum undulatum*, *Glochidion ferdinandi* and *Ficus macrophylla*. The vegetation is considered to be of moderate condition and therefore consistent with the thresholds under the EPBC Act.

Figure 7 identifies the vegetation areas considered to be consistent with both the BC Act and the EPBC Act listing and therefore its zoning to E2 Environmental Conservation under Kiama LEP 2011 is considered warranted. The remainder of the site comprises highly disturbed areas with no or limited native vegetation, consisting of predominantly of grazed exotic grassland.

In terms of fauna habitats, most vegetation communities do not occur as old-growth forms and important fauna habitat attributes, such as hollows, plentiful fallen timber, connectivity and large patch size are lacking. The general lack of these important habitat attributes reduces the site's capacity for supporting a wide diversity of local native species, including threatened species, in isolation from other higher quality habitats in the locality.

6.2 Heritage

Kelleher Nightingale have prepared an Aboriginal Heritage Due Diligence Assessment contained at **Appendix C**. No known aboriginal heritage archaeological significance or sites have been identified on the land that is proposed to be rezoned. The existing fig tree located within the central portion of the site may have cultural significance to local Aboriginal people. The existing fig tree, although not located on land to which this planning proposal relates, is proposed to be retained on the site as part of any future redevelopment plans for the site.

In relation to European heritage, the north-western corner of the site contains a remnant dry stone wall in poor condition. Dry stone walls are listed as heritage items under Schedule 5 (I64) of Kiama LEP 2011. It is envisaged that the basalt stones will be used as part of the site's future landscaping and public domain.

6.3 Traffic and Transport

The proposal is unlikely to result in any appreciable change in the traffic generation potential of the site. Any projected change to traffic activity as a consequence of future development will be required to demonstrate that the proposal has acceptable traffic implications.

7. Considerations in accordance with the NSW Government's *Guide to Preparing Planning Proposals*

7.1 Part 1 – Objectives or the intended outcomes of the proposed rezoning and subsequent LEP amendments

The objective of this planning proposal is to:

- Rezone land from RU1 Primary Production to R2 Low Density Residential and E2 Environmental Conservation.
- Amend the Height of Building (HOB), Floor Space Ratio (FSR) and Lot Size Zoning (LSZ) maps relating to the land to correspond with the adjoining controls applying to residential zoned R2 Low Density.
- Amend the Terrestrial Biodiversity map to identify land proposed to be rezoned from RU1 Primary Production to E2 Environmental Conservation as Biodiversity land.

The proposed amendments will enable rational building and development boundaries on the land for future development, including greater housing choice close to Kiama Town Centre and beach, as outcomes that are consistent with both the Kiama Urban Strategy 2011 and Illawarra-Shoalhaven Regional Plan.

7.2 Part 2 - A plain-English explanation of the legislative provisions that would apply to the site under the proposed instrument

The objectives of this planning proposal would be facilitated by the following legislative provisions. A detailed explanation of the legislative provisions is provided in section 5.

1. Amend the Kiama LEP 2011 Land Zoning (LZN) Map – **Sheet LZN_012** to rezone land zoned RU1 – Primary Production on part Lot 2 in DP 805229 Dido Street, Spring Creek to R2 Low Density Residential and part E2 Environmental Conservation
2. Amend the Kiama LEP 2011 Terrestrial Biodiversity (BIO) Map – **Sheet BIO_012** to identify land rezoned to E2 Environmental Conservation on part Lot 2 in DP 805229 Dido Street, Spring Creek as Biodiversity land in Kiama LEP 2011.
3. Amend the Kiama LEP 2011 Height of Building (HOB) Map – **Sheet HOB_012** to apply height limit of 8.5 metres to the rezoned land on part Lot 2 in DP 805299 Dido Street, Spring Creek, consistent with development standards for R2 zoned land in Kiama LEP 2011.
4. Amend the Kiama LEP 2011 Floor Space Ratio (FSR) Map – **Sheet FSR_012** to apply an FSR of 0.45:1 to the rezoned land on part Lot 2 in DP 805299 Dido Street, Spring Creek, consistent with development standards for R2 zoned land in Kiama LEP 2011.
5. Amend the Kiama LEP 2011 Lot Size Map (LSZ) Map – **Sheet LSZ_012** to apply a minimum lot size of 450m² to the rezoned land on part Lot 2 DP 805299 Dido Street, Spring Creek, consistent with development standards for R2 zoned land in Kiama LEP 2011.

7.3 Part 3 –Justification

This part of the report describes the reasons for the proposed outcomes and development standards of the Planning Proposal.

Section A – The need for the Planning Proposal

Is the Planning Proposal a result of any strategic study or report?

This planning proposal is not the direct result of any strategic study or report. The majority of the larger Boral land holding is zoned for residential purposes. The proposal only seeks to rezone that part of the site zoned RU1 Primary Production to R2 Low Density Residential and E2 Environmental Conservation. The proposal facilitates more rational building and development boundaries for future development.

The site is already identified within the Kiama Urban Strategy for the delivery of housing. A more rational zoning will facilitate practical development on the land consistent with this strategy and contribute to housing targets within the Kiama LGA. The outcome of this proposal would also consistent with the broader Illawarra-Shoalhaven Regional Plan (2015).

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal seeking to amend Kiama LEP 2011 is the most effective way of achieving the objective and intended outcomes. An amendment to the zoning and development standard controls and additional permitted uses will help to facilitate efficient use of and building outcome on the land, and contribute to the NSW Government's strategic directives on housing supply, diversity and affordability that is being sought in the Kiama LGA.

Section B – Relationship to strategic planning framework

Is the Planning Proposal consistent with the objective and actions of the applicable regional, sub-regional or district plan or strategy?

This planning proposal is consistent with the objectives and actions of the applicable Illawarra-Shoalhaven Regional Plan (2015). A detailed discussion of the planning proposal in relation to the Regional Strategy is provided in section 6.

Is the Planning Proposal consistent with Council's local strategy or other local strategic plan?

This planning proposal is consistent with the Kiama Urban Strategy 2011. A detailed discussion of the proposal in relation to this strategy is provided in section 6.

Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

State Environmental Planning Policies (SEPP) relevant to this planning proposal include:

- SEPP No.55 – Remediation of land
- SEPP (Rural Lands) 2008
- SEPP (Coastal Management) 2018

A detailed discussion of the planning proposal in relation to its consistency with the relevant SEPPs is provided in section 6.3 of this report.

Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 Directions)?

A detailed discussion of the planning proposals consistency with the relevant s.9.1 Ministerial Directions is included in **Appendix D**. In summary, this planning proposal is not inconsistent with any relevant s.9.1 Ministerial Directions.

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

An ecological constraints analysis of the site was undertaken by WSP. Due to historic and ongoing agricultural use and surrounding residential dwellings, the biodiversity values of the area in general and site have been heavily impacted and degraded. The majority of remnant native vegetation in and around the land to which the planning proposal relates is in a disturbed condition due to historical clearing, cattle grazing, fragmentation, small patch size and the absence of protective buffers due to adjacent land managed for residential subdivisions and agricultural tenures.

The site contains two patches of Whalebone Tree – Native Quince dry sub-tropical rainforest (PCT 1300) which are consistent with both the Illawarra Subtropical Rainforest in the Sydney Basin threatened ecological community listed as an endangered under the BC Act and identified as critically endangered under the EPBC Act. These patches of vegetation are proposed to be rezoned from RU1 Primary Production to E2 Environmental Conservation and identified as Biodiversity land under Kiama LEP 2011, commensurate with their high ecological value.

In terms of fauna habitats, most vegetation communities do not occur as old-growth forms and important fauna habitat attributes, such as hollows, plentiful fallen timber, connectivity and large patch size are lacking. The general lack of these important habitat attributes reduces the site's capacity for supporting a wide diversity of local native species, including threatened species, in isolation from other higher quality habitats in the locality.

Further detail is provided in section 6 of this report and **Appendix A**.

Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

An environmental assessment of the planning proposal in relation to European Heritage and Aboriginal Heritage was also undertaken. No land proposed to be rezoned is of European or Aboriginal heritage significance. The proposal is unlikely to result in any appreciable change in the traffic generation potential of the site and that any projected change to traffic activity as a consequence of the development will not have unacceptable traffic implications. The proposal will further protect 0.025ha (237m²) of native vegetation within an E2 Environmental Conservation zoning.

Has the planning proposal adequately addressed any social and economic effects?

This planning proposal seeks to provide greater housing choice through the permissibility of attached dwellings. By 2036, the population of the Illawarra-Shoalhaven is predicted to grow by just over 60,000 people and the make-up of the population is to include a greater proportion of people ages 65 years+ and one-two person households. The proposal delivers more diverse housing to meet the needs of singles, families and the aged and increasing the supply of affordable housing within Kiama.

The planning proposal will also provide opportunities for a mix of low and medium density housing close to existing services. Housing will be provided in an area that has good access to Kiama Town Centre and Bombo Train Station, services and facilities, recreation areas and jobs.

Is there adequate public infrastructure for the project?

The proposal involves rezoning two small areas of RU1 Primary Production land to R2 Low Density Residential and E2 Environmental Conservation. Given the nature of this change, it is unlikely to result in any appreciable demand on public infrastructure. Future DAs for housing will need to demonstrate that the proposal can be adequately serviced.

What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway Determination?

No State or Commonwealth authorities have been notified throughout the preparation of this Planning Proposal.

Consultation with State and Commonwealth agencies will be undertaken in accordance with Section 3.34 of EP&A Act.

8. Conclusion

This planning proposal is submitted to Council in support of an amendment to Kiama LEP 2011. The site is currently zoned RU1 Primary Production under Kiama LEP 2011. The area proposed to be rezoned is within the north-east and north-western portions of the site. It is proposed to rezone these parts of the site to R2 Low Density Residential and E2 Environmental Conservation to better align with the site's cadastre boundary and facilitate more rational building and development boundaries for future development and to ensure native vegetation on the site is further protected.

The site forms part of the 'Spring Creek Urban Release Area' in the Kiama Urban Strategy 2011 which was adopted by Council on 20 September 2011. The release area includes land owned by Boral and Council. The release area is earmarked to deliver some 160 dwellings of which approximately 50 dwellings are shown on Boral land. The site is also identified as 'urban land' under the Illawarra-Shoalhaven Regional Plan 2015.

The proposed amendment will provide for more efficient development on the site, contributing to additional homes and greater housing choice close to Kiama Town Centre and beach, outcomes that are consistent with both the Kiama Urban Strategy and Illawarra-Shoalhaven Regional Plan.

The proposal results does not result in any unacceptable environmental impacts.

Appendices

Appendix A. Ecological Assessment

Appendices

Appendix B. Bushfire Protection Assessment

Appendices

Appendix C. Aboriginal Heritage

Appendices

Appendix D. Section 9.1 Ministerial Directions



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