

Planning and Assessment

IRF19/6683

Gateway Determination Report

LGA	Kiama LGA
PPA	Kiama Municipal Council
NAME	Planning proposal to amend Kiama LEP 2011 to allow additional residential development and environmental protection on part Lot 2 DP805229, Dido Street, Kiama. (2 lots, 0 jobs)
NUMBER	PP 2019 KIAMA 002 00
LEP TO BE AMENDED	Kiama Local Environmental Plan 2011 (LEP)
ADDRESS	Dido Street, Kiama
DESCRIPTION	Part of Lot 2 DP805229
RECEIVED	31 July 2019, Additional information 25 September 2019
FILE NO.	IRF19/6683 (EF19/24361)
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

- The planning proposal seeks to amend the Kiama LEP 2011 to allow additional residential development and environmental protection on part of Lot 2 DP805229 Dido Street, Kiama.
- The planning proposal and supporting technical studies have been prepared by the landholder. Kiama Council has provided clarification of information within and in addition to the landholder's planning proposal. Council has advised that the planning proposal will be amended prior to public exhibition to ensure areas of Illawarra Sub-Tropical Rainforest Ecological Endangered Community (EEC) are rezoned for environmental protection.
- The proposal seeks to rezone portions of the Lot from RU1 Primary Production to R2 Low Density Residential and an environmental zoning as well as introducing building controls for minimum lot size, building height and floor space ratio.
- The majority of the Lot (70%) is already zoned R2 Low Density Residential. The planning proposal will extend the R2 zone to the Lot boundaries and remove any potential for a split zoning on some of the future residential lots.

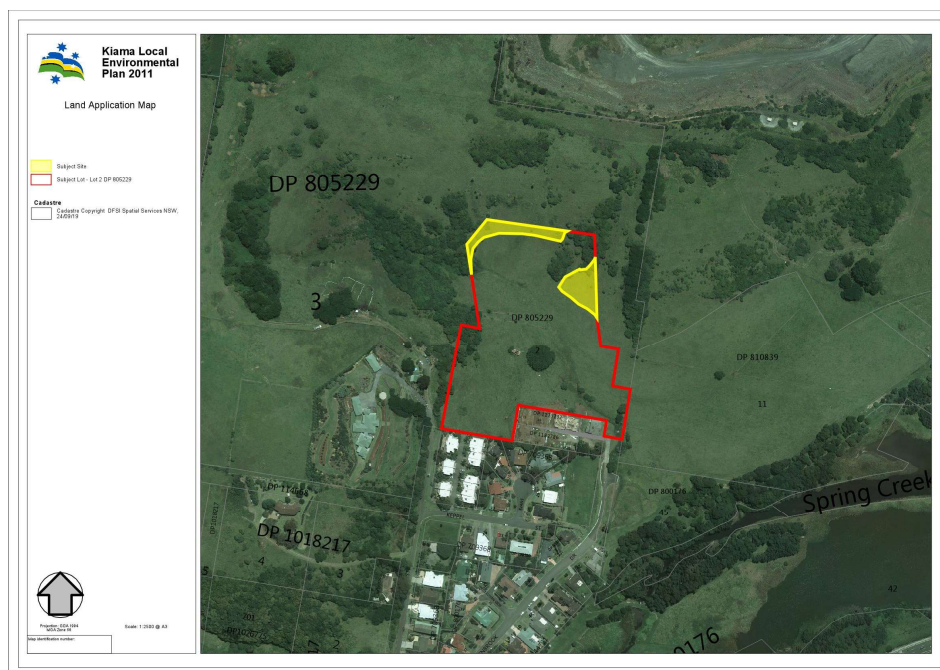
Site description

- The planning proposal applies to 0.27ha of land within Lot 2 (total area of Lot 2 is 3.568ha).
- The site is located along the north-western, northern and north-eastern boundaries of Lot 2.

- Lot 2 lies within the Spring Creek residential area and is accessible from Glenbrook Drive although it has frontage to Dido Street.
- Lot 2 including the site is vacant comprising predominantly cleared grazing land with pockets of remnant Illawarra SubTropical Rainforest ECC.
- The site slopes up to the north and north-west and is the highest parts of the Lot.
- Lot 2 is undulating land with two minor tributaries of Spring Creek traversing the Lot diagonally from the north west to south east and north to south.



Subject site and locality plan (Source: Kiama Council)



Subject site (Source: Kiama Council)

Existing planning controls

- The site subject to the proposal is currently zoned RU1 Primary Production with a minimum lot size of 40ha under the Kiama LEP 2011.
- Lot 2 is currently zoned part R2 Low Density Residential, part RU1 Primary Production and part E2 Environmental Conservation under the Kiama LEP 2011.
- The R2 zoned land has a minimum lot size of 450m², maximum building height of 8.5m and maximum floor space ratio of 0.45:1 under the LEP.

Surrounding area

- Lot 2 is within the Spring Creek residential area.
- To the north is a rural property, then Boral's Bombo Quarry and surrounding buffer lands.
- To the south is a mix of detached dwellings attached villa style dwellings, dual occupancy and multi-unit dwellings.
- To the east is residential zoned land owned by Kiama Council which also forms part of the Spring Creek residential area.
- To the west is rural land comprising a large residential estate and land for livestock grazing.
- The site can be viewed from the Princes Highway.

Summary of recommendation

- It is recommended that the planning proposal should proceed as submitted with conditions.

PROPOSAL

Objectives or intended outcomes

- The objective of the planning proposal is to amend the Kiama Local Environmental Plan (LEP) 2011 to allow low density residential development on the land.
- Council has further advised that the objective is to protect areas of the Illawarra Subtropical Rainforest EEC.
- Further clarification of the objectives will need to be included in the planning proposal and endorsed by the Department prior to public exhibition.

Explanation of provisions

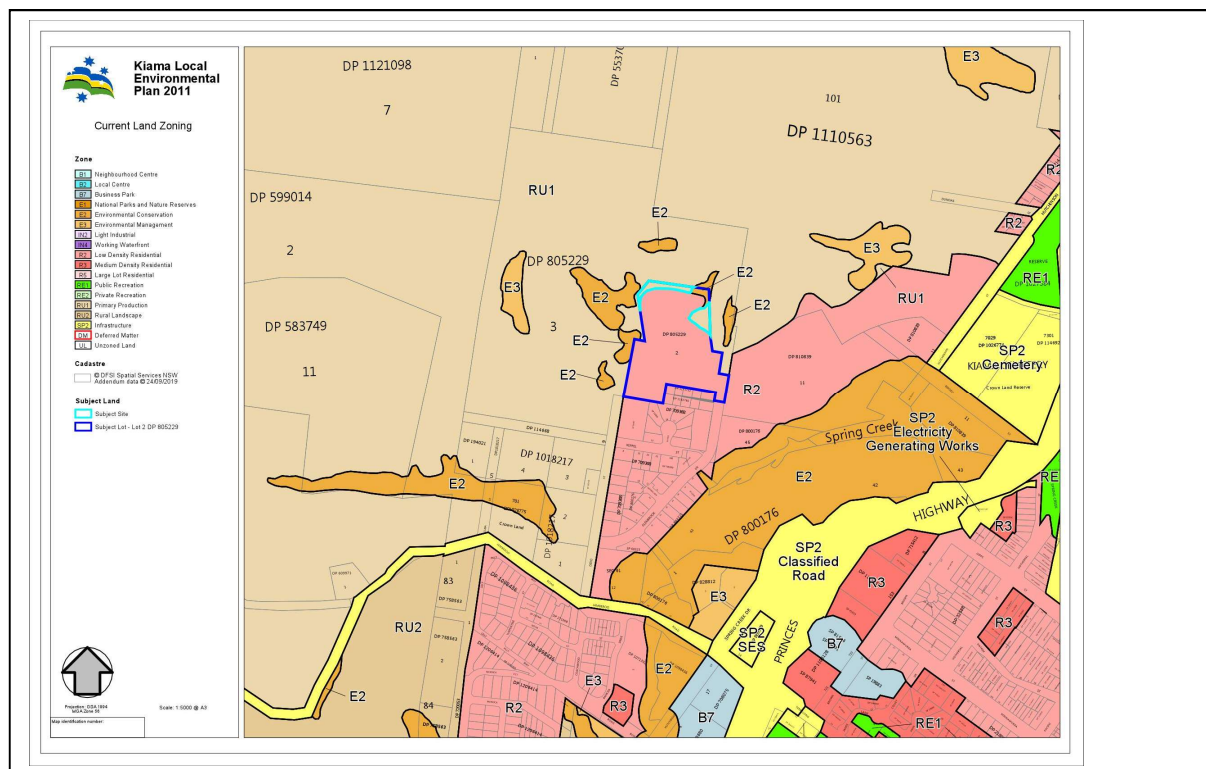
It is proposed to amend the Kiama LEP 2011 by:

- Amending the Land Zoning Map to rezone the land from RU1 Primary Production to R2 Low Density Residential;
 - Amending the Lot Size Map to reduce the minimum lot size from 40ha to 450m²;
 - Amending the Floor Space Ratio Map by introducing a floor space ratio of 0.45:1; and
 - Amending the Height of Buildings Map to apply a maximum height of 8.5m.
- The building controls are consistent with the current controls for the adjoining low-density residential lands.

- Council will need to revise the proposed explanation of provisions for the land zoning and minimum lot size in order to protect areas of the Illawarra Subtropical Rainforest EEC.
- Any changes to the provisions will need to be included in the planning proposal and endorsed by the Department prior to public exhibition.

Mapping

- An existing zoning map and proposed zoning, minimum lot size, floor space ratio and height of buildings maps for Lot 2 are included in the planning proposal.
- Council has updated the existing zoning map to reflect the site covered by the planning proposal.
- The proposed maps need to be revised to identify the land covered by the planning proposal and to reflect any changes to the explanation of provisions.
- The revised maps will need to be included in the planning proposal and endorsed by the Department prior to public exhibition.



Subject site showing existing site and surrounding land zoning
(Source: Kiama Council)

NEED FOR THE PLANNING PROPOSAL

- The planning proposal is not the result of any strategic study or report.
- The site was not identified in the Kiama Urban Strategy for urban development or as part of the Spring Creek residential area.
- The planning proposal seeks to better align the R2 Residential Low Density zoning to the cadastre boundary of Lot 2 and facilitate more rational building and development boundaries for future development. It will also remove any potential

for a split zoning on some of the proposed residential lots ie lots would have a R2 and RU1 zone.

- The planning proposal was originally submitted to Kiama Council seeking to rezone the areas of E2 Environmental Conservation and RU1 Primary Production within Lot 2 to R2 Residential Low Density.
- Council did not support the rezoning of the areas of Illawarra Subtropical Rainforest EEC from E2 Environmental Conservation to R2 Residential Low Density.
- Council has provided clarification that the intent was to protect areas of the Illawarra Subtropical Rainforest EEC which would include those already zoned E2 Environmental Conservation and those within the RU1 Primary Production Zone.
- The proponent resubmitted the planning proposal to Council with the proposed rezoning of E2 Environmental Conservation lands to R2 Residential Low Density removed.
- The planning proposal is the only mechanism available for amending the current land use and development control provisions applying to the site to achieve residential development on the land.

STRATEGIC ASSESSMENT

The planning proposal is not the result of the Kiama Urban Strategy or the draft Spring Creek Structure Plan.

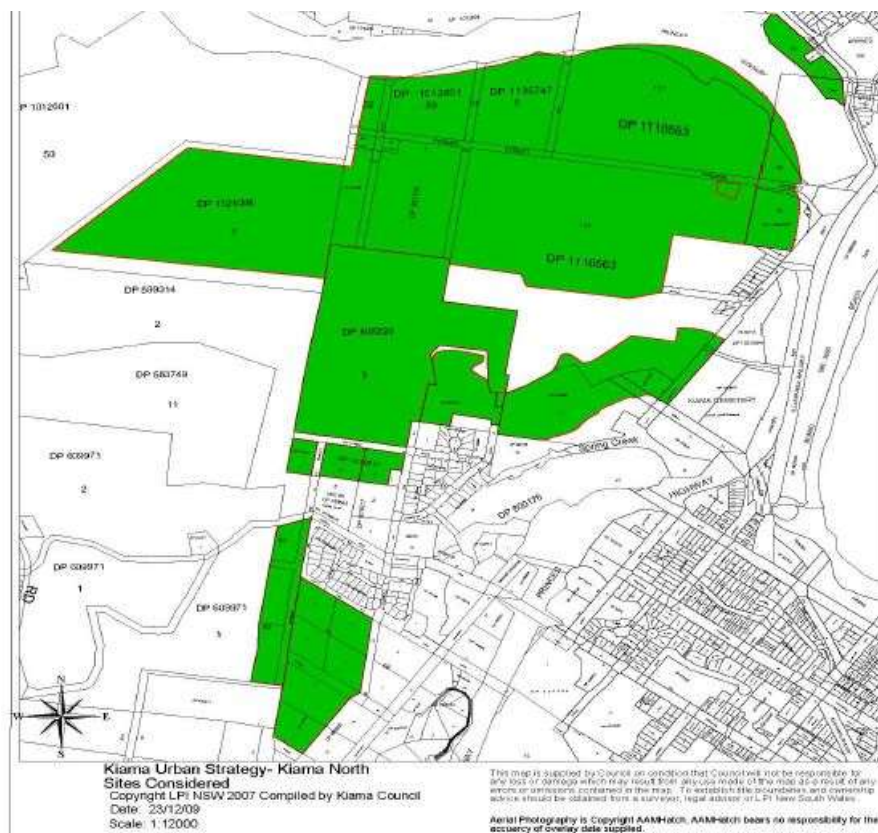
Regional - Illawarra Shoalhaven Regional Plan 2015

- The planning proposal is consistent with the aims of the Illawarra Shoalhaven Regional Plan (the Plan) as the site is adjoining a greenfield urban release area and will provide additional housing close to services, jobs and infrastructure.
- The Plan takes a balanced approach to housing that utilises development potential in both existing urban areas and new urban areas to provide housing choice and address affordability issues.
- The Plan indicates that there is not enough land or market ready infill development in the planning pipeline to meet the projected demand of 2,850 new homes in Kiama up to 2036.
- The Plan (Action 2.1.1) commits the NSW Government to work with Kiama Council to monitor and review the potential of the area to accommodate housing demand.

Kiama Urban Strategy 2011

- The Kiama Urban Strategy 2011 (the Strategy) was prepared by Kiama Council to inform the preparation of the Kiama LEP 2011.
- The Department supported the preparation of planning proposals for sites identified in the Strategy in order to contribute to housing supply in Kiama. However, the Strategy was not formally endorsed by the Department mainly on the grounds that it did not provide sufficient yields to meet the projected housing needs of Kiama.
- The Strategy aims to maintain and protect agricultural lands and ecologically sensitive areas and identify opportunities and options for urban expansion and infill to cater for future housing needs.

- The site was not considered by the Strategy for urban development. The Strategy provides no commentary as to why the site and another adjacent parcel of land to the north east along the ridgeline were excluded.
- It may be assumed that the site and adjacent land were excluded from the Strategy's investigations as they had recently been investigated as part of the Spring Creek residential area investigations and had retained their rural zoning. The lands to the south and east were rezoned from Rural to Residential as an amendment to the Kiama LEP 1996 to create an approximate potential dwelling yield of 163 lots.
- The Planning Proposal is inconsistent with the Kiama Urban Strategy however this inconsistency is minor as the site is only a small area of land (0.27ha) in Lot 2 and the rezoning investigations will review whether the land is suitable for urban development.



Spring Creek catchment lands considered for urban development as part of the
 Kiama Urban Strategy
 (Source: Kiama Urban Strategy, 2011)

Spring Creek Structure Plan – Assessment Report

- Kiama Council has initiated the preparation of a Structure Plan/Development Control Plan for the Spring Creek residential area.
- Whilst the site is not included in the residential area it is proposed to be included should the land be rezoned. The site also has similar attributes to land within the Plan and thus management recommendations could be extrapolated for the site.

- The Spring Creek Structure Plan – Assessment Report states that the EEC on the western portion of Lot 2 requires consideration by a site-specific ecological assessment with clearing avoided where possible.
- The Assessment Report also included a slope assessment which found that much of Lot 2 is subject to steeper grades with development potential and yield being a consideration of any development application. The steep slopes of Lot 2 continue into the site and have been mapped as greater than 25%.

Section 9.1 Ministerial Directions

- The planning proposal has not identified consistency or otherwise with Section 9.1 ministerial directions. Council's report to the Council meeting of 18 December 2018 has assessed the planning proposal against the applicable Section 9.1 directions. The planning proposal will need to be updated to include the consistency assessment.
- The planning proposal is consistent with the s9.1 Directions 2.2 Coastal Management, 2.3 Heritage Conservation, 3.4 Integrating Land Use and Transport and 5.10 Implementation of Regional Plans. The LEP contains heritage and coastal provisions, the site adjoins a residential area and the proposal will provide housing within the Kiama township boundaries.
- The planning proposal is inconsistent with s9.1 Direction 1.2 Rural Zones. This inconsistency is minor as only a small area (0.27ha) of rural land is to be rezoned. This area is too small to support agricultural activities. No further consideration of this Direction is required.
- The planning proposal is inconsistent with s9.1 Direction 3.1 Residential Zones in that neither the planning proposal nor Kiama LEP 2011 contain a 'requirement that residential development is not permitted, until the land is adequately serviced'. Council is currently negotiating an LEP amendment to insert an essential services clause. This inconsistency is of minor significance as the site adjoins a residential area where infrastructure is to be made available and the essential services clause is to be notified soon. No further consideration of this Direction is required.
- The planning proposal is inconsistent with s9.1 Directions 1.5 Rural Lands and 2.1 Environmental Zones which 'requires the inclusion of provisions to facilitate the protection and conservation of environmentally sensitive areas'. The site includes small pockets of EEC which are proposed to be cleared and rezoned for residential development. Whilst Council has advised it will review this proposal, any potential inconsistencies remain unresolved until Council confirms the proposed rezoning of the EECs.
- The north-west corner of the land is mapped as bushfire prone. It is unknown whether the planning proposal is consistent or justifiably inconsistent with the s9.1 Direction 4.4 Planning for Bushfire Protection. Any potential inconsistency remains unresolved until consultation with the Rural Fire Service has been undertaken.

State environmental planning policies

- A preliminary contaminated lands study consistent with SEPP55 Remediation of Land, was undertaken for the Spring Creek residential area. The study found that

the contamination risk on Lot 2 is low. No further investigation is required at the rezoning stage.

- The Coastal Management and Primary Production SEPPs do not require consideration of matters at a rezoning stage.

SITE-SPECIFIC ASSESSMENT

Social

- The planning proposal has not adequately addressed social impacts.
- The planning proposal will provide additional land which correlates to 2 additional lots.
- The proposal would have a small positive social benefit in providing two additional housing opportunities and short-term construction jobs.
- There would be minimal additional traffic generation from two more lots within the larger Spring Creek Residential area.
- An Aboriginal heritage search has revealed no Aboriginal sites or places in or near the site.

Environmental

- The site appears not to be mapped as biodiversity land in the Kiama LEP. Other areas of Lot 2 have been mapped.
- An Ecological Opportunities and Constraints Assessment of Lot 2 has been undertaken as part of the investigations for the Spring Creek residential area.
- The Assessment identifies small isolated patches of Illawarra Sub-Tropical Rainforest EEC on the site as well as a patch on Lot 2 that is zoned R2 Residential Low Density. These patches are contiguous with larger remnants of moderate/high conservation value extending across the ridgeline. The Assessment recommends enhancing the long-term viability of habitat linkages with adjoining vegetated areas.
- The assessment maps the patches as having a moderate conservation value where any clearing would require off-setting.
- The planning proposal is retaining the patches zoned E2 Environmental Conservation however proposing urban development for the patches on the rural zoned lands.
- As the Assessment covers all of Lot 2 it is difficult to ascertain the location of threatened species and fauna on the site.
- The north west area of the site is mapped as bushfire prone land. The planning proposal refers to a Bushfire Report however this has not been included in the proposal. A report is required as part of the technical studies required to support the planning proposal.
- The site is not affected by or affects other lands mapped as acid sulfate soils.

Economic

- The planning proposal has not addressed economic impacts.
- The proposal would have a negligible positive economic benefit in providing two additional housing opportunities and short-term construction jobs.

Infrastructure

- The small area of the site is unlikely to result in any appreciable demand on public infrastructure.
- Utility services are to be supplied to the adjoining Spring Creek residential area.
- Consultation with service providers is not required for the site.
- The provision of any required infrastructure will be the responsibility of the developer of the land.

CONSULTATION

Community

- The planning proposal does not include details on community consultation.
- Council has advised that the planning proposal is to be publicly exhibited for 28 days. Public notification will include local newspaper notifications, notice on Council's website, hard copies of the planning proposal provided at Council's administration buildings and notification letters to surrounding property owners. This is considered appropriate.

Agencies

- The Planning Proposal does not identify any agency consultation.
- Council has advised that consultation is required with the NSW Rural Fire Service to meet requirements under section 9.1 Direction 4.4 Planning for Bushfire Protection.
- Agency consultation is also required with the DPIE - Environment, Energy and Science to confirm the environmental status of the Illawarra Subtropical Rainforest Endangered Ecological Community on the site.

TECHNICAL STUDIES

- The Planning Proposal includes a:
 - Ecological Opportunities and Constraints Assessment by WSP, and
 - Aboriginal Heritage Due Diligence assessment by Kelleher Nightingale Consulting.
- These reports were undertaken as part of the investigations for the Spring Creek residential areas
- The planning proposal and Council report refer to a Bushfire Risk Assessment however it has not been included in the planning proposal.
- A bushfire assessment for the site, not the whole of Lot 2 is required to address section 9.1 Direction 4.4 Planning for Bushfire Protection.

TIME FRAME

- Council has proposed a 12-month project timeframe to complete the rezoning process.
- This is considered appropriate as the majority of studies have been completed, there's limited agency consultation and the proposed development controls are consistent with residential development in Kiama.

LOCAL PLAN-MAKING AUTHORITY

- Council has requested in its letter of 29 July 2019 Council Officer Delegation to prepare the draft LEP under Section of the Act.
- Due to the simple, local nature of the proposal and its consistency with the Kiama Urban Strategy and Illawarra Shoalhaven Regional Plan, it is considered appropriate to provide delegations to Council.

CONCLUSION

- Preparation of the planning proposal is supported to proceed with conditions.
- The planning proposal addresses the Department's 'A guide to preparing planning proposals'.
- The planning proposal will facilitate more rational building and development boundaries for future development. It will also remove any potential for a split zoning on some of the proposed residential lots.
- The planning proposal has strategic and local merit given its ability to provide residential development and will assist in providing housing for the Kiama LGA.
- Kiama Council has advised that the planning proposal will be amended prior to public exhibition to ensure areas of Illawarra Sub-Tropical Rainforest Ecological Endangered Community (EEC) are rezoned for environmental protection.
- Delegation of plan making functions are recommended to be given to Council.

RECOMMENDATION

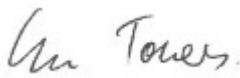
It is recommended that the delegate of the Secretary:

1. agree that the inconsistencies with section 9.1 Directions 1.2 Rural Zones and 3.1 Residential Zones are minor. No further consideration of these Directions is required; and
2. note that the consistency with section 9.1 Directions 1.5 Rural Lands, 2.1 Environmental Zones and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning and Open Spaces determine that the planning proposal should proceed subject to the following conditions:

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 part of Lot 2 only. This would include updating the outcomes and provisions, and current 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.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.

4. Consultation is required with the NSW Rural Fire Service in accordance with the Act and s9.1 Direction 4.4 Planning for Bushfire; and the Department of Planning, Industry and Environment - Environment, Energy and Science division.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should be the local plan-making authority.



17/10/19

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18/10/2019

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