



Planning Proposal

Amendment to KLEP 2011 to Reclassify and Rezone Land

Irvine Street, Kiama
Lots 36 and 45 DP263449, Lot 38 DP630551 and
Part Lot 12 DP708075

20 June 2016

*Amended 2 May 2017 to address matters
raised in Gateway Determination and the
Department's Practice Note PN16-001 issued
after this Determination*

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SET Consultants Pty Ltd


51 Graham Street Nowra 2541


Tel: (02) 4421 4500

Fax: (02) 4423 1496

Planning Proposal

AMENDMENT TO KIAMA LOCAL ENVIRONMENTAL PLAN 2011 TO RECLASSIFY AND REZONE LOTS 36 AND 45 DP263449, LOT 38 DP630551 AND PART LOT 12 DP708075 – IRVINE STREET, KIAMA

Prepared By: 
Karen Mion B.TP,
Member - PIA
Town Planner
SET Consultants Pty Ltd

Reviewed By: 
Bronwyn Seiden B.App.Sc. (Env. Planning),
Town Planner
Corporate Member - PIA
SET Consultants Pty Ltd

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This report has been prepared for and in accordance with the scope of services provided by Kiama Municipality Council for the purpose of preparing a Planning Proposal in accordance with Section 55 of the Environmental Planning and Assessment Act 1979. The Planning Proposal seeks to reclassify and rezone Lots 36 and 45 DP263449, Lot 38 DP630551 and Part Lot 12 DP708075 located on Irvine Street, Kiama.

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1 Statement of Objectives or intended outcomes

The objective of this planning proposal is to amend the Kiama Local Environmental Plan (LEP) 2011 to rezone and reclassify land currently owned by Council but deemed surplus to Council's needs. This would enable development and/or sale of the land for residential purposes in order to provide an income for Capital Works and/or assist in the long term financial sustainability of the Council.

The land to which this planning proposal applies is accessed from Irvine Street, Kiama and is known as Lots 36 and 45 DP263449, Lot 38 DP630551 and Part Lot 12 DP708075.

2 Explanation of Provisions

The proposed outcome will be achieved by amending the Kiama LEP as detailed below.

2.1 Reclassification

The proposal will amend the classification from 'community' to 'operational land' by including the land under Part 2 of Schedule 4 of the Kiama LEP 2011 as detailed in Table 1 below.

Column 1 Locality	Column 2 Description	Column 3 Any trusts etc not discharged
<i>Irvine Street, Kiama</i>	<i>Lot36 and 45 DP263449 and Lot 38 DP630551</i>	<i>Crown Grant(s), easement for water supply works (L.336297).</i>
<i>Irvine Street, Kiama</i>	<i>Part Lot 12 DP708075 as identified as operational land on the Land Reclassification (Part Lots) Map</i>	<i>Crown Grant(s), easement for water supply works (L.336297), easement for electricity services (AI468383).</i>

Table 1: Reclassification

The proposal will also involve the addition of a Land Reclassification (Part Lots) Map – Sheet RPL_12 applying to Part Lot 12 DP708075 and showing this Part Lot as Operational Land.

2.2 Rezoning and Provision of Principal Development Standards

The proposal will amend the Kiama LEP 2011 by rezoning the land which is currently zoned for recreational use to residential use and providing principal development standards suitable for residential development within this locality.

Specifically the Kiama LEP will be amended in the following manner:-

1. Amend the Land Zoning Map – Sheet LZN_012 applying to Lot 36 DP263449, Lot 45 DP263449, Lot 38 DP630551 and Part Lot 12 DP708075 from zone RE1 to zone R2.
2. Amend the Lot Size Map – Sheet LSZ_012 applying to Lot 36 DP263449, Lot 45 DP263449, Lot 38 DP630551 and Part Lot 12 DP708075 to apply a minimum lot size of G 450 sqm.
3. Amend the Floor Space Ratio Map – Sheet FSR_012 applying to Lot 36 DP263449, Lot 45 DP263449, Lot 38 DP630551 and Part Lot 12 DP708075 to apply an FSR of C 0.45:1.
4. Amend the Height of Buildings Map – Sheet HOB_012 applying to Lot 36 DP263449, Lot 45 DP263449, Lot 38 DP630551 and Part Lot 12 DP708075 to apply a maximum height of I 8.5m.
5. Amend the Heritage Map – Sheet HER_012 applying to Lot 12 DP 708075 to remove the Archaeological Item A103 from the portion of the lot proposed to be rezoned and reclassified.

Table 2 outlines the current and proposed land classification, zones and principal development standards.

	Current	Proposed
Land Classification	Community	Operational
Zoning	RE1 (Public Recreation)	R2 (Low Density Residential)
Floor Space Ratio	Unspecified	0.45:1
Minimum Lot	Unspecified	450sqm

Size		
Height Restrictions	Unspecified	8.5m

Table 2: Proposed changes to land classification, zones and principal development standards

3 Justification

3.1 Need for a Planning Proposal

3.1.1 Is the Planning proposal the result of any strategic study or report?

On 15 April 2014 Council's Revenue Sub-Committee recommended to Council that it *"commence the reclassification / rezoning process in relation to land surplus to Council's needs and which if sold will provide income for Capital Works and / or assist in long term financial sustainability."* This planning proposal is a result of Council adopting the recommendation to *"commence the re-classification/re-zoning process in relation to the subject lands"*.

Further to the above recommendation, the Kiama Urban Strategy (KUS) which was adopted by Council on 20 September 2011 aims to protect agricultural land from urban expansion through the provision of additional housing in suitable locations within existing townships of the Kiama Local Government Area (LGA). The planning proposal is consistent with the aims of the KUS.

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

The land is currently classified as Community Land. In accordance with the provisions of the NSW Local Government Act 1993 Council is therefore unable to sell the land. Amending the Kiama LEP to reclassify the land is the only avenue available to achieve the objective of the Planning Proposal.

The land is currently zoned for public recreation and are without principal development standards which currently apply to adjoining land zoned residential. The best way to achieve the outcome of being able to develop or sell the sites for residential purposes is to amend the Kiama LEP such that the land is rezoned to clearly reflect the intended land use and to apply suitable development restrictions.

3.2 Relationship to Strategic Planning Framework

3.2.1 Is the planning proposal consistent with objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan and exhibited draft strategies)?

The land is located within the Kiama LGA. The Kiama LGA falls outside the scope of the Sydney Metropolitan Plan known as the 'A Plan For Growing Sydney' released in December 2014.

The applicable regional strategy for the area is the Illawarra-Shoalhaven Regional Plan (ISRP) published in November 2015. The Planning Proposal is consistent with the vision detailed in the ISRP. The ISRP projects that housing needed in the Kiama LGA over the next 20 years would be 2,850. The ISRP also found that "analysis indicates that there is not enough land or 'market ready' infill development in the planning pipeline to meet this demand."¹

This shortfall was previously noted in the 2014 Illawarra Urban Development Program Update prepared by the NSW Government. This update (and earlier updates) raised concern that the Kiama LGA does not meet any of the greenfield land supply benchmarks although "Kiama Council has identified a number of sites under its Urban Strategy that will be investigated for rezoning in the short term to address this shortfall."² This update also states that Kiama is also relying on the up zoning of land with the Kiama and Gerringong town centres to further address this shortfall.

The Planning Proposal would provide a residential allotment within an existing urban area and is consistent with Direction 2.2 of the ISRP. Furthermore this Planning Proposal will not adversely impact on the regions natural or cultural assets as identified in the ISRP.

3.2.2 Is the planning proposal consistent with a Council's local strategy or other local strategic plan?

¹ NSW Government Planning & Infrastructure *Illawarra Shoalhaven Regional Plan* Published November 2015, p34

² NSW Government Planning & Infrastructure *Illawarra Urban Development Program Update 2014* Published September 2014, p6

The Kiama Urban Strategy (KUS) was adopted by Council on 20 September 2011 and is Kiama's overarching strategy to meeting housing targets identified in the IRS. The KUS had a direct influence on the preparation of the Kiama LEP 2011.

The sites affected by this Planning Proposal were not specifically identified or explored in the KUS. The Planning Proposal is consistent with the Community Panel's recommendation stated in the KUS that "Council's aim should be to accommodate growth as much as possible by infill development to increase the density of the existing built-up areas."³

The core factors driving the KUS were the need to meet housing targets identified in the Illawarra Regional Strategy (IRS) and the desire to protect rural land in the Municipality and maintain separate towns and villages within the LGA. While the IRS has been superseded by the ISRP, the housing demand remains evident (see Section 3.2.1 above). The Planning Proposal provides for an additional residential lot within existing residential area without impacting upon rural land or expanding townships closer to each other. The planning proposal is consistent with the KUS.

3.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with applicable State Environmental Planning Policies (SEPPs) and deemed State Environmental Planning Policies (deemed SEPPs) as detailed below.

SEPP 55 – Remediation of Land

SEPP 55 aims to provide a planning approach to the remediation of contaminated land for the purposes of reducing risk of harm to human health or any other aspect of the environment. Specifically relevant is that SEPP 55 specifies certain matters to be considered when rezoning land.

The Planning Proposal relates to land which is currently vacant of any built structures. Some large rocks have been positioned on the site as features for this open space. Land to the north was previously quarried. This northern land has since been remediated and is now used for recreational purposes.

A Phase 1 Contamination Assessment was carried out in accordance with the Contaminated Land Management Act. A copy of this report is provided in **Attachment 1**.

³ Kiama Municipal Council *Kiama Urban Strategy* Adopted 20 September 2011, p5.

The report found that the risk of land contamination was low and the land was suitable for residential development.

SEPP 71 – Coastal Protection

SEPP 71 aims:-

- to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- to ensure that the visual amenity of the coast is protected, and
- to protect and preserve beach environments and beach amenity, and
- to protect and preserve native coastal vegetation, and
- to protect and preserve the marine environment of New South Wales, and
- to protect and preserve rock platforms, and
- to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the *Protection of the Environment Administration Act 1991*), and
- to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- to encourage a strategic approach to coastal management.

All land is within the SEPP 71 Coastal Zone but not within a 'sensitive coastal location' as defined by SEPP 71. Matters to be considered when preparing a draft Local Environmental Plan are detailed under Clause 8. These are addressed in the table below.

Matters for consideration	Consistency with Planning Proposal
a) aims of the policy set out in clause 2,	The Planning Proposal is consistent with the aims set out in Clause 2 of the SEPP.
b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access	The land is well setback from foreshore area and does not provide any direct public access paths to or along the foreshore.

Matters for consideration	Consistency with Planning Proposal
to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	A right of way from Irvine Street to the adjoining public land is possible for future maintenance needs if deemed necessary.
c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	No significant opportunities given the setback of the land from the coastal foreshore area.
d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The planning proposal involves the reclassification and rezoning of land to a classification and zone consistent with the surrounding area.
e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	<p>Given the setback of the land from the coastal foreshore and the topography of the land, there will be no overshadowing of the foreshore.</p> <p>The land is in an elevated position. Surrounding residential development and existing vegetation restrict views from the land to the coastal foreshore.</p> <p>A small strip of the public land to the northern is also elevated. Distant views to the coastline can be gained from this elevated public land, however due to the danger associated with the topography and cliffs, access to this land is not afforded to the public and loss of the potential view will not be significant.</p>
f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	Given the setback of the land from the coastal foreshore and the topography of the land, future residential development in a manner similar to the surrounding area will not affect the scenic qualities of the coast.
g) measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u>) and plants (within the meaning of that Act), and their habitats,	The land is not mapped as Biodiversity land. The land is predominately open mowed grass land. A small number of trees and shrubs are located along the proposed northern boundary of the land.

Matters for consideration	Consistency with Planning Proposal
	Residential development of the land could occur without the need for this vegetation to be removed. It is therefore not considered necessary that an Assessment of Significance be carried out in accordance with Section 5A of the EP&A Act. However this can occur following the Gateway determination if determined by the Department to be necessary.
h) measures to conserve fish (within the meaning of Part 7A of the <u>Fisheries Management Act 1994</u>) and marine vegetation (within the meaning of that Part), and their habitats	The land is significantly setback from areas of marine life. The site is not directly associated with any specific watercourse. The Planning Proposal is unlikely to impact on fish, marine vegetation or their habitats.
i) existing wildlife corridors and the impact of development on these corridors,	The land is not mapped as Biodiversity land. The land is predominately open mowed grass land. A small number of trees and shrubs are located along the proposed northern boundary of the land. Residential development of the land could occur without the need for this vegetation to be removed.
j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	Given the setback of the land from the coastal foreshore development of the land for a residential use will not adversely impact on coastal processes and coastal hazards.
k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	The Planning Proposal will not result in any conflicts between land and water based coastal activities.
l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	The proposal will not impact on any items of known cultural importance of Aboriginals. Part of the land is mapped as having local archaeological significance (Item A103). The item is known as the

Matters for consideration	Consistency with Planning Proposal
	Pikes Hill Quarry and does not relate to items of Aboriginal significance.
m) likely impacts of development on the water quality of coastal waterbodies,	Future residential development would be subject to development assessment with sediment control and waste management measures required where necessary.
n) the conservation and preservation of items of heritage, archaeological or historic significance,	The land includes a small portion of Lot 12 DP 708075 which is listed as having local archaeological significance (Item A103). The item is known as the Pikes Hill Quarry. The Heritage Inventory for this item is provided in Appendix 7.4 . The portion of Lot 12, DP 708075 which forms part of the land subject to this planning proposal was not quarried and remains elevated above the disused quarry. This portion of Lot 12, DP 708075 is not likely to contain any archaeological items.
o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	The Planning proposal aims to reclassify and rezone land to allow for an additional residential allotment within an existing residential area. This supports the generation of compact towns.

Table 3: SEPP 71 Matters for consideration

3.2.4 Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?

The following table identifies the proposal's consistency with the relevant Ministerial Directions.

s.117 Direction Title	Consistency of Planning Proposal
<u>2.1 Environmental Protection Zones</u> A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.	The land is not zoned for Environmental Protection Zone. The Planning Proposal does not seek to alter the provisions made for

s.117 Direction Title	Consistency of Planning Proposal
<p>A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.</p>	<p>Environmental Protection Zones.</p> <p>The Planning Proposal is consistent with Direction 2.1 – Environmental Protection Zones.</p>
<p><u>2.2 Coastal Protection</u></p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997, and b) the Coastal Design Guidelines 2003, and c) the manual relating to the management of the coastline for the purposes of section 733 of the Local Government Act 1993 (the NSW Coastline Management Manual 1990). 	<p>The land is within the Coastal Zone.</p> <p>Clause 5.5 of KLEP contains provisions relating to development within the coastal zone. Clause 5.5 is consistent with the relevant Coastal policy, guidelines and manual. The Planning Proposal does not seek to alter the provisions of Clause 5.5.</p> <p>The Planning Proposal is consistent with Direction 2.2 – Coastal Protection.</p>
<p><u>2.3 Heritage Conservation</u></p> <p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the 	<p>Part of the land includes a portion of Lot 12, DP 708075 which is listed as having local archaeological significance (Item A103). The item is known as the Pikes Hill Quarry. The portion of Lot 12, DP 708075 which forms part of this Planning Proposal was not quarried and is positioned at an elevated height above the disused quarry.</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>item, area, object or place, identified in a study of the environmental heritage of the area,</p> <p>b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and</p> <p>c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>	<p>The Planning Proposal seeks to remove the archaeological mapping from the portion of Lot 12, DP 708075 which is subject to this Planning Proposal. The Planning Proposal would not seek to alter the archaeological listing of the portion of Lot 12, DP 708075 which was quarried nor the portion which contains the landmark cliff elements referred to in the Heritage Inventory (copy provided in Appendix 7.4).</p> <p>Clause 5.10 of KLEP contains provisions relating to heritage conservation including the conservation of archaeological sites. The Planning Proposal does not seek to the provisions of Clause 5.10.</p> <p>The Planning Proposal is consistent with Direction 2.3 – Heritage Conservation.</p>
<p><u>3.1 Residential Zones</u></p> <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>a) broaden the choice of building types and locations available in the housing market, and</p> <p>b) make more efficient use of existing infrastructure and services, and</p> <p>c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>d) be of good design.</p> <p>A planning proposal must, in relation to land to which this direction applies:</p> <p>a) contain a requirement that residential development is not</p>	<p>The Planning Proposal would result in land being zoned for a residential purpose with controls under the KLEP matching that of the surrounding residential land.</p> <p>The land is located within an existing residential area with access to appropriate existing infrastructure and services.</p> <p>The Planning Proposal is consistent with Direction 3.1 – Residential Zones.</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>b) not contain provisions which will reduce the permissible residential density of land.</p>	
<p><u>3.3 Home Occupations</u></p> <p>Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.</p>	<p>The Planning Proposal would rezone the land to Residential R2 (Low Density). Home Occupations are permitted without consent within the R2 zone under the KLEP. The Planning Proposal would not alter this permissibility.</p> <p>The Planning Proposal is consistent with Direction 3.3 – Home Occupations</p>
<p><u>3.4 Integrated Land Use and Transport</u></p> <p>A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</p> <p>b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p>	<p>The Planning Proposal provides an additional residential allotment within an established residential area with existing transport systems. The additional residential land will lead to increased viability of these existing transport systems.</p> <p>The Planning Proposal is consistent with Direction 3.4 – Integrated Land Use Transport.</p>
<p><u>4.1 Acid Sulfate Soils</u></p> <p>The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a</p>	<p>The land is not mapped as being affected by Acid Sulfate Soils.</p> <p>Clause 6.1 of the KLEP contains provisions relating to acid sulphate soils. The Planning Proposal does not seek to alter the provisions of Clause 6.1.</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>probability of acid sulfate soils being present.</p> <p>When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:</p> <ul style="list-style-type: none"> • the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or • such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines. <p>A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director-General prior to undertaking community consultation in satisfaction of section 57 of the Act.</p> <p>Where provisions referred to under paragraph (5) of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid</p>	<p>The Planning Proposal is consistent with Direction 4.1 – Acid Sulfate Soils.</p>

s.117 Direction Title	Consistency of Planning Proposal
Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with paragraph (5).	
<p>4.3 Flood Prone Land</p> <p>A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).</p> <p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> a) permit development in floodway areas, b) permit development that will result in significant flood impacts to other properties, c) permit a significant increase in the development of that land, d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high 	<p>The land is not classed as Flood Prone Land.</p> <p>Clause 6.3 of the KLEP contains provisions relating to flood planning. The Planning Proposal does not seek to alter the provisions of Clause 6.3.</p> <p>The Planning Proposal is consistent with Direction 4.3 – Flood Prone Land.</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>hazard areas), roads or exempt development.</p> <p>A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p> <p>For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>	
<p><u>5.1 Implementation of Regional Strategies</u></p> <p>Planning proposals must be consistent with a regional strategy released by the Minister for Planning.</p>	<p>The Planning Proposal is consistent with the Illawarra-Shoalhaven Regional Plan (see Section 3.2.1 of this report).</p> <p>The Planning Proposal is therefore consistent with Direction 5.1 – Implementation of Regional Strategies.</p>
<p><u>6.1 Approval and Referral Requirements</u></p> <p>A planning proposal must:</p> <p>a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a</p>	<p>The Planning Proposal does not include any additional provisions to the LEP which would require the concurrence, consultation or referral of future</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>Minister or public authority, and</p> <p>b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p> <p style="padding-left: 40px;">(i) the appropriate Minister or public authority, and</p> <p style="padding-left: 40px;">(ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and</p> <p>c) not identify development as designated development unless the relevant planning authority:</p> <p style="padding-left: 40px;">(i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</p> <p style="padding-left: 40px;">(ii) has obtained the approval of the Director-General of the Department of</p>	<p>development applications to a Minister or public authority.</p> <p>The Planning Proposal is consistent with Direction 6.1 – Approval and Referral Requirements.</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.</p>	
<p><u>6.2 Reserving Land for Public Purposes</u></p> <p>A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).</p> <p>When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must:</p> <ul style="list-style-type: none"> a) reserve the land in accordance with the request, and b) include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and c) identify the relevant acquiring authority for the land. <p>When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal</p>	<p>The Planning Proposal seeks to rezone and reclassify public land currently reserved for public purposes.</p> <p>Council is the relevant public authority. The Director-General's concurrence is sought through this Planning Proposal.</p> <p>The land proposed to be rezoned and reclassified is owned by Council but deemed superfluous to Council's needs. The rezoning would enable development and/or sale of the land for residential purposes in order to provide an income for Capital Works and/or assist in the long term financial sustainability of the Council.</p> <p>This Planning Proposal is justifiably inconsistent with Direction 6.1 – reserving land for public purposes. Concurrence is sort from the Director General.</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must:</p> <ul style="list-style-type: none"> a) include the requested provisions, or b) take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired. <p>When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.</p>	
<p><u>6.3 Site Specific Provisions</u></p> <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> a) allow that land use to be carried out in the zone the land is situated on, or b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development 	<p>The Planning Proposal does not contain any site specific planning controls. The development standards which would apply to the land are consistent with those applied on similarly zoned land.</p> <p>The Planning Proposal is consistent with Direction 6.3 – Site Specific Provisions.</p>

s.117 Direction Title	Consistency of Planning Proposal
<p>standards or requirements in addition to those already contained in that zone, or</p> <p>c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	

Table 4: Applicable s117 directions

3.3 Environmental Social and Economic Impact

3.3.1 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?

The Kiama LEP contains Biodiversity and Riparian maps and Clause 6.4 Terrestrial Biodiversity and Clause 6.5 Riparian Land and Watercourses contain controls for development occurring on or within close proximity of land so mapped. Clause 5.9 also provides controls for the preservation of trees and vegetation. The planning proposal does not seek to change the Biodiversity and Riparian maps nor Clause 5.9, 6.4 or 6.5 of the Kiama LEP. These clauses would apply to any future development of the land.

The land is not mapped as affected on the Terrestrial Biodiversity Map. The land is also not mapped as containing a water course or Riparian Land. The land is located along a ridge line and is dominated by mowed grass. One tree is located near the middle of the northern proposed boundary. Some other smaller vegetation is also located along this northern boundary. There are unlikely to be any adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats as a result of the development. Development of this site for residential purposes could occur without the need to remove the vegetation along the northern boundary. However removal may be desirable for outlook and would be assessed as part of any future development of the land.

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

The land is not known or mapped as affected by bushfire, flooding, landslip or acid sulphate soils. The land is located within an established residential area. A setback is provided between the subject land and the land which was quarried to the north such that a buffer would be provided between the cliff edge and the subject land which is consistent with adjoining residential properties. A Preliminary Geotechnical Assessment was undertaken. Bedrock was encountered at depths between 0.7m and 0.9m. This report provides recommendations for the type of construction of any future residential development on the land. A copy of this report is provided in **Appendix 7.3**. This report should be made available to any future purchaser of the property.

The Development Assessment (DA) process required to be undertaken in accordance with the Environmental Planning and Assessment Act 1979, provides the appropriate legislative framework through which environmental effects associated with any future residential development of the land would be assessed.

3.3.3 Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal does not apply to land identified as needing protection. The Planning Proposal aims to reclassify and rezone land to a residential zone consistent with surrounding residential zones. The development standards proposed for the land are consistent with those applicable to adjoining residential land.

The Planning Proposal will provide an additional housing allotment within an existing and well established residential area which has established infrastructure thereby assisting to reduce the housing pressure on rural and agricultural land.

Archaeological Heritage

Part of land is mapped as an archaeological site. This portion of the site is a small area of a larger lot (Lot 12 DP 708075) which covers the majority of the Kiama Quarry Sports Complex. The Kiama Quarry Sports Complex is located at the base of the former quarry and has a lower ground level than the subject site due to previous quarrying. The subject site is elevated above the quarried land and is not likely to contain any archaeological items.

Economic

The Planning Proposal relates to land currently owned by Council but deemed surplus to Council's needs and which has limited active community use. Reclassification and rezoning as proposed would enable development and/or sale of the land for residential purposes consistent with surrounding land in order to provide an income for Capital Works and/or assist in the long term financial sustainability of the Council while also reducing the ongoing costs of maintaining this land.

Access

The land provides potential opportunity to access public land located to the west of the site along the top of the quarry cliff for maintenance. Currently no access from the site to this cliff top area has been established as the occupier of each residential dwelling located to the west of the site currently maintains the respective adjoining section of public land. A right of way located along the western boundary of the site could be established as part of any future lot consolidation / subdivision of the site to ensure that the potential for future access for Council maintenance is retained.

Loss of Public Open Space

The Planning Proposal will result in the loss of a small open space accessed from Irvine Street. This open space is not well utilised. Due to its location along on a ridgeline, this space is only likely to be attractive to residents of Irvine Street and adjoining cul-de-sacs. However, residents in these streets are provided with access to the much larger Kiama Quarry Sports Complex via a pathway from Thompson Street. This access is less than 400m from the subject land.

3.4 State and Commonwealth Interests

3.4.1 Is there adequate public infrastructure for the planning proposal?

The Planning Proposal seeks to rezone and reclassify land to residential and operational and as a result future development of the land for residential purposes is expected. The land would generate one (1) residential lot. Under the R2 zoning proposed, dwellings, dual occupancies and secondary dwellings are all permitted uses.

Development of the land for residential purposes would result in a minor increase in demand for facilities relative to the existing demand generated by the established residential population of the area. The land is located within existing residential areas where all utility services are available. It is not expected that there would be issues

connecting to existing services nor for there to be any issues as a result of the minor increase in demand.

3.4.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

No State or Commonwealth authorities have been consulted as part of the preparation of this Planning Proposal.

It is requested that the Gateway determination confirm the following list of State authorities to be consulted and nominate any other State or Commonwealth authorities required for consultation.

- NSW Department of Planning and Infrastructure;
- NSW Department of Environment and Heritage;

3.5 **Director General's Requirements for Reclassifying Public Land**

3.5.1 Is the planning proposal the result of a strategic study or report?

As outlined in Section 3.1.1 above, on 15 April 2014 Council's Revenue Sub-Committee recommended to Council that it *"commence the reclassification / rezoning process in relation to land surplus to Council's needs and which if sold will provide income for Capital Works and / or assist in long term financial sustainability."* The land was identified as one of these surplus areas. This planning proposal is a result of Council adopting the recommendation to *"commence the re-classification/re-zoning process in relation to the subject lands"*.

3.5.2 Is the planning proposal consistent with the local Council's community plan, or other local strategic plan?

As outlined in Section 3.2.2 above, the Planning Proposal is consistent with the Community Panel's recommendation stated in the Kiama Urban Strategy (KUS) that "Council's aim should be to accommodate growth as much as possible by infill development to increase the density of the existing built-up areas."⁴

⁴ Kiama Municipal Council *Kiama Urban Strategy* Adopted 20 September 2011, p5.

3.5.3 If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided.

A caveat is noted on Lots 36 and 45 DP263449 and Lot 38 DP630551. The caveat number that is noted on these lots is K200000P and relates to a Register-General's caveat. Historically this caveat was applied where land vested in a Local Council was dedicated as a public reserve. Following gazettal of the amended LEP, the Council will seek that these caveats be removed.

The purpose of the subject Planning Proposal is to enable the sale of the subject site for residential purposes. The following table outlines the interests that need to be extinguished or retained for each allotment associated with this Planning Proposal to enable residential development.

	To be extinguished	Not to be extinguished
Lot 38 DP 630551 as shown on Draft Reclassification Map	Public Reserve shown on deposited plan	Crown Grant(s), easement for water supply works (L.336297).
Lots 36 & 45 DP 263449 as shown on Draft Reclassification Map	Public Reserve shown on deposited plan	Crown Grant(s), easement for water supply works (L.336297).
Part of Lot 12 DP 708075 as shown on Draft Reclassification Map	Public Reserve shown on deposited plan	Crown Grant(s), easement for water supply works (L.336297), easement for electricity services (AI468383).

Table 5: Interests to be extinguished

3.5.4 The concurrence of the landowner, where the land is not owned by the relevant planning authority.

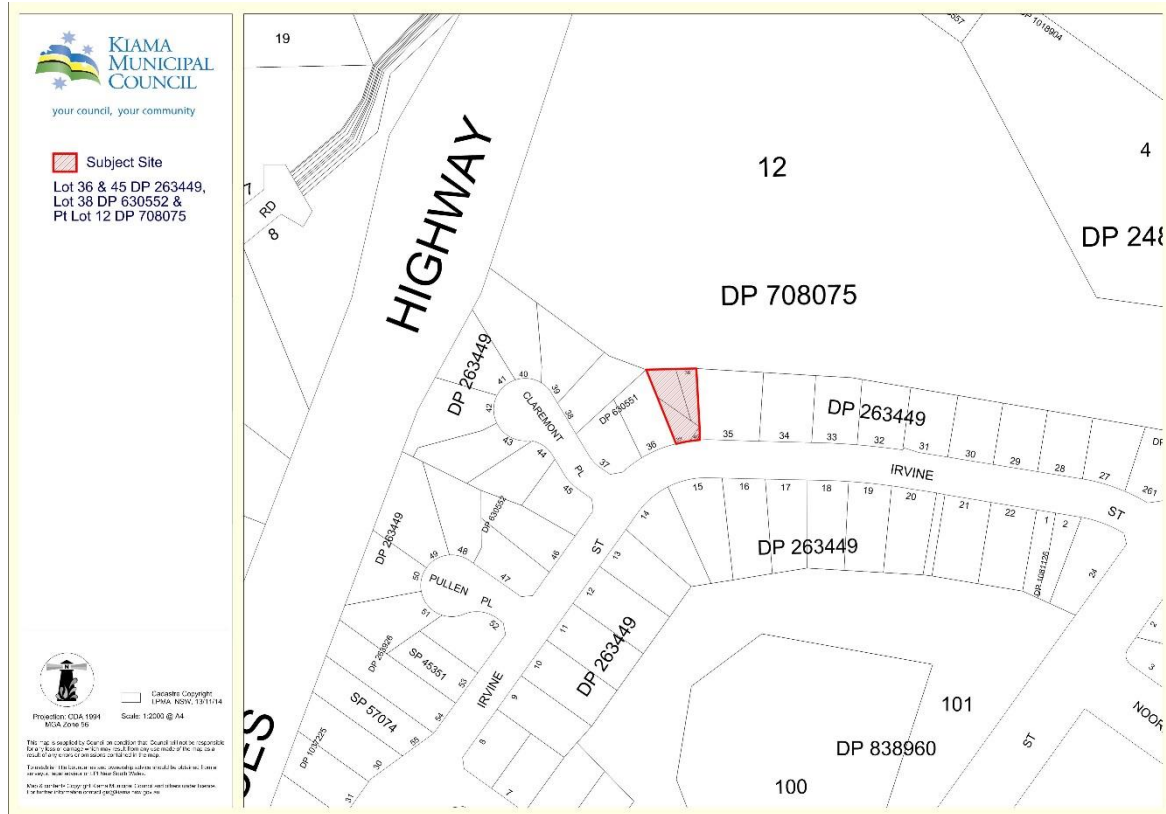
Council is the landowner and endorsed the preparation of this Planning Proposal at its meeting 15 April 2014.

4 Mapping

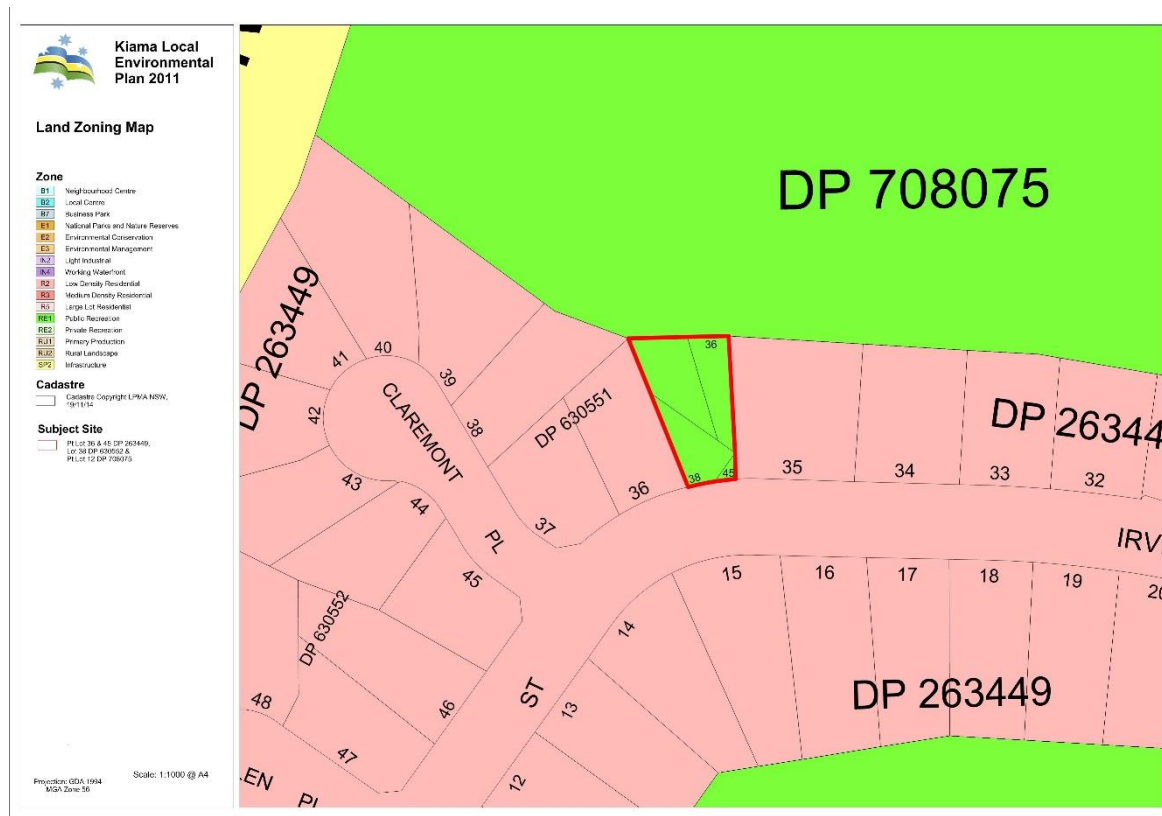
The following illustrates the subject land, current land use zoning and proposed land use zoning map amendments to the Kiama LEP 2011. Changes to the Principal Development Standards are outlined in Section 2.2 and Table 2. These changes will be mapped after the gateway determination. A Land Reclassification (Part Lots) Map as outlined in Section 2.1 will also be created prior to public exhibition. The maps below are reproduced in

Appendix 7.1 on the paper size mentioned on the scale. Aerial photographs of the sites are also included in the **Appendix 7.1**.

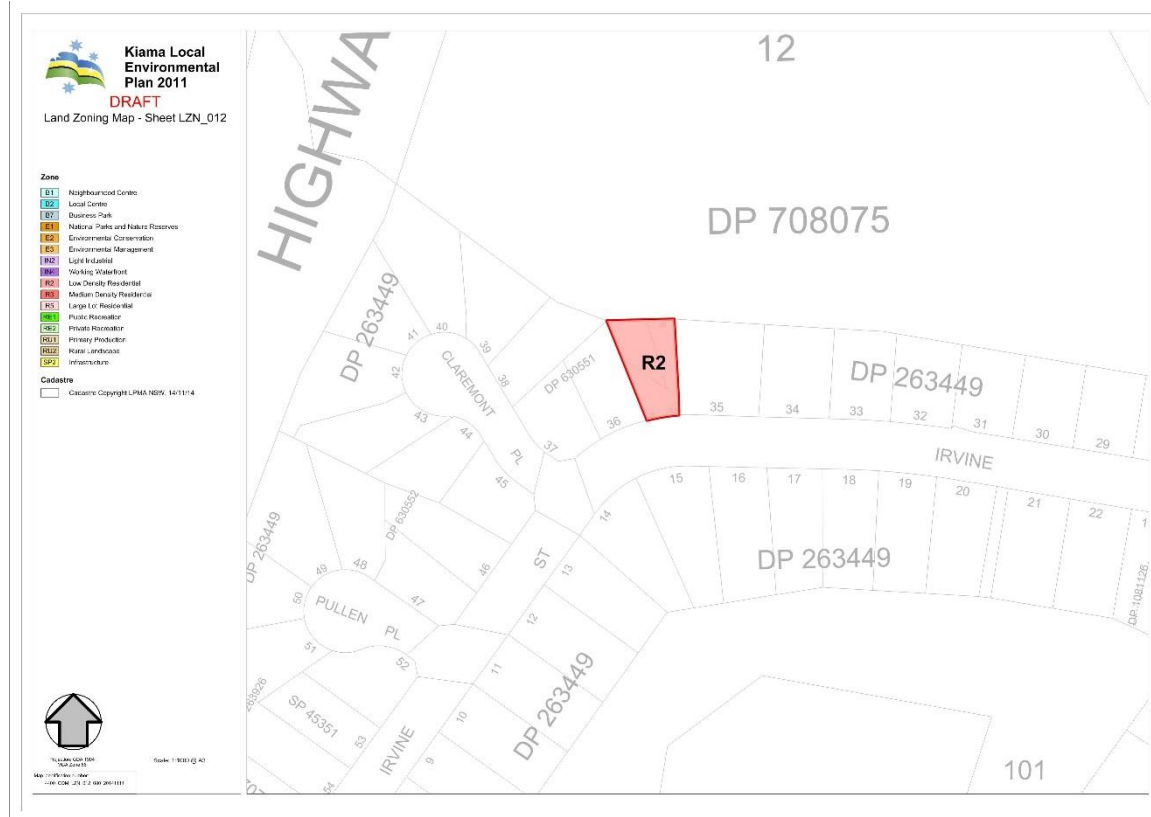
4.1 Land the subject of the Planning Proposal



4.2 Current Land Use Zone under the Kiama Local Environmental Plan 2011



4.3 Proposed Land Use Zone under this Planning Proposal



5 Community Consultation

Following the Gateway determination and approval from the Director-General (or delegate), the Planning Proposal will be exhibited for a minimum period of 28 days and include:

- Notification in local newspaper;
- Hard copies made available at the Council Administration Building and relevant libraries;
- Electronic copy on Council's website;
- Notification letters to adjoining and surrounding property owners;
- Letters to any State and Commonwealth Public Authorities identified in the gateway determination; and
- any other consultation methods deemed appropriate for the proposal.

Following the public exhibition period a public hearing will be held. Notice of the public hearing will be made in a local newspaper at least 21 days prior to the hearing date.

6 Project Timeline

The following table outlines the anticipated timeline for the project. This timeline has been established on the basis of commencement by Council in July 2016.

Stage	Anticipated Timeframe	Possible Dates
Planning Proposal to the Department	Following Council meeting July 2016	July 2016
Gateway determination	4 weeks from Council forwarding the Planning Proposal to the Minister	End September 2016
Completion of technical information or studies as determined by Gateway	4 – 6 weeks from the gateway determination	Mid November 2016
Consultation with State / Commonwealth agencies	4 weeks from the completion of any technical information or studies	December 2016
Exhibition of Planning Proposal (assuming Director General's approval for community consultation was issued with the Gateway determination)	4 weeks	December 2016
Notification of Public hearing date.	Immediately after the exhibition period.	Early January 2017 (unless holiday period is to be avoided)
Review of submissions	Immediately after the exhibition period.	January 2017
Public hearing	21 days after notification made.	Early February 2017
Review of Public Hearing report and preparation of report to Council.	4 weeks.	February / March 2017
Report to Council	First available Council meeting after review of hearing and report preparation.	March 2017
Submission to the department to finalise	4weeks from Council meeting	April 2017
Anticipated date LEP will be notified		May 2017

Table 6: Project Timeline

7 Appendix

7.1 Maps and Aerial Photography

7.2 Photomontage

7.3 Phase 1 Contamination Assessment and Preliminary Geotechnical Assessment

7.4 Kiama Heritage Inventory Sheet

7.5 Additional Information Required by New Practice Note

The Department of Planning and Environment issued the Gateway Determination on 4 October 2016. A new LEP Practice Note (PN 16-001) was issued by the Department on 5 October 2016 which relates to the classification and reclassification of public land through a LEP. This Practise note supersedes PN 09-003. The Department provided advice to Council that the new Practice Note must be addressed.

Practice Note 16-001 sets out a number of matters that must be addressed when a Planning Proposal involves the reclassification of public land. These matters are in addition to the requirements for planning proposals under Section 55 (a) – (e) of the EP&A Act. These additional matters are outlined in and addressed in Table 6 below. Where these matters were already addressed in the planning proposal this is noted rather than duplicating the response.

Matter to Be Addressed	Response
The current and proposed classification of the land	See Section 2.1 of this Planning Proposal
Whether the land is a 'public reserve' (defined in the LG Act)	Each of the three parcels and one part parcel which comprise the subject site are noted on their current DP as 'Public Reserve'.
The strategic and site specific merits of the reclassification and evidence to support this	As outlined in the Planning Proposal, the land is deemed surplus to Council's needs and has limited active community use. There is no regular community use of the land and the reserve has no infrastructure supporting formal usage. The reserve does not serve any accessibility function to the adjoining recreational/sporting fields. The land is situated adjacent to the Kiama Sports Complex which provides the surrounding residential community with abundant open space recreational opportunity. The site is located within a residential area and is of a size suitable for a single residential allotment. Providing an additional housing allotment within an existing and well established residential area which has established infrastructure

Matter to Be Addressed	Response
	will assist to reduce the housing pressure on rural and agricultural land, the principle of which is in accordance with the Kiama Urban Strategy (KUS) which was adopted by Council on 20 September 2011. (See Section 3.2 of this Planning Proposal)
Whether the Planning Proposal is the result of a strategic study or report	See Section 3.1.1 of this Planning Proposal
Whether the planning proposal is consistent with council's community plan or other local strategic plan	See Section 3.2.2 in relation to the local strategic plan. No specific Council Community Plan relevant to the site has been identified.
<p>A summary of council's interests in the land, including:</p> <ul style="list-style-type: none"> • how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution) • if council does not own the land, the land owner's consent; • the nature of any trusts, dedications etc; 	<p>The land is comprised of three parcels and one part parcel each of which are in Council ownership.</p> <p>DP 263449 was registered on 3 September 1982. This DP shows Lot 36 and Lot 45 as 'public reserve'. An easement for water supply works (L336297) is also present on the lots. The certificates of title issued in August 1990 shows these parcels to be in Council ownership.</p> <p>Lot 38 DP 630551 was registered on 23 February 1983. This DP shows Lot 38 as 'public reserve'. An easement for water supply works (L336297) is also present on the lot. The certificate of title Vol. 15012 Fol. 96 issued 14 March 1983 shows this Lot to be in Council ownership.</p> <p>Lot 12 DP 708075 was registered on 22 October 1984. This DP shows Lot 12 as 'public reserve'. The portion of Lot 12 subject to this classification was also shown as 'public reserve' on DP 248979 which was registered on 29 October 1975</p>

Matter to Be Addressed	Response
	<p>and which was subsequently superseded by DP 708075. An easement for water supply works (L.336297) and an easement for electricity services (A1468383) are present on the lot .The certificate of title issued 3 June 2014 shows the current Lot 12 to be in Council ownership.</p> <p>No trusts were found. See Section 3.5.3 of this Planning Proposal.</p>
Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why	See Section 3.5.3 of this Planning Proposal
The effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged)	This Planning Proposal seeks to reclassify and rezone the land. This will enable Council to sell the land as a residential allotment. See Section 3.3 of this Planning Proposal with regards to the Environmental, Social and Economic Impacts of this reclassification.
Evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents)	<p>The Certificates of title and Deposited Plans provide this evidence.</p> <p>See Appendix 7.6</p>
Current use(s) of the land, and whether uses are authorised or unauthorised	<p>The land is classified as “Park” and falls under a Plan of Management – Parks (Neighbourhood) adopted by Council in 1996 and amended in 2014. The land is currently vacant of any built structures. Some large rocks have been positioned on the site as features for this open space. Occasional informal use of the space for recreational purposes such as children rock climbing is noted.</p>
Current or proposed lease or agreements applying to the land, together with their duration, terms and controls	Nil.

Matter to Be Addressed	Response
Current or proposed business dealings (e.g. agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time)	At this point in time Council has not entered into any business detail to sell this land. After the rezoning / reclassification Council will seek to sell the land for development.
Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy)	<p>See Section 2.2.</p> <p>The rezoning will result in a Residential Zone being applied to the land which is consistent with the adjoining residential zones.</p> <p>The Plan of Management which covers this land is a generic Plan of Management for neighbourhood parks which is used for approximately fifty-four (54) properties. As such the plan does not specifically address this Irvine Street park.</p> <p>However, the Plan of Management does acknowledge that “An issue with parks is the change in function through time due to demographic / usage changes or other factors such as vandalism and costs of repairing or maintaining to the original standard and changes in recreational preferences in different age cohorts through time. A park can change through time from being a vibrant passive recreation space and meeting place for local residents to an un-used area with no practical functionality.”</p> <p>At the time this area was subdivided for residential development it is likely that young families were the dominate demographic. At that time a small playground was provided at the park and it is likely that this was well used for a period of time. The neighbourhood is</p>

Matter to Be Addressed	Response
	now a mix of older households with no or only adult children at home and families with primary or secondary school aged children and the park is not frequently used.
How council may or will benefit financially, and how these funds will be used	The reclassification and rezoning would enable Council to sell the site as a residential property suitable for development for a residential dwelling. The income generated would be used for Capital Works and/or assist in the long term financial sustainability of the Council. There would also be a financial saving by removing the maintenance cost to Council of maintaining this land.
How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal	The reclassification is not linked specifically to any project.
A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot	See Section 2.1. This map will be prepared prior to the proposal being placed on Public Exhibition.
Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable	N/A

Table 7: Responses to PN 16-001

7.6 Deposited Plans and Certificates of Title