

Housekeeping Amendment to Subdivision Provisions in Kiama LEP 2011

Proposal Title : Housekeeping Amendment to Subdivision Provisions in Kiama LEP 2011

Proposal Summary : The planning proposal seeks to amend subdivision provisions in the Kiama LEP 2011 to enable subdivision of dual occupancies and multi-dwelling housing in residential areas and to introduce a new clause for the adjustment of rural allotment boundaries.

PP Number : PP_2017_KIAMA_003_00 Dop File No : 17/08070

Proposal Details

Date Planning Proposal Received : 17-Aug-2017 LGA covered : Kiama

Region : Southern RPA : The Council of the Municipality of Kiama

State Electorate : KIAMA Section of the Act : 55 - Planning Proposal

LEP Type : Housekeeping

Location Details

Street : 0

Suburb : 0 City : 0 Postcode : 0

Land Parcel : applies to lands across the LGA

DoP Planning Officer Contact Details

Contact Name : Lisa Kennedy

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RPA Contact Details

Contact Name : Edward Paterson

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre : N/A Release Area Name : N/A

Regional / Sub Regional Strategy : Illawarra-Shoalhaven Consistent with Strategy : Yes

Regional Strategy : Regional Plan 2036

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : In November 2014, the Kiama Development Industry Committee raised concerns over the difficulties and uncertainties relating to the subdivision of dual occupancies within the municipality. Council subsequently resolved to undertake an administrative review of subdivision provisions in the LEP.

Provisions in the land use table and subdivision clauses within the LEP are inconsistent with Kiama Council's intent and policies to allow the subdivision of dual occupancies in the R2 zone. Council intends to allow Torrens title subdivision of dual occupancies to create lots which are half the size of the current minimum lot size ie at least 225m2 for residential areas in Kiama Downs, Kiama, Kiama Heights, Gerringong and Gerroa and at least 400m2 for residential areas in Jamberoo.

Council has also identified the need to introduce a new clause for boundary adjustments of certain rural and environmental land to enable more efficient property management.

In March 2017 Council resolved to prepare a planning proposal to amend the subdivision provisions in the Kiama LEP.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The objective of the planning proposal is to:

- * increase the minimum lot size for the Torrens title subdivision of dual occupancies on land zoned R2 Low Density Residential and R3 Medium Density Residential;
- * retain the existing minimum lot sizes for Torrens title subdivision of multi-dwelling housing on land zoned R3 Medium Density Residential;
- * permit semi-detached dwellings within the R2 Low density residential zone; and
- * enable the adjustment of allotment boundaries on land zoned RU1 Primary Production, RU2 Rural Landscape and E3 Environmental Management.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment :

The explanations of provisions in the planning proposal are to amend the Kiama LEP 2011 by:

- * Amending Clauses 4.1A and 4.1B to increase the size of the lot, created as part of a Torrens title subdivision, for each dwelling associated with a dual occupancy to be at least 225m² for residential areas in Kiama Downs, Kiama, Kiama Heights, Gerringong and Gerroa and at least 400m² for residential areas in Jamberoo; and
- * Amending Clauses 4.1A and 4.1B to retain the existing size of the lot created as part of a Torrens title subdivision for each dwelling associated with a multi-dwelling housing of 150m² for medium density residential areas; and
- * Amending the Land Use Table to make semi-detached dwellings permissible with consent within the R2 Low Density Residential zone; and
- * Adding a new clause to enable the adjustment of allotment boundaries on land zoned RU1 Primary Production, RU2 Rural Landscape and E3 Environmental Management.

As different areas of the Kiama Municipality have different minimum lot sizes, Council considers that it is not appropriate to set a uniform minimum lot size for the subdivision of dual occupancies. The planning proposal does not seek to alter the permissibility of dual occupancies and it is considered reasonable to permit torrens title subdivision of dual occupancies on R2 Low Density Residential zoned land to 50% of the prescribed minimum lot size, as this will mean that the lots resulting from the subdivision are in proportion to the minimum lot size.

As the subdivision of dual occupancies will ultimately result in the creation of semi-detached dwellings on land zoned R2 Low Density Residential, it is considered appropriate to also amend the land use table to make semi-detached dwellings permissible with consent within the R2 Low Density Residential zone.

Adjusting the lot boundaries on land zoned RU1 Primary Production, RU2 Rural Landscape and E3 Environmental Management is only to be allowed if the number of lots or the number of dwellings and dwelling entitlements on each lot are not increased. Subdivisions under this clause will also need to demonstrate a continuation of rural/agricultural uses.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

1.2 Rural Zones

1.5 Rural Lands

* May need the Director General's agreement

2.1 Environment Protection Zones

2.2 Coastal Protection

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.4 Planning for Bushfire Protection

5.10 Implementation of Regional Plans

Is the Director General's agreement required? No

c) Consistent with Standard Instrument (LEPs) Order 2006 : Yes

d) Which SEPPs have the RPA identified?

SEPP No 71—Coastal Protection

SEPP (Rural Lands) 2008

e) List any other

None

matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? Yes

If No, explain :

s117s Directions

The planning proposal is consistent with the Illawarra Shoalhaven Regional Plan. It will assist in supplying sufficient housing, support housing opportunities close to existing services and deliver housing in new release areas. It will also enable existing rural landholders to more efficiently manage their land and assets.

The planning proposal is consistent with the s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 3.1 Residential Zones, 3.4 Integrating Land Use & Transport and 5.10 Implementation of Regional Plans. The planning proposal does not contain provisions which would increase the permissible density of land within a rural zone or reduce the environmental protection standards. The proposed rural subdivision provisions will not create any new lot or dwelling entitlements. The planning proposal will enable the Torrens title subdivision of existing and proposed dual occupancy development on residential zoned land which is already serviced. There is no change to the density or form of residential development.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 3.1 Residential Zones, 3.4 Integrating Land Use & Transport and 5.10 Implementation of Regional Plans.

It is unknown whether the planning proposal is consistent or justifiably inconsistent with the s117 Directions 4.4 Planning for Bushfire Protection. The planning proposal will apply to lands which are mapped as bushfire prone land.

Recommendation: In accordance with the s117 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the Commissioner of the NSW Rural Fire Service and to confirm that notwithstanding any non-compliance with the provisions for Planning for Bushfire Protection, the Rural Fire Service does not object to the progression of the Planning Proposal.

SEPPs

The proposal is consistent with SEPP 71 Coastal Protection and the Rural Lands SEPP. The proposal is clarifying residential subdivision and rural boundary adjustment controls in coastal and rural areas where these types of subdivisions are already occurring with development consent.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : The planning proposal does not include any mapping amendments to the Kiama LEP 2011. However similar clauses in other Standard Instruments have resulted in changes to the Lot Size Map when there are areas in a zone with different minimum lot sizes for subdivision. Clarification on the need for mapping changes will be sought from Parliamentary Counsel when the LEP amendment is drafted.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council requests that the planning proposal be publicly exhibited for 28 days. Public notification of the exhibition will include local newspaper notifications, notice on Council's website, hard copies will be available at Council's administration buildings and notification letters to surrounding property owners.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment : The planning proposal addresses the Department's "A guide to preparing planning proposals, 2016" and is considered adequate for a Gateway Determination with conditions.

A project timeframe of twelve months to complete the rezoning process is included in the planning proposal. This is considered to be reasonable.

Council has confirmed in its referral letter of 6 June 2017 that it is seeking Council Officer Delegation to prepare the draft LEP under Section 59 of the EP&A Act. Appendix 4 – Evaluation Criteria for the Delegation of Plan making Functions was submitted. Due to the nature of the proposal and the proposed use of existing subdivision clauses used elsewhere, it is considered appropriate to provide delegations to Council.

Recommendation: The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

Recommendation: Delegation to be provided to Kiama Municipal Council.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Kiama LEP was notified on 16 December 2011.

Assessment Criteria

Need for planning proposal : The planning proposal is the only mechanism available for amending the current provisions – land use table and subdivision clauses, of the Kiama LEP.

Consistency with strategic planning framework : The planning proposal is not the result of any strategic study or report. The proposal is the result of an administrative review of the Kiama LEP's subdivision provisions and the implementation of these provisions during the assessment of development applications. The planning proposal is not inconsistent with the Illawarra Shoalhaven Regional Plan or Kiama Urban Strategy 2011.

Environmental social economic impacts : The planning proposal will enable more efficient residential and rural development which will result in positive environmental, social and economic impacts. The dual occupancy provisions will not result in any changes to the built form but will allow for subsequent Torrens title subdivision in proportion to the minimum lot size applying in that area.

The rural boundary lot adjustment provision will enable landholders to better manage the environmental features on their land via more appropriate lot boundaries and subsequent property ownership.

The new subdivision provisions will streamline the assessment of subdivision applications which will result in time and cost savings.

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Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - s56(2)(d) : **NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **The planning proposal identifies Council will consult with the NSW Rural Fire Service in accordance with s117 Direction 4.4 Planning for Bushfire Protection.**

Recommendation: Council will consult with the NSW Rural Fire Service in accordance with s117 Direction 4.4 Planning for Bushfire Protection.

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

No studies have been completed or are required for the planning proposal due to its nature.

Recommendation: No technical studies are required.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons : **The planning proposal identifies that no additional public infrastructure will be required as a direct result of the planning proposal. It is allowing for the subdivision of dual occupancies that are already built or have been assessed and approved for construction.**

Documents

Document File Name	DocumentType Name	Is Public
20170618 Housekeeping Amendments to Subdivision provisions planning proposal letter KCC to DoPE requesting gateway determination.pdf	Proposal Covering Letter	Yes
20170817 Housekeeping Amendments to subdivision provisions planning proposal planning proposal V4.pdf	Proposal	Yes
20170817 Housekeeping Amendments to subdivision provisions planning proposal email KMC to DPE change to Planning proposal.pdf	Proposal Covering Letter	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.2 Rural Zones**

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- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.4 Planning for Bushfire Protection
- 5.10 Implementation of Regional Plans

Additional Information :

The Director Regions, Southern as delegate of the Minister for Planning, determines under section 56(2) of the EP&A Act that an amendment to subdivision provisions in the Kiama LEP 2011, to enable subdivision of dual occupancies in residential areas and adjustment of rural allotment boundaries, should proceed subject to the following conditions:

1. No technical studies are required.
2. Consultation is required with the NSW Rural Fire Service in accordance with s117 Direction 4.4 Planning for Bushfire Protection. The Service is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal. Any agency advice received and council's proposed response to this advice should be placed on public exhibition with the planning proposal.
3. Community consultation is required under Sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of A Guide to Preparing local environmental plans (Department of Planning and Environment 2016).
4. A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).
5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Delegation is to be provided to Kiama Municipal Council.
7. The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 3.1 Residential Zones, 3.4 Integrating Land Use & Transport and 5.10 Implementation of Regional Plans.
8. The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are only of minor significance.

Supporting Reasons :

The planning proposal will provide for more efficient subdivision provisions in existing residential and rural areas. The provisions are consistent with adopted model clauses and clauses used in other Standard Instruments.

Signature:



Team Leader

Printed Name:

GRAHAM TOWERS

Date:

30/8/17.

