



IRF24/2963

# Gateway determination report – PP-2024-2097

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Urban Release Area Clause

January 25



Published by NSW Department of Planning, Housing and Infrastructure

[dpie.nsw.gov.au](https://dpie.nsw.gov.au)

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# Acknowledgment of Country

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

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# 1 Planning proposal

## 1.1 Overview

**Table 1 Planning proposal details**

<b>LGA</b>	<b>Kiama</b>
<b>PPA</b>	<b>Kiama Council</b>
<b>NAME</b>	<b>Urban Release Area Clause</b>
<b>NUMBER</b>	<b>PP-2024-2097</b>
<b>LEP TO BE AMENDED</b>	<b>Kiama LEP 2011</b>
<b>ADDRESS</b>	<b>LGA wide – South Kiama Urban Release Area (URA) and any future Urban Release Areas</b>
<b>DESCRIPTION</b>	<b>Proposal to allow the creation of undersized residue lots to enable subdivision of urban release areas.</b>
<b>RECEIVED</b>	<b>27/11/2024</b>
<b>FILE NO.</b>	<b>EF24/18056; IRF24/2963</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- The proposal seeks to facilitate the orderly and economic use and development of land within the Kiama Urban Release Area and future urban release areas.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Kiama LEP 2011 to introduce flexibility to vary the minimum lot size controls that applying to the subdivision of land within urban release areas by adding new clause 7.5 and clause 7.6 into Kiama LEP 2011 as follows:

### *7.5 Relationship between Part and remainder of Plan*

*A provision of this Part prevails over any other provision of this Plan to the extent of any inconsistency.*

### *7.6 Exceptions to minimum lot size—subdivision of land in approved land use zones*

*(1) The objective of this clause is to allow for the subdivision of particular land that is wholly or partly in an urban release area to create 1 or more new lots (each a residual lot) of a size that is less than the minimum lot size shown on the Lot Size Map in relation to the land in particular circumstances.*

*(2) This clause applies to a lot (the original lot) if the original lot, or part of the original lot is—*  
*(a) in an urban release area, and*  
*(b) in an approved land use zone.*

*(3) Development consent may be granted to subdivision of the original lot to create a residual lot of a size that is less than the minimum lot size shown on the Lot Size Map in relation to the land comprising the residual lot if the residual lot is within one or more approved land use zones, or an approved land use zone and another zone.*

*(4) A dwelling cannot be erected on a residual lot that is less than the minimum lot size created by clause 7.6(3).*

*(5) In this clause—*  
*approved land use zone means any of the following land use zones—*  
*(a) Zone RU2 Rural Landscape,*  
*(b) Zone C2 Environmental Conservation,*  
*(c) Zone C3 Environmental Management.*

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. It is noted that the final wording of any provisions will be subject to approval by Parliamentary Counsel.

## 1.4 Site description and surrounding area

The planning proposal was lodged in relation to the South Kiama Urban Release Area (URA), the only URA currently identified in the Kiama LEP (KLEP 2011) but is intended to also apply to future Urban Release Areas.

The South Kiama URA relates to approximately 40ha of land between Saddleback Mountain Road, Kiama and Weir Street, Kiama Heights at the southwestern edge of the Kiama township. The site is surrounded by a mix of rural, rural-residential, and residential land immediately to the north, south and west with the Princes Highway immediately to the east with more residential land further east.

The South Kiama URA (Figure 1) is the only existing URA, and the proposed clauses will apply to land zoned RU2 Rural Landscape, C2 Environmental Conservation and C3 Environmental Management which do not comply with the 40Ha minimum allotment size for the respective zones under KLEP 2011.



Figure 1 South Kiama Urban Release Area (source: Planning Proposal)



Figure 2 Site context – South Kiama Urban Release Area (source: Nearmap)

## 1.5 Mapping

The planning proposal includes mapping that shows the current zoning (Figure 3) and minimum lot size (Figure 4) of the South Kiama Urban Release Area which are suitable for the purpose of providing context for community consultation.

The planning proposal does not propose to alter any LEP maps.

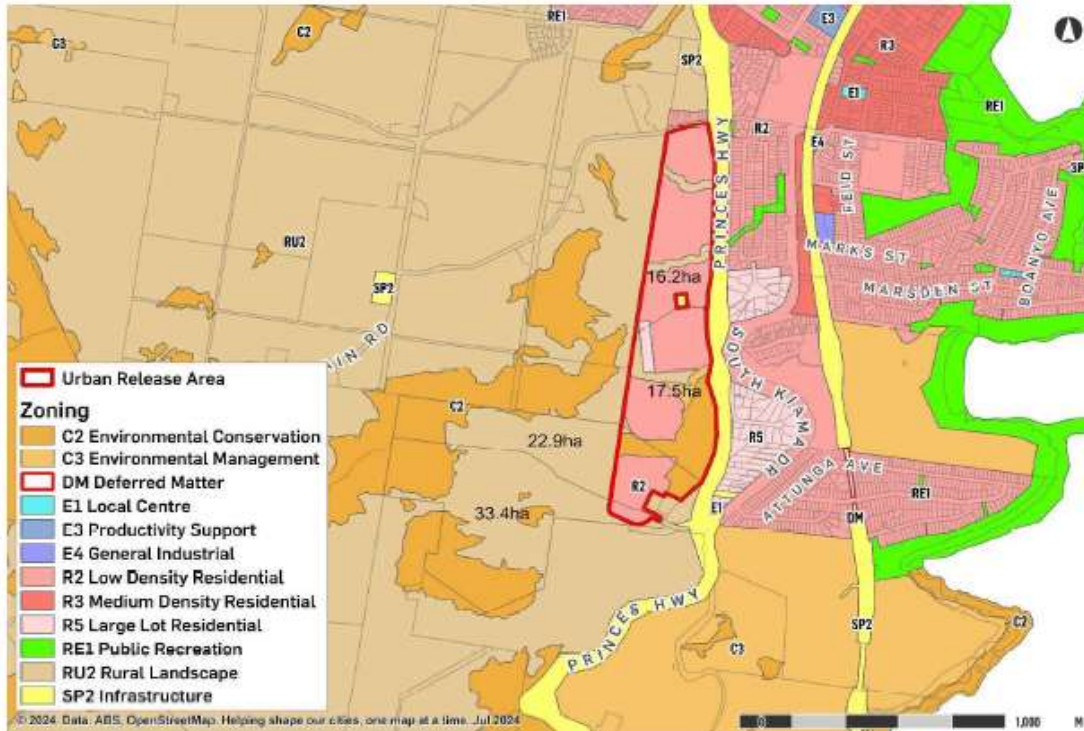


Figure 3 Zoning Map – South Kiama Urban Release Area and surrounds (source: Planning Proposal)

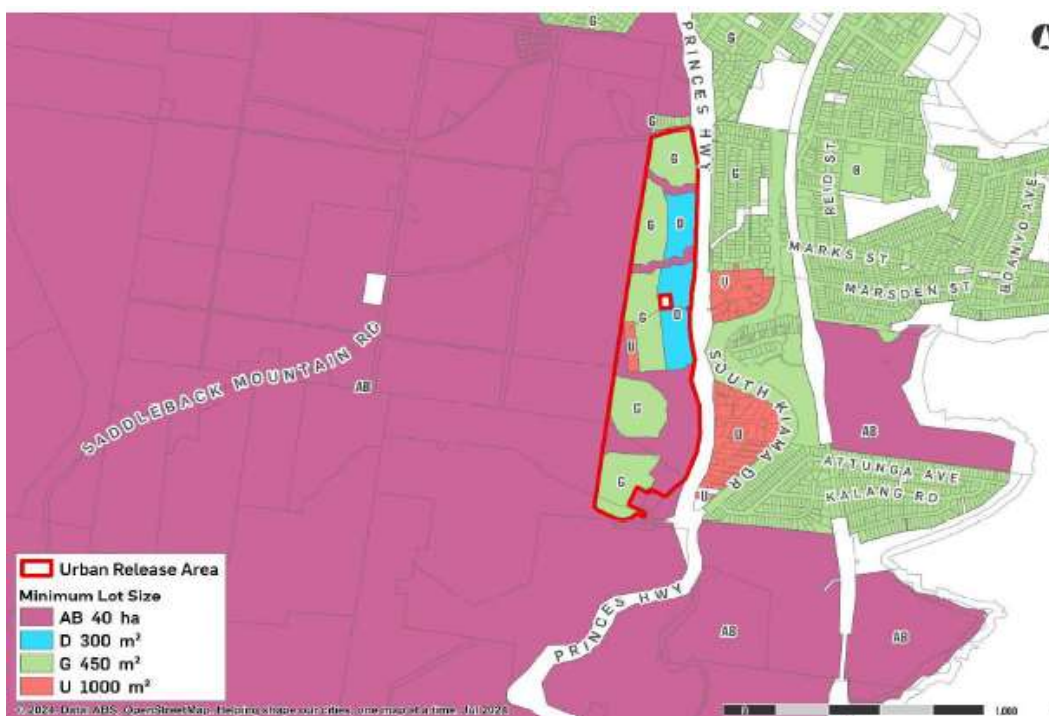


Figure 4 Lot size Map – South Kiama Urban Release Area and surrounds (source: Planning Proposal)

## 1.6 Background

The South Kiama Urban Release Area was rezoned for urban development in 2022 by the State. The intent of the proposal was to rezone rural land to permit residential development and also to recognise the environmental values of the site and apply appropriate zones for management of these areas.

Kiama Council is currently preparing a site-specific Development Control Plan (DCP) chapter for the site. Once a DCP is adopted a Development Application for subdivision could be approved, however the current restrictions in relation to minimum lot size would prevent this from occurring and are a barrier to creation of new residential lots.

## 2 Need for the planning proposal

The Planning proposal is not the result of strategic study or report.

During the preparation of the site specific DCP for the South Kiama Urban Release Area Council identified that the Kiama LEP 2011 does not include provisions to enable the proposed subdivision to occur. The subdivision of land to create residential lots permitted in the current R2 and R3 zones will result in the creation of residue C2 (Environmental Conservation), C3 (Environmental Management) and RU2 (Rural Landscape) lots that are less than the minimum lot size required under the LEP, which is currently not allowed.

In order to facilitate subdivision and enable residential development within this urban release area, there is a need for a planning proposal to include an additional clause (or clauses) in the LEP to allow for residue lots to be created within the C2 (Environmental Conservation), C3 (Environmental Management) and RU2 (Rural Landscape) zones that are less than the required minimum lot size mapped in the LEP.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Illawarra Shoalhaven Regional Plan 2041. The planning proposal is consistent with the Illawarra Shoalhaven Regional Plan as it seeks to unlock housing supply in a strategically identified urban release area that will increase residential land supply and housing within the Kiama LGA.

**Table 3 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 18 - Provide Housing supply in the right locations	<p>The planning proposal states that it will enable the orderly and economic development of the South Kiama Urban Release Area which has been purposefully rezoned to enable delivery of residential allotments. The proposal concludes that in rezoning the South Kiama Urban Release Area that DPHI recognised it as a suitable location to accommodate housing supply.</p> <p><i>The State rezoned the South Kiama Urban Release Area in 2022 to provide for housing. This planning proposal will facilitate the subdivision of the site that will enable residential development. The proposal is considered consistent with this Objective, and generally with the broader Regional Plan.</i></p>

Objective 19 -  
Provide Housing  
that is more diverse  
and affordable

The planning proposal states that proposed amendment will not alter the minimum lot size control of residential zoned land in an Urban Release Area.

*DPHI agrees that the delivery of increase housing supply in Kiama is important to ensure housing affordability in the area, and that this proposal will facilitate the subdivision and residential development of the identified urban release area. Therefore, the PP is considered consistent with this Objective.*

## 3.2 Local

The proposal states that it is consistent with the Kiama Local Strategic Planning Statement (LSPS) 2020 and the Draft Kiama Growth and Housing Strategy, as detailed in the table below:

**Table 4 Local strategic planning assessment**

Local Strategies	Justification
Kiama Local Strategic Planning Statement 2020 – Section 10 Future Housing Opportunities (Theme 1 – Manage sustainable growth)	<p>The proposal states that the inclusion of proposed clause 7.5 and clause 7.6 into KLEP 2011 (or similar) will facilitate the delivery of residential land in urban release areas and enable Council to achieve a significant component of its housing target.</p> <p>DPHI agrees that the proposed provisions will facilitate the outcomes of the South Kiama URA and allow for the development of the residential zoned area to deliver important new housing opportunities for the Kiama LGA.</p>
Draft Kiama Growth and Housing Strategy	<p>The Planning Proposal notes that Council has developed a draft Growth and Housing Strategy which will outline planning principles, enliven existing identified growth areas, and will scope opportunities to plan future growth location.</p> <p>The Draft Kiama Growth and Housing Strategy is to be reported to Council on 16 July for adoption for exhibition purposes. From the evidence base informing the Kiama Growth and Housing Strategy incorporating data from REMPLAN 2024, the population of Kiama is projected to increase from 23,398 in 2024 to 31,115 in 2044 with a 71% increase in the population of 75+ year olds (1,906 persons) over this period. It has been identified that providing a diversity of lot sizes is important to meet broad demographics of the Kiama LGA and will help achieve housing affordability and sustainability.</p> <p>At the time of writing this report, DPHI is aware that the Draft Strategy was publicly exhibited in August 2024 and Council is currently preparing a revised draft for further consultation.</p>

## 3.3 Section 9.1 Ministerial Directions

The planning proposal submitted to Council does not specifically address the 9.1 Directions, however the associated Council report includes an appropriate consideration of the PP against the Directions, which is discussed below.

It is considered appropriate that, as a condition of the Gateway determination, Council updates the planning proposal document prior to community consultation to address the Ministerial Directions.

The planning proposal's consistency with relevant section 9.1 Directions is discussed overleaf:

**Table 5 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	<p>The planning proposal states that it is consistent with the Illawarra-Shoalhaven Regional Plan 2041 and therefore consistent with Direction 1.1.</p> <p>DPHI agrees that the proposal is consistent with the Illawarra Shoalhaven Regional Plan 2041.</p>
1.4 Site Specific Provisions	Inconsistency justified	<p>The proposal seeks to add a new local provision to provide an exemption to the minimum lot size for certain land zones within the South Kiama URA. However, any inconsistency is considered to be minor as it will facilitate the delivery of the new housing in the URA.</p>
3.1 Conservation Zones	Yes	<p>The proposal could be seen as reducing the minimum lot size requirements in the C2 and C3 zones. However, it does not reduce the extent of these zones and any impacts on the environment can be managed through the preparation of a DCP and the development assessment process.</p> <p>The proposal will enable subdivision of the land and management of environmental lands will be a key consideration in assessment of the subdivision application.</p>
3.2 Heritage Conservation	Yes	<p>The planning proposal notes that heritage items such as Kendall's Cemetery and various Dry Stone Walls are located within the current URA area, and therefore this Direction applies. However, the proposal will not alter the existing provisions of the Kiama LEP 2011 and Kiama DCP 2020 which give effect to heritage conservation and therefore, the proposal is consistent with Direction 3.2.</p> <p>DPHI agrees that the proposal will not impact on the heritage items nor alter the heritage provisions within the LEP and therefore it is consistent with the Direction</p>
4.1 Flooding	Yes	<p>The planning proposal states that the site is flood affected and that flooding will not be impacted by the proposed clause and therefore the PP is consistent with Direction 4.1.</p> <p>DPHI notes the flood affectation and is aware that flooding was considered in the earlier strategic identification of the URA and during land rezoning and lot size allocation. The proposal does not increase development potential in flood prone areas and flooding will be further considered in the DCP and development assessment process. The planning proposal is not inconsistent with this Direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire Protection	Yes	<p>The proposal notes that the South Kiama URA site is Bushfire affected and that objective of the proposal does not alter the design of the URA which has regard for Planning for Bushfire Protection 2019 and incorporates APZs. This proposal does not introduce any new controls that place inappropriate developments in hazardous areas, nor does not alter or impact the bushfire affectation of the land. Council considers the PP to be consistent with Direction 4.3.</p> <p>DPHI agrees that the proposal does not seek to create any further development potential outside of the strategically identified residential zonings that apply for to the identified urban release area within the Kiama LEP 2011 and acknowledges that the development of the URA gave consideration to the provisions of this Direction 4.3. It is considered that the proposal is consistent with Direction 4.3.</p>
5.1 Integrating Land for Public Purposes	Yes	<p>The planning proposal details that the proposed provisions will not impact on transport choice and will not impact on permitted uses and the types of business that can be established in any proposed business zone. Therefore, the PP is consistent with Direction 5.1.</p> <p>DPHI agrees that the proposal is consistent with this Direction.</p>
5.2 Reserving Land for Public Purposes	Yes	<p>The proposal outlines that the URA area of South Kiama will incorporate land reserved for Public Open Space and the restoration of Kendalls Cemetery. This proposal will not create, alter or reduce existing zonings or reservations of land for public purposes and therefore the PP is consistent with Direction 5.2.</p> <p>DPHI agrees with that the proposal is consistent with this Direction.</p>
6.1 Residential Zones	Yes	<p>The planning proposal states that it applies to an approved Urban Release Area of South Kiama for the rezoning of residential land. Council is in the process of adopting a site specific DCP specific for the new URA to guide good design and encourage a variety and choice of housing types, and that new housing has appropriate access to infrastructure and services, whilst minimising the impact on the environment. This PP will facilitate the new URA for the provision of housing. The PP will not change the requirements of the site specific DCP. Therefore, the PP is consistent with Direction 6.1.</p> <p>DPHI agrees with that the proposal is consistent with this Direction.</p>
9.2 Rural Lands	Yes	<p>The proposal outlines that it proposes to facilitate the development of urban release areas, which will include the creation of residue lots, some which may be a rural zoning, to facilitate the urban development.</p> <p>DPHI agrees that the provisions proposed in the planning proposal will have no impact on rural land, and merely seek to separate it via subdivision from surrounding residential zoned land to facilitate residential development. Therefore, the proposal is consistent with the Direction.</p>

## 3.4 State environmental planning policies (SEPPs)

The planning proposal does not specifically address its consistency with State Environmental Planning Policies (SEPPs).

DPHI has considered the objectives of the proposal against the SEPPs and is comfortable that the outcomes will not impact upon the operation of any SEPPs.

A condition of the Gateway determination is recommended to require the planning proposal to be updated prior to consultation to show consideration of the proposal against any relevant SEPPs.

## 4 Site-specific assessment

### 4.1 Environmental

The planning proposal states there will be no adverse environmental impacts resulting from the planning proposal as the proposal represents a drafting anomaly which prevents the subdivision of land zoned for rural or conservation purposes from residential zoned land in an approved urban release area, and where the rural and conservation zoned lots will be under the minimum lot size.

DPHI agrees that the zoning of the South Kiama URA was investigated and implemented through an earlier strategic planning process, with environmental and other constraints considered at that stage. The ability to create residue rural and conservation zoned land below the minimum lot size for the purpose of allowing subdivision of residential land is consistent with the intent of the creation of the URA.

This does not alter zones or prevent proper management of rural and environmental lands which will be considered further through the preparation of a DCP and the development assessment process.

### 4.2 Social and economic

The planning proposal states that there will be no adverse social or economic effects arising from the insertion of clause 7.5 and clause 7.6 into KLEP 2011. The proposed clauses will enable the orderly and economic development of land within Kiama urban release areas.

DPHI agrees with the assessment within the planning proposal. The proposed amendments seek to facilitate residential development within residential zones in an approved urban release area and will provide housing and employment opportunities.

### 4.3 Infrastructure

The planning proposal will not result in an increased demand for public infrastructure.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms to the conditions of the Gateway determination.

## 5.2 Agencies

The proposal does not identify any agencies which Council will consult with, rather refers to those to be specified in the Gateway Determination.

Having regard to the nature of the proposal which does not alter the zoning of the land, DPHI does not consider that consultation with state agencies is necessary.

## 6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard

The Department recommends an LEP completion date of 9 months from the date of the Gateway determination in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the site/planning proposal seeks introduce provisions that will facilitate the orderly subdivision of an approved Urban Release Area strategically identified in a 2022 amendment to the Kiama LEP 2011, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions as it is required to enable the subdivision of residential land and the creation of residue rural and conservation zoned lots which can be appropriately managed.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Include in the planning proposal document, the assessment of consistency with the Ministerial Directions contained in the Council report.
- Include in the planning proposal an assessment of the proposal against any relevant State Environmental Planning Policies.

## 9 Recommendation

It is recommended the delegate of the Secretary:

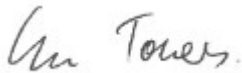
- Agree that any inconsistencies with section 9.1 Direction 1.4 Site Specific Provisions is justified as minor.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. Prior to community consultation, the planning proposal is to be updated to:
  - Include assessment of consistency with the Ministerial Directions.
  - Include an assessment of the proposal against any relevant State Environmental Planning Policies.
  - Consult the NSW Rural Fire Service in relation to section 9.1 Direction 4.3 Planning for Bushfire Protection.
2. Prior to community consultation, the planning proposal is to be revised to address condition 1.
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 9 months from the date of the Gateway determination be included on the Gateway.



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