

APPLICATION NUMBER: 10.2023.59.1

**NSW ePLANNING PORTAL
REFERENCE:**

APPLICANT: PSEC Project Services

OWNER: Kiama Spring Creek Pty Ltd

PROPERTY DESCRIPTION: LOT: 2 DP: 805229, Dido Street KIAMA

SITE ZONING: R2 Low Density Residential / PART C2
Environmental Conservation

DEVELOPMENT DESCRIPTION: Demolition of existing development and subdivision of land for the creation of 67 residential lots and 1 community lot. Housing comprising 60 semi-detached dwellings and 7 detached dwellings are proposed to be constructed on the residential lots. The Community lot will include a private road network, public recreational park, stormwater and civil infrastructure and rehabilitation of the existing riparian corridor. The development will also include site establishment such as earthworks, vegetation removal and services.

DATE: 31 January 2024

Executive Summary

This report reviews DA 10.2023.59.1 which involves demolition and clearing; bulk earthworks; construction of a private road network and stormwater infrastructure; construction of housing including 60 semi-detached dwellings and 7 detached dwellings; subdivision of land into 67 residential lots plus a Community lot including the private road network, park, stormwater infrastructure; and rehabilitation of the existing riparian corridor.

The subdivision and housing is designed as multiple attached / semi-detached dwellings with Clause 4.1A of Kiama LEP 2011 permitting resultant lot sizes to a minimum area of 50% of the minimum lot size (225m² / lot, minimum 450m² permitted).

An offer to enter into a draft Voluntary Planning Agreement is also proposed to fund a study to investigate design options for construction of a new bridge over Spring Creek, replacing the existing bridge which is affected by flooding.

The site is mapped as Bushfire Prone Land with the site also containing waterfront land within works proposed within 40m of a watercourse.

The proposal also relies on access from Dido Street which is flood affected by Spring Creek, being advised at 5% Annual Exceedance Probability. Council's *Spring Creek Catchment Flood Study – Final Report* dated May 2014 advises that the existing bridge crossing over Spring Creek and surrounding lands is high risk. This raises concerns that the proposed development (along with existing development north of the creek) does not have a flood free access/egress, with no means of carrying out an emergency evacuation by road in the event of a major flood.

The report recommends DA 10.2023.59.1 be refused on the following grounds:

1. The lack of flood free access/egress in the event of an emergency evacuation from the development during a defined flood is unacceptable having regard to the EP&A Act S.4.15(1)(b) – social and economic impacts in the locality, and S.4.15(1)(c) the suitability of the site for the development.
2. The proposal does not provide flood free access/egress as required pursuant to Kiama Development Control Plan objective O:3.6.44 – Property Access
3. The proposed Planning Agreement submitted pursuant to S.7.4 of the EP&A Act to fund a flood free access study is considered inadequate to address the critical issue of flood free access/egress.
4. The proposal is considered unsatisfactory having regard to S.4.15(1) (d) and (e) having regard to issues raised in submissions, and the public interest
5. The proposal does not satisfactorily demonstrate how protection and maintenance of terrestrial biodiversity will be achieved having regard to Clause 6.4 Terrestrial biodiversity of Kiama LEP 2011.
6. The development requires an Asset Protection Zone over neighbouring land Lot 3 DP805229 with owners consent not obtained for this as required pursuant to cl.23 of the Environmental Planning and Assessment Regulation 2021.
7. The proposal involving 67 Torrens title residential lots and one Community lot does not satisfactorily demonstrate binding arrangements for the maintenance of the Community lot drainage, roads and park, pursuant to the *Community Land Development Act 2021* clause 8 Establishment of community scheme.

Community Consultation

Required: Yes (website, onsite notice and letter notification).

Notification Period: 14 days from 22 November – 6 December 2023.

Submissions: 21 submissions, all opposing.

Other Requirements

Kiama Section 7.12 Plan

Heritage Item or in the vicinity of site: Yes – presence of dry stone walls on site

Mapped Bushfire Prone Land: Category 3 Vegetation

Integrated Development

The application is Integrated Development for subdivision of the bushfire prone land pursuant to Section 100B of the Rural Fires Act 1997; and waterfront land pursuant to Section 91 of the Water Management Act 2000. General Terms of Approval have been sought and obtained from the NSW Rural Fire Service, and NSW DPI - Water.

Attachments

Nil

Enclosures

Nil

RECOMMENDATION

That Development Application No 10.2023.59.1 be refused pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to reasons at the end of this report.

Development Site

The property is described as LOT: 2 DP: 805229, located at the northern end of Dido Street. Refer to Figure 1.

The site area measures 3.658ha and is irregular in shape.

The site currently contains a class 10 shed structure and is mostly cleared as former grazing land.

The site is bound by rural and residential land, with a large rural holding used as grazing land to the north, east and west, and a mix of detached and semi detached dwellings to the south. Further north is the Bombo quarry. To the east is vacant residue parcel of residential land. Refer to Figure 2.

The site is predominantly cleared and has a varying slope, steepening towards the north with a fall to the east and south to a category one stream flowing through the site in an easterly / south-easterly direction.



Figure 1 – Locality Plan



Figure 2 – Locality Plan – site located at centre of view

The site drains overland to the east to Spring Creek and lagoon to the east of the site.

Access to the property is gained from the northern end of Glenbrook Drive which intersects with Dido Street to the south, with Dido Street including a bridge crossing over Spring Creek to link with Jamberoo Road which provides access to the town of Kiama and the Princes Highway.

The site has frontage to Glenbrook Drive has access to essential infrastructure services including reticulated water/sewer, electricity and telecommunications.

The site is subject to the following constraints:

- Flooding affectation – Dido Street bridge crosses Spring Creek, bridge is affected by more than 5% Annual Exceedance Probability of flooding with no alternative evacuation route
- Bushfire affectation – entire site and surrounds
- Geotechnical instability – steeper upper northern slopes
- Terrestrial biodiversity – north-eastern corner of site and portion along western side boundary characterised by established stand of trees and native vegetation.
- DP & 88b Restriction - noted on DP 805229 - Easement for Services 5m wide, and Easement for Water Supply over existing pipes

Background

The development application history is as follows:

30 March 2023 – lodgement of DA with Kiama Council

9 June 2023 – additional information (“RFI1”) requested including Aboriginal Heritage Assessment, Civil design detail, subdivision plan and Community title arrangements, and clarification on progress of offer for Voluntary Planning Agreement

7 July 2023 – additional information (“RFI2”) requested including driveway design, bushfire perimeter road standards, car parking and manoeuvring, swept path analysis for waste trucks, road design, traffic assessment – cumulative impact on Dido St and Jamberoo Rd, flooding during PMF event over Spring Creek bridge, stormwater design, WSUD and OSD measures.

1 August 2023 – briefing meeting no.1 with Planning Panel including site inspection. Key issues discussed included flood affected emergency egress, Asset Protection Zones for development, Geotechnical constraints of steep sloping parts of site.

7 August 2023 – briefing meeting no.2 with applicant, Council and Panel to discuss issues identified from first briefing meeting and site inspection

23 August 2023 – Minutes of briefing meetings issued by Panel. Key issues raised include lack of flood free access / egress, landowners consent required for Asset Protection Zones outside the site, geotechnical constraints and suitability of design for construction on steeper parts of the site, visual impact, Community title arrangements and requirements of the community management plan.

4 October 2023 – Flora & fauna assessment submitted – further justification for removal of Illawarra Rainforest

17 October 2023 – second meeting with Planning Panel. Key issues included flood affected emergency egress and requirement for Asset Protection Zone (APZ) to extend into eastern neighbouring land, owners consent for APZ not obtained from neighbouring landowners (Kiama Council)

18 October 2023 – applicant’s part response to RFI1 & RFI2 received, including flood risk management report, civil engineering plans, drainage report, subdivision plan.

21 November 2023 – briefing meeting no.3 between Council and Panel to discuss applicant’s additional information. The Panel reiterated critical issues that flood free access / egress is imperative for the proposed development, and that the provision of APZs outside of the development site had not been resolved.

The Panel acknowledged that the negotiation process for the completion of the bridge design and construction needs to occur outside of the development assessment process. This was advised on the basis that a replacement ‘flood proof’ bridge including design and funding with detailed flooding assessment, structural design, costings, funding, and timing to construct all requiring careful analysis by Council beyond the limitations of the timeline of the subject proposal.

Based on this Council were requested by the Panel to complete its assessment based on the information submitted at that time, and forward to the Panel prior to its meeting of 20 February 2024 as the tentative determination date.

Description of the Proposed Development

The proposal comprises a 67 dwelling development with subdivision comprising private community access, drainage works, landscaping and a park, detailed as follows:

- demolition and clearing vegetation;
- bulk earthworks for site grading and drainage;
- relocation of an existing dry stone wall adjacent to the western boundary
- civil works including construction of:
 - o a private road network with a single two way collector road extending from Glenbrook Drive, plus two one way loops – one northern loop and one southern loop incorporating 6.4m – 9m wide road pavement,
 - o 1m footpaths plus 600mm rolled kerbs (total width min. 9m);
 - o two bridge crossings over the creek that traverses the site,
 - o stormwater infrastructure including open swale aligning to existing creek;
 - o local park located central to the development;
- Staged construction of housing including 60 semi-detached two storey dwellings and 7 detached dwellings;
- Housing designed as 3 - 4 bedroom two storey dwellings, and 2-3 storey dwellings on sloping sites, with attached single or double garage parking, and private open space to rear
- Construction of housing over 7 stages
- landscaping and rehabilitation of the existing riparian corridor associated with the creek through the site
- extension of existing critical infrastructure to service development including reticulated water and sewer, electricity and telecommunications
- subdivision of land into:
 - o 67 residential lots ranging in area from 250m² – 1,346m²; plus
 - o One Community lot including the private road network, park, stormwater infrastructure

Access to the development will be provided from the northern end of Glenbrook Drive.

Waste services are proposed with kerbside collection from each dwelling.

The proposal is shown in Figures 3 & 4 below.

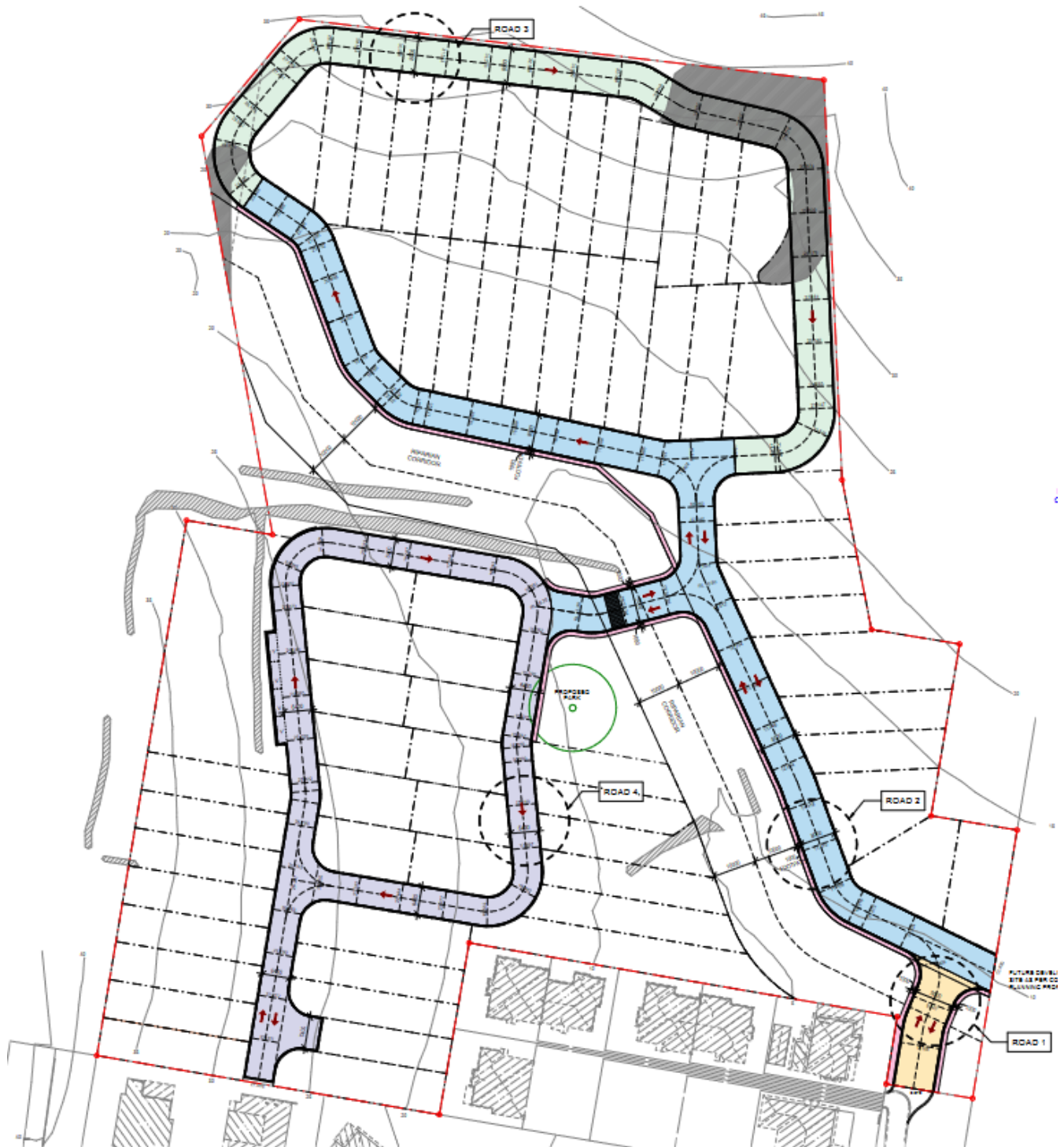


Figure 3 – Subdivision Plan (C2 Environmental Conservation Zone hatched grey)



Figure 4 – proposed subdivision and staging plan

Section 4.15 Assessment

The proposed development has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended) and the following matters are considered relevant.

Assessment Summary

Relevant Environmental Planning Instruments

The proposed development has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended) and the following matters are considered relevant.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 – Coastal management

The proposed development is within the mapped *Coastal Environment Area* and partly within the *Coastal Use Area*.

2.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment – The site is located on the edge of the established residential area of Kiama. The site is mostly cleared as former grazing land with the subdivision considered to result in no adverse impacts to the Coastal Environment Area.

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment – As stated above the proposal is not considered to cause any impacts on the site or surrounds noting the site is cleared with little vegetation removal required. Rehabilitation works within the riparian corridor are assessed as acceptable by Council's landscape officer.

2.11 Development on land within the coastal use area

In the *Coastal Use Area* the focus is on ensuring appropriate urban development for coastal areas, taking into account urban design issues such and maintaining scenic qualities, visual amenity and Aboriginal cultural heritage and places.

Under Cl.2.11 of the SEPP, development consent must not be granted to development on land that is within the 'coastal use area' unless the consent authority:

- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability;*
 - (ii) *overshadowing, wind funneling and the loss of views from public places to foreshores;*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands;*
 - (iv) *Aboriginal cultural heritage, practices and places;*
 - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised - the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment

The development is considered to be acceptable pursuant to Cl.2.11 of the SEPP, noting that it is not near any coastal elements, will not obstruct coastal access or views, and does not adversely impact the visual amenity or scenic qualities of the coast.

Chapter 4 – Remediation of land

Clause 4.6 of the SEPP requires Council to consider whether the land is contaminated and if it is contaminated if remediation works are required.

The Hazardous Materials Survey report submitted with the DA identifies an old shed containing asbestos sheeting. The report makes recommendations for demolition and removal of the asbestos and lead paint. Subject to carrying out demolition and remediation in accordance with this report, the site may be considered suitable for residential development and occupancy. Notwithstanding this is not grounds for which the proposal may be supported.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged for the new dwellings with the application which demonstrates that each dwelling has been designed in accordance with BASIX.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

Clause 9 and 10 of the SEPP (Vegetation in Non-Rural Areas) 2017 outlines that consent is required for the clearing of certain vegetation in non-rural areas. Clearing is proposed to facilitate the proposed development.

Kiama LEP 2011

Clause 2.3 - Zone objectives and Land Use Table

The subject land is zoned predominantly R2 Low Density Residential with two small parts zoned PART C2 Environmental Conservation pursuant to Kiama LEP 2011.

The proposal is defined as *dwelling houses, semi-detached dwellings, Environmental Protection Works, Roads, Environmental protection works, and a Recreation area* under the provisions of the LEP 2011, which are permitted with consent in the R2 Low Density Residential. Portions zoned part C2 Environmental Conservation zone permit roads, with housing not proposed within these areas.

The objectives of both zones are set out as follows with comment on these below.

Zone R2 Low Density Residential

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To increase the supply of secondary dwellings for affordable rental housing stock.*
- *To provide economic and employment opportunities for people who conduct business activities from their homes where these will not adversely affect the amenity of neighbours or the neighbourhood.*

Zone C2 Environmental Conservation

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To ensure adequate environmental buffers are provided, maintained or rehabilitated in the vicinity of high ecological value areas and waterways.*

Comment – The proposal is considered an acceptable form of low density residential development with a mix of detached and semi detached dwellings. The subdivision design is supported by the Flora and Fauna Assessment which finds that minor portions of the site zoned C2 at the north-eastern corner and along the western boundary are not significantly impacted noting presence of exotic woody species and lantana in these areas.

Notwithstanding, this is not grounds alone for support of the proposal at the present time, noting the lack of flood free egress as discussed later in this report.

Specific clauses requiring consideration:

Clause 4.1A – Exceptions to minimum lot size for development in Zone R2 and Zone R3

The LEP minimum lot size map indicates a minimum lot size for the land of 450m² per lot. Exception to this is permitted under Clause 4.1A.

Clause 4.1A permits a minimum lot size of 50% of the mapped minimum (450m² / 225m²) for attached / semi-detached / detached dwellings on each lot resulting from the proposed subdivision. Each lot includes a dwelling / semi detached dwelling with lot sizes ranging from 250m² – 1,346m² which complies.

Clause 4.3 - Height of Buildings

Clause 4.3 requires that the height of the building does not exceed the maximum height shown on the Height of Buildings Map. The height of building map identifies that a maximum building height of 8.5m applies to the site. The proposed housing is designed with all dwellings below the height limit, and complies.

Clause 4.4 - Floor Space Ratio

Clause 4.4 requires that the floor space ratio does not exceed the maximum floor space ratio shown for land on the Floor Space Ratio (FSR) map. The Floor Space Ratio (FSR) map of the KLEP 2011 identifies that a maximum floor space ratio of 0.45:1 applies to the site.

In this regard the proposed housing has a range of FSRs from 0.26:1 to 0.45:1 which complies.

Clause 5.10 - Heritage Conservation

Clause 5.10 lists requirements for heritage conservation for items listed in Schedule 5 of the Kiama LEP 2011.

The site contains a Dry Stone Wall which is identified as an item of local heritage significance. The proposal seeks to re-locate a portion of the existing stone wall to facilitate the proposed development.

The Heritage Impact Assessment submitted with the proposal reasons this results in a manageable impact based on disturbance being limited to a minor portion of the wall. Further its historic purpose of defining a road boundary will be reinstated with the relocated portion of wall adjacent to the proposed private road.

Clause 6.1 - Acid Sulfate Soils

Clause 6.1 lists requirements for land affected by Acid Sulfate Soils.

The site is subject to Acid Sulfate Soils Class 5 and the provisions requires that an Acid Sulfate Soils management plan be prepared and lodged with the development application for the proposed work unless more than 1 tonne of soil is disturbed by the proposal.

Based on the large size of the project and slope of the site more than 1 tonne of soil will require cut and fill works. This requirement has been satisfactorily addressed.

Clause 6.2 - Earthworks

Clause 6.2 lists considerations for proposals which involve earthworks. The proposal is consistent with the objectives of this clause noting the proposed civil works including cut and fill for roads and lot grading / benching are ancillary to and necessary to facilitate the proposed development. Noting the steeper sloping parts of the site proposed for development, the Geotechnical Assessment advises that the risk of slope instability is 'low to moderate', and makes recommendations for battering and construction standards in these areas which is considered satisfactory.

Clause 6.4 Terrestrial Biodiversity

Two relatively small portions of the site are mapped as terrestrial biodiversity, located at the upper north-eastern corner and along the western boundary.

In considering the requirements of cl.6.4, the proposal includes clearing of approximately 0.21ha of Illawarra subtropical rainforest which is identified in a degraded condition. Vegetation within the site study area is predominantly exotic grassland and weeds (3.01 ha) with clearing of this raising no concerns.

The proposal also includes development of a riparian corridor (~0.47 ha), located to avoid and minimise hydrological impacts (surface and groundwater) and improve riparian and ecological functions through removal of exotic vegetation. The removal of the remaining degraded native and exotic vegetation is not considered to cause any significant adverse environmental impacts or adversely affect the significance of threatened flora and fauna in the locality.

Any Draft Environmental Planning Instruments

Draft State Environmental Planning Policy

Nil draft SEPPs of relevance to the site or proposed development

Kiama Development Control Plan 2020

The proposed development is not inconsistent with the objectives Kiama DCP 2020. The minor non-compliances are addressed in the table below:

Control	Requirement	Compliance
Neighbour Notification	Section 24 – Ch2 – KDCP	Satisfactory
Waste	Kerbside collection available KDCP Ch.3.1.16 – 3.1.18	Comment – Private Road network will require a S.88B Instrument to include details on waste collection
Retaining walls	Cut / fill limited to 900mm, or engineer designed with retaining walls KDCP Ch.3.1.1 & 3.1.2	Comment – engineers design & geotechnical assessment provided
Parking	1 space behind building line + 1 space behind front boundary KDCP Ch.3.6.3	Yes – all dwellings provided with 2 spaces with min. 1 garage space
Road design	Access Street: 8m pavement + 2 x 3.5m verge KDCP Ch.3.6.66	Comment – Variation sought. 8m pavement + 1.3m verge / path proposed as a private road
Access	Enable rapid & safe evacuation of residents, and easy access to emergency services vehicles, in the case of a bush fire, flood or storm event or any other emergency requiring access to or evacuation of people from dwellings. KDCP O.3.6.44	NO – Unacceptable. The single existing access / egress provided along Dido Street is not above the 5% AEP flood event. Future development of the site is dependant on flood free access / egress being provided.
Dual occupancy – KDCP Ch.6.4 (most dwellings proposed as attached dual occupancies)		
Lot frontage width	15m for dual occ KDCP Ch.6.4.10	Yes – all dual occ lots > 15m wide
Lot slope	Max. 20° average (36%) KDCP Ch.6.4.13	Yes – 20% ave. for steeper northern lots 6 – 18.
Adaptable housing	1 in 2 dwelling for dual occ KDCP Ch. 6.4.15	No – not demonstrated
Orientation	Design locates living areas within 30° east and 20° west of north where possible – KDCP Ch.6.4.25	Satisfactory - @ 60% of lots achieve this

Control	Requirement	Compliance
Solar access	Min 3 hours direct sunlight achieved to 50% of living areas & POS of development and neighbours between 9am-3pm winter solstice KDCP Ch.6.4.26	Satisfactory – E-W oriented dwellings will receive min. 3 hours combined to east facing and west facing windows & POS
Building lines	Min. 4.5m front building line KDCP Ch.6.4.32 / 6.1.17	Yes – min. 4.5m adopted for all lots with 5m driveway length
Secondary building line – corner lots	Min. 3.5m to side boundary KDCP Ch. 6.1.18	Yes – min. 3.5m adopted for all corner lots
Rear setback	Min. 6m – KDCP Ch.6.1.20	Yes – min. 6m adopted for all lots
Side setbacks	900 mm wall 675 mm eaves KDCP Ch.6.1.23, 6.4.32	Yes – 900mm adopted
Garage carport building line /	Locate behind building line KDCP Ch.6.1.24	Yes – all dwellings have garages behind front building line.
Building footprints	60% of site area KDCP Ch.6.4.34 / 6.1.60	Yes – all lots < 60%
Storage	2 bed - 8m ³ 3+ bed - 10 m³ KDCP Ch. 6.4.36 / Ch.6.1.64	Yes - 10m ³ minimum available for each dwelling in garage and linen cupboards
Parking design	Occupy max 50% of front elevation KDCP Ch.6.1.65	Yes – all dwellings designed with garages occupying < 50% of façade area

Any Planning Agreement

An offer to enter into a Planning Agreement was submitted to Council, comprising funding to cover the costs of a Flood Study to inform the design of a new raised bridge over Spring Creek.

Such a bridge is required to be raised above the existing bridge, and above the existing 1:100 year flood level to ensure flood free egress in the event of an emergency evacuation from the site. This offer was reviewed by Council and not accepted due to inadequate funding being offered towards the future design and construction of a new bridge.

Any Matters Prescribed by the Regulations

- NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast

The proposal does not compromise the strategic actions or principles (Appendix C - Table 3) adopted within the *NSW Coastal Policy 1997*.

- Australian Standard AS 2601 - 1991: The Demolition of Structures

The proposal is not inconsistent with Australian Standard AS 2601 - 1991: *The Demolition of Structures*

Any Coastal Zone Management Plan

Reference is made to the **Spring Creek Catchment Flood Study – Final Report** dated May 2014. The Study is a key resource to Council for assessing development affected by flooding, including land within the Coastal Zone, and was prepared with reference to *The Floodplain Development Manual* (NSW Government, 2005)

Key information from the Study of relevance to Dido Street is cited as follows.

4.4.2 Flood History

Flooding of the Dido Street bridge was mentioned by three residents, with three providing photographic evidence of the road being flooded. Reported flooding of Dido Street occurred in October 2004, February 2007 and March 2011. During a site visit (outside the questionnaire process), a resident also reported flooding of Dido Street in early 2013.

2.3 Hydraulic Structures

A number of hydraulic structures are located along the creeks and tributaries of the Spring Creek catchment. These structures have an important role in controlling the passage of stormwater, either through channelling or redirecting flow. Some hydraulic structures within the catchment are subject to notable capacity constraints, mainly the culverts underneath Dido Street and Jamberoo Drive. Further details on the hydraulic structures within the catchment are discussed in Section 6 of this report.

2.4 Historical Flooding Issues

The Spring Creek catchment has historically been subject to frequent high intensity rainfall as a result of the orographic effects of the Illawarra Escarpment.

Anecdotal evidence of this catchment suggests that flooding is particularly prevalent in the lower reaches. Overland flooding and inundation of roads are also known to occur frequently as a result of heavy rainfall. In particular, flooding on Dido Street and in low lying parts of Jamberoo Road has been observed frequently. Anecdotal reports and photographs suggest that a combination of high flows, low lying roads and inadequate culvert capacities contribute to the flooding.

Major flooding and damage to residential and commercial properties in the past has been limited according to available reports.

During the March 2011 flood event, flooding in the lower reaches of the catchment was reported. Areas most affected included Dido Street, Jamberoo Road and the wetlands.

Community consultation was conducted as part of the Flood Study to seek the knowledge of local residents within the floodplain for the March 2011 flood event and other historical events.

Through this consultation, it was identified that flooding occurred within residents' backyards and damage was caused to property fences and garages. Residents also noted severe flooding along Dido Street (Pictures 1 and 2) with flood waters reaching the top of the 1m high flood marker.



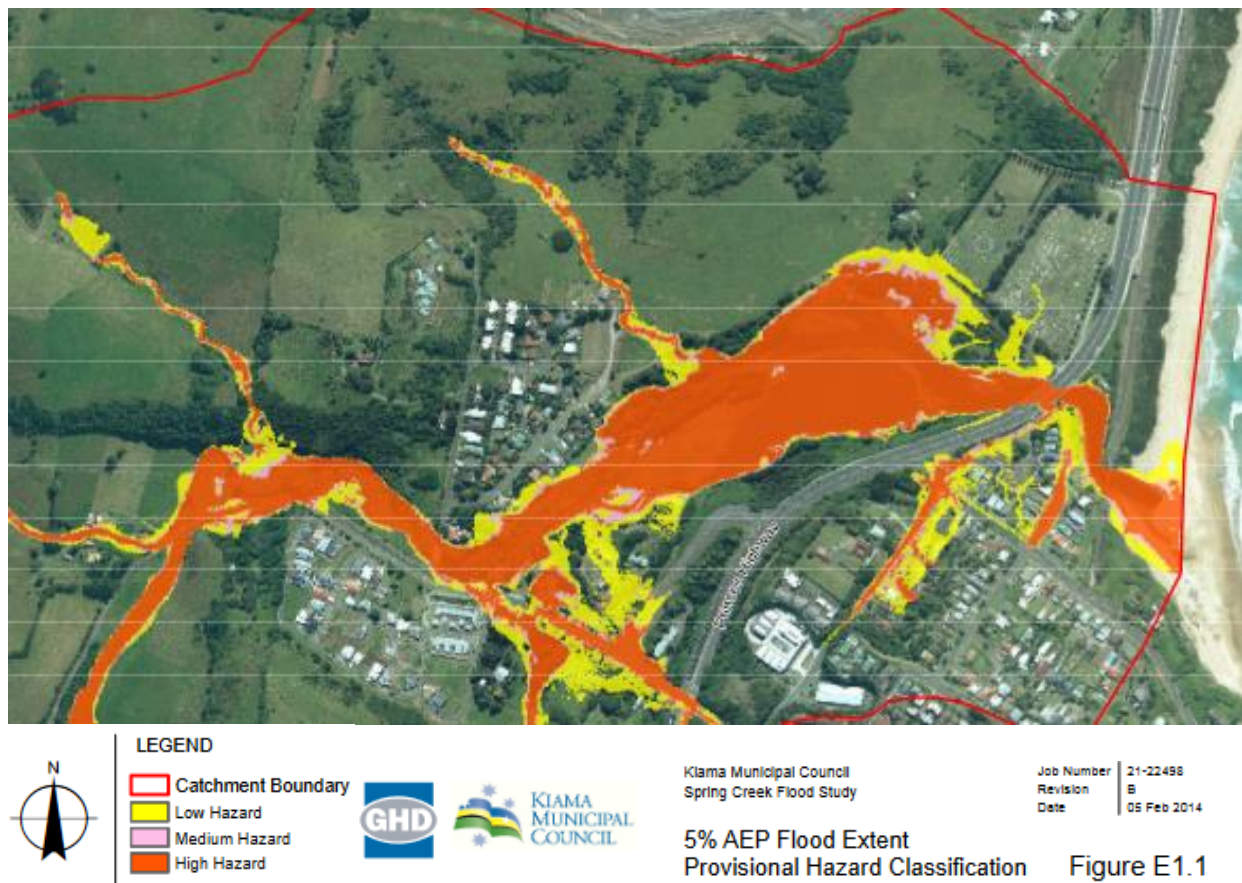
Picture 1: Flood waters inundating Dido Street during March 2011 flood event. (Source: [unintelligible])



Picture 2: Dido Street under normal conditions. (Source: GHD)

The Dido Street bridge is within an area mapped as 'high hazard' as shown in the 5% AEP Flood Extent at Figure E 1.1 of the Study. Based on this Council's engineering comments included in this report state with regards to the 5% AEP:

Safe carriageway for waterway crossings is required in low flood conditions (5% AEP). Due to the significant increase in development density compared to the existing, and number of residents accessing the road, and those potentially needing help from the SES during emergency events, the existing Dido Street access bridge is considered insufficient.



The Likely Impacts of the Proposed Development

Biodiversity

The application proposes clearing of native vegetation, and therefore the Environmental Planning and Assessment Act 1979 Part 1 Section 1.7 applies.

The Flora and Fauna Assessment comments on biodiversity values at the site as follows:

- There is one key threatening process of relevance to the Illawarra Subtropical Rainforest community, being clearing of native vegetation.
- Clearing of 0.21ha will be carried out of Illawarra subtropical rainforest which is identified in a degraded condition. Based on the site area at 3.658ha being within the 1ha – 40ha band, up to 0.5ha may be cleared without requiring application of the Biodiversity Assessment Method (BAM) and offsets scheme. Therefore the proposal is below the threshold.
- Vegetation within the study area is predominantly exotic grassland and weeds (3.01 ha).

- No threatened flora species were identified within the study area (site and surrounds)
- The proposal includes development of a riparian corridor (~0.47 ha), located to avoid and minimise hydrological impacts (surface and groundwater) and improve riparian and ecological functions within the study area. The removal of the remaining degraded native vegetation and exotic vegetation will not impact the biophysical, hydrological or ecological integrity of the retained areas of vegetation.

The report includes recommendations that a large mature *Ficus rubiginosa* is to be retained as part of the development with appropriate protection measures during works. Recommendations are also made on clearing vegetation on the site to minimise impacts on any flora on the site.

Streetscape

The design of the proposed development is considered to be reasonable when considered in relation to the context of the site. The bulk, scale and design of the proposed is consistent with relevant controls under the Kiama LEP and DCP.

Noise

Construction works will generate some noise, though conditions of consent can be imposed to ensure that works are undertaken only within specified hours to limit impacts upon neighbours. No ongoing significant noise impacts are expected as a result of the development.

Privacy and Overlooking

No significant concerns are raised in relation to privacy loss and overlooking resulting from the proposed development.

Overshadowing

Shadow diagrams have been supplied with the development application which indicate that the overshadowing impacts of the proposed development will be reasonable.

Views / visual impact

The proposed development will not cause any loss of distant views from surrounding elevated areas to the ocean and the Illawarra Escarpment to the west.

The development will be visible when viewed from surrounding development however as an integrated design with landscaping it is not considered unreasonably impactful on their outlook, noting the land is zoned for residential development.

Vehicular Access, Parking and Manoeuvring

Sufficient car parking is proposed.

Manoeuvring is compliant with AS/NZS 2890.1 – 2004 and the driveway will comply with required gradients.

Stormwater Management

A satisfactory drainage design has been provided with the application.

All stormwater will drain to the street/drainage easements.

Flooding

The following comments are provided regarding the flooding and must be addressed;

- a) The flood modelling identifies flood affectation on the proposed lots. It is assumed that the proposed swales will capture these flows upstream of the proposed lots. Clarification is required.
- b) Safe carriageway for waterway crossings is required in low flood conditions (5% AEP). Due to the significant increase in development density compared to the existing, and number of residents accessing the road, and those potentially needing help from the SES during emergency events, the existing Dido Street access bridge is considered insufficient.
- c) Flood Evacuation Plan is required in accordance with Kiama DCP 2.5.5, namely that "Appropriate engineer's report demonstrating that permanent measures are incorporated in the development to ensure that the timely, orderly and safe evacuation of people is possible from the area and that it will not add significant cost and disruption to the community or the SES."

Social and Economic Impacts

The proposed development is considered unsatisfactory principally due to the lack of having a safe flood free egress during an emergency evacuation.

The proposal land titling of the subdivision with 67 Torrens residential lots and one Community lot raises concerns regarding ongoing maintenance of infrastructure within the Community lot including drainage, roads and the park. This is on the basis that Torrens lots by their definition do not require shared ownership of external assets contained within the Community lot.

The Suitability of the Site for the Development

The proposal fits within the locality and the site attributes are considered to be conducive to development. Notwithstanding, external constraints of flood affected access make the site unsuited to development at this point in time.

Submissions

Public Submissions

Notification letters were sent to neighbouring property owners with 14 days to comment on the proposal. At the conclusion of the notification period, 21 submissions were received which raised the following (summarised) matters of concern:

Item	Objection	Assessment Officer's Comment
1	Flood free access / egress	This noted as the principal reason for refusal of the DA.
2	Pedestrian safety – no footpaths along Glenbrook Drive	This is noted however is not grounds for refusal. Traffic generation is not considered excessive with Glenbrook Drive being of adequate standard to service traffic generation from the development (@ 60 VPH in peak)

Item	Objection	Assessment Officer's Comment
3	Stormwater impacts on Bombo Lagoon downstream, plus increased incidents of sewage pollution on lagoon caused by new development (note sewage pollution an existing issue for lagoon)	<p>Drainage design measures including swales and a WSUD basin are unlikely to cause any adverse post development impacts on water quality discharging into the lagoon.</p> <p>Risk of sewage discharge is considered unlikely given the development will be connected to reticulated sewer with design requirements for sufficient capacity to prevent overloads discharges.</p>
4	Potential impacts of blasting from nearby quarry on site stability for sloping areas,	The northern site boundary is sufficiently separated from the quarry at @ 130m from the edge of the quarry. Blasting impacts are regulated under an Environmental Protection License aimed at minimising vibration, noise and dust
5	Public accessibility through private Community title road network	As a Community title road, the S.88B Instrument would be required to include a mechanism permitting public access along the roads
6	Removal of large fig tree near south-western corner of site (landscape and nesting value	This tree is identified in the Flora / Fauna Report as a significant species requiring retention.
7	Overshadowing to neighbouring villas along southern boundary of site	Shadow assessments for housing proposed along the southern boundary of the development demonstrate that compliant solar access will be maintained to southern neighbouring housing.

External Referrals

The application was referred to the following State Government Departments.

NSW Department of Planning & Environment – Water (DoPE)

The DoPE have issued their concurrence to the proposal with General Terms of Approval advised for works on waterfront land under the Water Management Act 2000.

NSW Rural Fire Service (RFS)

The RFS have issued their concurrence to the proposal with General Terms of Approval advised, including provision of an Asset Protection Zone which extends into the neighbouring property to the east, towards the south-eastern corner of the site.

Whilst the RFS GTAs are acknowledged, it is noted that owners consent has not been obtained for the part of the required APZ which extends into the eastern neighbouring land.

Internal Referrals

The application was referred to the following Council Officers for their consideration.

Subdivision & Development Engineer

Flooding - Safe carriageway for waterway crossings is required in low flood conditions (5% AEP). Due to the significant increase in development density compared to the existing, and number of residents accessing the road, and those potentially needing help from the SES during emergency events, the existing Dido Street access bridge is considered insufficient.

A Flood Evacuation Plan is required in accordance with Kiama DCP 2.5.5, namely that "Appropriate engineer's report demonstrating that permanent measures are incorporated in the development to ensure that the timely, orderly and safe evacuation of people is possible from the area and that it will not add significant cost and disruption to the community or the SES.

Parking / traffic - Additional information is required regarding driveway drainage, parking cross sections, pedestrian access to all lots, upgrades at intersection with Glenbrook Drive.

Environmental / Sustainability Officer

The Flora/Fauna Assessment advises that there is one key threatening process of relevance to the Illawarra Subtropical Rainforest community being clearing of native vegetation. Although it is advised that the proposal is unlikely to significantly impact Illawarra Subtropical Rainforest, sufficient justification has not been provided as to why that native vegetation or an endangered ecological community should be removed.

Landscape Design Officer

No objection has been raised in relation to the proposed development.

Property Manager

No objection has been raised in relation to the proposed development.

Waste Officer

Two way access will be required for all sections of road with lots on both sides, noting kerbside collection from the left side of the waste truck.

In order to undertake kerbside waste collection services, an 88b Instrument would be required on the title of the property to enable Council to be able to efficiently and safely collect all forms of garbage, organic waste and recycling from all the lots within the development.

The submitted Waste Management Plan does not include waste relating to the construction of the roads, kerb and guttering proposed for this development.

Contributions Officer

The Section 7.12 Contribution Plan applies to this site and to this development application. Contributions are levied based on the proposed cost of carrying out the development. In this instance, the levy is calculated as follows:

$$\begin{aligned}\text{Section 7.12 contribution} &= \text{Cost of development} \times \text{Levy Rate} \\ &= \$35,075,469.00 \times 1\% \\ &= \$350,754.00\end{aligned}$$

The Public Interest

The proposal is considered to be consistent with all relevant Environmental Planning Instruments and Development Control Plan, is not likely to cause significant adverse impacts to the natural or built environment, is not likely to cause significant adverse social and economic impacts, is suitable for the site and therefore is considered to be consistent with the public interest.

Final Comments and Conclusions

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Consideration has been given to the social, economic and environmental impacts of the proposed development. Concerns raised in submissions and Council's officers comments have been considered and warrant refusal of the application.

RECOMMENDATION

I declare that I have no pecuniary or non-pecuniary conflict of interest in the application, and recommend that Development Application No 10.2023.59.1 be refused under Section 4.16 of the Environmental Planning and Assessment Act, 1979, subject to the following reasons:

1. The lack of flood free access/egress in the event of an emergency evacuation from the development during a defined flood is unacceptable having regard to the EP&A Act S.4.15(1)(b) – social and economic impacts in the locality, and S.4.15(1)(c) the suitability of the site for the development.
2. Pursuant to the EP&A Act S.4.15(1)(a)(iii) the provision of any Development Control Plan, the proposal does not provide flood free access/egress as required pursuant to Kiama Development Control Plan objective O:3.6.44 – Property Access
3. Pursuant to EP&A Act S.7.4 Planning agreements, the proposed Planning Agreement to fund a flood free access study is considered inadequate to address the critical issue of flood free access/egress.
4. Pursuant the EP&A Act S.4.15(1) (d) and (e) The proposal is considered unsatisfactory having regard to having regard to issues raised in submissions, and the public interest.
5. Pursuant to the EP&A Act S.4.15(1)(a)(i) the provision of any environmental planning instrument, the proposal does not satisfactorily demonstrate how protection and maintenance of terrestrial biodiversity will be achieved having regard to Clause 6.4 Terrestrial biodiversity of Kiama LEP 2011.

6. The development requires an Asset Protection Zone over neighbouring land Lot 3 DP805229 with owners consent not obtained for this as required pursuant to cl.23 of the Environmental Planning and Assessment Regulation 2021.
7. The proposal involving 67 Torrens title residential lots and one Community lot does not satisfactorily demonstrate binding arrangements for the maintenance of the Community lot drainage, roads and park, pursuant to the *Community Land Development Act 2021* clause 8 Establishment of community scheme.

Assessment Officer

Ben Rourke - consultant planner

Date: 6/02/2024

DIRECTOR PLANNING, ENVIRONMENT AND COMMUNITIES ENDORSEMENT

Jessica Rippon – Director Planning, Environment and Communities

Date: 6/02/2024