

Rezoning review request

Springside Hill (PP-2023-2833)

PREPARED FOR
Traders in Purple

June 2024
MECONE.COM.AU

Project Director

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1 Introduction

This report has been prepared by Mecone Group Pty Limited on behalf of Traders in Purple (the proponent), in support of a rezoning review request to the Department of Planning, Housing and Infrastructure. It relates to the planning proposal request (PP-2023-2833) to Kiama Council to amend *Kiama Local Environmental Plan 2011* (LEP) for the land at 177 Long Brush Road, Jerrara, and 33 Greyleigh Drive and 103 Jamberoo Drive, Kiama (the Site).

In accordance with the Department of Planning, Housing and Infrastructure's LEP Making Guideline, this rezoning review request is made on the basis that Kiama Council has notified the proponent that it does not support the planning proposal request.

The LEP Making Guideline establishes the following criteria for requesting a rezoning review:

within 42 calendar days of council notifying the proponent that it does not support the planning proposal request.

The planning proposal request was not supported by Council on 16 April 2024. Council notified the proponent of its decision on 3 May 2024. This rezoning review request is within the required 42 calendar day time period.

1.1 Overview

15 December 2023

On 15 December 2023, the planning proposal request and letter of offer to enter into a planning agreement was submitted through the NSW Planning Portal (PP-2023-2833).

12 February 2024

On 12 February 2024, the planning proposal request was lodged for assessment by Kiama Council.

16 April 2024

On 16 April 2024, Council considered the planning proposal request at its Ordinary Meeting and resolved:

That Council:

- 1. Not support the Planning Proposal (PP-2023-2833) (PP) for the rezoning of land at 177 Long Brush Road, Jerrara, 33 Greyleigh Drive, Kiama and 103 Jamberoo Drive, Kiama, as it is inconsistent with the Kiama Local Strategic Planning Statement 2020 and Illawarra and Shoalhaven Regional Plan 2041 and therefore does not satisfy the strategic merit and site-specific merit tests.*
- 2. Not send the proposal to the Department of Planning for Gateway Determination.*
- 3. Actively work with the proponent through the Growth and Housing Strategy process to consider this land, along with other sites for future potential urban expansion, in conjunction with the Urban Development Program.*

Council did not seek to clarify any of the contents of their assessment with the proponent prior to considering the matter at Council on 16 April 2024.

3 May 2024

On 3 May 2024, Council wrote to the proponent notifying of its resolution not to proceed. In a separate letter dated 3 May 2024, Council notified the proponent that it won't progress the planning agreement letter of offer.



13 May 2024

Council wrote to landowner seeking a meeting to discuss future development potential of the Site and input into Council's 'Growth and Housing Strategy'

21 May 2024

Council, the landowner and the proponent meet to discuss the planning proposal and Council's position on various aspects of the proposal they deemed 'non-negotiable' which if addressed, could potentially lead the site being identified in the Growth and Housing Strategy. They are summarised as:

- Abandoning the use of an independent water and sewer infrastructure provider
- providing clarification on active open space provision
- beginning negotiations on a voluntary planning agreement particularly with respect to dedication of public space land
- reducing the maximum height of buildings from 15m
- removing the additional permitted education establishment and place of public worship uses
- demonstrating a willingness to engage in strategic traffic and transport discussion for the region.

7 June 2024

The landowner submitted a response to Council's 'non-negotiable', agreeing in principle to addressing all of Council's requests.



1.2 Purpose and structure

The purpose of this report is to outline our rezoning review request in accordance with the LEP Making Guideline. The table below provides an outline of our response to the requirements in the Guideline for a rezoning review.

TABLE 1 – LEP MAKING GUIDELINE – REZONING REVIEW REQUEST REQUIREMENTS

Requirement	Response
A copy of the proponent's latest version of the planning proposal, including all supporting material and information that was submitted to council	Separately attached
All correspondence that the proponent has received from the council in relation to the planning proposal request, including (if relevant) any copies of the council's written advice to the proponent and/or the Council resolution not proceed with the proposal	Attachment 1 of this report includes the following correspondence: <ul style="list-style-type: none"> • Letter dated 3 May 2024 notifying of Council's resolution on the planning proposal request • Letter dated 3 May 2024 notifying of Council's decision on the letter of offer to enter into a planning agreement • Minutes of 21 May 2024 meeting (received on 28 May 2024).
All correspondence and written advice from other public authorities and government agencies, if available	No correspondence or written advice has been received.
The proponent's written justification of the strategic and site-specific merit to confirm why a review is warranted	Included in this report
Disclosure of reportable political donations under section 10.4 of the EP&A Act, if relevant	N/A
The rezoning review fee to the Department	Paid on lodgement of this request



1.3 Site details

The Site is located at 177 Long Brush Road, Jerrara, and 33 Greyleigh Drive and 103 Jamberoo Drive, Kiama. It covers 12 lots in single ownership and portions of unformed Crown roads, covering approximately 114 hectares of land in the Kiama Local Government Area (LGA). The Site is located directly west of the Kiama CBD, adjoining the existing Kiama urban area. The portions of unformed Crown roads reflect the Sites history of being subdivided as part of historic land grants in Kiama's urban areas.

The Site is located approximately 1.7 km west of Kiama Railway Station and Town Centre. It directly adjoins a mix of low density and large lot residential zoned land to the east, and contains undulating topography, which naturally recesses along lower order streams and towards Spring Creek that forms its western boundary.

The proposal seeks to continue the pattern of residential development to the west. The Sites size and consolidated ownership provides a unique opportunity for it to be developed for urban land uses consistent with adjoining urban development. The roads adjoining the Site include Greyleigh Drive and Arnold Circuit to the east, Old Saddleback Road and Longbrush Road to the south and Jamberoo Road to the north.

TABLE 2 – THE SITE

Legal description	Address	Area
Lot 201 DP 1148007	177 Long Brush Road, Jerrara	38.08 ha
Lot 1 DP 995058	33 Greyleigh Drive, Kiama	6.39 ha
Lot 1 DP 1003719	33 Greyleigh Drive, Kiama	5.69 ha
Lot 156 DP 751279	33 Greyleigh Drive, Kiama	5.46 ha
Lot 1320 DP1060995	33 Greyleigh Drive, Kiama	3.93 ha
Lot 183 DP 751279	33 Greyleigh Drive, Kiama	1.23 ha
Lot 185 DP 751279	33 Greyleigh Drive, Kiama	1.47 ha
Lot 186 DP 751279	33 Greyleigh Drive, Kiama	2.80 ha
Lot 187 DP 751279	103 Jamberoo Road, Kiama	1.43 ha
Lot 188 DP 751279	33 Greyleigh Drive, Kiama	4.94 ha
Lot 189 DP 751279	33 Greyleigh Drive, Kiama	3.07 ha
Lot 102 DP 1176643	103 Jamberoo Road, Kiama	39.23 ha
Total		113.72 ha



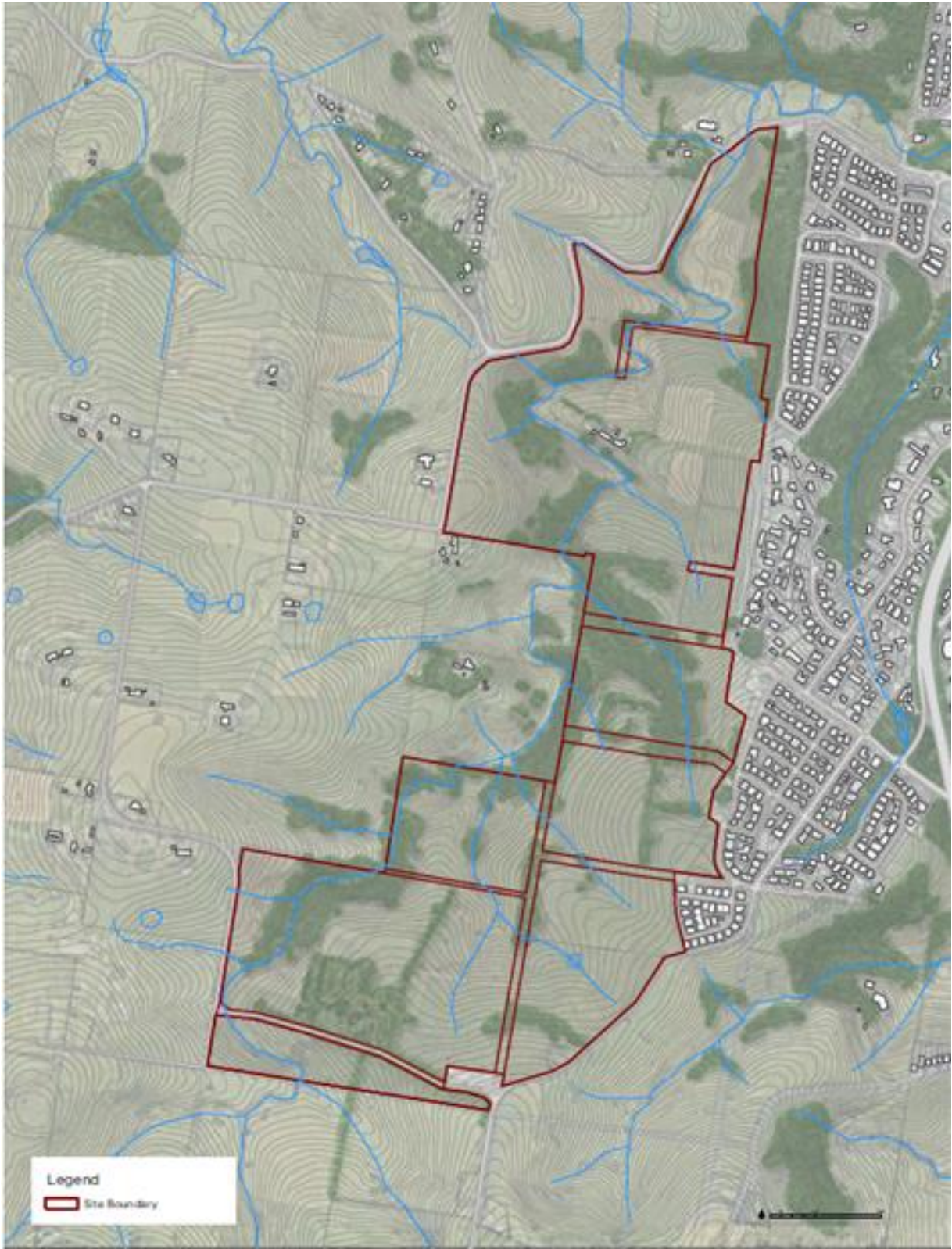


FIGURE 1 – THE SITE

Source: E8 Urban





FIGURE 2 – SITE CONTEXT

Source: Mecone

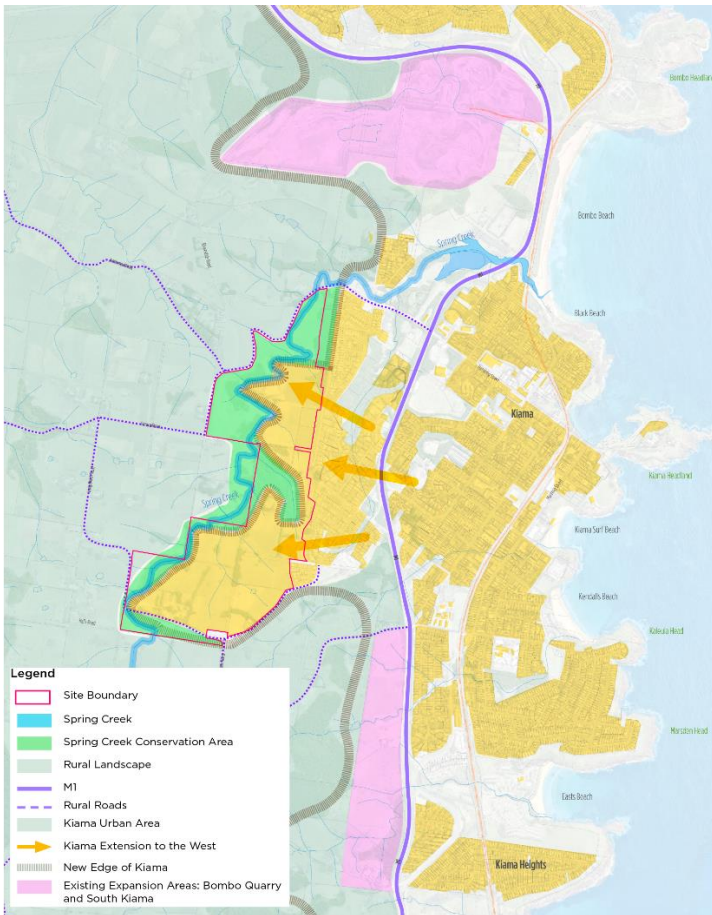


FIGURE 3 – POTENTIAL EXPANSION OF RESIDENTIAL SETTLEMENT

Source: E8 Urban



2 The proposal

The section provides a summary of the concept masterplan for the Site and the proposed amendments to Kiama LEP that are outlined in the planning proposal request.

2.1 Concept masterplan

Introduce maximum height of buildings controls of:

- 8.5 m for the R2 Low Density Residential zone
- 15 m for the R3 Medium Density Residential zone.

A concept masterplan was prepared that identifies a mix of residential, rural, recreation, employment and conservation land uses to demonstrate how the Site could be developed as a result of the planning proposal.

The concept masterplan could enable the following development outcome:

- approximately 1,062 new dwellings which will provide housing for locals, first home owners, key workers and low/middle income earners. The diversity of this housing stock could include:
 - 22 large rural residential allotments, averaging 3,900 sqm
 - 377 low density residential allotments, made up of 233 'standard' lots averaging 523 sqm and 144 'gully' lots averaging 637 sqm
 - 663 low rise, medium density housing dwellings to support a diversity of housing to suit smaller household types such as attached terraces, townhouses and low-rise garden apartments. This includes 172 'mews' lots averaging 196 sqm, 67 medium density lots averaging 338 sqm and 424 townhouses and low rise apartments
 - opportunity for delivery of social and affordable housing. At this stage, it is anticipated this will be made up of a mix of the following:
 - 5% social housing to be delivered to NSW Land and Housing Corporation at no cost
 - 5% delivered as affordable rental housing to be managed by a community housing provider in perpetuity
 - 5% delivered as part of a shared equity scheme for key workers
 - 5% reserved for first home buyers
 - 5% for locals identified in postcodes 2533 and 2534.
- 16 ha of retained rural land, with the potential for an educational establishment and place of public worship
- 43 ha of publicly accessible open space, provided as a combination of formal public open space, riparian lands and conservation areas. This land is intended to be restored and enhanced as part of the development process
- business uses to enable local retail and services
- retention of Greyleigh House to ensure its long term tourism function
- supporting local street, pedestrian network and cycling infrastructure.



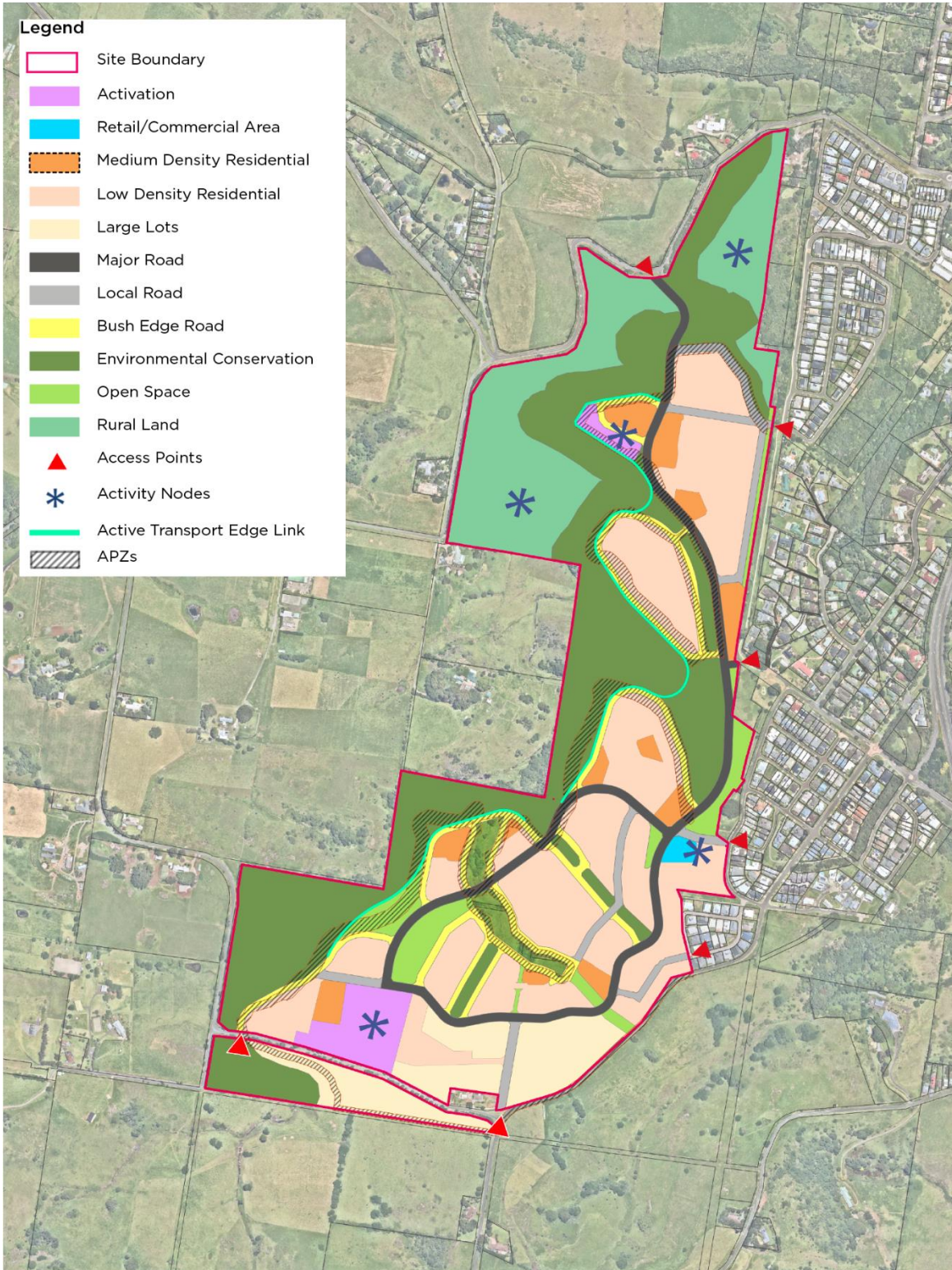


FIGURE 4 – INDICATIVE LAYOUT PLAN

Source: E8 Urban



2.2 Proposed amendments to Kiama LEP 2011

The planning proposal request seeks the following amendments the *Kiama Local Environmental Plan 2011* to enable the mix of rural, residential, open space, conservation and employment land uses that are shown on the concept masterplan:

2.2.1 Land use zoning

Rezone part of the Site from RU2 Rural Landscape to the following zones to enable development in line with the Indicative Layout Plan through the following zones:

- R2 Low Density Residential
- R3 Medium Density Residential
- E1 Local Centre
- RE1 Public Recreation.

In areas of the Site which are not proposed to be rezoned, the zoning will be retained as RU2 Rural Landscape. No change is proposed to the existing C2 Environmental Conservation and C3 Environmental Management zones.

2.2.2 Maximum height of buildings

Introduce maximum height of buildings controls of:

- 8.5 m for the R2 Low Density Residential zone
- 15 m for the R3 Medium Density Residential and E1 Local Centre zones.

2.2.3 Minimum subdivision lot sizes

Reduce the minimum subdivision lot size on part of the Site from 40 ha to the following:

- 450 sqm on land zoned R2 Low Density Residential and R3 Medium Density Residential
- 1,000 sqm on land zoned RU2 Rural Landscape in the southern portion of the Site.

2.2.4 Exception to minimum subdivision lot size for certain residential development

Introduce a clause that provides an exception to the minimum subdivision lot size to enable the following:

- 350 sqm for lots where it can be demonstrated by a building envelope plan that a dwelling house can be built on the lot
- 200 sqm for a semi-detached dwelling
- 175 sqm for an attached dwelling.

The proposed exception of minimum subdivision lot size clause is as follows:

Exception to minimum subdivision lot size for certain residential development

(1) *The objectives of this clause are—*

(a) to enable lots to be created that are smaller than the minimum lot size shown on the Lot Size Map for certain residential dwellings

(b) to provide opportunities for housing diversity and affordability.



(2) Development consent may be granted to the subdivision of land in Zone R2 Low Density Residential zone and R3 Medium Density Residential zone that results in a lot that is smaller than the minimum lot size shown on the Lot Size Map if—

(a) the subdivision of land results in a lot that is not less than 350 sqm if the consent authority is satisfied that the lot will contain a sufficient building envelope to enable the erection of a dwelling house on the lot, or

(b) the subdivision is carried out for the purposes of a semi-detached dwelling or an attached dwelling, and

(c) the size of any resulting lot is not less than—

(i) in the case of subdivision carried out for the purposes of a semi-detached dwelling – 200 square metres, or

(ii) in the case subdivision carried out for the purposes of an attached dwelling – 175 square metres.

2.2.5 Land reservation acquisition

Identify the following land for acquisition:

- RE1 Public Recreation
- C2 Environmental Conservation
- C3 Environmental Management.

2.2.6 Additional permitted use

Incorporate the following additional permitted uses on the Site in Schedule 1 of the Kiama LEP:

- educational establishments and place of public worship in the RU2 Rural Landscape zone
- attached dwellings in the R2 Low Density Residential zone.

The proposed additional permitted use clause is as follows:

Use of certain land at 103 Jamberoo Road, Kiama

(1) This clause applies to land at 177 Long Brush Road, Jerrara, and 33 Greyleigh Drive and 103 Jamberoo Road, Kiama, being part of Lot 201 DP 1148007, Lot 1 DP 995058, Lot 1 DP 1003719, Lot 156 DP 751279, Lot 1320 DP 1060995, Lots 183, 185-189 DP 751279, and Lot 102 DP 1176643.

(2) Development for the purposes of the following is permitted with development consent—

(a) educational establishments and place of public worship on land at 103 Jamberoo Road, Kiama, being part of Lot 103, DP 1176643, identified as “...” on the Additional Permitted Uses Map

(b) attached dwellings in the R2 Low Density Residential zone.

2.2.7 Urban release areas

Amend the urban release areas map to identify the Site.



3 Strategic merit

LEP Making Guideline

The LEP Making Guideline outlines matters for consideration that must be included in the planning proposal to justify that it will give effect to the NSW strategic planning framework and government priorities in order to satisfy strategic merit.

The assessment criteria outlined in the LEP Making Guideline requires the following criteria to be addressed:

- *Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy*
- *Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan*
- *Respond to a change in circumstances that has not been recognised by the existing planning framework.*

The planning proposal request provides an assessment against the strategic planning framework that applies to the Site, including:

- Illawarra Shoalhaven Regional Plan 2041
- Kiama Local Strategic Planning Statement
- Section 9.1 Ministerial Directions
- State environmental planning policies.

It found that the planning proposal request has strategic merit as it aligns with and promotes several key strategic planning priorities of Council and the State Government.

It also identifies that it responds to a significant change in circumstances in the Kiama LGA as the current local strategic planning framework does not provide for sufficient housing supply to meet current demand, which is resulting in a critical undersupply of housing. The LEP Making Guideline outlines the factors that could lead to a change in circumstances, and includes:

Changes to population and demographic trends and associated needs such as housing or jobs.

The proposal is a result of change in population and demographic trends in the Kiama LGA that is leading to a critical undersupply of housing over the next 5-15 years. The planning proposal request is a response to this change in circumstances that is not recognised in the current strategic planning framework.

It is noted that the median house price in Kiama is 15 times the median income and that housing in Kiama is now the most expensive in NSW, outside of Metropolitan Sydney.

3.1 Illawarra Shoalhaven Regional Plan 2041

The Illawarra Shoalhaven Regional Plan 2041 is a 20-year land use plan that applies to the areas of Wollongong, Shellharbour, Kiama and Shoalhaven on the South Coast of NSW. The Regional Plan sets the strategic framework for the area, aimed at protecting and enhancing the region's assets and plans for a sustainable future.



The Illawarra Shoalhaven Regional Plan 2041 identifies a need for an additional 58,000 dwellings in the Illawarra-Shoalhaven region by 2041. The Regional Plan focuses on directions, planning priorities and actions to guide future growth. A key strategy of the Regional Plan is to *identify urban growth boundaries and facilitate opportunities to support ongoing supply of housing in appropriate locations* (Strategy 18.1) as part of the development of local housing strategies.

There are no objectives or strategies in the Regional Plan which specifically restrict the consideration of additional housing in appropriate locations where it can be demonstrated that there is a demand. The planning proposal request justified consistency with the following Objectives of the Regional Plan:

- Objective 11: Protect and enhance environmental assets
- Objective 12: Build resilient places and communities
- Objective 13: Increase urban tree canopy cover
- Objective 14: Enhance and connect parks, open space and bushland with walking and cycling paths
- Objective 18: Provide housing supply in the right locations
- Objective 19: Deliver housing that is more diverse and affordable
- Objective 21: Respond to the changing needs of local neighbourhoods
- Objective 22: Embrace and respect the region's local character
- Objective 23: Celebrate, conserve and reuse cultural heritage
- Objective 28: Create connected and accessible walking and cycling networks.

3.2 Kiama Local Strategic Planning Statement

The Kiama Local Strategic Planning Statement (LSPS) establishes a 20 year vision for land use in the Kiama LGA. It captures the local identity and shared community values and outlines how growth and change will be managed into the future. The Kiama LSPS predates the Regional Plan.

The LSPS was published in 2020 and was based on 2019 population projections that forecast the population of Kiama would increase by 4,000 people between 2016 and 2041, from 22,100 to 26,100. The LSPS acknowledges that greenfield sites are required to deliver projected housing demand and identifies potential urban expansion areas, which are limited to those identified in the retired 2011 Kiama Urban Strategy.

However, since publication of the LSPS, the Department of Planning, Housing and Infrastructure has released updated population projections and implied dwelling demand figures. Whereas the 2019 projections showed population growing to 26,100 in the year 2041. The updated 2021 projections show that the Kiama population would grow to 30,800, a 126% increase on the 2019 figures. These projections have substantially increased and exceed the available development pipeline and historic dwelling completion data. This constitutes a significant change in circumstances and suggests a requirement for additional greenfield sites, beyond those sites identified in the Kiama Urban Strategy.

An action in the LSPS was for a local housing strategy to be prepared by 2021/2022, which would revise the retired 2011 Kiama Urban Strategy growth boundaries to respond to current population projections and dwelling demand. The draft local housing strategy has not yet been exhibited.

The planning proposal request found that it was justifiable to be inconsistent with the *Planning Priority 1: Plan for and balance supply and demand*. The proposal is inconsistent with this priority as the Site is not identified in a Kiama growth boundary that was identified in the 2011 Kiama Urban Strategy. The proposal is justified on the basis that since 2011, when the Kiama Urban Strategy was prepared, circumstances in Kiama and the



Illawarra Shoalhaven Region have substantially changed with regard to housing demand and the need to accommodate housing growth.

Despite the retirement of the Kiama Urban Strategy, the Kiama LSPS continues to limit greenfield housing opportunities based on mapping which generally reflects the Kiama Urban Strategy. As such, there is currently no evidence based contemporary plan or policy which seeks to guide housing delivery in Kiama in line with the forecasted growth trends.

3.3 Section 9.1 Ministerial Directions

The planning proposal request justifies consistency with all relevant Ministerial Directions, with the exception of Direction 9.1 Rural Zones and Direction 9.2 Rural Lands, where the proposal is considered to be justifiably inconsistent.

Ministerial Direction 9.1 Rural Zones

The Direction applies as the planning proposal request seeks to rezone rural land. The planning was considered inconsistent with the Direction as it seeks to rezone rural land to a residential and employment zone (Direction 9.1(1)(a)). However the planning proposal request is justifiably inconsistent as it responds to a change in circumstances in Kiama LGA identified in a Housing Study that highlights a significant undersupply of diverse and affordable housing to support population and demographic changes. The current planning framework does not enable this housing supply to be addressed.

Further, an Agricultural Assessment has been undertaken which found that the characteristics of the Site suggest it has little agricultural productive value. Notwithstanding, the proposal will retain some of the existing agricultural value.

Ministerial Direction 9.2 Rural Lands

The Direction applies as the planning proposal request seeks to rezone rural land. The planning was considered inconsistent with the Direction as it is inconsistent with the Kiama LSPS (Direction 9.2(1)(a)). However the planning proposal request is justifiably inconsistent as it responds to a change in demographic and population circumstances that has led to significant undersupply and unaffordability of housing in Kiama. The current demographic changes have not been accounted for in the LSPS. Whilst Council has committed to preparing a local housing strategy to define the Kiama urban growth boundaries to account for demographic changes, the housing strategy has not yet been exhibited.

Further, the characteristics of the Site suggest it is not State significant agricultural land. The concept masterplan prepared for the Site has also considered the environmental attributes, avoiding conflict with environmentally sensitive areas, including creek corridors, significant vegetation and areas of visual prominence. This includes restoration and embellishment of the Spring Creek Corridor. These areas are proposed to be zoned RE1 Public Recreation and retain the existing C2 Environmental Conservation and C3 Environmental Management zones.



3.4 State environmental planning policies

The planning proposal request justifies that it is consistent or can be consistent with all relevant state environmental planning proposal. The Council report has not raised any concerns with consistency with state environmental planning policies.

3.5 Change in circumstances

The NSW Government has recently announced housing targets for the Kiama LGA requiring the completion of 900 dwellings to FY 29, or 180 dwellings per annum. A Housing Study was prepared by AEC in support of the planning proposal request. It demonstrates how the Site can assist in meeting the Department of Planning, Housing and Industry's implied dwelling target of 3,771 dwellings by 2041 for the Kiama LGA. The study found that there is a critical undersupply of housing over the next 5-15 years. The proposal has the potential to not only increase supply but will also provide much needed diverse in housing, including affordable and social housing.

The current projected population growth for Kiama LGA between 2021-41 has increased from 3,065 residents (2019 forecast) to 6,917 residents (2021 forecast) reflecting a substantial increase of +126% (or an additional 193 residents per annum). This has not been accounted for in the Kiama LSPS and there is no current local housing strategy for Kiama to address this demand.

Based on the 10 year historic average of 81 in-fill dwelling completions per annum, the study found that 1,620 infill dwellings are 'likely' to be delivered between 2021-41. The identified release areas (excluding Bombo Quarry) have the potential to deliver approximately 734 dwellings between 2021-41. Combined, the release areas and infill redevelopment sites have potential to deliver a total of approximately 2,354 dwellings to 2041, falling short of the Department's implied dwelling demand figure of 3,771 by -1,417 dwellings.

The 10 year historic average for dwelling completions (infill and greenfield) throughout Kiama LGA is 125 dwellings per annum (2010-2020) and the most recent housing completion data identifies that only 54 dwellings were completed in 2022.. This is materially lower than what is required between 2021-41 based on the Departments implied dwelling demand of 3,771 (equating to 189 dwellings per annum) which roughly equates to the required housing target dwelling demand of 180 dwellings per annum.

Additionally, there is limited future supply from planning proposals in the system. The Kiama CBD Planning Proposal is the most recent planning proposal in Kiama LGA that has potential to increase supply. It proposes a minor increase in the maximum height of buildings and maximum floor space ratio control on a limited number of lots in the Kiama Town Centre. The Kiama CBD Planning Proposal will not significantly increase housing supply capacity to address the shortfall in Kiama LGA.

Whilst Bombo Quarry has been identified for potential supply, its constraints in terms of rehabilitation, legislation, timing, complexity and its isolated location (distinct separation from key town centres / amenities), raises uncertainty about its redevelopment potential and timing.

Further, the Housing Study includes advice from Kiama Council that the wastewater network for Jamberoo is now at full capacity and no additional connections to the wastewater network can be made, which is likely to restrict delivery of new additional housing in Jamberoo.



TABLE 3 – POTENTIAL FUTURE DWELLINGS

Item	Potential dwellings deliverable between 2021-41
Release area – number of lots / dwellings	734*
Projection based on historic infill dwelling average	1,620 (81 dwellings per annum)
Total	2,354
DPE Implied Dwelling Demand	3,771
Gap	-1,417

* Comprises all identified expansion areas in the LSPS, excluding Bombo Quarry/

Source: AEC

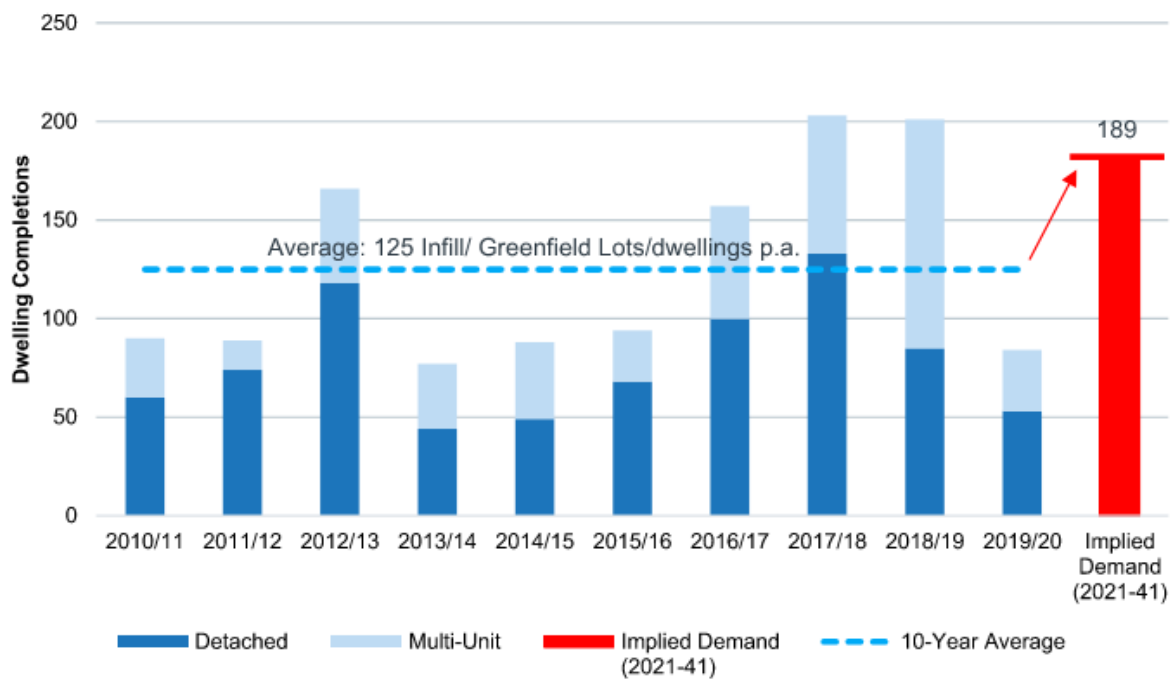


FIGURE 5 – KIAMA LGA HISTORIC DWELLING COMPLETIONS & ANNUAL IMPLIED DWELLING DEMAND (2021-2041)

Source: AEC and Illawarra-Shoalhaven Urban Development Program Dashboard



The change in circumstances is highlighted by the revised population projections, coupled with the lack of a strategic planning document from Council addressing housing demand. The most recent demographic data and housing completions data show that the current housing capacity and supply pipeline does not cater for this increased demand. Without intervention, such as this planning proposal, the supply shortfall will be exacerbated. This shortfall will contribute to heightened affordability issues, critically low rental supply and a lack of housing availability for more vulnerable low and middle income households and key workers.

The Site has the potential to contribute to Kiama LGAs housing supply, assist in meeting Council's housing target, provide a range of suitable housing typologies (including affordable and social housing), unlock privately owned land for public open space and community uses, create jobs and ensure the regions long term sustainability and economic strength.

Based on the evidence presented within the Housing Study, it is clear that the consideration of additional housing supply opportunities in appropriate locations is a strategy which could be employed to assist with meeting dwelling demand and managing housing affordability issues in the LGA.

Housing affordability is also becoming an increasing issue for a number of LGAs within the Illawarra Shoalhaven region, however none-more so than for Kiama LGA where median house prices grew by 27% over 2021 and 23% in 2022 and more than 80% over the last five years, the highest price growth in the State.

Effectively, household income would need to double in order for existing residents to purchase a median priced house without entering 'mortgage stress' (where mortgage repayments are greater than 30% of a households income). There is a growing unaffordability gap in Kiama LGA that is not being addressed by the existing planning framework.



4 Site-specific merit

LEP Making Guideline

The LEP Making Guideline outlines matters for consideration that must be included in the planning proposal to identify the potential environmental, social and economic impacts of the proposal and proposed mitigation measures and justification. The planning proposal request addresses these matters for consideration in demonstrating that the proposal is suitable for the site and the site is suitable for the resultant development.

The assessment criteria outlined in the LEP Making Guideline asks whether the proposal gives regard and assesses impacts to the following:

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)
- existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates
- services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Supporting technical reports

The LEP Making Guideline: Attachment C outlines the information and technical studies that are required to support a planning proposal to assist in assessing any impacts. The planning proposal request is consistent with the Guideline in providing the required supporting technical studies to justify site specific merit.

The planning proposal request is supported by the following technical reports that have considered the natural environment, existing and future uses, and services and infrastructure to justify site specific merit:

- Concept Landscaping Plans
- Concept Masterplan Urban Design
- Project Vision
- Housing Study
- Preliminary Economic Impact Assessment
- Traffic Impact Assessment
- Social and Community Needs Assessment
- Historical Heritage Constraints Assessment
- Aboriginal Due Diligence Assessment
- Ecological Report
- Bushfire Strategic Study Report
- Preliminary Water Cycle Management and Flood Assessment
- Potable Water and Wastewater Concept Review
- Utilities and Infrastructure Servicing Report
- Visual Attributes Study
- Stage 1 – Preliminary Site Investigation
- Agricultural Assessment and LUCRA
- Sustainable Utilities Servicing Strategy.

The findings and conclusions of these studies and reports show that the proposal does not include any unreasonable or unmanageable environmental, social or economic impacts.



Natural environment

The Council report identifies minor gaps and omissions in the bushfire report and water cycle management and flood assessment. These matters were not raised with the proponent before Council's resolution. If they were, the reports could have been updated to address the matters raised by Council. Notwithstanding, the matters raised by Council can be addressed.

The Department of Climate Change, Energy, the Environment and Water – Biodiversity Conservation Division identified a need for a flood impact and risk assessment report, and a further ecological assessment. Again, the proponent was not given an opportunity to address these matters before Council's resolved not to support the proposal. The proponent is willing to work with Council and DCCEEW to undertake further analysis to ensure sufficient information is provided to justify site specific merit.

Services and infrastructure

The Council report raises the following concerns in relation to services and infrastructure:

- The site is not identified in the Sydney Water Growth Servicing Plan 2024-2029. Council states it is unsure whether Sydney Water would allow the proposed onsite facility to provide drinking water, wastewater and recycled water services to the site. Council states that a stand-alone facility will be an undesirable outcome for the community as it undermines Council's advocacy to Sydney Water to upgrades to water and sewerage infrastructure in Kiama LGA.

The proposal is to engage Altogether to provide drinking water, wastewater and recycled water utility services for the Site. Altogether is licensed under the *Water Industry Competition Act 2006* to own and operate water infrastructure and to provide multiple water services including drinking water, recycled water, and wastewater services at several communities across New South Wales as an alternative to Sydney Water. It will be required to apply to IPART for a license under the *Water Industry Competition Act 2006* to provide services to the Site.

Whilst a stand-alone servicing approach is new in Kiama LGA, it is not a reason to not support the proposal. The stand-alone facility does not undermine any advocacy to Sydney Water to provide servicing infrastructure in Kiama LGA, as the *Water Industry Competition Act 2006* enables a licensed utility service provider to deliver drinking water, wastewater and recycled water to the Site.

The matters raised by Sydney Water's response to Council do not object to the proposal, but simply outline standard operating practices and information that is needed to progress the proposal. It is not a sufficient reason to not support the proposal.

Nevertheless, the landowner has begun discussions with Sydney Water to understand the agency's approach to growth servicing for the area, as per the request from Council at the 21 May 2024 meeting.

- There is an absence of a contributions plan and financial contribution mechanism to support infrastructure on the site, which raises a financial risk to Council.

A letter of offer to enter into a planning agreement was submitted to Council in conjunction with the planning proposal request. The offer was to fund all infrastructure costs associated with the proposal at not cost to Council. The proponent was not given an opportunity to discuss the letter of offer with Council before it resolved not to support the proposal. Notwithstanding, the proponent is willing to discuss the schedule of works proposed in the letter of offer should the planning proposal proceed.



5 Kiama Council resolution

Council considered the planning proposal request at its Ordinary Meeting on 16 April 2024. At that meeting, Council resolved the following:

That Council:

- 1. Not support the Planning Proposal (PP-2023-2833) (PP) for the rezoning of land at 177 Long Brush Road, Jerrara, 33 Greyleigh Drive, Kiama and 103 Jamberoo Drive, Kiama, as it is inconsistent with the Kiama Local Strategic Planning Statement 2020 and Illawarra and Shoalhaven Regional Plan 2041 and therefore does not satisfy the strategic merit and site-specific merit tests.*
- 2. Not send the proposal to the Department of Planning for Gateway Determination.*
- 3. Actively work with the proponent through the Growth and Housing Strategy process to consider this land, along with other sites for future potential urban expansion, in conjunction with the Urban Development Program.*

5.1 Response to Councils reasons for not supporting the planning proposal

The Council Report outlines the following reasons for not supporting the planning proposal request:

- the Site is not identified in a local or regional strategic plan for greenfield expansion
- the proposal relies on standalone infrastructure systems and supply
- there is a lack of support for the proposal from key government agencies
- there are information gaps and omissions in the documentation that needs to be addressed prior to Gateway determination
- there are impacts on Council relating to acquisition and maintenance of land and riparian corridors that has not been considered
- the proposal timeframe for delivery is 10 to 15 years, which does not provide an immediate or short-term solution to housing supply
- the proposal does not comply with Section 9.1 Ministerial Directions, Kiama Local Strategic Planning Statement 2020 or Illawarra Shoalhaven Regional Plan 2041
- there are several technical studies that are required to be updated
- there is a lack of contributions plans and financial contribution mechanisms for supporting infrastructure for this Site
- there has been no analysis of other suitable sites in Kiama LGA for future expansion and development
- the proposal pre-empts Council's strategic planning process.

A response to each of these reasons for refusal is provided in the following section.



5.1.1 Not identified in local or regional strategic plans

Kiama Council assessment

The Council Report states that the Site is not identified as a potential urban expansion area and the planning proposal request does not demonstrate compliance with the Illawarra Shoalhaven Regional Plan 2041 and Kiama Local Strategic Planning Statement. Specifically, the Council Report states the following:

This site has not been strategically identified as a potential greenfield urban expansion area within any existing strategic planning documents or frameworks including the Kiama Local Strategic Planning Statement 2020, the Illawarra and Shoalhaven Regional Plan 2041 or the Kiama Urban Strategy 2011.

Proponent response

- **Illawarra Shoalhaven Regional Plan 2041**

The Council report does not provide specific details as to why Council considers that the proposal is inconsistent with the Regional Plan. The Planning Proposal Report lodged with Council specifically responds to the relevant Regional Plan objectives and strategies to demonstrate consistency.

The Regional Plan anticipates a growth in the region's population of at least 100,000 by 2041, with Kiama's population expected to increase by 3,997 people. It highlights the need for future development to consider sustainability, feasibility, water and wastewater capacity and the protection of existing character when delivering new housing and associated infrastructure.

The Regional Plan identifies a need for an additional 58,000 dwellings in the entire Illawarra-Shoalhaven region by 2041. It encourages an increase in the diversity and affordability of the range of housing available to cater to the needs of all generations and demographics.

Kiama is identified as a Regional Centre in the Regional Plan. Objective 2 of the Regional Plan is to *grow the region's regional cities*, which includes the regional centre of Kiama. The Regional Plan states that it:

supports regionally significant centres by ... identifying and removing barriers to housing supply in Kiama.

This statement recognises that the current zoned housing supply capacity in Kiama will not meet demand and there is a need to *remove barriers* to provide new housing opportunities.

There are no objectives or strategies in the Regional Plan which specifically restrict the consideration of additional housing in appropriate locations where it can be demonstrated that there is a demand. The planning proposal request justified consistency with the following Objectives of the Regional Plan:

- Objective 11: Protect and enhance environmental assets
- Objective 12: Build resilient places and communities
- Objective 13: Increase urban tree canopy cover
- Objective 14: Enhance and connect parks, open spaces and bushland with walking and cycling paths
- Objective 18: Provide housing supply in the right locations
- Objective 19: Deliver housing that is more diverse
 - Strategy 19.1: Provide a diversity of housing choices and dwelling sizes
 - Strategy 19.2: Increase the supply of affordable housing
 - Strategy 19.3: Renew and increase social housing
- Objective 21: Respond to the changing needs of local neighbourhoods
- Objective 22: Embrace and respect the region's local character



- Objective 23: Celebrate, conserve and reuse cultural heritage
- Objective 28: Create connected and accessible walking and cycling networks.

Of relevance to the matters raised in the Council report is Objective 18. Objective 18 of the Regional Plan is to provide *housing supply in the right locations*. This is supported by Strategy 18.1 *identify urban growth boundaries and facilitate opportunities to support ongoing supply of housing in appropriate locations*.

Objective 18 seeks to prioritise new housing opportunities in strategic centres, such as Kiama. The Site is located approximately one kilometre from the Town Centre. Further, the single ownership of the Site enables the important supporting infrastructure to be provided in conjunction with housing supply.

There is no specific details in the Regional Plan that would prevent the planning proposal request from progressing.

- **Kiama Local Strategic Planning Statement**

The Kiama Local Strategic Planning Statement (LSPS) was published in 2020 and was based on 2019 population projections that forecast the population of Kiama would increase by 4,000 people between 2016 and 2041, from 22,100 to 26,100. The LSPS acknowledges that greenfield sites are required to deliver projected housing demand and identifies potential urban expansion areas, which are limited to those identified in the 2011 Kiama Urban Strategy (now retired).

However, since publication of the LSPS, the Department of Planning, Housing and Infrastructure released updated population projections and implied dwelling demand figures, and more recently revised housing targets. These show that projections have substantially increased and exceed the available development pipeline and historic dwelling completion data. This constitutes a significant change in circumstances and suggests a requirement for additional greenfield sites, beyond those sites identified in the Kiama Urban Strategy.

An action in the LSPS was for a local housing strategy to be prepared by 2021/2022, which would revise the retired 2011 Kiama Urban Strategy growth boundaries to respond to current population projections and dwelling demand. The draft local housing strategy has not yet been exhibited. The planning proposal request seeks to contribute to the housing supply shortage given the absence of a contemporary housing strategy.

The Kiama LSPS also commits to the preparation of new strategies around rural land uses, urban greening, net zero emissions and walking and cycling. However, these strategies are yet to be prepared.

Whilst the planning proposal request is not identified in the older urban expansion area listed in the LSPS, it responds to a change in circumstances in Kiama that has resulted in a critical undersupply of housing to meet the project population growth that is not covered by the current LSPS or a current local housing strategy. The identified growth areas in the LSPS will not deliver the housing supply that is needed in Kiama.



5.1.2 Relies on standalone infrastructure systems and supply

Kiama Council assessment

The Council Report has raised concerns about the proposed onsite water and sewer infrastructure. The Council Report states the following:

Establishing onsite sewerage or standalone systems also carries significant risk and it is clear from the submission provided by Sydney Water that further work and process is required before any such proposal can be considered. A stand-alone system is an undesirable outcome for the community. Such a proposal also undermines any advocacy work or planning strategy which seeks for Kiama to be included in planning / upgrades for water and sewerage infrastructure and the UDP. The need for improvements and capacity upgrades to the entire water and sewerage infrastructure network for the whole LGA is a matter of public record and one which Council has advocated strongly on before. Should this proposal be accepted, it will set a precedent for other developments and multiple standalone systems may result.

Proponent response

The proposal is to engage a registered and licensed private utility provider to provide drinking water, wastewater and recycled water utility services for the Site as an alternative to Sydney Water. Such providers are licensed under the *Water Industry Competition Act 2006* to own and operate water infrastructure and to provide multiple water services including drinking water, recycled water, and wastewater services at several communities across New South Wales. It is required to apply to IPART for a license under the *Water Industry Competition Act 2006* to provide services to the Site. It is unclear what *significant risk* Council is referring to when an infrastructure service provider is enabled by the *Water Industry Competition Act 2006* and has a license from IPART.

Whilst a stand-alone servicing approach is new in Kiama LGA, it is not a reason to not support the proposal. The stand-alone facility does not undermine any advocacy to Sydney Water to provide servicing infrastructure in Kiama LGA, as the *Water Industry Competition Act 2006* enables a licensed utility service provider to deliver drinking water, wastewater and recycled water to the Site.

The matters raised by Sydney Water's response to Council do not object to the proposal, but simply outline standard operating practices and information that is needed to progress the proposal, which the landowner has begun. These matters are not sufficient reasons to not support the proposal.



5.1.3 Lack of support from government agencies

Kiama Council assessment

The Council Report claims that there is a lack of support from key government agencies. It refers to comments received from Sydney Water and the Department of Climate Change, Energy, the Environment and Water (DCCEEW). Copies of letters from these agencies are included as attachments to the Council report.

Proponent response

Contrary to Council's assessment, the letters from Sydney Water and DCCEEW do not indicate a lack of support, but rather provide guidance and a request for further information that needs to be submitted in order for the proposal to be further assessed. Requests for further information is standard practice on most proposals.

The letters from Sydney Water and DCCEEW were not provided to the proponent. The proponent was not asked or given the opportunity to address these requests for further information prior to Council's resolution not to support the proposal.

Notwithstanding, a summary of the agency requirements is included in the tables below followed by a response.

Sydney Water

The proponent is to lodge a feasibility application via their WSC

Noted. This is standard practice and is not sufficient reason to not support the planning proposal request and discussions with Sydney Water have commenced.

Sydney Water

The proponent should complete and return the growth data form in the format as part of their planning proposal submission and with their feasibility application

Noted. This is standard practice and is not sufficient reason to not support the planning proposal request and discussions with Sydney Water have commenced.

Sydney Water

Sydney Water is happy to meet with the proponent to discuss all options for servicing the site once the feasibility is registered.

Noted. The proponent is prepared to meet with Sydney Water and Council to further discuss the proposal and discussions with Sydney Water have commenced.

Department of Climate Change, Energy, the Environment and Water

A fit for purpose Flood Impact and Risk Assessment (FIRA) report is required

Noted. A flood impact assessment report can be prepared to support the planning proposal request. The degree of assessment that is now required to support the planning proposal has increased significantly since the time the Preliminary Water Cycle Management report was prepared in January 2023. It should be noted that the current development proposal is predominantly beyond the extent of the PMF flood extents.



Department of Climate Change, Energy, the Environment and Water

Further flood assessment work be undertaken to address public safety risks.

Noted. An updated report can be provided to address public safety risks.

Department of Climate Change, Energy, the Environment and Water

An assessment of potential impacts of the altered land-use on water quality prior to rezoning be undertaken to ensure adequate spatial and zoning provisions are incorporated.

Noted. Further information on estuarine and waterway health can be provided, based on a risk based framework. However, Council needs to set the appropriate objectives for the risk based framework across the catchment. It is not considered appropriate for an individual developer to undertake this extensive and expensive process to set the correct rules that could be used as performance objectives for an individual development site.

Department of Climate Change, Energy, the Environment and Water

Restoring riparian lands is supported but such land should be zoned to C2 or C3 rather than RE1.

Noted. The planning proposal request can be amended to incorporate a C2 Environmental Conservation or C3 Environmental Management zone for the riparian lands if Council and DCCEEW agree to this approach.

A letter of offer to enter into a planning agreement was submitted to Council to support the planning proposal. One of the proposed public purpose offers relates to the rehabilitation and embellishment of the Spring Creek riparian corridor. The future ownership and ongoing management of this land will need to be discussed with Council.

This comment from DCCEEW is not a sufficient reason for Council to not support the planning proposal request.

Department of Climate Change, Energy, the Environment and Water

A C2 zoning be considered for all significant biodiversity values on the Site including areas mapped as 'high ecological constraints' (some attributes currently zoned C3 may warrant C2 zoning long term given the management intentions).

Noted. However, the planning proposal request did not propose a change to the existing C2 Environmental Conservation or C3 Environmental Management zones that apply to the Site. The proposal sought to rezone part of the RU2 Rural Landscape zone to the following zones:

- R2 Low Density Residential
- R3 Medium Density Residential
- E1 Local Centre
- RE1 Public Recreation.

Notwithstanding, the proposal can be amended to rezone land from C3 Environmental Management to C2 Environmental Conservation if Council and DCCEEW agree.

This comment from DCCEEW is not a sufficient reason for Council to not support the planning proposal request.



Department of Climate Change, Energy, the Environment and Water

*In addition to remnant native vegetation within the study area, significant biodiversity should be mapped and incorporated into non-urban zoning where possible, including hollow bearing trees, lone cabbage tree palms (*Livistona australis*) and large fig trees (*Ficus* spp.).*

Noted. The planning proposal request seeks to locate areas of ecological value within the C2 Environmental Conservation, C3 Environmental Management and RE1 Public Recreation zoned land to restrict future development and enable a plan of management to be prepared. The Ecological Report outlines the recommended approach to managing areas of high ecological value.

The ecological report would be further reviewed and further detail provided as part of the application for development consent. This comment from DCCEEW is not a sufficient reason for Council to not support the planning proposal request.

Department of Climate Change, Energy, the Environment and Water

*Buffers be applied to all remnant vegetation to prevent 'edge effects' (eg. weed infestation, trampling, etc.) particularly Threatened Ecological Communities and populations of *Zieria granulata**

Noted. Sufficient buffers will be incorporated as part of future development applications to prevent 'edge effects'. The details of those buffers can form part of site-specific development control plan provisions and discussed with Council as part of future development applications.

This comment from DCCEEW is not a sufficient reason for Council to not support the planning proposal request.

Department of Climate Change, Energy, the Environment and Water

*Further ecological assessment be carried out at the Planning Proposal stage to determine if suitable areas for rehabilitation of the *Melaleuca armillaris* Tall Shrubland Critically Endangered Ecological Community occur within the Site. If so, these should be included in conservation zones and rehabilitated in accordance with a Vegetation Management Plan and/or an in-perpetuity conservation agreement.*

Noted. We are prepared to undertake further ecological assessment to determine the suitable areas for rehabilitation. This work can be undertaken as part of the assessment of the planning proposal or future development applications.

Department of Climate Change, Energy, the Environment and Water

Council appraise the land tenure outcomes of the conservation zoned land to ensure adequate funding/mechanism for ongoing management. Vegetated lands that may be transferred to Council are an opportunity to investigate the proponent establishing an actively managed Biodiversity Stewardship Agreement site/s before transfer.

Noted. We are prepared to discuss the ownership and ongoing management of the conservation land with Council.

The planning proposal request was accompanied by a letter of offer to enter into a planning agreement for the rehabilitation and dedication of the conservation area to Council. Council wrote to the proponent on 3 May 2024 advising that it is not prepared to discuss or negotiate the terms of the letter of offer. Nonetheless, in a meeting on 21 May 2024 Council stated that it is happy for the landowner to enter into negotiations with respect to a voluntary planning agreement. The landowner has confirmed that negotiations can commence, noting that Council has exhibited a contributions and voluntary planning agreement policies.



This comment from DCCEEW is not a sufficient reason for Council to not support the planning proposal request.

Department of Climate Change, Energy, the Environment and Water

A Vegetation Management Plan be prepared for the Spring Creek riparian corridor, adjacent areas of remnant vegetation and any areas proposed for rehabilitation, and this should be secured at development application stage.

We note the comment that a Vegetation Management Plan is required at the development application stage. This is consistent with the LEP Making Guideline: Attachment C that provides an outline of the supporting technical information and reports that are needed to accompany a planning proposal. One of the technical reports listed in Appendix C is a biodiversity assessment report. In relation to the biodiversity assessment, the LEP Making Guidelines specifically states the following:

Note: A vegetation management plan or conservation management plan is not required at planning proposal stage.

We are prepared to develop a Vegetation Management Plan at the development application stage following the rezoning of the Site. It is not required at the planning proposal stage and should not be used by Council as a reason to not support the planning proposal request.

Department of Climate Change, Energy, the Environment and Water

Asset Protection Zones (APZs) be contained within existing cleared areas (noting that the Master Plan indicates some APZs appear to be located within areas of 'high ecological constraint').

Noted. Future development applications will ensure that asset protection zones are not located within areas of high ecological constraint.

This comment from DCCEEW is not a sufficient reason for Council to not support the planning proposal request.



5.1.4 Information gaps and omissions in the documentation

Kiama Council assessment

The Council Report states that there are gaps and omissions in the planning proposal request documentation that prevents it from proceeding. The Council Report states the following:

- 1. The Bushfire Report prepared by Eco Logical Australia does not refer to the recently adopted Bush Fire Prone Land Map 2023. Therefore, an updated Bushfire Report is required.*
- 2. The Preliminary Water Cycle Management and Flood Assessment prepared by J. Wyndham Prince has not been prepared in accordance with the 2023 Flood Risk Management Manual and Emergency Evacuation. Therefore, an updated Preliminary Water Cycle Management and Flood Assessment is required.*
- 3. The Traffic Impact Assessment prepared by SCT Consulting does not include traffic flow that may occur resulting from Bombo Quarry to the north. Bombo Quarry may yield approximately 2000 dwellings. This will have a significant impact on traffic flow in the future. Therefore, the traffic impact assessment is not an accurate representation of future traffic impacts. Trip generation resulting from the proposed additional uses of the educational establishment and Education Facility appear to have not been considered in the traffic impact assessment.*

Proponent response

The proponent was not given an opportunity to respond to update these reports prior to Council's resolution. Nevertheless, the reports can be updated as requested.

- Bushfire

The Bushfire Report prepared by Eco Logical Australia can be updated to refer to the more recent Bush Fire Prone Land Map 2023 that was not available at the time the original report was prepared. An assessment against the more recent maps will be undertaken and the findings considered to determine whether there is a need to update the planning proposal request. However, preliminary advice is that the updated mapping is largely administrative and will have no significant impact on the initial conclusions of the Bushfire Report.

- Water Cycle Management and Flood Assessment

The Preliminary Water Cycle Management and Flood Assessment prepared by J Wyndham Prince can be updated to in accordance with the 2023 Flood Risk Management Manual and Emergency Evacuation.

- Traffic

It is unreasonable to request the traffic assessment to include traffic flows that may occur from Bombo Quarry. There is no proposal for Bombo Quarry and it is yet to be demonstrated that the site can accommodate the 2,000 dwellings.

The Traffic Impact Assessment considered the cumulative impacts on the road network and found that the net increase in vehicular traffic associated with the proposal is estimated to be 783 and 860 vehicles per hour for AM and PM peaks based on the RMS Guide to Traffic Generating Developments (2013). It found that the network would operate at satisfactory levels in all modelled periods including a future year with development and does not require any upgrades given there is sufficient remaining capacity on the local road network.

The Traffic Impact Assessment can be updated to consider a hypothetical scenario of yield on Bombo Quarry and reviewed in terms of potential education facilities on the Site.



5.1.5 Impact on Council resources due to acquisition and maintenance of land and riparian corridors

Kiama Council assessment

The Council Report raises concerns that it doesn't have sufficient funding and resources to maintain the proposed public land and riparian corridors. The Council Report states the following:

There are impacts on Council relating to acquisition and maintenance of land and riparian corridors, which have not been considered, planned for, or analysed properly through the process followed by the applicant.

Further, the Council report states that:

Given Council's current financial position any dedication and resulting burden of management to Council for lands needs to be carefully and diligently considered. The suitability of Council accepting dedication of these lands and the cost and resource implications (including on-going maintenance) have not been adequately addressed in the documentation. Nor have these been appropriately explored through a strategic process.

Proponent response

The planning proposal request was accompanied by a letter of offer to enter into a planning agreement dated 12 December 2023. The intent of the planning agreement was to ensure that the proposed public land would be dedicated to Council at no cost, and that a funding agreement would be entered into for the ongoing maintenance of that land.

Despite the letter of offer, Council wrote to the proponent on 3 May 2024 advising the following:

Due to the limited statutory timeframe for council staff to carry out a preliminary technical assessment it was considered that there was insufficient time to carry out any negotiations to better inform the initial staff report.

It is difficult for a proponent to consider Council's financial position without discussing the matter with Council. It is unreasonable for Council to justify not supporting the planning proposal request on the basis that its financial position has not been addressed in the documentation when Council has not responded to the letter of offer to enter into a planning agreement. This justification is not a sufficient reason to not support the planning proposal request.

Nonetheless, in a meeting on 21 May 2024 Council stated that it is happy for the landowner to enter into negotiations with respect to a voluntary planning agreement. The landowner has confirmed that negotiations can commence, noting that Council has exhibited a contributions and voluntary planning agreement policies are on public exhibition.



5.1.6 No immediate or short term solution to housing supply

Kiama Council assessment

The Council Report claims that the proposed timeframe for housing delivery on the Site will not be in the short term and on this basis should be not supported. The Council Report states the following:

The proposed URA would deliver approximately 1069 dwellings over a 10 to 15 year timeframe.

Council state that the proposed timeframe for delivery at 10 to 15 years means the proposal does not provide immediate or short-term solution for housing supply for the Kiama LGA.

Proponent response

This is not an accurate representation of the proposed delivery timeframe. The Planning Proposal Report does not state that development on the Site will occur in a 10 to 15 year timeframe. On the contrary, the project would commence immediately, providing short term housing delivery, following the rezoning. Whilst not stated in the Planning Proposal Report, the overall completion of development across the entire 114 ha Site for 1,069 dwellings is estimated to be 10 to 15 years.

It is unjustified to not support the planning proposal request on the basis of an inaccurate assessment of the housing delivery timeframe on the Site.



5.1.7 Non-compliance with Section 9.1 Ministerial Directions

Kiama Council assessment

The Council Report claims that the planning proposal request does not comply with Section 9.1 Ministerial Directions. The Council report states the following:

The PP does not demonstrate compliance with the Section 9.1 Ministerial Directions, Kiama Local Strategic Planning Statement 2020, or the Illawarra Shoalhaven Regional Plan 2041.

The Council report refers to the following Ministerial Directions:

- Ministerial Direction 3.2 Heritage
- Ministerial Direction 4.1 Flooding
- Ministerial Direction 4.3 Planning for Bushfire
- Ministerial Direction 4.4 Remediation of Land.

Proponent response

- **Ministerial Direction 3.2 Heritage**

The Council report states that the proposal must address Aboriginal heritage and dry stone walls. It is unclear what is meant by this comment as the planning proposal request discusses the findings of the following supporting technical report:

- Historical Heritage Constraints Assessment
- Aboriginal Due Diligence Assessment.

This matter has not been discussed with the proponent and no opportunity has been given to provide further information if needed.

Direction 3.2 requires a planning proposal to contain provisions to conserve environmental heritage and Aboriginal object and places. The Kiama LEP 2011 has adopted Standard Instrument clause 5.1 Heritage conservation. Direction 3.2 notes that an LEP that adopts the Standard Instrument heritage conservation clause should *identify such items, areas, objects or places of environmental heritage significance or indigenous heritage significance as are relevant to the terms of this direction on the Heritage Map and relevant Schedule of the LEP.*

There are no heritage items identified on the Site in the Kiama LEP 2011 Heritage Mapping. However, the Site contains several dry-stone walls, identified as local heritage item 64 within Kiama LEP Schedule 5. The Site is also nearby other local heritage items, being the Pines Homestead (item 113) and Silver Hill (item 180).

The dry-stone walls identified within the Site are the only heritage items which have the potential to be impacted by future works. According to Kiama Council, the dry-stone walls were constructed during the late 19th and early 20th century and are in varying conditions. The masterplan layout has been designed to generally avoid and minimise impacts to the dry stone walls. Some works may be required in the vicinity of stone walls to enable key infrastructure provision (such as roads and fire track access) and as part of an overall strategy to reduce excessive cut and fill. In areas where dry stone walls may be impacted, the proposal is to interpret and if possible, re-instate in new suitable locations within the public domain.

In terms of Aboriginal heritage, the Aboriginal Due Diligence Assessment report identified 11 potential archaeological deposits within the Site. These areas were identified by landform, including elements such as proximity to water, elevation and flat areas. The remainder of the Site was identified as having low potential



due to shallow soils, distance from water, prior disturbances from agricultural and residential land use, and unfavourable landforms. The report found one major Aboriginal cultural heritage constraint but proposed a range of strategies that would reduce the impacts and enhance the heritage elements as part of the masterplan. It was proposed that further consultation will take place with the traditional owners of the land.

The proponent is willing to discuss this with Council to address any further information that may be required.

- **Ministerial Direction 4.1 Flooding**

The Council report states that the proposal must address the 2023 Flood Risk Management Manual and emergency evacuation. The proponent was not given an opportunity to provide this additional information before the Council resolution.

The proposal has shown that all proposed residential lots are outside the 1:100 ARI flood extent and are not at risk of flooding. Nevertheless, the proponent can provide the flood risk assessment if required.

- **Ministerial 4.3 Planning for Bushfire**

The Council report states that the proposal must refer to Planning for Bushfire Protection 2019. It is unclear what is meant by this comment. Further, the Council report separately states that the supporting bushfire report needs to be updated to refer to the recently adopted Bush Fire Prone Land Map 2023, which wasn't available when the report was finalised.

The planning proposal request recognises that the Site is partially impacted by bushfire prone land, including category 2 and buffer area bushfire risk categories. Bushfire prone land typically follows the pattern of dense vegetation along the Spring Creek corridor.

The concept masterplan has been designed with the intent of creating a bushfire resilient community. A bushfire ring road has been indicated along the Site's perimeter in accordance with the requirements of NSW Rural Fire Service *Planning For Bushfire Protection 2019*. A Bushfire Impact Assessment has been submitted with the Planning Proposal to provide commentary on the nature of bushfire risk and the recommended mitigation measures. The report concludes that there is no evacuation need/risk for future development, nor will development impact upon any adjoining lands evacuation in the event of a bushfire.

The proponent is willing to work with Council to update the bushfire report to reference the recently adopted Bush Fire Prone Land Map 2023 and to consider any necessary adjustments to the proposal that may result.

- **Ministerial Direction 4.4 Remediation of Land**

The Council report states that a Stage 2 detailed site investigation is required. It is unclear why a detailed site investigation is required. The LEP Making Guideline: Appendix C only requires a preliminary site investigation to support a planning proposal. The Guideline notes that Council may require a detailed investigation *if it considers that the findings of the preliminary investigation warrant such an investigation*.

The Stage 1 Preliminary Site Investigation report identified seven areas of environmental concern with low potential for contamination. Notwithstanding, the report found that the Site is considered to be suitable (from a land contamination perspective) for the proposed future land use subject to a targeted Stage 2 detailed site investigation within the identified areas of environmental concern as part of future development applications on the Site. The report concluded that any contamination within the targeted detailed site investigation is likely to be localised and will not preclude any redevelopment of the Site following remediation (if/where warranted).

The findings of the preliminary investigation do not warrant a detailed site investigation to be undertaken to support the planning proposal.



5.1.8 Technical studies require updating

Kiama Council assessment

The Council Report states the following to justify not supporting the planning proposal request:

There are several technical studies that are required to be updated.

Response

The Council Report does not expand on the actual technical studies that need to be updated. It is presumed that the comments relate to the identified gaps and omissions in the planning proposal documentation that is listed in the Council Report relating to the following:

- Bushfire Report
- Water Cycle Management and Flood Assessment
- Traffic Report.

As response to updates to these reports has been provided.

5.1.9 Lack of contributions plan and financial contributions mechanisms for supporting infrastructure

Kiama Council assessment

The Council Report states the following:

There is a lack of contributions plans and financial contribution mechanisms for supporting infrastructure for this site. This may result in increased risks for the existing ratepayers who would bear the cost burden of the future development's required infrastructure, services, and facilities.

Further, the Report states the following:

The proposed Planning Agreement has not been approved by Council. There have been no discussions or negotiations with council staff on the content of the Letter of Offer, which is an important step in the process as set out in Council's Planning Agreement Policy. While a VPA can be a useful mechanism to obtain and secure development contributions, this will be dependent upon both parties negotiating a suitable outcome. To date there have been no discussions with council staff on the content of a VPA.

The Report states that Council does not currently have an adopted s7.11 Contributions Plan for the Site. In the absence of an adopted s7.11 Contributions Plan, the current adopted s7.12 Contribution Plan would apply, which means that contributions levied will be insufficient to cover the cost of infrastructure generated by the development, and this cost would therefore be shifted to existing ratepayers.

Proponent response

The planning proposal request was accompanied by a letter of offer to enter into a planning agreement dated 12 December 2023. The intent of the planning agreement was to ensure that the full costs of the infrastructure that is required to support the development would be borne by the proponent, at no cost to Council and no cost to existing ratepayers.

The submission of the letter of offer was intended to enable discussions and negotiations with Council on the scope of the planning agreement that is linked to a planning proposal request to amend Kiama LEP. Council



did not respond to the letter of offer, despite stating in the report that there has been no discussions with Council staff on the content of the planning agreement.

Following Council's consideration of the planning proposal request, the proponent received a letter from Council dated 3 May 2024. The letter states that:

Due to the limited statutory timeframe for council staff to carry out a preliminary technical assessment it was considered that there was insufficient time to carry out any negotiations to better inform the initial staff report.

There is no statutory timeframe outlined in the *Environmental Planning and Assessment Act 1979* and Regulation for the assessment of a planning proposal request and letter of offer to enter into a planning agreement. We acknowledge that the Department of Planning, Housing and Infrastructure's LEP Making Guideline has 'benchmark timeframes' on planning proposals and timeframes for requesting a rezoning review. However, the LEP Making Guideline timeframes are not a sufficient reason to not progress the proposal or commence discussions and negotiations with the proponent.

The submission of the offer to enter into a planning agreement is consistent with the Department of Planning, Housing and Infrastructure's Planning Agreements Practice Note (February 2021), despite the scope of the offer not being discussed with Council prior to lodgement. There is nothing in Council's Planning Agreements Policy (March 2010), or the Department's Practice Note or *Environmental Planning and Assessment Act 1979* and Regulation that prevents discussions and negotiations on a letter of offer post lodgement.

It is considered more appropriate, transparent and a reduced probity risk to Council to discuss and negotiate a letter of offer to a planning agreement following lodgement of a planning proposal request and supporting technical studies when the content and details of the proposed LEP changes are known. Otherwise, there is no basis for the discussion.

Nonetheless, in a meeting on 21 May 2024 Council stated that it is happy for the landowner to enter into negotiations with respect to a voluntary planning agreement. The landowner has confirmed that negotiations can commence, noting that Council has exhibited a contributions and voluntary planning agreement policies are on public exhibition.



5.1.10 No strategic analysis of other potential housing locations in Kiama LGA

Kiama Council assessment

The Council Report states the following:

There has been no strategic indication that this is the most suitable and only site available for future expansion and development in the Kiama LGA. Council is aware of several other landowners that have indicated interest in providing land for future development. A number of these landowners have indicated a willingness to wait for the Growth and Housing Strategy to be completed and to include consideration of their landholdings as part of this process.

Proponent response

It is unreasonable to not support the planning proposal request on the basis that the proponent has not completed an LGA wide investigation into other potential suitable sites and to then compare that with the proposed Site. Further, the proponent is not aware, nor should be, of any other landowners that have indicated an interest in providing land for future development.

This is a Council consideration as part of a strategic planning investigation in preparing its Growth and Housing Strategy. It is not a relevant consideration in which to assess a planning proposal request.

The Council report claims to have assessed the planning proposal request against the following:

- *Environmental Planning and Assessment Act 1979* and Regulations
- Section 9.1 Ministerial Directions
- Department of Planning, Housing and Infrastructure's LEP Making Guideline.

However, an LGA wide strategic study into housing opportunities in Kiama is not part of the strategic or site-specific merit test to be applied to the planning proposal request. Such a consideration is inconsistent with the LEP Making Guideline and should not be used as a reason to not support the planning proposal request.

5.1.11 Pre-empts Council's strategic planning process

Kiama Council assessment

The Council Report states the following:

Supporting the planning proposal at this point in time pre-empts any process currently being followed by Council and in essence places the strategic planning process and decision making in a landowner's hands rather than Council or the community. Local Government's role in leading planning and development should not be undermined by private landowners right to seek development, but the processes for managing and planning growth ought to be followed.

Proponent response

The planning proposal request is justified in that the current local strategic planning framework has not responded to a change in circumstances that have resulted in a significant undersupply of housing in Kiama LGA. The intention is not to undermine Council's strategic planning, but to assist in addressing much needed housing in Kiama.

The strategic merit test in the LEP Making Guideline requires an assessment of the current strategic planning framework. It is appropriate to determine a planning proposal request on the basis that it pre-empts updates to the strategic planning framework that are unknown.



5.1.12 Other matters

In addition to the reasons outlined in the Council report for not progressing the planning proposal, the following outlines a response to various matters raised in the Council report.

5.1.12.1 Engagement

The Council report states the following:

Council staff met with the applicant and DPE to discuss the outstanding issues.

This is a misleading statement, as the proponent did not meet with Council staff or the Department of Planning, Housing and Infrastructure following lodgement of the planning proposal request. The proponent did not receive any communication from Council post lodgement.

5.1.12.2 Assessment

The Council report states the following:

it becomes difficult to undertake further discussions including site meetings once the proposal is lodged with Council. It is essential that probity is upheld. Legal advice received in this matter reflects the need for formality in both process and discussions.

Further:

Changes to documentation, negotiations and/or formal feedback to the proponents does not occur at this stage of the process as any assessment can only be made on the information to hand.

These statements by Council are unclear. There is nothing in the *Environmental Planning and Assessment Act 1979* and Regulation, or the Department of Planning, Housing and Infrastructure's LEP Making Guideline that prevents a planning proposal authority from discussing and amending a planning proposal request following lodgement.

On the contrary, s3.35(1) of the *Environmental Planning and Assessment Act 1979* enables a planning proposal authority to vary a proposal at any time. Section 3.35 provides:

3.35 Planning proposal authority may vary proposals or not proceed

(1) The planning proposal authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.

It is standard practice, and an expectation, that planning proposal authority discuss planning proposal requests with a proponent. It is also standard practice to request further information and amendments to documentation submitted by a proponent.

Whilst a Scoping Report was not prepared and a formal pre-lodgement meeting did not occur, it is inappropriate for Council to use this as a reason to not engage with the proponent. Further, the proponent was advised by the CEO of Council that a Scoping Report would not be required, given the extensive reports that were undertaken as part of the planning proposal lodgement.



5.1.12.3 Historic planning proposal requests

The Council report has relied on previous planning proposals as a reason to not progress the current planning proposal request. The Council report states the following:

Council has previously considered this parcel of land three times through individual planning proposals and also as part of the original establishment of the KLEP 2011 and subsequent amendments to this plan.

This is a misleading statement. There has not been any previous planning proposals on the Site that is the subject to this rezoning review. As is outlined in the Planning Proposal Report, there has been two planning proposal requests made to Kiama Council by previous landowners on part of the Site, but not on the entire Site. Those requests were not supported by Kiama Council.

It is misleading to compare previous proposals from 2015 and 2019 that covered 7 ha and 38 ha respectively and on different land, with the current proposal covering 114 ha. The demographic characteristics, strategic framework and housing supply circumstances are vastly different today than they were 5 and 9 years ago when those previous requests were submitted to Council. The current proposal has responded to the change in circumstances in Kiama that has resulted in a significant undersupply of housing to meet the demand projected by the Department of Planning, Housing and Infrastructure. It is also supported by a comprehensive range of technical reports.

The refusal of the older historic planning proposal requests on different parts of the Site is not considered a sufficient reason to not progress the current contemporary planning proposal request for the Site, particularly in the context of housing targets being released for Kiama which require 180 dwellings to be completed per annum, for the next five financial years.

5.1.12.4 Housing capacity in Kiama LEP 2011

The Council report discusses historic amendments made to the Kiama LEP 2011 that increase housing supply in Kiama to demonstrate that Council has been responding to increasing housing demand and changes in demographic and population profiles.

In particular, the report refers to a recent LEP amendment that resulted in an increase in the maximum height of buildings and floor space ratios in the Kiama Town Centre. The report states the following:

A significant update was provided recently which included the changes made to heights, FSR and density within the Kiama Town Centre.

The Planning Proposal (PP-2022-4144) that increased building heights and FSRs in the Town Centre resulted in the following amendment to Kiama LEP 2011:

- increase in the maximum height of buildings to 14 metres and a floor space ratio of 2:1 to:
 - the southern side of Terralong Street (between Thompson Street and Collins Street)
 - part of the Kiama Centrepoint Shopping Mall
- increase in the maximum height of buildings for parts of Akuna Street to 14 metres, 17 metres and 21 metres and a floor space ratio control of 2:1, 2.5:1 and 3:1 respectively
- decrease in the maximum height of buildings for parts of Akuna Street strategic site to 8.5 metres
- apply a maximum height of buildings control of 11 metres and floor space ratio control of 1.5:1 to 72 Manning Street
- adopt active street frontage to specific sites.



The LEP amendment will result in an increase in less than 20 dwellings in the Kiama Town Centre. This is not considered a significant increase in housing supply in the Kiama LEP when the implied dwelling demand target is 3,771 dwellings by 2041. It represents less than 1% of the required demand.

The table provides a summary of the current and increased housing supply capacity as a result of the Town Centre Planning Proposal.

Parameter	Result
Total lots in the Town Centre Planning Proposal (PP-2022-4144)	22
Total area (approx.)	1.72 ha
Total current actual dwellings (approx.)	58
Total current LEP dwelling capacity	106 (+ 48 above actual dwellings)
Total proposed LEP dwelling capacity	120 (+ 62 above actual dwellings)
Total increase in LEP dwelling capacity	+ 14 above current LEP capacity

The small increase in dwelling capacity (< 20 dwellings) in the Town Centre as a result of the Planning Proposal (PP-2022-4144) does not address the significant shortfall in dwelling demand needed in Kiama LGA.

The historic amendments to the Kiama LEP are not considered sufficient reason to not progress the planning proposal request that will provide approximately 1,062 diverse and affordable dwellings in the short term, which will significantly contribute to reducing the dwelling demand in Kiama LGA.

5.1.12.5 Proponent-led community engagement

The landowner undertook community engagement to understand the housing needs of the local area and whether there was interest for the proposal to progress. Initiatives included advertising in the local community newspaper, a project website that detailed the planning proposal and planning process and community drop-in sessions to allow the community to ask questions about the proposal.

There has been positive sentiment within the community whereby more than 180 people have registered interest in purchasing or renting a home in Springside Hill, many of them key workers or locals who would benefit from the landowner's 25 per cent guarantee.



6 Conclusion

This report has been prepared to support a rezoning review request to the Department of Planning, Housing and Infrastructure in relation to the planning proposal request (PP-2023-2833) refused by Kiama Council to amend *Kiama Local Environmental Plan 2011* (LEP) for the land at 177 Long Brush Road, Jerrara, and 33 Greyleigh Drive and 103 Jamberoo Drive, Kiama. The planning proposal request seeks to enable residential, employment, conservation and open space land use outcomes on the Site.

The rezoning review request has been prepared on the basis that Kiama Council has notified the proponent that it does not support the planning proposal request. The request is made within 42 calendar days of Council's notification that it does not support the planning proposal request.

The rezoning review request addresses the matters outlined in the LEP Making Guideline. It demonstrates that the proposal has strategic and site specific merit to enable an amendment to Kiama LEP 2011. Specifically, it demonstrates that:

- it is consistent with the Illawarra Shoalhaven Regional Plan 2041
- it responds to a change in circumstances in Kiama due to population demographic changes that have resulted in an undersupply in housing that has not been considered in strategic planning documents, which is consistent the *Local Environmental Plan Making Guideline*
- it is consistent with relevant Local Ministerial Directions and state environmental planning policies
- there are no constraints on the Site that can't be managed that would prevent future development under the proposed land use zones.

The reasons outlined in Council's assessment report are not sufficient to justify not progressing the proposal to a request for a Gateway determination. The Council Report does not provide a full and complete assessment of the entire proposal, but simply relies on the inconsistency with LSPS as the main reason for it not to progress.

There is a significant change in circumstances which warrants that this planning proposal to progress and receive a Gateway determination. Not least the lack of a housing strategy, housing targets which Council will not be able to achieve and the ability for the landowner to deliver significant affordable and social housing for the region.

6.1 Planning proposal authority

Clause 3.32 of the *Environmental Planning and Assessment Act 1979* identifies the planning proposal authority to be the council for the local government area to which the proposed instrument is to apply, subject to proposals which the Minister directs the Planning Secretary to be the planning proposal authority (cl. 3.32(2)).

We request that the Panel be appointed as the planning proposal authority as Council has not supported the planning proposal request for a Gateway determination.

The proponent is willing to engage with Council and relevant State agencies during the Panel's assessment of the proposal.



**Attachment 1:
Planning Proposal and
supporting technical
studies (separate)**

Attachment 2:
Council Report -16
April 2024 (separate)

Attachment 3:
Letters from Council
(separate)

Attachment 4:
Minutes and response
to meeting with
Council on 21 Mau
2024 (separate)

