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URBIS

PLANNING PROPOSAL

Amendment to Urban Release Area
Provisions | Kiama Local Environmental
Plan 2011

Prepared for
WHITE CONSTRUCTIONS & DEVELOPMENTS PTY LTD
23 January 2025

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1. INTRODUCTION

1.1. OVERVIEW

This proponent-initiated Planning Proposal (**Planning Proposal**) has been prepared by Urbis Ltd (**Urbis**) on behalf of White Constructions & Developments Pty Ltd (**the proponent**) and seeks to amend provisions of Part 4 Principal development standards of the *Kiama Local Environmental Plan 2011 (KLEP 2011)* as it relates to the subdivision of land within Urban Release Areas mapped under KLEP 2011 that have multiple land use zones.

This Planning Proposal seeks to include provisions that will enable the subdivision of land within current and future mapped Urban Release Areas including the 'South Kiama Urban Release Area' (as mapped under Part 7 of the KLEP 2011), that includes rural and conservation zoned land that do not meet the minimum allotment size requirements for subdivision of land prescribed under Part 4 of the KLEP 2011. This Planning Proposal will enable an exception to the minimum lot size development standard for future subdivision within an Urban Release Area in certain circumstances. It is proposed to introduce two new clauses, clauses 7.5 and 7.6 (as explained in **Section 3** of this Planning Proposal) to provide an exemption to clause 4.6(6) of KLEP as it relates to the subdivision of rural and conservation zoned land associated with the subdivision of land within an Urban Release Area.

An unintended consequence of the operation of clauses 4.1, 4.1C and 4.6(6) as they relate to the ability to subdivide land zoned rural and conservation prohibits the creation of undersized rural and conservation zoned lots within in an Urban Release Area.

The rationale for the introduction of the two clauses is to manage the prohibition on the subdivision of land and is detailed in **Section 3** and **Attachment A** of this Planning Proposal.

At this time there is only one Urban Release Area designated under KLEP 2011, the South Kiama Urban Release Area. The operation of the proposed clauses has been tested against South Kiama Urban Release Area but is expected to have similar application to future Urban Release Areas where multiple land use zones are involved. For context, the location of the South Kiama Urban Release Area is shown in **Figure 1**.

Figure 1 South Kiama Urban Release Area



Source: Urbis, 2024

1.2. REPORT STRUCTURE

This Planning Proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and the NSW Department of Planning, Housing and Infrastructure (DPHI) guideline '*Local Environmental Plan Making Guideline*' dated August 2023.

The relevant sections of the Planning Proposal are listed below:

- **Section 2:** Background on the planning proposal which rezoned the South Kiama Urban Release Area, and current strategic and statutory planning framework relevant to the proposed amendment to KLEP 2011.
- **Section 3:** Agency Referral
- **Section 4:** Comprehensive description and assessment of the Planning Proposal in accordance with the DPHI Guideline.
- **Section 5:** Conclusion and justification.

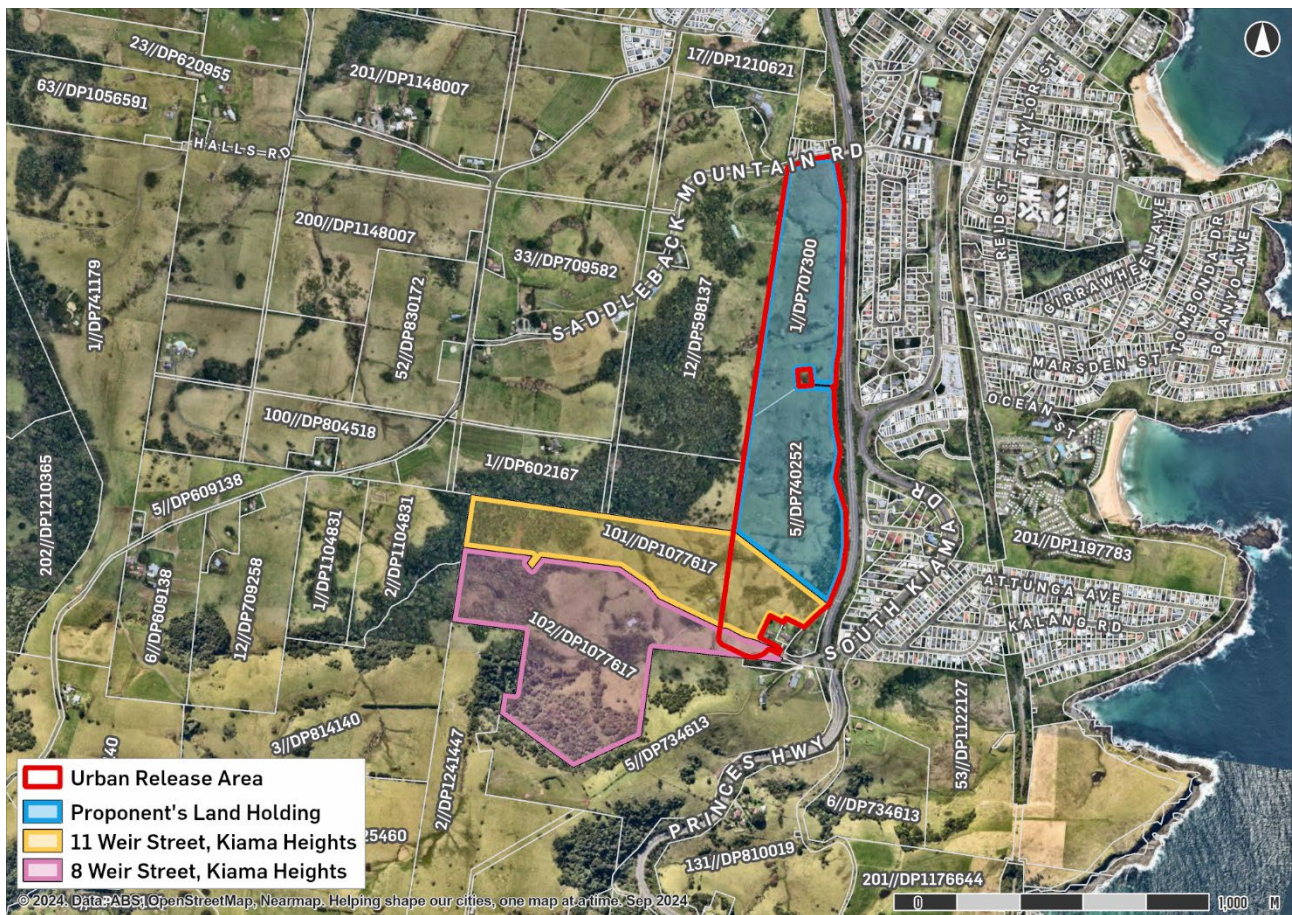
2. EXISTING URBAN RELEASE AREA CONTEXT

This Planning Proposal relates to land currently designated as an Urban Release Area under KLEP 2011 being land between Saddleback Mountain Road, Kiama and Weir Street, Kiama Heights as shown in **Figure 1** above, and will also apply to land within future Urban Release Areas.

The South Kiama Urban Release Area is located at the southwestern edge of the Kiama township, surrounded by a mixture of rural, rural-residential, and residential land immediately to the north, south and west with the Princes Highway immediately to the east with more residential land further east.

The South Kiama Urban Release Area is depicted in **Figure 1** above and its relationship to associated lands is shown in **Figure 2** below. Subdivision of land within the urban release area will involve the subdivision of five allotments with split zonings namely Lot 1 in DP707300, Lot 5 in DP740252, Lots 101 and 102 in DP 1077617 (see **Figure 2** below) The land within these existing lots is zoned part RU2 Rural Landscape, part C2 Environmental Conservation and part C3 Environmental Management and does not comply with the 40 hectare minimum allotment size for the respective zones nominated under clause 4.1 of KLEP 2011 (refer to **Figure 5** and **Figure 6**).

Figure 2 South Kiama Urban Release Area and Associated lands



Source: Urbis, 2024

Allotment details are provided in **Table 1** below.

2.1. BACKGROUND TO SOUTH KIAMA URBAN RELEASE AREA

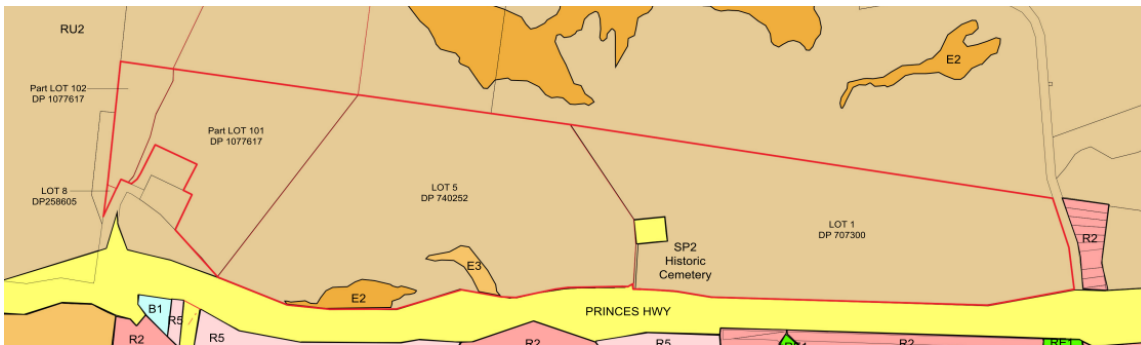
Planning Proposal PP-2021-379 (**PP-2021-379**) was submitted to Kiama Municipal Council (**Council**) on 4 July 2018 with final documentation submitted on 4 March 2019. PP-2021-379 sought to rezone land now identified as the South Kiama Urban Release Areas from RU2 Rural Landscape, E2 Environmental Conservation, and E3 Environmental Management to a mix of land use zones including:

- R2 Low Density Residential

- R5 Large Lot Residential
- RE1 Public Recreation
- E2 Environmental Conservation (now C2 Environmental Conservation)
- E3 Environmental Management (now C3 Environmental Management)

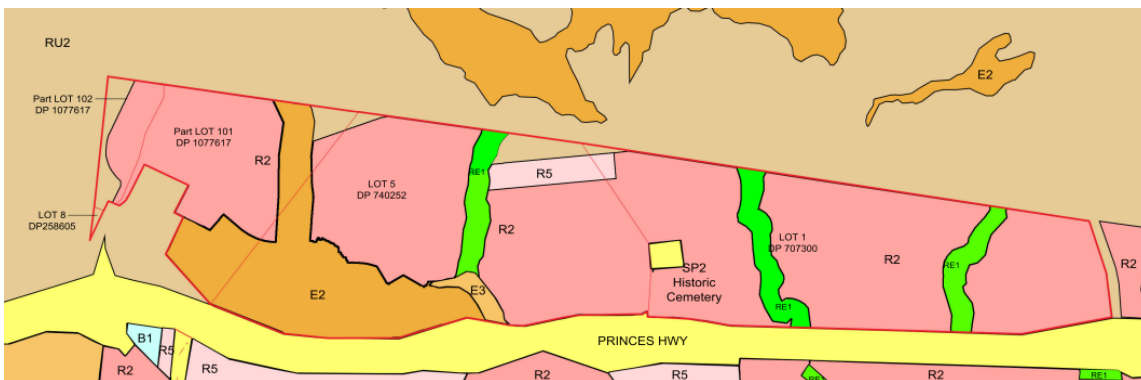
The land use zones applying to the South Kiama Urban Release Area pre and post the lodgement of PP-2021-379 are illustrated in **Figure 3** below. Kendall's Cemetery which is zoned SP2 Historic Cemetery does not form part of the Urban Release Area and was not rezoned under PP-2021-379.

Figure 3 PP-2021-379 Rezoning



Picture 1 Zoning Pre-PP-2021-379

Source: Site Plus, 2018



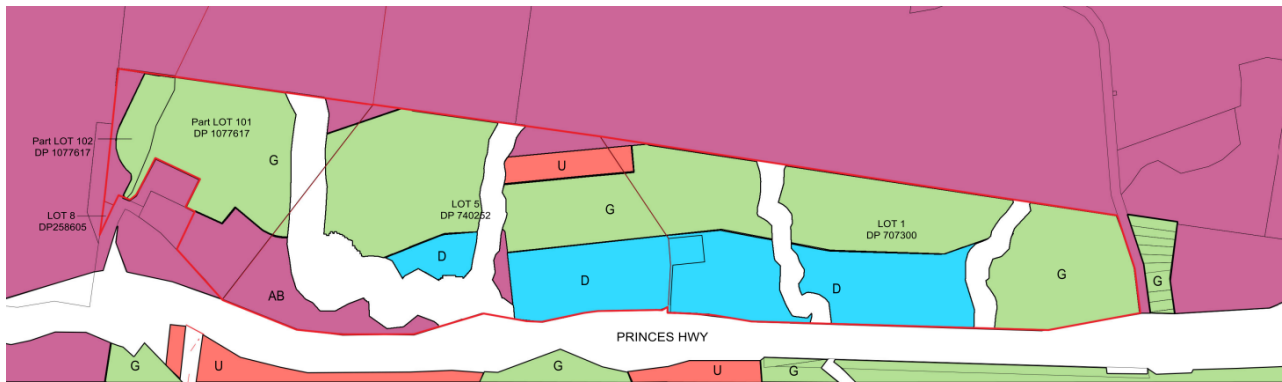
Picture 2 Proposed Rezoning under PP-2021-379

Source: Site Plus, 2018

In tandem with the rezoning of the land, new minimum lot size controls were proposed under PP-2021-379 as shown on **Figure 4**:

- 'D' – 300m².
- 'G' – 450m².
- 'U' – 1000m².
- 'AB' – 40ha.

Figure 4 PP-2021-379 Proposed Minimum Lot Sizes



Source: Site Plus, 2018

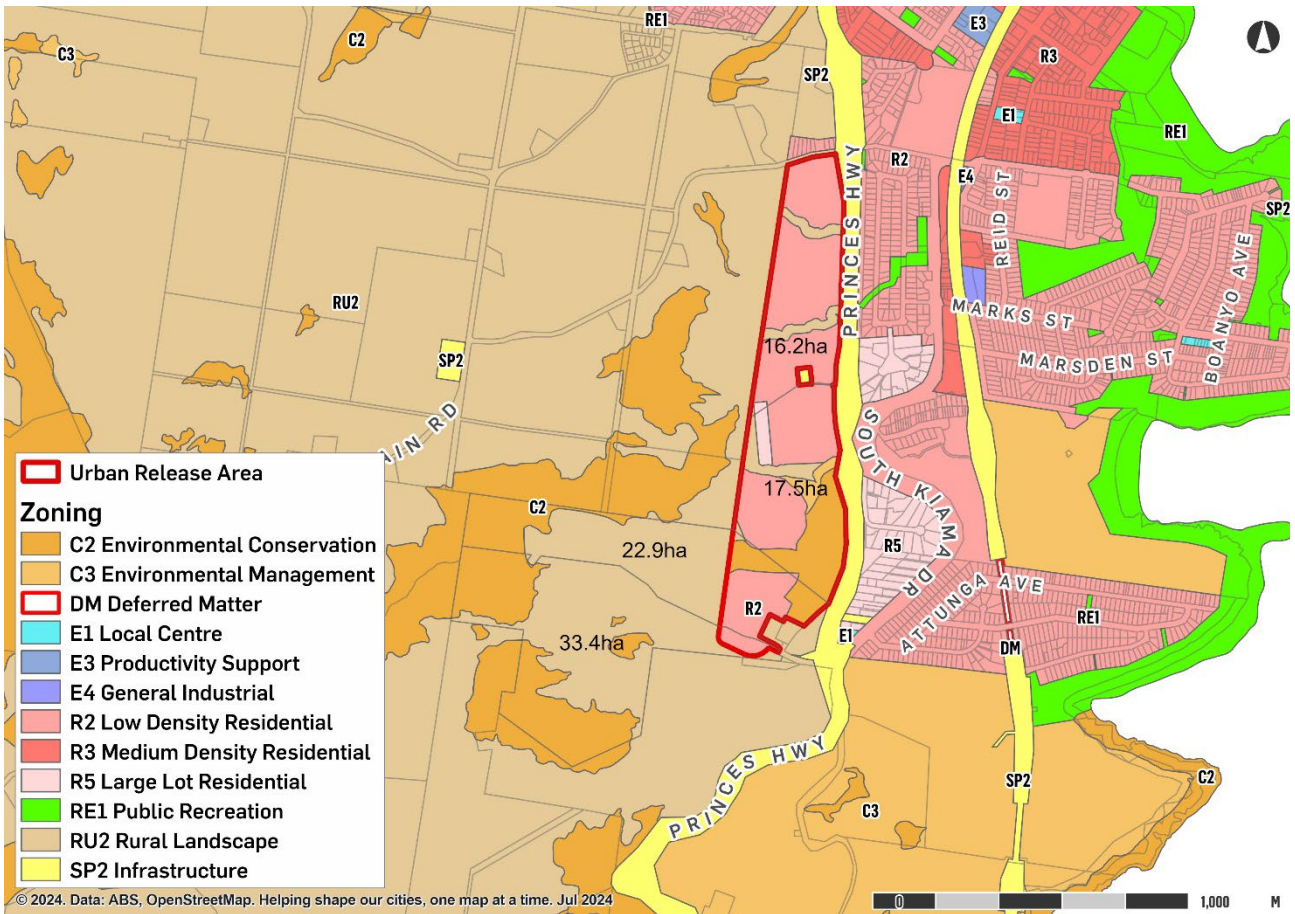
No minimum allotment size was proposed for that land to be zoned RE1 Public Recreation under PP-2021-379. The 'Urban Release Area' designation excluded Kendall's Cemetery.

The gazetted land use zones for the South Kiama Urban Release Area differed from that sought under PP-2021-379 and are shown in **Figure 5** which include:

- R2 Low Density Residential
- R5 Large Lot Residential
- C2 Environmental Conservation
- C3 Environmental Management
- RU2 Rural Landscape

The key change from the submitted planning proposal was that the three watercourses proposed to be zoned RE1 Public Recreation under PP-2021-379 were retained in an RU2 Rural Landscape zone.

Figure 5 Current Land Use Zoning



Source: Urbis, 2024

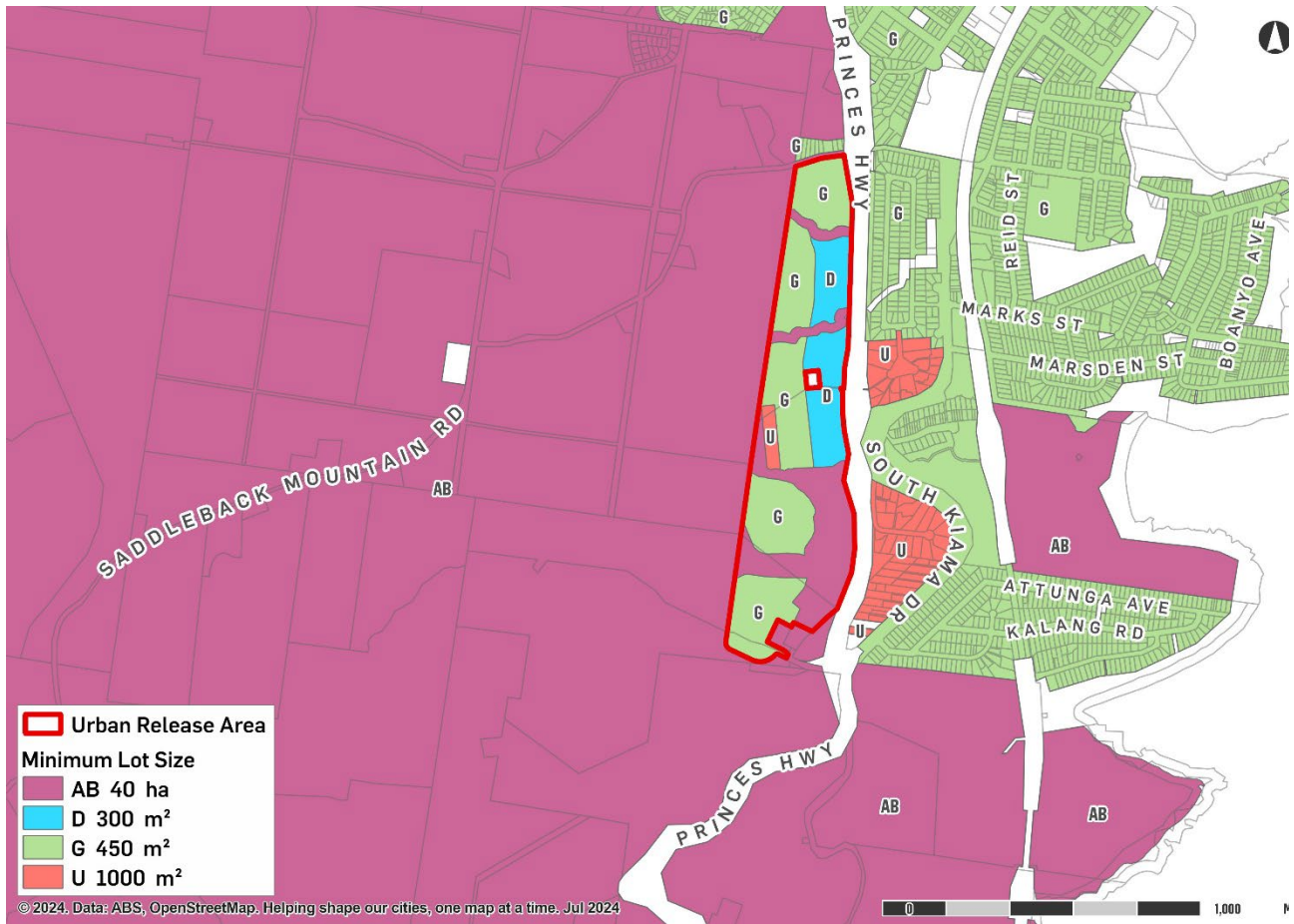
Note: the areas in **Figure 5** comprise the existing areas of the allotments as listed in **Table 1** below.

The minimum lot size controls gazetted for PP-2021-379 as shown in **Figure 6** are:

- 'D' – 300m².
- 'G' – 450m².
- 'U' – 1000m².
- 'AB' – 40ha.

Land within and outside the Urban Release Area boundary zoned for rural or conservation purposes as shown on **Figure 5** above were designated as 'AB' (in the Minimum Lot Size Map) with a 40 ha minimum allotment size for the subdivision of land.

Figure 6 Current Minimum Allotment Sizes



Source: Urbis, 2024

2.2. OPERATION OF PART 4 OF KLEP 2011 TO THE SOUTH KIAMA URBAN RELEASE AREA

The KLEP 2011 is the principal environmental planning instrument applying to the Kiama Local Government Area (LGA) and the South Kiama Urban Release Area.

Part 4 of KLEP 2011 establishes principal development standards for the subdivision of land, minimum allotment sizes for the erection of residential development, maximum heights of buildings and floor space ratio controls for development. Clause 4.6 and other provisions of Part 4 provide a level of flexibility in the operation of these principal development standards.

Notwithstanding the flexibility provided for in the application of the development standards, certain provisions of Part 4, operate in concert to prevent the orderly subdivision of land in the South Kiama Urban Release Area.

The unintended restrictions on the subdivision of the South Kiama Urban Release Area are explained below.

Clause 4.1 – Minimum subdivision lot size

Clause 4.1 establishes minimum allotment sizes for the subdivision of land as shown on the Lot Size Map under KLEP 2011. Relevantly clause 4.1(3) states “*The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land*”.

Clause 4.1 – Exceptions to minimum subdivision lot sizes for certain split zones

An element of flexibility is provided to clause 4.1(3) by clause 4.1C Exceptions to minimum subdivision lot sizes for certain split zones. The clause applies to land in a rural or conservation zone and land in a residential or employment, or W4 Working Waterfront zone. The objectives of the clause are:

(a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,

(b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.

Clause 4.1C(3) provides a level of flexibility in the subdivision of land with a split zoning removing the requirement to comply with the minimum lot sizes in clause 4.1 but only in limited circumstances as follows:

(3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if—

(a) one of the resulting lots will contain all of the land in a rural or conservation zone and—

(i) any existing dwelling, or

(ii) any land within any other zone with an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and

(b) each of the other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

In circumstances where undersized allotments are created through a subdivision of land within a rural and conservation zone, **clauses 4.2 and 4.2A operate to preclude the erection of dwelling houses**. This is to minimise unplanned rural residential development and enable the replacement of lawfully erected dwelling houses in the rural and conservation zones.

Clause 4.6 – Exceptions to development standards

Clause 4.6 of KLEP 2011 provides a degree of flexibility in applying certain development standards to particular development. A limitation is provided to this flexibility through clause 4.6(6) which states:

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

The consequences of these provisions mean that the subdivision of the South Kiama Urban Release Area as shown in the subdivision plan in **Figure 7** below would be prohibited under KLEP 2011 and the potential exception to compliance with development standards provided under clause 4.6(2) is not available.

For completeness, clause 4.6(2) stipulates:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The subdivision of the South Kiama Urban Release Area as shown in **Figure 7** overleaf would result in the creation of multiple allotments in a rural or conservation zone that do not comply with the minimum allotment size for subdivision and would therefore be prohibited.

The details of the future subdivision are:

- Subdivision of Lot 101 and Lot 102 in DP1077617 to delineate the residential zoned land within the Urban Release Area land from the existing rural and conservation zoned land to the west and south that sit outside of the land shown on the Urban Release Area Map.

- Subdivision of the residential zoned land within the mapped Urban Release Area into allotments ranging from 300m² to 1,000m² consistent with the nominated development standards for residential development.
- Progressively create allotments within a rural and/or conservation zone in the Urban Release Area that would contain areas of open space, regional stormwater infrastructure, and regenerated riparian areas. These allotments would have an area below the minimum allotment size of 40 hectares and less than 90% of the minimum allotment size for the respective zone and as such would not comply with the minimum lot size control under clause 4.1 of KLEP 2011.

Figure 7 South Kiama Urban Release Area with Zoning Overlay



Source: DKO, 2023

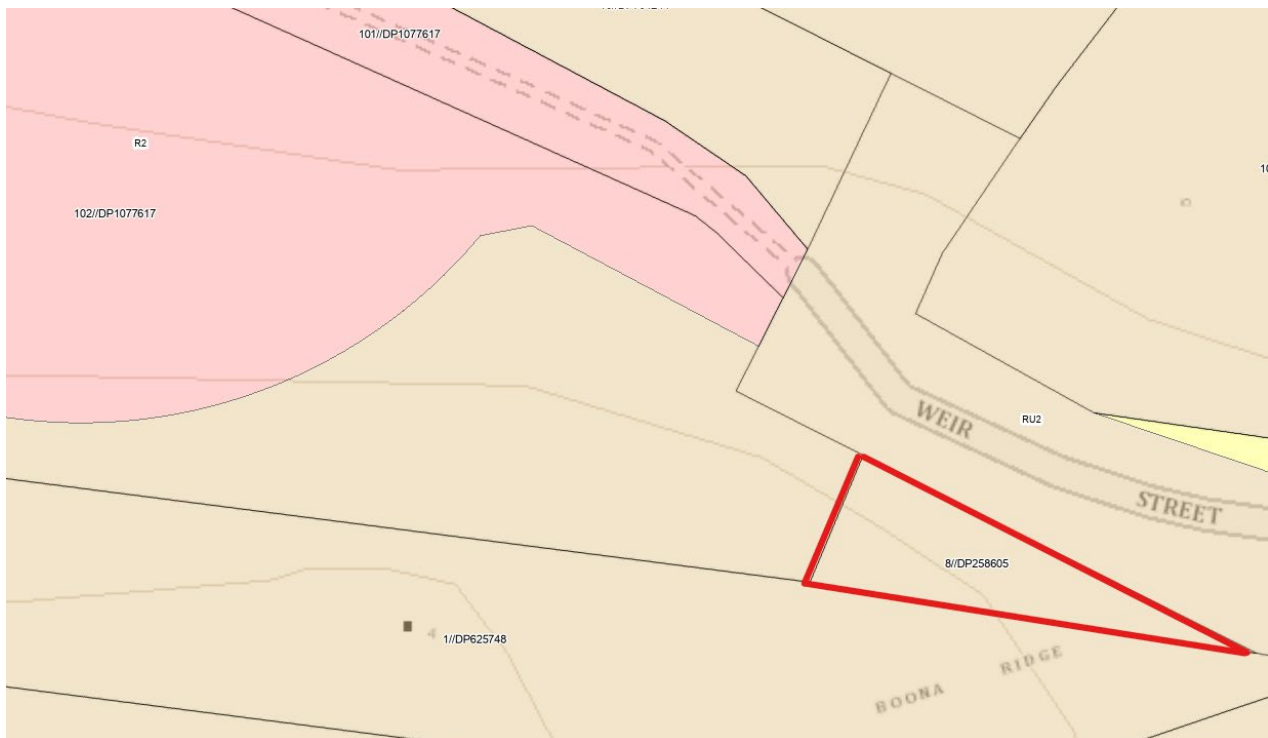
Each of the allotments that are in whole or part-located within the South Kiama Urban Release Area have split land use zones including residential, rural and conservation zones as set out in Table 1. None of the allotments currently meet the minimum allotment size for land zoned for rural or conservation purposes of 40 hectares as detailed in Table 1, Figure 5 and Figure 6.

Table 1 Allotment Details

Allotment	Land-use Zones	Allotment Area
Lot 1 DP707300	<ul style="list-style-type: none"> ▪ R2 Low Density Residential ▪ RU2 Rural Landscape 	16.22ha
Lot 5 DP740252	<ul style="list-style-type: none"> ▪ R2 Low Density Residential ▪ C2 Environmental Conservation ▪ C3 Environmental Management ▪ RU2 Rural Landscape 	17.83ha
Lot 101 DP1077617	<ul style="list-style-type: none"> ▪ R2 Low Density Residential ▪ C2 Environmental Conservation 	23.07ha

Allotment	Land-use Zones	Allotment Area
	<ul style="list-style-type: none"> RU2 Rural Landscape 	
Lot 102 DP1077617	<ul style="list-style-type: none"> R2 Low Density Residential C2 Environmental Conservation RU2 Rural Landscape 	33.38ha
Lot 8 DP258605 (refer to Figure 8 below)	<ul style="list-style-type: none"> RU2 Rural Landscape 	438.7m ²

Figure 8 Lot 8 DP258605 Location Plan



Source: NSW Government

The operation of clauses 4.1, 4.1C and 4.6(6) will prevent the owners of Lot 101 in DP 1077617 and Lot 102 in DP 1077617 from excising their rural and conservation zoned land from the residential, rural and conservation zoned portions located within the Urban Release Area. Further, residential subdivision within the Urban Release Area would be precluded as it would result in the creation of lots zoned RU2 Rural Landscape, C2 Environmental Conservation and C3 Environmental Management that do not comply with the minimum allotment size for the respective zones.

2.3. STRATEGIC PLANNING CONTEXT

This Planning Proposal will enable the orderly subdivision of land in the South Kiama Urban Release Area and would have equal application for land in future urban release areas with split land use zoning, being land identified to deliver much needed housing, consistent with and supportive of a range of strategic planning outcomes established by Council and the NSW Government. It will, through the introduction of the new LEP provisions, remove current and prevent future barriers to subdivision in Urban Release Areas.

This section provides a brief overview of the strategic planning policies governing development in NSW and how the amendments to KLEP 2011 will facilitate the strategic policy outcomes.

Detailed consistency of the proposal with the relevant State and local strategic planning documents is demonstrated in **Section 3.3.2** of this report.

Table 2 Strategic Planning Framework

Document / Directive	Description
<p>NSW Government Priorities</p>	<p>NSW Housing Targets have been set for all LGAs committing to build 377,000 new homes across the state in the next 5 years.</p> <p>Council has a target of 900 new completed houses by 2029. The proposed amendment to KLEP 2011 will facilitate the delivery of up to 50% of Council's housing target by 2029.</p> <hr/> <p>The Australian housing context is currently subject to a housing shortage and an affordability crisis.</p> <p>Delivery of a diverse housing stock continues to be a priority across all levels of government, with the amendments to the Housing SEPP for Infill Affordable Housing and the Transport Orientated Development (TOD) SEPP as well as the draft Low and Mid-Rise Housing initiatives driving increased density to alleviate housing stresses.</p>
<p>Illawarra Shoalhaven Regional Plan 2041 (Region Plan)</p>	<p>The Region Plan provides a 20-year vision for, amongst other elements, the emerging housing needs of the growing Illawarra Shoalhaven community.</p>
<p>Kiama Local Strategic Planning Statement 2020 (LSPS)</p>	<p>Aligning with the Region Plan, the LSPS sets the land use framework for the Kiama Municipality's economic, social and environmental requirements over the next 20 years. This includes diversity of housing stock and strategies to unlock housing within the LGA.</p>
<p>Draft Kiama Growth and Housing Strategy</p>	<p>Council is currently developing a Growth and Housing Strategy which will outline planning principles, enliven existing identified growth areas, and will scope opportunities to plan future growth locations.</p> <p>The draft Growth and Housing Strategy was exhibited between 19 July 2024 and 16 August 2024, finalisation to occur in 2025.</p>

3. AGENCY REFERRAL

The Proponent and Council have undertaken relevant stakeholder engagement where required to inform the preparation of this Planning Proposal.

A condition of the Gateway Determination of the Planning Proposal required the Council prior to exhibition to consult with the NSW Rural Fire Service (**RFS**) in relation to section 9.1 Direction 4.3 Planning for Bushfire Protection.

By letter dated 16 January 2025 the RFS advised Council that:

“Based upon an assessment of the information provided, NSW RFS considers the planning proposal to be consistent with the Ministerial Direction 4.3 issued in accordance with Section 9.1 of the Environmental Planning and Assessment Act 1979. No objections to the proposal subject to a requirement that the future subdivision of the land complies with Planning for Bush Fire Protection.”

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4. THE PLANNING PROPOSAL

This Planning Proposal has been prepared in accordance with section 3.33 of the EP&A Act and the DPHI Guideline 'Local Environmental Plan Making Guideline' dated August 2023.

This section addresses each of the matters to be addressed as outlined in the Guideline, including:

- Objectives and intended outcomes.
- Explanation of provisions.
- Justification including need for proposal, relationship to strategic planning framework, environmental, social and economic impacts, and State and Commonwealth interests.
- Likely future community consultation.

4.1. PART 1: OBJECTIVES AND INTENDED OUTCOMES

4.1.1. Objective

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

4.1.2. Intended Outcomes

This Planning Proposal seeks to remove the effective prohibition under clause 4.6(6) of KLEP 2011 as it relates to the subdivision of land within Urban Release Areas, inclusive of the South Kiama Urban Release Area. The application of the proposed KLEP 2011 amendment is limited to land within an urban release area with multiple land use zones in a rural or conservation zone. The proposed amendment will not have broad application to all land the subject of KLEP 2011.

The operation of the proposed amendment will not enable the development of a dwelling house on an undersized rural or conservation zoned allotment created under the controls where a dwelling house does not presently exist. The provisions of clause 7.6(4) will apply to any undersized allotment zoned rural or conservation created by the proposed exception.

The amendment provides a pathway for the logical and orderly subdivision of rural and conservation zones in and associated with the development of an urban release area within the Kiama LGA.

Enabling an exception as proposed to the minimum allotment size in the appropriate circumstances will facilitate the orderly and economic use and development of land within urban release areas with split zonings. In the case of the South Kiama Urban Release Area, variation to the 40ha minimum lot size control for land zoned rural and conservation will enable the excision of land zoned for rural and conservation purposes. It will also facilitate the future embellishment and revitalisation of natural and open spaces and delivery of regional stormwater infrastructure prior to transfer of the land into public ownership; and, enable land zoned for residential purposes to be developed.

The proposed clause has been adapted from similar urban release area provisions applying in adjacent LGAs. The wording is intentional to accommodate not only excision of non-Urban Release Area land but also to effectively allow multi-stage residential subdivision which will create undersized rural and conservation zoned allotments within the urban release area. The following nuances of the clause are acknowledged as essential in enabling the appropriate subdivision of the site:

- Per section 8 of the *Interpretation Act 1987*, a reference to a word or phrase in the singular form includes are reference in the plural.
- Residue portions of an original lot in the urban release area, following initial subdivision are considered to be an original lot for the next phase of subdivision for the purposes of the clause.

Attachment A, which contains testing of a staged subdivision approach of the South Kiama Urban Release Area, reflects these nuances.

4.2. PART 2: EXPLANATION OF PROVISIONS

4.2.1. Intended Provisions

The objectives and intended outcomes of the Planning Proposal will be achieved by introducing flexibility to vary the minimum lot size controls that applying to land within urban release areas by insertion of clause 7.5 and clause 7.6 into KLEP 2011 as follows (amendments in red text):

7.5 Relationship between Part and remainder of Plan

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

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

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

(2) This clause applies to a lot (the original lot) if the original lot, or part of the original lot is—

- (a) in an urban release area, and*
- (b) in an approved land use zone.*

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

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

(5) In this clause—

approved land use zone means any of the following land use zones—

- (a) Zone RU2 Rural Landscape,*
- (b) Zone C2 Environmental Conservation,*
- (c) Zone C3 Environmental Management.*

4.3. PART 3: JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT

The LEP Making Guideline identifies that the Minister (or delegate) must be satisfied that the Planning Proposal has strategic and site-specific merit and that identified potential impacts can be readily addressed during the subsequent LEP making stages.

Consistent with the assessment criteria outlined in the LEP Making Guidelines, **Table 3** outlines an assessment against the criteria for strategic and site-specific merit.

Table 3 Strategic and Site-Specific Merit Assessment

Assessment Criteria	Response	Consistency
Strategic merit – does the proposal:		
<i>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.</i>	The proposed amendment will facilitate the logical subdivision of land and enable future residential development to be undertaken within an Urban Release Area, as zoned. This will meet in part the housing objectives of the Illawarra-Shoalhaven Regional Plan	YES
<i>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.</i>	The Planning Proposal is consistent with the relevant objectives of the Kiama LSPS. Refer to Table 5 .	YES
Site-specific merit – does the proposal give regard and assess impacts to:		
<i>The natural environment on the site to which the proposal relates and other affected land.</i>	The proposed clauses will not have a direct impact on the natural environment. Considered in a broad sense the proposed clause will facilitate the delivery of restored environmental land into public ownership.	N/A
<i>Existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates.</i>	The proposed amendment to KLEP 2011 will facilitate logical subdivision and enable future residential development of land within Urban Release Areas.	YES
<i>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.</i>	Service and infrastructure provision is not relevant to the proposed amendment.	N/A

4.3.1. Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. The proposed amendment is to address an unintended consequence of the outcomes of PP-2021-379 which results in the prohibition of creating conservation and open space lots in an Urban Release Area.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. This planning proposal is the best means of achieving the planning outcomes to facilitate development in the South Kiama Urban Release Area and future Urban Release Areas which will enable the orderly and economic subdivision of land in an Urban Release Areas that contain rural or conservation zones under the KLEP 2011.

4.3.2. Section B – Relationship to Strategic Planning Framework

Q3. *Will the planning proposal give effect to the objectives and actions of the applicable regional, of district plan or strategy (including any exhibited draft plans or strategies)?*

Yes. The Planning Proposal will give effect to the objectives and actions of the applicable regional and district planning strategies described in **Section 2.3** above and detailed below in **Table 4**:

Table 4 Relationship to Strategic Planning Framework

Objective	Consistency
Government Priority	
<p>NSW Government Housing Targets</p> <p>Kiama 5-year housing target – 900 new completed homes by 2029.</p>	<p>The Planning Proposal seeks to rectify an unintended consequence of PP-2021-379 which restricts the ability to subdivide rural and conservation zoned land. The amendment will facilitate the delivery of residential land in the South Kiama Urban Release Area and will significantly contribute to housing provision in Kiama as well as meeting the targets set by the State Government.</p>
<p>The Australian housing context is currently punctuated with housing shortage and an affordability crisis developing across Australia, enveloping New South Wales, the Illawarra-Shoalhaven Region and the Kiama LGA.</p> <p>Delivery of a diverse housing stock continues to be a priority across all levels of government, with the amendments to the Housing SEPP for Infill Affordable Housing and the TOD SEPP as well as the draft Low and Mid-Rise Housing initiatives driving increased density to alleviate housing stresses.</p>	<p>The Planning Proposal seeks to amend the provisions of KLEP 2011 which preclude the orderly subdivision of the South Kiama Urban Release Area which was rezoned in 2022 for the purpose of enabling residential development. The provision will apply to future urban release areas that result in a mix of residential, rural or environmental zones.</p>
Illawarra Shoalhaven Regional Plan 2041	
A region that values its people and places	
<p><i>Objective 18: Provide housing supply in the right locations.</i></p>	<p>The Planning Proposal will enable the orderly and economic development of the South Kiama Urban Release Area which has been purposefully rezoned to enable delivery of residential allotments. It can be concluded that in rezoning the South Kiama Urban Release Area that DPHI recognised it as a suitable location to accommodate housing supply.</p>
<p><i>Objective 19: Deliver housing that is more diverse and affordable.</i></p>	<p>The proposed amendment will not alter the minimum lot size control of residential zoned land in an Urban Release Area.</p>

Q4. *Is the planning proposal consistent with a Council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?*

Yes. The Planning Proposal is consistent with the following local strategy as described in **Section 2.3** of this report and detailed below:

Table 5 Relationship to Local Strategic Plans

Planning Priority	Consistency
Kiama Local Strategic Planning Statement 2020	
<i>Section 10 - Future Housing Opportunities</i>	The inclusion of proposed clause 7.5 and clause 7.6 into KLEP 2011 will facilitate the delivery of residential land in urban release areas and enable Council to achieve a significant component of its housing target.
<i>Theme 1: Manage sustainable growth</i>	

Q5. Is the planning proposal consistent with applicable State and regional studies or strategies?

Yes. A consistency assessment against Council’s relevant local strategies is provided below.

Table 6 Relationship to relevant local strategies

Local Strategy	Consistency
Draft Kiama Growth and Housing Strategy	
<p>Council has developed a Growth and Housing Strategy which will outline planning principles, enliven existing identified growth areas, and will scope opportunities to plan future growth location. The Draft Kiama Growth and Housing Strategy is to be reported to Council on 16 July for adoption for exhibition purposes..</p> <p>From the evidence base informing the Kiama Growth and Housing Strategy incorporating data from REMPLAN 2024, the population of Kiama is projected to increase from 23,398 in 2024 to 31,115 in 2044 with a 71% increase in the population of 75+ year olds (1,906 persons) over this period.</p> <p>It has been identified that providing a diversity of lot sizes is important to meet broad demographics of the Kiama LGA and will help achieve housing affordability and sustainability.</p>	<p>The Planning Proposal seeks to facilitate the subdivision of residential land within the South Kiama Urban Release Area and emerging precincts nominated as an Urban Release Area that have residential, environmental and rural zoning.</p> <p>The staged subdivision of the South Kiama Release area as shown in Figure 7 and Attachment A will be enabled by the proposed clause 7.5 and clause 7.6 and this will enable the delivery of a diversity of housing supply.</p>

Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes. The Planning Proposal is consistent with the relevant State Environmental Planning Policies (SEPP) as outlined in **Table 7** below.

Table 7 Consistency with SEPPs

SEPP	Consistency	Comment
SEPP (Transport and Infrastructure) 2021	Consistent	<p><u>Chapter 2 Infrastructure</u></p> <p>This Chapter aims to facilitate the effective delivery of infrastructure across the State by (amongst other things) identifying matters to be considered in the assessment</p>

SEPP	Consistency	Comment
		<p>of development adjacent to particular types of development.</p> <p>The Princes Highway traverses the site in a north-south direction. The Proposal does not prejudice the mechanisms bestowed under the T&I SEPP, rather future developments to be undertaken on the site will be required to consider relevant provisions under Chapter 2, in particular Sections 2.119 and 2.122.</p> <p>Future developments may require consideration in relation to Schedule 3 of the T&I SEPP pertaining to Traffic Generating Development. Accordingly, future development applications will require concurrence with TfNSW should they trigger the relevant requirements.</p>
SEPP (Resilience and Hazards) 2021	Consistent	<p><u>Chapter 4 Remediation of Land</u></p> <p>Section 4.6 requires in the event of a change of land use, that the planning / consent authority must consider whether the land is contaminated, and if the land can be suitably remediated for the proposed land use zones / activities.</p> <p>Future development applications will be required to undertake relevant investigations to determine whether the land is or can be made suitable for the future land uses.</p>
SEPP (Housing) 2021	Consistent	Should future developments include provision for residential development under the Housing SEPP, this Proposal does not preclude the ability to invoke the provisions as stipulated under the Housing SEPP.
SEPP (Sustainable Buildings) 2022	Consistent	This Proposal does not preclude the ongoing operation of the Sustainable Buildings SEPP. Future developments will be required to include BASIX certificates and address the relevant provisions of Chapter 2 of the SEPP in relation to future built form for residential purposes.

Q7 *Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?*

Yes. The Proposal is consistent with the relevant Ministerial Directions under Section 9.1 of the EP&A Act as identified and summarised in **Table 8** outlined below.

The insertion of clause 7.5 and clause 7.6 through this Planning Proposal will address an unintended consequence of the interplay between clauses 4.1, 4.1C and 4.6 of KLEP 2011 as they relate to land with multiple zonings in an urban release area.

Table 8 Consistency with Section 9.1 Ministerial Directions

Ministerial Direction	Consistency	Comment
1. Planning Systems		
1.1 Implementation of Regional Plans	Consistent	<p>The Proposal is consistent with the land use strategy, goals, directions and actions contained within the Illawarra-Shoalhaven Regional Plan.</p> <p>The proposed amendment will facilitate the logical subdivision of land and enable future residential development to be undertaken within an Urban</p>

Ministerial Direction	Consistency	Comment
		Release Area, as zoned. This will meet in part the housing objectives of the Illawarra-Shoalhaven Regional Plan
1.2 Development of Aboriginal Land Council Land	Not applicable	The Precinct is not within the land application area of the repealed <i>State Environmental Planning Policy (Aboriginal Land) 2019</i> , now identified under Chapter 3 of the Planning Systems SEPP. Therefore, this Direction is not applicable to the Proposal.
1.3 Approval and Referral Requirements	Consistent	This direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development. The Proposal responds to this direction by including new provisions within the LEP that will support future subdivision of the site and enable the orderly development of future urban release areas in the LGA. That have multiple land use zones.
1.4 Site Specific Provisions	Consistent	<p>The objective of the direction is to discourage unnecessarily restrictive site-specific planning controls. This Proposal proposes new provisions to ensure the existing subdivision provisions are not restrictive and will allow for ongoing subdivision of the site in the future.</p> <p>The staged subdivision of the South Kiama Release area as shown in Figure 7 and Attachment A will be enabled by the proposed clause 7.5 and clause 7.6 and this will enable the delivery of a diversity of housing supply.</p>
1.4A Exclusion of Development Standards from Variation	Consistent	Should future developments require departure from the applicable Development Standards, a Clause 4.6 Variation Request would be required to be prepared.
Focus Area 2: Design and Place		
Focus Area 3: Biodiversity and Conservation		
3.1 Conservation Zones	Consistent	The Proposal will indirectly facilitate the ongoing protection, enhancement and conservation of riparian corridors and protected vegetation across the Urban Release Area. Future subdivision will include allotments that are dedicated for future conservation and environmental purposes (riparian corridors).
3.2 Heritage Conservation	Consistent	<p>There is one (1) local heritage item (Kendalls Cemetery) identified across the Urban Release Area and identified Aboriginal Cultural Heritage throughout various parts of the Urban Release Area. Both fields of historic and Aboriginal Cultural Heritage have been previously investigated as a result of the rezoning (as gazetted) and will continue to be considered in the future as a result of future applications.</p> <p>To ensure ongoing protection of heritage items is achieved, robust heritage controls have been proposed in a Draft DCP (being undertaken concurrently to this Proposal) that is due to be endorsed and adopted in early 2025. The controls in the DCP will guide and facilitate development outcomes surrounding the cemetery which includes the requirement for a curtilage and open space to be provided as a buffer that ensures the ongoing protection and preservation of the item into the future.</p>

Ministerial Direction	Consistency	Comment
3.6 Strategic Conservation Planning	Consistent	<p>Added protection will be ensured via a future Heritage Conservation Management Plan that will be coordinated with Council.</p> <hr/> <p>The objective of this Direction is to protect, conserve or enhance areas with high biodiversity value. The Urban Release Area includes areas zoned C2 and C3. Consistent with the Direction, this Proposal will ensure that future development can:</p> <ul style="list-style-type: none"> - Protect and enhance native vegetation; - Protect or enhance riparian corridors, including native vegetation and water quality; - Protect threatened ecological communities, threatened species and their habitats; - Protect and enhance the identified migratory bird habitat in the north-eastern corner of the Precinct; - Minimise impacts on areas of regionally significant biodiversity, including threatened ecological communities, threatened species and their habitats; and - Maintain and enhance ecological function. <p>Future subdivision of the land will aim to implement strategies that rehabilitate riparian corridors through revegetation and planned management measures.</p>
3.7 Public Bushland	Consistent	<p>The objective of this Direction is to protect bushland in urban areas, including rehabilitated areas, and ensure the ecological viability of the bushland is maintained. The Proposal is in accordance with this direction by preserving:</p> <ul style="list-style-type: none"> - Biodiversity and habitat corridors; - Existing hydrological landforms, processes and functions, including natural drainage lines, watercourses; and - The recreational, scientific, aesthetic, environmental, ecological, cultural & educational value and potential of the land.
3.10 Water Catchment Protection	Consistent	<p>In accordance with the objectives of this Direction, the Proposal will ensure that future developments are capable of:</p> <ul style="list-style-type: none"> - Maintaining water quality and flows of natural waterbodies, and reduce urban run-off and stormwater pollution; - Protecting hydrological, ecological and geomorphological processes of natural waterbodies and their connectivity; - Protecting and enhance the environmental quality of water catchments through ecologically sustainable management, for the benefit of all users; and

Ministerial Direction	Consistency	Comment
		- Protecting watercourses, wetlands, riparian lands and their vegetation and ecological connectivity.
Focus Area 4: Resilience and Hazards		
4.1 Flooding	Consistent	<p>The objective of this Direction is to ensure that the development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> – which has now been repealed by the 2023 version.</p> <p>The Proposal does not require consideration of flooding; however, it is important to note that by virtue of the provisions proposed, future subdivision will be able to consider relevant low points throughout the Urban Release Area and design residential catchments to be clear of the relevant portions that are inundated by flooding.</p>
4.3 Planning for Bushfire Protection	Consistent	<p>In accordance with the objectives of this Direction, the Proposal has been developed to include provisions that will allow for subdivision to occur whereby future applications can be prepared on the basis to protect life, property and the environment from bush fire hazards through discouraging the establishment of incompatible land uses in bush fire prone areas, and to include sound management of bush fire prone areas. Bushfire planning measures in accordance with <i>Planning for Bushfire Protection 2019</i> will be considered as part of future applications.</p> <p>Furthermore, the NSW RFS have provided their support as follows: <i>“Based upon an assessment of the information provided, NSW RFS considers the planning proposal to be consistent with the Ministerial Direction 4.3 issued in accordance with Section 9.1 of the Environmental Planning and Assessment Act 1979. No objections to the proposal subject to a requirement that the future subdivision of the land complies with Planning for Bush Fire Protection.”</i></p>
4.4 Remediation of Contaminated Land	Consistent	Future development applications will be required to undertake relevant investigations to determine whether the land is or can be made suitable for the future land uses.
4.5 Acid Sulfate Soils	Consistent	Future development applications will be required to undertake relevant investigations to determine whether the land is subject to the potential of Acid Sulfate Soils occurring.
4.6 Mine Subsidence and Unstable Land	Not applicable	The Precinct is not located within a mine subsidence area.
Focus Area 5: Transport and Infrastructure		
5.1 Integrating Land Use and Transport	Consistent	Future development will take into consideration land use locations, street layouts and future subdivision to promote access by walking, cycling and public transport.
5.2 Reserving Land for Public Purposes	Consistent	Ongoing consultation will continue to occur with the relevant authorities to ensure land can be allocated for future public purposes.

Ministerial Direction	Consistency	Comment
Focus Area 6: Housing		
6.1 Residential Zones	Consistent	The Proposal includes provisions that will allow for subdivision to occur within the Urban Release Area and consequently future residential development to occur, thereby contributing to Kiama's housing targets.
Focus Area 7: Industry and Employment		
7.1 Employment Zones	Not applicable	The Urban Release Area prohibits all employment related land uses.
Focus Area 8: Resources and Energy		
8.1 Mining, Petroleum Production and Extractive Industries	Not applicable	The Precinct is not utilised for the purposes of extraction or resource recovery, and the Proposal will not prohibit the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restrict the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance.
Focus Area 9: Primary Production		
9.1 Rural Zones	Consistent	Consistent with the direction, the Proposal will allow for the future subdivision of rural zones which include riparian corridors. The intent is for these areas to be rehabilitated, vegetated and dedicated to Council in the future.
9.2 Rural Lands	Consistent	Consistent with this Direction, the Proposal: <ul style="list-style-type: none"> - Is consistent with the applicable strategic planning framework endorsed by the Planning Secretary; - Identifies and protects environmental values, maintains biodiversity, and protects native vegetation, cultural heritage and water resources; - Responds to the natural and physical constraints of the land, including topography, size, location, water availability and ground and soil conditions; and, - Promotes the social, economic and environmental interests of the community.

4.3.3. Section C – Environmental, Social and Economic Impact

Q8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

No. The planning proposal seeks to correct a drafting anomaly which prevents the subdivision of land zoned for rural or conservation purposes from residential zoned land in an Urban Release Area where the resulting rural or conservation lots will be undersized.

Q9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

No. The Planning Proposal will remove a drafting anomaly in KLEP 2011.

4.3.3.1. Built Form and Context

Q10. Has the planning proposal adequately addressed any social and economic effects?

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

4.3.4. Section D – Infrastructure (Local, State and Commonwealth)

Q11. Is there adequate public infrastructure for the planning proposal?

Insertion of proposed clause 7.5 and clause 7.6 into KLEP 2011 will not give rise to any increased demand for public infrastructure.

4.3.5. Section E – State and Commonwealth Interests

Q11. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The DPHI Regional Office has been consulted in relation to the Planning Proposal and confirmed that this Planning Proposal was the appropriate pathway to address the drafting anomaly.

In addition, multiple meetings have been held with Kiama Municipal Council to test the wording of the proposed provisions

4.4. PART 4: MAPS

No maps are required to be updated as part of the Planning Proposal.

4.5. PART 5: COMMUNITY CONSULTATION

Section 3.34 of the EP&A Act requires the relevant Planning Proposal Authority to consult with the community in accordance with the Gateway Determination.

In accordance with the requirements of the LEP Making Guideline, it is expected that the Planning Proposal will be publicly exhibited for at least 28 days post Gateway Determination. As part of the Gateway Determination, consultation will be undertaken with any relevant agencies and stakeholders.

4.6. PROJECT TIMELINE

The Planning Proposal is **basic** as the change is principally administrative in nature.

The following table sets out the anticipated project timeline in accordance with the LEP Making Guideline. The key milestones and overall timeframe will be subject to further detailed discussions with Council and DPHI to seek ways to accelerate this timeframe.

Table 9 Anticipated Project Timeline

Process	Indicative Timeframe
Planning Proposal submitted to Council	September 2024
Council decision	November 2024
Gateway Determination	December 2024
Post Gateway + Public Exhibition	January-February 2025
Review of submissions	February-March 2025
Report to Council – adoption for finalisation	March 2025
Finalisation of planning proposal	March – May 2025

Process	Indicative Timeframe
Gazettal of LEP amendment	May 2025

5. CONCLUSION

The insertion of proposed clause 7.5 and clause 7.6 into KLEP 2011 as proposed under the Planning Proposal is an administrative amendment to address the unintended consequence of prohibiting the subdivision of land in an urban release area with multiple land use zones.

The proposed amendment will not result in the creation of additional dwelling entitlements in rural or conservation zones and will only apply to land within designated urban release areas with multiple land uses zones applying to the land.

In the immediate term the proposed amendment will enable the orderly development of the South Kiama Urban Release Area, have a significant positive impact towards meeting Council's 2029 housing target and facilitate the subdivision of land in future urban release areas under KLEP 2011.

6. DISCLAIMER

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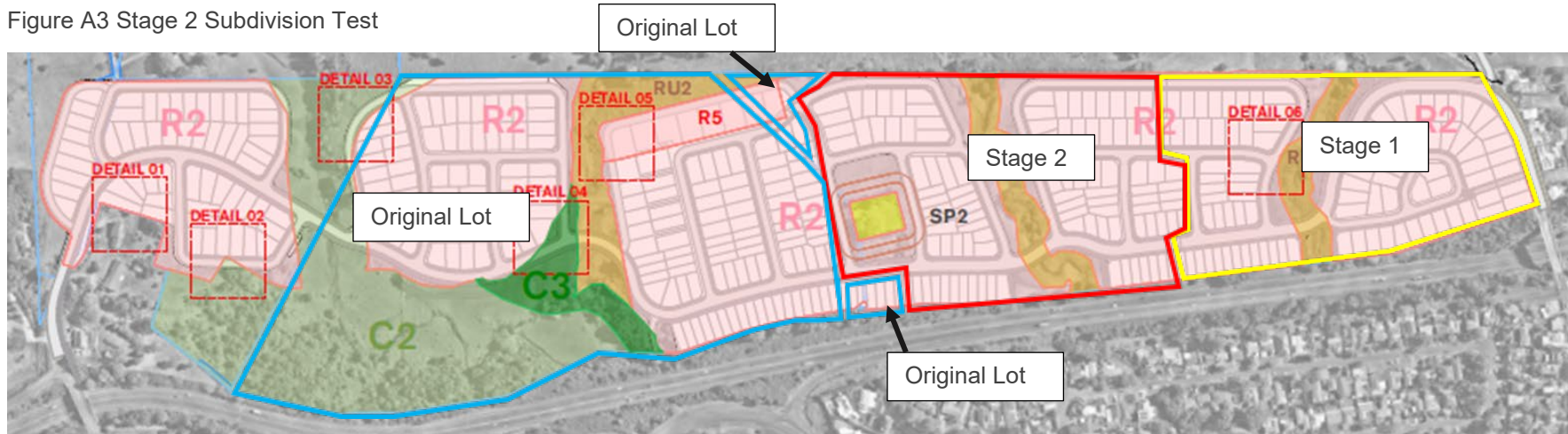
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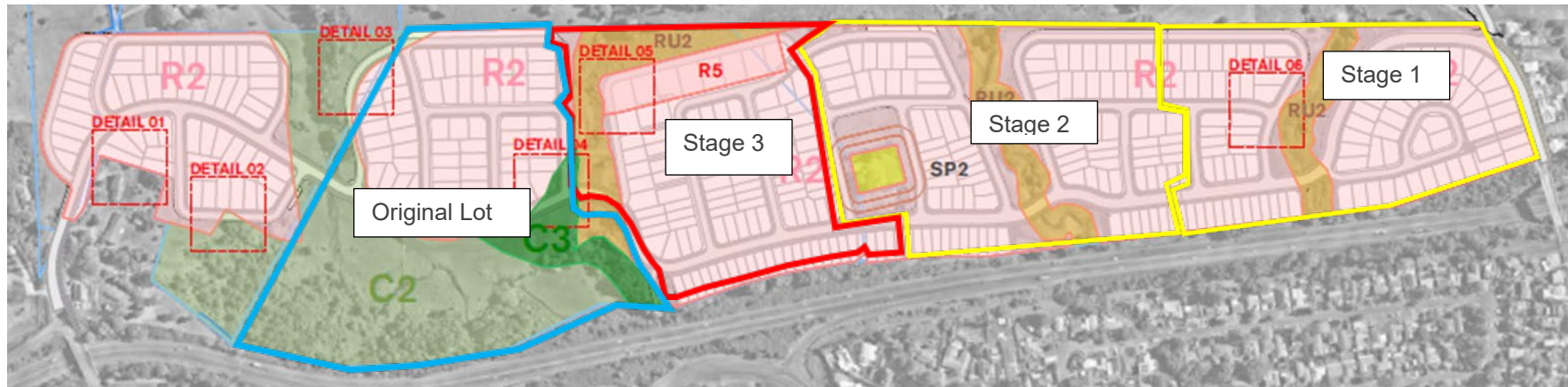
Attachment A – Subdivision Testing

Figure A3 Stage 2 Subdivision Test



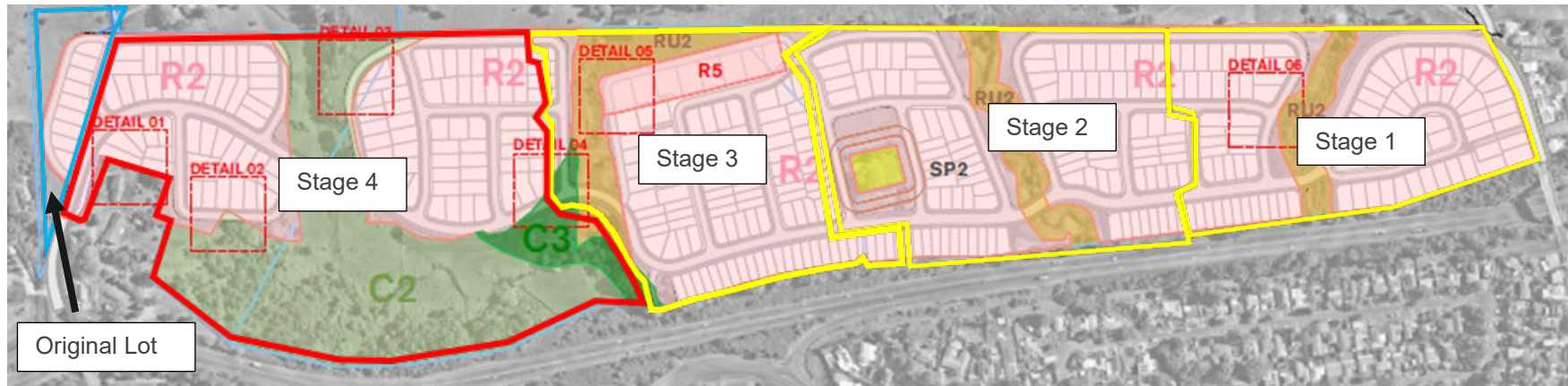
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Figure A4 Stage 3 Subdivision Test



Source: DKO

Figure A5 Stage 4 Subdivision Test



Source: DKO

