



ORDINARY MEETING OF COUNCIL SUPPLEMENTARY ITEMS

To be held at 5 pm on

Tuesday 19 October 2021

Council Chambers

11 Manning Street, KIAMA NSW 2533

Members

The Mayor

Councillor M Honey

Councillor A Sloan

Deputy Mayor

Councillor M Brown

Councillor N Reilly

Councillor K Rice

Councillor W Steel

Councillor D Watson

Councillor M Way

Councillor M Westhoff

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17 ADDENDUM TO REPORTS

17.1 Planning Proposal - South Kiama

CSP Objective: 2.0 Well planned and managed spaces, places and environment

CSP Strategy: 2.3 The principles of sustainable development and compliance underpin town planning and local development

Delivery Program: 2.3.1 Conduct development and building assessment/approval functions in accordance with statutory requirements, policies and procedures

Summary

On 13 October 2021 Council received a letter from the Department of Planning Industry and Environment regarding a development proposal at South Kiama advising that:

“After careful consideration of Council’s position, submissions and planning strategies, the Department has concluded the proposal has strategic and site-specific merit and issues raised during consultation can be addressed. As such the Department has decided that it intends to rezone the site for residential development and environmental protection.”

This report outlines the content of the letter and the next steps required in the process. It also seeks to outline the options available to Council and an overview of the considerations that need to be made in relation to the resources provided to Department Industry Planning and Environment (DPIE) from Council for the finalisation of the proposal.

Policy

Planning Proposals require consideration of several Acts, Government policies, Council environmental planning instruments and planning documents. Specifically, the *Environmental Planning and Assessment Act 1979*, *Kiama LEP 2011*, *Illawarra-Shoalhaven Regional Plan*, *Kiama Local Strategic Planning Statement 2020*, and the *Kiama Planning Proposal Policy*.

Communication/Community Engagement

There has been extensive consultation and exhibition through the Planning Proposal (PP) process which resulted in over 300 submissions to Council. Of these submissions 16 were for the proposal, whilst 284 were against the proposal. The key issues raised by community and Council included strategic merits, traffic and parking impacts, loss of rural landscape, folding issues, heritage impacts and infrastructure capacity.

The submissions that supported the proposal sighted an increase in the supply of housing and support for local jobs during construction.

Delegations

Supplementary Reports

17.1 Planning Proposal - South Kiama (cont)

As this PP was subject to a Rezoning Review (i.e. involvement of Southern Planning Panel) Council has not received plan making delegations, from the Minister of Planning and Public Spaces, for this Proposal.

Any recommendation of Council must be forwarded to the Minister for a final determination. Council does not have the plan making delegations or the ability review the determination of the DPIE, the decision must be accepted.

Item 17.1

Attachments

- 1 DPIE letter [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council

- Note the decision of the State Government relating to Department of Planning Industry and Environment approval for a development proposal at South Kiama PP_2019_KIAMA004_00 and the intention to rezone rural land west of the Princes Highway between Saddleback Mountain Road and south of Weir Street for residential purposes and environmental conservation.
- Note and reiterate for the public record, the previously stated resolutions from the 28 June 2021 report where specific concerns were cited in relation to the proposed development known as South Kiama which remain.
- Following the finalization of the Housekeeping Amendment to Kiama Local Environmental Plan (KLEP) note that the urban release areas clause will apply and that there will be a requirement for a site-specific Development Control Plan.
- Delegate to the Chief Executive Officer to work proactively with the proponent to seek early input and improved outcomes for the development of the site for the benefit of the community.
- Delegate to the Chief Executive Officer operational responsibility to continue to work collaboratively and provide planning expertise to the Department of Planning Industry and Environment using Council's Major Projects team model, in order to assist with finalizing the required mapping to support the development outlined at resolution one (1) above.

Purpose of Report

The purpose of this report is to publicly advise Council and the community of the correspondence received from the DPIE on the 13th October 2021, regarding the Planning Proposal for South Kiama. Council had sought to cease the gateway process and not rezone the land, however the DPIE have advised that they have determined that the proposal has strategic merit and should proceed.

Supplementary Reports

17.1 Planning Proposal - South Kiama (cont)

Council now has two keys tasks which include:

1. Ensure the community is publicly advised of the State Government's decision on the development proposal.
2. Allocate operational resources to assist the DPIE to finalisation the proposal in line with existing legislative responsibilities and to ensure continued input and expertise into a major development for the local government authority.

Further details about the background and process are provided in the content outlined below.

Background

On 19 March 2019, Council resolved not to endorse a Planning Proposal (PP) to rezone land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the Princes Highway, Kiama to R2 Low Density Residential. The proponent subsequently sought a review of this decision via the Southern Regional Planning Panel.

On 10 July 2019, the Southern Planning Panel determined that the Proposal satisfied the Strategic Merit and Site-Specific Merit tests and recommended that a Gateway Determination be issued.

On 16 July 2019, Council resolved to accept the role of Planning Proposal Authority and as such be responsible for the administration processes associated with any Gateway processes associated with this Proposal.

Council did not receive plan making delegations from the Minister of Planning and Public Spaces for this proposal. Any recommendation of Council would therefore be forwarded to the Minister for a final determination.

A Gateway Determination was issued by the NSW Department of Planning, Industry and Environment (DPIE) on 4 December 2019.

In accordance with the Gateway Determination, Council proceeded with the required consultation. This was undertaken with seven State Agencies. A public exhibition period of 28 days was also completed where over 200 submissions were received.

At the Extraordinary Meeting, 28 June 2021, Council resolved as follows:

21/001OC

Committee recommendation That Council write to the Minister for Planning and Public Spaces to:

1. Inform the Minister that the proponent lead Planning Proposal, PP_2019_KIAMA_004_00, for land south of Saddleback Mountain Road, north of Weir Street and to the west of and immediately adjacent to the Princes Highway now fails to satisfy the Strategic Merit and Site-Specific Merit Tests for the following reasons:
 - other initiatives have now been pursued by Council, some to completion, to meet projected housing needs identified in the Illawarra Shoalhaven Regional Plan. This includes:

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17.1 Planning Proposal - South Kiama (cont)

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- the planning proposal for Henry Parkes Drive, Kiama Downs
 - the planning proposal for 48 Campbell Street, Gerringong
 - completion of the Local Strategic Planning Statement and
 - the commitment to prepare and adopt a Local Housing Strategy by 30 June 2022
 - the proposal is inconsistent with Ministerial Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements
 - the amount of fill the proponent considers necessary to make the site suitable is excessive and completely outside Council's policy framework and provisions. The proposed cut and fill in fact suggests that the site is in not suitable for this level of development, noting the Southern Planning Panel's conclusion that the site would have site-specific merit through further refinement and reduction in initial yields (with no reduction of yields provided in this application)
 - there remains significant community opposition to the proposed development and this development is not deemed to be within the public interest
 - there also remains significant concerns relating to the following matters:
 - impacts on local educational facilities particularly Kiama High School and Primary School to be able to support the additional population resulting from this proposal
 - significant impacts on traffic and movement particularly the intersection between Saddleback Mountain Rd and South Kiama Drive and local roads leading from there to the Princes Highway. A full traffic assessment and modelling is still required and needs to be associated with Council's Kiama Traffic and Parking Study
 - reservations remain regarding the ability for the site to be serviced by Sydney Water, given lack of forward planning that has occurred by Sydney Water to date.
2. Recommend that the NSW Department of Planning, Industry and Environment issue an amended Gateway Determination to no longer proceed with PP_2019_KIAMA_004_01 to rezone multiple Lots between Saddleback Mountain Road, Weir Street and the Princes Highway, Kiama.

(Councillors Sloan and Reilly)

For: Councillors Brown, Honey, Reilly, Rice, Sloan, Steel, Watson, Way and Westhoff

Against: Nil

The Planning Proposal

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17.1 Planning Proposal - South Kiama (cont)

The original PP, reported to March 2019 Council meeting, proposed rezoning the majority of the site, with the exception of the existing E2 Environmental Conservation and E3 Environmental Management zoned land and the low lying RU2 Primary Production to R2 Low Density Residential and a small area of R3 Medium Density Residential. This proposal would achieve approximately 285 standard residential allotments, 140 small residential allotments and 30 townhouse sites (i.e. a total of 455 allotments).

As part of addressing the Gateway requirements and State agencies' comments the proposed zoning has significantly changed from what was originally reported to Council in March 2019.

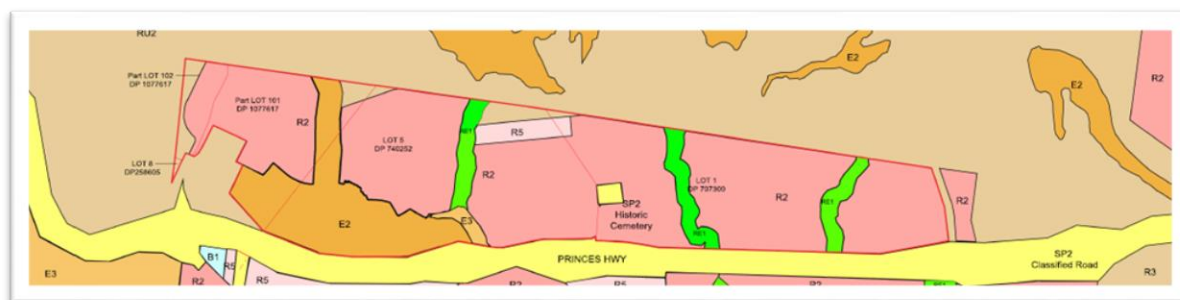


Figure 1 – Final Proposed Zoning (Source: Planning Proposal Report – Version 4. prepared by Unicomb Development Services Pty Ltd)

The current proposal, which was publicly exhibited, rezones the low lying RU2 land to E2 to capture the entirety of the Munna Munnora Creek. The other drainage channels within the site will be rezoned to RE1 Public Recreation. The highly visible parts of the site will retain their existing RU2 zoning. Another area towards the top of the hill will be rezoned R5 Large Lot Residential with a 7.5m max building height rather than 8.5m.

The proposal no longer includes any R3 zoning. The Biodiversity land will also increase. According to the submitted Planning Proposal, this proposal would achieve approximately:

- 285 standard residential allotments
- 156 small residential allotments
- 3 large lots
- With a total of 444 allotments

Supplementary Reports

17.1 Planning Proposal - South Kiama (cont)



Figure 2 – Site Constraints Plan (Source: Planning Proposal Report – Version 4. prepared by Unicomb Development Services Pty Ltd)

Current Status of Planning Proposal

On 13 October 2021 Council received a letter from the Department of Planning Industry and Environment advising that:

“After careful consideration of Council’s position, submissions and planning strategies, the Department has concluded the proposal has strategic and site-specific merit and issues raised during consultation can be addressed. As such the Department has decided that it intends to rezone the site for residential development and environmental protection.”

The DPIE has concluded in the recommendation to the Executive Director that the PP has strategic and site-specific merit and issues raised during consultation can be addressed. This decision is to be respected and noted in the context of significant growth in the Region. The Department has a legal right to make this determination, as Council does not hold the plan making authority for this proposal. Council can only provide a recommendation to the Minister, which was done in the 28 June 2021 report.

To seek Ministerial approval for a proposal, DPIE staff work through a review of Council’s decision, may speak with proponents (or hold meetings with proponents) and compile a report which is provided to the Executive Director for consideration. This report includes Council’s reports and recommendations and a recommendation of DPIE staff. This decision conflicts with Council’s intended recommendation resolved on the 28th June 2021.

The decision of DPIE is primarily based on consideration of land availability with the Kiama LGA, other urban release areas (or the lack thereof) and a consideration of the site-specific merits of the proposal. It is also based in the context of the Regional Plan for the area, projected growth, and significant need to facilitate development outcomes which generate commensurate housing opportunities.

Whilst there remain concerns over infrastructure and servicing of the site, the DPIE believe that this can be resolved through the future discussions and negotiations through both the masterplan, subdivision process and future development assessments. The Department has determined that the PP meets the strategic merit test and the decision of DPIE is a valid decision and that there is no legal review or recourse available.

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17.1 Planning Proposal - South Kiama (cont)

Council's Role

As this PP was subject to a Rezoning Review (i.e., involvement of Southern Planning Panel) Council did not received plan making delegations, from the Minister of Planning and Public Spaces. Council does not have the plan making delegations, or the ability review the determination of the DPIE.

Council now has two keys tasks which include:

1. Ensure the community is publicly advised of the State Government's decision on the development proposal.
2. Allocate operational resources to assist the DPIE to finalisation the proposal in line with existing legislative responsibilities and to ensure continued input and expertise into a major development for the local government authority.

Actions Taken

It is imperative to note that regardless of any action taken, Council has no authority over the final decision or outcome of the Planning Proposal. Council can influence the final mapping outcomes and the wording of any clauses within the KLEP. Council can also work with the proponent through either the subdivision or development assessment process. The efforts of staff at this point are best directed towards working constructively with the proponent and State Government to achieve positive outcomes.

Administrative Support to DPIE

Whilst staff understand the community and political perceptions of playing any role in the PP, there are some realities that must be considered, and which could ultimately result in a better outcome if a productive working relationship is established.

These include:

1. Council staff providing feedback and advice to the Department about the mapping and zoning layers applied to the development. This is of benefit to Council as it enables staff to identify the areas which need to be protected. This may include appropriate zoning of riparian corridors as well as any land which has specific purposes (such as the cemetery).
2. Using our expertise to finalise the LEP Maps. This is beneficial to Council as the DPIE do not have the in-house resources to prepare maps and map layers. This could result in a poor final product which Council would have to implement and likely amend.
3. Continue to maintain productive working relationship with the State Government and the proponent.
4. Develop a detailed understanding of any civic or public infrastructure that results from the development and ensure asset management and operational capabilities are considered in a strategic manner. All public infrastructure will eventually come "off maintenance" and transition from the developer. This will then be under Council's control, maintenance and asset management. This will impact on operations, service levels and staffing and is essential for Council to understand
5. The benefits of being involved includes ensuring that the final LEP maps are accurate as ultimately it will be Council who bears the legacy of the preparation

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of these maps. Providing our expert advice to the Department will also assist in mitigating the significant impacts of this proposal.

6. Maintain our legislative role and responsibility as the planning authority for developments.
7. There is also a degree of reputational risk at hand if Officers are not permitted to be involved, but at the same time are wishing to reform their DA and planning practices. Maintaining healthy working relationships with the State agencies and local developers is essential to Council being effective in its planning and assessment duties. The role of Council Officers is always to be impartial and give advice on matters.

The letter received from the DPIE has requested Council's assistance through this process. Council has an excellent working relationship with DPIE particularly the regional office. Whilst understanding the concerns of the community and Council, staff always work closely with the DPIE to assist in planning proposal mapping and other requirements as requested. This relationship must be maintained.

Next Steps

Staff have been requested to aid in drafting the accompanying maps and Map Cover Sheet to reflect the planning proposal, and on the administrative matters to finalise the plan. It is the professional opinion of Officers that this assistance should be provided to enable Council to have input into areas which will ultimately rest with Council in the future. This is also recommended to be provided to maintain the working relationships with the State Government, and to enable the organisation to play a mature role in the facilitation of development outcomes that will become part of the Kiama local government area and ultimately, our community.



PP_2019_KIAMA_004_00
(IRF21/3934)
Your Ref. SC2885

Ms Jane Stroud
Chief Executive Officer
Kiama Municipal Council
PO Box 74
KIAMA NSW 2533

Attention: Edward Paterson, Manager Strategic Planning

Via email council@kiama.nsw.gov.au

Dear Jane

Planning proposal PP_2019_KIAMA_004_00 – Alteration of Gateway Determination and Finalisation of Proposal

I refer to your letter seeking a Gateway determination alteration to no longer proceed with planning proposal PP_2019_KIAMA_004_00 which seeks to rezone rural land west of the Princes Highway between Saddleback Mountain Road to south of Weir Street, South Kiama and modify development standards to enable residential development and environmental conservation.

After careful consideration of Council's position, submissions and planning strategies, the Department has concluded the proposal has strategic and site-specific merit and issues raised during consultation can be addressed. As such the Department has decided that it intends to rezone the site for residential development and environmental protection.

The Department will now proceed with the process of making the plan. The Department's regional office will be in contact with Council to seek assistance in drafting the accompanying maps and Map Cover Sheet to reflect the planning proposal, and on the administrative matters to finalise the plan.

Should you have any questions in relation to this matter, please contact Ms Sarah Lees, Director, Southern Region on 4247 1810.

Yours sincerely

13/10/2021
Monica Gibson
Executive Director
Local and Regional Planning