

4.1 Planning Proposal: reclassification of land at 14A Bonaira Street, Kiama

Responsible Director: Environmental Services

On 10 February 2023 the Department of Planning and Environment determined that Council should proceed with the planning proposal for the reclassification of land at 14A Bonaira Street, Kiama. This Planning Proposal (PP) seeks to reclassify the land (on which the aged care facility and associated ILUs are located) from Community to Operational.

The Gateway Determination received from the Department specifies that Council now needs to undertake:

- Consultation with the Rural Fire Service (RFS).
- Formal exhibition of the Planning Proposal for 20 days.

Council staff have already commenced consultation with the RFS and provided the Planning Proposal to them, for consideration. The RFS has 30 days in which to provide a response to Council.

Next steps - exhibition

Following the issue of a Gateway Determination Council now proceeds to formally exhibition the PP. The PP has been updated in accordance with the Gateway Determination to include further details about Section 9.1 to enable the process to now commence.

The exhibition process is expected to run from 6 March 2023 for 20 days, to ensure timely processing of the PP. Details will be provided on Council's website and the PP exhibition will be communicated to key stakeholders and our community.

Notification of the planning proposal at the public exhibition stage will occur:

- on the Council website
- on the Planning Portal
- in writing to affected and adjoining landowners unless this is impractical and therefore not required as part of the Gateway determination.

These notices must describe or identify:

- the objectives or intended outcomes of the planning proposal
- the land affected by the planning proposal
- where people can view the proposal
- contact details for submissions
- whether Council is the designated Local Planning Making Authority.

The following material must be made available for inspection:

- the planning proposal in the form approved for public exhibition by the Gateway determination
- the Gateway determination

Reports for Information

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- all relevant additional information relied upon by the planning proposal.

During the 20-day exhibition process community members can make formal submissions to Council about the proposal.

Public Hearing

Given the proposal is for a reclassification of land a formal Public Hearing will also be held. Council will:

- give notice of the arrangements for the public hearing on its website
- give notice in a letter to each of the persons who requested a public hearing when making a submission at least 21 days before the date of the hearing.

It is expected that the likely timing for the Public Hearing would be the last two weeks in April 2022. The community can register to attend the Public Hearing and make representations to the process.

The Public Hearing must be facilitated by an independent facilitator. Council has commissioned a local government expert to support this process and run the public hearing on behalf of Council.

Following the Public Hearing the submissions made during the exhibition process and hearing are compiled into a report. This report is then provided to Council for final decision on the proposal.

Given Council has been granted Local Plan Making Authority, the report to Council would formally make the LEP if supported. This would likely occur in May 2022.

Risk Implication

The reclassification process is essential to ensure appropriate classification of the land on which the aged care facilities are located. Appropriate classification to Operational land supports the ongoing use of the site for commercial/non-public space (eg the residential aged care facility).

Council must follow the process required to reclassify the land appropriately. The timing of this process is also imperative to the ongoing viability of the KMC business and the aged care operations, including the ability to enact the resolution of Council that supports the sale of the land and all services/facilities on site. Not completing this process in a timely and appropriate manner is a significant risk for the organisation.

Attachments

- 1 Planning Proposal PP2023-244 Letter DPE
- 2 Gateway Determination



Department of Planning and Environment

Our ref: PP-2023-244/IRF23/281

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

Attention: Suzi Stojcevska, Strategic Planner

Dear Ms Stroud

Planning proposal – PP-2023-244 – to amend Kiama Local Environmental Plan 2011

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to reclassify the site of the Blue Haven Bonaira Retirement Village (14A Bonaira Street, Kiama – Lot 2 DP 1215276) from Community Land to Operational Land.

As delegate of the Minister for Planning, I have determined that the planning proposal should proceed subject to the conditions in the enclosed gateway determination.

I have also agreed, as delegate of the Secretary, the inconsistency of the planning proposal with applicable directions of the Minister under section 9.1 of the EP&A Act (except those outlined below) are justified in accordance with the terms of the Direction.

In relation to Direction 6.2 Reserving Land for Public Purposes, I have agreed any inconsistency is minor as the proposed reclassification corrects a historical land status anomaly to more accurately reflect the existing operational use of the site as a seniors housing facility.

No further approval is required in relation to the Directions.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant applicable directions of the Minister under section 9.1 of the EP&A Act (Direction 4.3 Planning for Bushfire Protection). Council should ensure this occurs prior to public exhibition

Considering the nature of the planning proposal I have determined that Council may exercise local plan-making authority functions in relation to the planning proposal.

The proposed local environmental plan (LEP) is to be finalised on or before 10th December 2023. Council should aim to commence the exhibition of the planning proposal as soon as possible. Should Council seek to make a proposed LEP, the request to draft the LEP should be made directly to Parliamentary Counsel's Office well in advance of the date the LEP is projected to be made. A copy of the request should be forwarded to the Department of Planning and Environment.

The NSW Government has committed to reduce the time taken to complete LEPs. To meet these commitments, the Minister may appoint an alternate planning proposal authority if Council does not meet the timeframes outlined in the gateway determination.

The Department's categorisation of planning proposals in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2021) is supported by category specific timeframes for satisfaction of conditions and authority and Government agency referrals, consultation, and responses. Compliance with milestones will be monitored by the Department to ensure planning proposals are progressing as required.

Should you have any enquiries about this matter, I have arranged for Mr Andrew Hartcher, A/Specialist Planner, to assist you. Mr Hartcher can be contacted on 4247 1823.

Yours sincerely



10/2/2023

**Daniel Thompson
Director, Southern Region
Local and Regional Planning**

Encl: Gateway determination



Department of Planning and Environment

Gateway Determination

Planning proposal (Department Ref: PP-2023-244): to amend the Kiama Local Environmental Plan 2011 to reclassify land at 14A Bonaira Street, Kiama (Lot 2 DP 1215276) from Community Land to Operational Land.

I, Daniel Thompson the Director, Southern Region, at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Kiama Local Environmental Plan 2011 as described above should proceed subject to the following conditions:

1. Prior to public exhibition, Section B of the planning proposal is to be updated to provide a more detailed assessment of the proposal against Section 9.1 Direction 5.2 – Reserving Land for Public Purposes.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as basic as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 20 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).
3. Consultation is required with the NSW Rural Fire Service under section 3.34(2)(d) of the EP&A Act. NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
 - (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.

6. The LEP should be completed on or before 10th December 2023.

Dated 10th day of February 2023.



Daniel Thompson
Direction, Southern Region
Local and Regional Planning
Department of Planning and Environment

Delegate of the Minister for Planning

PP-2023-244 (IRF No 23/281)