



ORDINARY MEETING OF COUNCIL

To be held at 5 pm on

Tuesday 19 October 2021

Council Chambers

11 Manning Street, KIAMA NSW 2533

Order of Business

- 1 Apologies
- 2 Acknowledgement of Traditional owners
- 3 Confirmation of Minutes of Previous Meeting
- 4 Business Arising From The Minutes
- 5 Declarations of Interest
- 6 Tabling of petitions and other documents
- 7 Public Access Summary
- 8 Mayoral Minute
- 9 Minutes of Committees
- 10 Public Access Reports
- 11 Report of the Chief Executive Officer
- 12 Report of the Director Environmental Services
- 13 Report of the Director Corporate and Commercial Services
- 14 Report of the Director Engineering and Works
- 15 Report of the Director Blue Haven
- 16 Reports for Information
- 17 Addendum To Reports
- 18 Notice of Motion
- 19 Questions for future meetings
- 20 Confidential Summary
- 21 Confidential Reports
- 22 Closure

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

13 October 2021

To the Chairman and Councillors:

NOTICE OF ORDINARY MEETING

You are respectfully requested to attend an **Ordinary Meeting** of the Council of Kiama, to be held in the **Council Chambers, 11 Manning Street, KIAMA NSW 2533** on **Tuesday 19 October 2021** commencing at **5 pm** for the consideration of the undermentioned business.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jane Stroud', written in a cursive style.

Jane Stroud

Chief Executive Officer

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**AGENDA FOR THE
ORDINARY MEETING OF KIAMA MUNICIPAL COUNCIL
TUESDAY 19 OCTOBER 2021**

1 APOLOGIES

2 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

“I would like to acknowledge the traditional owners of the land on which we meet, the Wadi Wadi people of the Dharawal nation, and pay my respect to Elders past and present.”

3 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

3.1 Ordinary Council on 21 September 2021

Attachments

- 1 Minutes - Ordinary Council - 21/09/2021 [↓](#)

Enclosures

Nil

RECOMMENDED

That the Minutes of the Ordinary Meeting held on 21 September 2021 be received and accepted.



MINUTES OF THE ORDINARY MEETING OF COUNCIL

commencing at 5 pm on

TUESDAY 21 SEPTEMBER 2021

Council Chambers
11 Manning Street, KIAMA NSW 2533

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

MINUTES OF THE ORDINARY MEETING OF
THE COUNCIL OF THE MUNICIPALITY OF KIAMA
HELD IN THE COUNCIL CHAMBERS
ON TUESDAY 21 SEPTEMBER 2021 AT 5 PM

PRESENT: Mayor – Councillor M Honey,
Deputy Mayor – Councillor A Sloan,
Councillors M Brown, N Reilly, K Rice, W Steel, D Watson,
M Way and M Westhoff

IN ATTENDANCE: Chief Executive Officer, Director Environmental Services,
Director Corporate and Commercial Services, Director
Engineering and Works and Director Blue Haven

1 APOLOGIES

Nil

2 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

The Mayor declared the meeting open and acknowledged the traditional owners:

"I would like to acknowledge the traditional owners of the Land on which we meet, the Wadi Wadi people of the Dharawal nation, and pay my respect to Elders past and present."

3 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

3.1 Ordinary Council on 17 August 2021

21/153OC

Resolved that the Minutes of the Ordinary Council meeting held on 17 August 2021 be received and accepted.

(Councillors Rice and Brown)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING**21 SEPTEMBER 2021****3.2 Extraordinary Council on 27 August 2021****21/154OC**

Resolved that the Minutes of the Extraordinary Council Meeting held on 27 August 2021 be received and accepted.

(Councillors Reilly and Way)

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

Against: Nil

4 BUSINESS ARISING FROM THE MINUTES

Nil

5 DECLARATIONS OF INTEREST

Nil

6 TABLING OF PETITIONS AND OTHER DOCUMENTS

Nil

7 PUBLIC ACCESS SUMMARY 5.02

Name	Item No.	Subject
Celia Wade	11.2	Donation request: Slow Food Saddleback
Shane Douglas	12.2	Approval of Heritage Management Document - Gerringong Town Hall
Karen Renkema-Lang	12.6	Strategic Planning Works Program
Paul Wyer	18.1	Notice of Motion: Kiama Harbour land management
Colin Packham	18.2	Notice of Motion: Wood-fired heaters

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

8 MAYORAL MINUTE

8.1 2022 Australia Day Award nominations

21/155OC

Resolved that Council support the call for 2022 Australia Day nominations.

(Councillors Honey)

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

Against: Nil

9 MINUTES OF COMMITTEES

9.1 Minutes: Australia Day Committee - 8 September 2021

21/156OC

Resolved that the Minutes of the Australia Day Committee Meeting held on 8 September 2021 be received and accepted.

(Councillors Westhoff and Sloan)

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

Against: Nil

9.2 Minutes: Community Safety Committee - 1 July 2021

21/157OC

Resolved that the Minutes of the Community Safety Committee Meeting held on 1 July 2021 be received and accepted.

(Councillors Rice and Reilly)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

9.3 Minutes: Destination Kiama Tourism Advisory Committee Extraordinary Meeting - 10 September 2021

21/158OC

Resolved that the Minutes of the Destination Kiama Tourism Advisory Committee Extraordinary Meeting held on 10 September 2021 be received and the following recommendations endorsed:

That Council:

1. *cancel the New Year's Eve fireworks celebration in Kiama for 31 December 2021*
2. *replace the New Year's Eve fireworks celebration with a series of smaller events, spread throughout the municipality and scheduled over four (4) weeks in May 2022*
3. *as part of the preparation of the 2022/23 future budget process further consideration is given to future New Year's Eve celebrations in 2022.*

(Councillors Brown and Way)

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

Against: Nil

9.4 Minutes: Jamberoo Youth Hall s355 Committee - 12 August 2021 and annual general meeting on 6 September 2021

21/159OC

Resolved that Council receive and accept the Minutes of the Jamberoo Youth Hall s355 Committee General Meeting held on 12 August 2021, the annual general meeting on 6 September 2021 and the general meeting on 6 September 2021.

(Councillors Reilly and Westhoff)

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

Against: Nil

9.5 Minutes: Kiama Cultural Board - 27 May and 22 July 2021

21/160OC

Resolved that Council:

1. *receive and accept the minutes of the Cultural Board Meetings held on Thursday 27 May and 22 July 2021 and note the recommendations that have been put forward by the Committee*

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

2. work with committee members to develop a project proposal which outlines the resource needs, options for volunteer assistance, budget and legal requirements for the review of the Art Collection Policy and the divestment of items from the collection where no proof of ownership transfer is available. Once completed this project proposal be considered in relation to the existing works program and budget available to the Cultural Development team
3. consider the option of an internally restricted reserve for Art Collections as part of the development of the 2022/23 budget development.

(Councillors Rice and Sloan)

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

Against: Nil

9.6 Minutes: Kiama Local Traffic Committee - 7 September 2021

21/1610C

Resolved that the Minutes of the Kiama Local Traffic Committee Meeting held on 7 September 2021 be received and the following recommendations accepted:

1. That Council approves to proceed with the original recommendation from the August 2021 Ordinary Council Meeting relating to the Federal Street and Charles Avenue intersection, and look at future treatments for continuous safety improvements.
2. That Council approves a regulatory "Stop" sign and line marking to be installed at the intersection of Taylor and Bonaira Streets Kiama, as per the plan attached to the report.
3. That Council approves a "No Stopping" zone to be created on the western side of Johnson Street, Kiama Downs, between Merindah Street and Johnson Lane with the installation of regulatory signage and line marking, as per the plan attached to the report.

(Councillors Way and Rice)

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

Against: Nil

9.7 Minutes: Walking Tracks and Cycleways Committee - 11 August 2021

21/1620C

Resolved that the Minutes of the Walking Tracks and Cycleways Committee Meeting held on 11 August 2021 be received and accepted.

(Councillors Way and Westhoff)

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

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

Against: Nil

9.8 Minutes: Youth Engagement Committee Meeting - 5 August 2021

21/163OC

Resolved that the Minutes of the Youth Engagement Committee Meeting held on 5 August 2021 be received and accepted.

(Councillors Westhoff and Reilly)

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

Against: Nil

COMMITTEE OF THE WHOLE

21/164OC

Resolved that at this time, 5.11pm, Council form itself into a Committee of the Whole to deal with matters listed in the reports as set out below:

- Report of the Chief Executive Officer
- Report of the Director Environmental Services
- Report of the Director Corporate and Commercial Services
- Report of the Director Engineering and Works
- Reports for Information

(Councillors Brown and Westhoff)

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

Against: Nil

10 PUBLIC ACCESS REPORTS

21/165OC

Committee recommendation that at this time, 5.11 pm, Council bring forward and deal with the matters pertaining to the Public Access Meeting.

(Councillors Steel and Watson)

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

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

Against: Nil

11.2 Donation request: Slow Food Saddleback

21/166OC

Committee recommendation that Council consider providing a donation of \$550 to Slow Food Saddleback so that they may enter into an agreement with FanForce, to screen their film at The Pavilion Kiama on 12 December 2021.

(Councillors Reilly and Way)

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

Against: Nil

12.2 Approval of Heritage Management Document - Gerringong Town Hall

21/167OC

Committee recommendation that Council approve the heritage management document, prepared by Platinum Planning Solutions, for the Gerringong Town Hall.

(Councillors Westhoff and Brown)

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

Against: Nil

12.6 Strategic Planning Works Program

21/168OC

Committee recommendation that Council:

1. note the Strategic Planning Works Program, and
2. endorse the 2021/2022 Strategic Planning Work Program Community Engagement Plan.

(Councillors Brown and Way)

MINUTES OF THE ORDINARY MEETING**21 SEPTEMBER 2021**

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

Against: Nil

It was **moved** by Councillor Rice and **seconded** by Councillor Sloan that, in addition to outlining the interdependency of housing, employment and character in Kiama, the forthcoming workshop on these three elements will also entertain consideration of how the outcomes of strategic planning in these areas will evolve with respect to other Local Strategic Planning Statement planning priorities such as preservation of Kiama's agricultural land and planning for climate change.

The **motion** on being put was **lost**.

For: Councillors Rice and Sloan

Against: Councillors Brown, Honey, Reilly, Steel, Watson, Way and Westhoff

18.1 Notice of Motion: Kiama Harbour land management**Councillor Reilly withdrew his motion**

That Council contact Crown Land Commissioner Professor Richard Bush advising of our desire to become the manager of Crown Land identified as School Flat, Black Beach, Robertson Basin and Kiama Harbourside attendant to the Crown Land Management Act 2016. This Crown Land, infrastructure, assets and associated land within the area described in this motion are currently managed by Transport for NSW.

18.2 Notice of Motion: Wood-fired heaters**21/169OC****Committee recommendation** that Council:

1. develops a comprehensive policy and package of information pertaining to the installation, expected performance and safest usage of wood fired heaters
2. provides detail within this suite of information that explains the assessment stages of development applications for wood fired heaters and the site-specific criteria that are measured and taken into account
3. outlines community rights and responsibilities regarding wood fired heating
4. considers how incentives for electric home heating can be incorporated into the Kiama municipality's net zero emissions planning
5. reports on this as part of the budget process, for the new Council to consider its delivery in the 2022/23 financial year.

(Councillors Rice and Sloan)

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

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

Against: Nil

11 REPORT OF THE CHIEF EXECUTIVE OFFICER

11.1 Audit, Risk and Improvement Committee - External independent membership

21/1700C

Committee recommendation that Council:

1. appoint the following people to Council's Audit, Risk and Improvement Committee as the external independent members, Rhonda Wheatley and David Pendleton
2. extend its sincere gratitude to Mr Brian MacDonald for his service and insight on the Audit, Risk and Improvement Committee, noting his resignation from the committee
3. Complete an evaluation of the Audit, Risk and Improvement Committee in six months' time including resolving the two remaining extended independent members roles and future recruitment processes.

(Councillors Sloan and Westhoff)

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

Against: Nil

Item 11.2 Donation request: Slow Food Saddleback was dealt with in section 10 Public Access Report.

11.3 Executive summary and motions - Central Precinct - 24 August 2021

21/1710C

Committee recommendation that Council:

1. receive and accept the Executive Summary of the minutes of the Central Precinct meeting held on 24 August 2021
2. note the motions contained within the Executive Summary relating to –
 - Coastal management scoping study
 - Blue Haven Bonaira
 - Financial sustainability plan

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

- Kiama Heights zoning
 - Public tree management policy
 - L'Etape cancellation
 - Spring Creek plan of management
3. provide a brief (two or three lines), considered response to each motion
 4. extends this protocol to all motions received from all precinct groups, the Jamberoo Valley Residents and Ratepayers Association and the Minnamurra Progress Association.

(Councillors Reilly and Westhoff)

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

Against: Nil

11.4 Election of Deputy Mayor

21/172OC

Committee recommendation that Council:

1. receive written nominations for the Deputy Mayor for the period to 4 December 2021
2. determine the form of election, if required
3. thereafter, proceed with the election of the Deputy Mayor
4. note that one nomination was received, that being for Councillor Sloan, who was duly appointed as Deputy Mayor for the term of this Council.

(Councillors Way and Westhoff)

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

Against: Nil

11.5 Hall hire cleaning fees

21/173OC

Committee recommendation that Council removes the short term (less than 2 hours) waste, recycling and cleaning fee for not-for-profit groups hiring Council halls by amending the adopted 2021/22 Fees and Charges for hall hire, waste, recycling and cleaning (page 22) as follows:

1. add new line for "Minimum charge up to 2 hours – Not for Profit" with a value of \$0

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

2. amend existing line to read "Minimum charge up to 2 hours – Commercial" with values as per current, being \$55.

(Councillors Way and Rice)

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

Against: Nil

11.6 Local Government NSW Annual Conference 2021

21/174OC

Committee recommendation that Council endorse:

1. registration of Councillors interested in attending the Local Government NSW Annual Conference 2021
2. Councillors Rice, Reilly and Honey as voting delegates for the 2021 conference.

(Councillors Brown and Sloan)

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

Against: Nil

11.7 Policy Review: Privacy Management Plan

21/175OC

Committee recommendation that Council:

1. endorses the amended Privacy Management Plan to be placed on public exhibition for a period of 28 days calling for submissions
2. receive a further report for consideration, if any relevant submissions are received as a result of public exhibition or if any substantial changes are proposed for any other reasons, detailing the public exhibition outcomes and proposed changes with further recommendations regarding adoption
3. following the conclusion of the public exhibition period, adopt the amended Privacy Management Plan, if there are no relevant submissions received and there are no substantial changes proposed for any other reasons.

(Councillors Watson and Steel)

MINUTES OF THE ORDINARY MEETING

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

Against: Nil

11.8 Re-Purpose loan funding

21/176OC

Committee recommendation that Council:

1. endorse the Chief Executive Officer to seek a re-purpose of the current loan agreement with NSW TCorp for \$500,000 from the Kiama Leisure Centre Splash Pad project to the Gerringong Library and Museum project
2. endorse \$1.9million of the \$4million loan with NSW TCorp to fund the following projects, Gerringong Library and Museum \$2,600,000, Road Renewals \$1,000,000 and Playgrounds \$400,000.

(Councillors Brown and Watson)

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

Against: Nil

11.9 Statement of Investments August 2021

21/177OC

Committee recommendation that Council:

1. receive and adopt the information relating to the Investments
2. note the movement and current balance of \$23,310,000 in the external reserve held for the sale of units at Blue Haven Bonaira under the restriction of the loan agreement
3. endorse the Carry Over Works Internally Restricted Reserve carrying balance of \$814,920 as per the table outlined in this report
4. endorse the Unspent Loan Funding Internally Restricted Reserve carrying balance of \$500,000 as per the table outlined in this report.

(Councillors Westhoff and Reilly)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

11.10 2021 NSW Public Libraries SWITCH Conference

21/178OC

Committee recommendation that Council approve the attendance of Councillor Rice and Councillor Reilly to the NSW Public Libraries Conference to be held on 18 November 2021 online.

(Councillors Brown and Way)

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

Against: Nil

12 REPORT OF THE DIRECTOR ENVIRONMENTAL SERVICES

12.1 10.2021.127.1 - 46 Allowrie Street, Jamberoo - Use of already erected ornamental windmill

21/179OC

Committee recommendation that Council approve Development Application No 10.2021.127.1 under Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to conditions at the end of this report.

(Councillors Sloan and Steel)

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

Against: Councillor Rice and Westhoff

Item 12.2 Approval of Heritage Management Document - Gerringong Town Hall was dealt with in section 10 Public Access Reports

12.3 Better Futures Declaration - Cities Power Partnership

21/180OC

Committee recommendation that Council endorse and become a signatory of the Better Futures Australia Declaration, demonstrating Council's commitment to take and advocate for ambitious climate action.

(Councillors Honey and Sloan)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING

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12.4 Draft Environmental Planning and Assessment Regulation 2022 - Submission

21/181OC

Committee recommendation that Council inform the NSW Department of Planning, Industry and Environment that they are generally supportive of the draft Environmental Planning and Assessment Regulation 2021, but suggest the following:

- Consult with councils now on the content of the Approved Form/s of the NSW Planning Portal to ensure a smooth transition, and
- Develop an online register, database or spatial viewer of areas of outstanding biodiversity value, declared by the Minister, to ensure councils are providing accurate information to their customers.

(Councillors Reilly and Brown)

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

Against: Nil

12.5 Planning Reform Program - improving customer experience and assessment timeframes

21/182OC

Committee recommendation that Council:

1. support the Development Reform Program which focuses staff on this important initiative and change for our customers.
2. endorse the attached 2021/2022 Development Assessment Reform Program Engagement Plan, and in accordance with the engagement plan undertake several industry and stakeholder discussions to seek feedback on the reform program in October and November 2021
3. through the Chief Executive Officer (or their delegate) develop a draft Development Assessment Policy and this policy be provided to the October 2021 Council meeting for endorsement and exhibition
4. support the formation of a Major Projects Cluster (Internal) who will work with customers of major projects prior to and during application preparation and submission and delegate the formation of this cluster/team to the CEO.

(Councillors Brown and Westhoff)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

Item 12.6 Strategic Planning Works Program was dealt with in section 10 Public Access Reports.

13 REPORT OF THE DIRECTOR CORPORATE AND COMMERCIAL SERVICES

13.1 Economic recovery and positive messaging

21/183OC

Committee recommendation that Council:

1. Welcomes and congratulates the NSW Government's announcement of a "Roadmap to Freedom"
2. Supports COVID safe initiatives that assist economic recovery
3. Supports the Kiama and District Business Chamber campaign "COVID Shots for Safe Shops".

(Councillors Brown and Rice)

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

Against: Nil

13.2 Policy Review - Use of Public Reserves for Commercial Fitness Activities and Personal Training

21/184OC

Committee recommendation that Council place the draft policy for use of public reserves for commercial fitness activities and personal trainers on public exhibition for comment and a subsequent report be prepared for a future meeting following consideration of any submissions to the draft policy.

(Councillors Brown and Way)

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

Against: Nil

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21 SEPTEMBER 2021

13.3 Requests for Financial Assistance COVID-19

21/185OC

Committee recommendation that Council:

1. Acknowledge ongoing financial impacts of the COVID-19 pandemic and the significant social and economic challenges for our community.
2. Note that the previous Council-endorsed (21 April 2020) COVID relief packages are still current and will continue until the end of the pandemic on the basis of the National Cabinet Code of Conduct as well as the *Retail and Other Commercial Leases (COVID-19) Regulation 2021*.
3. The relief measures include:
 - a. waiving outdoor dining fees until 13 January 2022,
 - b. deferral of all rent reviews with current leases,
 - c. 50% rent waiver (based on demonstrated percentage loss of turnover),
 - d. 50% rent deferral (based on demonstrated percentage loss of turnover) and paid back over a 24-month period/remaining lease term whichever is the greater.
4. Endorse options for ratepayers, where it is their primary place of residence, to defer payment of their rates and annual charges until 13 January 2022 through approving:
 - a. removal of penalty interest applicable on overdue rates and annual charges by reducing the interest charge from 7.5% to 0%,
 - b. cease legal recovery otherwise required under Council's Hardship Policy.

(Councillors Way and Brown)

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

Against: Nil

14 REPORT OF THE DIRECTOR ENGINEERING AND WORKS

14.1 Active Transport Funding

21/186OC

Committee recommendation that Council:

1. accept the funding of \$3.3 million offered by the State Government under their Active Transport Program for delivery of:
 - a. Jamberoo Valley cycleway
 - b. Omega Flat – Fern Street, Gerringong pathway

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

- c. Town Centre bicycle facilities improvements
 - d. Network connectivity improvements to the Minnamurra Bike Skills Track, subject to a reasonable extension of time being granted for the completion of all projects
2. delegate to the Chief Executive Officer authority to negotiate terms and sign the funding agreement enabling execution of the funding.

(Councillors Westhoff and Sloan)

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

Against: Nil

14.2 Funding Applications - Safer Roads Program (2022 - 2023)

21/187OC

Committee recommendation that Council note and endorse funding applications already under the NSW Government's Safer Roads Program for 2022/23 for:

1. pedestrian Safety Improvements in Railway Station Precinct at Bong Bong Street Kiama - \$40,000
2. implementation of a rural gateway treatment on Crooked River Road at the northern and southern entrances into Gerroa - \$50,000.

(Councillors Brown and Rice)

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

Against: Nil

14.3 Jamberoo free camping

21/188OC

Committee recommendation that Council:

1. notes that no consent or approval has been given under the Kiama Local Environmental Plan 2011 and the Local Government Act permitting camping at Kevin Walsh Oval, Jamberoo.
2. approve the sustained closure of the Kevin Walsh Oval free camping area at Jamberoo.
3. in a future financial year seeks advice about the required planning steps to make free camping on identified parcels of Council land legal, approved and not in breach of anti-competitive legislation.

(Councillors Watson and Steel)

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

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

14.4 Kiama Harbour Revitalisation Action Plan

21/189OC

Committee recommendation that Council:

1. note and thank Transport for NSW for consideration of Council's feedback on the Draft Kiama Harbour Revitalisation Strategic Framework.
2. endorse Council's submission on the Draft Kiama Harbour Revitalisation Action Plan as contained in the body of this report.
3. grant the Chief Executive Officer authority to finalise the submission based on Councillor feedback and forward it to Transport for NSW by 24 September 2021.
4. include in the proposed submission point 5. *Seeking greater responsiveness of the proposed Revitalisation Actions to the risks identified in the Kiama Coastal Management Study.*

(Councillors Rice and Way)

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

14.5 Kiama Traffic and Parking Study

21/190OC

Committee recommendation that Council:

1. endorse the draft Kiama Traffic and Parking Study 2021 to go on public exhibition for a period of at least 28 days;
2. prepare a report at the close of the public exhibition period on the submissions received for tabling at a future Council meeting.

(Councillors Reilly and Sloan)

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

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

14.6 Thomson Street parking bay fee waiver

21/191OC

Committee recommendation that Council waive the fees associated with Roads Act 1993 related permits as contained in the adopted 'Fees and Charges 2021/22' to the developer of 47 Thomson Street, Kiama on the conditions that:

1. The developer agrees to construct the angled parking bays in Thomson Street in accordance with Council's design and specifications;
2. The developer lodges a modification to the Development Consent 10.2018.225.1 that incorporates the construction of the angled parking bays in Thomson Street, Kiama.

(Councillors Sloan and Reilly)

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

Against: Nil

15 REPORT OF THE DIRECTOR BLUE HAVEN

Nil

16 REPORTS FOR INFORMATION

21/192OC

Committee recommendation that the following Reports for Information listed for the Council's consideration be received and noted:

- 16.1 Minutes: Gerroa Sand Resource Community Consultative Committee meeting - 22 July 2021
- 16.2 Minutes: Minnamurra Progress Association - 7 September 2021
- 16.3 Parking Statistics - August 2021
- 16.5 Questions for Future Meeting Register as at 13 September 2021
- 16.6 Riverside Drive Kiama Downs - RMS land sold at auction

(Councillors Watson and Westhoff)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

16.4 Question for Future Meeting: Kiama Tourism Opportunities Plan

21/193OC

Committee recommendation that Council:

1. appreciate and acknowledge the genuine and hard work of the team at Destination Kiama to consult with our community to deliver the Tourism Opportunity Plan (TOP) under our former manager, Karen Ronning, and the then Tourism Advisory Committee, a number which are still serving our community
2. Thank all those in our community, and industry, who contributed to the extensive consultative process to produce the TOP
3. Note that the majority of formal respondents in the survey were “residents” rather than “business” operators” (see page 91-101 of the appendix of the TOP). It was always the intention of Destination Kiama to ensure that tourism and community should co-exist. The TOP followed the “residents” submissions in formulating this very important community originating document essential to our cultural, sporting and economic wellbeing

(Councillors Brown and Way)

RESUMPTION OF ORDINARY BUSINESS

21/194OC

Committee recommendation that at this time, 6.48 pm, Council resume the ordinary business of the meeting with all Councillors and Staff present at the adjournment of the meeting being present.

(Councillors Sloan and Brown)

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

Against: Nil

ADOPTION OF COMMITTEE OF THE WHOLE REPORT

21/195OC

Resolved that Council formally confirm, adopt and endorse the Committee recommendations made by Council sitting as a Committee of the Whole as detailed in the Committee recommendations numbered 21/165OC to 21/194OC above.

(Councillors Watson and Westhoff)

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

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

Against: Nil

17 ADDENDUM TO REPORTS

Nil

18 NOTICE OF MOTION

Item 18.1 Notice of Motion: Kiama Harbour land management and 18.2 Notice of Motion: Wood-fired heaters were dealt with at section 10 Public Access Reports.

19 QUESTIONS FOR FUTURE MEETINGS

19.1 Strategic Plan 2013-23: engagement opportunities

Councillor Reilly requested a report on the gradual implementation of our Strategic Plan 2013-23: engagement opportunities and promote a consistent and positive image of Council to the community with a positive and consistent use of Council's logo. The matter was referred to the Director Environmental Services for action.

19.2 Unauthorised use of a road reserve

Councillor Reilly requested a report on the following - can Council, as the owner and asset manager of the road reserves in the municipality, exercise it's policy to ensure that an encroachment is either

1. removed, or
2. subject to a Council resolution, permitted to remain, by the adjoining owner entering into an appropriate agreement with Council to ensure public liability and public amenity issues are identified and managed, and that a community benefit results which does not adversely impact on the owners of neighbouring properties?

The matter was referred to the Director Corporate and Commercial Services for action.

19.3 Planting of shrubs - Surfleet Place / South Kiama Drive

Councillor Reilly requested planting of shrubs between Surfleet Place and South Kiama Drive. The ongoing maintenance would be minimal and would be no more

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

20 CONFIDENTIAL SUMMARY

21/196OC

Resolved that at this time, 6.54 pm, Council form itself into a Confidential Committee of the Whole to deal with matters listed in the recommendations as set out below subject to the consideration of any representations relating to such action.

(Councillors Sloan and Way)

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

Against: Nil

Public Representations:

The Mayor called for representations regarding issues which had been proposed to be disclosed in Confidential Committee of the Whole. No such representations were received.

20.1 Exclusion Of Press And Public:

21/197OC

Committee recommendation that in accordance with Sections 10 and 10A of the Local Government Act, 1993 as amended, Council close the meeting of the Confidential Committee of the Whole to the Press and Public to deal with the following matters on the grounds as detailed below.

21.1 SALE OF SECTION OF CLOSED ROAD - ANTRIM STREET KIAMA

Reason for Confidentiality: This matter deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business as per Section 10A(2)(c) of the Local Government Act.

21.2 MANAGEMENT CONTRACT FOR WERRI BEACH HOLIDAY PARK

Reason for Confidentiality: This matter deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business as per Section 10A(2)(c) of the Local Government Act.

(Councillors Sloan and Rice)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

arduous that the maintenance required when Council plants a shrub on the nature strip in front of properties, as they have done in front of some of the Surfleet Place properties. The verge is at least five metres making the area ideal for shrubs as both visual appeal and a potential noise barrier for the residents of Surfleet Place. The matter was referred to the Director Engineering and Works for action.

19.4 Kiama Harbour wharf reconstruction

Councillor Way requested a report on proposed reconstruction by ocean wharf contractors for the southern wharf at Kiama Harbour boat ramp that would also include disabled access, given the Kiama Harbour Revitalisation project has confirmed the boat ramp will remain in its current location. The matter was referred to the Director Engineering and Works for action.

19.5 Vegetation at Jones Beach and Werri Beach

Councillor Way requested a report advising when the proposed investigation and report on vegetation for Jones and Werri beaches will commence and be completed. In conjunction with the Director of Engineering and Works please provide a date for the commencement of work to remove dead vegetation on Jones Beach that is not constrained by the report on vegetation across Kiama Municipal beaches. The matter was referred to the Director Environmental Services for action.

19.6 Pedestrian safety at Charles Avenue and Federal Street intersection

Councillor Way requested a report based on the Kiama Local Traffic Committee September minutes and recommendation 9.6 Item 1 regarding safety work for school children at the intersection of Charles Avenue and Federal Street, Minnamurra, detailing cost of this work and date to commence and complete this work. The matter was referred to the Director Engineering and Works for action.

19.6 Local Strategic Planning Statement priorities

Councillor Rice requested a report on the anticipated sequence and timeframe for the progression of the remaining Local Strategic Planning Statement priorities throughout the next financial year and beyond. The matter was referred to the Director Environmental Services for action.

Councillor Brown thanked Acting Director Corporate and Commercial Services, Megan Hutchison for her service to Council and the community and congratulated Megan on her retirement.

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

21 CONFIDENTIAL REPORTS

21.1 Sale of section of closed road - Antrim Street Kiama

21/198OC

Committee recommendation that Council:

1. endorse the sale of Lot 4 DP1032869 Antrim Street Kiama as outlined in the summary of this report
2. authorise the Mayor and Chief Executive Officer to sign any documentation associated with the sale of the land on behalf of Council under Council seal.

(Councillors Brown and Rice)

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

Against: Nil

21.2 Management contract for Werri Beach Holiday Park

21/199OC

Committee recommendation that Council:

1. Formally thanks the operators Harry and Claudia Robbins for their years of service and commitment in managing Werri Beach Holiday Park.
2. Offers the contract for the management of Werri Beach Holiday Park to David Timbs and Jacqui Sonter for a term of eight (8) months, from 1 November 2021 to 30 June 2022.
3. Gives the Chief Executive Officer delegated authority to sign the Contract on behalf of Kiama Municipal Council.

(Councillors Brown and Westhoff)

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

Against: Nil

MINUTES OF THE ORDINARY MEETING

21 SEPTEMBER 2021

Close of Confidential Committee of the Whole:

21/200OC

Committee recommendation that at this time, 6.59 pm, the Confidential Committee of the Whole revert to Open Council.

(Councillors Reilly and Way)

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

Against: Nil

Adoption of Report

The General Manager formally reported the recommendations of the Confidential Committee of the Whole more particularly set out above.

21/201OC

Resolved that that the Confidential Committee of the Whole recommendations numbered 21/197OC to 21/200OC be confirmed and adopted.

(Councillors Sloan and Rice)

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

Against: Nil

22 CLOSURE

There being no further business the meeting closed at 7.02pm.

These Minutes were confirmed at the Ordinary Meeting of Council held on 19 October 2021.

.....
Mayor

- 4 BUSINESS ARISING FROM THE MINUTES**
- 5 DECLARATIONS OF INTEREST**
- 6 TABLING OF PETITIONS AND OTHER DOCUMENTS**
- 7 PUBLIC ACCESS SUMMARY**

8 MAYORAL MINUTE

8.1 Congratulations to Paralympian Amanda Reid

Attachments

Nil

Enclosures

Nil

RECOMMENDED

That Council formally congratulates Amanda Reid on recently winning gold and breaking a world record at the recent Tokyo Paralympics.

REPORT

The Paralympics has a proud and has existed for more than 100 years. It is the ultimate athletic competition for athletes with an impairment and the caliber of competition is extraordinary. Our municipality has a strong focus on sports and this report notes the recent athletics achievements of a local resident Amanda Reid. 24 year old Amanda, who has cerebral palsy and an intellectual impairment, is now a five time para-cycling world champion as well as a three time Paralympian. She brought home a gold medal and a world record in the C1-3 500m Time Trial Cycling Paralympics event.

Amanda is a Guringai and Wemba Wemba woman, and has made Paralympics history as the first Indigenous Australian to win a cycling gold medal. Our community could not be prouder of her achievements and athletic performance on the world stage.

After competing in the London 2012 Paralympic Games in the S14 100 metre breaststroke, she transitioned to cycling ahead of the Rio 2016 Games, where she won a Silver Medal.

Amanda lives and trains between Gerringong, Sydney and the Snowy Mountains.

9 MINUTES OF COMMITTEES

9.1 Minutes: Kiama Local Traffic Committee meeting - 5 October 2021

Responsible Director: Engineering and Works

Attachments

- 1 Minutes - Kiama Local Traffic Committee - 05/10/21 - PDF [↓](#)

Enclosures

Nil

RECOMMENDED

That the Minutes of the Kiama Local Traffic Committee Meeting held on 5 October 2021 be received and the following recommendation accepted:

1. That Council approve the temporary closure of Bourool Lane, Kiama from 25 October 2021 to 2 November 2021 (with no closure on the Sunday in-between) between the hours of 7 a.m. and 6:00 p.m., subject to the inclusion of the following conditions:
 - a. The Permit Holder shall have current at all times insurance in the sum of no less than \$20,000,000.00. The policy shall indemnify Kiama Council from all costs and/or claims resulting from any actions of the contractor.
 - b. Should the permit holder, supervisor, contractor or sub-contractor fail to comply with any conditions of the permit, the permit may be revoked by Council, pursuant to Section 140 of the Roads Act 1993.
 - c. Road closure shall only occur during approved work dates and times. The road is to be returned to a trafficable condition outside of these dates and times.
 - d. Immediately following the direction of any Council and/or emergency services officers, road plates shall be installed over all excavations, the road way cleared of all plant & materials and then opened to traffic. A sufficient amount of appropriately sized road plates shall be located in close vicinity of excavations at all times.
 - e. Subject to the discretion of the Roads Authority, days lost over the permit period due to inclement weather may be made up at the expiration of permit. Written consent of the Roads Authority shall be obtained prior to undertaking works.



**MINUTES OF THE
KIAMA LOCAL TRAFFIC COMMITTEE
MEETING**

commencing at 9.00am on

TUESDAY 5 OCTOBER 2021

Via Zoom

MINUTES OF THE KIAMA LOCAL TRAFFIC COMMITTEE 5 OCTOBER 2021

**MINUTES OF THE KIAMA LOCAL TRAFFIC COMMITTEE
HELD IN THE COUNCIL CHAMBERS, KIAMA
ON TUESDAY 5 OCTOBER 2021 AT 9.00AM**

PRESENT: Councillor M Honey (Mayor) (Chairman), J Miles (Transport for NSW Representative), Donna Binns (Observer - TfNSW) Craig Gray (NSW Police Representative), Darrell Clingan (Local Member's Representative), Mark Way (Councillor), Darren Brady (Manager Design and Development), Janelle Burns (Kiama Council Road Safety Officer), Chris Balzarano (Council Ranger), Mark Biondich (Subdivision and Development Engineer), and Alyson Hodgekiss (Minutes)

1 APOLOGIES

Mike Dowd (Director Engineering and Works),

2 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

The Mayor declared the meeting open and acknowledged the traditional owners:

"On behalf of those present, I would like to show my respect and acknowledge the traditional owners of the Land, of Elders past and present, on which this meeting takes place, and extend that respect to other Aboriginal and Torres Strait Islander people present."

3 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

3.1 Kiama Local Traffic Committee Meeting on 7 September 2021

[21/039LTC](#)

Resolved that the Minutes of the Kiama Local Traffic Committee Meeting held on 7 September be received and accepted.

(Member Darrell Clingan and Mayor Mark Honey)

4 BUSINESS ARISING FROM THE MINUTES

Nil

5 REPORT OF RMS DELEGATED FORMAL ITEMS

5.1 Temporary Road Closure - Bourrool Lane, Kiama

[21/040LTC](#)

MINUTES OF THE KIAMA LOCAL TRAFFIC COMMITTEE 5 OCTOBER 2021

Resolved that the Kiama Local Traffic Committee approve the temporary closure of Bourool Lane, Kiama from 25 October 2021 to 2 November 2021 (with no closure on the Sunday in-between) between the hours of 7 a.m. and 6:00 p.m., subject to the inclusion of the following conditions:

1. The Permit Holder shall have current at all times insurance in the sum of no less than \$20,000,000.00. The policy shall indemnify Kiama Council from all costs and/or claims resulting from any actions of the contractor.
2. Should the permit holder, supervisor, contractor or sub-contractor fail to comply with any conditions of the permit, the permit may be revoked by Council, pursuant to Section 140 of the Roads Act 1993.
3. Road closure shall only occur during approved work dates and times. The road is to be returned to a trafficable condition outside of these dates and times.
4. Immediately following the direction of any Council and/or emergency services officers, road plates shall be installed over all excavations, the road way cleared of all plant & materials and then opened to traffic. A sufficient amount of appropriately sized road plates shall be located in close vicinity of excavations at all times.
5. Subject to the discretion of the Roads Authority, days lost over the permit period due to inclement weather may be made up at the expiration of permit. Written consent of the Roads Authority shall be obtained prior to undertaking works.

(Member Justin Miles and Member Darrell Clingan)

6 GENERAL BUSINESS

7 CLOSURE

There being no further business the meeting closed at 9.13am

These Minutes were confirmed at the Ordinary Meeting of Council held on 2 November 2021

.....
.....
Mayor

Director Engineering & Works

9.2 Minutes: Australia Day Committee - 5 October 2021

Responsible Director: Office of the Chief Executive Officer

Attachments

- 1 Minutes: Australia Day 2022 - 5 October 2021 [↓](#)

Enclosures

Nil

RECOMMENDED

That the Minutes of the Australia Day Committee Meeting held on 5 October 2021 be received and accepted.



Australia Day Committee Minutes

Date: 5 October 2021	Time: 10.30am	Venue: Zoom
Chairperson: Clr Mark Westhoff	Minutes: Emily Vaughan	
Participants: Clr Mark Honey Brent Blackburn Cathie Bax	Apologies: Clr Andrew Sloan	
Meeting Objective: 2022 Australia Day – Working Group – Meeting No. 2		

No.	Item	Who	Notes
1.	Apologies / introductions	Clr Mark Westhoff	<ul style="list-style-type: none"> Apologies received from Councillor Sloan
2.	Event overview / brief - Review budget - Discuss capacity with Covid restrictions	Clr Mark Westhoff / Brent Blackburn	<ul style="list-style-type: none"> Finance have confirmed budget of \$10,000 To host celebrations at Jamberoo School of Arts capacity would be either 80 or 40 pax depending on the per square metre rule. Given the trending high number of new citizens it was agreed to move to Gerringong Town Hall due to greater capacity.
3.	Media & PR - Call for nominations - Date nominations close	All	<ul style="list-style-type: none"> Nominations close 12 November
4.	Actions from 2021 debrief: • Work with Wollongong and Shellharbour councils	Emily Vaughan	<ul style="list-style-type: none"> EV to meet with Wollongong and Shellharbour Councils, scheduled Friday 8 October A joint radio advertisement will be discussed to call for nominations

21/98649

No.	Item	Who	Notes
5.	<p>Community Group events</p> <ul style="list-style-type: none"> - Level of interest to continue - Sponsorship from Council 		<ul style="list-style-type: none"> • Gerringong Lions, Jamberoo Red Cross and Kiama Downs Surf Club would like to continue running Australia Day celebrations. Kiama Rotary will discuss internally and advise • Report to Council to request \$1,000 donation and in-kind services
6.	<p>General Business / other</p> <ul style="list-style-type: none"> - Received enquiry whether a husband/wife team can be nominated - Period between 4 December to new Council - Confirm next meeting date <ul style="list-style-type: none"> o Emily and Cathie to maintain budget (trim 21/86796) 	Emily Vaughan	<ul style="list-style-type: none"> • Committee agreed a husband and wife may be nominated under the Citizen category • The committee hereby resolves that management of remaining matters regards Kiama Council's Australia Day functions for 2022 be delegated to Council staff until the formation of a new committee after the local government elections • EV to invite Gwenda Jarrett to do Welcome to Country and discuss Didgeridoo player • In the event of the new Council not being nominated for committees, Councillor Westhoff has offered to be the MC if needed

Next Meeting: Wednesday 3 November	Time: 10am	Venue: Zoom
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21/98649

Committee Of The Whole***RECOMMENDATION***

That Council form itself into a Committee of the Whole to deal with matters listed in the reports as set out below:

- Report of the Chief Executive Officer
- Report of the Director Environmental Services
- Report of the Director Corporate and Commercial Services
- Report of the Director Engineering and Works
- Report of the Director Blue Haven
- Reports for Information
- Addendum to Reports

10 PUBLIC ACCESS REPORTS

11 REPORT OF THE CHIEF EXECUTIVE OFFICER

11.1 Request for in-kind donation and sponsorship: Australia Day 2022

CSP Objective: 1.0 A healthy, safe and inclusive community

CSP Strategy: 1.1 Developing and implementing services and programs that promote social cohesion, healthy and active lifestyles for residents of all ages, abilities and interests

Delivery Program: 1.1.3 Provide and promote cultural and artistic activities and programs

Item 11.1

Summary

This report seeks Council's consideration of in-kind support and sponsorship to those Community Groups hosting Australia Day 2022 breakfasts in each of our townships, Kiama, Kiama Downs, Jamberoo and Gerringong.

Finance

Not-for-profit organisations, Gerringong Lions Club, Kiama Downs Surf Club, Kiama Rotary, and Jamberoo Red Cross are not required to pay hire fees for Council reserves however other costs for the breakfast events include: waste services \$210.60; Road Occupation \$190; advertising for Road Occupation up to \$250; and Native Title \$50 per reserve. In addition to in-kind support, Council also provides sponsorship of \$1,000 per community group.

Fees are to be funded from Council's Community Contributions & Donations (events/festivals) fund.

Policy

Not applicable

Consultation (Internal)

Waste Services

Engineering & Works – Manager Design and Development

Property Team

Australia Day Committee

Communication/Community Engagement

The breakfast events are an integral part of the Municipality's Australia Day celebrations. Council promotes the event through normal media and social media channels.

Attachments

Nil

Enclosures

Nil

Report of the Chief Executive Officer

11.1 Request for in-kind donation and sponsorship: Australia Day 2022 (cont)

RECOMMENDATION

That Council:

1. Provide in-kind support for the provision of waste services, road occupation including advertising, native title (if applicable) in addition to sponsorship of \$1,000 to Gerringong Lions Club, Kiama Downs Surf Club, Kiama Rotary and Jamberoo Red Cross for the Australia Day 2022 breakfasts should they be able to proceed under public health orders.
2. Further, that the community groups who received funding for the Australia Day 2022 breakfasts be advised Council would appreciate appropriate recognition of support of the event.

BACKGROUND

At its recent meeting, the Australia Day Committee discussed the provision of sponsorship and in-kind donations provided by Council to those community groups which host Australia Day breakfasts in the townships of Kiama, Kiama Downs, Jamberoo and Gerringong.

As in previous years, it is requested that Council consider in-kind support for the provision of waste services, road occupation including advertising, native title (if applicable) in addition to sponsorship of \$1,000 to Gerringong Lions Club, Kiama Downs Surf Club, Kiama Rotary and Jamberoo Red Cross.

Council appreciates the hard work put in by each of the groups. We hope that COVID restrictions have eased and allow these important community events to proceed.

11.2 Statement of Investments September 2021

CSP Objective: 4.0 Responsible civic leadership that is transparent, innovative and accessible

CSP Strategy: 4.1 Council is financially sustainable

Delivery Program: 4.1.2 Identify opportunities to diversify and maximise funding sources

Item 11.2

Summary

This report recommends receipt and adoption of the Statement of Investments for September 2021

Financial implication

NA

Policy

Clause 625 of the *Local Government Act 1993*

Clause 212 of the *Local Government (General) Regulation 2005*

Kiama Municipal Council – Investment Policy

Kiama Municipal Council – Restricted Assets Policy

Consultation (internal)

Chief Executive Officer

Chief Financial Officer

Financial Accountant

Communication/Community engagement

NA

Attachments

- 1 Statement of Investments September 21 [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. receive and adopt the information relating to the Statement of Investments
2. note the movement and current balance of \$25,590,000 in the external reserve held for the sale of units at Blue Haven Bonaira under the restriction of the loan agreement.

Report of the Chief Executive Officer

11.2 Statement of Investments September 2021 (cont)

3. endorse the Carry Over Works Internally Restricted Reserve carrying balance of \$699,694 as per the table outlined in this report.
4. note the movement and current balance of \$4,400,000 in the external reserve held the minimum liquidity required as per the Aged Care Prudential Standards Policy for the Aged Care Home.

BACKGROUND

Council is required to invest its surplus funds in accordance with the Ministerial Investment Order and Division of Local Government guidelines. The Order reflects a conservative approach and restricts the investment types available to Council. In compliance with the Order and Division of Local Government guidelines, Council adopted an Investment Policy in August 2021. The Investment Policy provides a framework for the credit quality, institutional diversification and maturity constraints that Council's portfolio can be exposed to. Council's investment portfolio was controlled by Council's Finance Division during the period to ensure compliance with the Investment Policy.

Council's direct investments are often rolled over on maturity with the same financial institution, if competitive, and based on whether funds are required for operations.

Council's average weighted return for September 2021 was 0.44% above the Bank Bill Swap Rate benchmark return of 0.01%. This result was primarily due to the higher fixed interest rates on term deposits purchased prior to the COVID-19 impact on the financial market.

Council holds one floating rate note through Newcastle Permanent, this is paying 65 points over The Bank Bill Swap Rate (BBSW) with a maturity of February 2023.

Council's overall cash balance continues to trend in the right direction. Over the past 12 months, Council's investments portfolio has increased by 45.54% or \$23.7million from the total investments held in September 2020. This is principally due to unit sales at Blue Haven Bonaira and Terralong and new residents into the Aged Care Home, which has contributed \$31.25million. This increase in cash from Blue Haven Bonaira will now dry up as the units in the Retirement Village and nursing home are now at capacity.

During September there was a 0.79%, \$413k increase in cash from August 2021. Unit sales at Blue Haven Bonaira continue to yield positive cash for Council with an additional \$2.28 million from unit settlements in September 2021. Accommodation deposits and refunds from the Aged Care Home totaled a positive cashflow for August of \$6.70million.

The decrease in unrestricted from \$3.1million in August to \$2.27million in September is driven by increases in external restrictions for both unit sales at Bonaira and an increase in the minimum liquidity level at the aged care home, the positive cashflows from the Aged Care Home and continued positive cashflows from the unit sales at Blue Haven Bonaira.

Report of the Chief Executive Officer

11.2 Statement of Investments September 2021 (cont)

COVID restrictions continue to have an impact on expected cashflows from the holiday parks and leisure center, with both business units affected by the current restrictions. Occupancy rates at the holiday parks continue to be minimal with only permanent residents and occupants with no permanent address continuing to bring cash inflows. The Leisure Centre has been closed since 14 August 2021. The impact on the holiday parks income is significant for July, August and September, with income for this period \$1.82million under budget. The Leisure Centre for the same period is \$219k under budget.

Council's current investment portfolio totaling \$52.052million is made up of 39% non-fossil fuel funding investments, totaling \$20.197million.

Investments placed for the month of August include the following:

- Term deposit \$4,000,000 – Bank of Queensland at 0.42%, placed 9/9/21 and maturing 9/9/2022 – invested with funds from the sale of units at Bonaira Street Retirement Village.
- Term deposit \$4,000,000 – NAB at 0.5%, placed 9/9/21 and maturing 8/3/2023 - invested with funds from the sale of units at Bonaira Street Retirement Village.
- Term deposit \$750,000 – AMP at 0.8%, placed 27/9/21 and maturing 27/9/22, rollover investment from previous term deposit.

Restricted asset movements

During August there have been movements to four reserves, they include the following:

Externally Restricted Fund Movements:

- Loan Restrictions – TCorp – Increase of \$2,280,000 with a carrying amount of \$25,590,000. This restriction must be held until the maturity of the current loan for the construction of the Blue Haven matures on 9 August 2023.
- Blue Haven Aged Care Home – Increase of \$1,400,000 with a carrying amount of \$4,400,000 due to increase in RAD (Refundable Accommodation Deposit) from 2020 to 2021. This reserve is held under the Aged Care Act and Council's Aged Care Prudential Standards Policy adopted at the October 2021 Blue Haven Board meeting.

Internally Restricted Fund Movements:

- Carry Over Works – Decrease of \$115,226 with a requested carrying amount of \$699,694.

Unrestricted Fund Movements – Decrease of \$850,957 with a carrying amount of \$2,271,339.

The following table details the current carrying amount and purpose of the proposed Carry Over Works internal restriction for September 2021.

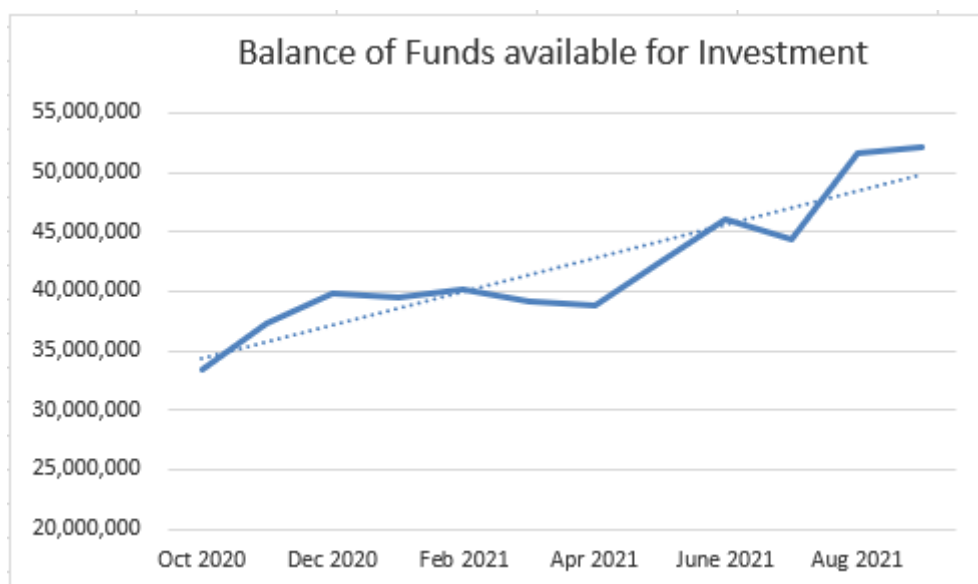
Report of the Chief Executive Officer

11.2 Statement of Investments September 2021 (cont)

Program / Project	Approved 21/22 Carryover	Amount Spent to September	Carrying Balance of Reserve
Gerringong Library and Museum Upgrade	\$ 950,000	\$ 745,999	\$ 204,001
Keith Irvine Amenities	\$ 180,000	\$ 166,138	\$ 13,862
Bonaira Reserve car park upgrade	\$ 105,000	\$ 61,540	\$ 43,460
Bonaira Oval sealed parking area and drainage	\$ 5,000	\$ -	\$ 5,000
Kiama Downs SLSC - carpark upgrade	\$ 140,000	\$ 86,280	\$ 53,720
Kiama Harbour Cabins - Cabin 21 renewal	\$ 60,000	\$ -	\$ 60,000
Surf beach HP Residence Renewal and refit	\$ 50,000	\$ 16,327	\$ 33,673
Kendalls HP Fire Hydrant (compliance)	\$ 50,000	\$ -	\$ 50,000
Seven Mile HP - Reception upgrade	\$ 140,000	\$ 4,022	\$ 135,978
Leisure Centre - Air handling replacement & upgrade	\$ 80,000	\$ -	\$ 80,000
Leisure Centre - Fire protection system compliance rectification works	\$ 80,000	\$ 80,000	\$ -
Leisure Centre Backwash Tank and Sewer Connection	\$ 20,000	\$ -	\$ 20,000
King Street, Kiama Street Lighting Stage 2	\$ 4,000	\$ 4,000	\$ -
Total	\$1,864,000	\$ 1,164,306	\$ 699,694

Item 11.2

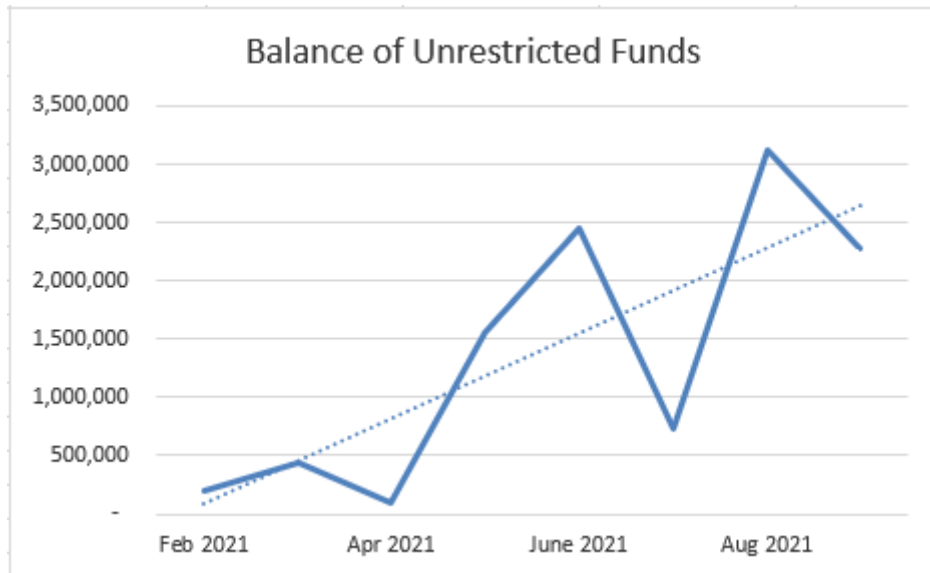
The graph below shows the trend of a continual increase in Council’s overall cash position.



Report of the Chief Executive Officer

11.2 Statement of Investments September 2021 (cont)

The below graph shows the trend of Council’s unrestricted funds over the past five months.



Item 11.2

The investment portfolio is regularly reviewed in order to maximise investment performance and minimise risk. Comparisons are made between existing investments with available products that are not part of Council’s portfolio. Independent advice is sought on new investment opportunities.

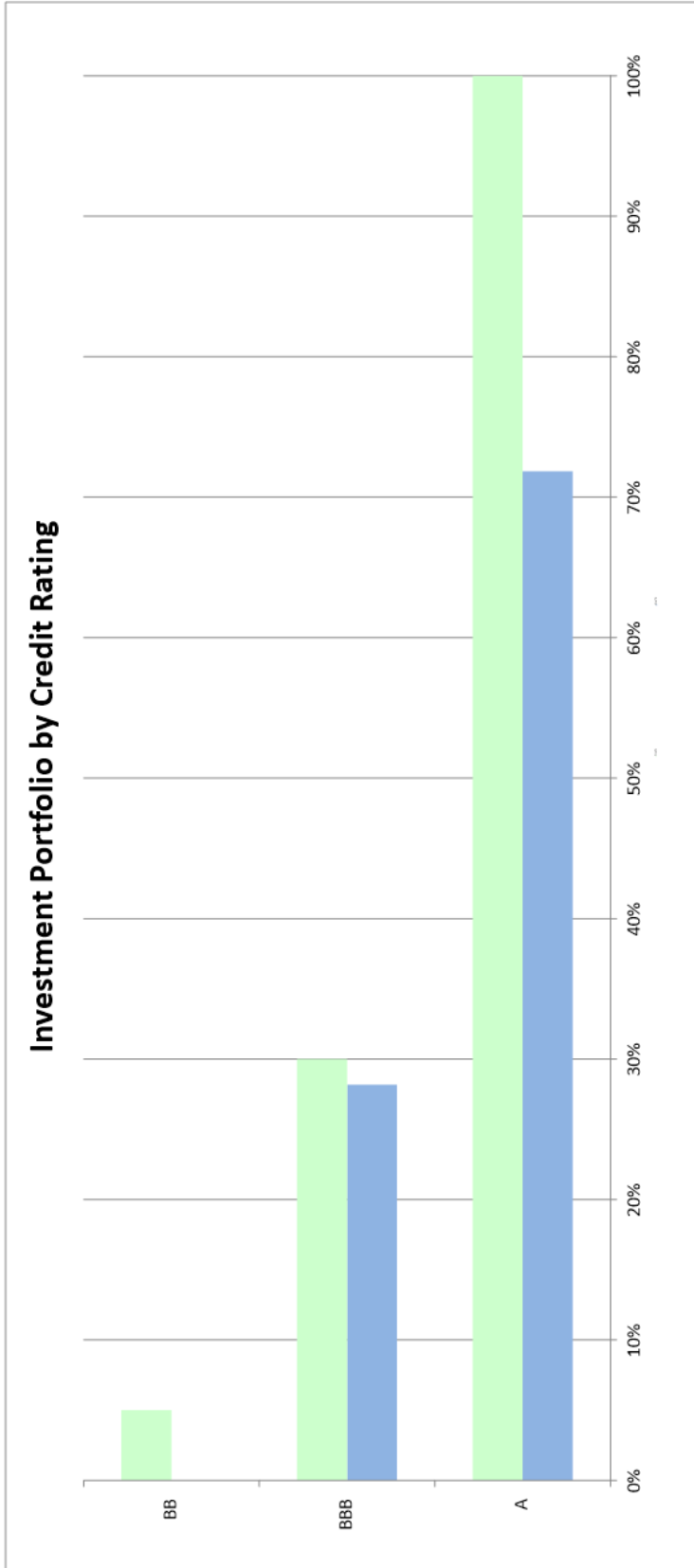
Certification – Responsible Accounting Officer

I hereby certify that the investments listed in this report have been made in accordance with Section 625 of the *Local Government Act 1993*, clause 212 of the *Local Government (General) Regulation 2005* and Council’s Investment Policy.

Jason Galloway
Chief Financial Officer

(b) Council Investments as at 30 September, 2021

DIRECT INVESTMENTS: INSTITUTION	S & P RATING	MARKET VALUE \$	INVESTMENT TYPE	DATE LOGGED	MATURITY DATE	TERM (DAYS)	RATE %
AMP	BBB	1,000,000	Term Deposit	08/03/21	08/03/22	365	0.75
AMP	BBB	750,000	Term Deposit	27/09/21	27/09/22	365	0.80
Bank of Qld	BBB+	1,900,000	Term Deposit	02/06/21	02/06/22	365	0.40
Bank of Qld	BBB+	1,000,000	Term Deposit	02/03/21	02/12/21	275	0.39
Bank of Qld	BBB+	2,000,000	Term Deposit	21/07/21	21/07/22	365	0.44
Suncorp	A+	1,000,000	Term Deposit	25/05/21	25/05/22	365	0.64
Commonwealth Bank	AA-	1,000,000	Term Deposit	21/10/20	21/10/21	365	0.61
ME Bank	BBB+	3,000,000	Term Deposit	02/06/21	02/06/22	365	0.50
ING	A	1,000,000	Term Deposit	09/06/21	09/06/23	730	0.50
NAB	AA-	1,000,000	Term Deposit	23/03/21	23/03/22	365	0.35
NAB	AA-	1,000,000	Term Deposit	16/03/21	16/03/22	365	0.37
NAB	AA-	1,000,000	Term Deposit	07/04/21	07/04/22	365	0.35
NAB	AA-	1,000,000	Term Deposit	14/04/21	14/04/22	365	0.37
NAB	AA-	1,000,000	Term Deposit	04/11/20	04/11/21	365	0.55
NAB	AA-	1,000,000	Term Deposit	11/11/20	11/08/21	273	0.50
NAB	AA-	1,000,000	Term Deposit	18/11/20	18/11/21	365	0.55
NAB	AA-	1,000,000	Term Deposit	02/12/20	04/10/21	306	0.50
NAB	AA-	1,000,000	Term Deposit	16/12/20	16/12/21	365	0.53
NAB	AA-	1,503,877	Term Deposit	18/02/21	17/02/22	364	0.30
Westpac	BBB	1,014,994	Floating Rate Note	28/09/18	06/02/23	1592	0.69
Newcastle Permanent FRN	A+	5,000,000	Term Deposit	23/08/21	23/08/22	365	0.30
Suncorp	AA-	5,000,000	Term Deposit	23/08/21	02/08/23	709	0.44
Westpac	BBB+	4,000,000	Term Deposit	09/09/21	09/09/22	365	0.42
Bank of Qld	AA-	4,000,000	Term Deposit	09/09/21	08/03/23	545	0.50
NAB	AA-	7,000,000	Term Deposit	09/06/21	09/06/23	730	0.55
Total Term Deposits & FRNs		49,168,871					0.50
TCorpIM Cash Fund	AAA	181,972	Cash Fund		AT CALL		0.00
Westpac	AA-	2,701,974	Bank Account	-	AT CALL		0.00
Total 'At Call' Funds		2,883,946					0.00
TOTAL CASH & INVESTMENTS		52,052,817					0.44
							0.99
TOTAL INVESTMENTS August 2021		51,639,000					0.79%
TOTAL INVESTMENTS Sep 2020		28,348,826					45.54%
							Change in total investment over prev 1 month
							Change in total investment over prev 12 months



Portfolio Limit	Policy Maximum	Current Holding %	Current Investment \$
Long Term Credit Ratings (S&P or Moodys or Fitch)			
A to AAA	100%	72%	\$37,387,823
A-	40%	0%	\$0
BBB to BBB+	30%	28%	\$14,664,994
BBB- and below	5%	0%	\$0
BBB- and below	5%	0%	\$0
			\$52,052,817

(c) Application of Invested Funds

Restricted Funds: Externally Restricted	Category	Sub-Category	Description	Value (\$)
	Developer Contributions	Major	Developer Contributions	4,355,000
	Operational	Timing Adjustments	Unexpended Grants	562,000
	Operational	Statutory/ External Restriction	Domestic Waste	3,352,825
	Operational	Statutory/ External Restriction	Loan Restrictions - Tcorp	25,590,000
	Operational	Statutory/ External Restriction	Blue Haven Terralong ILLU	1,385,000
	Operational	Statutory/ External Restriction	Blue Haven Bonaira ILLU	114,000
	Operational	Statutory/ External Restriction	Blue Haven Aged Care Home	4,400,000
	Operational	Statutory/ External Restriction	Community Bus	315,000
Internally Restricted				
	Asset Management	Specific	Carry Over Works	699,694
	Strategic	Community	Council Elections	250,000
	Operational	Accumulated Liabilities	Employee Leave Liabilities	1,500,000
	Strategic	Community	Energy Efficiency	213,000
	Asset Management	Specific	Crown Holiday parks	959,050
	Asset Management	Specific	Land development	1,602,000
	Asset Management	Light Fleet and Plant Acquisition	Plant replacement	1,513,909
	Operational	Accumulated Liabilities	Blue Haven Home Care Packages	688,000
	Strategic	Community	Risk Improvement Incentive	105,000
	Strategic	Community	Unspent Loan Funding	500,000
	Strategic	Community	Waste and Sustainability	415,000
	Strategic	Community	Waste Business Unit	1,262,000
Unrestricted Funds:				
TOTAL INVESTMENTS		Funds to meet current budgeted expenditure		2,271,339
				52,052,817

Note:
The above Application of Invested Funds will change subject to the preparation of the financial statements. The values can change due to monthly movements.
The Unrestricted Funds balance forms available cash to fund Council's ongoing budget operations.

(d) Investment Portfolio Performance

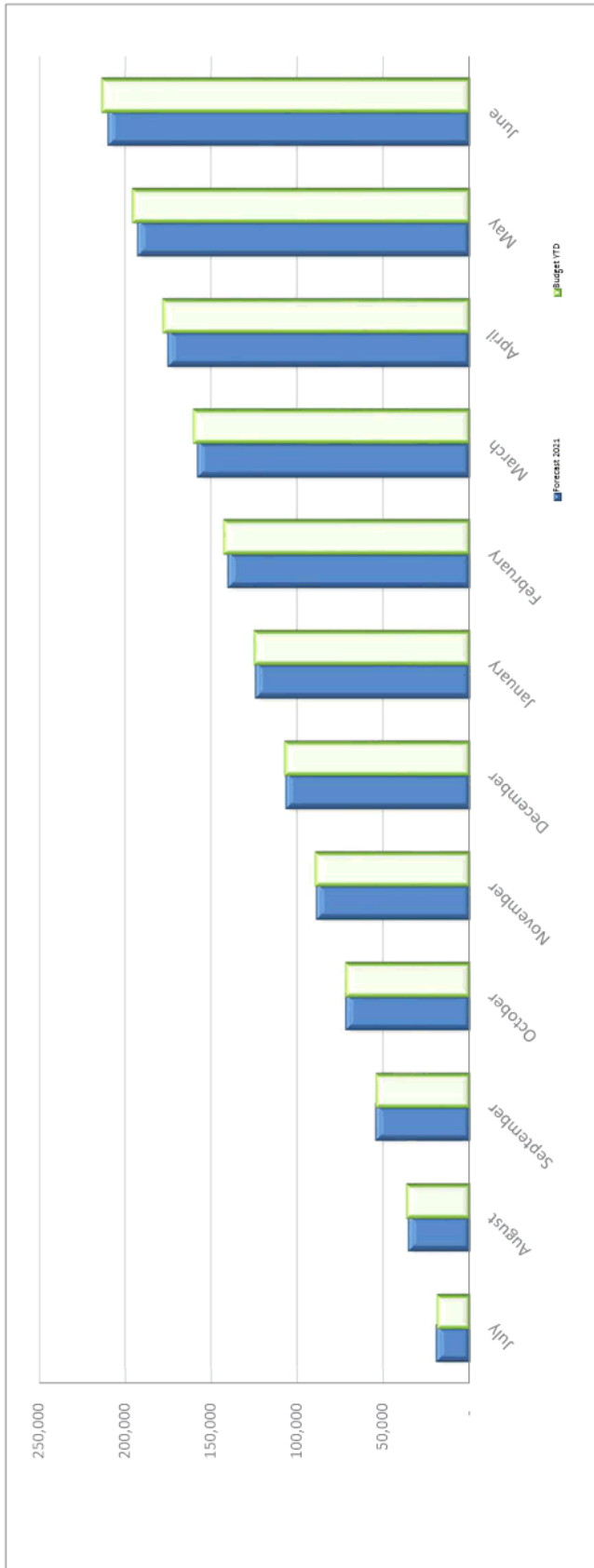
Investment Performance vs Benchmark		Benchmark: BBSW 90 day Bank Bill Index (source RBA)
Investment Portfolio Return (%pa)		
1 month average	0.44	0.01
3 month average	0.39	0.02
6 month average	0.34	0.03
12 month average	0.36	0.03

Council Investment Performance Compared to Benchmark



Council has been able to consistently perform above the Reserve Bank 90 day Bank Bill Index.

Accrued Interest Compared to Budget as at 30 September, 2021



11.3 Finance Advisory Committee

CSP Objective: 4.0 Responsible civic leadership that is transparent, innovative and accessible

CSP Strategy: 4.3 Council and the community working together

Delivery Program: 4.3.1 Foster positive community relationships through open communication, opportunities for participation and sharing information

Item 11.3

Summary

This report outlines the outlines the successful candidates for the Finance Advisory Committee.

Financial implication

NA

Policy

NA

Consultation (internal)

Mayor Cllr Mark Honey

Chief Executive Officer

Chief Financial Officer

Communication/Community engagement

NA

Attachments

Nil

Enclosures

Nil

RECOMMENDATION

That Council:

1. Sincerely thank all individuals for applications for the Finance Advisory Committee, noting the high caliber of applicants and their willingness to lend expertise.
2. Endorse the five community members, Anna-Leena Risku, Elizabeth Kelly, Graeme Gherashe, James Evan Thomson and Mark Greaves as the finance advisory committee.

BACKGROUND

During its August 2021 meeting Council endorsed to seek nominations for community experts to join a finance advisory committee. This report identifies the successful candidates and their skillsets and seek endorsement of the five community members listed. An open expression of interest was held to find expert community members to support both the staff and Council in delivering improved financial performance and strategies. Council has been humbled and overwhelmed by the response, not just by the number of applications (29) but also by the quality of candidates. It is a very comforting fact that there are many members of the community wanting to volunteer and share their knowledge and experience in improving Councils financial position. Through this process there were five successful applicants as listed below.

- Anna-Leena Risku – Anna-Leena brings a wealth of experience from many industries and within many large organisations. Anna has held positions of Financial Controller, Chief Financial Officer and Program Director.
- Elizabeth Kelly – Elizabeth is a member of the Australian Institute of Company Directors and has held positions such as Deputy Secretary bringing significant government experience to the committee.
- Graeme Gherashe – Graham has over 25 years' experience in senior executive roles in large organisations and holds an MBA in Finance and HR. He is an active community advocate and currently sits on Kiama Cultural Board.
- James Even Thomson – James is a Barrister with significant experience in Local Government matters, his skills will bring value to both analytical financial challenges and any potential problematic legal issues.
- Mark Greaves – Mark brings significant experience in advising boards during times of change. Mark is an active community member and the current President of the Kiama Central Precinct Committee.

The committee will also have a number of key positions of Council staff including the Chief Executive Officer and be chaired by the Chief Financial Officer. It will also include a Councilor, which currently will be the Mayor Mark Honey.

The group's first agenda will be to finalise the terms of reference for the committee, review the draft financial sustainability plan and review the independent peer review plans of work. These initial strategies include the following

1. Review land and property development
2. Strategic procurement actions (including a review of all current licences and subscriptions)
3. Asset management plan to develop levels of service for community asset maintenance
4. Review fees and charges with focus on developer contributions and compliance and planning fees
5. Sustainable resourcing

Report of the Chief Executive Officer

11.3 Finance Advisory Committee (cont)

6. Focus on grant opportunities and supporting current grant acquittals

7. A review of Council's future borrowing costs

Council has been overwhelmed by the interest in this committee and would like to thank each and every applicant for their want to be involved within their local Council and community.

Item 11.3

11.4 New Policy Framework - suite of documents

CSP Objective: 4.0 Responsible civic leadership that is transparent, innovative and accessible

CSP Strategy: 4.2 Council embraces good governance and better practice strategies

Delivery Program: 4.2.2 Manage an effective workforce in an environment of continuous improvement

Item 11.4

Summary

The purpose of this report is to recommend Council adopt the new draft Policy Framework as attached to this report.

Financial implication

Nil

Policy

Once adopted this policy framework will establish an effective system to ensure that policy documents are kept up-to-date and staff are made aware of the contents. Making our policies available to the public will ensure openness, transparency and accountability in Council's decision making.

Consultation (internal)

- Executive Assistant to the CEO
- Communications Officer
- Internal Auditor
- Executive Leadership Team (ELT)

Communication/Community engagement

Nil

Attachments

- 1 Policy Framework Document [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council adopt the proposed Policy Framework suite of documents as attached to this report and note the intended improvements for governance procedures.

BACKGROUND

In improving the governance framework of Council it is crucial to look at the way that the organisation develops policies, procedures and conducts regular review of this materials. Policies and procedures guide the way that staff work and help give certainty to both Officers and the community into how matters are handled, resolved and considered.

There is currently a lack of a framework for managing policies at Council. There are some gaps and omissions in the suite of policies available to staff and annualised process for review has not been established. Likewise, a central register of documents requires establishment and the process for approval and adoption needs to be apparent.

The proposed policy framework applies to all staff of Council, and Council's policies, procedures and process maps. It provides guidance to council employees who have a role in developing, reviewing and implementing Council's policy documents.

The policy framework consists of an overarching framework document with associated procedures, process maps, templates and a policy register. It aims to:

- ensure high quality policy documents that are easy to access and understand
- ensure policy documents comply with legislation and reflect industry best practice standards
- encourage both internal and external stakeholder engagement throughout the process of policy development and review
- establish a process for the implementation and dissemination of policy documents
- establish a system to ensure policy documents are kept up to date, all staff have access and obsolete policies are no longer in use
- promote transparency and accountability by providing public access to Council's policy documents wherever possible



Policy Framework



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Item 11.4

Attachment 1

Date adopted	XX
Resolution number	XX
Previously adopted	XX
Next review due	XX
Department	Governance
Responsible Officer	Governance Officer
TRIM reference	21/95877
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DRAFT

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Policy Framework

1.0 Purpose

The purpose of this document is to provide a framework for the development, review, adoption, implementation, dissemination and tracking of Council's policies, procedures and process maps.



Policy Framework Model showing the hierarchy of policy documents.

2.0 Objectives

This framework links to the following objectives in Council's Community Strategic Plan:

- 4.0 Responsible Civic Leadership that is Transparent, Innovative and Accessible.
- 4.2 Council embraces good governance and better practice strategies.

This framework aims to:

- ensure high quality policy documents that are easy to access and understand
- ensure policy documents comply with legislation and reflect industry best practice standards
- encourage both internal and external stakeholder engagement throughout the process of policy development and review
- establish a process for the implementation and dissemination of policy documents
- establish a system to ensure policy documents are kept up to date, all staff have access and obsolete policies are no longer in use
- promote transparency and accountability by providing public access to Council's policy documents wherever possible

3.0 Scope

This framework applies to all staff of Council and all Council's policies, procedures and process maps. It provides guidance to council employees who have a role in developing, reviewing and implementing Council's policy documents.

This policy should be read in conjunction with the *Procedures for policy development and review* and the process map for *Developing a new policy or reviewing an existing policy* (**Appendix 1**).

4.0 Definitions

Term	Definition
Core Values	Respect, Integrity, Innovation, Teamwork and Excellence
KMC	Kiama Municipal Council
ELT	Executive Leadership Team made up of Council's CEO and Directors
Framework	A suite of documents to address a particular matter
Internal Policy	Statement of principles that give direction, is internally focussed and affects employees of Council
MLT	Management Leadership Team
Policy	Statement of principles that give direction and are customer focused
Policy Register	A tool used to manage and track policy documents
Procedure	Details the steps involved in completing a process
Process Map	A process map visually describes the flow of work

5.0 Policy

5.1 How to incorporate Council's core values into policies

Policy writers should ensure their policy documents reflect Council's core values of Respect, Integrity, Innovation, Teamwork and Excellence.

Respect

We value respect by making our policies publicly available wherever possible and encouraging the community to submit their views and have their say on Council's policies.

Integrity

We value integrity by being open, transparent and accountable for our actions and decisions. Wherever possible, Council's policy documents are made available on our website.

Innovation

We value innovation by listening to new ideas and working towards improving the services we provide to the community and our customers, and incorporate those into our policy documents.

Teamwork

We identify opportunities early in policy design and review for consultation with key stakeholders including staff directly impacted by the policy contents.

We seek feedback and direction from Council's Management Leadership Team and Executive Leadership Team when developing/reviewing policies.

Excellence

We strive for excellence by researching best practice and incorporating this into our policies.

5.2 What is a Council policy?

A Council policy is a statement of guiding principles that gives direction on the activities of Council and helps with decision making. A Council policy has an outward customer focus or impact and supports legislation rather than duplicates it.

A Council policy is adopted by Council and supports its strategic plans.

5.3 What is an internal policy?

An internal policy is a policy that focuses on internal administrative and operational matters.

Internal policies are approved by the Executive Leadership Team (ELT).

5.4 What are procedures?

Procedures describe how each policy will be put into action and outlines who will do what, what steps they need to take and which forms or documents to use.

Procedures only require approval from the appropriate manager or supervisor and must be consistent with the related policy. Procedures are often linked to a process map and easily accessed by staff through Council's Intranet.

5.5 What is a process map?

A process map is a tool that shows visually what is to be done and outlines the steps to complete a process. Process maps are easy to follow and provide consistency when staff are performing an unfamiliar task, a new role or filling in for another staff member. They usually have links to underlying policies and procedures and other supporting documents.

5.6 Policy register

Council's policy register is maintained by the governance team. It contains Council and internal policies, procedures, process maps and other supporting documents. The register is used to keep track of review dates. Managers must ensure the most recent version of the policy document is available for staff to access.

The policy register is used to ensure that policies are reviewed in a timely manner, within designated timeframes.

Council must make certain policy documents available to the public on its website. The policy register will be used to tag Council's policies for display on Council's website. As a rule of thumb all policies adopted by Council will be made publicly available unless there is an overriding public interest against disclosure.

5.7 Policy development

Prior to drafting a new policy, consultation needs to take place with Council's Management Leadership Team to gain their support and ensure the intent of the policy aligns with Council's Community Strategic Plan. Internal consultation of key stakeholders should also occur. Consideration should be given to researching best practice at other councils that have similar

issues. Advice should be sought from Council's Communications team on whether more comprehensive community engagement should occur prior to or after drafting the policy.

The policy must list any related procedures, process maps, templates or other supporting documentation.

For consistency, policy templates must be used and the policy written in clear and plain English, avoiding technical terms or jargon and written in short sentences. If it is necessary to include technical terms, a clear definition must be included.

Council policies

Council policies are considered by ELT prior to being reported to Council for consideration and adoption. They are placed on public exhibition, calling for submissions, for a minimum period of 28 days, (or legislated time period). During the Christmas/New Year period consideration is given to extend the public exhibition period.

If relevant submissions are received as a result of public exhibition, or other changes are required, a further report is provided to Council seeking adoption of the amended policy. Once adopted, a policy automatically becomes a policy of Council and entered into the Policy Register.

Internal policies

Internal policies are to be considered by the Management Leadership Team prior to being submitted to ELT for approval. When ELT are satisfied with the internal policy it will be submitted to Consultative Committee for consideration. Following Consultative Committee consideration the internal policy will be endorsed by ELT.

Policies specifically related to Blue Haven (aged care) are to be considered at their Managers meeting prior to being submitted to ELT for endorsement.

Once endorsed, an internal policy automatically becomes a policy of Council and will be entered in the Policy Register.

5.8 Policy review

Officers responsible for the policies of their department must ensure that their policy documents are reviewed in a timely manner, contain current information, reflect changes in legislation and follow industry good practice. They are to be reviewed annually in June, unless legislated.

Policies adopted by Council are not to be altered or amended without the prior knowledge and consent of the Council and the CEO. This does not apply to minor changes that do not change the intent of the policy or corrections/re-formatting. Councillors will be made aware of any policy changes approved by the CEO.

Amended internal policies are to be considered by the Consultative Committee prior to being reported to ELT for endorsement. ELT will be made aware of any minor administrative changes.

5.9 Implementation and dissemination

Once policy documents have been adopted, stakeholders and staff must be made aware of the contents of the policy through a training and education campaign.

Policy documents will be available to staff from the policies register and hard copies made available at sites where internet access is not possible.

5.10 Record management and document control

All previous versions and drafts of policies, including significant working documents must be stored in Council's electronic document management system, as required under recordkeeping legislation.

Where policies adopted by Council are no longer required, the rescission of the policy must be reported to Council.

5.11 Privacy

A privacy statement is included wherever Council calls for submissions from the public. The statement must provide information on how people can apply to have their personal information suppressed from their submission prior to being attached to the council report.

Any submissions containing malicious, defamatory or irrelevant information will not be considered by Council or attached to the council report.

5.12 Roles and responsibilities

Governance Team

The governance team is responsible for administering this framework including the following:

- Maintaining Council's policy register
- Ensuring policy documents are available to staff, including Blue Haven and other offsite locations
- Ensuring policies are made available to the public on Council's website as required under the GIPA Act
- Reporting to ELT on the status of policy documents overdue for review
- Ensuring previous versions of Council's policy documents are stored in Council's electronic document management system as required by recordkeeping legislation
- Preparing an annual report to Council on administrative changes to policies
- Preparing an annual report to ELT on administrative changes to internal policies
- Assisting managers to provide training/awareness of the contents of policy documents

Managers

Managers must ensure their policy documents are reviewed, implemented and disseminated in a timely manner. Regular evaluation of the outcomes of policy documents must be conducted to determine if they are achieving their intended purpose.

Staff

Staff of Council are responsible for familiarising themselves with policy documents that affect them. Staff must act in accordance with any reasonable direction within Council's policy documents.

6.0 Attachments

- Procedure – Policy Development and Review
- Process Map - Developing a new Policy or Reviewing an Existing policy

7.0 References

- *Government Information (Public Access) Act 2009*
- *State Records Act 1998*
- *Privacy and Personal Information Protection Act 1998*
- Internal Audit Report – Policy Framework Review 2019
- Kiama Municipal Council's Style Guide 2019
- Council's Community Engagement Strategy
- Council's Policy Template Instructions

8.0 Related documents

- Process Map – Developing a new policy or reviewing an existing policy
- Procedure – Policy Development and Review
- Process Map - Add a report in InfoCouncil
- Policy template
- Internal policy template
- Procedure template
- Council report template (InfoCouncil)
- ELT report template

9.0 Consultation

- Executive Assistant to the CEO
- Communications Officer
- Internal Auditor

10.0 Policy review

This framework will be reviewed annually in September. Any amendments to this framework document must be by way of Council resolution. Any amendments to the related procedures must be approved by ELT.

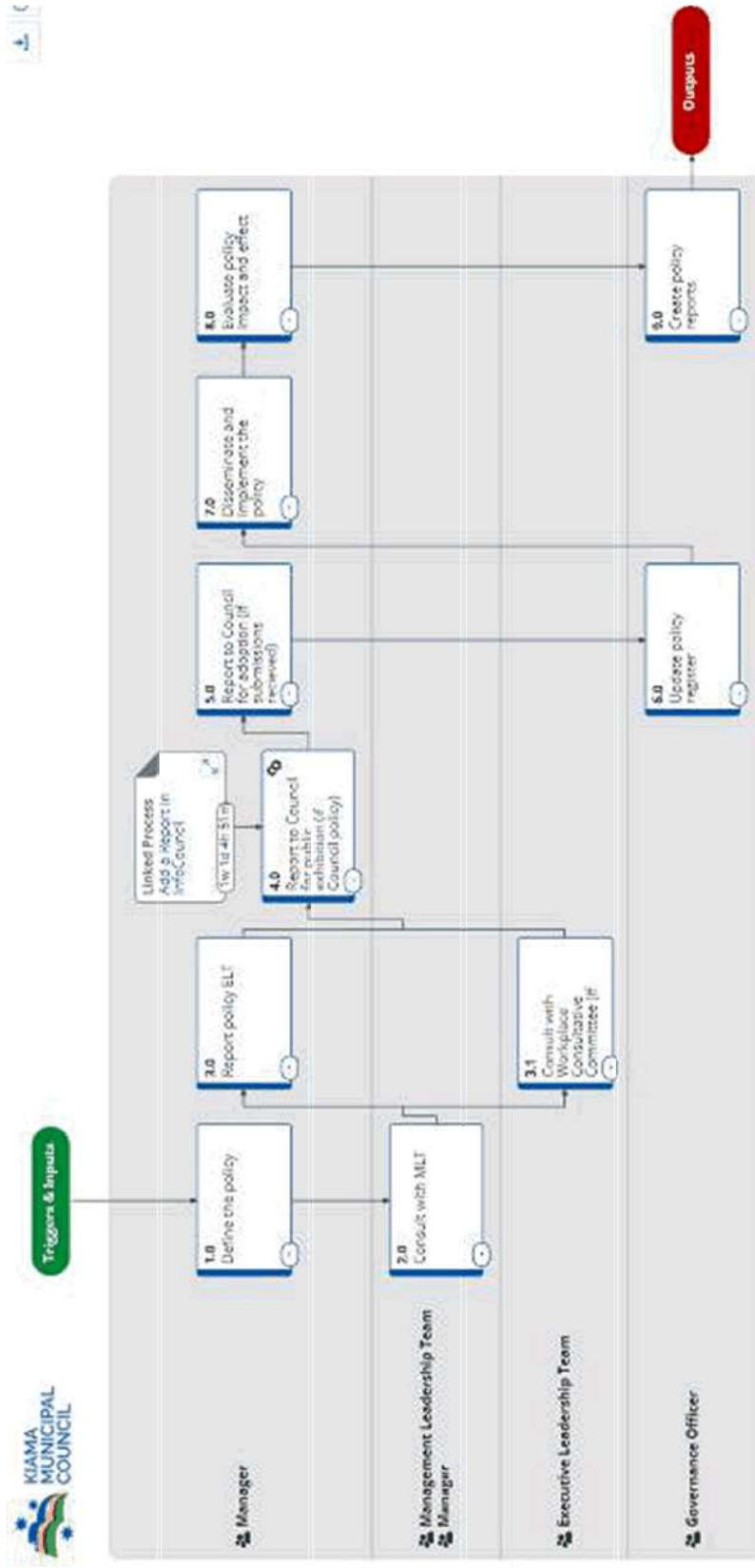
11.0 Document control

Date reviewed	Date adopted	Amendment
New Framework	tbc	N/A

12.0 Signature

Name: Jane Stroud – CEO	Date: tbc
Signature: <div style="background-color: #e0e0ff; height: 40px; width: 100%;"></div>	

Appendix 1 - Process Map - Developing a new Policy or Reviewing an Existing policy



How to contact Council

Post

Chief Executive Officer
Kiama Municipal Council
PO Box 75
Kiama NSW 2533

Telephone

+61 (02) 4232 0444

Facsimile

+61 (02) 4232 0555

Online

Email: council@kiama.nsw.gov.au
Website: www.kiama.nsw.gov.au

Office hours





Policy Development and Review Procedure



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Item 11.4

Attachment 1

Date adopted	XX
Resolution number	XX
Previously adopted	XX
Next review due	XX
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Responsible Officer	Governance Officer
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Procedure – Policy Development and Review

1.0 Purpose

This procedure is part of the Policy Management Framework for Kiama Municipal Council (KMC). It outlines the steps involved in the development, review, dissemination, implementation and adoption of new policies.

2.0 Objectives

The objectives of this procedure are to outline:

- the steps to be taken when developing or reviewing policy documents
- which forms, templates and tools to use
- considerations for consulting with key stakeholders
- how to finalise the policy
- strategies for dissemination, implementation and evaluation of policies.

3.0 Scope

This Procedure applies to the development of new policies and the review of existing policies, and applies to staff of KMC who have a role in policy development. Separate procedures exist for reviewing and implementing policy documents.

4.0 Definitions

For the purpose of this procedure the following definitions apply:

Term	Definition
Core Values	Respect, Integrity, Innovation, Teamwork and Excellence
KMC	Kiama Municipal Council
ELT	Executive Leadership Team made up of Council's CEO and Directors
MLT	Management Leadership Team
Framework	A suite of documents to address a particular matter
Council Policy	Statement of principles that give direction and are customer focused
Internal Policy	Statement of principles that give direction, is internally focussed and affects employees of Council
Policy Register	A tool used to manage and track policy documents
Process Map	A process map visually describes the flow of work

5.0 Procedure

5.1 New policy design

The first stage in policy development is to define the problem or issue that needs to be addressed, and/or the goal or direction that needs to be met. Identify the intent of the policy, consider if another policy already exists that addresses the same similar matter or if the content crosses over into other policies.

Decide on what type of policy is needed:

- Council policies describe the what and why, are about matters that may affect the public, are formally adopted by Council and made available to the public on Council's website.
- Internal Policies describe the what and why, are about internal business/operational matters and are approved by ELT.
- Procedures describe how the policy document is put into action, what steps need to be taken, who will do what and which forms or documents to use.
- Frameworks are used when a matter needs a coordinated approach, a suite of documents (ie policy, procedures, checklists, process maps etc).

See Council's process map for *developing a new policy or reviewing an existing policy* to guide you through the process.

Governance needs to be notified so that the policy register is kept up to date.

5.2 Policy review

All policies must be reviewed in June each year, unless legislated otherwise. If no changes are needed, update the version control to say reviewed with no changes. Managers will be sent a reminder via the Policy Register one month before their policy document is due for review. When policies are overdue for review, Governance will seek status updates from Managers and report these to ELT.

The Policy Register will contain the most recent version of the policy. To meet legislated record retention obligations, all current and previous versions of policies must be stored in Trim.

Wherever possible track changes or similar should be used to show where changes were made to the policy.

The first stage in policy review is to examine any changes in legislation, Acts and Regulations. Research circulars, newsletters, best practice guides or network with other Councils. The policy should also be examined to ensure it reflects Council's current Community Strategic Plan and Council's core values.

Thought should be given on whether the policy is achieving its intended purpose, is still relevant and up to date with organisational changes.

5.3 Minor amendments

If the policy only requires minor amendments such as correcting mistakes, re-formatting, updating position titles etc, that do not change the intent of the policy, these can be made without going through the formal adoption/public exhibition process.

Once the minor changes have been made, the version number needs to be updated and the next review date set (annually, or as legislated). Notify Governance to upload it to the policy register and Trim.

In September of each year, the governance team will coordinate and compile a report on all updates to policies of an administrative nature. Managers are responsible for making

administrative changes and advising governance. Council policy administrative changes will be reported to Council, internal policy administrative changes will be reported to ELT.

5.4 Initial consultation

Commence consultation with key internal/external stakeholders at the beginning of developing the new policy or reviewing the existing policy and continue this consultation throughout the process.

Consultation with Councils Management Leadership Team (MLT) must be conducted when developing a new policy.

Other suggestions for consultation are listed below:

- staff impacted by the policy
- governance, IT, HR, risk management
- Councillors
- customers/clients
- a particular section of the community (e.g. single parents, persons aged over 65, persons with a disability, persons of a particular nationality)
- a community group (eg Kiama Community Garden, Lions Club, Rotary, Men's Shed, Community Transport, advocacy groups)
- Precincts, residents and ratepayers action groups
- people residing in a particular area or suburb impacted by the policy
- a group of people with a common interest (eg parents and citizens association, sporting groups, advocacy groups)
- people of a particular occupation or industry sector (eg medical practitioners, food shops, tattoo and piercing parlours).

5.5 Best practice

Consider up to date policies of neighbouring or similar councils. Research what resources are available from relevant governing bodies or oversight agencies such as the Office of Local Government. A model policy may exist.

5.6 Templates

For consistency all policies must be developed using Council's policy template available in the process map for *developing a new policy or reviewing an existing policy* or from Council's intranet.

Follow the template prompts and if there is no information to be placed under a heading, write the word "Nil", do not remove headings.

Write using simple, plain English with few words and short sentences. Do not use technical jargon or acronyms that only industry experts can understand. If you need to use these terms, ensure that the meaning is explained in the definitions section of the policy.

Once the first draft is complete notify Governance to update the policy register.

5.7 Approval or adoption

Council policies must be endorsed by ELT prior to being reported to Council for adoption.

Internal policies must be provided to the MLT for input, approved by ELT to submit to the Consultative Committee prior to endorsing by ELT.

Blue Haven policies must be presented at their Managers meeting for input prior to endorsing by ELT.

5.8 Accompanying report

ELT and Consultative Committee reporting templates are available from the process map for **developing a new policy or reviewing an existing policy** or council's intranet. Council reports must be generated from InfoCouncil, for assistance contact the EA to the CEO.

5.9 Public Exhibition

Council policies of interest to the public must be placed on public exhibition for a minimum of 28 days (or as legislated), calling for submissions. This period should be extended for policies considered to be of high public interest or during the Christmas holiday period. This allows more time for people to gather information to make informed submissions and have their say. Internal policies that relate to the internal day to day operations of Council functions generally do not need to be publicly exhibited.

A report accompanying the policy needs to be created using the report template. The report will seek Council's endorsement to place the policy on public exhibition. Below is an example of the wording to be used in the recommendation.

That Council:

1. *endorse the ... to be placed on public exhibition for a period of 28 days calling for submissions*
2. *receive a further report for consideration, if any relevant submissions are received or if any substantial changes are proposed for any other reasons, detailing the public exhibition outcomes and proposed changes with further recommendations regarding adoption*
3. *following the conclusion of the public exhibition period, adopt the ..., if there are no relevant submissions received and there are no substantial changes proposed for any other reasons.*

If a more comprehensive advertising/communication strategy is needed, contact the communications team for assistance. This could be a combination of newspaper advertising, website, community forums/meetings, community visits and public displays at various locations.

5.10 Submissions

Upon completion of the submission period the policy owner is to send acknowledgment letters to submitters notifying them of the Council meeting the policy will be considered at or where they can find this information on our website. Information on how and when they can have their say should also be included.

Where many submissions are received, a table summarising the main points in the submissions is to be included in the report to Council outlining Council's response to each point.

5.11 Privacy

The following privacy statement should be included wherever the policy is advertised calling for submissions, and in acknowledgement letters to submitters.

Please Note: *Submissions received in relation to this matter may be made publicly available as required under the Government Information (Public Access) Act 2009 (GIPA Act). If you have concerns about your personal information being made public, such as your name, address and contact details, you may apply to have this information suppressed prior to publishing, please submit your request in writing to council@kiama.nsw.gov.au*

5.12 Finalising the policy

Following adoption or approval of a policy, the Executive Assistant to the CEO will finalise the policy, register it in Trim and notify the governance team to upload the policy to the policy register.

If the policy document is to be made publicly available on Council's website, governance will tag this in the policy register.

The Executive Assistant to the CEO will finalise the policy document by:

- setting the next review date (annually or as legislated)
- inserting the resolution number (if adopted by Council) and the date the policy became affective
- adding the Trim number, also to the document footer
- updating the history section
- inserting the CEO's or Director's signature.

5.13 Accessibility

Staff are to access policy documents through the online Policy Register. The register contains information about the policy document and summarises the content. The register can also send reminders to policy owners when their policies are coming up for review.

Hardcopies must be made available for those that do not have access to the online policy register.

5.14 Awareness/Training

Once new or amended policies have been finalised and adopted by Council or approved by ELT, stakeholders and staff must be made aware of the contents and attend training and awareness programs to understand how it impacts on their role.

As a minimum the following steps should be taken to promote awareness of the new or amended policy:

- conduct a key staff information session
- advertise in internal newsletters
- send an email to key staff providing information about the policy and how it can be accessed (online policies register or hardcopy in staffrooms)
- place a hardcopy in staffrooms/lunchrooms in areas for staff that can't access the internet
- notify relevant external stakeholders

Some policies will require staff to undertake more comprehensive training, such as Code of Conduct, WHS, Drug and Alcohol policy and Public Interest Disclosures etc. Contact Human Resources to discuss whether training can be conducted in-house or an external facilitator is more appropriate. A summary of these policies should also be presented to new staff at inductions.

5.15 Evaluation cycle

Ongoing evaluation of the outcomes of policy documents must be conducted to determine if they are achieving their intended purpose. Outcomes should be aligned to Council's Community Strategic Plan.

Continually evaluate and review the policy document's impact and effect. Talk to staff who have a direct role in applying the content of the policy documents to see what has been working well or not working well. Gather statistics or data and study actual effects to help identify any issues or content that needs improvement. This is a continuous cycle of policy development and review.

6.0 Attachments

Nil

7.0 Related Documents

- Policy Framework document
- Process map for Developing a new policy or reviewing an existing policy
- Council policy template
- Internal policy template
- Procedure template
- Ordinary Council meeting report template
- ELT meeting report template

8.0 Document control

Date reviewed	Date adopted	Amendment
V1	tbc	New Procedure

9.0 Signature

Name:	Date:
Signature:	

DRAFT



Click to enter document name
Council Policy



Item 11.4

Attachment 1

Date adopted	XX
Resolution number	XX
Previously adopted	XX
Next review due	XX
Department	Governance
Responsible Officer	Governance Officer
TRIM reference	21/95877
Attachments	XX

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5.0	Definitions -----	4
6.0	Policy -----	4
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8.0	Add additional headings as required -----	4
9.0	Policy review -----	4
10.0	Document control -----	5
11.0	Signature -----	5

Council Policy Name

1.0 Purpose

Insert text here

2.0 Objectives

The objectives of this policy are:

- List objectives using bullets

3.0 Scope

Description here

4.0 References

This document should be read in conjunction with the following:

- List associated procedure/process map/templates and other references

5.0 Definitions

For the purpose of this document the following definitions apply:

Term	Definition

6.0 Policy

Insert policy here

7.0 Attachments

- List attachments using bullets

8.0 Add additional headings as required

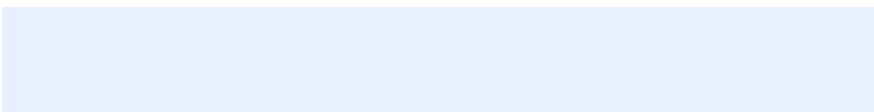
Insert text here

9.0 Policy review

10.0 Document control

Date reviewed	Date adopted	Amendment
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Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

11.0 Signature

Name: Click or tap here to enter name.	Date: Click or tap to enter a date.
Signature: 	

How to contact Council

Post

Chief Executive Officer
Kiama Municipal Council
PO Box 75
Kiama NSW 2533

Telephone

+61 (02) 4232 0444

Facsimile

+61 (02) 4232 0555

Online

Email: council@kiama.nsw.gov.au

Website: www.kiama.nsw.gov.au

Office hours

Our Administration Building located at
11 Manning Street Kiama is open 8.45 am to 4.15 pm





Click to enter document name

Internal Policy



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Item 11.4

Attachment 1

Date adopted	XX
Resolution number	XX
Previously adopted	XX
Next review due	XX
Department	Governance
Responsible Officer	Governance Officer
TRIM reference	21/95877
Attachments	XX

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6.0 Attachments-----	4
7.0 Add additional headings as required -----	4
8.0 Document control-----	5
9.0 Signature -----	5

Internal Policy Name

1.0 Purpose

Insert text here

2.0 Objectives

The objectives of this policy are:

- List objectives using bullets

3.0 Scope

Description here

4.0 References

This document should be read in conjunction with the following:

- List associated procedure/process map/templates and other references

5.0 Definitions

For the purpose of this document the following definitions apply:

Term	Definition

6.0 Policy

Insert policy here

7.0 Attachments

- List attachments using bullets

8.0 Add additional headings as required

Insert text here

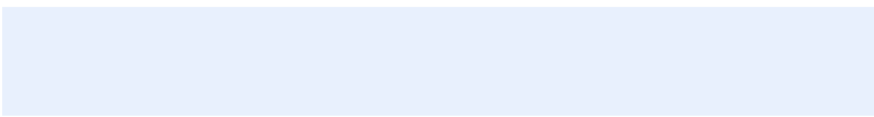
9.0 Policy review

Insert text here

10.0 Document control

Date reviewed	Date adopted	Amendment
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Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
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11.0 Signature

Name: Click or tap here to enter name.	Date: Click or tap to enter a date.
Signature: 	



Click to enter document name
Procedure



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Item 11.4

Attachment 1

Date adopted	XX
Date last reviewed	XX
Next review due	XX
Department	Governance
Responsible Officer	Governance Officer
TRIM reference	21/95877
Attachments	XX

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7.0 Add additional headings as required	3
8.0 Document control	4
9.0 Signature	4

Procedure Name

1.0 Purpose

Insert text here

2.0 Objectives

The objectives of this procedure are:

- List objectives using bullets

3.0 Scope

Description here

4.0 References

This document should be read in conjunction with the following:

- List associated policy/process map/templates and other references

5.0 Definitions

For the purpose of this document the following definitions apply:

Term	Definitions

6.0 Procedure

Insert procedure here

7.0 Attachments

- List attachments using bullets

8.0 Add additional headings as required

Insert text here

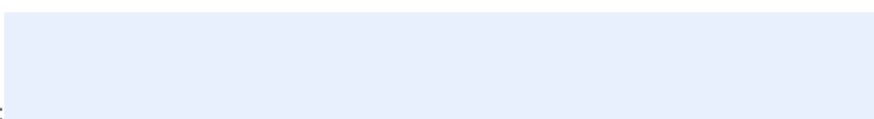
9.0 Policy review

Insert text here

10.0 Document control

Date reviewed	Date adopted	Amendment
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

11.0 Signature

Name: Click or tap here to enter name.	Date: Click or tap to enter a date.
Signature: 	

12 REPORT OF THE DIRECTOR ENVIRONMENTAL SERVICES

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings

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

This report reviews Development Application No 10.2021.67.1 which involves a 2 Lot Torrens Title subdivision to create a development lot and residual lot, subsequent 21 Lot Community Title subdivision of the development lot to create 19 residential lots and 2 community property lots, and the construction of 19 serviced self-care dwellings.

The report recommends that Council refuse Development Application No 10.2021.67.1 as the proposal is:

- Prohibited in the RU2 Rural Landscape and E2 Environmental Conservation zones, does not comply with the zone objectives and is inconsistent with the relevant development standards of Kiama Local Environment Plan 2011 (LEP), specifically cl 4.1 and cl 4.1AA; and
- Generally inconsistent with Kiama Development Control Plan 2020 (DCP).

Requests to vary these LEP development standards and these DCP controls have not been received. The proposed subdivision is prohibited and cl 4.1 and cl 4.1AA cannot be varied using cl 4.6 of the LEP.

Financial implication

N/A

Policy

N/A

Consultation (internal)

Please refer to the “Internal Referrals” section in this report.

Communication/Community engagement

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

Notification Period: 14 days from 25/05/2021 to 08/06/2021.

Submissions: 5 submissions.

Report of the Director Environmental Services

- 12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)
-

Reason for the Report

This report is submitted to Council because only the elected Council determine applications with a construction value of more than \$5,000,000.00.

Options

Based on the legal advice that has been received by Council, staff are of the opinion that the only option available to Council for this development is refusal as the development is prohibited.

Attachments

- 1 10.2021.67.1 - plans [↓](#)
- 2 10.2021.67.1 - Site Compatibility Certificate [↓](#)
- 3 10.2021.67.1 - Section 4.15 Assessment Report [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council refuse Development Application No 10.2021.67.1 under Section 4.16 of the Environmental Planning and Assessment Act, 1979 for the following reasons:

1. Having regard to the matters for consideration in the Environmental Planning and Assessment Act the development is prohibited and must be refused because:
 - a) The proposed 2 Lot Torrens Title subdivision does not comply with cl 4.1(3) of Kiama Local Environmental Plan 2011, as the lots resulting from the subdivision are less than the 40ha minimum lot size; and
 - b) The proposed 2 Lot Torrens Title subdivision cannot be approved under cl 4.6(6) of Kiama Local Environmental Plan 2011 as the proposed subdivision will result in 2 lots that are less than the minimum area specified and the subdivision will result in two (2) lots that are less than 90% of the minimum area specified for such a lot by a development standard and is therefore prohibited development; and
 - c) It is inconsistent with the Site Compatibility Certificate issued by the Southern Regional Planning Panel on 26 June 2020 under cl 25(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, specifically requirement number 1 requiring the Asset Protection Zone (APZ) be amended to exclude the identified Zieria granulata plants.

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

- d) The proposed subdivision does not satisfy the objectives of the E2 Environmental Conservation Zone under Kiama Local Environmental Plan 2011, as it does not protect, manage and restore areas of high ecological value; and
- e) It does not satisfy the objectives of the RU2 Rural Landscape Zone under Kiama Local Environmental Plan 2011, as the proposal does not maintain the rural character of the land or protect agricultural land for long term agricultural production.
- f) It is inconsistent with the aims of Kiama Local Environmental Plan 2011
- g) Insufficient information has been submitted to satisfy the requirements of cl 6.12 of Kiama Local Environmental Plan 2011, specifically:
 - o Stormwater drainage or on-site conservation; and
 - o Suitable road access.
- h) It is inconsistent with the aims and controls contained within the Kiama Development Control Plan 2020 specifically:
 - Topic 1.5
 - Topic 3.6
 - Topic 5.2
- i) Insufficient information to allow New South Wales Rural Fire Service to issue Bush fire Safety Authorities (BSA) under s100B of the Rural Fires Act 1997 for the proposed Special Fire Protection Purpose (SFPP), specifically:
 - The proposed bushfire protection measures are not consistent with the Site Compatibility Certificate issued by the Southern Regional Planning Panel on 26 June 2020; and
 - Insufficient information has been provided to support vegetation classification and effective slope assessment.

Item 12.1

Subject Site

The property is described as Lot 17 DP 1210621 which is located at 2 Caliope Street, Kiama. The overall site measures 57,160m² (5.716ha) and is rectangular in shape. The site is currently vacant and is bounded by residential and rural development containing principally dwellings and pasture. It is zoned part RU2 Rural Landscape and part E2 Environmental Conservation under Kiama LEP 2011.

The site is vegetated and slopes moderately from the north west corner to the south east corner with a fall of approximately 30m. The site drains to the natural water course located in the south eastern corner of the site. Access to the property is gained via direct frontage to Caliope Street (i.e., a Public Road. The site is not serviced with utilities.

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

The site is subject to the following constraints:

- Bushfire
- Flooding
- Areas mapped in Kiama LEP 2011 as terrestrial biodiversity, riparian land and water courses.

Item 12.1



Figure 1 – Locality Plan



Figure 2 – Site Photograph (Aerial View)

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

Description of the Proposed Development

The details of the proposal are as follows:

- Two (2) Lot Torrens Title subdivision creating a development lot with an area of 24,248.5m² and a residual lot with an area of 32,910.83m² (34,229m² on subdivision plan).
- Twenty one (21) Lot Community Title subdivision of the development lot to create 19 private residential lots ranging in size from 500m² to 1,079.72m² and 2 community property lots containing the proposed road, local passive recreation activities and the required asset protection zones (APZ).
- Construction of 19 single storey serviced self-care dwellings (Dwelling types A, B, C, D, G, H, J and K).
- Construction of internal one-way road (9.5m wide road reserve and 6m wide pavement) accessed from Caliope Street containing 8 visitor parking spaces (including 4 disabled spaces).
- New stormwater infrastructure and civil works including a 1.5m shared path and driveway cross overs to the private roadway and new 2m wide footpath along the southern side of Caliope Street.

The proposal includes the construction of nineteen (19) dwellings. There are eight (8) different dwelling types/designs proposed, being dwelling types A, B, C, D, G, H, J and K.

The details of each of the dwellings is as follows:

- Dwelling Type A - proposed on Lot 19 and has a GFA of 152.92m²;
- Dwelling Type B – proposed on Lots 6, 7, 8 and 9, and has a GFA of 166.03m²;
- Dwelling Type C – proposed on Lot 15 and has a GFA of 142.88m²;
- Dwelling Type D – proposed on Lot 16 and has a GFA of 141.7m²;
- Dwelling Type G – proposed on Lots 1 and 10 and has a GFA of 162.62m²;
- Dwelling Type H – proposed on Lots 2-5, and 11-14 and has a GFA 155.10m²;
- Dwelling Type J – proposed on Lot 18 and has a GFA of 143.88m²; and
- Dwelling Type K – proposed on Lot 17 and has a GFA of 141.99m².

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)



Item 12.1

Development Application History

The development application history is as follows:

DA No	Description	Lodgement	Determined	Decision
12.2009.20.1	Boundary Adjustment	29/05/2009	02/06/2009	Refused
10.2009.270.1	Subdivision of 1 existing lot into 6 lots	30/10/2009	03/11/2009	Rejected
10.2009.288.1	6 lot subdivision and easement for bushfire trail	12/11/2009	16/03/2010	Approved by GM
10.2014.161.1	16 Lot Torrens Title subdivision and creation of road reserve	18/07/2014	16/12/2014	Approved by Council
10.2014.161.2	Modified - 16 Lot Torrens Title subdivision and creation of road reserve	30/01/2015	12/03/2015	Approved
10.2014.161.3	Modified - 17 Lot Torrens Title	05/06/2015	01/07/2015	Approved

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

	subdivision and creation of road reserve			
10.2014.161.4	Modified - 16 Lot Torrens Title subdivision and creation of road reserve	04/01/2016	08/03/2016	Approved
10.2014.161.5	Modified - 16 Lot Torrens Title subdivision and creation of road reserve	15/02/2018	17/04/2018	Approved
10.2014.161.6	Modified - 17 Lot Torrens Title subdivision and partial demolition of existing dwelling	07/09/2018	13/09/2018	Approved

Item 12.1

Key Considerations and Assessment

In accordance with the Environmental Planning and Assessment Act 1979, Officers have prepared a detailed S4.15 Assessment for this proposed development. This assessment is provided as an attachment to this report.

A summary of the key consideration of this assessment are detailed below.

1. Zoning

The subject land is zoned part RU2 Rural Landscape and part E2 Environmental Conservation under Kiama LEP 2011. The proposal is defined as *seniors housing* under the provisions of the LEP 2011, which is prohibited in the RU2 Rural Landscape zone.

On 29 August 2019, the Southern Regional Planning Panel issued a Site Compatibility Certificate for the proposed development under clause 25(4) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The SEPP prevails in the event of any inconsistency with any other environmental planning instrument, including Kiama LEP 2011.

The proposed development is not consistent with the objectives of the RU2 Rural landscape zone. The proposal seeks to fragment the land by way of subdivision for the purposes of residential development and in turn not protecting the agricultural land for long term agricultural production, nor maintaining the rural landscape character of the land.

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

The proposed development does not provide opportunities for employment generating development that adds value to local agricultural production. As the proposal results in the reduction of agricultural land available, it is considered to detract from local agricultural production.

The submitted Statement of Environmental Effects (SOEE) fails to address the objectives of the RU2 zone.

It is considered that the proposed development is not consistent with the objectives of the E2 Environmental Conservation zone as it seeks to manage an area of *Zieria granulata* to the standards of an Asset Protection Zone (APZ). This does not allow the species to be protected or restored. The proposal is not considered to be consistent with the zone objectives and is not supported.

2. Minimum Lot Sizes

Clause 4.1 requires that the minimum subdivision lot size is not less than the minimum size shown on the Lot Size Map. The site is listed with a minimum resulting lot size of 40ha on the lot size map.

The applicant fails to address cl 4.1 of Kiama LEP 2011 regarding minimum subdivision lot size. The proposed Torrens title subdivision is not considered to be consistent with the objectives of cl 4.1 as it does not provide lot sizes capable of accommodating development consistent with relevant development controls and does not restrict the fragmentation of land for rural residential purposes.

The proposed two Lot Torrens Title subdivision will create a 'development lot' with an area of 2.29ha and a residual lot with an area of 3.42ha. The lots equate to 5.72% and 8.55% of the minimum lot size respectively. The lots are therefore undersized and amount to a departure from the development standard to the extent of 94.28% and 91.45% respectively.

In this regard the subdivision is prohibited because the application is precluded, by Clause 4.6(6) of Kiama LEP 2011, from consideration of an exception to the development standard

The development application must therefore be refused, because the subdivision is prohibited development as the subdivision will result in two lots less than the prescribed minimum lot size development standard and the subdivision will result in two lots that are less than 90% of the minimum lot size development standard.

The subsequent Community title subdivision of the 'development lot' is not subject to cl 4.1 as prescribed by cl 4.1(4)(b).

3. Minimum subdivision lot size for community title schemes

The proposed development includes the Community title subdivision of land within the RU2 Rural Landscape zone and therefore this clause applies to the development.

The applicant fails to address cl 4.1AA of Kiama LEP 2011 in regard to the minimum subdivision lot size. The proposed Community title subdivision is not considered to be consistent with the objectives of cl 4.1AA as it fragments rural land below the minimum lot size for the purposes of residential accommodation (seniors housing).

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

Clause 4.1AA requires that the minimum subdivision lot size is not less than the minimum size shown on the Lot Size Map. The site is listed with a minimum resulting lot size of 40ha on the lot size map.

The proposed Community title subdivision includes 19 lots (excluding community property lots) ranging in size from 500m² to 1050.6m². The lots equate to 0.13% - 0.26% of the minimum lot size. The lots are therefore undersized and amount to a departure from the development standard to the extent ranging from 99.74% to 99.87%.

In this regard the subdivision is prohibited because the application is precluded, by Clause 4.6(6) of Kiama LEP 2011. The development application must therefore be refused, because the subdivision is prohibited development as the subdivision will result in two or more lots less than the prescribed minimum lot size development standard and the subdivision will result in at least one lot that is less than 90% of the minimum lot size development standard.

4. Consistency with Site Compatibility Certificate (SCC)

A SCC for the development was issued by the Southern Region Planning Panel (SRPP) on 26 June 2020 under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The following requirements/conditions were imposed on the SCC:

A future development application for seniors living on the site shall include the following revisions to the concept plan and development layout for the site to facilitate the following:

- *The amendment of the APZ on the eastern boundary of the development area such that the identified Zieria granulata plants are excluded.*
- *Removal of the proposed screening fence along the southern and part western boundary of the site to maintain visibility of the local heritage dry stone walls and reduce the visual impact of the development. This will require an alternative bushfire management solution or amendment to the development footprint on this part of the site.*
- *Demonstration of adequate setbacks along Old Saddleback Road to maintain visibility for vehicles approaching the intersection of Old Saddleback Road and Caliope Street.*

Item 1 - Zieria Granulata

The submitted SOEE (page 8) states that the APZ's have been revised to exclude Zieria granulata plant management areas identified in the submitted Ecological Report.

The submitted Bushfire Assessment Report states that the area of the threatened plant species *Illawarra Zieria (Zieria granulata)* will be excluded from the identified APZ area but managed as low threat vegetation or otherwise to equivalent Inner Protection Area (IPA) standards for shrub & grassland as prescribed by PBP (Sections A1.10 & A4.1.1 respectively).

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

The submitted APZ Zieria Management Plan shows the area of the identified *Zieria granulata* being excluded from the proposed APZ and not considered as a bushfire hazard as it is low threat vegetation due to reduced flammability and low fuel load. As stated previously, the submitted Bushfire Assessment Report states that this area of vegetation will be managed to the equivalent of an Inner Protection Area (IPA). This does not exclude the Zieria plants from the APZ, it merely draws an arbitrary boundary around the plants within the APZ.

The APZ boundary should be on the north western / western boundary of the limit of the *Zieria granulata* plants present at the site, and I interpret the requirements of the site compatibility certificate to reflect this. The existing Zieria plants and any seed source in the area between them and the existing E2 Illawarra Subtropical Rainforest community to the east, could then be managed for the ongoing enhancement and expansion of the Zieria population and associated native vegetation within this zone.

The current APZ management requirements for the land encompassing the management area, as well as the proposed perimeter fire trail would both further isolate and fragment the Zieria plants from adjacent vegetation and potential habitat, as well as being incompatible with any potential further expansion of the Zieria from the seedbank in the surrounding soil.

It is considered that managing this area so that it is considered low threat vegetation/low fuel load, and to the level of an IPA is inconsistent with the requirement imposed on the SCC.

The application was referred to the NSW Department of Planning, Industry and Environment (NSW DPIE) for comments regarding the applications consistency with the SCC. The following comments were received from NSW DPIE:

“Ultimately Council will need to form a view on consistency or otherwise of the application with the SCC. However, I can see how a view could be formed that it is inconsistent with requirement 1 of the SCC...”

I note the following in the Panel’s Record of Decision “The panel agreed that a requirement be placed on the determination to require that the Zieria granulata plants be excluded from the APZ area. This would facilitate a revision to the concept layout of the site to move the APZ area to the west of its current location and enable the Zieria granulata plants to be managed contiguously with the native vegetation in the adjoining E2 Environmental Conservation zoned area.

From the APZ/Zieria Management Plan attached to your email it appears that the Zieria plants are located within the APZ, albeit as low threat.”

As stated in NSW DPIE’s response above and in the Southern Regional Planning Panel’s Record of Decision, the intent of requirement 1 on the SCC is to enable the *Zieria granulata* plants to be managed contiguously with the native vegetation in the adjoining E2 zoned area.

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

The submitted APZ/Zieria Management Plan shows a 4m wide perimeter fire trail, fragmenting and isolating the *Zieria granulata* plants from the native vegetation within the E2 zoned land. As the *Zieria granulata* plants are managed in isolation and are not contiguous with the adjoining E2 zone land containing native vegetation, the proposal is not consistent with requirement 1 of the SCC and cannot be supported.

Item Two - Screening

The aforementioned screening fence along the southern and part western boundary of the site has been relocated approximately 24m north of the southern boundary. The proposed fence now runs in a west-east direction along the southern boundaries of proposed dwellings 5, 6 and 15.

The fencing was initially proposed as part of bushfire protection measures in the SCC application. The panel was of the view that the solid fence of colorbond type construction would have an unacceptable visual impact when viewed from Old Saddleback Road and reduce visibility and setting of the local heritage listed dry stone walls along the southern boundary of the site. The panel agreed that the proposed bushfire protection measures be revised to remove the need for the fencing in that location. The panel stated that this may result in an increased setback for the dwellings located on the southern boundary of the site.

The relocation of the proposed fence from the southern boundary of the site to the southern boundaries of proposed dwellings 5, 6 and 15. The proposed fence is also only located along the boundaries of the individual dwelling sites as opposed to a long solid fence along the southern boundary of the overall development site.

It is considered that the proposed fence reduces the visual impact along Old Saddleback Road and is unlikely to have an unreasonable adverse effect on the heritage listed dry stone wall. The proposed fence is also provided as a bushfire protection measure and so the application was referred to NSW RFS. Bush fire Safety Authorities have not been issued.

Item 3- Setbacks

It is considered that setbacks along Old Saddleback Road are adequate to maintain visibility for vehicles approaching the intersection of Old Saddleback Road and Caliope Street. The submitted SOEE states the following in regard to this requirement:

“Minimum dwelling side setbacks of 3.8m have been provided to Old Saddleback Road and 5m front setbacks are maintained to the Caliope Street frontage. Old Saddleback Road comprises a 10m wide grassed verge between the lot boundaries and edge of road. The setbacks provide sufficient lines of sight for drivers along Old Saddleback Road approaching the intersection.”

5. Risk Analysis

A risk analysis has been undertaken and it is considered that approval of the development application will have a significant risk to Council, therefore refusal has been recommended.

Report of the Director Environmental Services

12.1 10.2021.67.1- Lot 17 DP 1210621 – 2 Caliope Street, Kiama – 2 Lot Torrens Title Subdivision, 21 Lot Community Title Subdivision & 19 Serviced Self-Care Dwellings (cont)

6. Consultation

The development was notified in accordance with the requirements of Council's Community Participation and Engagement Plan for a period of fourteen days. At the conclusion of the notification period, 5 submissions were received which raised the following (summarised) matters of concern.

- Rural Land not Identified for Residential Development
- Community Hall
- Traffic Impacts
- Surveys confirming floor and ridge levels
- Negative Impact on neighbouring property values

7. Related Policy, Precedents and/or Statutory Requirements

The statutory instruments relevant to the development include the following:

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55 - Remediation of Land
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Kiama LEP 2011
- Kiama Development Control Plan 2020.

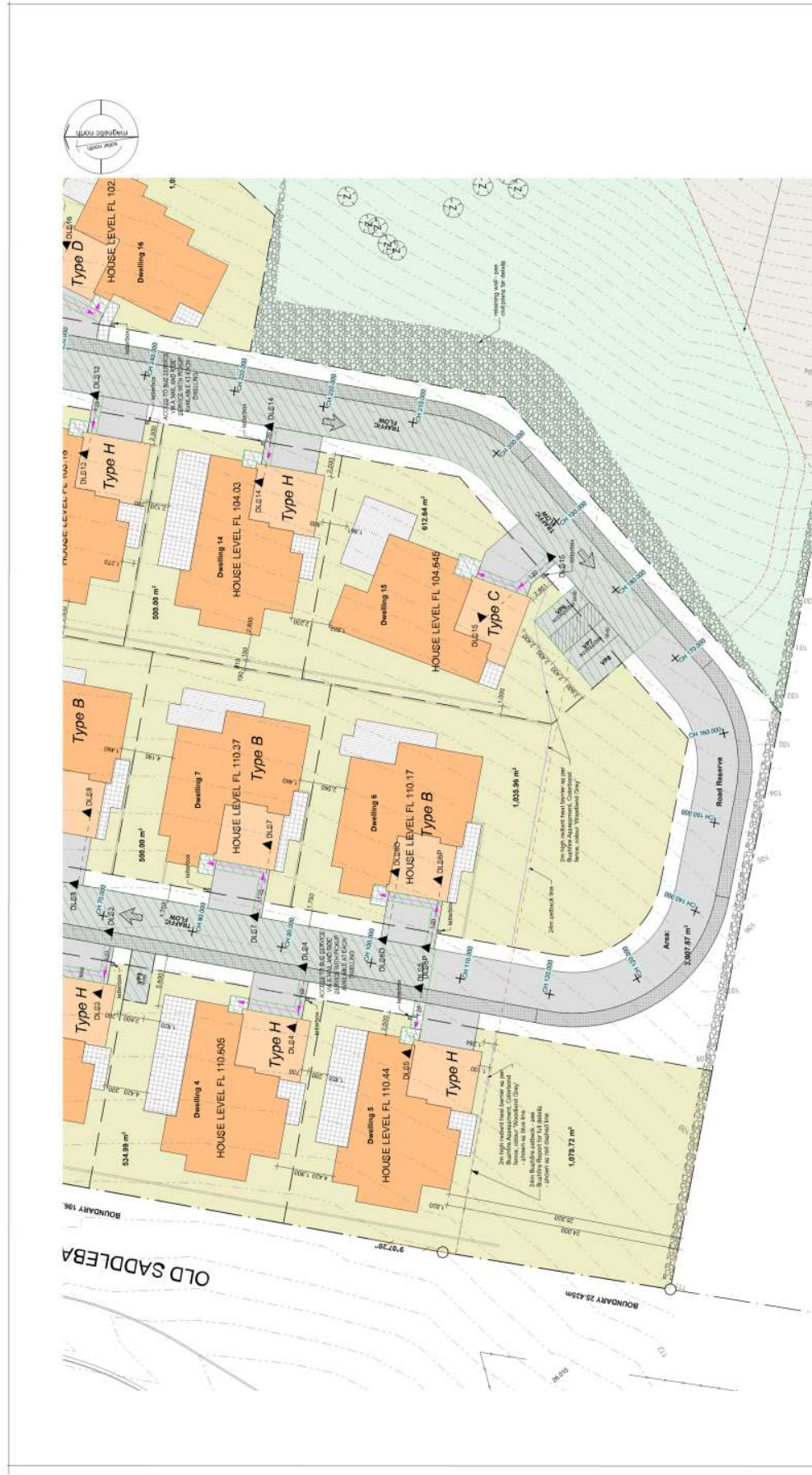
Conclusion

A comprehensive assessment of the application has been undertaken in accordance with all statutory requirements.

The proposal is inconsistent with Kiama LEP 2011 and relevant Kiama DCP 2020 Chapters. The proposed development is inconsistent with the objectives of the RU2 Rural Landscape and E2 Environmental Conservation zone. The proposed development is inconsistent with the issued Site Compatibility Certificate. The proposed development is considered to be prohibited and must be refused



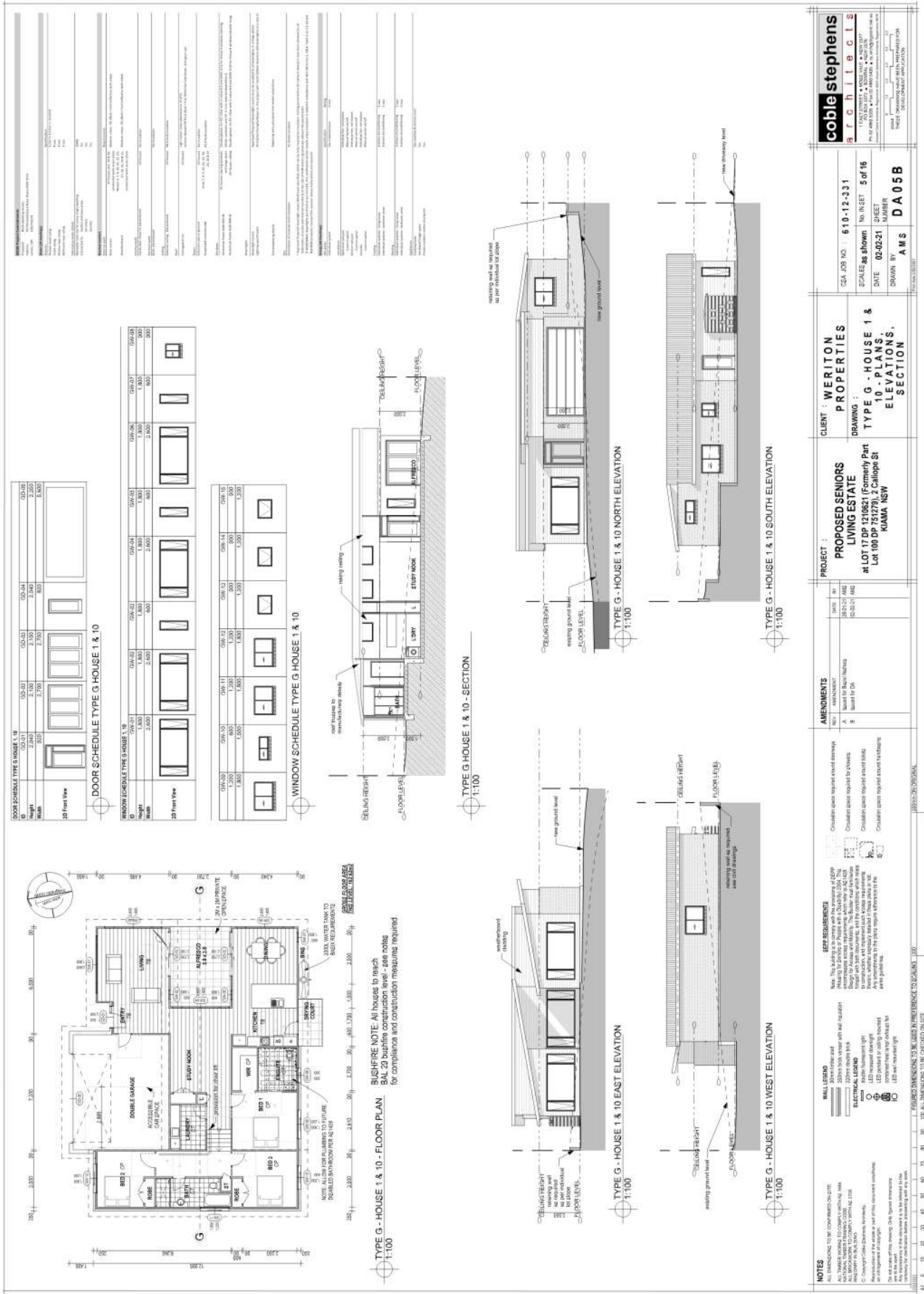


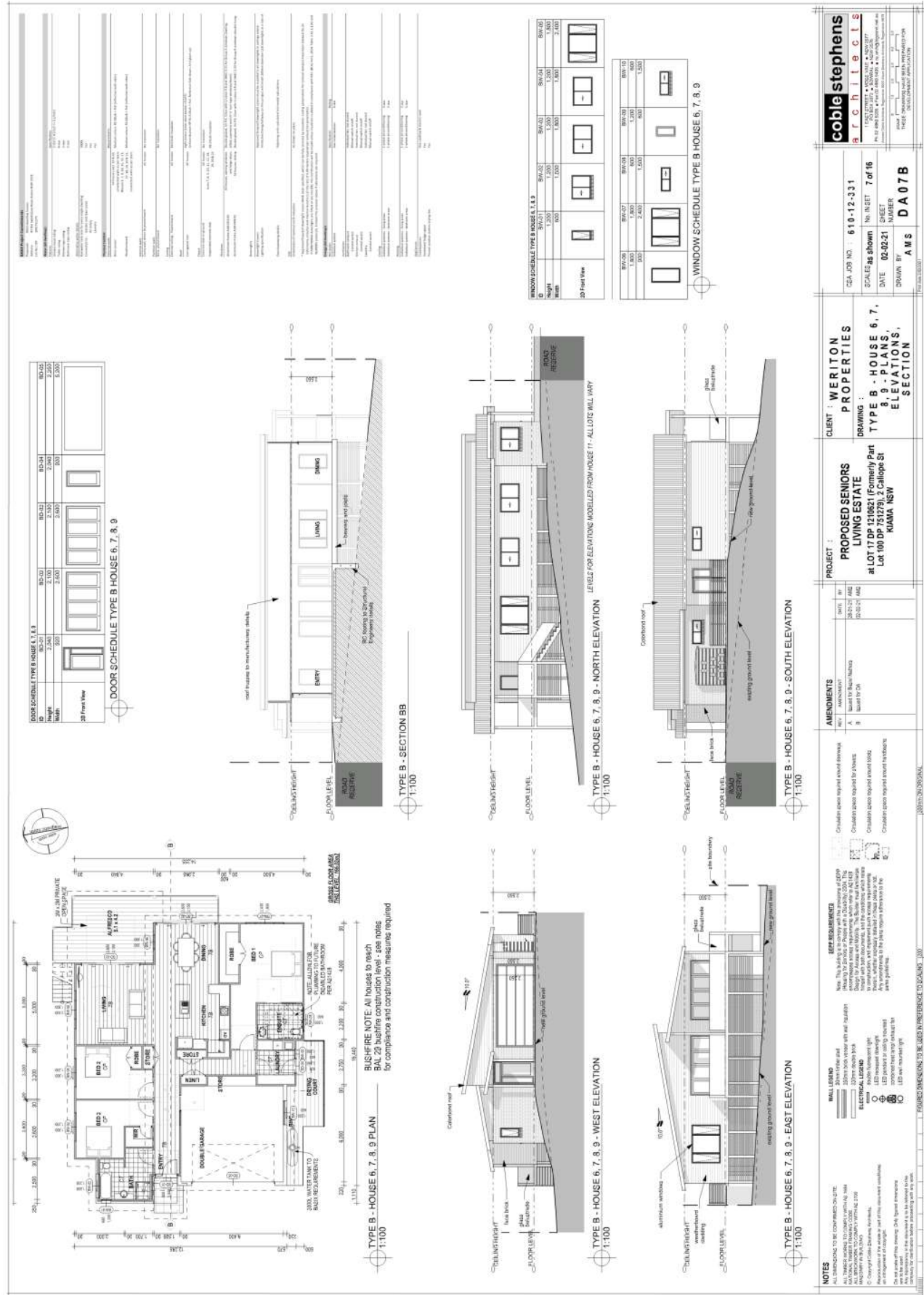


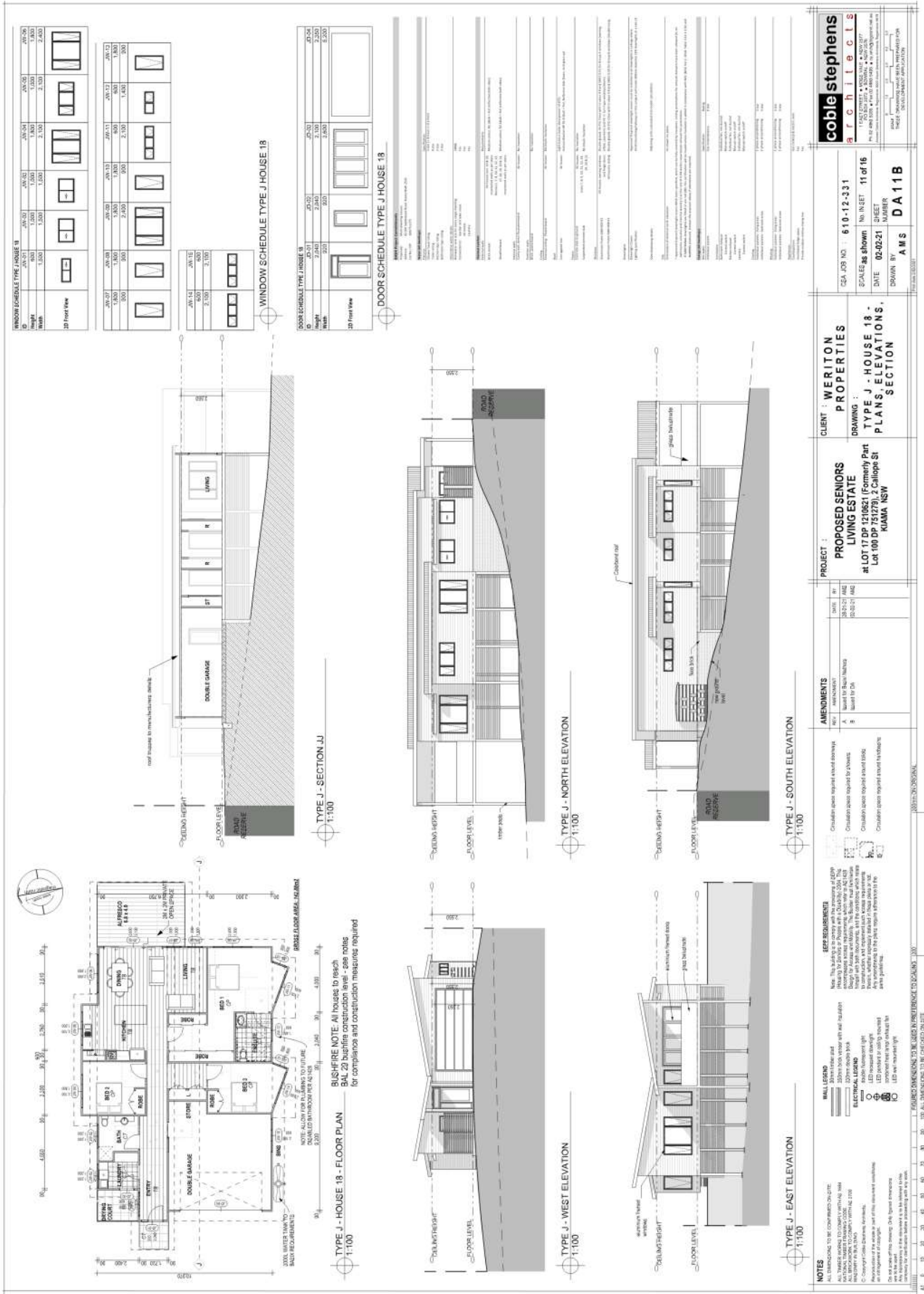
LEGEND
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 - direction of rise of pavement
 - 1:20 gradient of ramp/ path road

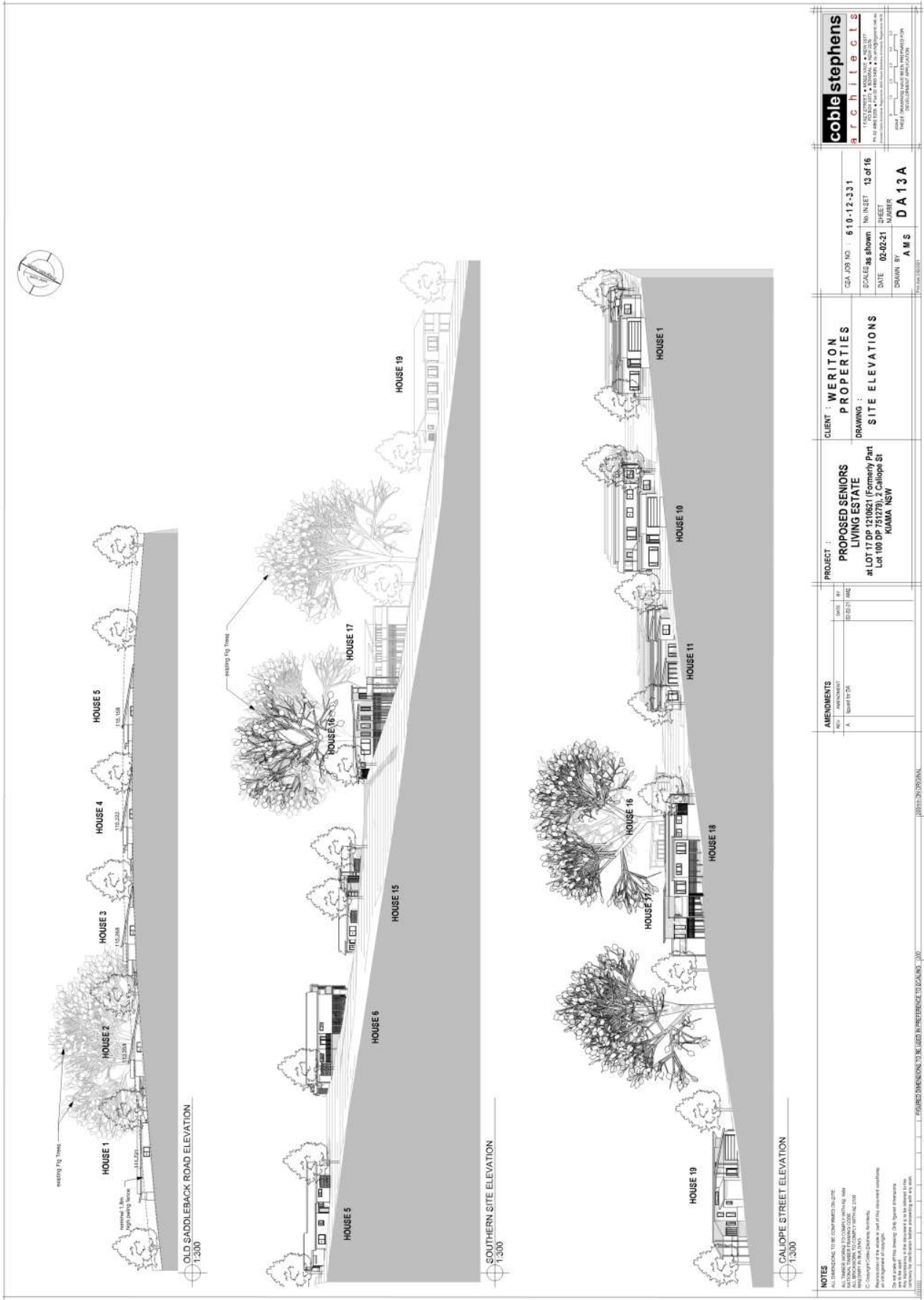
SITE PLAN - DETAIL
 1:200

<p>NOTES</p> <p>1. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>2. ALL TRENCHES TO BE 150mm DEEP WITH 100mm SAND FILL TO THE TOP.</p> <p>3. ALL EXISTING UTILITIES TO BE DELETED UNLESS OTHERWISE NOTED.</p> <p>4. PROPERTY TO BE SURVEYED TO CONFIRM BOUNDARIES.</p> <p>5. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>6. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>7. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>8. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>9. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>10. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>11. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>12. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>13. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>14. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>15. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>16. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>17. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>18. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>19. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p> <p>20. ALL DIMENSIONS TO BE CONFIRMED ON SITE.</p>	<p>AMENDMENTS</p> <p>REV. DESCRIPTION</p> <p>A. Initial Design</p> <p>B. Client Feedback</p> <p>C. Final Design</p>	<p>PROJECT :</p> <p>PROPOSED SENIORS LIVING ESTATE at Lot 17 DP 1210621 (Formerly Part Lot 100 DP 751278), 2 Caliope St, KIAMA NSW</p>	<p>CLIENT : WERITON PROPERTIES</p> <p>DRAWING : SITE PLAN - DETAIL HOUSES 4, 5, 6, 7, 14 & 19</p>	<p>CSA JOB NO. : 610-12-331</p> <p>SCALE as shown No. IN SET 4 of 16</p> <p>DATE 02.02.21 SHEET NUMBER DA 04C</p> <p>DRAWN BY A.M.S.</p>	<p>coble stephens architects</p> <p>1/25 COLIPE ST, KIAMA NSW 2549</p> <p>Ph: 02 8852 1500 • Fax: 02 8852 1505 • www.coblestephens.com.au</p> <p>1/25 COLIPE ST, KIAMA NSW 2549</p> <p>Ph: 02 8852 1500 • Fax: 02 8852 1505 • www.coblestephens.com.au</p>
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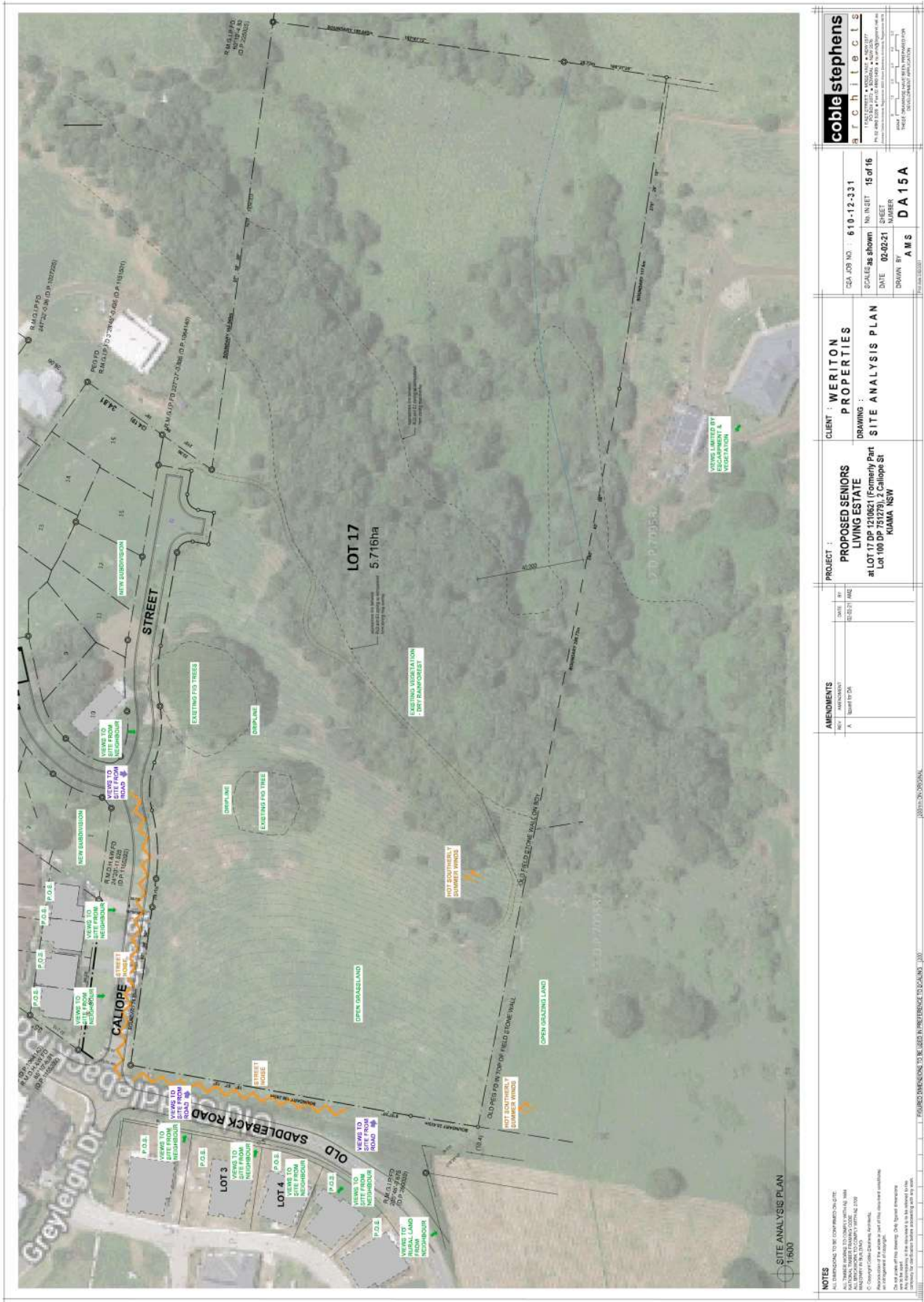






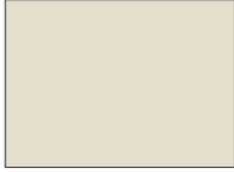

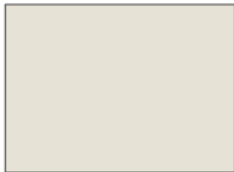






NOTES		AMENDMENTS		PROJECT :		CLIENT :		coble stephens	
ALL DIMENSIONS TO BE CONFIRMED ON SITE. ALL TRADES REFERRED TO DRAWING WITHIN THE IMA. ALL DIMENSIONS TO COMMENCEMENT OF WORK. © Copyright Coble Stephens Architects. No responsibility is taken by the Architect for the design of any structure or for the safety of any person. This drawing is for the use of the client only and is not to be used for any other purpose. The client is advised that this drawing is not a contract.		REV: AMENDMENT A: 10/04/2021		PROPOSED SENIORS LIVING ESTATE at LOT 17 DP 1210621 (Formerly Part of Lot 100 DP 751278), 2 Caliope St KIAMA NSW		WERITON PROPERTIES DRAWING : SITE ELEVATIONS		COBLE STEPHENS ARCHITECTS 1 CALIOPE STREET • WINDALE • 2503 PHONE: (02) 4422 1000 • FAX: (02) 4422 1001 WWW.COBLESTEPHENS.COM.AU ARCHITECTS REG. NO. 12127 REG. NO. 12127	
		DATE: 02.02.21 SHEET: 13 of 16 DRAWN BY: A.M.S. NUMBER: DA 13 A		PROJECT NO.: 610-12-331 SCALE: as shown					



NOTES ALL DIMENSIONS TO BE CONFIRMED ON SITE. ALL TRENCHES TO BE COMPLETED WITH 150MM ALLSOUNDING TO COMPLY WITH STR 2009. ALL DIMENSIONS TO COMPLY WITH STR 2009. © Copyright Coble Stephens Architects. All rights reserved. No part of this document may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Coble Stephens Architects. 10/10/2021 10:00:00 AM		AMENDMENTS REV. 1 DATE: 10/10/2021 BY: [Signature]	PROJECT : PROPOSED SENIORS LIVING ESTATE at Lot 17 DP 1210621 (Formerly Part Lot 100 DP 751279), 2 Caliope St KIAMA NSW	CLIENT : WERITON PROPERTIES	SCALE: AS SHOWN No. IN SET: 15 of 16 DATE: 02.02.21 SHEET NUMBER: DA 15A DRAWN BY: AMS	coble stephens architects 1/21 CALIOPE STREET, KIAMA NSW 2533 Ph: 02 486 5299 • Fax: 02 486 5295 • www.coblestephens.com.au LEVEL 12, 100 COLLEGE STREET, SYDNEY NSW 2000 LEVEL 12, 100 COLLEGE STREET, SYDNEY NSW 2000
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COLOUR SCHEDULE

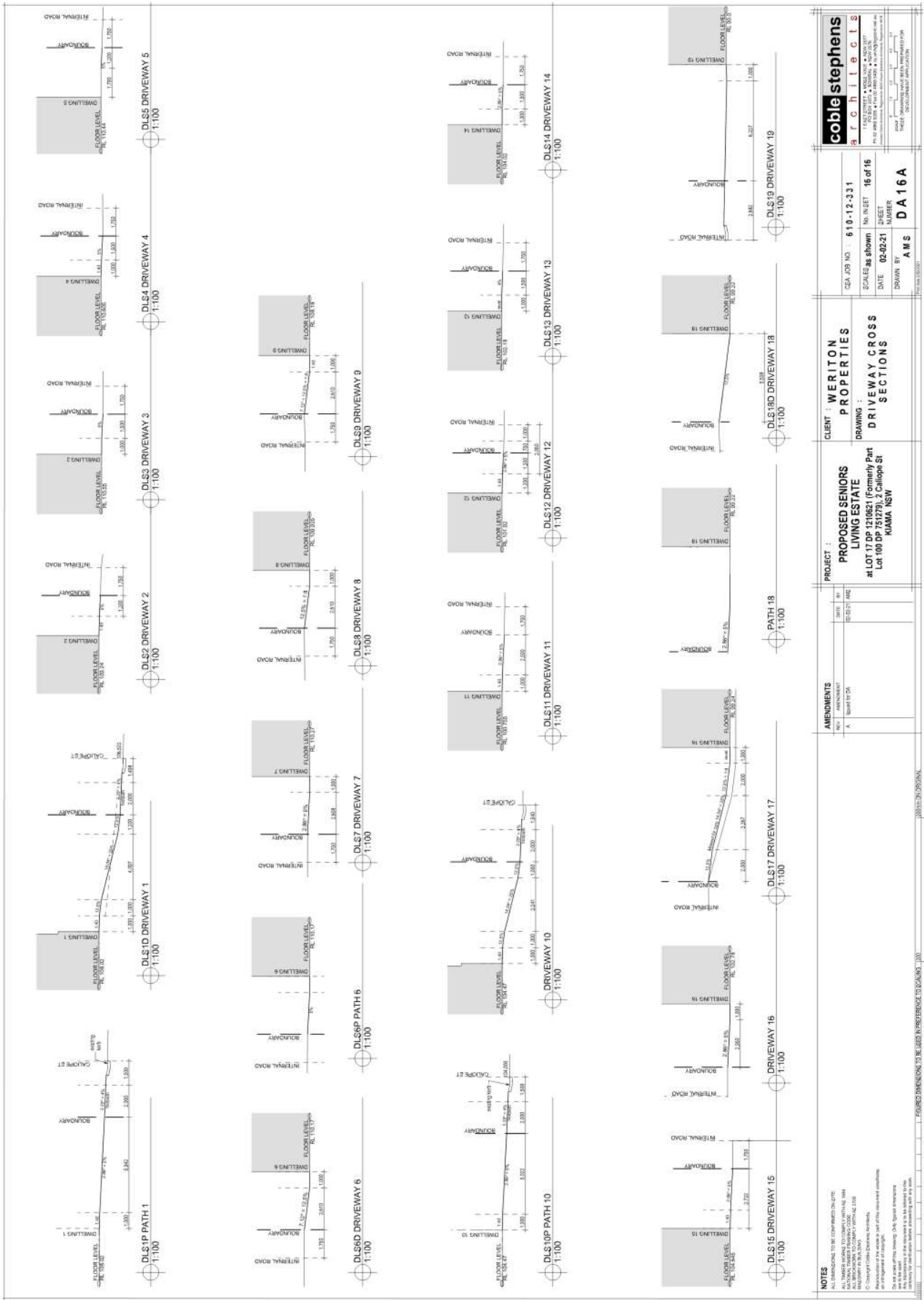
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	WALLS - brick	Brick	Range - Austral Everyday Life Colour - Leisure
	ROOFS	Colorbond roof sheet	Colorbond Surfmist
	ROOFS	Colorbond roof sheet	Colorbond Shale Grey
	WINDOWS	Aluminium	White
	GARAGE DOOR	Colorbond steel	Colorbond Surfmist
	METAL FIRE BARRIER FENCE	Colorbond steel	Colorbond Woodland Grey

**PROPOSED SENIORS
LIVING ESTATE**
at
LOT 17 DP 1210621 (Formerly Part Lot 100 DP
751279), 2 Caliope St KIAMA NSW
WERITON PROPERTIES

02-02-21

coble stephens
a r c h i t e c t s

1 EAST STREET ■ MOSS VALE ■ NSW 2577
PO BOX 2072 ■ BOWRAL ■ NSW 2576
Ph 02 4869 5395 ■ Fax 02 4869 5495 ■ cs.arch@bigpond.net.au
Andrew Coble Architects Registration 6922 Alison Stephens Architects Registration 6878







**State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Site Compatibility Certificate**

The Southern Regional Planning Panel has determined the application made by Saddleback Mountains Estates No. 2 Pty Ltd on 29 August 2019 by issuing this certificate under clause 25(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The Panel certify that in their opinion:

- the site described in Schedule 1 is suitable for more intensive development;
- the development described in Schedule 1 is compatible with the surrounding environment having had regard to the criteria specified in clause 25(5)(b);
- that development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding land uses only if it satisfies certain requirements specified in Schedule 2 of this certificate.

A handwritten signature in black ink, appearing to read 'Gordon Kelly'.

**Chair
Southern Regional Planning Panel**

Date certificate issued: **Friday, 26 June 2020**

Please note: This certificate will remain current for 24 months from the date of this certificate (clause 25(9)) and cannot be varied during its currency to cover additional land.

SCHEDULE 1

Site description: 2 Caliope Street, Kiama

Development description: The application proposes the development of the site as a retirement village, comprising 21 single storey serviced self-care houses.

Planning Panels Secretariat

4PSQ 12 Darcy Street, Parramatta NSW 2150 | Locked Bag 5022, Parramatta NSW 2124 | T 02 8217 2060 | www.planningportal.nsw.gov.au/planningpanels

SCHEDULE 2

Requirements imposed on determination:

- A future development application for seniors living on the site shall include the following revisions to the concept plan and development layout for the site to facilitate the following:
 1. The amendment of the APZ on the eastern boundary of the development area such that the identified *Zieria granulata* plants are excluded.
 2. Removal of the proposed screening fence along the southern and part western boundary of the site to maintain visibility of the local heritage listed dry stone walls and reduce the visual impact of the development. This will require an alternative bushfire management solution or amendment to the development footprint on this part of the site.
 3. Demonstration of adequate setbacks along Old Saddleback Road to maintain visibility for vehicles approaching the intersection of Old Saddleback Road and Caliope Street.

- The consent authority for a future development application being satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in Clause 18 of SEPP (Housing for Seniors or People with a Disability) 2004.

- The consent authority for a future development application being satisfied that appropriate service agreements are in place as part of any consent to ensure the on-going provision of, or transportation for residents to, community, retail, commercial, recreational, health and educational facilities.

**10.2021.67.1 – 2 Caliope Street, Kiama
Section 4.15 Assessment**

Section 4.15 Assessment

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

Relevant Environmental Planning Instruments

- State Environmental Planning Policy No 55 - Remediation of Land

Council is unaware of any historic land use which would deem the site unsuitable for the proposed development, therefore the land is considered to be suitable for the proposed use.

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

A BASIX Certificate (892019M_03) was lodged for the new dwellings with the application which demonstrates that each dwelling has been designed in accordance with BASIX.

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The proposed development provides for seniors housing (self-contained dwellings) as defined under SEPP Seniors Living which is a permissible use under the terms of SEPP Seniors Living.

An assessment against the relevant clauses is provided below:

Clause	Comment
Clause 4 - Land to which Policy applies	The site is zoned RU2 Rural Landscapes and E2 Environmental Conservation and adjoins land that is zoned primarily for urban purposes under Kiama LEP 2011. The proposed seniors living applies only to the portion of the site RU2 Rural Landscapes.
Clause 8 - Seniors & Clause 9 People with a Disability	A restriction as to user is to be registered against the title of the property limiting the use of the self-contained dwellings to people aged 55 years or more, or people with a disability that either have permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.

Clause	Comment
<p>Clause 10 - Seniors Housing</p>	<p>The proposal will comprise of self-contained dwellings for the purposes of seniors housing. Seniors housing is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:</p> <ul style="list-style-type: none"> (a) a residential care facility, or (b) a hostel, or (c) a group of self-contained dwellings, or (d) a combination of these, <p>but does not include a hospital.</p> <p>The proposal satisfies these provisions.</p>
<p>Clause 26 - Location and access to facilities</p>	<p>The site is located on the urban fringe of Kiama and is not located within the Kiama Town Centre. The submitted SOEE states that there is an existing bus service located 130m north of the site on Old Saddleback Road, providing services to the Kiama town centre.</p> <p>The proposed development also includes the provision of a private bus service to be operated between the site and the Kiama town centre. The service proposes to run twice daily, 7 days per week, 52 weeks per year - once in the morning and once in the afternoon. The proponent has advised that additional services may be provided by appointment on a regular basis as required by individual residents. The service will be provided as a hail and ride type service with pick up and return of passengers to the front of their dwellings. This development therefore relies upon the provisions of clause 26(2)(c), which requires access to a transport service and not specifically a public transport services as prescribed by clause 26(2)(b).</p> <p>An Accessibility Report prepared by Accessible Solutions (NSW) Pty Ltd concludes that the proposed development site is appropriate for the geographical south coast location and can comply with the accessibility and adaptability requirements of the State Environment Planning Policy - Housing for Seniors or People with a Disability.</p> <p>A Pedestrian Access Plan was not provided with the application demonstrating existing footpaths servicing the site/drop off location offer an acceptable overall average gradient between the site and services. The bus service proposes to pick up/drop off residents door to door.</p>

Clause	Comment
Clause 27 Bushfire	<p>The subject land is partially mapped as being bushfire prone land. The application was referred to NSW RFS under Section 100B of the <i>Rural Fires Act 1997</i> as the proposed development is a special fire protection purpose and relies on performance solutions to comply with <i>Planning for Bushfire Protection 2019</i>.</p> <p>NSW RFS has not issued their Bush Fire Safety Authorities as insufficient information has been provided and the development is not supported in its current state.</p>
Clause 28 Water and Sewer	<p>The development is capable of being serviced with water and sewer and therefore complies. The application was referred to Sydney Water who advised that potable water and waste water servicing should be available to the site. Amplifications, adjustments, and extensions may be required.</p>
Clause 30 Site Analysis	<p>The application provided a detailed site analysis as required by this clause.</p>
Clause 31 Design of in-fill self-care housing	<p>The proposed development complies with the provisions of the Seniors Living Policy: Urban Design Guideline for Infill Development. Table 6 in the submitted SOEE details how the proposal complies with the Urban Design Guideline for Infill Development.</p>
Clause 33 Neighbourhood amenity and streetscape	<p>The character of the surrounding area is largely made up of single and double storey detached and attached residential dwellings on similar sized allotments with a modern architectural design orientated to the street frontage.</p> <p>The proposed dwellings are consistent with the surrounding residential estates. The proposed dwellings are single storey in nature, responding to the sloping topography of the site, with a simple modern design addressing the street frontage (both Caliope Street and the proposed internal road). The dwellings are provided with a consistent front building line like that of nearby residential development.</p> <p>The proposal will contribute to the residential identity of the area and not unduly detract from the neighbourhood amenity.</p> <p>Suitable setbacks are provided to all dwellings to reduce visual bulk of adjoining dwellings and open space areas.</p>

Clause	Comment
<p>Clause 34 Visual and acoustic privacy</p>	<p>The dwellings have been designed and sited to minimise potential impacts on the visual and acoustic privacy of future residents and neighbouring properties.</p> <p>All proposed units are sufficiently setback from side boundaries with the setback area being landscaped with a mix of turf and paved areas.</p> <p>The development is cut into the site causing a difference in level between the neighbouring properties on both the northern side of the subject site (Seaview Estate).</p> <p>Each dwelling is proposed to be provided with a tree adjacent to the neighbouring dwellings garage to improve visual and acoustic privacy.</p> <p>An acoustic report was not submitted with the application, however, it is considered that the design of the dwellings will not adversely impact the amenity of dwelling occupiers within the proposed development or nearby residential development.</p>
<p>Clause 35 Solar access and design for climate</p>	<p>The proposed dwellings have been designed to provide daylight to the main living areas and private open space of the units. Proposed dwelling have been designed with main living areas having a predominately north facing orientation.</p> <p>The design also allows adequate sunlight to substantial areas of private open space of adjoining neighbours in the vicinity. Proposed dwellings are single storey within sufficient setbacks from neighbouring properties to allow adequate solar access.</p> <p>In addition, each of the dwellings have been designed to comply with BASIX requirements.</p>
<p>Clause 36 Stormwater</p>	<p>The development maximises the use of water permeable surfaces on the site by achieving slightly above the minimum standard for deep soil zones. Furthermore, each dwelling will be provided with a minimum 3000L water tank as per BASIX requirements.</p> <p>The proposal will control and minimise the impacts of stormwater runoff through the use of water tanks and onsite detention, maximisation of pervious surfaces and installation of water quality infrastructure.</p> <p>The submitted Stormwater Management Plan shows stormwater runoff being piped to bio-retention basins and then piped directly to existing drainage pits located in Caliope Street.</p>

Clause	Comment
Clause 37 Crime Prevention	<p>The proposed dwellings have been designed in accordance with the principles of Crime Prevention through Environmental Design (CPTED).</p> <p>Main entries of dwellings face the primary street frontages and are discernible from the street. Each dwelling type has been designed to include a large window/s (varying from living areas to bedrooms) facing the street to provide additional passive surveillance.</p> <p>Pathway lighting is proposed to be installed as part of the application. No details have been provided at this stage.</p> <p>A CPTED Report has not been submitted in support of the application.</p>
Clause 38 Accessibility	<p>The proposed development will have obvious and safe pedestrian links to local services (via a private bus service) and public transport which comply with minimum grades. It also proposes a safe environment for pedestrians and motorists alike, with clear and convenient access and parking for residents and visitors. This is confirmed in the submitted Accessibility Report prepared by Accessible Solutions (NSW) Pty Ltd.</p>
Clause 39 Waste management	<p>The proposed development includes 3 individual bins for each dwelling, waste, recycling and FOGO (food and organics). These bins will be located in internal big storage areas for each dwelling.</p> <p>The submitted SOEE states that waste collection will be undertaken by Council’s weekly waste service. The application was referred to Council’s Waste Management Officer for comment regarding waste collection from the proposed development.</p> <p>Council’s waste service trucks are a left hand pick up only. Therefore, with the in and out direction of the private road as shown, Council’s waste service trucks will only be able to service dwellings 16–19 and 1-5 effectively. Dwellings 6–15 would need to place their bins (up to 3 bins per dwelling) in front of properties 1-5, 16-19. This is a similar arrangement to that of the seniors living development on the northern side of Old Saddleback Road. Additionally, the draft Community Management Statement submitted with the application states that residents must place their garbage bins in the location and at the times specified in the Waste Services Agreements, and the bins are to be retrieved within 12 hours of collection.</p>

Clause	Comment
Clause 40 Development standards, minimum sizes and building height	<ul style="list-style-type: none"> • Site size - The site has an area of 24,248.5m² which is greater than the SEPP's 1,000m² minimum requirement. • Site frontage - The standard requires a minimum frontage of 20m at the building line. The site will have a frontage to Caliope Street of approximately 200m and complies. • Height – The height of all dwellings is less than 8m and are single storey.
Clause 41 Standards for hostels and self-contained dwellings	<p>The assessment of this part and in particular Schedule 3 concludes that the development has been specifically designed to comply with the various requirements provided in the Schedule including Australian Standards AS 1428.1, AS 1680, AS 1735.12, AS 2890 and AS4299.</p> <p>An Access Report prepared by Accessibility Solutions (NSW) Pty Ltd found that the design exhibited an acceptable level of accessibility and is compliant with the requirements set out in Schedule 3.</p> <p>A detailed assessment of all requirements contained under the Schedule is not possible with the level of detail shown in the plans provided.</p>

Clause 50 Standards that cannot be used to refuse self-contained dwellings

Standard	Control	Comment
Building height	If all proposed buildings are 8m or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys).	All proposed dwellings are 8m or less.
Density and scale	If the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.	Complies The proposed dwellings range in FSR from 0.13:1 to 0.33:1. Calculations based on final allotments, not overall site.
Landscaped area	A minimum of 30% of the area of the site is to be landscaped.	Complies - 47% landscaped area

Deep soil zones	15% of the area of the site. Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3m.	Complies – Approximately 66% of the landscaped area is a deep soil zone.
Solar access	If living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of three hours direct sunlight between 9.00am and 3.00pm in mid-winter	Shadow diagrams have not been supplied with the development to determine if the proposed dwellings will meet minimum solar access requirements.
Private open space for in-fill self-care housing	Ground floor units = 15m ² with minimum dimensions 3m x 3m. Any other dwellings = Balcony min 10m ² minimum dimension 2m length or width from living area.	Complies - All dwellings are provided with a minimum area of 15m ² that are accessible from the main living area and meet the minimum dimension of 3m x 3m.
Parking for residents and visitors	0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider	Complies - Parking has been provided at a rate in excess of 0.5 car spaces per bedroom to comply with Kiama DCP 2020 requirements. A double garage is provided per dwelling with 11 visitor spaces proposed throughout the site.

- State Environmental Planning Policy (Rural Lands) 2008

The proposed development will not significantly impact on the existing uses of the land in the vicinity of the development. The proposed development will not be incompatible with the existing uses of the land in the vicinity of the development.

- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

Clause 9 and 10 of the SEPP (Vegetation in Non-Rural Areas) 2017 outlines that consent is required for the clearing of certain vegetation in non-rural areas. Council's DCP 2020 outlines that certain trees can be removed without requiring consent. The removal of native vegetation has been assessed against the *Biodiversity Conservation Act 2016* later in this report.

Kiama LEP 2011

Clause	Comment
<p>Clause 2.3 - Zone objectives and Land Use Table</p>	<p>The subject land is zoned part RU2 Rural Landscape and part E2 Environmental Conservation under Kiama LEP 2011. The proposal is defined as <i>seniors housing</i> under the provisions of the LEP 2011, which is prohibited in the RU2 Rural Landscape zone.</p> <p>On 29 August 2019, the Southern Regional Planning Panel issued a Site Compatibility Certificate for the proposed development under clause 25(4) of <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>. The SEPP prevails in the event of any inconsistency with any other environmental planning instrument, including Kiama LEP 2011.</p> <p>The proposed development is not consistent with the objectives of the RU2 Rural landscape zone. The proposal seeks to fragment the land by way of subdivision for the purposes of residential development and in turn not protecting the agricultural land for long term agricultural production, nor maintaining the rural landscape character of the land.</p> <p>The proposed development does not provide opportunities for employment generating development that adds value to local agricultural production. As the proposal results in the reduction of agricultural land available, it is considered to detract from local agricultural production.</p> <p>The submitted Statement of Environmental Effects (SOEE) fails to address the objectives of the RU2 zone.</p> <p>It is considered that the proposed development is not consistent with the objectives of the E2 Environmental Conservation zone as it seeks to manage an area of <i>Zieria granulata</i> to the standards of an Asset Protection Zone (APZ). This does not allow the species to be protected or restored. The proposal is not considered to be consistent with the zone objectives and is not supported.</p>
<p>Clause 4.1 - Minimum Subdivision Lot Size</p>	<p>Clause 4.1 requires that the minimum subdivision lot size is not less than the minimum size shown on the Lot Size Map. The site is listed with a minimum resulting lot size of 40ha on the lot size map.</p> <p>The applicant fails to address cl 4.1 of Kiama LEP 2011 regarding minimum subdivision lot size. The proposed Torrens title subdivision is not considered to be consistent with the objectives of cl 4.1 as it does not provide lot sizes capable of accommodating development consistent with relevant development controls and does not restrict the fragmentation of land for rural residential purposes.</p>

Clause	Comment
	<p>The proposed 2 Lot Torrens Title subdivision will create a 'development lot' with an area of 2.29ha and a residual lot with an area of 3.42ha. The lots equate to 5.72% and 8.55% of the minimum lot size respectively. The lots are therefore undersized and amount to a departure from the development standard to the extent of 94.28% and 91.45% respectively.</p> <p>In this regard the subdivision is prohibited because the application is precluded, by Clause 4.6(6) of Kiama LEP 2011, from consideration of an exception to the development standard</p> <p>The development application must therefore be refused, because the subdivision is prohibited development as the subdivision will result in two lots less than the prescribed minimum lot size development standard and the subdivision will result in two lots that are less than 90% of the minimum lot size development standard.</p> <p>The subsequent Community title subdivision of the 'development lot' is not subject to cl 4.1 as prescribed by cl 4.1(4)(b). The proposed Community title subdivision is discussed below in cl 4.1AA of Kiama LEP 2011.</p>
<p>Clause 4.1AA – Minimum subdivision lot size for community title schemes</p>	<p>The proposed development includes the Community title subdivision of land within the RU2 Rural Landscape zone and therefore this clause applies to the development.</p> <p>The applicant fails to address cl 4.1AA of Kiama LEP 2011 in regard to the minimum subdivision lot size. The proposed Community title subdivision is not considered to be consistent with the objectives of cl 4.1AA as it fragments rural land below the minimum lot size for the purposes of residential accommodation (seniors housing).</p> <p>Clause 4.1AA requires that the minimum subdivision lot size is not less than the minimum size shown on the Lot Size Map. The site is listed with a minimum resulting lot size of 40ha on the lot size map.</p> <p>The proposed Community title subdivision includes 19 lots (excluding community property lots) ranging in size from 500m² to 1050.6m². The lots equate to 0.13% - 0.26% of the minimum lot size. The lots are therefore undersized and amount to a departure from the development standard to the extent ranging from 99.74% to 99.87%.</p> <p>In this regard the subdivision is prohibited because the application is precluded, by Clause 4.6(6) of Kiama LEP 2011.</p>

Clause	Comment
	The development application must therefore be refused , because the subdivision is prohibited development as the subdivision will result in two or more lots less than the prescribed minimum lot size development standard and the subdivision will result in at least one lot that is less than 90% of the minimum lot size development standard.
Clause 4.3 - Height of Buildings	The subject site is not identified on the Height of Buildings (HOB) map and therefore this clause does not apply to the proposal.
Clause 4.4 - Floor Space Ratio	The subject site is not identified on the FSR map and therefore this clause does not apply to the proposal.
Clause 5.10 - Heritage Conservation	An item of heritage does not exist on the property and the proposal meets the objectives of the clause.
Clause 6.2 - Earthworks	The proposal complies with the objectives of the clause and as the proposed earthworks are ancillary to the proposed dwelling separate development consent is not required.
Clause 6.3 Flood Planning	Clause 6.3 was repealed on 14/07/2021, however was in force at the time of the Development Application lodgement and therefore is applicable to the proposal. No objection was raised to the development as the Surf Beach flood study indicates that the building areas and roads are flood free.
Clause 6.12 – Essential services	<p>The application was referred to Sydney Water who advised that potable water and wastewater servicing should be available to the site, A Section 73 application is required to be lodged with Sydney Water for formal approval of servicing requirements.</p> <p>The application was referred to Endeavour Energy who did not object to the development but advised an appropriate application for electricity connection is required to be made.</p> <p>Stormwater will be piped to a number of bio-retention basins within the development site which are then connected to an existing drainage pit in Caliope Street and a proposed drainage pin Caliope Street. Staff are not satisfied that the proposal satisfies the relevant controls contained within Chapter 3 of Kiama DCP 2020. Specifically, C3.6.67 requires the road to be designed as an Access Street of 6.5m wide with 3.5m verges. The proposed one-way road does not comply with this and a variation was not submitted.</p>

Clause	Comment
	The proposed development is not permissible within the RU2 Rural Landscape and E2 Environmental Conservation zone, is inconsistent with the relevant provisions of Kiama LEP 2011 and must be refused.
Clause 6.5 – Riparian land and watercourse	<p>Clause 6.5 lists considerations for proposals which involve works within proximity to watercourse. A Category 3 watercourse is present on the site.</p> <p>No works are occurring within:</p> <ul style="list-style-type: none"> i. 40m of the top of the bank of a Category 1 watercourse, or ii. 20m of the top of the bank of a Category 2 watercourse, or iii. 10m of the top of the bank of a Category 3 watercourse, or <p>It is therefore unlikely that the development will have any adverse impact on water quality or aquatic riparian habitats.</p>
Clause 6.4 – Terrestrial Biodiversity	The proposed development is unlikely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the mapped land as the dwellings will not be constructed within land identified as “Biodiversity Land” nor is any vegetation identified as “Biodiversity Land” proposed to be removed. The proposal complies with the objectives of the clause.

Consistency with Site Compatibility Certificate (SCC)

A SCC for the development was issued by the Southern Region Planning Panel (SRPP) on 26 June 2020 under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The following requirements/conditions were imposed on the SCC:

A future development application for seniors living on the site shall include the following revisions to the concept plan and development layout for the site to facilitate the following:

1. *The amendment of the APZ on the eastern boundary of the development area such that the identified Zieria granulata plants are excluded.*
2. *Removal of the proposed screening fence along the southern and part western boundary of the site to maintain visibility of the local heritage dry stone walls and reduce the visual impact of the development. This will require an alternative bushfire management solution or amendment to the development footprint on this part of the site.*
3. *Demonstration of adequate setbacks along Old Saddleback Road to maintain visibility for vehicles approaching the intersection of Old Saddleback Road and Caliope Street.*

Item 1 - Zieria Granulata

The submitted SOEE (page 8) states that the APZ's have been revised to exclude Zieria granulata plant management areas identified in the submitted Ecological Report.

The submitted Bushfire Assessment Report states that the area of the threatened plant species Illawarra Zieria (*Zieria granulata*) will be excluded from the identified APZ area but managed as low threat vegetation or otherwise to equivalent Inner Protection Area (IPA) standards for shrub & grassland as prescribed by PBP (Sections A1.10 & A4.1.1 respectively).

The submitted APZ Zieria Management Plan shows the area of the identified *Zieria granulata* being excluded from the proposed APZ and not considered as a bushfire hazard as it is low threat vegetation due to reduced flammability and low fuel load. As stated previously, the submitted Bushfire Assessment Report states that this area of vegetation will be managed to the equivalent of an Inner Protection Area (IPA). This does not exclude the Zieria plants from the APZ, it merely draws an arbitrary boundary around the plants within the APZ.

The APZ boundary should be on the north western / western boundary of the limit of the Zieria granulata plants present at the site, and I interpret the requirements of the site compatibility certificate to reflect this. The existing Zieria plants and any seed source in the area between them and the existing E2 Illawarra Subtropical Rainforest community to the east, could then be managed for the ongoing enhancement and expansion of the Zieria population and associated native vegetation within this zone.

The current APZ management requirements for the land encompassing the management area, as well as the proposed perimeter fire trail would both further isolate and fragment the Zieria plants from adjacent vegetation and potential habitat, as well as being incompatible with any potential further expansion of the Zieria from the seedbank in the surrounding soil.

It is considered that managing this area so that it is considered low threat vegetation/low fuel load, and to the level of an IPA is inconsistent with the requirement imposed on the SCC.

The application was referred to the NSW Department of Planning, Industry and Environment (NSW DPIE) for comments regarding the applications consistency with the SCC. The following comments were received from NSW DPIE:

“Ultimately Council will need to form a view on consistency or otherwise of the application with the SCC. However, I can see how a view could be formed that it is inconsistent with requirement 1 of the SCC.

I note the following in the Panel's Record of Decision “The panel agreed that a requirement be placed on the determination to require that the Zieria granulata plants be excluded from the APZ area. This would facilitate a revision to the concept layout of the site to move the APZ area to the west of its current location and enable the Zieria granulata plants to be managed contiguously with the native vegetation in the adjoining E2 Environmental Conservation zoned area.

From the APZ/Zieria Management Plan attached to your email it appears that the Zieria plants are located within the APZ, albeit as low threat.”

As stated in NSW DPIE's response above and in the Southern Regional Planning Panel's Record of Decision, the intent of requirement 1 on the SCC is to enable the *Zieria granulata* plants to be managed contiguously with the native vegetation in the adjoining E2 zoned area.

The submitted APZ/*Zieria* Management Plan shows a 4m wide perimeter fire trail, fragmenting and isolating the *Zieria granulata* plants from the native vegetation within the E2 zoned land. As the *Zieria granulata* plants are managed in isolation and are not contiguous with the adjoining E2 zone land containing native vegetation, the proposal is not consistent with requirement 1 of the SCC and cannot be supported.

Item Two - Screening

The aforementioned screening fence along the southern and part western boundaries of the site has been relocated approximately 24m north of the southern boundary. The proposed fence now runs in a west-east direction along the southern boundaries of proposed dwellings 5, 6 and 15.

The fencing was initially proposed as part of bushfire protection measures in the SCC application. The panel was of the view that the solid fence of colorbond type construction would have an unacceptable visual impact when viewed from Old Saddleback Road and reduce visibility and setting of the local heritage listed dry stone walls along the southern boundary of the site. The panel agreed that the proposed bushfire protection measures be revised to remove the need for the fencing in that location. The panel stated that this may result in an increased setback for the dwellings located on the southern boundary of the site.

The relocation of the proposed fence from the southern boundary of the site to the southern boundaries of proposed dwellings 5, 6 and 15. The proposed fence is also only located along the boundaries of the individual dwelling sites as opposed to a long solid fence along the southern boundary of the overall development site.

It is considered that the proposed fence reduces the visual impact along Old Saddleback Road and is unlikely to have an unreasonable adverse effect on the heritage listed dry stone wall. The proposed fence is also provided as a bushfire protection measure and so the application was referred to NSW RFS. Bush fire Safety Authorities have not been issued.

Item 3- Setbacks

It is considered that setbacks along Old Saddleback Road are adequate to maintain visibility for vehicles approaching the intersection of Old Saddleback Road and Caliope Street. The submitted SOEE states the following in regard to this requirement:

"Minimum dwelling side setbacks of 3.8m have been provided to Old Saddleback Road and 5m front setbacks are maintained to the Caliope Street frontage. Old Saddleback Road comprises a 10m wide grassed verge between the lot boundaries and edge of road. The setbacks provide sufficient lines of sight for drivers along Old Saddleback Road approaching the intersection."

Any Draft Environmental Planning Instruments

- Draft State Environmental Planning Policy

The following draft State Environmental Planning Policies (SEPP) have been exhibited and are required to be considered:

- Draft SEPP (Environment)

The draft Environment State Environmental Planning Policy (SEPP), with accompanying maps, was on public exhibition from 31 October 2017 until 31 January 2018. The draft SEPP is not applicable to the subject site as it is not identified on the maps.

- Draft SEPP 55 – Land Remediation

The draft Land Remediation State Environmental Planning Policy (SEPP), with accompanying maps, was on public exhibition from 25/01/2018 until 13/04/2018. The draft SEPP is under consideration and has not been gazetted at this time.

Council is unaware of any historic land use which would deem the site unsuitable for the proposed development.

Kiama Development Control Plan 2020

The proposed development is considered to be inconsistent with the objectives contained within Chapter 5 of Kiama DCP 2020. The non-compliances are addressed in the table below:

- Chapter 1 – Introduction and Administration

It is considered that the proposed development is inconsistent with the aims of Kiama DCP 2020 as it does not respond positively to the qualities of the site, detracts from the natural values of the Kiama LGA and does not add to the character of Kiama in promoting a sustainable environment.

- Chapter 3 – Common Requirements

C3.6.67 requires the road to be an “Access Street” with a 6.5m wide carriageway and 3.5m wide verges. Council’s Subdivision and Development Engineer has stated that the proposed one-way road does not comply with this control and a variation request has not been received.

- Chapter 5 - Subdivision, Consolidation and Boundary Adjustment

It is considered that the proposed development does not comply with the above objectives within Topic 5.2, Chapter 5 of Kiama DCP 2020. The proposed subdivision severely fragments the rural land for the purposes of residential development. The residual Torrens title lot (Lot 21) is highly constrained by watercourses and biodiversity, making it highly isolated and unable to be used for agricultural purposes.

As outlined in cl 4.1 and cl 4.1AA of Kiama LEP 2011, the proposed lots do not meet the prescribed minimum lot size and are therefore not consistent with the objectives of this chapter.

The proposed development does not adequately minimise the impact on native vegetation, specifically the identified *Zieria granulata* species located on site. To ensure its protection, a condition was imposed on the issued Site Compatibility Certificate requiring the plant species be excluded from the Asset Protection Zone.

The proposal seeks to manage the *Zieria granulata* plants to a level consistent with NSW RFS requirements for an APZ. It is considered that managing the vegetation to these levels does not allow for it to restore/expand into the adjoining Terrestrial Biodiversity mapped land. It is also considered that this is not consistent with the SCC.

The proposed development does not comply with the relevant objectives of Kiama DCP 2020 and is not supported.

Any Planning Agreement

Nil.

Any Matters Prescribed by the Regulations

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

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

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

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

- Clauses 93, 94 and 94A

The proposal does not involve a change of use or additions and alterations to an existing building, or the erection of a temporary building.

Any Coastal Zone Management Plan

Nil.

The Likely Impacts of the Proposed Development

- Biodiversity

The proposed development includes the clearing of native vegetation for the purposes of establishing an Asset Protection Zone (APZ). An Ecological Report prepared by Unlimited Habitats Environmental Services was submitted to assess the possible impacts of the development on native fauna and flora.

The proposed clearing of native vegetation is limited to the removal of isolated individuals of wattle species, occurring in a strip of woody weeds in the eastern portion of the RU2 zoned land adjoining the E2 zoned land. The vegetation proposed to be removed is less than 0.1ha in size.

The submitted ecological report states that this strip of woody weeds, kikuyu and wattle species, contains no environmentally sensitive or protected items and no threatened species of fauna or flora were noted in targeted surveys. The majority of plant species in this patch of vegetation include large leaved privet, African olive, Lantana, blackberry and kikuyu.

The application proposes clearing of native vegetation, and therefore the Environmental Planning and Assessment Act 1979 Part 1 Section 1.7 applies to the development. The Act requires biodiversity assessment and reporting and requires proponents to offset significant biodiversity impacts by retiring biodiversity credits through the Biodiversity Offset Scheme (BOS).

The Biodiversity Offsets Scheme is a framework to avoid, minimise and offset impacts on biodiversity from development and clearing, and to ensure land that is used to offset impacts is secured in-perpetuity. There are two key elements to the Biodiversity Offsets Scheme:

- a. Developers and landholders who undertake development or clearing, generating a credit obligation which must be retired to offset their activity

- b. Landholders who establish a biodiversity stewardship site on their land, generating credits to sell to developers or landholders who require those credits, to securely offset activities at other sites.

Clearing Thresholds

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the BOS will be triggered. The threshold has two elements:

- whether the amount of native vegetation being cleared exceeds an area threshold; and
- whether the impacts occur on an area mapped on the Biodiversity Values Map.

The application does not involve clearing of land identified on the Biodiversity Values Map and does not exceed the 1ha clearing threshold for a site with a minimum lot size of 40ha - <1000ha.

Test of Significance

Proponents are also required to carry out a test of significance for all local development proposals that do not exceed the Biodiversity Offset Scheme Threshold. The test of significance is intended to provide standardised and transparent consideration of threatened species, ecological communities, and their habitats, through the development assessment process.

The applicant engaged a qualified ecologist Unlimited Habitats Environmental Services (who is an accredited assessor under the BOS), to investigate the natural values of the site and prepare and submit a Test of Significance, in accordance with the *Threatened Species Test of Significance Guidelines*.

The proposed vegetation removal relates to woody weeds only and does not include the removal of any endangered ecological communities. The proposal does not include the removal of any of the identified Illawarra Zieria (*Zieria granulata*) or the EEC Illawarra Subtropical Rainforest in the Sydney Basin Bioregion. The estimated outcome is a net positive benefit to the protection and preservation of the Illawarra Zieria identified on the subject property.

Clause	Comment
(a) <i>in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity —</i>	
<i>is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or</i>	The EEC Illawarra Subtropical Rainforest in the Sydney Basin Bioregion is contained wholly within the E2 zoned portion of land and is not proposed to be removed or impacted upon by the development.
<i>is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,</i>	The EEC Illawarra Subtropical Rainforest in the Sydney Basin Bioregion is contained wholly within the E2 zoned portion of land and is not proposed to be removed or impacted upon by the development.

Clause	Comment
<i>(b) in relation to the habitat of a threatened species or ecological community —</i>	
<i>the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and</i>	A net positive benefit will be achieved by weed removal of weed species. Both the EEC, <i>Illawarra Subtropical Rainforest in the Sydney Basin Bioregion</i> and specimens of <i>Zieria granulata</i> , will be protected and preserved through measures that have been incorporated in the <i>Zieria granulata Site Management Statement and Vegetation Management Plan</i> .
<i>whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and</i>	The EEC <i>Illawarra Subtropical Rainforest in the Sydney Basin Bioregion</i> is contained wholly within the E2 zoned portion of land and is not proposed to be removed or impacted upon by the development.
<i>the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,</i>	The EEC <i>Illawarra Subtropical Rainforest in the Sydney Basin Bioregion</i> is contained wholly within the E2 zoned portion of land and is not proposed to be removed or impacted upon by the development.
<i>whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),</i>	Not applicable, no declared area of outstanding biodiversity value.
<i>whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.</i>	<p>The proposed activities associated with establishing an APZ on the eastern side of the proposed development, are estimated to deliver a net positive benefit to the EEC, <i>Illawarra Subtropical Rainforest in the Sydney Basin Bioregion</i>, and specimens of <i>Zieria granulata</i> identified on the subject property.</p> <p>The proposed development does not exceed the thresholds not is a significant affect likely, therefore the proposed development is not required to enter the Biodiversity Offsets Scheme.</p>

- Streetscape

The design of the proposed development is considered to be reasonable when considered in relation to the context of the site. The bulk, scale and design of the proposal is consistent with relevant planning instruments and is not inconsistent with the streetscape.

The subject site slopes from west to east with nearby residential development being located to the west and north. The sloping nature of the site results in the development being positioned at a lower level than the existing residential development. This assists in reducing potential streetscape impacts from both Old Saddleback Road as well as Caliope Street. To further mitigate potential impacts, the proposed dwellings are single storey in nature.

- Noise

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

- Privacy and Overlooking

No significant concerns are raised in relation to privacy loss and overlooking resulting from the proposed development. The proposed dwellings are single storey in nature and are provided with sufficient setbacks to prevent overlooking into neighbouring dwellings and their private open space.

- Overshadowing

The proposed dwellings are single storey in nature with sufficient setbacks to adjoining dwellings, therefore it is considered unlikely that the proposed dwellings will have unreasonable overshadowing impacts.

- Views

The proposal is considered unlikely to have an unreasonable impact upon views currently available from neighbours.

The proposed development has the potential to impact upon views to the South Pacific Ocean from the *Seaview Estate Retirement Village* located on the western side of Old Saddleback Road. The properties most likely to be impacted include 1, 3, 5 and 7 Arnold Crescent as shown in Figure 18 below:



Figure 18 – Identified Dwellings in Visual Impact Analysis

The FFL of the dwellings at 1, 3, 5 and 7 Arnold Crescent are as follows:

- 1 Arnold Crescent (Lot 2 DP 270898) – FFL 114.875m
- 3 Arnold Crescent (Lot 3 DP 270898) – FFL 116.7m
- 5 Arnold Crescent (Lot 4 DP 270898) – RL 117.5m
- 7 Arnold Crescent (Lot 5 DP 270898) – FFL 118.4m

The subject site slopes from west to east with the highest point of the site being 114m AHD, in the south-west portion of the site. Proposed dwellings 1-5 range in floor levels from 108.3m AHD to 110.605m AHD, meaning that the proposed dwellings will sit lower than the existing dwellings on Arnold Crescent, minimising the potential view impacts.

Further minimising potential view impacts is the single storey nature of the proposed dwellings. The submitted SOEE states that the elevation plans show the RL ridge heights for the proposed dwellings as follows:

- Dwelling 1 – 111.721m
- Dwelling 2 – 113.958m
- Dwelling 3 – 115.268m
- Dwelling 4 – 115.323m
- Dwelling 5 – 115.158m

When comparing the ridge heights of the proposed dwellings to the floor levels of the existing dwellings (1, 3, 5 and 7 Arnold Crescent), it is considered that the proposed development will not unreasonably impact upon water views from the existing dwellings at the adjacent seniors living development.

The following Figures 19 and 20 were included as part of a Visual Impact Assessment submitted with the application:



Figure 19 – View from 3 Arnold Crescent looking south-east



Figure 20 – View from 5 Arnold Crescent looking north-east

- Vehicular Access, Parking and Manoeuvring

Sufficient car parking is proposed.

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

- Stormwater Management

A satisfactory drainage design has been provided with the application.

All stormwater will drain to the proposed drainage easement.

- Environmental Impacts

Fauna Impacts – It is unlikely that the proposal will affect any fauna or its habitat.

Impact on Soil Resources – Construction activities have the potential to impact on soil resources by way of erosion and sedimentation. Conditions of consent should be imposed, if consent is granted, in relation to soil and water management controls to be implemented during construction. Satisfactory implementation of these controls will prevent significant impacts on soil resources.

Impact on Water Resources – A rainwater tank will be provided for each dwelling, as required by BASIX. Stormwater is proposed to be conveyed to the proposed drainage easement.

- Social and Economic Impacts

The proposed development will likely have minimal adverse social or economic impacts. The amenity impacts of the proposed development have been considered in detail and no concerns raised in submissions warrant refusal of the application.

The Suitability of the Site for the Development

The proposal fits within the locality and the site attributes are considered to be conducive to development.

Submissions

Public Submissions

Notification letters were sent to neighbouring property owners who were provided with 14 days in which to comment on the proposal. At the conclusion of the notification period, 5 submissions were received which raised the following (summarised) matters of concern:

	Objection	Assessment Officer’s Comments
Item 1	Rural Land not Identified for Residential Development	<p>Submissions received during the notification period raised concerns that the subject property is zoned as rural and the <i>Kiama Urban Strategy</i> (since repealed and replaced by the <i>Kiama Local Strategic Planning Statement</i>) does not identify the site for future residential expansion, therefore the proposal should not proceed.</p> <p>As discussed earlier in this report the site is zoned part RU2 Rural Landscape and part E2 Environmental Conservation under the Kiama LEP 2011. The proposal is defined as <i>seniors living</i> which is a prohibited use in the RU2 zone.</p>

		<p>A Site Compatibility Certificate was issued by the Southern Regional Planning Panel under cl 25(4) of the SEPP (Housing for Seniors or People with a Disability) 2004, making that component of the proposal a permitted land use.</p> <p>However, the proposed subdivision is prohibited and therefore the application must be refused.</p>
Item 2	Community Hall	<p>Submissions received during the notification period raised concerns that a community hall has not been proposed as part of this application.</p> <p>The proposed development is prohibited and therefore must be refused.</p>
Item 3	Traffic Impacts	<p>Submissions received during the notification period raised concerns regarding potential traffic impacts arising from the development, both during construction and the ongoing life of the development.</p> <p>The submissions raised concerns regarding the safety of the area with the additional heavy traffic movements associated with the civil infrastructure works. The submission specifically raises concern that the proposal does not include the widening of Old Saddleback Road south of Caliope Street.</p> <p>For significant developments such as proposed, a condition of consent would be imposed requiring the submission of a Traffic Management Plan as well as a Construction Management Plan detailing how issues such as traffic movements, noise and vibration, erosion control etc. would be managed throughout the construction of the development.</p> <p>However, the proposed development is prohibited and therefore must be refused, negating the need for these conditions.</p>
Item 4	Surveys confirming floor and ridge levels	<p>Submissions received during the notification period raised concerns regarding visual amenity and requested conditions of consent be imposed requiring surveys be undertaken during construction to ensure the proposed dwellings would be built to their approved floor levels and ridge levels.</p> <p>It is noted that Council has standard conditions of consent requiring the above surveys to be undertaken for development such as the one proposed.</p> <p>However, the proposed development is prohibited and therefore must be refused, negating the need for these conditions.</p>

Item 5	Negative Impact on neighbouring property values	This is not a matter for consideration under the EP&A Act 1979.
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It is noted that two additional submissions were received outside of the notification period and therefore were not counted to the total number of submissions as per Council's Community Participation Plan.

External Referrals

The application was referred to the following State Government Departments:

- NSW Department of Planning, Industry & Environment (DPIE)

The application was referred to NSW DPIE for comments regarding the consistency of the proposal with the Site Compatibility Certificate issued by the Southern Regional Planning Panel on 26 June 2020. Specifically, Council was seeking comment on the consistency of the proposal with requirement 1 in Schedule 2 of the issued Site Compatibility Certificate. The condition required the following:

The amendment of the APZ on the eastern boundary of the development area such that the identified Zieria granulata plants are excluded.

The following comments were received from NSW DPIE:

"Ultimately Council will need to form a view on consistency or otherwise of the application with the SCC. However, I can see how a view could be formed that it is inconsistent with requirement 1 of the SCC..."

I note the following in the Panel's Record of Decision "The panel agreed that a requirement be placed on the determination to require that the Zieria granulata plants be excluded from the APZ area. This would facilitate a revision to the concept layout of the site to move the APZ area to the west of its current location and enable the Zieria granulata plants to be managed contiguously with the native vegetation in the adjoining E2 Environmental Conservation zoned area."

From the APZ/Zieria Management Plan attached to your email it appears that the Zieria plants are located within the APZ, albeit as low threat."

As stated by NSW DPIE, Council is required to assess the consistency of the subject application with the Site Compatibility Certificate issued.

- NSW Rural Fire Service (RFS)

The RFS have not issued their Bushfire Safety Authorities. A request for additional information was received on 2 September 2021 as the proposed development is not supported in its current state.

- Transport for New South Wales (TfNSW)

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

- Sydney Water

Sydney Water raised no objections to the proposed development. Sydney Water provided comments stating that potable water and wastewater servicing should be available to the site.

- Endeavour Energy

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

Internal Referrals

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

- Building Assessment Officer

An objection has been raised in relation to the proposed development. The submitted plans are inconsistent with the relevant BASIX Certificate.

- Subdivision & Development Engineer

An Objection has been raised in relation to the proposed development. Insufficient information has been submitted with regard to access and manoeuvring, stormwater treatment, land stability and impacts on the public domain

- Landscape Design Officer

An Objection has been raised in relation to the proposed development regarding encroachments into the TPZ of the Fig tree adjacent to proposed dwelling 16.

- Environmental Health Officer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Environmental/Sustainability Officer

The application was referred to Council's Environmental/Sustainability Officer for comments regarding the proposed vegetation management and removal. An objection has been raised in relation to the proposed development and is not supported based upon the proposed management of the *Zieria granulata* plants.

- GIS Officer

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

- Waste Management Officer

No objection has been raised in relation to the proposed development. Council's Waste Management Officer does not object to the proposed waste servicing method (one-way road) as this is consistent with waste servicing at the nearby Seaview Estate in which Council's Waste Servicing staff have no issue with.

The Public Interest

The proposal is inconsistent with the relevant Environmental Planning Instruments and Development Control Plan, and therefore is inconsistent with the public interest.

Final Comments and Conclusions

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 4.15 of the Environmental Planning and Assessment Act, 1979. The proposal is inconsistent with Kiama LEP 2011 and relevant Kiama DCP 2020 Chapters. The proposed development is inconsistent with the objectives of the RU2 Rural Landscape and E2 Environmental Conservation zone. The proposed development is inconsistent with the issued Site Compatibility Certificate.

The proposed development is prohibited and must be refused.

12.2 10.2018.273.3 – 81 Jerrara Road, Jerrara – Use and Fitout

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

This report reviews the Section 4.55 Application for Modification of Consent No 10.2018.273.2 which involves the modification of the use of the property for *animal boarding and training establishment* (dog breeding and sale).

The report recommends that Council refuse Section 4.55 Modification of Consent Application No 10.2018.273.3 as the proposal is:

- Contrary to objectives in the RU2 Rural Landscape zone objectives within Kiama LEP 2011; and
- Inconsistent with an objective of Chapter 8 – Rural Uses within the Kiama DCP 2020

Financial implication

N/A

Policy

N/A

Consultation (internal)

Please refer to the “Internal Referrals” section in this report.

Communication/Community engagement

Required: Yes (letter notification)

Notification Period: 14 days from 5/2/2021 to 19/2/2021

Submissions: 4 submissions

Reason for the Report

This report is submitted to Council because the modification relates (in part) to trial period conditions resolved by the elected Council when the development was first approved.

Options

There are three options available to the elected Council in consideration of this Development Application. These include:

- a) *Adopt the recommendation – thereby refusing the modification to the existing development consent*

This is the recommended option provided to Council by the assessing officer.

Report of the Director Environmental Services

12.2 10.2018.273.3 – 81 Jerrara Road, Jerrara – Use and Fitout (cont)

It is important to note that the existing consent remains and the animal boarding establishment can continue to operate. The only condition that remains in place which the applicant has requested to be removed is the ability for the canines to be unsupervised in the outdoor run. All other operations can occur in accordance with the existing consent and the business can continue, on the site.

The recommendation of the officers has been provided as a way to continue to support the existing business whilst responding to the complaints and concerns that have been received from neighbouring properties regarding potential noise levels of unsupervised dogs.

This circumstance is unusual in that trial periods have been applied. It is not usual practice for development assessment. Staff have also undertaken extensive additional work to respond to and investigate complaints and compliance concerns that have been raised regarding this business.

b) *Provide an alternative recommendation and approve the development.*

As this is a modification application Council would need to provide a resolution which included a statement that the modification application had been approved and the following condition has been deleted:

Time Limited Consent of the Outdoor Dog Run

- (1) *The unmonitored use of the outdoor dog run by the canines (shown on the approved plan titled: "Dog Facilitates" Dwg No CD13 dated 10/2/2019 drawn by J Roso), as an Animal Boarding and Training Establishment is limited to an initial consent trial period of six (6) months.*

The six (6) month trial period commences from the date of determination of the modification application.

Six (6) months after the date of determination of the modification application, the unmonitored use of the outdoor run by the canines must cease.

To continue the use of the outdoor dog run by the canines the consent is to be modified by lodging of a formal application under section 4.55 of the Environmental Planning & Assessment Act 1979 to modify the condition/s of the consent relating to time limit trial period.

N.B. When assessing any formal application to further modify this condition, any complaints received by Council during the trial period will be considered

Council may also wish to add additional conditions to the consent which provided further clarity around the times, number of dogs etc that can utilise the outdoor run unsupervised.

It is accepted that there may be arguments made which could support this application. They may suggest that the noise impact is acceptable in the context of a rural setting. In permitting this type of commercial operation within the municipality there is also an economic development argument and service delivery to community consideration to be considered. The applicant has invested significant funds, obliged with trial periods and made every attempt to assist Officers with their assessment and conditions to mitigate impacts.

Report of the Director Environmental Services

12.2 10.2018.273.3 – 81 Jerrara Road, Jerrara – Use and Fitout (cont)

Council's assessing officers have chosen to recommend refusal based on the key remaining concern that the noise impacts of the development have not been fully understood or resolved. This is principally due to the remaining fact that the operations of the facility have never reached the capacity at which approval has been granted. Noise impacts that have been considered as part of this assessment rely on an operation level of less than approved which leaves an element of doubt remaining that the impacts once the business reached full capacity could have an undue impact on the rural amenity if the dogs were allowed unsupervised in the outdoor run.

Council would need to assure themselves that they were confident that these impacts were minimal, acceptable, and that the development complied with Councils legislative and policy framework.

If Councillors were to approve this proposal, they may also be of a mind to include conditions such as:

- That the unsupervised use of the outdoor gravel run be restricted to 4 canines.
- The unsupervised use of the outdoor gravel run be time restricted. For example, the 4 canines are only able to use the outdoor dog run unsupervised between the hours of 10:00am and 2:00pm.

(c) *Provide an alternative recommendation to defer consideration of the report*

Councillors may wish to defer this report for further consideration or information.

Attachments

1 10.2018.273.3 - Section 4.15 Assessment Report [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council refuse Section 4.55 Modification of Consent Application No 10.2018.273.3 under Section 4.55 of the Environmental Planning and Assessment Act 1979 for the following reasons:

- (1) is considered inconsistent with an aim of clause 1.2 of Kiama LEP 2011 because the development anticipated by the proposed modification has not demonstrated or reached the maximum operating capacity to which the consent enables.
- (2) is considered contrary to the aims of Clause 1.2, because the maximum operating capacity of the facilities has not been reached and the protection of the rural character of the locality is not ensured by the proposal.
- (3) the proposed modifications to the management practices of the Animal Boarding and Training Establishment will be contrary to this objective because it has not been demonstrated that the operations of the facility as proposed will be with compatible with surround land uses.

Report of the Director Environmental Services

12.2 10.2018.273.3 – 81 Jerrara Road, Jerrara – Use and Fitout (cont)

-
- (4) is inconsistent with an objective of Chapter 8 of the Kiama Development Control Plan. The proposed modification has failed to demonstrate that this objective is met and does not ensure the protection of the rural residential amenity.
 - (5) there is insufficient information to understand the likely impacts of the proposed development or whether the site is suitable for the proposed changes to the management practices of the Animal Boarding and Training Establishment.
 - (6) changes to the management practices of the Animal Boarding and Training Establishment to allow canines to use the outdoor gravel run unsupervised, in the absence of the facilities having never reached the operational capacity (maximum number of canines), does not allow the proposed modifications to be reasonably assessed. This is required to ensure that the Animal Boarding and Training Establishment provides for sufficient compatibility with the character of the rural environment, and to ensure the facilities do not pose an unreasonable impact on the locality.

Item 12.2

Development Site

The property is described as Lot 104 DP 1094576, which is located at 81 Jerrara Road, Jerrara.

The overall site measures 42.32 hectares and is irregular in shape. The site currently contains a combination of Class 1 and Class 10 buildings and is bounded by rural land containing principally agricultural buildings, dwellings and pastures. The subject site currently contains a dwelling house, ancillary outbuilding with farm stay accommodation, and various farm sheds previously used as a dairy and now employed in the operation of a beef cattle and horse grazing enterprise conducted on the site.

The site has the following characteristics

- The site is zoned RU2 Rural Landscape under Kiama LEP 2011.
- The subject site consists of a largely cleared, rural parcel of land situated in Jerrara to the west of Kiama, with undulating to steep topography.
- The site drains overland through a natural ephemeral watercourse to the adjoining land and public road.
- Access to the property is gained through a public road, Jerrara Road. The site is serviced by water, electricity and telecommunications.

The site is subject to the following constraints:

- Bushfire affectation
- Flooding affectation
- Services and easements
- Areas mapped in Kiama LEP 2011 as riparian land and watercourses

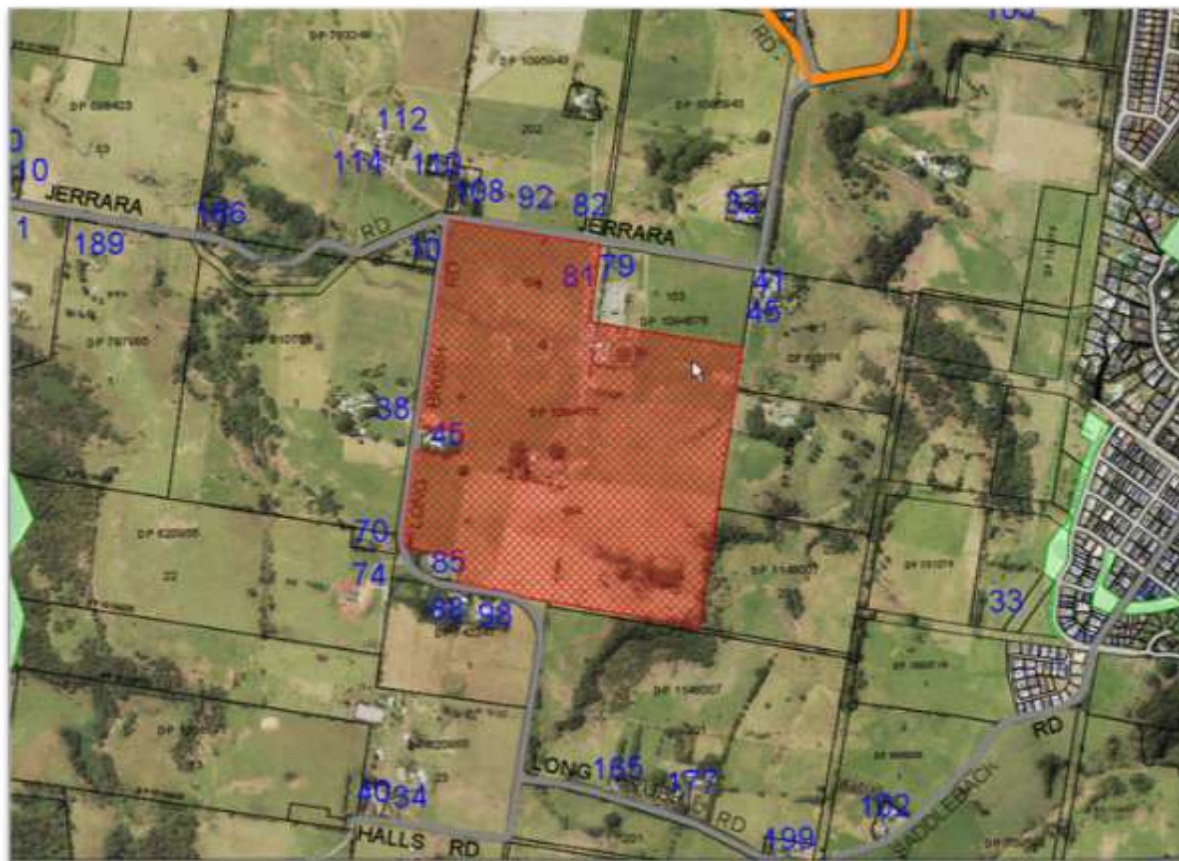


Figure 1 – Locality Plan

Development History

DA No.	Description	Lodgement	Determined	Decision
10.2018.273.1	Use of Property for Animal Boarding and Training Establishment (Dog Breeding and Sale)	12/11/2018	16/04/2019	Approved by Council
10.2018.273.2	Modified - Use of Property for Animal Boarding and Training Establishment (Dog Breeding and Sale)	24/12/2019	23/06/2020	Approved by Council

Development Approval (10.2018.273.2)

It is important to note that currently there is an existing and ongoing approval for the operation of the Animal Boarding establishment. This consent has been enacted and therefore is no longer time limited and remains attached to the land. This existing consent allows for:

- 12 breeding canines over the age of 12 months to be kept at the premises for the purposes of the *Animal Boarding and Training Establishment*; and
- A maximum of 12 litters per year, or a rate that equals to a maximum of two litters every 2 years for each breeding canines; and
- Canines are to be housed in Rooms 1, 2, or 3 as shown on the approved plan titled “Dog Facilities” (Dwg. No. CD13 dated 10/2/2019 drawn by J Roso) between the hours of 10:00pm and 7:00am. On public holidays and Sundays, all canines are to be housed in Rooms 1, 2, or 3 as shown on the approved plan titled “Dog Facilities” (Dwg. No. CD13 dated 10/2/2019 drawn by J Roso) between 10:00pm and 08:00am. For ease of reference, the Rooms 1, 2, and 3 have been highlighted yellow and can be seen in Figure 2 below; and
- The canines can utilise the outdoor gravel run whilst there is a suitably qualified person present to supervise the canines. For ease of reference, the outdoor gravel run has been highlighted green and can be seen in Figure 2 below.

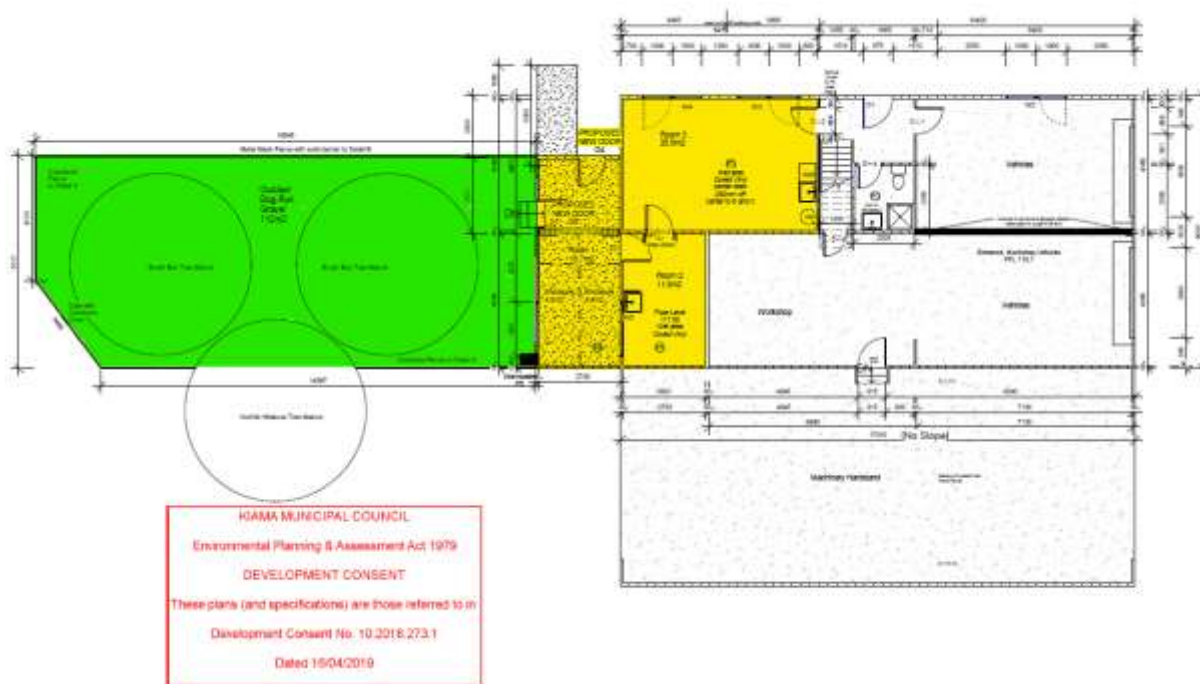


Figure 2 - Floor Plan of Dog Facilities (Highlighted Green is the Outdoor Gravel Run & Highlighted Yellow is the Rooms 1, 2, and 3)

Purpose of this Modification Application (10.2018.273.3)

The applicant is seeking the deletion of condition 1 within Development Consent No 10.2018.273.2.

Time Limited Consent		
(1)	<p><i>The unmonitored use of the outdoor dog run by the canines (shown on the approved plan titled: “Dog Facilitates” Dwg No CD13 dated 10/2/2019 drawn by J Roso), as an Animal Boarding and Training Establishment is limited to an initial consent trial period of six (6) months.</i></p> <p><i>The six (6) month trial period commences from the date of determination of the modification application.</i></p> <p><i>Six (6) months after the date of determination of the modification application, the unmonitored use of the outdoor run by the canines must cease.</i></p> <p><i>To continue the use of the outdoor dog run by the canines the consent is to be modified by lodging of a formal application under section 4.55 of the Environmental Planning & Assessment Act 1979 to modify the condition/s of the consent relating to time limit trial period.</i></p> <p><i>N.B. When assessing any formal application to further modify this condition, any complaints received by Council during the trial period will be considered.</i></p>	Request to be Deleted

Item 12.2

The intent of this condition was to provide further information concerning the actual noise impact of the facility when operating with maximum of 12 breeding dogs, so that the development could be tested before the consent was permitted to operate unfettered with respect to the use of the outdoor run.

Key Considerations and Assessment

Noise Impacts

Ongoing concerns have been raised via submissions to the DA process which for this specific application include four in total (3 from the same family). There have also been separate direct complaints and compliance concerns which have been provided to Council relating to the operation of the business and conduct of the applicant.

In response to the concerns raised with Council and in accordance with current custom and practice staff have acted on these complaints and investigated the allegations raised. These are as follows:

- Providing a trial period for the consent
- Provision of conditions of consent which require strict adherence to controls and monitoring including conditions of development consent requires the operator of the facility to install and maintain Close Circuit Television (CCTV) with audio capabilities and provide video with audio to Council upon request.
- Undertaking investigatory actions including site inspections, noise monitoring and review of CCTV images.

Report of the Director Environmental Services

12.2 10.2018.273.3 – 81 Jerrara Road, Jerrara – Use and Fitout (cont)

The monitoring and review undertaken have involved significant staff time and resources includes the following detailed actions:

- *Review of CCTV footage and monitoring*

Conditions of development consent requires the operator of the facility to install and maintain Close Circuit Television (CCTV) with audio capabilities and provide video with audio to Council upon request. As part of the assessment of the application (10.2018.273.3), staff reviewed video segments of the CCTV that were identified following complaints from adjoining property owners of periods of noise disturbances by the canines barking.

In total, staff reviewed over 9 hours of CCTV footage that related to the 6-month trial period of the unsupervised use of the gravel run.

Of the instances that were identified to be periods of nuisance from adjoining property owners, review of the CCTV footage indicates that these disturbances generally coincided with periods when the owners are present onsite with the canines.

- *Site Inspection*

In addition to the above, Council staff arranged a site inspection of the facilities and that of an adjoining neighbour's property. These site inspections were carried out simultaneously to obtain an understanding on the noise that was generated from the facility.

The purpose of this process was aimed to try to replicate and test the acoustic levels recorded and presented in the Acoustic Compliance Assessment associated with the development.

Staff used a Svantech 971 - Class 1 Sound Level Meter to record the noise from the canines.

When staff initially attended the site, the canines were not barking and it was difficult to record any meaningful data that would enable staff to assess the noise from the canines against the acoustic compliance report.

However, the operators of the facilities eventually were able encourage the dogs to constantly bark which was considered representative of an agitated response for the recording periods.

When the dogs were recorded in the house yard, they were barking at the closest point accessible to the affected residence at 85 Long Brush Road, where the fence of the outdoor run meets the house yard fence (approximately 30m direct line of sight to the sound level meter).

The following table compares the Laeq (1min) recordings that were taken when the dogs were in the outdoor run and also in the house yard.

Measurement ID (Site in Acoustic Compliance Report))	Short term operator attended measure Laeq(30secs) (dB) Acoustic compliance report	Long term unattended measured Laeq (30secs) (dB) Acoustic compliance report	Council measured comparison Laeq (1 min) 21 June 2021	Sound level meter file (Council measured)
C	65	66	67.7 (1min) 66.7 (1 min)	L126
E	56	67	55.9 (1 min) 56.6 (1 min)	L127
Typical worst case barking event when dogs located in domestic yard		62	52.3 (1 min) 58.2 (1 min)	L128
Paddock			38 (1 min) 36.7 (1 min)	L129

Item 12.2

LA90 background measurements were taken on side of the road outside 85 Long Brush Road, and then in the backyard at 85 Long Brush Road. The LA90 measures were 39 dBA and 38.6 dBA respectively. This is equivalent to the ambient noise of a library.

Whilst this level of monitoring review and action may seem unusual, it is not unique for a development application or for a compliance matter within Kiama LGA. There are many contentious and complicated circumstances that staff must address often including numerous complex complaints and concerns. Many matters which would appear simple have been escalated

This is part of the ongoing work within the Planning Reform program that is being undertaken to provide clear guidance on how much staff resource is used for such complaints and the reasonableness of actions taken.

Prevention of Cruelty to Animals Act 1979

The Prevention of Cruelty to Animals Act 1979 came into effect on 9 June 1981. Column 2 in Schedule 1 of the Prevention of Cruelty to Animals Act 1979 prescribes the respective Code of Practice and Standards for the specific forms of animal trade identified in Column 1.

Report of the Director Environmental Services

12.2 10.2018.273.3 – 81 Jerrara Road, Jerrara – Use and Fitout (cont)

The applicable code of the practice states that operators need to adhere to the following:

- Animal Welfare Code of Practice – Breeding Dogs and Cats

A central issue for the proposed modification application is a respective standard under Topic seven (7) *Animal Management*.

Standard 7.1.1.8 prescribes the following:

Exercise areas must be supervised to ensure that dogs contained with it are compatible.

The application proposes to permit the use of the outdoor gravel run unsupervised which is contrary to the requirements of the Animal Welfare Code of Practice – Breeding Dogs and Cats for exercise yards.

The Animal Welfare Code of Practice – Breeding Dogs and Cats does not define an exercise yard however, the outdoor gravel run is considered to be a form of exercise yard.

It is important to note that this policy is for the protection of the welfare of the canines not a policy for ameliorating noise impacts associated with the Animal Boarding and Training Establishments.

Environment

A complete assessment of potential environmental impacts is provided in the Section 4.15 Report as Attachment to this report.

Social

A complete assessment of potential social impacts is provided in the Section 4.15 Evaluation Report as Attachment to this report.

Final Comments and Conclusions

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

However, the Section 4.55 Modification of Consent Application No 10.2018.273.3 is inconsistent with Kiama Local Environmental Plan 2011 and the objectives of the RU2 Rural Landscape zone.

Consideration has been given to the social, economic and environmental impacts of the proposed development. Concerns raised in submissions have been considered and warrant refusal of the application based on a precautionary principle.

The proposed modification of the development is considered to be unreasonable and refusal is recommended.

The *Animal Boarding and Training Establishment*, if the application is refused will in turn be required to operate as follows.

- The outdoor gravel run can only be used by the canines when there is a suitably qualified person present on the site to supervise as per condition 3 under the heading *Site Operations*; and

Report of the Director Environmental Services

12.2 10.2018.273.3 – 81 Jerrara Road, Jerrara – Use and Fitout (cont)

- Condition (1) a) under the heading *Amendments to Approved Plans and Documents* have not been activated as the unsupervised use of the outdoor gravel by the canines has been only ever been on trial.

**10.2018.273.3 – 81 Jerrara Road, Jerrara
Section 4.15 Assessment**

Section 4.15 Assessment Report

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

Section 4.55 Modifications

Under Section 4.55 of the Environmental Planning and Assessment Act 1979, Council, when considering a request to modify a determination, must:

- a) *be satisfied that the development as modified is substantially the same development as the development for which consent was originally granted*
- b) *consult with any relevant authority or approval body*
- c) *notify the application in accordance with the regulations*
- d) *consider any submissions made; and*
- e) *take into consideration the matters referred to in Section 4.15 as are of relevance to the development the subject of the application*

These matters are addressed below:

Substantially the Same Development

Is the development substantially the same development?

The proposed modification is only in relation to the management practices on the development consent and is considered to be substantially the same development for which consent was originally granted because:

- That the essence of the proposal to breed dogs for sale is unchanged by the proposed modified conditions and is materially the same as in the approved development.
- That the site coverage is unchanged by the proposed modified conditions and is materially the same.
- That the setbacks are unchanged by the proposed modified conditions and are materially the same.
- That the landscaped area is unchanged by the proposed modified conditions and is materially the same.
- The land use, and associated physical structures used for the housing of canines will not be altered under this proposal.

Consultation with any Relevant Authority or Approval Body

No authorities or bodies were required to be consulted.

Application notification in accordance with the Regulations

The application was notified in accordance with the regulations and Council's policy.

Consideration of any Submissions

The submissions received have been addressed in the report below under the heading 'Public Submissions'.

Matters referred to in Section 4.15 as are of relevance to the Development

The matters of relevance are addressed below:

Assessment of the Modifications

Modification Request

The applicant proposes to have the following condition deleted from the consent:

Time Limited Consent of the Outdoor Dog Run

- (1) *The unmonitored use of the outdoor dog run by the canines (shown on the approved plan titled: "Dog Facilitates" Dwg No CD13 dated 10/2/2019 drawn by J Roso), as an Animal Boarding and Training Establishment is limited to an initial consent trial period of six (6) months.*

The six (6) month trial period commences from the date of determination of the modification application.

Six (6) months after the date of determination of the modification application, the unmonitored use of the outdoor run by the canines must cease.

To continue the use of the outdoor dog run by the canines the consent is to be modified by lodging of a formal application under section 4.55 of the Environmental Planning & Assessment Act 1979 to modify the condition/s of the consent relating to time limit trial period.

N.B. When assessing any formal application to further modify this condition, any complaints received by Council during the trial period will be considered

Applicant's Justification

The applicant provided the following justification:

There were 2 litters of puppies bred during the trial period, 10 puppies in total, present at the premises during September and October 2020. In the other months, the canines were able to be left unsupervised for several periods to take advantage of the condition of unmonitored use of the outdoor run.

The times when this occurred were logged in the table shown below. The frequency and duration of times without supervision would represent a typical pattern going forward.

For each of the times, the camera footage and associated audio was later watched in its entirety and any barking heard in the footage was recorded. The video and audio footage can be made available to Council for verification of this record if required.

I am unaware of any complaints made during the trial period and am confident that there would have been no reason provided for complaint.

In conclusion, the acoustic report from 2019 supports the fact that if the dogs were to bark while unsupervised the acoustic mitigation measures are adequate. When the dogs were unsupervised in the outdoor run during the trial period, there was very little barking, and they were generally very calm. There were no negative impacts to adjoining residents during the trial period and I therefore ask that Council remove the time limit for the consent condition.

Assessing Officer's Comments

In the original determination of the application (10.2018.183.1) Council staff recommended that the facilities be placed on an 18 month trial.

The reasoning for this was to allow sufficient time for the operations of the *Animal Boarding and Training Establishment* to occur prior to making a determination on the suitability of the facilities and the impacts of the development with respect to barking dog noise on neighbours.

A motion was moved to reduce the recommended length of the trial period to 6 months for Development Application No 10.2018.273.1 and the application was determined by way of approval on 16 April 2019.

The facilities transitioned off a 6 month trial with the determination of Development Application No 10.2018.273.2 on 26 June 2020.

During the initial trial period of the facilities (10.2018.273.1), there was 5 adult canines and 8 puppies across 2 litters at the facility, whereas the development consent allows a maximum of 12 breeding dogs plus puppies.

During the unsupervised trial period of the outdoor dog run (10.2018.273.2), there were 4 adult canines and 10 puppies across 2 litters at the facility.

In this regard, across both trial periods, the maximum operational capacity of the facility that the consent enables, has not been reached.

The proposed modification seeks development consent to transition off a time-limited consent of the unsupervised use of the outdoor gravel run by the canines. This would enable 12 adult canines and their puppies to use the outdoor dog run unsupervised between the hours of 7:00am -10:00pm and on public holidays 8:00am – 10:00pm.

Under these circumstances, it is considered unreasonable for the canines to use the outdoor dog run unsupervised in the absence of the facilities having been trialed at the level which the consent permits.

Furthermore, given that this is a commercial land use, appropriate levels of supervision of the canines is required to ensure that the amenity and character are not adversely impacted and so that the requirements of the Animal Welfare Code of Practice – Breeding Dogs and Cats are met at all times.

Relevant Environmental Planning Instruments

Kiama LEP 2011

The following provisions of Kiama LEP 2011 are considered pertinent to the proposed development:

Clause 1.2 – Aims of Kiama LEP 2011

The proposed modifications to the *Animal Boarding and Training Establishment* are considered inconsistent with the following aims:

- *to protect and enhance the coastal and rural character of Kiama's rural towns, neighbourhoods and villages, and the characteristic scenic landscapes that contribute to its liveability and identity,*

The proposed modifications to the management practices will be contrary to this aim because the maximum operating capacity of the facilities has not been reached and the protection of the rural character of the locality is not ensured by the proposal.

Under these circumstances the impacts of transitioning off the time restricted consent for the use of the outdoor gravel run by the canines, in the absence of the facilities having reached the maximum operating capacity to which the consent enables, does not allow the impacts of the modifications to be completely understood.

It is considered that these modifications may present an unacceptable risk to adverse effects on the rural character of the locality, and in the absence of information that indicates the facilities have reached the maximum operating capacity with no recorded instances of disturbances, giving support to the proposed modifications may give rise to untested noise impacts, and is therefore problematic.

Clause 2.3 Zone objectives and Land Use Table

The subject land is zoned RU2 Rural Landscape under Kiama LEP 2011. The proposal is defined as an *Animal Boarding and Training Establishment* under the provisions of the LEP 2011, which are permitted with consent in the RU2 Rural Landscape zone.

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The proposal is considered contrary to the following objectives of the RU2 Rural Landscape Zone (set out in italics below) as follows:

- *To maintain the rural landscape character of the land.*

The unsupervised use of the outdoor gravel run has not been trailed in a manner that is consistent with full scope of the consent that has been granted.

In this regard, in the absence of the facilities having reached the maximum operating capacity, the noise impacts of transitioning off a time limited consent of the unsupervised use of the outdoor gravel run cannot be properly understood and validated.

In these circumstances, it is considered that the modifications present a risk to the development adversely affecting the peaceful rural character of the locality, and in the absence of information that indicates the facilities have reached the maximum operating capacity without undue noise impact, whether the development maintains the rural character with respect to noise is uncertain.

- *To provide for a range of compatible land uses, including extensive agriculture*

The proposed unsupervised use of the outdoor dog run is considered to fail to satisfy this objective because it has not been demonstrated that the maximum operation of the facility as approved will be compatible with surrounding land uses, including rural residential land uses in proximity to the site.

It should be noted that this is a commercial operation as per the definition of *Animal Boarding and Training Establishment* under Kiama LEP 2011.

In this regard, it is considered that the facilities should be operated accordingly, which requires the supervision of the outdoor dog run to ensure that the facilities and canines are managed to ensure noise impacts are compatible with the surrounding land uses.

Kiama Development Control Plan 2020

Since the application (10.2018.273.1) was approved Kiama DCP 2020 was endorsed. Kiama DCP 2020 stipulates specific controls in relation to the management and siting of *Animal Boarding and Training Establishments*.

The original application was determined on the 16 April 2019 and the Kiama DCP 2020 was not endorsed until the 17 March 2020. In this regard, the application has been assessed under the objectives and controls that have been implemented under the Kiama DCP 2020.

The proposed modification is considered inconsistent with an objective of Chapter 8 – Rural Uses of the Kiama DCP 2020.

The unsupervised use of the outdoor gravel run is considered contrary to the following objectives of the RU2 Rural Landscape zone (set out in italics below) as follows:

- *To protect rural residential amenity*

The proposed modification has failed to demonstrate that this objective is met because the unsupervised use of the outdoor gravel run by the canines has not been operated on a scale that the consent enables for up to 12 breeding dogs and their pups.

In this regard, modifying the management practices of the *Animal Boarding and Training Establishment* to enable the unsupervised use of the outdoor gravel run by the canines in the absence of this occurring does not ensure the protection of the rural residential amenity.

Any Planning Agreement

Nil

Any Matters Prescribed by the Regulations

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

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

Any Coastal Zone Management Plan

Nil

The Likely Impacts of the Proposed Development

Streetscape

The proposed modification does not alter the respective facilities presence within the streetscape.

Noise Impact

The facility has been operating under the consent conditions since June 2019.

In accordance with the requirements of the consent a compliance assessment of the facility is required to be conducted to validate the noise projections, received noise levels at the nearest residential receivers, and the performance of the acoustic mitigation measures.

The applicant has provided an acoustic compliance report, prepared by Acoustic Dynamics dated 9/12/2019 in accordance with the consent conditions.

In the acoustic compliance report, the following statement is provided:

Further to the noise monitoring and measurements conducted, our review of the relevant acoustic criteria and requirements and our calculations, Acoustic Dynamics advises that the noise emission associated with the development, complies with the relevant acoustic criteria of Kiama Council, the NSW POEO Act 1997 and the NSW EPA and the recommendations and management plan contained within report 4403r001.LB181009 (Original Acoustic Report) dated 12th of October 2018 have been implemented.

Whilst the report details that the facilities are compliant with the respective noise assessment criteria, the issue remains whether it is appropriate to leave the canines in the outdoor dog run unsupervised.

Through a single lens focus, being compliance with the respective noise criteria as detailed in the acoustic compliance report prepared by Acoustic Dynamic (dated 9/12/2019), the proposed modifications can be seen to have some merit.

However, when considering the broader impacts on the locality, and how the proposal will affect the amenity and character of the rural landscape, the unsupervised use of the outdoor gravel run present concerns as already outlined above in this report.

On balance, it is considered that there is an unacceptable risk to the amenity and rural character of the locality to enable the unsupervised use of the outdoor dog run by the canines.

In addition, in the absence of the facilities having ever reached the maximum operating capacity the noise that emanates from the facilities has not been validated.

It is considered that the reasonable direction for the development is that in the event where nobody is present on site, the canines can be housed in the acoustically treated purpose built dog housing facility.

This direction ensures that the operations of the *Animal Boarding and Training Establishment* can continue, albeit a minor operational inconvenience, and the rural amenity and character of the locality is preserved.

Privacy and Overlooking

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

Views

The proposal will have no unreasonable impact upon views currently available from neighbours.

Vehicular Access, Parking and Manoeuvring

Sufficient car parking is proposed.

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

Stormwater Management

A satisfactory drainage design has been provided with the application.

All stormwater will drain to the natural riparian watercourses that traverse the subject site.

Environmental Impacts

Vegetation Removal – No vegetation is to be removed.

Fauna Impacts – It is unlikely that the proposal will affect any fauna or its habitat.

The Suitability of the Site for the Development

The proposal does not fit within the locality and the site attributes are not considered to be conducive to development.

Submissions

Public Submissions

Notification letters were sent to neighbouring property owners who were provided with 14 days in which to comment on the proposal. At the conclusion of the notification period, 4 submissions were received which raised the following (summarised) matters of concern:

	Objection	Assessment Officer's Comment
Item 1	Noise	All four submissions received by Council have raised concerns over noise impacts from the operation of the facility. Given that the overall noise impacts of the facility operating at maximum capacity remain unvalidated as the facility never operated at maximum capacity during the trial period, it is inappropriate to move off a trial period of the unsupervised use of the outdoor dog run by the canines.
Item 2	Inappropriate to move off trial of unsupervised use of the outdoor dog run	All four submissions received by Council have raised concerns of it being inappropriate for the outdoor gravel yard being used by the canines unsupervised. This concern is accepted for this modification application. The noise impacts of the maximum number of breeding canines comprising 12, the facilities remain untested with respect to noise at this level and is inconsistent with the Animal Welfare Code of Practice – Breeding Dogs and Cats which require exercise yards to be supervised at all times.

Item 3	Inappropriate siting of facilities	Two submissions received by Council raised concern over the siting of the facilities. The modification application is not in relation to the siting of the facility and an assessment of the siting of the facilities is not a matter of consideration.
Item 4	Offensive Noise	One submission received by Council raised a concern that the facilities are breaching the conditions of development consent in relation to offensive noise. It is not possible to determine offensive noise from the audio analysis of CCTV. Council staff would need to observe and experience the noise first hand to arrive at the conclusion of offensive noise. Further, staff cannot rule on offensive noise during the site inspection as the dogs were being agitated by the operators to enable Council staff to take noise measurements.

External Referrals

Nil

Internal Referrals

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

Environmental Health Officer

In the initial referral, Councils EHO raised concerns over the reliability of the acoustic compliance report.

An additional information letter was sent to the applicant requesting a supplementary acoustic report that did not model the sound at the nearest residential receivers but was based on actual noise readings for 12 dogs.

The applicant expressed that the Acoustic Compliance report was satisfactory in determining the noise levels at the receiver boundaries.

During the site inspection, Council staff attempted to replicate the detailed noise levels indicated in the Acoustic Compliance Report. For further comments on this please see above in the report under the heading *Actions of Assessing Staff*.

The data collected during the site inspection was generally consistent with the noise criteria put forward under the Acoustic Compliance Report.

However, the issue remains that the facility have not reached maximum operating capacity, and the modelled acoustic compliance reports do not give Council sufficient information to understand the noise impacts of the facility.

The Public Interest

The proposed modification is considered to be inconsistent with some of the provisions of the relevant Environmental Planning Instruments and Development Control Plans, is likely to cause adverse impacts to the amenity and rural character of the locality, and it is not suitable for the site and therefore is considered to be inconsistent with the public interest

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama - commencement

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

CSP Strategy: 2.1 Maintain the separation and distinct nature of local towns, villages and agricultural land

Delivery Program: 2.1.1 Develop and implement appropriate land use plans

Summary

Council has received a request to adopt a Planning Proposal (PP) to amend *Kiama Local Environmental Plan (LEP) 2011* to reclassify a portion of Lot 514 DP 1066359 - 10 Cole Street Kiama, a public reserve, from community to operational land to provide permanent vehicular access to a neighbouring allotment.

The proponent owns two adjoining parcels and is seeking to gain permanent vehicular access over the public reserve to Lot 105 DP 1206239.

In December 2020 Council became aware that the proponent had constructed a large steel-framed shed, concrete pad and undertaken earthworks without the necessary development consent. Accordingly, a 'Stop Work' Order was issued December 2020.

A Development Application (DA 10.2021.64.1) was lodged March 2021 seeking retrospective approval for the unauthorised works. This DA was ultimately refused in September 2021. One reason for refusal was that the proponent sought to provide access to the unauthorised shed via the public reserve.

The proposal fails to meet both the strategic merit and site-specific merit tests. It is recommended that Council not endorse this Proposal proceeding to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway Determination.

Financial implication

Council has adopted a fee structure for the submission and review of planning proposals. The relevant fees have been paid as required by Council's fees and charges schedule. The fees required to be provided by the proponent have been submitted and paid.

Policy

The assessment of requests for the rezoning of land requires the consideration of a number of Acts, Government Policies, Environmental Planning Instruments and planning documents.

Consultation (internal)

Internal consultation has been undertaken with Council's Property and Development Assessment teams.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

Communication/Community engagement

The *Kiama Community Participation Plan (CPP) 2019*, requires pre-Gateway consultation to be undertaken for projects that have not been identified by the Kiama Local Strategic Planning Statement (LSPS) 2020. The reclassification of 10 Cole Street from community to operational land has not been identified by the LSPS.

Council has 90 days to inform a proponent if it will support a Planning Proposal. Following this the proponent can then seek a determination from the NSW Department of Planning, Industry and Environment (DPIE).

The Planning Proposal was submitted and formally lodged on 30 September 2021. Due to the upcoming local government elections, the ordinary October 2021 Council meeting is the only opportunity for the elected Council to determine if it will support this Proposal. For this reason, pre-Gateway consultation was not undertaken. Additionally, Council has previously informed the proponent that a Planning Proposal to reclassify the site would not be supported, as echoed by the recommendation of this report.

Should Council support the reclassification of the site and a Gateway Determination be issued by the DPIE consultation with the community will occur in accordance with the Gateway Determination and the *Kiama Community Participation Plan*.

Attachments

- 1 PP-2021-5683 - Planning Proposal - 10 Cole Street KIAMA - VORTEX DEVELOPMENTS PTY LTD [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. Not endorse the proponent lead Planning Proposal PP-2021-5683 to reclassify a portion of Lot 514 DP 1066359 – 10 Cole Street, Kiama proceeding to the NSW Department of Planning, Industry and Environment for a Gateway Determination for the following reasons:
 - a. The Proposal fails to satisfy the Strategic Merit and Site-Specific Merit Tests as it is not justified by the Illawarra-Shoalhaven Regional Plan 2041 or the Kiama Local Strategic Planning Statement 2020,
 - b. The Proposal fails to satisfy the Planning Secretary's requirements as it is inconsistent with the Kiama Community Strategic Plan 2017-27, and
 - c. The Proposal fails to satisfy the NSW Department of Planning, Industry and Environment's Reclassification of Land Checklist as it is not the result of a strategic study and/or report.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

2. Inform the proponent of Council's resolution.
3. Commence enforcement action under the provisions of the *Environmental Planning and Assessment Act 1979* to have the unauthorised structures removed from Lot 105 DP 1206239.

BACKGROUND

Council has received a request to adopt a Planning Proposal (PP) to amend *Kiama Local Environmental Plan (LEP) 2011* to reclassify a portion of Lot 514 DP 1066359 - 10 Cole Street Kiama, from community to operational land in order to provide vehicular access to a neighbouring allotment.

The proponent owns 2 adjoining parcels and is seeking to gain permanent access over the public reserve to one of these parcels (Lot 105 DP 1206239).

In December 2020 Council became aware that the proponent had constructed a large steel-framed shed, concrete pad and undertaken earthworks without the necessary development consent. Accordingly, a 'Stop Work' Order was issued December 2020.

A Development Application (DA 10.2021.64.1) was lodged March 2021 seeking retrospective approval for the unauthorised works. This DA was ultimately refused September 2021. The DA was refused for the following reasons:

1. The use of the shed, primarily for domestic purposes, is inconsistent with the objectives of the RU2 Rural Landscape zone, which seeks to encourage sustainable primary industry production etc., and
2. Adequate arrangements for both stormwater drainage and vehicular access were not made.

Clause 6.12 of Kiama LEP 2011 outlines that development consent must not be granted if adequate arrangements cannot be made for:

- The supply of water,
- The supply of electricity,
- The disposal and management of sewage,
- Stormwater drainage or on-site conservation,
- Suitable road access.

As part of the DA process, Council's Development Assessment staff informed the proponent that suitable road access would need to be provided. The proponent's solicitors approached Council to determine if the adjoining public reserve could be used to provide suitable road access.

In consultation with the Executive Leadership Team, Council's Property Coordinator informed the proponent's solicitors that the reclassification of the public reserve to benefit a single landowner was not supported. Despite this, the proponent has lodged the attached Planning Proposal.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama - commencement (cont)

Site Details

The site is immediately adjacent to the east of Cole Street, Kiama. The site is currently vacant and comprises of a grassed site (refer to Figure 1). The site is currently zoned R2 Low Density Residential, under Kiama LEP 2011. Under Deposited Plan 1066359, the site is dedicated as a public reserve (refer to Figure 2).

Item 12.3



Figure 1: Subject Site

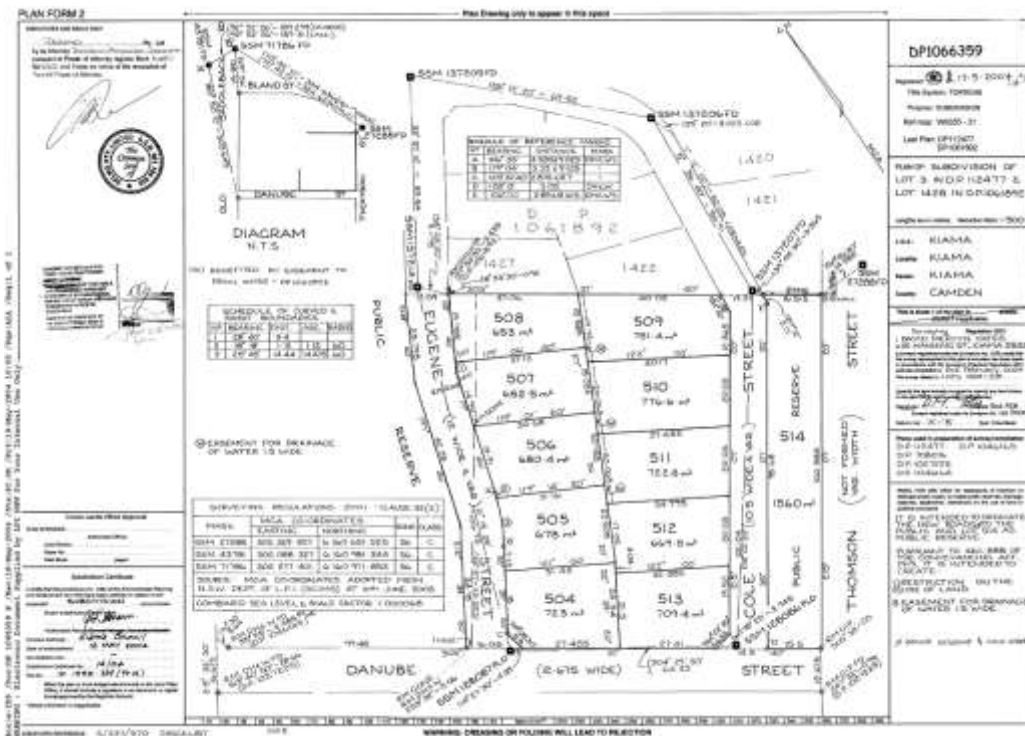


Figure 2: Deposited Plan 1066359

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
 - commencement (cont)

Intent of Planning Proposal

The intent of the Proposal is to provide permanent vehicular access over the public reserve to the neighbouring Lot 105 DP 1206239.

This Proposal seeks to amend Kiama LEP 2011 by reclassifying Lot 514 DP 1066359 - 10 Cole Street Kiama from community land to operational land.

Access Options for Lot 105 DP 1206239

As outlined above the intent of the Proposal to provide permanent vehicular access to the neighbouring Lot 105 DP 1206239. The options that could be considered to provide this access are as follows:

1. Access Via 15 Cole Street

The owner of Lot 105 DP 1206239 also owns the adjoining property at 15 Cole Street. By consolidating these two allotments legal vehicular access would be provided via 15 Cole Street.

While this option would provide legal vehicular access, difficulties arise with the practicality of this arrangement. A heritage listed dry stone wall runs along the south-western and south-eastern boundaries of 15 Cole Street (refer to Figure 3). This wall, or portions of, would need to be removed in order for vehicular access to be provided. As the dry stone wall is identified as a local heritage item by Kiama LEP 2011 a DA would need to be lodged and approved for the wall to be removed.



Figure 3: Approximate Location of Dry Stone Wall

Dry stone walls are listed as local heritage items within the Municipality due to their unique construction, their association with notable historic figures and as they delineate historic land holdings. Therefore, demolishing or relocating a dry stone wall would detrimentally impact upon the significance of the wall.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

2. Licence Agreement

The proponent's solicitors also enquired about the possibility to enter into a licence agreement to use the public reserve to provide legal vehicular access.

Clause 46 of the *Local Government Act 1993* outlines that Council can only enter into a licence on community land if the licence is for a purpose expressly authorised by the relevant Plan of Management.

As no Plan of Management exists for this piece of community land than no licence can be entered into.

This information was provided to the proponent's solicitors.

3. Reclassify & Purchase a portion of Public Reserve

As outlined below, a Planning Proposal to reclassify community land to operational land needs to firstly be strategically justified by the Illawarra-Shoalhaven Regional Plan and the Kiama Local Strategic Planning Statement and then have site-specific merit.

As demonstrated below, this proposal fails to satisfy both the Strategic and Site-specific Merit test as it is not justified by the Illawarra-Shoalhaven Regional Plan or the Kiama Local Strategic Planning Statement. The sole purpose of this Proposal is to the reclassify a public reserve to benefit a single landowner who has carried out unauthorised works.

4. Easement/Right of Way over a portion of Public Reserve

Under section 88K of the *Conveyancing Act 1919* the Supreme Court of NSW can impose an easement or right-of-way over land, including a public reserve. The Court may only make an order under section 88K if the easement is reasonably necessary for the effective use or development of the land to be benefited by the easement and if the Court is satisfied that:

- the use of the land having the benefit of the easement will not be inconsistent with the public interest.
- the owner of the land to be burdened by the easement (and each person having a registered interest in that land) can be adequately compensated for any loss or disadvantage arising from the imposition of the easement; and
- all reasonable attempts have been made by the applicant to obtain the easement having the same effect but have been unsuccessful.

ASSESSMENT OF THE PLANNING PROPOSAL

The Department of Planning, Industry and Environment's (DPIE) 'A guide to preparing local environmental plans' outlines that an assessment to determine whether the proposal has strategic merit and having met the strategic merit test, whether the site has site-specific merit. An assessment of the proposal's strategic merit has been carried out below.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

Strategic Merit

When assessing the proposal's strategic merit, the following questions need to be answered:

- Does the proposal give effect to the Illawarra-Shoalhaven Regional Plan?

Illawarra-Shoalhaven Regional Plan 2041

The Illawarra-Shoalhaven Regional Plan (ISRP) 2041 is the NSW Government's strategy for guiding land use planning decisions for the region over the 20 years to 2036.

The proponent's Proposal has incorrectly referred to the Illawarra-Shoalhaven Regional Plan 2015, which was repealed earlier this year. The proponent's Proposal argues that:

Whilst the Planning Proposal does not actively promote one or more of the goals of the ISRP 2015, it does not hinder the achievement of those goals and is therefore not inconsistent with the ISRP 2015.

It needs to be acknowledged that the question being asked is 'does the proposal give effect to the Regional Plan?' not 'does it hinder the Regional Plan?'.

This Proposal will not support the Objectives of the Regional Plan as it only seeks to provide permanent legal vehicular access to a private owned property over a public reserve.

- Does the proposal give effect to a local strategy that has been endorsed by the Department Planning, Industry and Environment?

Kiama Local Strategic Planning Statement 2020

At the June 2020 meeting, Council adopted the Kiama Local Strategic Planning Statement (LSPS) 2020. The Department have endorsed the Kiama LSPS by publishing it on the NSW Planning Portal. The Planning Priorities of the LSPS are focused around:

- managing sustainable growth,
- developing a diverse and resilient economy,
- protecting rural landscapes,
- mitigating and adapting to climate change and protecting our environment, and
- fostering vibrant and accessible places.

As the sole purpose of this Proposal is to the reclassify a public reserve to benefit a single landowner who has carried out unauthorised works it does not give effect to the priorities of the endorsed Kiama LSPS 2020.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

-
- Does the proposal respond to a change in circumstances, such as an investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?

No. This Proposal has been submitted in order for a private landholder to gain access over a public reserve in order to service unauthorized work.

As demonstrated above, the proposal fails to meet the strategic merit test and should not proceed to the DPIE for a Gateway Determination.

Site-Specific Merit

When assessing the site-specific merit test the following considerations are undertaken:

- The natural environment (including known significant environmental values, resources or hazards)

A small portion of the public reserve is mapped as bushfire prone land. There are no other known significant environmental values, resources or hazards on the site.

A significant portion of the adjoining property, which contains the unauthorized development, is mapped as bushfire prone land and is zoned E2 Environmental Conservation. These areas are also mapped as biodiversity areas by the Kiama LEP 2011. It is noted that some of the unauthorised structures are located within the E2 zoned portion of this property and are therefore prohibited.

For this reason, reclassifying the public reserve to provide permanent vehicular access to the unauthorised development is not appropriate due to the environmental constraints of the adjoining allotment.

- The existing uses, approved uses and likely future uses of land in the vicinity of the land subject to a proposal

The existing and approved uses in the vicinity of the public reserve are predominantly residential.

While the reclassification of a portion of the public reserve is not inconsistent with these uses the loss of community land to to benefit a single landowner who has carried out unauthorised works is a dangerous precedent.

- The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provisions.

This proposal will not result in any additional demands on public infrastructure.

Planning Secretary Requirements

In the case of proposed LEPs which are being prepared solely to classify or reclassify public land, the Planning Secretary has issued the following requirements as to the specific matters that must be addressed in the justification for the planning proposal (EP&A Act s. 3.33(3)) in the NSW DPIE's "*Guide to Preparing Local Environmental Plans*":

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

a) Is the planning proposal the result of a strategic study or report?

No - This PP is not the result of a strategy study or report. This has been addressed above, as part of the strategic merit assessment.

b) Is the planning proposal consistent with the local council's community plan, or other local strategic plan?

The proponent is arguing that this Planning Proposal is consistent with the Kiama Council Community Strategic Plan (CSP) 2017-2027 as Council will benefit financially through the payment of remuneration in exchange for the granting of access (4.1 - Council is financially sustainable). This point is refuted as any remuneration associated with the granting of access would not significantly contribute to Council meeting the seven 'Fit for the Future' financial, health and sustainability ratios.

The CSP also includes actions to:

- 1.1.7 - manage recreation and open space infrastructure to cater for current and future generations; and
- 2.2.2 – protect and maintain environmentally significant natural areas.

The loss of community land to benefit a single landowner, in order to provide access to an unauthorised structure located within an environmentally significant area, is inconsistent with these actions.

c) If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided

The intent of this Planning Proposal is to reclassify a Council owned property from Community Land to Operational Land. The NSW DPIE Practice Note PN 16-001 "Classification and reclassification of public land through a local environmental plan" states that the:

"Interests in land refers to property ownership as well as rights and privileges affecting land, such as leasehold, easements, covenants and mortgages. For the purpose of reclassification through an LEP, 'interests' means trusts, estates, dedications, conditions, restrictions and covenants affecting the land."

The proponent has identified that the site is listed as a public reserve in Deposited Plan 1066359. The proponent does not seek to extinguish this interest.

d) The concurrence of the landowner, where the land is not owned by the planning proposal authority

This is owned by Kiama Municipal Council who is also the planning proposal authority. Concurrence is therefore not required.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

Reclassification of Land Checklist

In addition to the Planning Secretary's requirements above, the NSW Department of Planning, Industry and Environment has published an '*LEP Practice Note PN 16-001*' dated 5th October 2016, relating to the *Classification and reclassification of public land through a local environmental plan*. This practice note contains an information checklist for proposals to classify or reclassify public land through an LEP. The proponent has provided an assessment against this checklist. This assessment has been reviewed by staff and its conclusion is not agreed with. The checklist requires the following matters to be considered:

- the strategic and site specific merits of the reclassification,
- whether the proposal is the result of a strategic study/report, and
- whether the proposal is consistent with Council's CSP.

As outlined above, this Proposal fails to satisfy the Strategic and Site-Specific Merit Tests, is not the result of a strategic study/report and is inconsistent with Council's CSP.

Section 9.1 Ministerial Directions

Under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the Minister for Planning is able to issue directions that apply to the preparation of PP.

The proponent's Planning Proposal has indicated that the PP is consistent with all relevant Ministerial Directions. This is refuted.

Direction 4.4 – Planning for Bushfire Protection

Direction 4.4 – Planning for Bushfire Protection states that prior to undertaking community consultation the planning authority must consult with the Commissioner of the NSW Rural Fire Service. This requirement is raised in order to inform the elected Council that if they resolve to proceed with this Planning Proposal consultation with the Commissioner of the NSW Rural Fire Service will be required.

Direction 5.10 – Implementation of Regional Plans

Direction 5.10 – Implementation of Regional Plans states that a PP must be consistent with a Regional Plan released by the Minister for Planning. A PP may be inconsistent with this direction if it is:

- Is of minor significance, and
- The planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.

As outlined above, the proponent has not referred to the current Illawarra-Shoalhaven Regional Plan in their submission.

Report of the Director Environmental Services

12.3 Planning Proposal - Reclassify Lot 514 DP 1066359 - 10 Cole Street, Kiama
- commencement (cont)

State Environmental Planning Policies

With the repeal of Clause 6 of the *State Environmental Planning Policy No 55 – Remediation of Land* on 13th December 2019 there are now no longer any State Environmental Planning Policies which apply when considering Planning Proposals.

Delegations

Should Council be of a mind to support this Planning Proposal, they are able to request plan making delegation, under Section 3.32 of the *Environmental Planning and Assessment Act 1979*.

Conclusion

The intent of the Proposal is to provide permanent vehicular access over the public reserve to the neighbouring Lot 105 DP 1206239. This Proposal seeks to amend Kiama LEP 2011 by reclassifying Lot 514 DP 1066359 - 10 Cole Street Kiama from community land to operational land.

As demonstrated above, this Proposal fails to satisfy both the Strategic and Site-specific Merit test as it is not justified by the Illawarra-Shoalhaven Regional Plan or the Kiama Local Strategic Planning Statement. The Proposal also fails to satisfy the Planning Secretary's requirements and the DPIE Reclassification of Land Checklist as it is inconsistent with the Kiama CSP and is not the result of a strategic study/report.

The sole purpose of this Proposal is to the reclassify a public reserve to benefit a single landowner who has carried out unauthorised works on an adjoining allotment.

It is recommended that Council not endorse this Proposal proceeding to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway Determination.

PLANNING PROPOSAL REQUEST



**LOT 514 DP 1066359
COLE STREET, KIAMA**

Prepared by

Plannex Environmental Planning

on behalf of Terry and Fay Browne

September 2021

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Planning Proposal Request
Cole Street, Kiama

September 2021

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1.0 INTRODUCTION

1.1 Introduction

Plannex Environmental Planning has been engaged by Terry and Fay Browne to prepare a Planning Proposal seeking to reclassify part of a public reserve at Lot 514 DP 1066359 from 'community land' to 'operational land' under the provisions of the Local Government Act, 1993.

Mr and Mrs Browne are the owners of Lot 101 DP 1206239 No.15 Cole Street, Kiama, which adjoins the public reserve to its north-east, and an adjoining Lot 105 DP 1206239 located to the rear of No.15 Cole Street and east of the public reserve. Whilst No.15 Cole Street has direct public road access from Cole Street, Lot 105 DP 1206239 does not have co-incidental legal and practical access to the surrounding public road network.

The purpose of the proposed reclassification is to enable the granting of a Right of Carriageway, or alternatively a licence or the purchase of land, for private access across the north-eastern end of the public reserve to provide access to Lot 105 DP 1206239.

This Planning Proposal report identifies the objectives and intended outcomes of the proposal; offers an explanation of the proposed amendment to Kiama Local Environmental Plan 2011; and, provides detailed justification for the proposed amendment.

This Planning Proposal report has been prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act, 1979 (the "EP&A Act"); and, relevant Department of Planning, Industry and Environment (DPIE) guidelines, including 'Planning Proposals: A guide to preparing planning proposals' (2018) and 'Local Environmental Plans: A guide to preparing local environmental plans' (2018).

1.2 Subject Site

The subject site is a narrow public reserve extending along the south-eastern side of Cole Street at Kiama (see Figure 1). The subject site is described as Lot 514 in Deposited Plan No.1066359 Cole Street and is known as "Bulga Reserve". The subject site is essentially a rectangular-shaped allotment of land with a total frontage of 100.85m to Cole Street along its north-western boundary and depths of between 1.5m (at its south-western end) and 16.515m (at its north-eastern end). The subject site has an area of 1,560m².

The subject site was dedicated to Kiama Council as a public reserve upon registration of DP 1066359 on 17th May 2004 and is classified as 'community land' in accordance with Division 1 of Part 2 of Chapter 6 of the Local Government Act, 1993 (the "LG Act"). The subject site is not currently covered by a site-specific Plan of Management and is also omitted from the generic *Community Land Plan of Management – Parks (Neighbourhood)*.

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Figure 1 Location Plan



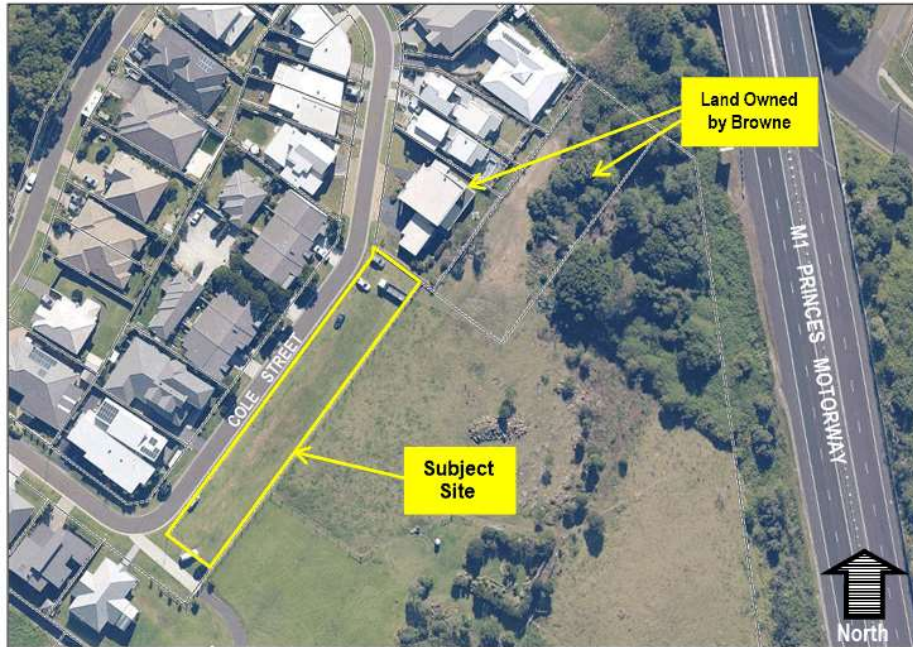
Source - SIX Maps

The subject site is a gently sloping, grassed public reserve area and does not contain any vegetation or physical improvements. The boundaries of the subject site are defined by post-and-wire along its south-eastern side and a dry stone wall along its north-western side. The south-western boundary and Cole Street frontage are unfenced.

Photographs of the subject site are contained at Appendix A.

The subject site is adjoined to its south-west and south-east by a ~3 hectare rural-residential allotment containing a dwelling house and machinery shed and occupying the south-eastern slopes between the subject site and the M1 Princes Motorway. The property to the north-east is a standard residential allotment containing a two-storey dwelling house. The land opposite the subject site, on the north-western side of Cole Street, contains one or two-storey detached dwelling houses and a multi dwelling housing development comprising eight (8) dwellings.

Figure 2 Site Context



Source - SIX Maps

1.3 Existing Planning Controls

1.3.1 Local Government Act, 1993

As mentioned previously, the subject site was dedicated to Kiama Council as a public reserve in 2004 and is currently classified as 'community land' under the provisions Division 1 of Part 2 of Chapter 6 of the LG Act.

1.3.2 Kiama Local Environmental Plan 2011

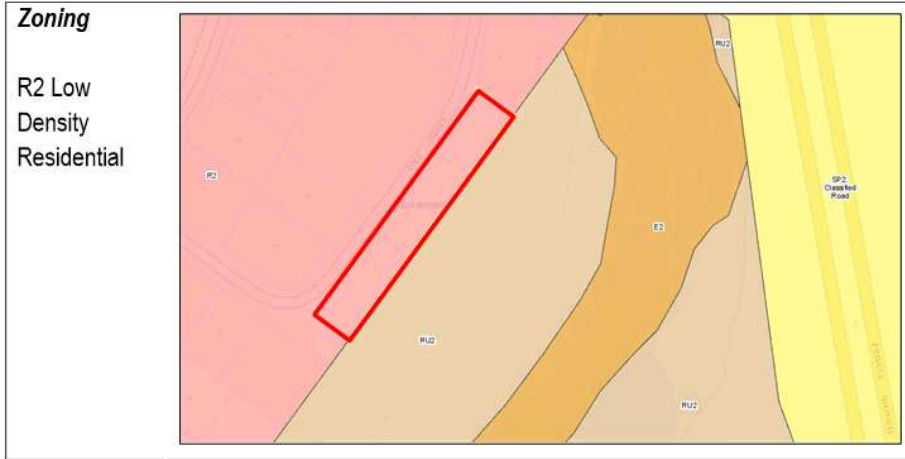
The subject site is affected by the provisions of Kiama Local Environmental Plan 2011 (KLEP 2011).

Dry stone walls generally in the Kiama area are listed in Schedule 5 to KLEP 2011 as items of environmental heritage having local significance (item I64). The dry stone wall along the north-eastern boundary of the subject site is therefore affected by the heritage provisions of KLWP 2011.

Under KLEP 2011 the following specific planning controls apply to the subject site (shown edged in red on the map extracts):-

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2.0 OBJECTIVES & INTENDED OUTCOMES

The objective of this Planning Proposal is to reclassify a 6m wide strip of land along the north-eastern boundary of the subject site from 'community land' to 'operational land' under the provisions of the LG Act (see Figure 3).

Figure 3 *Proposed Reclassification*



The intended outcome of the Planning Proposal is to enable the creation of a formal access across the subject site to provide a link between the north-western terminus of an existing 6m wide Right of Carriageway (RoW) and Cole Street, by way of the creation of a Right of Carriageway, or a licence agreement, or the sale and purchase of that land. The existing 6m wide Right of Carriageway benefits Lot 105 DP 1206239 but does not provide a connection to a public road. The creation of the proposed access will provide this legal connection between Lot 105 DP 1206239 and Cole Street, thereby enabling access to that allotment.

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3.0 EXPLANATION OF THE PROPOSED PROVISIONS

Schedule 4 of KLEP 2011 lists land which has been reclassified as either 'operational land' or 'community land'. This Planning Proposal seeks to amend KLEP 2011 by listing the subject site in Part 1 of Schedule 4 as land which has been reclassified to 'operational land'.

The proposed amendment to Part 1 of Schedule 4 is outlined below:-

Part 1 Land classified, or reclassified, as operational land – no interests charged

Column 1 Locality	Column 2 Description
<i>Cole Street, Kiama</i>	<i>Part of Lot 514, DP 1066359, identified as "Operational Land" on the Land Reclassification (Part Lots) Map</i>

4.0 JUSTIFICATION FOR THE PLANNING PROPOSAL

This section of the report examines the justification for the Planning Proposal in terms of the need for the proposal; how it sits within the strategic planning framework; its likely environmental, social and economic impacts; and, its implications for State and Commonwealth government agencies. This section is structured as responses to the questions contained within the DPIE's 'A guide to preparing planning proposals' (2018).

4.1 Planning Secretary's Requirements

In the case of Planning Proposals which are being prepared solely to classify or reclassify public land, pursuant to sub-section 3.33(3) of the EP&A Act, the Planning Secretary has issued requirements as to specific matters which must be addressed in the justification for a Planning Proposal. These matters are as follows:-

4.1.1 *Is the planning proposal the result of a strategic study or report?*

No. The Planning Proposal is not the result of a specific strategic study or report.

4.1.2 *Is the planning proposal consistent with the local council's community plan, or other local strategic plan?*

As outlined in section 4.4.2 of this report, the Planning Proposal is not inconsistent with Kiama Council's *Community Strategic Plan 2017-2027* and *Kiama Local Strategic Planning Statement 2020*.

4.1.3 *If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided.*

DPIE's practice note PN16-001 *Classification and reclassification of public land through a local environmental plan* identifies interests in land as referring to property ownership as well as any other rights or privileges affecting the land, including leasehold, easements, trusts, estates, dedications, conditions, restrictions, covenants and mortgages. Apart from the current ownership of the subject site by Kiama Council, there are no other interests in the land by Council or other parties. Therefore, there are no interests proposed to be extinguished as a result of the Planning Proposal.

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4.1.4 The concurrence of the landowner, where the land is not owned by the planning proposal authority.

The Council of the Municipality of Kiama is the registered owner of the subject site and the planning proposal authority. The separate concurrence of the landowner is therefore not required.

4.2 Reclassification of Land Checklist

DPIE has produced a practice note PN16-001 *Classification and reclassification of public land through a local environmental plan* which relates directly to the process of reclassifying public land through a local environmental plan (LEP). The purpose of the practice note is to provide guidance on the process for classifying and reclassifying public land, with the emphasis being to demonstrate strategic and site specific merit.

The practice note includes a comprehensive information checklist of matters to be addressed for Gateway consideration, which are in addition to the matters listed in sections 4.1, 4.3, 4.4, 4.5 and 4.6 of this report. The table below provides a summary of the consideration of checklist items in relation to the Planning Proposal.

Table A Reclassification of Land Checklist

Matter	Consideration
<i>The current and proposed classification of the land</i>	The subject site is currently classified as 'community land'. It is proposed to reclassify part of the subject site as 'operational land'.
<i>Whether the land is a 'public reserve' (defined in the LG Act)</i>	The subject site is a "public reserve" as defined in the LG Act.
<i>The strategic and site specific merits of the reclassification and evidence to support this</i>	The site specific merits of the reclassification are outlined in section 4.3.1 of this report.
<i>Whether the planning proposal is the result of a strategic study or report</i>	The Planning Proposal is not the result of a strategic study or report.
<i>Whether the planning proposal is consistent with council's community plan or other local strategic plan</i>	The Planning Proposal's consistency with Council's community strategic plan and other strategic plans is outlined in section 4.4.2 of this report.
<i>A summary of council's interests in the land, including: - how and when the land was first acquired (eg. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution) - if council does not own the land, the land owner's consent; - the nature of any trusts, dedications etc</i>	The subject site was dedicated to Council as a public reserve upon registration of DP 1066359 on 17 th May 2004. Kiama Council is the owner of the subject site. There are no known trusts, dedications etc.
<i>Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why</i>	There are no interests in the subject site which are proposed to be discharged.

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Table A (cont)

Matter	Consideration
<i>The effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged)</i>	The proposed reclassification affects a strip of land 6m wide (approx. 96m ² in area) at the north-eastern boundary of the subject site and does not change the nature of the land – it will remain a public reserve – and does not affect Council’s ability to embellish or improve the balance of the public reserve for the use and enjoyment of the community.
<i>Evidence of public reserve status or relevant interests, or lack thereof applying to the land (eg. electronic title searches, notice in a government gazette, trust documents)</i>	A copy of DP 1066359 and the Title Certificate for Lot 514 are attached at Appendices B & C.
<i>Current use(s) of the land, and whether uses are authorised or unauthorised</i>	The subject site is currently vacant. The site is grassed but does not support any other vegetation or embellishments and improvements.
<i>Current or proposed lease or agreements applying to the land, together with their duration, terms and controls</i>	There are no current leases identified on the Title Certificate.
<i>Current or proposed business dealings (eg. Agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time)</i>	The purpose of the reclassification is to enable the creation of a 6m wide access linking Cole Street to an existing 6m wide Right of Carriageway so as to provide Lot 105 DP 1206239 with co-incidental legal and practical access to the public road system.
<i>Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy)</i>	There is no rezoning proposed by the Planning Proposal. The subject site will retain its R2 Low Density Residential zoning.
<i>How council may or will benefit financially, and how these funds will be used</i>	It is expected that Council will receive remuneration for the creation of the formal access. What these funds are and how they will be used will need to be determined by Council.
<i>How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal</i>	How any funds generated from the reclassification and creation of a formal access will be utilised will need to be determined by Council.
<i>A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot</i>	The reclassification does not apply to all of the subject site and an amendment to the Land Reclassification (Part Lots) Map is proposed.
<i>Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable</i>	No comments have been sought from government agencies at this stage. The subject site was dedicated by a private developer and not a government agency.

4.3 Need for the Planning Proposal

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

No. The Planning Proposal is not the result of an endorsed local strategic planning statement, or a specific strategic study or report. The proposal has been initiated by the owner of an adjacent allotment of land as a means of providing co-incidental legal and practical access to that land.

Lot 105 DP 1206239 originally existed as Lot 4 DP 1165344 and was created by registration of a road closure and first title creation plan on 30th May 2011 (see Appendix D). Prior to this time, Lot 4 was part of the Thomson Street road reserve. Lot 4 had a notional frontage to Bland Street, with physical access from Bland Street to Lot 4 being impossible due to the steep-sided cutting within which the public road sits.

The registration of DP 1165344 post-dated the creation of 'Bulga Reserve' (DP 1066359). Being a subdivision for the purposes of road closure, development consent and/or a Subdivision Certificate were not required before DP 1165344 could be registered. The registered plan created a 6m wide Right of Carriageway over Lot 3 DP 1165344 in favour of Lot 4. However, this Right of Carriageway only extended to the boundary of the adjoining public reserve and did not continue through to Cole Street nor did not extend to the eastern end of Danube Street – which would have been the most logical means of providing access to Lot 4 from the public road system. It is clear that the lack of provision of access to Lot 4 was a grave anomaly in the preparation of DP 1165344, and perhaps it would have been picked up by Council had the subdivision which created Lot 4 been of a type which required development consent and/or Subdivision Certificate approval.

On 14th July 2017, a plan of subdivision was registered as DP 1206239 (see Appendix E) creating the current Lot 105. The subdivision provided for a boundary adjustment between the former Lot 4 DP 1165344 and adjoining allotments to the north-west, to realign the common boundary to follow the alignment of an existing dry stone wall. Lot 105 maintains the benefit of the previously granted 6m wide Right of Carriageway (see Title search at Appendix E).

Lot 105 DP 1206239 does not currently have co-incidental legal and practical access. The property does have a notional frontage to Bland Street along its north-eastern boundary, but it is physically impossible to access the site from Bland Street. The property has a Right of Carriageway over the land that adjoins to the south-east and south-west, but as explained above, this Right of Carriageway does not provide a linkage to the public road system. Whilst Lot 105 is in the same ownership as an adjoining property to the north-west (No.15 Cole Street) which does have a direct frontage and access to Cole Street, a heritage-listed dry stone wall is located along the entire common boundary between the two, preventing the creation of an access without detrimentally impacting the integrity of the wall.

Options for the provision of legal access to Lot 105 DP 1206239 have been explored as follows:-

(a) Access via No.15 Cole Street

Access through No.15 Cole Street is physically achievable, with some engineering construction works to address a difference in levels along the side of the garage. However, access would require the creation of a break in an existing, in-tact heritage listed dry stone wall. The creation of such an access break through the wall is not considered to be desirable and would disrupt the integrity of the wall and undermine its heritage value.

(b) Access via a Right of Carriageway over Lot 1 DP 1231462 No.25 Cole Street

Access from Cole Street at the south-western end of the public reserve would require the creation of a 6m wide Right of Carriageway across No.25 Cole Street, running the length of the south-eastern boundary of the public reserve. This option is not considered to be a desirable one as it would impact on over 590m² of rural land which is used for small-scale agricultural purposes.

(c) Access across “Bulga Reserve”

Access from Cole Street across the public reserve is seen as the preferred option as it follows the shortest possible route to Cole Street; it acts as a natural and logical extension of the existing 6m wide Right of Carriageway; and, it is located at the very north-eastern end of the public reserve, thereby minimising encroachment into the reserve and any impacts on future embellishment or development of the reserve as a public recreation space.

The reclassification would afford Council with various options to provide access to Lot 105, including:-

- granting a Right of Carriageway in favour of Lot 105; or
- entering into a licence agreement over that part of the reserve, which could be a temporary licence extinguishable upon the creation of a viable alternative access option becoming available; or
- Council may opt to sell the land and generate additional revenue which would enable it to provide improved amenities to the community without impacting on the usability of ‘Bulga Reserve’.

In order to pursue the creation of a legal and legitimate access across the public reserve it is necessary for the route of the proposed access to be reclassified to ‘operational land’.

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

As explained above, the reclassification of a 6m wide strip of land along the north-eastern boundary of the subject site to ‘operational land’ is the only means by which formal access can be obtained from Cole Street to Lot 105 DP 1206239 via the grant of a Right of Carriageway.

4.4 Relationship to Strategic Planning Framework

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

The Illawarra Shoalhaven Regional Plan 2015 (ISRP 2015) identifies the vision for the Illawarra-Shoalhaven region as being for “a sustainable future and a resilient community, capable of adapting to changing economic, social and environmental circumstances”. To achieve this vision, the ISRP 2015 sets the following specific goals:-

Goal 1: A prosperous Illawarra-Shoalhaven

Goal 2: A region with a variety of housing choices, with homes that meet needs and lifestyles

Goal 3: A region with communities that are strong, healthy and well-connected

Goal 4: A region that makes appropriate use of agricultural and resource lands

Goal 5: A region that protects and enhances the natural environment

The Planning Proposal is for the reclassification of a narrow strip of public reserve land from 'community land' to 'operational land' to enable the provision of formal access across that land to an adjacent privately-owned allotment of land which currently does not have co-incidental legal or practical access from the public road system. Whilst the Planning Proposal does not actively promote one or more of the goals of the ISRP 2015, it does not hinder the achievement of those goals and is therefore not inconsistent with the ISRP 2015.

4.4.2 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

(a) Kiama Local Strategic Planning Statement 2020

The *Kiama Local Strategic Planning Statement 2020* (KLSPS) gives effect to the ISRP 2015 by implementing the directions and actions of the regional plan at local level. The KLSPS sets the land use framework for Kiama's economic, social and environmental land use needs for the next 20 years, identifying the following Planning Priorities:-

PP1 Plan for and balance housing supply and demand

PP2 Champion architectural excellence

PP3 Connect the Municipality

PP4 Support the delivery of required infrastructure

PP5 Foster economic diversity

PP6 Manage tourism development and the visitor economy

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- PP7 Strengthen commercial centres*
- PP8 Protect viable agriculture and agricultural lands*
- PP9 Protect scenic rural landscapes*
- PP10 Conserve areas of environmental significance*
- PP11 Responsibly manage resources and waste*
- PP12 Plan for and adapt to the impacts of natural hazards and the changing climate*
- PP13 Support and create vibrant places*
- PP14 Identify and safeguard areas and items of heritage significance*
- PP15 Celebrate and protect local character*

The Planning Proposal involves a reclassification of a small portion of an existing public reserve from 'community land' to 'operational land' to enable the granting of a Right of Carriageway to provide access to an otherwise land-locked allotment of land. The Planning Proposal will not contravene or offend any of the Planning Priorities. The Planning Proposal will therefore not prevent the implementation of the KLSPS.

(b) Kiama Community Strategic Plan 2017-2027

The *Kiama Community Strategic Plan 2017-2027* (KCSP) sets out the values, principles and mission of Council to achieve the community vision of "*working together for a healthy, sustainable and caring community*". Achieving the community vision requires a focus on the following objectives:-

- 1.0 A healthy, safe and inclusive community*
- 2.0 Well planned and managed spaces, places and environment*
- 3.0 A diverse, thriving economy*
- 4.0 Responsible civic leadership that is transparent, innovative and accessible*

The strategies for achieving these goals that are relevant to this Planning Proposal include:-

2.1 Maintain the separation and distinct nature of local towns, villages and agricultural land

The Planning Proposal seeks to reclassify land within the existing town boundaries of Kiama and does not seek to extend urban development into the surrounding rural lands. The Planning Proposal will therefore not compromise the achievement of this strategy.

4.1 Council is financially sustainable

Council will benefit financially from the Planning Proposal through the payment of remuneration in exchange for the granting of the Right of Carriageway.

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(c) Community Land Plan of Management – Parks (Neighbourhood)

Council has adopted a Plan of Management (PoM) for various neighbourhood parks throughout the Kiama LGA. The PoM identifies sixty (60) Council properties in Kiama Downs, Kiama, Kiama Heights, Werri Beach, Gerringong, Gerroa and Jamberoo. The subject site is not one of the neighbourhood parks identified in the PoM.

As the development and use of the subject site is not guided by a PoM, the proposed creation of a Right of Carriageway across the subject site to service Lot 105 DP 1206239 will not contravene the provisions of a relevant PoM.

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

The Planning Proposal has been reviewed against all State Environmental Planning Policies (SEPPs) to determine its consistency or otherwise with those SEPPs. The Table in Appendix G provides a summary of that review.

With regard to SEPP No.55 – *Remediation of Land*, the subject site is not located within an 'investigation area' within the meaning of the Contaminated Land Management Act 1997, and development for a purpose referred to in Table 1 of the contaminated land management guidelines is not currently being undertaken on the land and is not known to have been undertaken on the land.

The Planning Proposal will not change the current residential zoning of the land and only seeks reclassification for the purposes of enabling formal access across the subject site.

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

The Planning Proposal has been reviewed in light of the Directions issued by the Minister pursuant to Section 9.1 of the EP&A Act. The Planning Proposal has been assessed as being consistent with the relevant Section 9.1 Directions, as outlined in the summary Table in Appendix H, with the following Directions being of particular relevance:-

2.3 Heritage Conservation	The subject site is not identified as a heritage item and is not located within a heritage conservation area. The dry stone wall along the north-eastern boundary of the site is a heritage item and is protected under the current provisions of clause 5.10 of Kiama LEP 2011.
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2.6 Remediation of Contaminated Land	<p>The subject site is not located within an 'investigation area' within the meaning of the Contaminated Land Management Act 1997, and development for a purpose referred to in Table 1 of the contaminated land management guidelines is not currently being undertaken on the land and is not known to have been undertaken on the land.</p> <p>The Planning Proposal will not change the current residential zoning of the land and only seeks reclassification for the purposes of enabling formal access across the subject site. Accordingly, the proposal is considered to be consistent with this Direction.</p>
4.4 Planning for Bushfire Protection	<p>The very north-eastern corner of the subject site is mapped as containing bushfire prone land. The proposed reclassification of this part of the site to 'operational land' for the purposes of enabling the granting of a Right of Carriageway over that land does not heighten the risk of bushfire.</p>

4.5 Environmental, Social and Economic Impact

4.5.1 *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 subject site does not contain any critical habitat, threatened species, threatened populations or endangered ecological communities. As shown in the photographs in Appendix A, the entire subject site is a cleared, vacant, grassed area which is regularly mown and maintained by Council.

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

The very north-eastern corner of the subject site is mapped as bushfire prone land. The proposed reclassification of this part of the site to 'operational land' for the purposes of enabling the granting of a Right of Carriageway over that land does not heighten the risk of bushfire. The subject site is not affected flooding or landslip hazards.

The subject site occupies highly a modified landform and is unlikely to contain any items of Aboriginal cultural heritage significance. The dry stone wall located along the north-eastern boundary of the subject site is identified as a heritage item under KLEP 2011 and will be protected under the provisions of the planning instrument.

The reclassification of the subject site and creation of a Right of Carriageway will not prevent Council from undertaking future landscaping and embellishment of the public reserve for the benefit of the community. The 'operational land' classification and Right of Carriageway will be confined to a 6m wide strip of land along the north-eastern boundary of the subject site. At approximately 96m² in area, the Right of Carriageway will still leave some 1,464m² of contiguous public reserve area available for exclusive public use.

4.5.3 *Has the planning proposal adequately addressed any social and economic effects?*

The Planning Proposal seeks to reclassify a 6m wide strip of land along the north-eastern boundary of the subject site from 'community land' to 'operational land' to provide access to an adjacent property and is not expected to have any significant social or economic effects.

From a social perspective, the entirety of the subject site will remain a public reserve and there will be no restriction on the public being able to retain access to the reclassified portion of the site, with the boundaries of the proposed Right of Carriageway to remain unfenced.

On the economic front, Council will directly benefit financially from the Planning Proposal through the payment of remuneration in exchange for the granting of the Right of Carriageway.

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4.6 State and Commonwealth Interests

4.6.1 *Is there adequate public infrastructure for the planning proposal?*

The purpose of the Planning Proposal is to enable the creation of a Right of Carriageway over the subject site to provide vehicular access from Cole Street to the adjacent Lot 105 DP 1206239.

Cole Street is a bitumen-sealed, two-way public road with rolled kerb to either side. Access from Cole Street to the proposed Right of Carriageway does not conflict with any street infrastructure (eg drains, light poles etc), and longitudinal gradients along the route of the proposed Right of Carriageway are acceptable.

4.6.2 *What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?*

No preliminary consultation has been undertaken with State or Commonwealth public authorities in the preparation of this Planning Proposal. It is anticipated that the Gateway determination will identify the relevant State and Commonwealth public authorities to be consulted during the public exhibition period.

5.0 MAPPING

In addition to amending the wording of Schedule 4 as outlined in section 3.0 of this report, the Planning Proposal will also require the *Land Reclassification (Part Lots) Map* to be amended in the manner indicated by the map in Figure 4 below.

Figure 4 Amendment to Land Reclassification (Part Lots) Map



6.0 COMMUNITY CONSULTATION

The Minister's Gateway determination will identify the level of public consultation required for the Planning Proposal, and may require:-

- notification of the Planning Proposal in a newspaper circulating in the locality;
- notification on Kiama Council's website; and
- notification in writing to affected and adjoining landowners.

The written notice of the Planning Proposal is required to:-

- a) give a brief description of the objectives or intended outcomes of the Planning Proposal;
- b) indicate the land affected by the Planning Proposal;
- c) state where and when the Planning Proposal can be inspected;
- d) provide Kiama Council's details for the receipt of submissions;
- e) indicate the last date for receipt of submissions; and
- f) confirm whether delegation for making the local environmental plan amendment has been issued to Council by the Minister.

The DPIE's '*A guide to preparing local environmental plans*' outlines the consultation required for different types of planning proposals. Planning Proposals that involve the reclassification of land are required to be placed on public exhibition for a period of at least 28 days.

During the exhibition period, the following material must be made available for inspection:-

- the planning proposal in the form approved for community consultation by the Gateway determination;
- the Gateway determination; and
- any information or technical information relied upon by the planning proposal.

As this Planning Proposal is for the reclassification of 'community land' to 'operational land', Council is obliged by the LG Act to hold a public hearing. Following the conclusion of the public exhibition period and at least 21 days before the date of the hearing, Council is required to give notice of the arrangements for the public hearing in a local newspaper and (in writing) to anyone who requested a public hearing when making a submission on the Planning Proposal.

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7.0 CONCLUSION

This Planning Proposal seeks to amend KLEP 2011 by reclassifying a 6m wide strip of land along the north-eastern boundary of “*Bulga Reserve*” from ‘community land’ to ‘operational land’ in order to enable the provision of co-incidental legal and practical access from Cole Street to the otherwise land-locked Lot 105 DP 1206239 via either a Right of Carriageway, licence agreement, or the sale and purchase of that land.

Various options for the provision of access to Lot 105 have been explored, with the proposed route along the north-eastern boundary of the public reserve being the preferred option.

This report has reviewed the Planning Proposal in light of the State and local strategic planning framework, and has determined that the proposal is consistent with the ISRP 2015, KLSPS, relevant SEPPs and s9.1 Directions. As the Planning Proposal seeks to reclassify ‘community land’ it has also been reviewed having regard to the Planning Secretary’s requirements and the applicable planning practice note, and has been found to be satisfactory.

The Planning Proposal is recommended to Council for referral to the Department of Planning, Industry and Environment for Gateway Determination.



Glenn Debnam BTP (UNSW) RPIA
**Town Planner
Director**

13th September 2021

APPENDIX A

Site Photographs



PHOTO 1 – View of 'Bulga Reserve' looking southward, with Cole Street to the right.



PHOTO 2 – View of 'Bulga Reserve' looking northward, with Cole Street to the left.



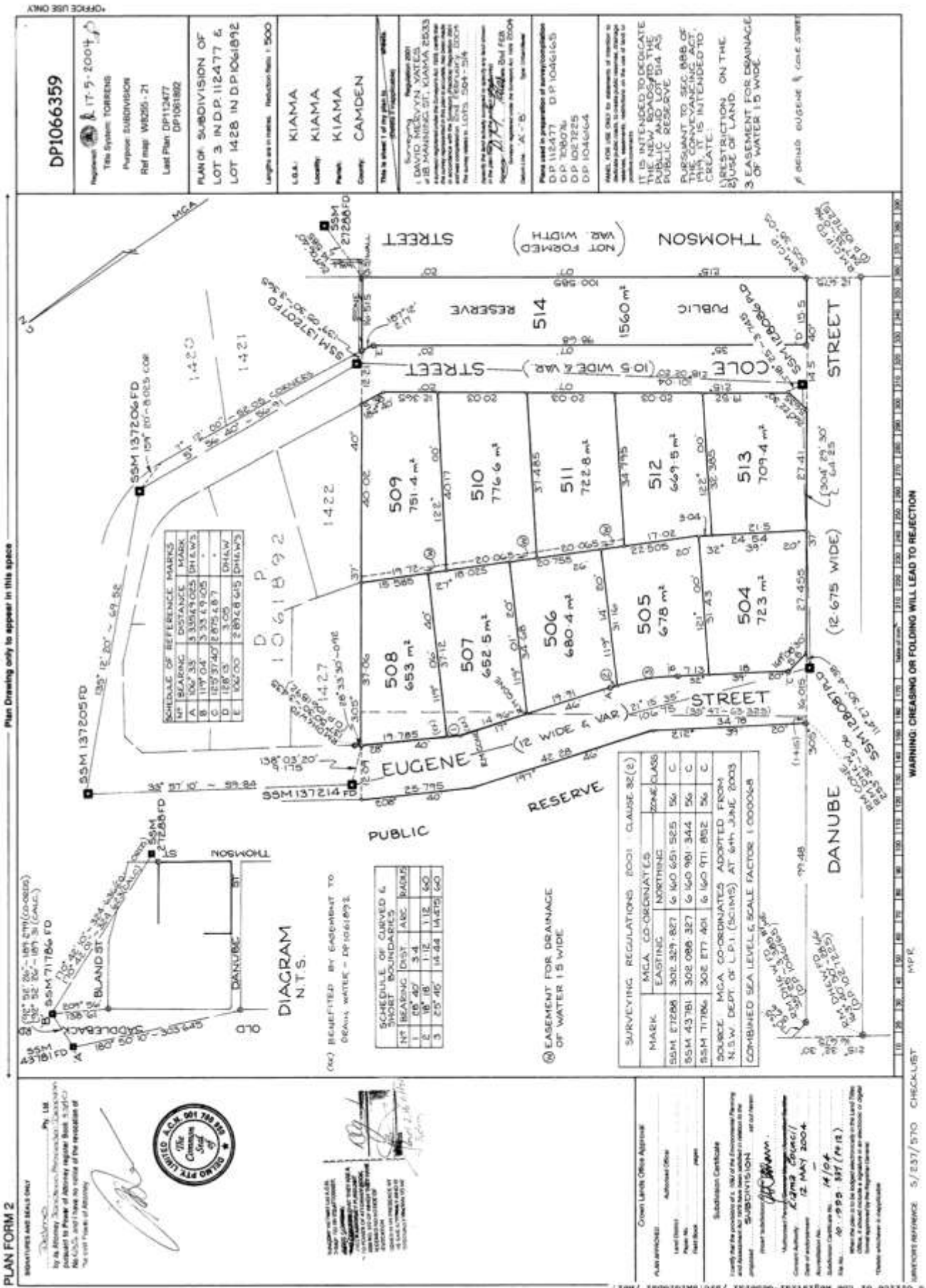
PHOTO 3 – The route of the proposed access, with the dry stone wall defining the boundary between 'Bulga Reserve' and No.15 Cole Street, Kiama.



PHOTO 4 – Looking down the route of the proposed access, along the north-eastern edge of 'Bulga Reserve' (defined by the dry stone wall at the left). The gate in the centre of the photograph provides access to the western terminus of the existing Right of Carriageway.

APPENDIX B

Copy of DP 1066359



Item 12.3
Attachment 1

APPENDIX C

Title Search - Lot 514 DP 1066359



Order number: 70131228
Your Reference: 2020.097
02/09/21 16:34



NSW LRS - Title Search

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 514/1066359

SEARCH DATE	TIME	EDITION NO	DATE
2/9/2021	4:34 PM	1	18/5/2004

LAND

LOT 514 IN DEPOSITED PLAN 1066359
AT KIAMA
LOCAL GOVERNMENT AREA KIAMA
PARISH OF KIAMA COUNTY OF CAMDEN
TITLE DIAGRAM DP1066359

FIRST SCHEDULE

COUNCIL OF THE MUNICIPALITY OF KIAMA

SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 THE LAND WITHIN DESCRIBED IS PUBLIC RESERVE

NOTATIONS

UNREGISTERED DEALINGS: NIL

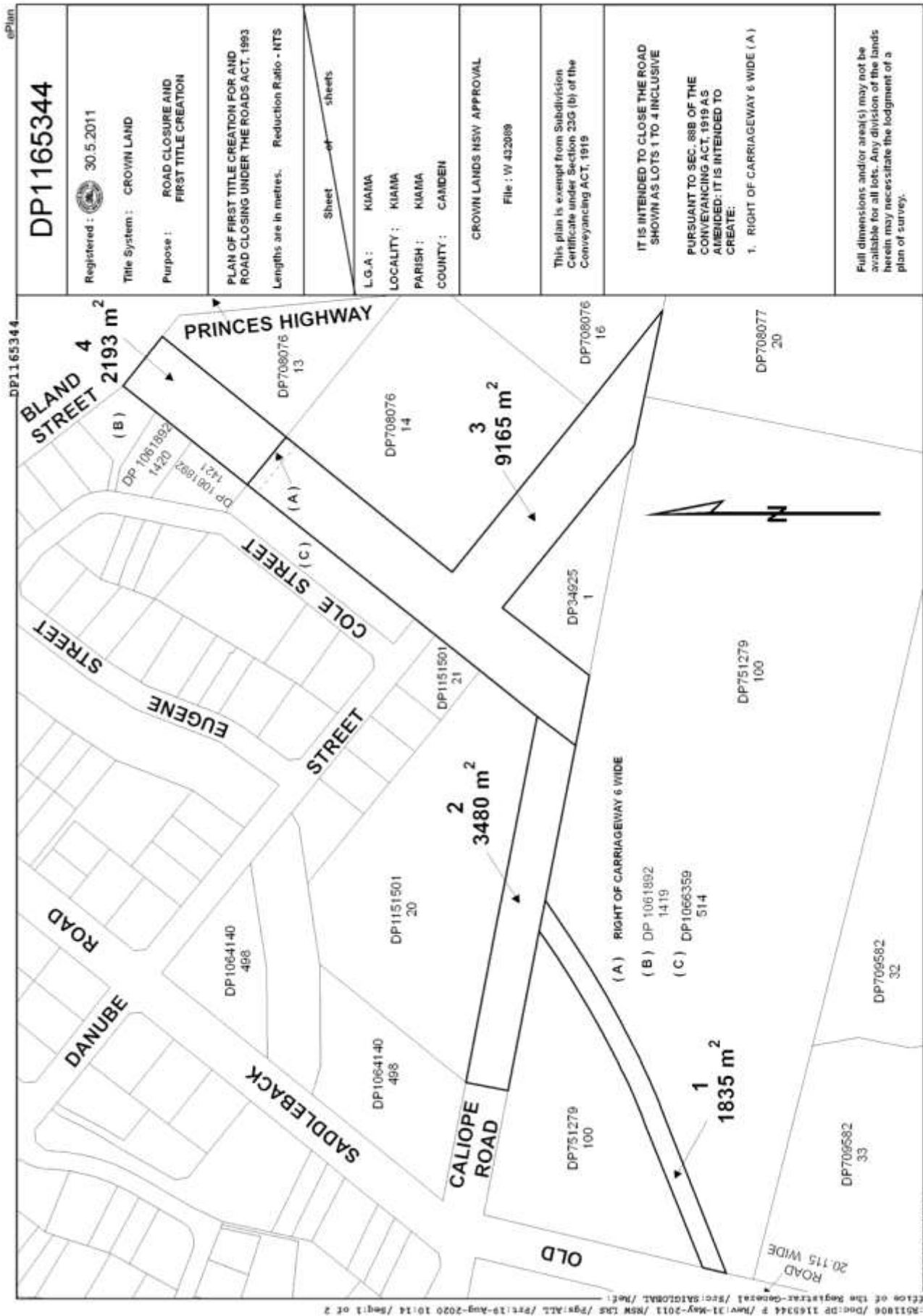
*** END OF SEARCH ***

PRINTED ON 2/9/2021


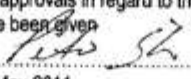
* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register.

APPENDIX D

Copy of DP 1165344



Req:R511806 /Doc:DP 1165344 P /Rev:31-May-2011 /NSW LRS /Pgs:ALL /Prt:19-Aug-2020 10:14 /Seq:2 of 2
 © Office of the Registrar-General /Src:SAIGLOBAL /Ref:

CERTIFICATES, SIGNATURES AND SEALS		ePlan Sheet 1 of 1 sheet(s)
<p>PLAN OF PLAN OF FIRST TITLE CREATION AND ROAD CLOSING UNDER THE ROADS ACT, 1993</p>	<p style="font-size: 2em; font-weight: bold;">DP1165344</p>	
		<p>Registered:  30.5.2011</p>
<p style="text-align: center;">Surveying Regulation, 2001</p> <p>I, of a surveyor registered under the <i>Surveying Act, 2002</i> certify that the survey represented in this plan is accurate, has been made in accordance with the <i>Surveying Regulation, 2001</i> and was completed on:.....</p> <p>The survey relates to</p> <p>(specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey)</p> <p>Signature Dated:..... <small>Surveyor registered under the Surveying Act, 2002</small></p> <p>Datum Line:..... Type: Urban/Rural</p>	<p>SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads or to create public reserves and drainage reserves.</p>	
<p style="text-align: center;">Crown Lands NSW/Western Lands Office Approval</p> <p>I, Peter Gilson, in approving this plan certify <small>(Authorised Officer)</small> that all necessary approvals in regard to the allocation of the land shown herein have been given</p> <p>Signature: </p> <p>Date:..... 13 May 2011</p> <p>W Number: ... 432089</p> <p>File Number: ... 10/19055</p> <p>Office:..... Nowra</p>		
<p style="text-align: center;">Subdivision Certificate</p> <p>I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to</p> <p>the proposed set out herein (insert 'subdivision' or 'new road')</p> <p style="text-align: center;">* Authorised Person/General Manager/Accredited Certifier</p> <p>Consent Authority:</p> <p>Date of Endorsement:</p> <p>Accreditation no:</p> <p>Subdivision Certificate no:</p> <p>File no:</p> <p><small>* Delete whichever is inapplicable.</small></p>		
<p>Use PLAN FORM 6A for additional certificates, signatures and seals</p>		
<p>SURVEYOR'S REFERENCE:</p>		

* OFFICE USE ONLY

Item 12.3
Attachment 1

Req:R511810 /Doc:DP 1165344 B /Rev:31-May-2011 /NSW LRS /Pgs:ALL /Prt:19-Aug-2020 10:14 /Seq:1 of 1
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ePlan

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions as to Use of Land or Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919.

Sheet 1 of 1 Sheet

Plan: DP1165344
Full name and address of the owner of the land: THE STATE OF NEW SOUTH WALES

Plan of first title creation and road closing under the Roads Act 1993

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and firstly referred to in the plan	Burdened lots(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Right of Carriageway 6 wide (A)	Lot 3	Lot 4 in this plan

SIGNED BY
PETER GILSON
.....
(print name)
delegation pursuant to Section 180 of the Crown Lands Act 1989 and with authority under Section 13L of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the Registered Proprietor being The State Of New South Wales in the presence of:

Peter Gilson
.....
(signature of delegated officer)

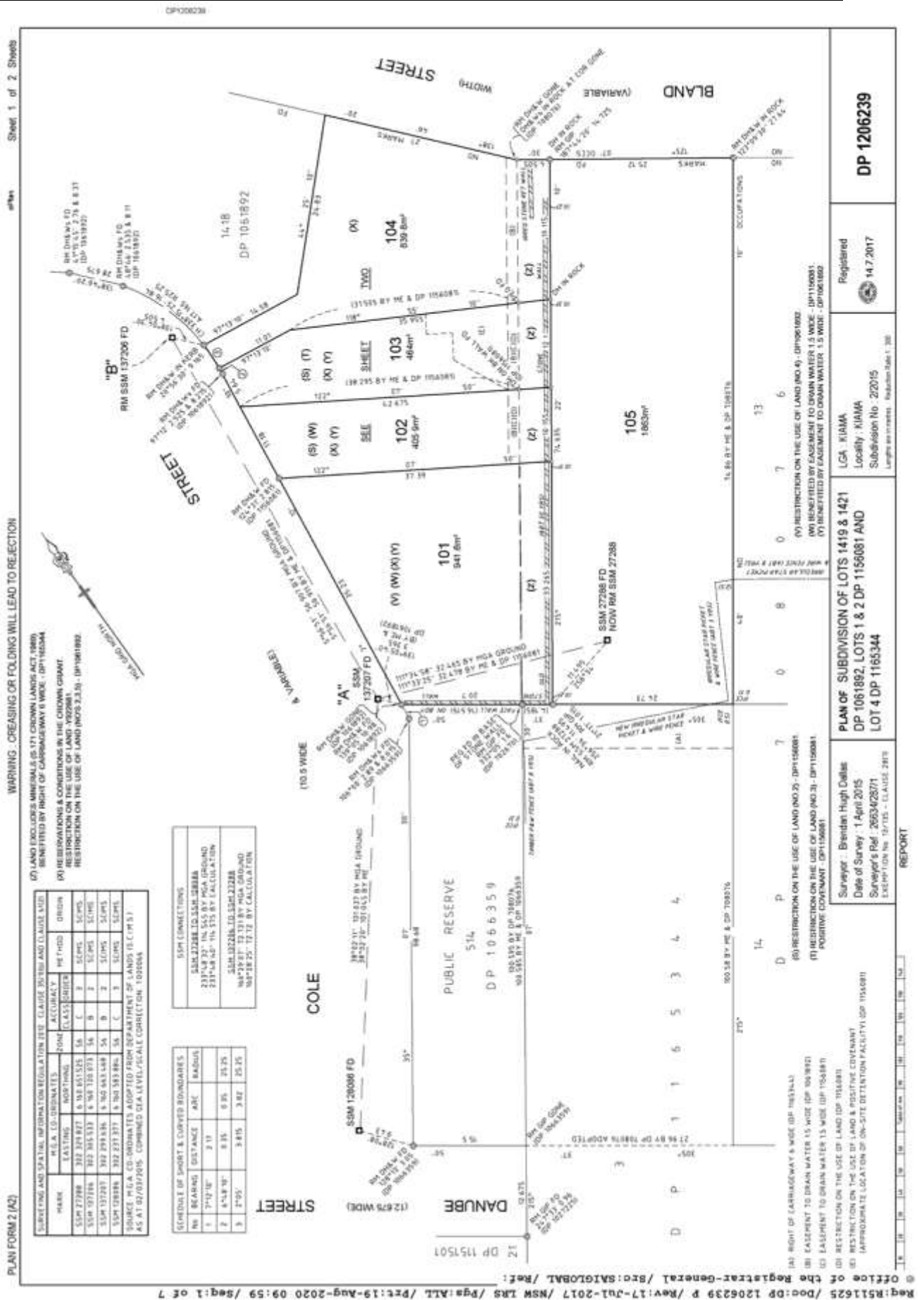
adul
.....
(signature of witness)
Sharon Ambrose
.....
(name & address of witness)
5 O'Keefe Avenue
.....
NOWRA NSW 2541
.....

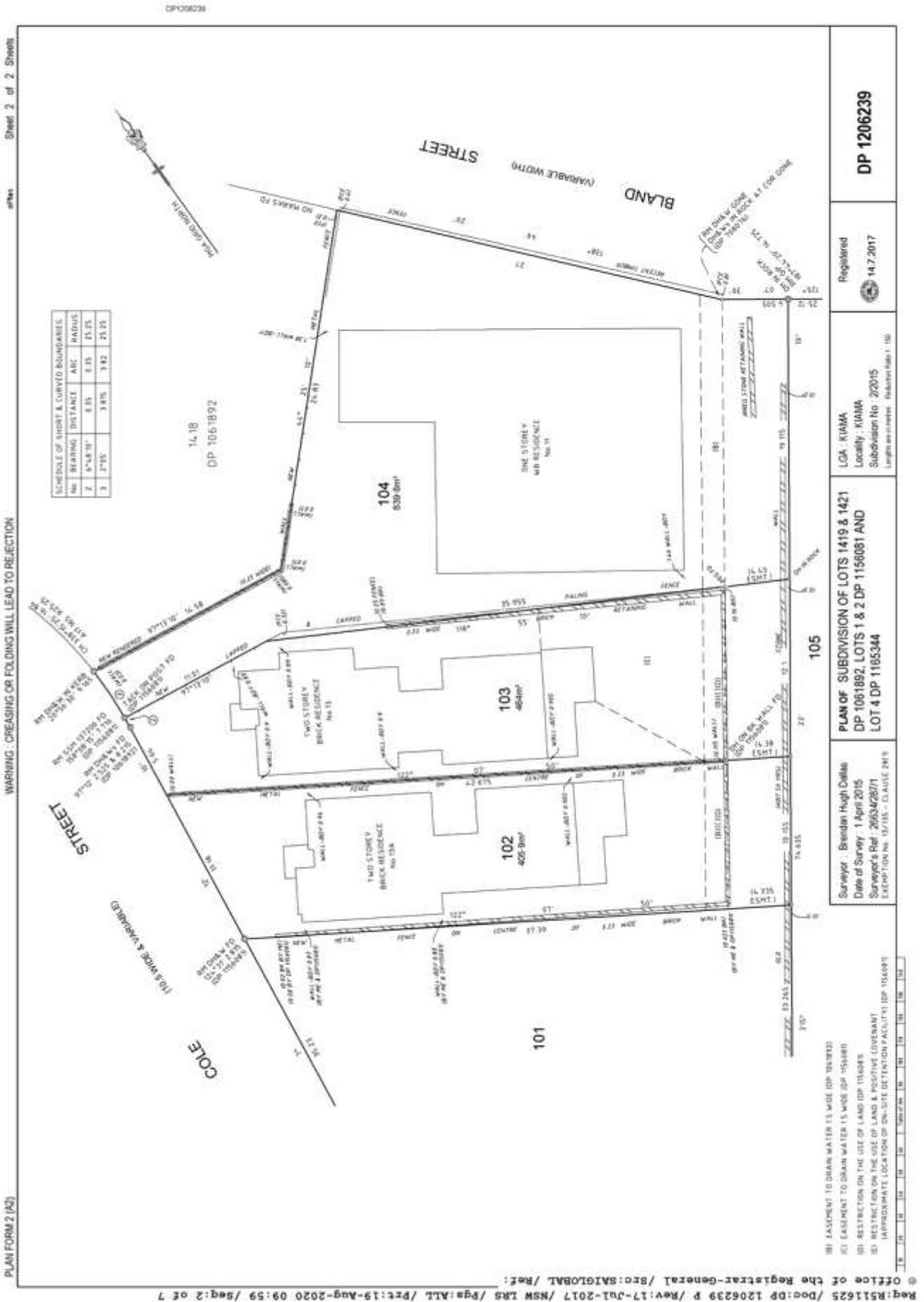


Item 12.3
Attachment 1




APPENDIX E

Copy of DP 1206239





Req:R511625 /Doc:DP 1206239 P /Rev:17-Jul-2017 /NSW LRS /Pgs:ALL /Prt:19-Aug-2020 09:59 /Seq:3 of 7
 © Office of the Registrar-General /Src:SAIGLOBAL /Ref:

PLAN FORM 6		WARNING : Creasing or folding will lead to rejection		ePlan	
DEPOSITED PLAN ADMINISTRATION SHEET				Sheet 1 of 5 Sheet(s)	
Office Use Only		Office Use Only			
Registered :  14.7.2017		DP 1206239			
Title System : TORRENS					
Purpose : SUBDIVISION					
PLAN OF SUBDIVISION OF LOTS 1419 & 1421 DP 1061892, LOTS 1 & 2 DP 1156081 AND LOT 4 DP 1165344		LGA : KIAMA Locality : KIAMA Parish : KIAMA County : CAMDEN			
Crown Lands NSW / Western Lands Office Approval I, (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of land shown herein have been given Signature: Date: File Number: Office:		Survey Certificate I, <u>BRENDAN HUGH DALLAS</u> of <u>SCARRATT & ASSOC, PO BOX 209, KIAMA, 2533</u> a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> , certify that: *(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i> , is accurate and the survey was completed on 1 April 2015 *(b) The part of the land shown in the plan ("being" excluding ^) was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i> , is accurate and the survey was completed on the part not surveyed was compiled in accordance with that Regulation. *(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2012</i> . Signature:  Dated: <u>29/04/2015</u> Surveyor ID: 8661 Datum Line: 'A'-B' Type: Urban / Rural The terrain is *Level-Undulating / *Steep-Mountainous. * Strike through if inapplicable ^ Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey			
Subdivision Certificate I, <u>MARK BIONDICH</u> *Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to the proposed subdivision, new road or reserve set out herein. Signature:  Accreditation no: Consent Authority: <u>KIAMA MUNICIPAL COUNCIL</u> Date of Endorsement: <u>07/05/2015</u> Subdivision Certificate no: <u>2/2015</u> File no: * Strike through inapplicable parts					
STATEMENTS of intention to dedicate public roads, public reserves and drainage reserves		Plans used in the preparation of survey / compilation DP 708076 DP 1027225 DP 1061892 DP 1165344 DP 1066359 DP 1156081 If space is insufficient use PLAN FORM 6A			
Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A		Surveyors Reference: 26634/287/1 EXEMPTION No. 13/135 - CLAUSE 28(1)			

Item 12.3 Attachment 1

Req:R511625 /Doc:DP 1206239 P /Rev:17-Jul-2017 /NSW LRS /Pgs:ALL /Prt:19-Aug-2020 09:59 /Seq:4 of 7
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PLAN FORM 6A WARNING : Creasing or folding will lead to rejection ePlan

DEPOSITED PLAN ADMINISTRATION SHEET Sheet 2 of 5 Sheet(s)

Office Use Only Registered : 14.7.2017	<h2 style="margin: 0;">DP 1206239</h2>
PLAN OF SUBDIVISION OF LOTS 1419 & 1421 DP 1061892, LOTS 1 & 2 DP 1156081 AND LOT 4 DP 1165344	This sheet is for the provision of the following information as required: • A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2012</i> • Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> • Signatures and seals - see 195D <i>Conveyancing Act 1919</i> • Any information which cannot fit the appropriate panel of sheet 1 of the administration sheets.
Subdivision Certificate Number: <u>2/2015</u> Date of Endorsement: <u>07/05/2015</u>	

SCHEDULE OF STREET ADDRESSES				
LOT	STREET No.	STREET NAME	STREET TYPE	LOCALITY
101	15	COLE	STREET	KIAMA
102	13A	COLE	STREET	KIAMA
103	13	COLE	STREET	KIAMA
104	11	COLE	STREET	KIAMA
105	NA	NA	NA	KIAMA

EXECUTED BY CARLIN TRANSPORT PTY LIMITED ACN 132 989 970 UNDER SECTION 127(1) OF THE CORPORATIONS ACT 2001 BY BEING SIGNED BY:

.....
 CARLE ROBERT GOODFELLOW
 DIRECTOR

.....
 LINDA RAE GOODFELLOW
 DIRECTOR

.....
 CARLE ROBERT GOODFELLOW

.....
 LINDA RAE GOODFELLOW





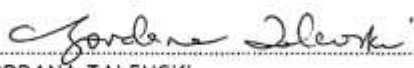
If space is insufficient use additional annexure sheet

Surveyors Reference: **26634/287/1**
 EXEMPTION No. 13/135 - CLAUSE 28(1)

Item 12.3

Attachment 1

Req:R511625 /Doc:DP 1206239 P /Rev:17-Jul-2017 /NSW LRS /Pgs:ALL /Prt:19-Aug-2020 09:59 /Seq:5 of 7
© Office of the Registrar-General /Src:SAIGLOBAL /Ref:

PLAN FORM 6A		WARNING : Creasing or folding will lead to rejection		ePlan	
DEPOSITED PLAN ADMINISTRATION SHEET				Sheet 3 of 5 Sheet(s)	
Registered :  14.7.2017		DP 1206239			
PLAN OF SUBDIVISION OF LOTS 1419 & 1421 DP 1061892, LOTS 1 & 2 DP 1156081 AND LOT 4 DP 1165344		This sheet is for the provision of the following information as required: • A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2012</i> • Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> • Signatures and seals - see 195D <i>Conveyancing Act 1919</i> • Any information which cannot fit the appropriate panel of sheet 1 of the administration sheets.			
Subdivision Certificate Number: <u>2/2015</u>					
Date of Endorsement: <u>07/05/2015</u>					
 JOHN JAMES ENDICOTT					
 MAREE AGNES ENDICOTT					
 LINDA JANE LIVINGSTONE					
 GORDANA TALEVSKI					
If space is insufficient use additional annexure sheet					
Surveyors Reference: 26634/287/1 EXEMPTION No. 13/135 - CLAUSE 28(1)					


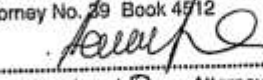

Item 12.3

Attachment 1

Req:R511625 /Doc:DP 1206239 P /Rev:17-Jul-2017 /NSW LRS /Pgs:ALL /Prt:19-Aug-2020 09:59 /Seq:6 of 7
 © Office of the Registrar-General /Src:SAIGLOBAL /Ref:

PLAN FORM 6A WARNING : Creasing or folding will lead to rejection ePlan

DEPOSITED PLAN ADMINISTRATION SHEET Sheet 4 of 5 Sheet(s)

Registered:  14.7.2017 PLAN OF SUBDIVISION OF LOTS 1419 & 1421 DP 1061892, LOTS 1 & 2 DP 1156081 AND LOT 4 DP 1165344 Subdivision Certificate Number: <u>2/2015</u> Date of Endorsement: <u>07/05/2015</u>	<div style="text-align: center; font-size: 24pt; font-weight: bold;">DP 1206239</div> <p>This sheet is for the provision of the following information as required:</p> <ul style="list-style-type: none"> • A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2012</i> • Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> • Signatures and seals - see 195D <i>Conveyancing Act 1919</i> • Any information which cannot fit the appropriate panel of sheet 1 of the administration sheets.
<p>Mortgagee under Mortgage No. <u>AA417181</u> Signed at <u>Kiama</u>, this <u>27th</u> day of <u>April</u> 20<u>17</u> for National Australia Bank Limited ABN 12 004 044 937 by <u>Laura Jones</u> its duly appointed Attorney under Power of Attorney No. <u>29</u> Book <u>4512</u>  Level <u>B</u> Attorney Witness/Bank Officer <u>MELISSA JOVANOVSKI</u> </p> <p style="text-align: center;">CONSENTED TO BY NATIONAL AUSTRALIA BANK LIMITED AS MORTGAGEE UNDER MORTGAGE REGISTERED AA417181</p> <p style="text-align: center; font-size: 8pt;">If space is insufficient use additional annexure sheet</p>	
Surveyors Reference: <u>26634/287/1</u> EXEMPTION No. 13/135 - CLAUSE 28(1)	




Item 12.3
Attachment 1

Req:R511625 /Doc:DP 1206239 P /Rev:17-Jul-2017 /NSW LRS /Pgs:ALL /Prt:19-Aug-2020 09:59 /Seq:7 of 7
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PLAN FORM 6A

WARNING : Creasing or folding will lead to rejection

ePlan

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 5 of 5 Sheet(s)
Office Use Only Registered :  14.7.2017	DP 1206239	
PLAN OF SUBDIVISION OF LOTS 1419 & 1421 DP 1061892, LOTS 1 & 2 DP 1156081 AND LOT 4 DP 1165344	This sheet is for the provision of the following information as required: <ul style="list-style-type: none"> • A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2012</i> • Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> • Signatures and seals - see 195D <i>Conveyancing Act 1919</i> • Any information which cannot fit the appropriate panel of sheet 1 of the administration sheets. 	
Subdivision Certificate Number: <u>2/2015</u>	Date of Endorsement: <u>07/05/2015</u>	
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">  Ruth Helen Neal </div> <div style="width: 60%;"> <p>I have no notice of the revocation of the power of attorney under which I sign this document. Signed sealed and delivered on behalf of <i>Commonwealth Bank of Australia</i> <i>trading as Bankwest ABN 48 123 123 124</i> by its attorney under power of attorney registered Book 4639 no: 422 In the presence of:</p> </div> </div> <div style="margin-top: 20px; margin-left: 100px;">  Sandy Lee Dentons 77 Castlereagh Street SYDNEY NSW 2000 </div> <div style="margin-top: 40px; margin-left: 100px;"> CONSENTED TO BY COMMONWEALTH BANK OF AUSTRALIA AS MORTGAGEE UNDER MORTGAGE REGISTERED A1888273 </div>		
If space is insufficient use additional annexure sheet		
Surveyors Reference: 26634/287/1 EXEMPTION No. 13/135 - CLAUSE 28(1)		

Item 12.3

Attachment 1

APPENDIX F

Title Search - Lot 105 DP 1206239



Order number: 63695878
Your Reference: 2020.000
19/08/20 10:07



NSW LRS - Title Search

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 105/1206239

SEARCH DATE	TIME	EDITION NO	DATE
19/8/2020	10:07 AM	1	14/7/2017

LAND

LOT 105 IN DEPOSITED PLAN 1206239
AT KIAMA
LOCAL GOVERNMENT AREA KIAMA
PARISH OF KIAMA COUNTY OF CAMDEN
TITLE DIAGRAM DP1206239

FIRST SCHEDULE

CARLIN TRANSPORT PTY LIMITED

SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS (S.171 CROWN LANDS ACT 1989)
- 2 DP1165344 RIGHT OF CARRIAGEWAY 6 METRE(S) WIDE APPURTENANT TO
THE LAND ABOVE DESCRIBED

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PRINTED ON 19/8/2020

* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register.

APPENDIX G

State Environmental Planning Policies

State Environmental Planning Policies

State Environmental Planning Policy (SEPP)	Consistency of Planning Proposal
SEPP No.19 – Bushland in Urban Areas	N/A – Does not apply to Kiama LGA
SEPP No.21 – Caravan Parks	Not applicable to this Planning Proposal.
SEPP No.33 – Hazardous and Offensive Development	Not applicable to this Planning Proposal.
SEPP No.36 – Manufactured Home Estates	Not applicable to this Planning Proposal.
SEPP No.47 – Moore Park Showground	N/A – Does not apply to Kiama LGA
SEPP No.50 – Canal Estate Development	Not applicable to this Planning Proposal.
SEPP No.55 – Remediation of Land	Consistent – The subject site is not located within an ‘investigation area’ within the meaning of the Contaminated Land Management Act 1997, and development for a purpose referred to in Table 1 of the contaminated land management guidelines is not currently being undertaken on the land and is not known to have been undertaken on the land. The Planning Proposal will not change the current residential zoning of the land and only seeks reclassification for the purposes of enabling formal access across the subject site.
SEPP No.64 – Advertising and Signage	Not applicable to this Planning Proposal.
SEPP No.65 – Design Quality of Residential Apartment Development	Not applicable to this Planning Proposal.

State Environmental Planning Policy (SEPP)	Consistency of Planning Proposal
SEPP No.70 – Affordable Housing (Revised Schemes)	Not applicable to this Planning Proposal.
SEPP (Kurnell Peninsula) 1989	N/A – Does not apply to Kiama LGA
SEPP (Penrith Lakes Scheme) 1989	N/A – Does not apply to Kiama LGA
SEPP (Building Sustainability Index: BASIX) 2004	Not applicable to this Planning Proposal.
SEPP (Housing for Seniors or People with a Disability) 2004	Not applicable to this Planning Proposal.
SEPP (State Significant Precincts) 2005	N/A – The Planning Proposal does not relate to a 'state significant precinct'.
SEPP (Sydney Region Growth Centres) 2006	N/A – The subject site is not located within a 'growth centre'.
SEPP (Kosciusko National Park – Alpine Resorts) 2007	N/A – Does not apply to Kiama LGA
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable to this Planning Proposal.
SEPP (Exempt and Complying Development Codes) 2008	Not applicable to this Planning Proposal.
SEPP (Affordable Rental Housing) 2009	Not applicable to this Planning Proposal.
SEPP (Western Sydney Employment Area) 2009	N/A – Does not apply to Kiama LGA
SEPP (Western Sydney Parklands) 2009	N/A – Does not apply to Kiama LGA
SEPP (Urban Renewal) 2010	N/A – The subject site is not located within a 'potential precinct'.
SEPP (State and Regional Development) 2011	N/A – The Planning Proposal is not for development that is State Significant or Regionally Significant.

State Environmental Planning Policy (SEPP)	Consistency of Planning Proposal
SEPP (Sydney Drinking Water Catchment) 2011	N/A – The subject site is not within the Sydney drinking water catchment.
SEPP (Three Ports) 2013	Not applicable to this Planning Proposal.
SEPP (Activation Precincts) 2020	N/A – The subject site is not located within a declared 'activation precinct'.
SEPP (Infrastructure) 2017	Not applicable to this Planning Proposal.
SEPP (Educational Establishments and Child Care Facilities) 2017	Not applicable to this Planning Proposal.
SEPP (Vegetation in Non-Rural Areas) 2017	Not applicable to this Planning Proposal.
SEPP (Coastal Management) 2018	N/A – The subject site is not located within the 'coastal zone'.
SEPP (Concurrences and Consents) 2018	Not applicable to this Planning Proposal.
SEPP (Gosford City Centre) 2018	N/A – Does not apply to Kiama LGA
SEPP (Aboriginal Land) 2019	N/A – The Planning Proposal does not apply to land to which SEPP (Aboriginal Land) 2019 applies.
SEPP (Primary Production and Rural Development) 2019	Not applicable to this Planning Proposal.
SEPP (Western Sydney Aerotropolis) 2020	N/A – Does not apply to Kiama LGA
SEPP (Major Infrastructure Corridors) 2020	Not applicable to this Planning Proposal.
SEPP (Koala Habitat Protection) 2020	N/A – The subject site is not located within an RU1, RU2 or RU3 zone.
SEPP (Koala Habitat Protection) 2021	N/A – The subject site has an area of less than 1 hectare and does not have an approved koala plan of management.

APPENDIX H

Section 9.1 Ministerial Directions

Section 9.1 Ministerial Directions

Section 9.1 Direction Title		Consistency of Planning Proposal
1	Employment and Resources	
1.1	Business and Industrial Zones	N/A – The Planning Proposal does not apply to land within a business or industrial zone.
1.2	Rural Zones	N/A – The Planning Proposal does not apply to land within a rural zone.
1.3	Mining, Petroleum Production and Extractive Industries	N/A
1.4	Oyster Aquaculture	N/A
1.5	Rural Lands	N/A – The Planning Proposal does not apply to land within a rural or environmental protection zone.
2	Environmental and Heritage	
2.1	Environmental Protection Zones	N/A
2.2	Coastal Management	N/A – The subject site is not located within the 'coastal zone' as defined under the Coastal Management Act 2016.
2.3	Heritage Conservation	Consistent – The subject site is not identified as a heritage item and is not located within a heritage conservation area. The dry stone wall along the north-eastern boundary of the site is a heritage item and is protected under the current provisions of clause 5.10 of Kiama LEP 2011.

Section 9.1 Direction Title	Consistency of Planning Proposal
2.4 Recreation Vehicle Areas	N/A
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A – Does not apply to Kiama LGA
2.6 Remediation of Contaminated Land	<p>Consistent – The subject site is not located within an ‘investigation area’ within the meaning of the Contaminated Land Management Act 1997, and development for a purpose referred to in Table 1 of the contaminated land management guidelines is not currently being undertaken on the land and is not known to have been undertaken on the land.</p> <p>The Planning Proposal will not change the current residential zoning of the land and only seeks reclassification for the purposes of enabling formal access across the subject site. Accordingly, the proposal is considered to be consistent with this Direction.</p>
3 Housing, Infrastructure and Urban Development	
3.1 Residential Zones	<p>Consistent – The Planning Proposal will not alter the boundaries of the existing R2 zone applying to the subject site. The subject site is a public reserve and cannot be used for housing and therefore the Planning Proposal will have no effect on the supply of housing or housing diversity and choice.</p>
3.2 Caravan Parks and Manufactured Home Estates	N/A
<i>Direction 3.3 revoked</i>	
3.4 Integrating Land Use & Transport	N/A – The Planning Proposal does not seek to create, alter or remove a zone or a provision relating to urban land.

Section 9.1 Direction Title	Consistency of Planning Proposal
3.5 Development Near Regulated Airports and Defence Airfields	N/A – The subject site is not located near a regulated airport or defence airfield.
3.6 Shooting Ranges	N/A – The subject site is not located adjoining or adjacent to an existing shooting range.
3.7 Reduction in non-hosted short term rental accommodation period	N/A
4 Hazard and Risk	
4.1 Acid Sulfate Soils	N/A – The subject site is not mapped as containing potential Acid Sulfate Soils.
4.2 Mine Subsidence and Unstable Land	N/A – The site is not within a proclaimed Mine Subsidence District or located on identified unstable land.
4.3 Flood Prone Land	N/A – The subject site is not mapped as containing potential flood prone land.
4.4 Planning for Bushfire Protection	Consistent – The very north-eastern corner of the subject site is mapped as containing bushfire prone land. The proposed reclassification of this part of the site to 'operational land' for the purposes of enabling the granting of a Right of Carriageway over that land does not heighten the risk of bushfire.
5 Regional Planning	
<i>Direction 5.1 revoked</i>	
5.2 Sydney Drinking Water Catchments	N/A – The subject site is not within the Sydney drinking water catchment.

Section 9.1 Direction Title	Consistency of Planning Proposal
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A – Does not apply to Kiama LGA
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A – Does not apply to Kiama LGA
<i>Directions 5.5 to 5.8 revoked</i>	
5.9 North West Rail Link Corridor Strategy	N/A – Does not apply to Kiama LGA
5.10 Implementation of Regional Plans	Consistent – The Planning Proposal is consistent with the Illawarra-Shoalhaven Regional Plan (2015).
5.11 Development of Aboriginal Land Council land	N/A – The Planning Proposal does not apply to land to which State Environmental Planning Policy (Aboriginal Land) 2019 applies.
6 Local Plan Making	
6.1 Approval and Referral Requirements	Consistent – No concurrence, consultation or referral provisions are proposed by the Planning Proposal and no development is identified by the Planning Proposal as being designated development.
6.2 Reserving Land for Public Purposes	N/A
6.3 Site Specific Provisions	N/A

Section 9.1 Direction Title		Consistency of Planning Proposal
7 Metropolitan Planning		
<i>Directions 7.1 & 7.2 revoked</i>		
7.3 Parramatta Road Corridor Urban Transformation Strategy		N/A – Does not apply to Kiama LGA
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan		N/A – Does not apply to Kiama LGA
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan		N/A – Does not apply to Kiama LGA
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan		N/A – Does not apply to Kiama LGA
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor		N/A – Does not apply to Kiama LGA
7.8 Implementation of Western Sydney Aerropolis Interim Land Use and Infrastructure Implementation Plan		N/A – Does not apply to Kiama LGA
7.9 Implementation of Bayside West Precincts 2036 Plan		N/A – Does not apply to Kiama LGA

Section 9.1 Direction Title	Consistency of Planning Proposal
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	N/A – Does not apply to Kiama LGA
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	N/A – Does not apply to Kiama LGA
7.12 Implementation of Greater Macarthur 2040	N/A – Does not apply to Kiama LGA
7.13 Implementation of the Pymont Peninsula Place Strategy	N/A – Does not apply to Kiama LGA

12.4 Planning Proposal - Housekeeping Amendments to address mapping anomalies and introduce Urban Release Area controls - finalisation

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

CSP Strategy: 2.1 Maintain the separation and distinct nature of local towns, villages and agricultural land

Delivery Program: 2.1.1 Develop and implement appropriate land use plans

Summary

On 20 October 2020, Council supported a Planning Proposal (PP) for general housekeeping amendments to *Kiama Local Environmental Plan (LEP) 2011* to address zoning anomalies on a number of sites within the Local Government Area.

A Gateway Determination was issued by the Department of Planning, Industry and Environment (DPIE) on 31 May 2021.

At the July 2021 meeting, Council supported a further amendment to the PP to address zoning anomalies on land owned and operated by Sydney Water and to include specific provisions for new Urban Release Areas.

An Alteration Gateway Determination was issued by DPIE on 2 September 2021, granting plan making delegation.

As required by the conditions of the Gateway Determination, the PP was referred to the NSW RFS.

The PP was placed on public exhibition between 17 September and 18 October 2021. No submissions were received during the exhibition period. No issues were raised by the relevant State agencies that warrant not proceeding with this PP.

As such, it is recommended that Council endorse this Planning Proposal and use its plan making delegations to finalise the relevant amendments to *Kiama Local Environmental Plan 2011*.

Financial implication

The budget associated with the Strategic Planning Works Program allows for the completion of up to two housekeeping amendments to the Kiama LEP, each year.

Policy

Planning Proposals require consideration of a number of Acts, Government policies, 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.

Consultation (internal)

Council's Property and Development Assessment teams were consulted with as part of the PP process. No objection was raised.

Report of the Director Environmental Services

12.4 Planning Proposal - Housekeeping Amendments to address mapping anomalies and introduce Urban Release Area controls - finalisation (cont)

Communication/Community engagement

The subject PP was placed on public exhibition from 17 September to 18 October 2021. The Kiama Community Participation Plan (CPP) 2019 outlines that Council will actively inform the community of plan making projects by placing notices in a range of media platforms, this included Council's website, social media platforms and on the NSW Planning Portal Website.

Direct notification was also sent to:

- Minnamurra Progress Association
- Jamberoo Valley Residents and Ratepayers Association
- Central Precinct Committee
- South Precinct Committee
- Gerroa Community Association
- Combined Community Advocacy Group

Attachments

- 1 Planning Proposal - Housekeeping Amendments to Kiama LEP 2011 [↓](#)
- 2 DPIE Gateway Determination - Housekeeping Planning Proposal [↓](#)
- 3 DPIE Alteration Gateway Determination - Housekeeping Planning Proposal [↓](#)
- 4 NSW Rural Fire Service Response - Housekeeping Planning Proposal [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. Endorse this Housekeeping Amendment Planning Proposal to address mapping anomalies and introduce Urban Release Area controls to *Kiama Local Environmental Plan (LEP) 2011* which specifically:
 - a. amends the relevant Land Zoning Maps, and Floor Space Ratio Maps for the following sites to annotate the land use zone using the infrastructure categories contained within the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) or the Standard Instrument dictionary and adopt associated development standards:
 - i. Part of Lot 48 DP 250008 - 46 Blackwood Street, Gerringong,
 - ii. Part of Lot 60 DP 703112 - Blackwood Street, Gerringong,
 - iii. Part of Lot 206 & part of Lot 207 DP 1164476 - Fern Street, Gerringong,
 - iv. Part of Lot 10 DP 1167819 - Fern Street, Gerringong,

Report of the Director Environmental Services

12.4 Planning Proposal - Housekeeping Amendments to address mapping anomalies and introduce Urban Release Area controls - finalisation (cont)

-
- v. Part of Lot 38 DP 873965 - Fern Street, Gerringong,
 - vi. Lot 100 DP 803472 - 7 Railway Parade, Kiama,
 - vii. Lot 51 DP 830172 - Saddleback Mountain Road, Kiama,
 - viii. Lot 51 DP 804377 - 210 Shoalhaven Street, Kiama,
 - ix. Lot 14 DP 869959 - 205 Terralong Street, Kiama,
 - x. Lots 1 & 3 DP 1236189 - 206 Terralong Street, Kiama,
 - xi. Lot 1 DP 106081 - 24 Terralong Street, Kiama,
 - xii. Lot 1 Section 5 DP 758563 - 30 Terralong Street, Kiama,
 - xiii. Lot 7033 DP 1061038 - 32 Terralong Street, Kiama,
 - xiv. Lot 1 DP 1056775 - Meehan Drive, Kiama Downs,
- b. amends the relevant Land Zoning Maps, Lot Size Maps, Height of Buildings Maps and Floor Space Ratio Maps for the following Public Reserves to rezone land to RE1 Public Recreation and/or E2 Environmental Conservation and remove associated development standards:
- i. Lots 86, 88 & 89 DP 838437 – Burnett Avenue, Gerringong,
 - ii. Lot 53 DP 884475 – Fern Street, Gerringong,
 - iii. Lot 91 DP 838437 – Fern Street, Gerringong,
 - iv. Lot 747 DP 1171578 – Millewa Avenue, Gerringong,
 - v. Lot 231 DP 1060665 – Neptune Street, Gerringong,
 - vi. Lot 21 DP 264151 – Tanner Place, Kiama,
 - vii. Lot 702 DP 1148475 – Union Way, Gerringong,
 - viii. Lot 206 DP 1180016 – Union Way, Gerringong,
 - ix. Lot 130 DP 1052645 – 18 Union Way, Gerringong,
 - x. Lot 206 DP 1156196 - Wells Street, Gerringong,
 - xi. Lot 2 DP 1065404 – Headland Drive, Gerroa,
 - xii. Lot 8 DP 839577 – 7 Bland Street, Kiama,
 - xiii. Lot 600 DP 1044512 – Bland Street, Kiama
 - xiv. Lot 8 DP 850163 – Elourea Place, Kiama,
 - xv. Lot 1429 DP 1061892 – Eugene Street, Kiama,
 - xvi. Lot 1319 DP 1060995 – Greyleigh Drive, Kiama,
 - xvii. Lot 300 DP 1059841 - Greyleigh Drive, Kiama,
 - xviii. Lot 199 DP 1042913 - Greyleigh Drive, Kiama,
 - xix. Lot 100 DP 1042908 - Greyleigh Drive, Kiama,
 - xx. Lot 2 DP 1179778 - Greyleigh Drive, Kiama,

Report of the Director Environmental Services

12.4 Planning Proposal - Housekeeping Amendments to address mapping anomalies and introduce Urban Release Area controls - finalisation (cont)

-
- xxi. Lot 1310 DP 1060995 – Old Saddleback Road, Kiama,
 - xxii. Lot 499 DP 1064140 – Old Saddleback Road, Kiama,
 - xxiii. Lot 2 DP 1056775 – Meehan Drive, Kiama Downs,
- c. amends the relevant Land Zoning Map, Lot Size Map, Height of Buildings Map and Floor Space Ratio Map for the following State agency owned sites to rezone from R2 to SP2 to reflect the current and intended use of the sites:
 - i. Lot 909 DP 236615 – 133 North Kiama Drive, Kiama Downs;
 - ii. Lot 2 DP 793745 – Gwinganna Avenue, Kiama;
 - iii. Lot 139 DP 29245 – 15 North Street, Minnamurra,
 - iv. Lot 400 DP 801403 – Newing Circuit, Kiama Downs, and
 - v. Lot 436 DP 1088899 – 46 Union Way, Gerringong,
 - d. amends the Land Zoning Map, Lot Size Map, Height of Buildings Map and Floor Space Ratio Map for one (1) State agency owned site, Lot 1 DP 883525 – 20 Eddy Street, Kiama, to rezone from SP2 Infrastructure to B2 Local Centre and adopt a maximum permitted Height of Building of 11m and Maximum permitted Floor Space Ratio of 1.5:1;
 - e. amends Schedule 1 and Additional Permitted Use Map – Sheet APU_012 to include *community facilities* as a use permitted without development consent on Lot 1 DP 883525, 20 Eddy Street;
 - f. includes specific provisions for Urban Release Areas.
2. Use its plan making delegations to make the necessary amendments to the *Kiama Local Environmental Plan 2011*.

BACKGROUND

As part of the ongoing Strategic Planning Works Program, Council seeks to ensure the currency of the Kiama LEP 2011 by undertaking annual housekeeping amendments.

Since its publication in 2011 a number of mapping anomalies have been identified. This PP has therefore been conducted to:

- amend the land use annotations for a number of sites zoned SP2 Infrastructure, listed in Appendix 2, to ensure consistency with Standard Instrument definitions, and changing the Floor Space Ratio for two sites,
- rezone a number Public Reserves, listed in Appendix 3, from their current zoning to RE1 Public Recreation and/or E2 Environmental Conservation,
- rezone five (5) State agency owned sites, listed in Appendix 4, from R2 to SP2 to reflect the current and intended use of the sites,
- rezone one (1) State agency owned site, Eddy Street, listed in Appendix 4, from SP2 to B2 to reflect the current and intended use of the site, and

Report of the Director Environmental Services

12.4 Planning Proposal - Housekeeping Amendments to address mapping anomalies and introduce Urban Release Area controls - finalisation (cont)

-
- include specific provisions for Urban Release Areas.

The Urban Release Areas provisions will allow Council to ensure that, as part of resolving to support any significant future planning proposals, site specific development control plans and servicing arrangements will need to be prepared prior to development consent being issued for subdivision. This will ensure that infrastructure is established to service the subdivision and that the cost is worn by the developer and not the community.

Council Resolutions

At the October 2020 Ordinary meeting, Council resolved to support the proposal to:

- amend land use notations for land zoned SP2 Infrastructure,
- rezone public reserves to RE1 Public Recreation,
- rezone 20 Eddy Street, Kiama, from SP2 Infrastructure to B2 Local Centre, and
- rezone 133 North Kiama Drive, Kiama Downs from R2 Low Density Residential to SP2 Infrastructure – Water Supply System.

Council resolved to support and submit the PP to the DPIE for a Gateway Determination. This support was based on the strategic merit of the proposal.

At the July 2021 Ordinary Meeting, Council resolved to amend the Planning Proposal to include the:

- rezoning of Lot 2 DP 793745, Gwinganna Avenue, Kiama from R2 Low Density Residential to SP2 - Water Supply System;
- rezoning of 15 North Street, Minnamurra from R2 Low Density Residential to SP2 Water Supply System;
- rezoning of Lot 400 DP 801403, Newing Circuit, Kiama Downs from R2 Low Density Residential to SP2 Water Supply System;
- rezoning of 46 Union Way, Gerringong from R2 Low Density Residential to SP2 Water Supply System; and
- to Amend Kiama LEP 2011 to include provisions for Urban Release Areas.

Gateway Determinations

A Gateway Determination was issued by the Department of Planning, Industry and Environment on 31 May 2021, granting plan making delegation. The Gateway Determination required minor updates to the PP.

Following Council's resolution in July 2021, the amended LEP Housekeeping PP was forwarded to the Department Planning, Industry and Environment (DPIE) for an Alteration Gateway Determination. An Alteration Gateway Determination was issued 2 September 2021.

Report of the Director Environmental Services

12.4 Planning Proposal - Housekeeping Amendments to address mapping anomalies and introduce Urban Release Area controls - finalisation (cont)

The Alteration Gateway Determination required Council to consult with the NSW RFS under Section 3.34(2)(d) of the Act and to comply with the requirements of Section 9.1 Direction 4.4 Planning for Bushfire Protection prior to a public exhibition period of 28 days. All actions associated with the Gateway Determination are to be completed by 2 September 2022 (i.e. within 12 months). It is pleasing that this planning proposal has met the timeframe set for completion, meeting this target with over 11 months to spare.

ASSESSMENT OF PLANNING PROPOSAL**State Agency/Organisation Referrals**

As required by the conditions of the Gateway Determination, the PP was referred to the prescribed agencies/organisations for comments for a period of 21 days from the 7 September 2021.

Consultation with NSW RFS was required with the NSW RFS under section 3.34(2)(d) of the Act and to comply with the requirements of section 9.1 Direction 4.4 Planning for Bushfire Protection.

The NSW RFS raised no concerns or issues that warrant no longer proceeding with this Proposal. The following response was provided by the agency.

Agency	Comments	Staff Response and/or any changes made to proposal
New South Wales Rural Fire Service (NSW RFS)	<p>The PP seeks to rezone a number of sites used for recreation purposes (and Public Reserve on Title). The PP seeks to rezone 20 Eddy Street, Kiama from SP2 Infrastructure - Railway to B2 Local Centre and 133 North Kiama Drive, Kiama Downs, from R2 Low Density Residential to SP2 Infrastructure - Water Supply System</p> <p>The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.</p>	<p>The Planning Proposal complies with section 9.1 Direction 4.4 <i>Planning for Bushing Protection 2019</i>.</p> <p>This PP does not alter these requirements or obligations.</p> <p>No changes have been made to proposal.</p>

Public Exhibition

The subject PP was placed on public exhibition from 17 September to 18 October 2021. The Kiama Community Participation Plan (CPP) 2019 outlines that Council will actively inform the community of plan making projects by placing notices in a range of media platforms.

Report of the Director Environmental Services

12.4 Planning Proposal - Housekeeping Amendments to address mapping anomalies and introduce Urban Release Area controls - finalisation (cont)

Direct notification was sent to:

- Minnamurra Progress Association
- Jamberoo Valley Residents and Ratepayers Association
- Central Precinct Committee
- South Precinct Committee
- Gerroa Community Association
- Combined Community Advocacy Group

Notification was also provided on Council's social media platforms, the 'Your Say' function of Council's website and on the NSW Planning Portal Website.

During the exhibition period, no submissions were received.

Delegations

As part of issuing the Alteration Gateway Determination, DPIE delegated plan making functions for this PP to Council. As such, Council is the decision-making authority for this PP. As the planning proposal authority, Council are satisfied that the PP has been carried out in accordance with the conditions prescribed by the Gateway Determination.

Conclusion

This planning proposal provides important updates and resolves anomalies within the Kiama Local Environmental Plan 2011 to ensure that controls within this plan are relevant and valid. Importantly the PP provides updates to state owned land, resolves anomalies on reserves and other land identified in the Kiama LGA. The PP also enables Council to include specific provisions for Urban Release Areas.

The PP was placed on public exhibition between 17 September and 18 October 2021. No submissions were received during the exhibition period. No issues were raised by the relevant State agencies that warrant not proceeding with this PP.

As such, it is recommended that Council endorse this Planning Proposal and use its plan making delegations to finalise the relevant amendments to *Kiama Local Environmental Plan 2011*.



Housekeeping Planning Proposal to Amend Kiama LEP 2011

Revision 4



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

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Planning Proposal for housekeeping amendments to the Kiama LEP 2011

1.0 Statement of the objectives

The Planning Proposal (PP) proposes the following housekeeping amendments, which apply to a number of sites throughout the Kiama Municipality, to the *Kiama Local Environmental Plan (LEP) 2011*:

1. amend the land use annotations for a number of sites zoned SP2 Infrastructure, listed in Appendix 2, to ensure consistency with Standard Instrument definitions, and changing the Floor Space Ratio for two sites.
2. rezone a number Public Reserves, listed in Appendix 3, from their current zoning to RE1 Public Recreation and/or E2 Environmental Conservation, and
3. rezone five (5) State agency owned sites, listed in Appendix 4, from R2 to SP2 to reflect the current and intended use of the sites.
4. rezone one (1) State agency owned site, Eddy Street, listed in Appendix 4, from SP2 to B2 to reflect the current and intended use of the site.
5. Include specific provisions for Urban Release Areas.

2.0 Explanation of provisions

The Kiama Local Environmental Plan (LEP) 2011 is to be amended by:

1. Amending the relevant Land Zoning Maps, and Floor Space Ratio Maps as per Appendix 2 to annotate the land use zone using the infrastructure categories contained within the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) or the Standard Instrument dictionary and adopt associated development standards;
2. Amending the relevant Land Zoning Maps, Lot Size Maps, Height of Buildings Maps and Floor Space Ratio Maps as per Appendix 3 to rezone land to RE1 Public Recreation and/or E2 Environmental Conservation and removed associated development standards;
3. Amend Land Zoning Map, Lot Size Map, Height of Buildings Map and Floor Space Ratio Map as per Appendix 4 from R2 Low Density Residential to SP2 Infrastructure - Water Supply System.
4. Amend Land Zoning Map, Height of Buildings Map and Floor Space Ratio on Lot 1 DP 883525, 20 Eddy Street, from SP2 Infrastructure - Railway to B2 Local Centre and adopting a maximum permitted Height Of Building of 11m and Maximum permitted Floor Space Ratio of 1.5:1;
5. Amend Schedule 1 to include *community facilities* as a use permitted without development consent on Lot 1 DP 883525, 20 Eddy Street; and
6. Amend Additional Permitted Use Map – Sheet APU_012 to show that an additional permitted use applies to Lot 1 DP 883525, 20 Eddy Street;
7. Insert controls for Urban Release Areas.

SP2 Infrastructure annotations

The PP seeks to amend land use annotations for certain sites that are not annotated with a land use listed within the infrastructure categories of the Infrastructure SEPP or the Standard Instrument dictionary. An example of this is Figure 1 shown below:



Figure 1 - Current Zoning Annotation of 206 & 210 Terralong Street

The sites are zoned SP2 Fire Station & Ambulance. Fire station and ambulance are not defined land uses within the Standard Instrument LEP nor are they one of the 25 types of infrastructure prescribed by the Infrastructure SEPP, therefore this PP will seek to amend the annotation to *emergency services facility*. This is consistent with LEP practice note PN10-001 as *emergency service facility* is a defined land use within the Standard Instrument LEP as well as being one of the 25 types of infrastructure prescribed by the Infrastructure SEPP. This is one example of a number of sites that have been identified throughout the LGA having the same error.

Public Reserves

A number of sites throughout the Kiama LGA are currently used for recreational purposes (including sites that are Public Reserve on title) but are not zoned accordingly. The PP seeks to rezone these sites for public recreation purposes. An example of this is Mathoura Reserve in Elambra Estate shown in Figure 2 below:

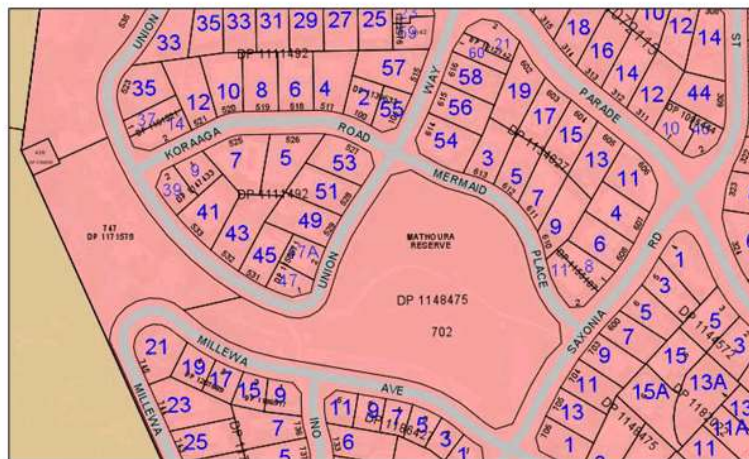


Figure 2 - Current Zoning of Mathoura Reserve, Elambra Estate

The site is currently zoned R2 Low Density Residential even though its intended use was not for residential purposes. The reasoning for the current zoning is that final subdivision layouts are not known at the time a PP is being considered, therefore it is not logical to rezone a portion of the

site to RE1 Public Recreation as the boundaries may change during the assessment of a development application for subdivision, therefore requiring another PP to amend the zone boundaries. The R2 zoning falsely indicates that the land may be used for residential development, which is not permissible given the land is classified as community land under the *Local Government Act 1993*. The PP seeks to rezone a number of parcels of land such as the above to ensure the zoning is consistent with the use and classification of the land.

State Owned Land

The PP seeks to rezone 20 Eddy Street, Kiama from SP2 Infrastructure - Railway to B2 Local Centre to allow for a wider range of commercial activities to be undertaken on the site, including the relocation of the Kiama Men's Shed.

SEPP 55 requires Council to be satisfied that the land is suitable (or can be made suitable) for the proposed use/s. A combined preliminary and detailed investigation and hazardous materials survey was undertaken on the site including a desktop assessment, site inspection and intrusive soil assessment involving six (6) boreholes being drilled into the ground. The investigation concluded that the site is suitable in its current state for commercial/industrial and medium to high density residential development. The investigation also concluded that remediation works would be required for a potential future land use of low density residential or open space. The PP seeks to rezone the site to B2 Local Centre where boarding houses, group homes and shop top housing are the only forms of residential accommodation that are permissible.

An environmental site assessment conducted on the site indicated that the site was used for storage and warehouse purposes as early as 1963. The current surrounding land uses are residential and commercial properties. The site is suitable in its current state for commercial/industrial and medium to high density residential development. Should low density residential development or open space be proposed, the site investigation indicates that remediation works would be required prior to these land uses being suitable. Although the B2 Local Centre zone allows for shop top housing which has a residential component, this proposed development would fall in the medium to low density residential component which does not require any remediation works and the site is suitable in its current state.

The site has an area of 1463m², is located south of the Kiama Town Centre adjoining the Illawarra Railway and is accessible via direct frontage to Eddy Street. The site contains an existing building that was formerly used as a depot for RailCorp and is now considered surplus to operational requirements. RailCorp and Sydney Trains are currently in the process of assessing these surplus properties to determine potential future uses, considering re-purposing and/or divestment. As part of this process, RailCorp and the Kiama Men's Shed expressed a mutual interest in using the existing building at 20 Eddy Street for the Kiama Men's Shed relocation. In order to reduce the amount of 'red tape' it is proposed to make *community facilities* a use that is permitted without development consent on the site. The site is shown in Figures 3 and 4 below:



Figure 3 – Aerial Image 20 Eddy Street (Source: SIX Maps)



Figure 4 – 20 Eddy Street (Source: Nearmap)

The PP also seeks to rezone five (5) sites throughout the Kiama that are currently owned by Sydney Water Corporation that are used for infrastructure purposes that are not zoned accordingly. The PP seeks to rezone these sites from R2 to SP2 Water Supply System to better reflect the current and future use of the site for Sydney Water infrastructure. The five (5) sites are listed in Appendix 4 and include; 133 North Kiama Drive, Gwinganna Avenue, 15 North Street, Newing Circuit and 46 Union Way.

The sites are currently zoned R2 Low Density Residential even though their intended use was not for residential purposes. The R2 zoning falsely indicates that the land may be used for residential development. The PP seeks to rezone a number of parcels of land such as the above to ensure the zoning is consistent with the use and classification of the land. The PP will result in residential development being prohibited on the site and therefore it is considered that the site is suitable in its current state and investigation/remediation works is not required.

Urban Release Area Clause

Urban Release Area provisions will ensure that once land has been rezoned, other strategic planning processes will need to occur and be finalised before development consent can be issued for future development. These provisions will allow Council to ensure that, as part of resolving to support any significant future planning proposals, site specific development control plans and servicing arrangements will need to be prepared prior to development consent being issued for subdivision. The final wording of this clause will be determined following consultation with the community and the NSW Parliamentary Counsel office.

3.0 Justification for objectives

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

The PP is not the direct result of the *Kiama Local Strategic Planning Statement 2020* (LSPS), or a strategic study or report.

Council's Strategic Planning works program, prepared to assist in the implementation of the Kiama LSPS 2020, identifies the need to undertake a number of housekeeping PPs to ensure the Kiama LEP 2011 remains contemporary.

In accordance with Council's *Planning Proposal Policy*, Council will only prepare a maximum of two (2) 'housekeeping' PP's per calendar year. This PP was endorsed by Council at the Ordinary Meeting on 20 October 2020.

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

A PP is the mechanism available for amending the current provisions of the LEP.

SP2 Annotations

A PP is the only mechanism available for amending the land use annotations on certain land zoned SP2 Infrastructure as this requires amendments to a number of Land Zoning Maps within the Kiama LEP 2011. As discussed earlier in this report, an example of this is the Kiama Fire Station. The site is currently zoned SP2 Fire Station and Ambulance. As this is not a defined land use in the Standard Instrument or the Infrastructure SEPP, a PP is required to amend the land use annotation to SP2 Emergency Services Facility.

Public Reserves

This PP seeks to rezone a number of public reserves from their current zoning to RE1 Public Recreation. A PP is the only mechanism available to rezone land. As discussed earlier in this report, an example of this is Mathoura Reserve in Elambra Estate. The site is a Council owned Public Reserve zoned R2 Low Density Residential. The current zoning does not reflect the appropriate and applicable uses of the site and therefore a PP is required to rezone the site to RE1 Public Recreation.

State Owned Land

In regards to the rezoning of 20 Eddy Street, alternative mechanisms to amend the LEP to facilitate such development include Additional Permitted Uses (Schedule 1 of Kiama LEP 2011) and Development near zone boundaries (Clause 5.3 Development near zone boundaries of the Standard Instrument – Principal Local Environmental Plan).

These mechanisms are not considered to be the most appropriate as Clause 5.3 of the Standard Instrument – Principal Local Environmental Plan is not currently adopted by the Kiama LEP 2011 nor could it be utilised on this site as it is within the coastal zone as identified by *State Environmental Planning Policy (Coastal Management) 2018*.

Only amending the LEP by way of inserting an Additional Permitted Use to permit a *community facility* on the site is not considered to be the best means of achieving the intended outcomes of the PP as it unnecessarily restricts potential development that would be appropriate for such a site within close proximity to the Kiama Town Centre and infrastructure such as the Illawarra Railway.

In regards to the rezoning of the five (5) sites listed in Appendix 4, that are currently owned by Sydney Water Corporation LGA, alternative mechanisms to amend the LEP to facilitate such development include Additional Permitted Uses (Schedule 1 of Kiama LEP 2011).

Only amending the LEP by way of inserting an Additional Permitted Use in the R2 zone to permit infrastructure on the site is not considered to be the best means of achieving the intended outcomes of the PP as it unnecessarily permits potential development that would not be

appropriate for residential sites and continues to falsely indicate that the land may be used for residential development even though the intended use was not for residential purposes. For this reason, rezoning the sites from R2 to SP2 through the planning proposal is considered the best means of achieving the objectives and/or intended outcomes.

Urban Release Area Clause

This PP seeks to include provisions for Urban Release Areas. A PP is the only mechanism available to include a new set of the controls in the LEP. These provisions will allow Council to ensure that, as part of resolving to support any significant future planning proposals, site specific development control plans and servicing arrangements will need to be prepared prior to development consent being issued for subdivision. This will ensure that infrastructure is established to service the subdivision and that the cost is worn by the developer and not the community.

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

The applicable regional plan is the Illawarra-Shoalhaven Regional Plan (ISRP) 2041. It is considered that the proposed amendments to the Kiama LEP 2011 are consistent with the objectives contained within the plan, specifically:

- Objective 11
- Objective 18
- Objective 21

Objective 11 – Protect important environmental assets

The Planning Proposal is considered to be consistent with and give effect to Objective 11 of the ISRP. The PP is consistent with the intent of Strategy 11.4 – Protect biodiversity values in urban release areas by incorporating validated, up-to-date environmental data into local strategic planning and local plans, in that it is ensuring that the zoning of Lot 91 DP 838427, Fern Street, Gerringong reflects the biodiversity values on the site. Kiama LEP maps a portion of the site zoned RE1 as containing terrestrial biodiversity (i.e. clause 6.4). This PP seeks to align the boundaries so that the land identified on the Terrestrial Biodiversity Map is also zoned E2 Environmental Conservation, therefore providing further protection to the environmental values of the site. The Planning Proposal also incorporates an Urban Release Area Clause to ensure the protection of biodiversity values.

Objective 18 – Provide housing supply in the right locations

The Planning Proposal is considered to be consistent with and give effect to Objective 18 of the ISRP. The PP is consistent with the intent of Strategy 18.3 – Identify, prioritise and coordinate infrastructure needed to support vibrant and healthy communities in the regions urban release areas through the Illawarra Shoalhaven Development Program. This PP seeks to incorporate an Urban Release Area Clause in the LEP to ensure infrastructure needed to support vibrant and healthy communities is provided in identified urban release areas.

Objective 21 – Respond to the changing needs of local neighbourhoods

The Planning Proposal is considered to be consistent with and give effect to Objective 21 of the ISRP. The PP is consistent with Strategy 21.1 – Consider the changing needs of local neighbourhood centres in local strategic planning and local plans by exploring flexibility and supporting a mix of land uses so that local spaces can be adapted to new uses and user needs over time. Whilst not within the Kiama Town Centre, Lot 1 DP883525, 20 Eddy Street is within close proximity to the town centre and public transport services such as the Illawarra Railway

Corridor, making it an ideal site for rezoning to B2 Local Centre. This is also consistent with the findings of the KTC Study that identified a lack of non-retail commercial floor space within the Kiama Town Centre. Rezoning this site will facilitate a wider range of commercial activities on the site and will allow Transport for NSW to lease the site to the Kiama Men's Shed for the purposes of a community facility. Increasing the amount of land zoned for public recreation purposes will contribute to building healthy communities. This PP also seeks to incorporate an Urban Release Areas Clause in the LEP which will ensure that arrangements are made for the provision of State public infrastructure before any development consent is granted for development on land in an urban release area. This will ensure that appropriate infrastructure is provided to service the residents.

3.4 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

The PP will give effect to the Council endorsed *Kiama Local Strategic Planning Statement* (LSPS).

The PP gives effect to a number of planning priorities contained within the Kiama LSPS which provide rationale for decisions about how Council will use land to achieve the community's broader goals and what updates are required to the LEP and DCP.

The PP gives effect to *Planning Priority 7 Strengthen Commercial Centres* by increasing land available for commercial activities in line with the recommendations of the KTC Study. The PP gives effect to *Planning Priority 14 Support and create vibrant places* by ensuring Council owned land (specifically Public Reserves) are managed to create vibrant and inclusive spaces.

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

The following State Environmental Planning Policies (SEPP's) are applicable to the Planning Proposal (PP):

- *State Environmental Planning Policy No. 55 – Remediation of Land*

SEPP 55 requires Council to be satisfied that the land is suitable (or can be made suitable) for the proposed use/s. The PP involves the rezoning of 20 Eddy Street to B2 Local Centre, therefore making a wider range of uses permissible on the site. A combined preliminary and detailed investigation and hazardous materials survey was undertaken on the site including a desktop assessment, site inspection and intrusive soil assessment involving six (6) boreholes being drilled into the ground.

The site structures consist of a large brick building with an adjoining metal building to the north. The remaining site footprint is sealed with asphalt, with the exception of small grassed areas along some boundaries. A disused train turntable is situated directly north of the site. Historical aerial imagery indicates that the site was used for storage and warehouse purposes from 1961 onwards. The current building configuration was constructed between 1993 and 2002. Prior to this time, the surrounding area was primarily residential and commercial properties.

The investigation concluded that the site is suitable in its current state for commercial/industrial and medium to high density residential development. The investigation also concluded that remediation works would be required for a potential future land use of low density residential or open space. The PP seeks to rezone the site to B2 Local Centre where boarding houses, group homes and shop top housing are the only forms of residential accommodation that are permissible.

There are five (5) sites throughout the Kiama that are currently owned by Sydney Water Corporation LGA that are used for infrastructure purposes that are not zoned accordingly. The PP seeks to rezone these sites from R2 to SP2 Water Supply System to better reflect the current and future use of the site for Sydney Water infrastructure. The five (5) sites are listed in Appendix 4 and include; 133 North Kiama Drive, Gwinganna Avenue, 15 North Street, Newing Circuit and 46 Union Way.

The sites are currently zoned R2 Low Density Residential even though their intended use was not for residential purposes. The R2 zoning falsely indicates that the land may be used for residential development. The PP seeks to rezone a number of parcels of land such as the above to ensure the zoning is consistent with the use and classification of the land. The PP will result in residential development being prohibited on the site and therefore it is considered that the site is suitable in its current state and investigation/remediation works is not required.

The subject PP is considered to be consistent with SEPP No. 55 and depending on the future use of 20 Eddy Street, remediation works may be required. These can be further considered and detailed at Development Application stage if necessary.

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

A Section 9.1 Ministerial Directions – Compliance Checklist has been compiled by Kiama Council and is included in Appendix 1.

Council finds the proposal consistent with all applicable Section 9.1 Ministerial Directions except for Direction 1.5 – Rural Lands, as it seeks to rezone a number of parcels of land from RU2, E2 and E3 to RE1 Public Recreation. The inconsistency is justified as it is of minor significance. The parcels being rezoned to RE1 are identified as Public Reserves on title and are not used for rural/agricultural purposes. The PP does not reduce environmental protection nor restrict land available for agriculture.

3.7 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?

Due to the nature of the PP it is considered unlikely that any environmental effects will occur as a result of the proposed changes.

The PP seeks to amend the zone boundaries for Lot 91 DP 838437 Fern Street, Gerringong. Currently the site is zoned both RE1 Public Recreation and E2 Environmental Conservation. A portion of the site contains saline wetlands and is identified on Council's Terrestrial Biodiversity map. It is standard Council practice that areas mapped as terrestrial biodiversity are also zoned E2 Environmental Conservation, however, the E2/RE1 zone boundary on the site does not align. As the PP seeks to amend the zone boundaries to ensure the terrestrial biodiversity land is zoned E2, it is considered that the PP is unlikely to have an adverse effect on any critical habitat, threatened species, populations or ecological communities or their habitats.

Figures 7 and 8 below highlight the discrepancy between the Terrestrial Biodiversity Map layer and the zoning:



Figure 7 – Terrestrial Biodiversity Overlay Lot 91 DP 838437

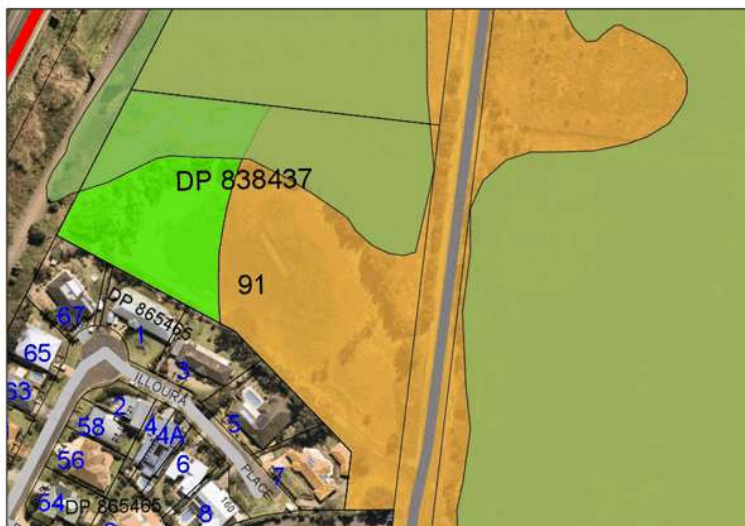


Figure 8 – Zoning and Terrestrial Biodiversity Overlay Lot 91 DP 838437

20 Eddy Street is developed and does not contain any vegetation nor is it identified on Council's Terrestrial Biodiversity map and therefore is unlikely to have an adverse effect on any critical habitat, threatened species, populations or ecological communities or their habitats.

Five (5) sites owned by Sydney Water, listed in Appendix 4, are currently occupied by Sydney Water Corporation infrastructure. The PP seeks to rezone the sites from R2 to SP2 Water Supply System to more accurately reflect the current use of the site. The five (5) sites are listed in Appendix 4 and include; 133 North Kiama Drive, Gwinganna Avenue, 15 North Street, Newing Circuit and 46 Union Way.

The PP will not alter any existing measures to conserve that critical habitat or threatened species, populations or ecological communities, or their habitats. The *Biodiversity Conservation Act 2016*, *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and Chapter 2 of the *Kiama Development Control Plan 2020* will continue to apply to development involving the removal of vegetation.

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

Due to the nature of the PP it is considered unlikely that any environmental effects will occur as a result of the proposed changes. None of the sites this PP applies to are identified as items of environmental heritage in Schedule 5 of the *Kiama Local Environmental Plan 2011*.

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

Economic Effects

The PP is considered to have a positive economic effect on the Kiama LGA. The *Kiama Town Centre Economic Study* was prepared on behalf of Council with the aim of providing Council with an understanding of the current economic performance and potential future demand for the centre. The study suggested that there is a clear lack of non-retail commercial space for small businesses within the town centre. Whilst it is noted that 20 Eddy Street is not located within the Kiama Town Centre, it is within close proximity to the town centre and public transport making it a suitable site for commercial land uses.

Amending the LEP to include provisions for Urban Release Areas will have a positive effect on the community as it ensures that State public infrastructure will be established prior to any development consent for development on land in urban release areas, and the cost worn by the developer.

The remaining components of the PP are for housekeeping purposes and are considered to have a neutral economic effect as they do not restrict potential development from occurring.

Social Effects

The PP is considered to have significant positive social effect for the community. The PP seeks to rezone a number of parcels of land to RE1 Public Recreation, effectively increasing the amount of land zoned for public recreation purposes. These sites are Public Reserves on title and the PP seeks to align the land zoning to this use ensuring their continued use for public recreation purposes.

As noted earlier in this report, the rezoning of 20 Eddy Street to B2 Local Centre not only allows for potential commercial activities to take place on the site, it allows for the potential relocation of the Kiama Men's Shed facility from Manning Street to the site. The Kiama Men's Shed is a community facility promoting men's health and wellbeing, and therefore is considered to have positive social effects on the Kiama community.

Amending the LEP to include provisions for Urban Release Areas will have positive social effects for the community as it will ensure appropriate development control plans are in place prior to development consent being granted for any future development. This will ensure that best practice urban design, stormwater management, open green space, connectivity etc occurs.

3.10 Is there adequate public infrastructure for the planning proposal?

The proposal has the potential to increase the current demand on public infrastructure, although such an increase is considered to be of minor significance.

The rezoning of 20 Eddy Street from SP2 Infrastructure to B2 Local Centre will allow for a wider range of land uses to be permissible on the site. The site is located within close proximity to the town centre and it is considered that there is adequate public infrastructure available to service the site.

The rezoning of the five (5) sites owned by Sydney Water, listed in Appendix 4, is not considered to have an impact on public infrastructure available to the site. The sites include; 133 North Kiama Drive, Gwinganna Avenue, 15 North Street, Newing Circuit and 46 Union Way. The sites are located within an existing residential area provided with adequate public infrastructure. The

rezoning of the sites is to reflect the use of the sites for water supply infrastructure. The proposed rezoning will not impact on existing public infrastructure available to the site.

The PP seeks to amend incorrect land use annotations on a number of sites in the Kiama LGA zoned SP2 Infrastructure. Amending these land use annotations will have no impact on public infrastructure and is for administration/housekeeping purposes only. The rezoning of Council owned land (Public Reserves) to RE1 Public Recreation is unlikely to require the provision of public infrastructure.

Council recommends that consultation with Sydney Water, Endeavour Energy and Sydney Trains should be required post Gateway.

Amending the LEP to include provisions for Urban Release Areas will ensure that there is adequate infrastructure for future planning proposals. The objectives of the provisions are to ensure that satisfactory arrangements are to be made for the provision of State public infrastructure before any development consent for future development is granted. This will ensure that future residents can be serviced adequately.

3.11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Pre Gateway consultation

The proposal is minor in nature and as such, no State or Commonwealth authorities have been consulted as part of the preparation of this Planning Proposal.

Post Gateway consultation

Whilst Council proposed to consult with the following agencies:

- Sydney Water
- Sydney Trains
- Endeavour Energy
- NSW Rural Fire Services

The Gateway Determination only requires consultation with the NSW Rural Fire Services.

4.0 Mapping

The PP requires the following LEP Maps to be amended:

- Land Zoning Map:
 - Sheet LZN_011;
 - Sheet LZN_012;
 - Sheet LZN_013;
 - Sheet LZN_014; and
 - Sheet LZN_015
- Lot Size Map:
 - Sheet LSZ_011;
 - Sheet LSZ_012;
 - Sheet LSZ_014; and
 - Sheet LSZ_015
- Height of Buildings Map:
 - Sheet HOB_011;
 - Sheet HOB_012;
 - Sheet HOB_014; and
 - Sheet HOB_015

- Floor Space Ratio Map:
 - Sheet FSR_011;
 - Sheet FSR_012;
 - Sheet FSR_014; and
 - Sheet FSR_015
- Additional Permitted Uses:
 - Sheet APU_012

5.0 Community Consultation

Council requests that the planning proposal be exhibited for a period of 28 days and include:

- Electronic copy on Council's website,
- Notification letters to affected/neighbouring land owners and relevant community precinct groups,
- Notification letters to relevant State agencies and other authorities/agencies nominated by the DPIE.

6.0 Project Timeline

The timeframe for the Planning Proposal is that, from date of Gateway determination to date of submission to the Department of Planning, Industry & Environment (DPIE), to finalise the LEP is a period of 12 months.

	Timeframe	Possible dates
Submit to DPIE seeking a Gateway Determination		April 2021
Receive Gateway Determination	4 weeks from submission date	May 2021
Preparation of any outstanding studies (if required)	N/A	N/A
Consult with State/Commonwealth agencies	4 weeks from completing review of any outstanding studies	August 2021
Exhibition of PP and technical studies (assuming no requirement to resubmit to DPIE)	4 weeks from completing review of any outstanding studies	September 2021
Date of Public Hearing (if required)	N/A	
Review of Public Submissions and preparation of report to Council	4 weeks from end of exhibition period	October 2021
Report to Council for final endorsement	First available Council meeting after completion of review of submissions (allow 8 weeks)	November 2021

Seek Parliamentary Counsel Office's (PCO) opinion.	2 weeks from date of Council meeting minutes being published	December 2021
Submit maps to DPIE for review	2 weeks from date of Council meeting minutes being published	December 2021
Submit to DPIE to publish LEP amendment	4-6 weeks from date PCO's opinion requested	February 2022
Anticipated publication date of LEP amendment	2 weeks from date of submission to DPIE	March 2022

Appendix 1 – Section 9.1 Ministerial Directions – Compliance Checklist

Ministerial Direction	Comment
1. Employment and Resources	
1.1 Business and Industrial Zones	This PP will allow for a broader range of business/commercial land uses to occur on 20 Eddy Street, Kiama. The PP gives effect to the objectives of this direction as it encourages employment growth in a suitable location as well as supporting the viability of the Kiama Town Centre. The PP is consistent with Direction 1.1 – Business and Industrial Zones.
1.2 Rural Zones	The direction applies to the PP as it affects land within an existing rural zone by altering the existing zone boundary. The PP is consistent with this direction as it does not rezone land from a rural zone to a residential, business, industrial, village or tourist zone, nor does it contain provisions that will increase permissible density of land within a rural zone. The PP is consistent with Direction 1.2 – Rural Zones.
1.3 Mining, Petroleum Production and Extractive Industries	The direction does not apply to the PP.
1.4 Oyster Aquaculture	The direction does not apply to the PP.
1.5 Rural Lands	The direction applies to the PP as it seeks to rezone land zoned RU2 Rural Landscapes, E2 Environmental Conservation and E3 Environmental Management to RE1 Public Recreation. The PP is considered to be justifiably inconsistent with this direction. The PP seeks to rezone a number of

	<p>parcels of land from RU2, E2 and E3 to RE1 Public Recreation.</p> <p>The inconsistency is justified as it is of minor significance. The parcels being rezoned to RE1 are identified as Public Reserves on title and are not used for rural/agricultural purposes. The PP does not reduce environmental protection nor restrict land available for agriculture.</p> <p>The PP is consistent with the Illawarra-Shoalhaven Regional Plan, does not affect significant agricultural land, protects environmental valued including native vegetation, does not impact upon farmer's ability to exercise their right to farm, does not fragment or isolate agricultural land and considers the social, economic and environmental interests of the community.</p> <p>The PP is justifiably inconsistent with Direction 1.5 – Rural Lands.</p>
<p>2. Environment and Heritage</p>	
<p>2.1 Environment Protection Zones</p>	<p>The PP does not seek to reduce the environment protection standards that apply to land within an environment protection zone or land currently identified for environment protection purposes.</p> <p>Lot 2 DP 1065404 Headland Drive, Gerroa, is currently zoned E3 Environmental Management but is not identified on Council's Terrestrial Biodiversity Map.</p> <p>The PP does not reduce environment protection standards that apply to the land as the <i>Biodiversity Conservation Act 2016</i>, <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> and Chapter 2 of the <i>Kiama Development Control Plan 2020</i> will continue to apply to development involving the removal of vegetation.</p> <p>The PP is consistent with Direction 2.1 – Environment Protection Zones.</p>
<p>2.2 Coastal Management</p>	<p>A number of parcels of land subject to this PP are located within the coastal zone prescribed by <i>State Environmental Planning Policy (Coastal Management) 2018</i>. A Coastal Vulnerability Map has not been adopted and therefore no coastal vulnerability areas have been identified.</p> <p>The PP does not seek to rezone land which would enable increased development or more intensive land-use on land that has been identified as land affected by a current or future coastal hazard in the Kiama LEP 2011 or Kiama DCP 2020.</p> <p>The sites subject to this PP are not identified as coastal wetlands or littoral rainforests by the Coastal Management SEPP.</p>

	The PP is considered to be consistent with the objects of the <i>Coastal Management Act 2016</i> and is consistent with Direction 2.2 – Coastal Management.
2.3 Heritage Conservation	The PP will not alter the existing provisions of the Kiama LEP 2011 and Kiama DCP 2020 which give effect to heritage conservation. The PP is consistent with Direction 2.3 – Heritage Conservation.
2.4 Recreation Vehicle Areas	The PP will not alter existing development permissibility within the municipality in regards to vehicle recreation areas. The Planning Proposal is consistent with Direction 2.4 – Recreation Vehicle Area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	This direction does not apply to the Kiama LGA.
2.6 Remediation of Contaminated Land	20 Eddy Street is owned by RailCorp and was previously used as a depot. Preliminary and detailed site investigation was carried out and submitted to Council to address potential contamination. The report concluded that the site is suitable in its current state for commercial/industrial, and medium to high density residential development. The report also concludes that further remediation works are required if the land is to be used for low density residential development or open space. The PP seeks to rezone the site to B2 Local Centre, meaning that low density residential development and outdoor recreational facilities are prohibited on the site. As such, Council is satisfied that the land is suitable in its current state for all the purposes for which land in the zone concerned is permitted to be used, and if remediation works are required, satisfied that these works will be carried out prior to the land being used for that purpose. The PP is consistent with Direction 2.6 – Remediation of Contaminated Land.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	The PP seeks to rezone a number of Public Reserves from R2 Low Density Residential to RE1 Public Recreation. The PP also seeks to rezone five (5) parcels of land from R2 to SP2 Infrastructure (Water Supply System) to better align the site with their current use. Amending the LEP to include provisions for Urban Release Areas will ensure that best practice urban design, stormwater management, open green space, connectivity etc occurs.

	The PP is consistent with Direction 3.1 – Residential Zones.
3.2 Caravan Parks and Manufactured Home Estates	The PP does not reduce the permissibility of caravan parks and does not rezone existing caravan parks. The PP is consistent with Direction 3.2 – Caravan Parks and Manufactured Home Estates.
3.3 Home Occupations	Revoked. The PP is consistent with Direction 3.3 – Home Occupations.
3.4 Integrating Land Use and Transport	The PP is consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001). The rezoning of 20 Eddy Street provides commercial development within close proximity to the town centre and public transport links assisting to aid in clustering of centre developments. The PP is consistent with Direction 3.4 – Integrating Land Use and Transport.
3.5 Development Near Regulated Airports and Defence Airfields	This direction does not apply to the PP.
3.6 Shooting Ranges	This direction does not apply to the PP.
3.7 Reduction in non-hosted short term rental accommodation	This direction does not apply to the PP.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	The PP does not propose an intensification of land uses on land identified as having a probability of containing acid sulfate soils. The PP does not alter the applicability of Clause 6.1 of the KLEP 2011. The PP is consistent with Direction 4.1 – Acid Sulfate Soils.
4.2 Mine Subsidence and Unstable Land	This direction does not apply to the PP.
4.3 Flood Prone Land	The PP does not contain provisions which permits development in floodways, development that will result in significant flood impacts to other properties, does not permit a significant increase in development on flood prone land nor is it likely to result in a substantially increased requirement for Government spending on flood mitigation measure, infrastructure or services.

	The PP is consistent with Direction 4.3 – Flood Prone Land.
4.4 Planning for Bushfire Protection	The PP does not result in development places in inappropriate and hazardous areas and does not alter the applicability of <i>Planning for Bushfire Protection 2019</i> . The PP is consistent with Direction 4.4 – Planning for Bushfire Protection.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Revoked 17 October 2017
5.2 Sydney Drinking Water Catchments	The PP does not apply to land that is within the Sydney Drinking Water Catchment.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	This direction does not apply to the Kiama LGA.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	This direction does not apply to the Kiama LGA.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Revoked 18 June 2010
5.6 Sydney to Canberra Corridor	Revoked 10 July 2008
5.7 Central Coast	Revoked 10 July 2008
5.8 Second Sydney Airport: Badgerys Creek	Revoked 20 August 2018
5.9 North West Rail Link Corridor Strategy	This direction does not apply to the Kiama LGA.
5.10 Implementation of Regional Plans	The PP is consistent with the Illawarra-Shoalhaven Regional Plan (see Section 4.3 of this report). The PP is consistent with Direction 5.10 – Implementation of Regional Plans.
5.11 Development of Aboriginal Land Council land	The subject sites are not identified on the Land Application map of <i>State Environmental Planning Policy (Aboriginal Land) 2019</i> .
6. Local Plan Making	
6.1 Approval and Referral Requirements	The PP does not increase the requirement for concurrence, consultation or referral of development applications to a Minister or public authority.

	The PP is consistent with Direction 6.1 – Approval and Referral Requirements.
6.2 Reserving Land for Public Purposes	The subject PP seeks to rezone land that is Public Reserve on Title to RE1 Public Recreation. The land being rezoned is already used for public purposes. The PP is consistent with Direction 6.2 – Reserving Land for Public Purposes.
6.3 Site Specific Provisions	The subject PP seeks to rezone 2 Eddy Street, Kiama, to facilitate a wider range of commercial development, including potential relocation of the Kiama men’s Shed (a <i>community facility</i>). The PP is consistent with Direction 6.3 – Site Specific Provisions.
7. Metropolitan Planning	
These directions do not apply to the Kiama Municipality	

Appendix 2 – SP2 Zoned Land Incorrectly Annotated

Site Lot and Plan	Address & Locality	Current Zoning	Proposed Zoning	Lot Size Current and Proposed	Height of Building Current and Proposed	Floor Space Ratio Current and Proposed	Map Sheet
Lot 14 DP 869959	205 Terralong Street, KIAMA	SP2 SES	SP2 Emergency Services Facility	Nil – No change	11 – No change	0.9 – No change	12
Lot 51 DP 804377	210 Shoalhaven Street, KIAMA	SP2 Fire Station and Ambulance	SP2 Emergency Services Facility	Nil – No change	11 – No change	0.9 – No change	12
Lot 1 & Lot 3 DP 1236189	206 Terralong Street, KIAMA	SP2 Fire Station and Ambulance	SP2 Emergency Services Facility	Nil – No change	11 – No change	0.9 – No change	12
Lot 1 DP 106081	24 Terralong Street, KIAMA	No land use assigned – Post Office	SP2 Public Administration Building	Nil – No change	11 – No change	0.9 – No change	12
Lot 1 Section 5 DP 758563	30 Terralong Street, KIAMA	No land use assigned – NSW Police	SP2 Emergency Services Facility	Nil – No change	11 – No change	0.9 – No change	12
Lot 7033 DP 1061038	32 Terralong Street, KIAMA	SP2 Council Chambers	SP2 Emergency Services Facility	Nil – No change	8.5 – No change	0.9 – No change	12
Part of Lot 48 DP 250008	46 Blackwood Street, GERRINGONG	SP2 Fire Station	SP2 Emergency Services Facility	Nil – No change	8.5 – No change	Part of Lot 48: 0.9 – No Change	14
Part of Lot 60 DP 703112	Blackwood Street, GERRINGONG	SP2 Fire Station	SP2 Emergency Services Facility	Nil – No change	8.5 – No change	Part of Lot 60: Nil – Add 0.9	14

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Lot 100 DP 803472	7 Railway Parade, KIAMA	SP2 Library	SP2 Information and Education Facility	Nil – No change	Nil – No change	Nil – No change	12
Part of Lot 206 & part of Lot 207 DP 1164476 Part of Lot 10 DP 1167819	Fern Street, GERRINGONG	No land use assigned – On/off ramp	SP2 Classified Road	Nil – No change	Nil – No change	Nil – No change	13
Part of Lot 38 DP 873965	Fern Street, GERRINGONG	SP2 Town Hall	SP2 Community Facility	Nil – No Change	Nil – No Change	Nil – No Change	14
Lot 1 DP 1056775	Meehan Drive, KIAMA DOWNS	SP2 Community Facilities	SP2 Water Storage Facility	Nil – No change	Nil – No change	0.45 - remove	12
Lot 51 DP 830172	Saddleback Mountain Road, KIAMA	No land use assigned	SP2 Water Supply System	Nil – No change	Nil – No change	Nil – No change	12

Appendix 3 - Land to be zoned for Public Recreation

Site Lot and Plan Number	Address and Locality	Current Zoning	Proposed Zoning	Lot Size Current and Proposed	Height of Building Current and Proposed	Floor Space Ratio Current and Proposed	Map Sheet
Lot 8 DP 839577	7 Bland Street, KIAMA	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	12
Lot 600 DP 1044512	Bland Street, KIAMA	R3 Medium Density Residential	RE1 Public Recreation	450 - Remove	Nil - No change	Nil - No change	12
Lot 88 & Lot 89 DP 838437	Burnett Avenue, GERRINGONG	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	14
Lot 86 DP 838437	Burnett Avenue, GERRINGONG	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	14
Lot 8 DP 850163	Elouera Place, KIAMA	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	12
Lot 1429 DP 1061892	Eugene Street, KIAMA	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	Nil - No change	Nil - No change	12
Lot 53 DP 884475	Fern Street, GERRINGONG	B2 Local Centre	RE1 Public Recreation	Nil - No change	11 - Remove	0.45 - Remove	14

Lot 91 DP 838437	Fern Street, GERRINGONG	Part RE1 Part E2 Environmental Conservation	Amend zone boundaries to reflect Terrestrial Biodiversity Layer	Nil – No change	Nil – No change	Nil – No change	13/14
Lot 1319 DP 1060995	Greyleigh Drive, KIAMA	RU2 Rural Landscapes	RE1 Public Recreation	40ha - remove	Nil – No change	Nil – No change	12
Lot 300 DP 1059841	Greyleigh Drive, KIAMA	RU2 Rural Landscapes	RE1 Public Recreation	40ha - remove	Nil – No change	Nil – No change	12
Lot 199 DP 1042913	Greyleigh Drive, KIAMA	RU2 Rural Landscapes	RE1 Public Recreation	40ha - remove	Nil – No change	Nil – No change	12
Lot 100 DP 1042908	Greyleigh Drive, KIAMA	RU2 Rural Landscapes	RE1 Public Recreation	40ha - remove	Nil – No change	Nil – No change	12
Lot 2 DP 1179778	Greyleigh Drive, KIAMA	RU2 Rural Landscapes	RE1 Public Recreation	40ha - remove	Nil – No change	Nil – No change	12
Lot 2 DP 1065404	Headland Drive, GERROA	E3 Environmental Management	RE1 Public Recreation	Part 450sqm/40ha – remove from all	Part 8.5/Nil – Remove from all	Part 0.45/Nil – Remove from all	14/15
Lot 2 DP 1056775	Meehan Drive, KIAMA DOWNS	SP2 Community Facilities	RE1 Public Recreation	Nil – No change	Nil – No change	0.45 - Remove	11
Lot 747 DP 1171578	Millewa Avenue, GERRINGONG	R2 Low Density Residential	E2 Environmental Conservation	450 - Remove	8.5 - Remove	0.45 - Remove	14

Lot 231 DP 1060665	Neptune Street, GERRINGONG	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	14
Lot 1310 DP 1060995	Old Saddleback Road, KIAMA	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	12
Lot 499 DP 1064140	Old Saddleback Road, KIAMA	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	Nil – No change	Nil – No change	12
Lot 21 DP 264151	Tanner Place, KIAMA	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	12
Lot 702 DP 1148475	Union Way, GERRINGONG	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	14
Lot 535 DP 1111492	Union Way, GERRINGONG	R2 Low Density Residential	E2 Environmental Conservation	450 - Remove	8.5 - Remove	0.45 - Remove	14
Lot 206 DP 1180016	Union Way, GERRINGONG	Part R2 Low Density Residential and Part RU2 Rural Landscapes	E2 Environmental Conservation	40ha - Remove	Part 8.5/Nil – Remove from all	Part 0.45/Nil – Remove from all	14
Lot 130 DP 1052645	18 Union Way, GERRINGONG	R2 Low Density Residential	RE1 Public Recreation	450 - Remove	8.5 - Remove	0.45 - Remove	14
Lot 206 DP 1156196	Wells Street, GERRINGONG	R2 Low Density Residential	E2 Environmental Conservation	Part 450sqm/40ha – Remove from all	Part 8.5/Nil – Remove from all	Part 0.45/Nil – Remove from all	14

Appendix 4 - State Agency owned Land

Site Lot and Plan	Address	Current Zoning	Proposed Zoning	Lot Size Current and Proposed	Height of Building Current and Proposed	Floor Space Ratio Current and Proposed	Map Sheet
Lot 909 DP 236615	133 North Kiama Drive, KIAMA DOWNS	R2 Low Density Residential	SP2 Water Supply System	450 - Remove	8.5 - Remove	0.45 - Remove	11
Lot 2 DP 793745	Gwinganna Avenue, BEACHSIDE	R2 Low Density Residential	SP2 Water Supply System	450 - Remove	8.5 - Remove	0.45 - Remove	12
Lot 139 DP 29245	15 North Street, MINNAMURRA	R2 Low Density Residential	SP2 Water Supply System	450 - Remove	8.5 - Remove	0.45 - Remove	11
Lot 400 DP 801403	Newing Circuit, KIAMA DOWNS	R2 Low Density Residential	SP2 Water Supply System	450 - Remove	8.5 - Remove	0.45 - Remove	12
Lot 436 DP 1088899	46 Union Way, GERRINGONG	R2 Low Density Residential	SP2 Water Supply System	450 - Remove	8.5 - Remove	0.45 - Remove	14
Lot 1 DP 883525	20 Eddy Street, KIAMA	SP2 Railway	B2 Local Centre	Nil – No change	Nil – Add 11	Nil – Add 1.5	12

Appendix 5 – Transport NSW Concurrence

Hi Ed,

Thank you again for your email below and advising us of Council's upcoming housekeeping LEP amendment. In response to your matters raised, I can confirm the following:

- Sydney Trains supports the rezoning of the site at 20 Eddy Street Kiama to B2 Local Centre;
- We can provide the Kiama Depot Hazardous Materials Survey and Environmental Site Assessment (will send in separate email given large file size);
- There are additional sites in the Kiama LGA - 21 Barney Street Kiama (suggested rezoning to R3 as per adj zones), Lots 1, 2, 3, 4 DP 715077 Attunga & Kalang Rd, Kiama Heights (suggested rezoning to R2 as per adj zones), and the two lots shown below along Riverside Drive in Bombo (suggested rezoning to R3 give the site's size and location and its distance away from any neighbours).



For your information.

We look forward to further consultation and involvement in this process going forward.

Kind Regards,

Rita Nakhle
Senior Town Planning Officer
Property & Commercial Services
Customer Environment
Customer Operations
Sydney Trains

T 02 8574 2484

DA_sydneytrains@transport.nsw.gov.au
Level 3 East, 36-46 George Street, Burwood NSW 2134
PO Box 459, Burwood NSW 1805

Appendix 6 – Sydney Water Concurrence

From: VIESIS, KARL
Sent: Tuesday, 29 October 2019 1:57 PM
To: 'edwardp@kiama.nsw.gov.au' <edwardp@kiama.nsw.gov.au>
Subject: Kiama Municipal Council LEP Review - Sydney Water Re-zoning Requests

Dear Mr Paterson,

Thank you for your time discussing Sydney Water's request for Kiama Municipal Council to consider the re-zoning of various Sydney Water operational land holdings, as part of the Council's any upcoming LEP Housekeeping Review. As discussed, please find attached property information for the land subject to a rezoning request and below information associated with the request.

Rationale

Sydney Water has undertaken a review of its property portfolio across various Local Government Area's with a focus on its operational property assets.

As part of this review, various sites have been identified that contain permanent operational infrastructure within lands considered to contain zoning anomalies.

The infrastructure is critical to the servicing of the existing population and future growth within the Kiama Municipal Council LGA. As part of recognising the permanent nature of these infrastructure assets and their requirements for protection, Sydney Water recommends rezoning of these sites to SP2 – Infrastructure, as part of any LEP Housekeeping amendments or an upcoming Kiama Local Environmental Plan (LEP) Review.

Sydney Water believes that re-zoning these lots to SP2 – Infrastructure;

- Better reflects the lands ongoing, permanent use as vital water and sewerage infrastructure;
- Provides clarity to the local community as to the current and intended use of the land;
- Is consistent with Kiama LEP 2011, SP2 Zone objectives to provide for infrastructure and related uses;
- Confirms the land use is intended to support population growth within the LGA, providing services and infrastructure to meet peoples changing needs.

At this stage Sydney Water has identified 5 parcels within the Kiama LGA that contain permanent and critical infrastructure and have the potential for a more appropriate zoning. Please find attached property details including legal description, address, zoning and diagrams showing Sydney Water infrastructure.

Should you require any further information please do not hesitate to contact me on 8849 4466. We are happy to meet to discuss any details or Council's view to an appropriate zoning at your convenience.

Kind Regards,

Karl Viesis
Project Manager - Property Optimisation Program
Group Property
Sydney Water, Level 13, 1 Smith Street, Parramatta NSW 2150

 Ph 8849 4466
Mob 0447 054 998
KARL.VIESIS@sydneywater.com.au

How to contact Council

Post

General Manager
Kiama Municipal Council
PO Box 75
Kiama NSW 2533

Telephone

+61 (02) 4232 0444

Facsimile

+61 (02) 4232 0555

Online

Email: council@kiama.nsw.gov.au
Website: www.kiama.nsw.gov.au

Office hours

Our Administration Building located at
11 Manning Street Kiama is open 8.45 am to 4.15 pm
Monday to Friday (excluding public holidays)



KIAMA MUNICIPAL COUNCIL
your council, your community



Gateway Determination

Planning proposal (Department Ref: PP-2021-3041): housekeeping amendment to correct anomalies with zoning and map labelling for government sites across the LGA and to rezone surplus railway land to allow commercial uses.

I, the Director, Southern Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that a housekeeping amendment to the Kiama Local Environmental Plan (LEP) 2011 to correct anomalies with zoning and map labelling for government sites across the LGA and to rezone surplus railway land to allow commercial uses should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - confirm the provisions;
 - correct the title referencing of the maps;
 - include the letter from Transport for NSW requesting and supporting the rezoning of Lot 1 DP883525, 20 Eddy Street, Kiama as supporting documentation; and
 - include as attachments, the reports undertaken by Transport for NSW on the preliminary and detailed site investigation and hazardous materials survey for Lot 1 DP883525, 20 Eddy Street Kiama.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 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 section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).

3. Consultation is required with the NSW RFS under section 3.34(2)(d) of the Act and to comply with the requirements of section 9.1 Direction 4.4 Planning for Bushfire Protection.

NSW RFS is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

PP-2021-3041 (IRF21/1922)

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 Act.
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the 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 section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. The time frame for completing the LEP is to be 12 months following the date of the Gateway determination expiring on 31 May 2022.

Dated 31st day of May 2021



**Sarah Lees
Director, Southern Region
Local and Regional Planning
Department of Planning, Industry and
Environment**

**Delegate of the Minister for Planning
and Public Spaces**



Planning,
Industry &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP-2021-3041)

I, the Director, Southern Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 31 May 2021 for the proposed amendment to the Kiama Local Environmental Plan 2011 as follows:

1. Change the name and description of the planning proposal

from

Planning proposal (Department Ref: PP-2021-3041): to correct anomalies with zoning and map labelling for government sites across the LGA and to rezone surplus railway land to allow commercial uses.

I, the Director, Southern Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, 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 (LEP) 2011 to correct anomalies with zoning and map labelling for government sites across the LGA and to rezone surplus railway land to allow commercial uses as part of a housekeeping review of the LEP should proceed subject to the following conditions:

to

Planning proposal (Department Ref: PP-2021-3041): to correct anomalies with zoning and map labelling for government sites across the LGA; to rezone surplus railway land to allow commercial uses; and to insert an urban release area clause.

I, the Director, Southern Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, 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 (LEP) 2011 to correct anomalies with zoning and map labelling for government sites across the LGA; to rezone surplus railway land to allow commercial uses; and to insert an urban release area clause with controls for strategic planning and servicing arrangements as part of a housekeeping review of the LEP should proceed subject to the following conditions:

Dated 2nd day of September 2021.

Sarah Lees
Director, Southern Region
Local and Regional Planning
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning and
Public Spaces

PP-2021-3041 (IRF21/3514)



NSW RURAL FIRE SERVICE

The Council of the Municipality of Kiama
PO Box 75
KIAMA NSW 2533

Your reference: (REF-783)
Our reference: SPI20210908000153

ATTENTION: Suzi Stojcevska

Date: Monday 13 September 2021

Dear Sir/Madam,

**Strategic Planning Instrument
Rezoning**

The PP seeks to amend land use annotations for certain sites within the infrastructure categories of the Infrastructure SEPP or the Standard Instrument dictionary. The PP seeks to rezone a number of sites used for recreation purposes (and Public Reserve on Title). The PP seeks to rezone 20 Eddy Street, Kiama from SP2 Infrastructure - Railway to B2 Local Centre and 133 North Kiama Drive, Kiama Downs, from R2 Low Density Residential to SP2 Infrastructure - Water Supply System

I refer to your correspondence dated 07/09/2021 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.

For any queries regarding this correspondence, please contact Bradley Bourke on 1300 NSW RFS.

Yours sincerely,

Martha Dotter
**Supervisor Development Assessment & Plan
Built & Natural Environment**

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement

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

Item 12.5

Summary

This report assesses Development Application No 10.2021.69.1 which involves the demolition of existing structures and the construction of three attached multi-dwellings, basement carparking, associated landscaping and the relocation of an existing drainage easement at 31-33 Taylor Street, Kiama.

The report recommends that Council approve Development Application No 10.2021.69.1 as the proposal is:

- Permissible in the R3 Medium Density Residential and complies with the zone objectives and is consistent with the relevant development standards of Kiama LEP 2011; and
- Generally consistent with Kiama DCP 2020, with the exception of the following controls (for which variations have been sought)
 - a frontage of 25m for the erection of multi-dwelling housing in the R3 – Medium Density Zone
 - cut and fill
 - side boundary setbacks.

Financial implication

N/A

Policy

N/A

Consultation (internal)

Please refer to the “Internal Referrals” section in this report.

Communication/Community engagement

Required: Yes (newspaper advertisement, letter notification).

Notification Period: 14 days from 17/05/2021 to 31/05/2021.

Submissions: Zero (0) submissions.

Report of the Director Environmental Services

- 12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)
-

Attachments

- 1 10.2021.69.1 - plans [↓](#)
- 2 10.2021.69.1 - Section 4.15 Assessment Report [↓](#)
- 3 10.2021.69.1 - Draft Conditions of Development Consent [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council approve Development Application No 10.2021.69.1 over land identified as 31- 33 Taylor Street Kiama. This approval be granted under Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to the conditions of consent which are provided as an attachment to this report.

Reason for the Report

This report is submitted to Council because only the elected Council can determine applications involving more than a minor variation to the DCP. Key issues for consideration include the following variations to DCP controls:

- a frontage of 25m for the erection of multi-dwelling housing in the R3 – Medium Density Zone
- cut and fill
- side boundary setbacks.

Options

There are 4 options available to the elected Council in consideration of this Development Application. These include:

- a) *Adopt the recommendation – thereby approving the development with attached conditions of consent*

This is the recommended option provided to Council

- b) *Amend the recommendation through the addition of further conditions of consent*

In this case there are no further conditions of consent recommended by staff other than those attached to this report. Councillors may wish to add conditions of consent via an amendment to the recommendation attached to this report.

Report of the Director Environmental Services

12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)

c) *Refuse*

This is not recommended as there are not sufficient reasons for refusal.

d) *Defer*

Councillors may wish to defer this report for further consideration or information.

Development Site

The property is described as Lot 45 DP 15871 which is located at 33 Taylor Street Kiama.

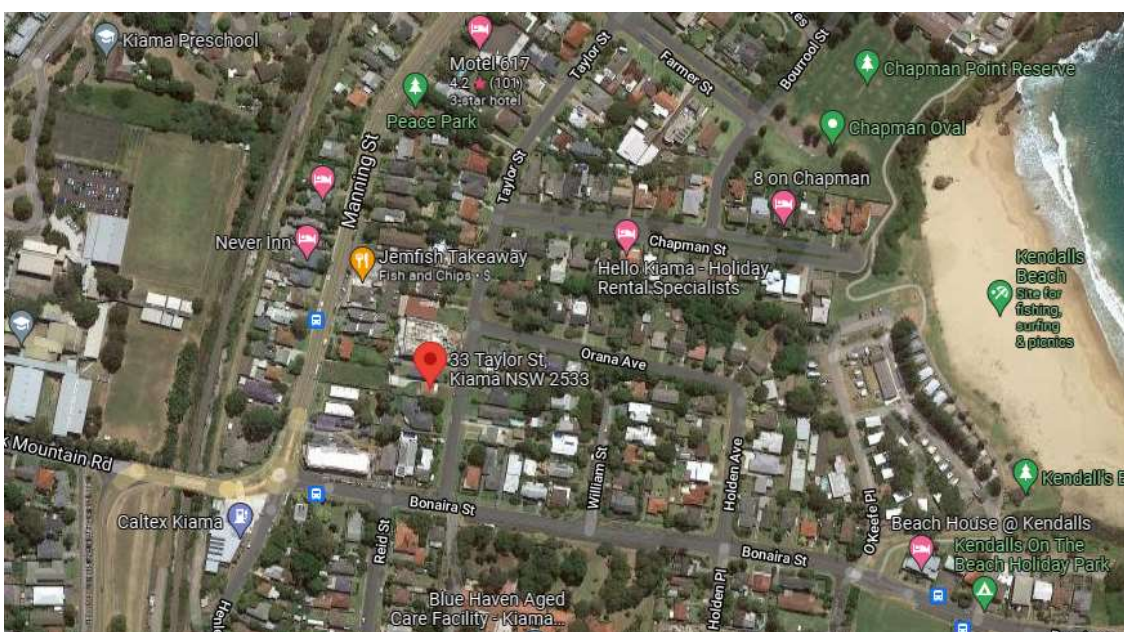


Figure 1 – Locality Plan

Features of the site include:

- measures approximately 627.96m² and is rectangular in shape.
- contains a single dwelling and detached garage and is bounded by residentially zoned land containing principally dwellings.
- is zoned R3 Medium Density Residential under Kiama LEP 2011.
- is cleared and slopes slightly from the western boundary to the eastern corner with a fall of 1.16m or 2.5 %.
- drains overland to the adjoining public road.
- Access to the property is gained via Taylor Street.
- is serviced by water, sewer, electricity, and telecommunications.

Item 12.5

Report of the Director Environmental Services

12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)

Item 12.5



Figure 2 – Site Photograph (View of Existing Dwelling to be demolished)

Description of the Proposed Development

The proposal is for the:

- demolition of the existing dwelling and detached garage
- construction of three attached dwellings,
- a basement carpark,
- the relocation of an existing easement to drain stormwater affecting both Lot 45 and Lot 46, DP 15871 - 31 Taylor Street, Kiama.

The proposed units/apartments are configured as follows:

	Floor area (m²)	Bedrooms	Parking
Unit 1	150.06	3	2
Unit 2	142	3	2
Unit 3	167.01	3	2
TOTAL	459.07	9	8 (2 Visitor Car Parking spaces)

Report of the Director Environmental Services

- 12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)

Each proposed unit has access to a private open space area on the ground floor. Vehicular access is obtained from Taylor Street and waste will be collected from the Taylor Street frontage.

Item 12.5



Figure 3 – Artists Impression – Streetscape Elevation

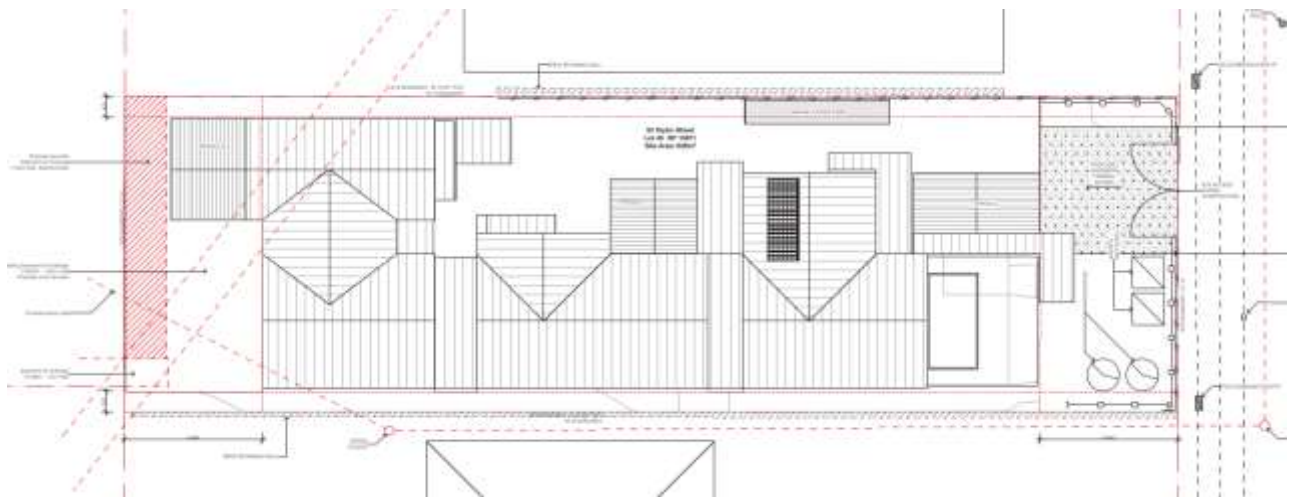


Figure 4 – Site Plan

Report of the Director Environmental Services

12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)



Figure 5 – Eastern Elevation



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Report of the Director Environmental Services

- 12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)
-

Key Considerations and Assessment

In accordance with the Environmental Planning and Assessment Act 1979, Officers have prepared a detailed S4.15 Assessment for this proposed development. This assessment is provided as an attachment to this report.

A summary of the key consideration of this assessment are detailed below.

1. Variation of DCP Controls

A request has been received from the applicant seeking variation to 3 DCP controls. The controls sought to be varied include street frontage, cut and fill and boundary setbacks. Following assessment of the application and of the justification provided by the applicant these requests are supported. Further details for each variation are provided below.

- *Street Frontage*

The proposal seeks development consent for the erection of multi dwelling housing on R3 – Medium Density zoned land with a lot width of 13.7m, where the minimum lot width requirements under Kiama DCP 2020 requires 25m.

This lot width is representative of a departure from the development control of 54.86% and is a significant non-compliance.

However, it is worth noting, that the provisions of Kiama DCP 2020 regarding medium density development do not differentiate between the varying scales and built forms that medium density development can take.

Under these circumstances, the applicant's justification is considered reasonable, when considered against the respective objectives of the control.

In this regard, it is considered that the development responds positively to its surroundings and strict compliance with the minimum lot width requirements is not warranted.

- *Cut and Fill*

The proposed development has a cut in excess of the maximum 900mm prescribed by Kiama DCP 2020.

However, the non-compliant cut and fill achieves a superior outcome to that of a compliant design. If the development were to strictly adhere to the cut and fill requirements, the development would need an access handle to service the dwellings at the rear of the subject site.

The proposed configuration allows for a basement carpark that reduces the extent of hardstand area. This approach to the development dispenses with the access handle and the creation of a 'gun barrel'. It is considered that despite the proposal being non-complaint with the cut and fill requirements the outcome is a far superior planning outcome.

Report of the Director Environmental Services

12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)

- Setbacks and Building Separation*

The proposed setbacks and the required setbacks under Kiama DCP 2020 are as follows:

Building Line	Proposed	Kiama DCP 2020 Requirements
South Boundary Setback (Ground Floor)	Dwelling 1: 0.9m	3m
	Dwelling 2: 0.9m	3m
	Dwelling 3: 0.9m	3m
South Boundary Setback (First Floor)	Dwelling 1: 0.9m	3m
	Dwelling 2: 0.9m	3m
	Dwelling 3: 0.9m	3m
Northern Boundary Setback (Ground Floor)	Dwelling 1: 3.2	3m
	Dwelling 2: 5m	3m
	Dwelling 3: 1.0m	3m
Northern Boundary Setback (First Floor)	Dwelling 1: 2.4	3m
	Dwelling 2: 5.0	3m
	Dwelling 3: 1.0	3m
Eastern Boundary Setback (Ground Floor)	Dwelling 1: 6m	6m
Eastern Boundary Setback (First Floor)	Dwelling 1: 11.5m	6m
Western Boundary Setback (Ground Floor)	Dwelling 3: 6.0m	6m
Western Boundary Setback (First Floor)	Dwelling 3: 5.2	6m

When considering the proposed variation against the objectives that underpin it, the proposed setbacks are considered reasonable under the circumstances.

Report of the Director Environmental Services

- 12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)
-

The proposal maintains a sufficient level of separation between existing developments on adjoining lots. The utilisation of high sill windows on the walls of the non-compliant setback further maintains a high level of privacy for end users of the development and the adjoining properties.

The proposed development creates an environment for end users of the development with significant access to daylight, solar access, and ventilation ensuring a high-quality outcome for adjoining properties and its respective end users.

In this regard, the proposed development despite being numerically non-complaint is readily achieving the objectives of the setback requirements.

2. Environment

A complete assessment of potential environmental impacts is provided in the Section 4.15 Report as attached to this report.

3. Social

A complete assessment of potential social impacts is provided in the Section 4.15 Report as attached to this report.

4. Civic Leadership

The proposed development is considered to be consistent with the Kiama Community Strategic Plan particularly the 2.0 Well planned and managed spaces, places and environment”, which requires amongst other things that development occur in a way that is environmentally, socially and economically responsible.

5. Economic – Broader Economic Implications

The proposed development is not expected to result in any significant broader economic implications.

6. Economic - Delivery Program/Operational Plan Implications

There are no implications for Council’s Delivery Program/adopted Operational Plan.

7. Risk Analysis

A risk analysis has been undertaken and it is considered that approval of the development application as recommended, does not pose a significant risk to Council.

8. Consultation

The development was notified in accordance with the requirements of Council’s Community Participation and Engagement Plan for a period of fourteen days. No Submissions were received.

9. Related Policy, Precedents and/or Statutory Requirements

The statutory instruments relevant to the development include the following:

- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)

Report of the Director Environmental Services

12.5 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement (cont)

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55 - Remediation of Land
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Kiama LEP 2011
- Kiama Development Control Plan 2020.

10. Implementation Date/Priority

In the event that Council adopts the recommendation, a formal notice of determination will be issued for the Development Application. A formal notice of determination is valid for 5 years and the applicant can act on the development consent at any time within that period, subject to meeting any relevant conditions of the consent.


Conclusion

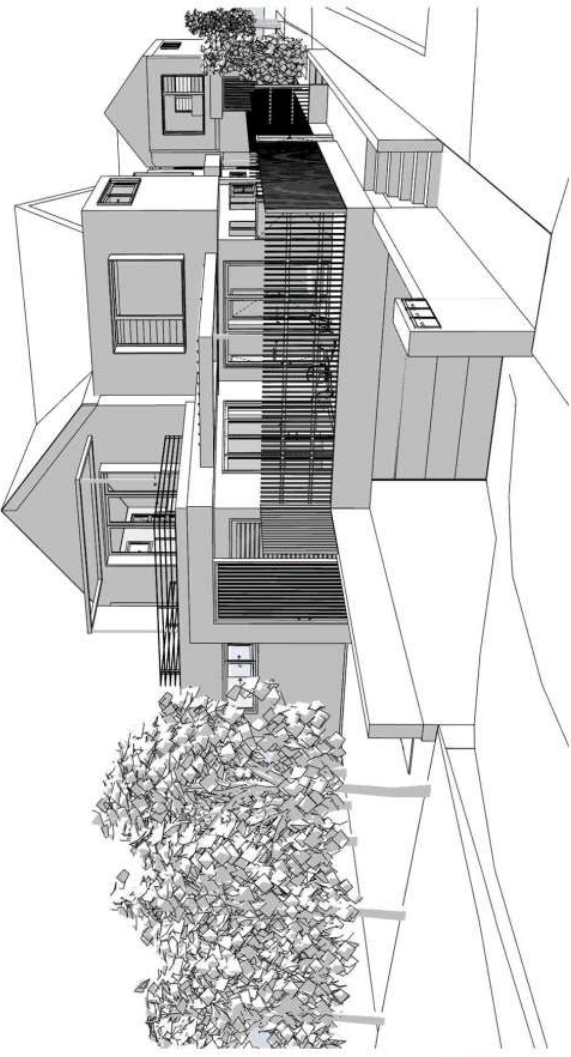
A comprehensive assessment of the application has been undertaken in accordance with all statutory requirements and it is recommended that the application be approved subject to a number of standard conditions (as attached).

Item 12.5 - 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement

Attachments 1 - 10.2021.69.1 - plans

Medium Density
For The Cottages
33 Taylor Street
Kiama, NSW, 2533
Lot 45, DP 15871





Refer to Plans in conjunction with following documents:

- Planning Report (SEE)
- Control Survey
- Professional Engineering Consultant Plans
- Stormwater Drainage Management Report
- Landscaping Concept Plan
- BASIX Report & Certificate

Project Information:



Site area:	928m ²
Zone:	FG
Site coverage permitted:	90%
Site coverage allowed:	975.59m ²
Site coverage proposed:	271.53m ²
FSI permitted:	1:1
Floor area allowed:	928m ²
Floor area proposed Dwelling 1:	155.59m ²
Floor area proposed Dwelling 2:	142.00m ²
Floor area proposed Dwelling 3:	161.58m ²
Floor area proposed total:	459.07m ²
FSI proposed:	0.781
Min. deep soil zone:	25%
Min. deep soil area:	155.59m ²
Proposed deep soil area:	158.88m ²

BASIX Commitments:

- Hot Water: All dwellings to be supplied hot water by individual 9-star gas instantaneous hot water systems
- Natural Lighting: Three bedrooms and a kitchen to have access to natural light via a window or skylight in both Dwelling 1 and Dwelling 2
- Hot Water: Two bedrooms and a kitchen to have access to natural light via a window or skylight in Dwelling 3
- Alternative Energy: Photovoltaic System (panel min. 2kW peak) to be installed on Dwelling 1

Drawing Schedule

Sheet No.	Sheet Name
00.01	Cover Sheet
00.02	Notification Plan
10.01	Site Analysis
10.02	Site & Works Management Plan
10.03	Demolition Plan
20.01	Basement Floor Plan
20.02	Ground Floor Plan
20.03	First Floor Plan
20.04	Roof Plan
25.01	Ground Floor FSI Plan
25.02	First Floor FSI Plan
30.01	Elevation
32.01	Section A & B
35.01	Perspective Views
70.01	Sketchup Diagrams
95.01	Ground Floor Adaptable Plan
95.02	First Floor Adaptable Plan

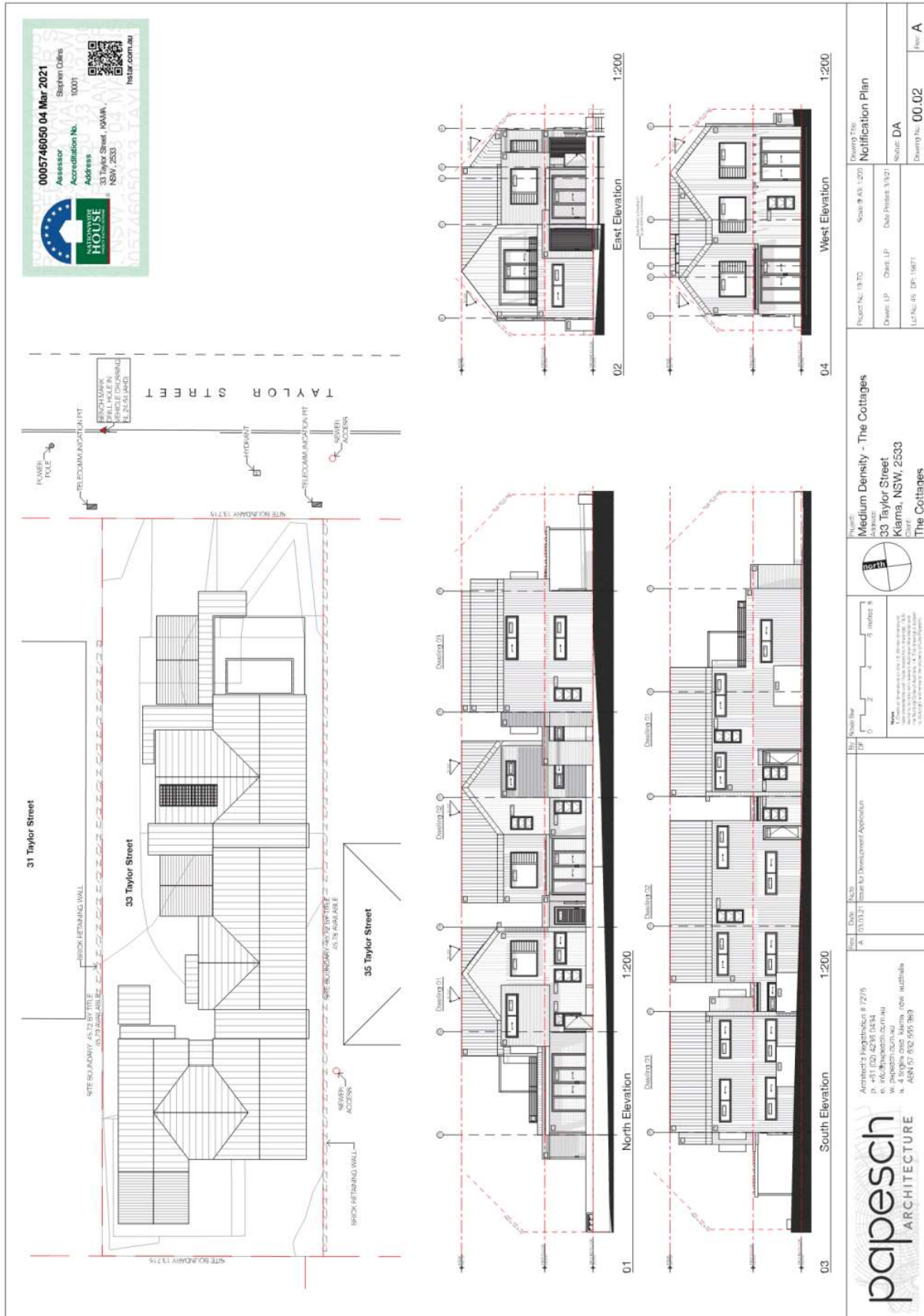



Medium Density
For The Cottages
Kiama, NSW, 2533
The Cottages

Project No: 10.2021.69.1
Drawing Title: Cover Sheet
Client: DA
Scale: DA
Date: 10/01/2021
Drawing No: 00.01
Page: A

Item 12.5 - 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement

Attachments 1 - 10.2021.69.1 - plans



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Attachment 1

Item 12.5 - 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement

Attachments 1 - 10.2021.69.1 - plans

HERA Assessor # 10001 February 2021 CDA Reference: 3420
33 Taylor Street KIAMA NSW 2533
conceptdesigns@outlook.com Concept Designs Australia Ph: 0418871971

Thermal Performance Specifications

External Wall Construction	Insulation	Colour (Solar Absorptance)	Detail
150mm concrete block	None	Medium	UP wall
100mm concrete block/Sheet	Vigoro Insulor +	Medium	
Roof	Vigoro Insulor	Medium	
Timber cladding	Vigoro Insulor	Medium	
Asph/Flt Sh + R2.5			
Insulation			

Internal Wall Construction

Insulation	Detail
None	
Panelboard on studs	
72.5	Walls between bedrooms and living rooms (Walls between bathroom and adjoining rooms)
None for thermal	Between Units

Ceiling Construction

Insulation	Detail
R5.0	All ceilings adjacent to roof space above
None	Colour (Solar Absorptance)

Roof Construction

Insulation	Detail
R1.3	Medium
None	Medium
None	Medium

Floor Construction

Insulation	Detail
R1.0	None and Timber
Concrete	

Timber

Timber	Detail
Business carpark	Timber and Timber
Final floors to outside	

Windows Glass and frame type U Value SWGC Details

ANS-01.01	Maximum framed single clear	4.59	0.45	Sliding windows - WS-00
VN-04.03	Maximum framed single low e	4.08	0.40	Sliding windows - WS-08, WS-10
ANS-06.02	Maximum framed single low e	3.94	0.47	Louvre windows - WS-08, WS-10
ANS-01.02	Maximum framed single clear	4.30	0.72	Fixed windows - WS-08, WS-10
ANS-01.03	Maximum framed single clear	4.24	0.72	Sliding doors
ANS-01.04	Maximum framed single clear	4.45	0.84	Awning windows
ANS-08.01	Maximum framed single clear	5.91	0.75	Effery doors
VN-04.07	Maximum framed single clear	5.14	0.84	Non-opening Fixed windows
ANS-08.07	Maximum framed single clear	5.91	0.75	Non-opening Fixed windows

U and SWGC values are according to AS202. Alternative products may be used if their U value is the same or better and their SWGC is the same or better. This table applies to changes to the structure of glazing required to meet durability and acoustic requirements.

Fixed shading - Eaves Minimum eaves overhang, offset at distance above windows

Width	As drawn	As drawn	Minimum eaves overhang, offset at distance above windows
Minimum eaves overhang, offset at distance above windows			

Fixed shading - Other Minimum eaves overhang, offset at distance above windows

Width	As drawn	As drawn	Minimum eaves overhang, offset at distance above windows
Minimum eaves overhang, offset at distance above windows			

Building Sealing Shaded areas and shafts devices as drawn, adjoining buildings and boundary fences

External doors to be weather stoppered and windows to comply with AS 2047
 LED downlights to be sealed
 External fans to be fitted with tamper as per NCC

0005746850 04 Mar 2021
 Accreditation No. 13001
 Address: 33 Taylor Street, KIAMA NSW, 2533
 papashes@papashes.com.au
 papashes.com.au

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Medium Density

33 Taylor Street

Kiama NSW 2533

The Cottages

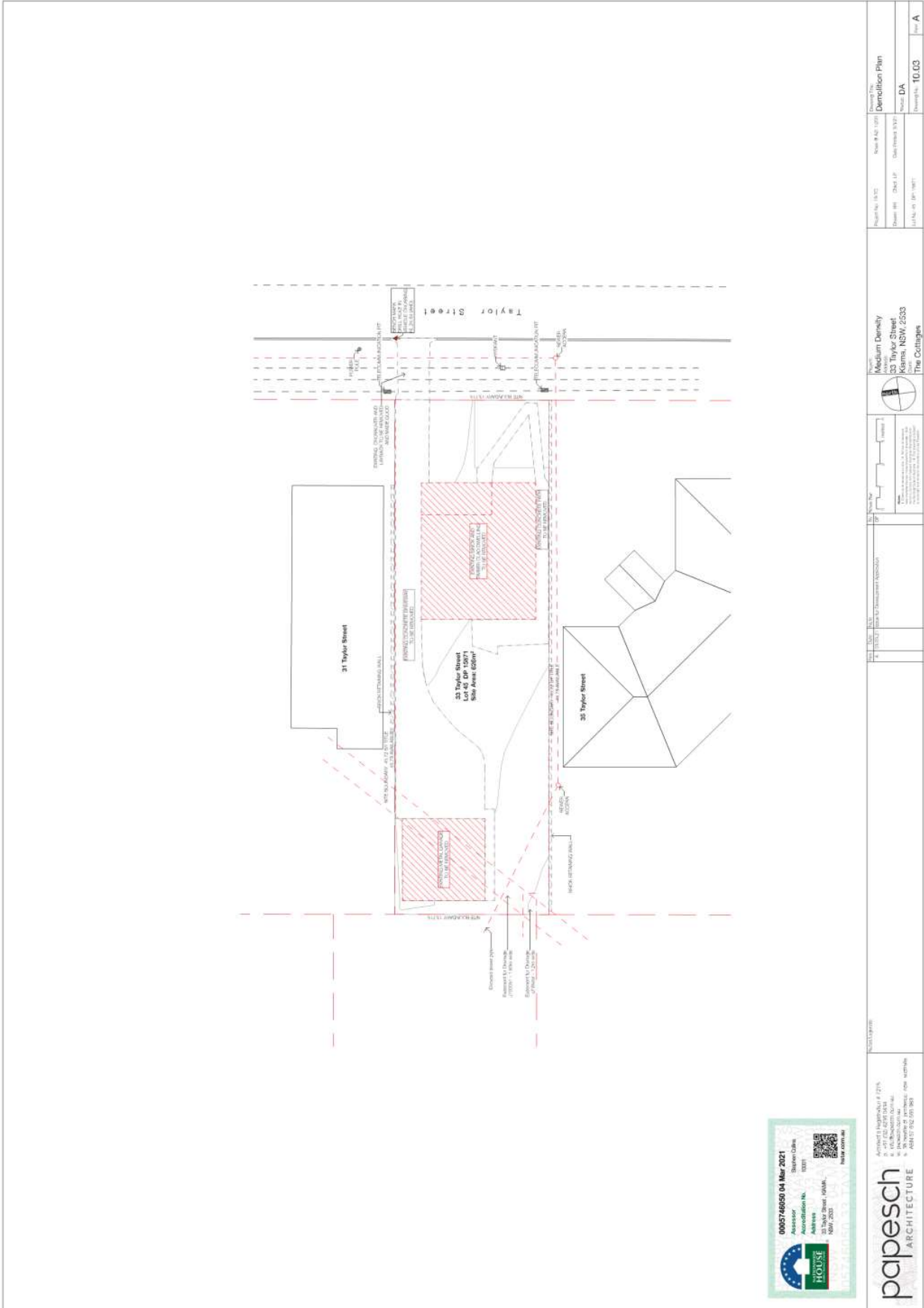
Request No. 1432 **Issue # 42 (2021)** **Owner's Title**

Drawn BY: CHS JF **Date Printed: 13/11/21** **Scale: DA**

10.01

Item 12.5 - 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement

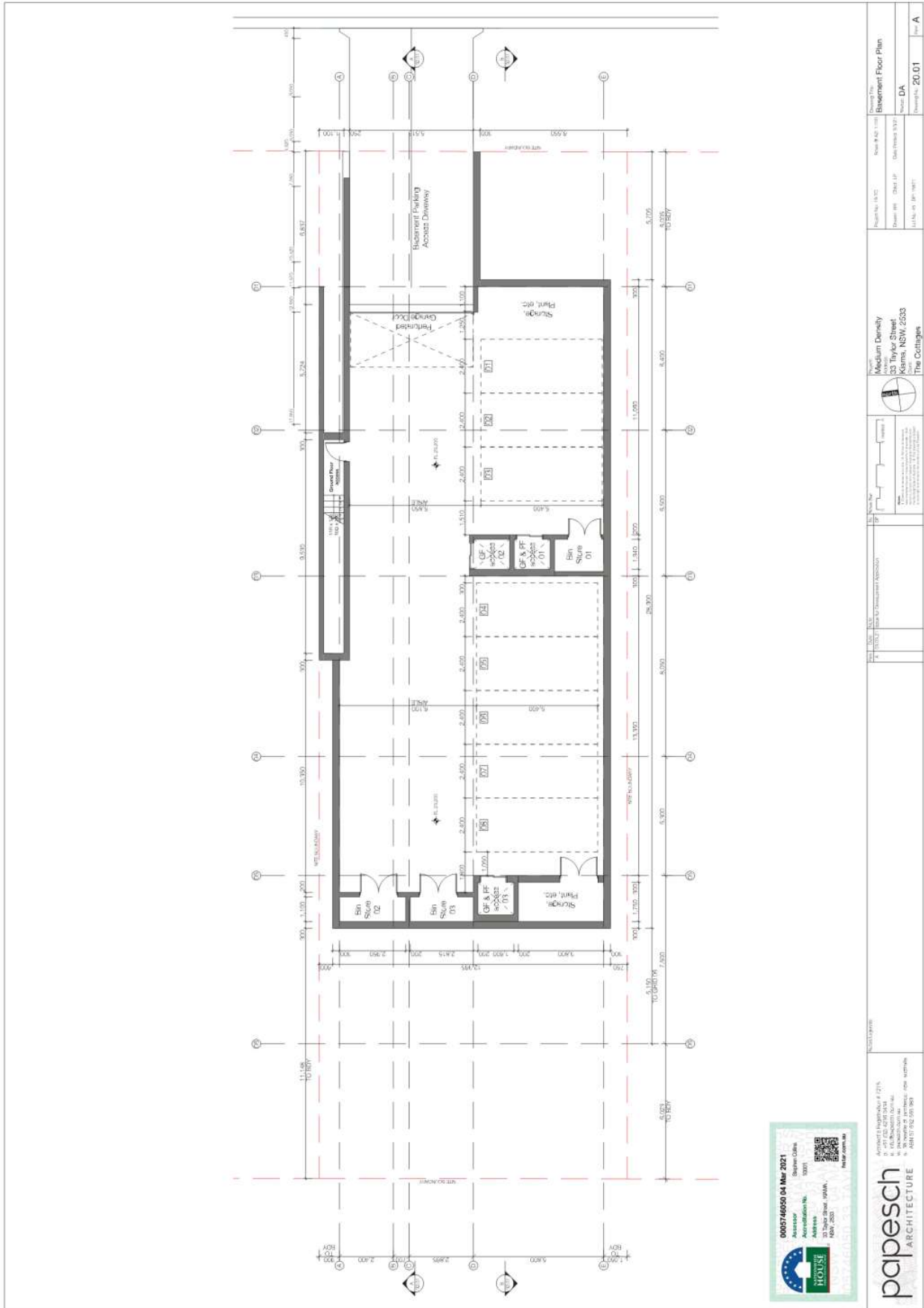
Attachments 1 - 10.2021.69.1 - plans



Attachment 1 Item 12.5

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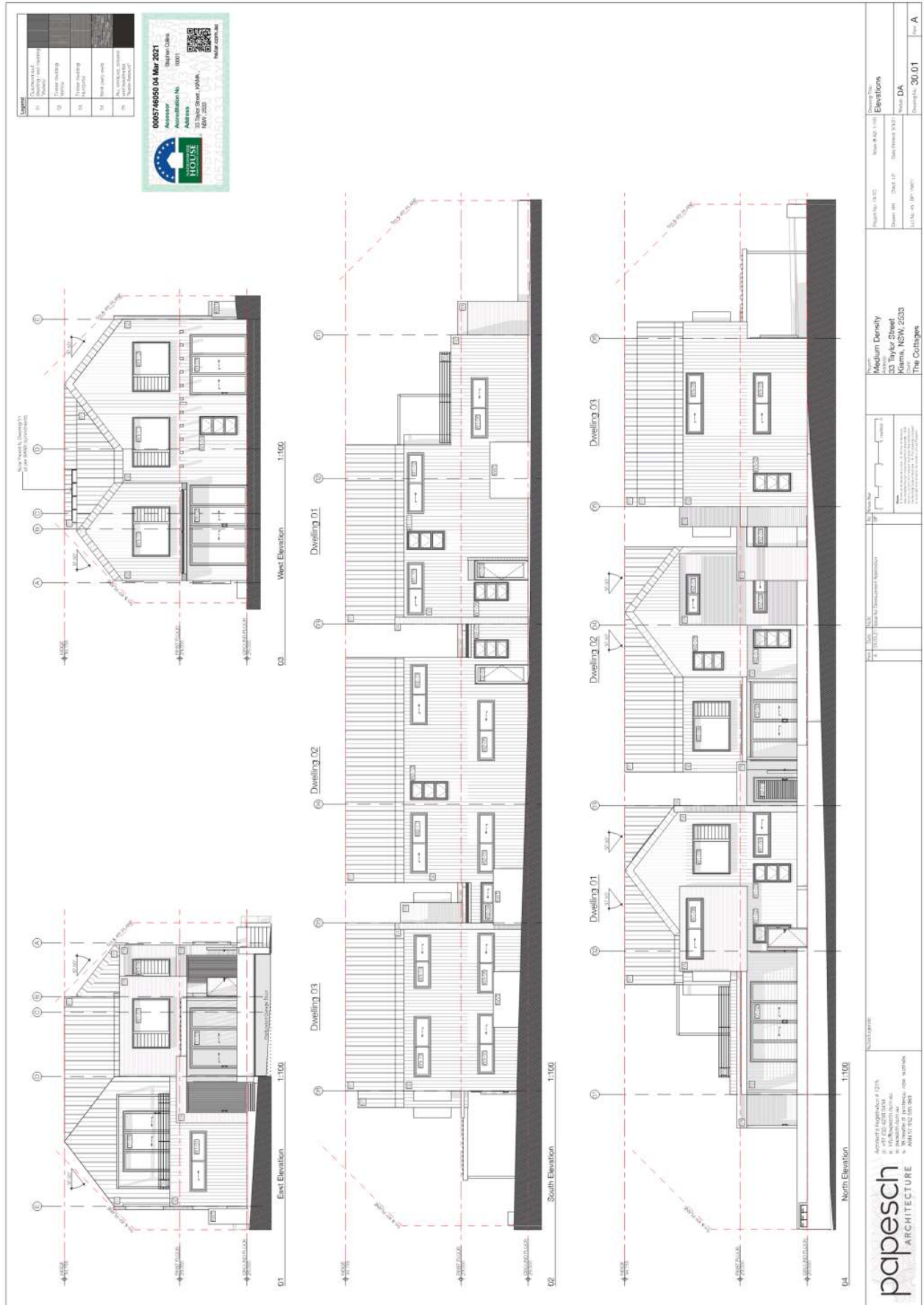


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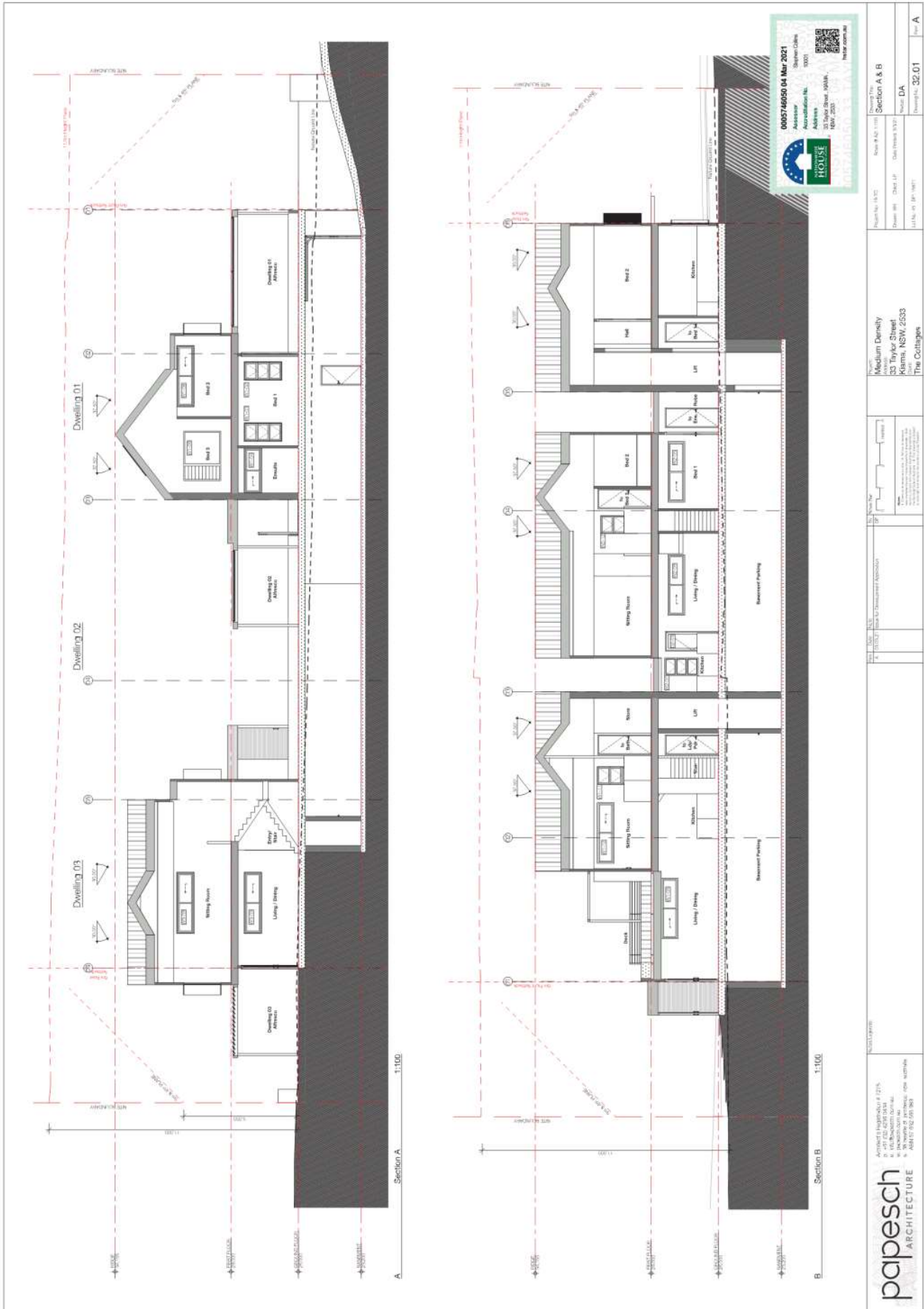
Attachments 1 - 10.2021.69.1 - plans

Item 12.5

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Attachments 1 - 10.2021.69.1 - plans



<p>papesch ARCHITECTURE</p> <p>Architects Incorporated # 275 15 Macquarie Street Sydney NSW 2000 Phone: (02) 9550 7881 www.papesch.com.au</p>	<p>Project No: 1432 Client: DAJ LP Date: 10/2021 Scale: 1:100</p>	<p>Project Title: Section A & B</p>	<p>Project No: 1432 Client: DAJ LP Date: 10/2021 Scale: 1:100</p>	<p>Project Title: Section A & B</p>
<p>Professional Seal: 0005748050 04 Mar 2021 Papesch Architecture 15 Macquarie Street Sydney NSW 2000 www.papesch.com.au</p>				

Attachment 1 **Item 12.5**

**Item 12.5 - 10.2021.69.1 – 31-33 Taylor Street, Kiama -
Demolition & new multi-dwelling housing - demolition
of an existing dwelling & detached garage, erection of
3 attached dwellings, basement carpark with
associated landscaping & the relocation of an existing
drainage easement**

**Attachments 1 - 10.2021.69.1 -
plans**

Item 12.5

Attachment 1

Item 12.5 - 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement

Attachments 1 - 10.2021.69.1 - plans

	<p>01 South West View</p>		<p>02 North West View</p>		<p>03 North East View</p>		<p>04 South East View</p>	
<p>Architect's Registration # 2275 p. +61 (0) 4216 1434 e. info@papesch.com.au w. papesch.com.au n. ASN 57 732 595 363</p>		<p>Issue Date: 10/10/21 Issue for Development Application</p>		<p>Project: Medium Density - The Cottages Address: 33 Taylor Street Kiama, NSW, 2533 Client: The Cottages</p>		<p>Project No: 19 TC Design LP: Chris LP Date Printed: 11/02 Lot No: 45 DP: 18871</p>		<p>Drawing Title: Perspective Views Status: DA Drawing No.: 35.01 Rev: A</p>

Attachment 1

Item 12.5

Item 12.5 - 10.2021.69.1 – 31-33 Taylor Street, Kiama - Demolition & new multi-dwelling housing - demolition of an existing dwelling & detached garage, erection of 3 attached dwellings, basement carpark with associated landscaping & the relocation of an existing drainage easement

Attachments 1 - 10.2021.69.1 - plans

Item 12.5

Attachment 1

**10.2021.69.1 – 31-33 Taylor Street, Kiama
Section 4.15 Assessment**

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

Relevant Environmental Planning Instruments

Instrument	Comment
State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)	State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65) only applies to the development residential accommodation component comprising of 3 or more storeys and containing 4 or more self-contained dwellings. However, the subject development is not more than 2 storeys high and therefore the provisions of SEPP 65 do not apply.
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	A BASIX Certificate (1004079M_02) was lodged with the application, which demonstrates that the development has been designed in accordance with BASIX.
State Environmental Planning Policy No 55 - Remediation of Land	Clause 7 of the SEPP No 55 requires Council to consider whether the land is contaminated and if it is contaminated if remediation works are required. Council is unaware of any historic land use which would deem the site unsuitable for the proposed development, therefore the land is considered to be suitable for the proposed use.
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Clause 9 and 10 of the SEPP (Vegetation in Non-Rural Areas) 2017 outlines that consent is required for the clearing of certain vegetation in non-rural areas. Council’s DCP 2020 outlines that certain trees can be removed without requiring consent. No trees are proposed to be removed as part of this development.
Kiama LEP 2011	
Clause 2.3 - Zone objectives and Land Use Table	The subject land is zoned R3 Medium Density Residential under Kiama LEP 2011. The proposal is defined as a <i>Multi Dwelling Housing</i> under the provisions of Kiama LEP 2011, which are permitted with consent in the R3 Medium Density Residential zone.

	<p>It is considered that the proposed development is consistent with the objectives of the R3 Zone. The proposed development will:</p> <ul style="list-style-type: none"> • Provide for additional and varied housing opportunities for the community • Enable land uses that provide support to local community services • Have the possibility of providing employment opportunities for people who work from home • Increase the supply of affordable housing • Provide opportunities for multi storey residential accommodation <p>Specific clauses requiring consideration:</p>
<p>Clause 4.1F - Minimum site areas for dual occupancies, manor houses and multi dwelling housing in Zone R3</p>	<p>Clause 4.1F requires the development for the purposes identified under Clause 4.1F (2)(a)-(c) to meet the respective minimum lot size area per dwelling identified in Clause 4.1F (2).</p> <p>Clause 4.1F 2(a)-(c) indicates that the development for the purposes of dual occupancy, manor houses, and terraces are required to meet an area per dwelling of 200m².</p> <p>The proposed development is neither of these identified land uses.</p> <p>However, it should be noted that if the proposed development was characterised by one of the respective land uses identified above it would be compliant with the requirement.</p> <p>This provision has been satisfactorily addressed.</p>
<p>Clause 4.3 - Height of Buildings</p>	<p>Clause 4.3 requires that the height of the building does not exceed the maximum height shown on the Height of Buildings Map. The height of building map identifies that a maximum building height of 11m applies to the site. The proposed multi dwelling housing will have a maximum height of 8.1m above existing ground level and as such complies.</p>
<p>Clause 4.4 - Floor Space Ratio</p>	<p>Clause 4.4 requires that the floor space ratio does not exceed the maximum floor space ratio shown for land on the Floor Space Ratio (FSR) map. The FSR map of Kiama LEP 2011 identifies that a maximum floor space ratio of 1:1 applies to the site.</p>

	<p>As per the definition provided in Kiama LEP 2011, the <i>gross floor area</i> of the proposed development is 459.07m².</p> <p>In this regard the proposed development has a FSR of 0. 7:1 with the site and as such complies.</p>
<p>Clause 6.2 - Earthworks</p>	<p>Clause 6.2 lists considerations for proposals which involve earthworks. The proposal complies with the objectives of the clause and as the proposed earthworks are ancillary to the proposed dwelling separate development consent is not required.</p> <p>The proposed development is consistent with the relevant provisions of Kiama LEP 2011 and is permissible within in the R3 Medium Density Residential zone.</p>

Any Draft Environmental Planning Instruments

- Draft SEPP – Land Remediation

As the proposal is in relation to the erection of a multi dwelling housing and it is not mapped as being contaminated, it's considered that the proposed development is consistent with this draft planning instrument.

Kiama Development Control Plan 2020

The following requirements of Kiama DCP 2020 are pertinent to the proposed development

Cut and Fill

- 3.3.1 - Cutting and filling on site is limited to 900 mm

The proposed development has a cut in excess of the maximum 900mm prescribed by Kiama DCP 2020. However, the non-compliant cut and fill achieves a superior outcome to that of a compliant design. If the development were to strictly adhere to the cut and fill requirements, the development would need an access handle to service the dwellings at the rear of the subject site.

The proposed configuration allows for a basement carpark that reduces the extent of hardstand area. This approach to the development dispenses with the access handle and the creation of a 'gun barrel'. It is considered that despite the proposal being non-complaint with the cut and fill requirements the outcome is a far superior planning outcome.

Lot Frontage

- 6.5.2 - Lots must have a minimum frontage of 25m wide.

The proposal seeks development consent for the erection of multi dwelling housing on R3 – Medium Density zoned land with a lot width of 13.7m, where the minimum lot width requirements under Kiama DCP 2020 requires 25m.

This lot width is representative of a departure from the development control of 54.86% and is a significant non-compliance.

However, it is worth noting, that the provisions of Kiama DCP 2020 regarding medium density development do not differentiate between the varying scales and built forms that medium density development can take.

Under these circumstances, the applicant's justification is considered reasonable, when considered against the respective objectives of the control.

In this regard, it is considered that the development responds positively to its surroundings and strict compliance with the minimum lot width requirements is not warranted.

Medium Density – Setbacks and Building Separation

The proposed setbacks and the required setbacks under Kiama DCP 2020 are as follows:

Building Line	Proposed	Kiama DCP 2020 Requirements
South Boundary Setback (Ground Floor)	Dwelling 1: 0.9m	3m
	Dwelling 2: 0.9m	3m
	Dwelling 3: 0.9m	3m
South Boundary Setback (First Floor)	Dwelling 1: 0.9m	3m
	Dwelling 2: 0.9m	3m
	Dwelling 3: 0.9m	3m
Northern Boundary Setback (Ground Floor)	Dwelling 1: 3.2	3m
	Dwelling 2: 5m	3m
	Dwelling 3: 1.0m	3m
Northern Boundary Setback (First Floor)	Dwelling 1: 2.4	3m
	Dwelling 2: 5.0	3m
	Dwelling 3: 1.0	3m
Eastern Boundary Setback (Ground Floor)	Dwelling 1: 6m	6m
Eastern Boundary Setback (First Floor)	Dwelling 1: 11.5m	6m
Western Boundary Setback (Ground Floor)	Dwelling 3: 6.0m	6m
Western Boundary Setback (First Floor)	Dwelling 3: 5.2	6m

When considering the proposed variation against the objectives that underpin it, the proposed setbacks are considered reasonable under the circumstances.

The proposal maintains a sufficient level of separation between existing developments on adjoining lots. The utilisation of high sill windows on the walls of the non-compliant setback further maintains a high level of privacy for end users of the development and the adjoining properties.

The proposed development creates an environment for end users of the development with significant access to daylight, solar access, and ventilation ensuring a high-quality outcome for adjoining properties and its respective end users.

In this regard, the proposed development despite being numerically non-complaint is readily achieving the objectives of the setback requirements.

Chapter 6 –Residential Development – Solar Access

The applicant's justification for the development's POS configuration is considered acceptable and reasonable under the circumstances.

The solar accessibility to the POS for Dwelling 2 is the most impacted by the adjoining developments shadow. However, when considering the provision of 6.5.28 it is considered acceptable as the majority of this area receives a substantial amount of solar access.

Overall, the solar accessibility to adjoining developments and to the proposed POS for the 3 dwellings achieves a reasonable balance between the rights of the adjoining neighbours for solar access and the rights of end users of the development outcome.

The proposed development generally complies with the relevant controls of Kiama DCP 2020, and where strict compliance is not achieved the objectives of the controls are maintained.

Any Planning Agreement

Nil.

Any Matters Prescribed by the Regulations

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

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

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

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

Any Coastal Zone Management Plan

Nil.

The Likely Impacts of the Proposed Development

- Biodiversity

The application does not propose clearing of native vegetation, and therefore the Environmental Planning and Assessment Act 1979 Part 1 Section 1.7 does not apply to the development.

- Streetscape

The design of the proposed development is reasonable when considered in relation to the context of the site. The bulk, scale and design of the proposal is consistent with relevant planning instruments and is not inconsistent with the streetscape.

The proposal has a high standard of design, will be constructed with quality materials, and has a sophisticated level of detailing. The proposed building has had consideration to the existing character of the area and this can be exhibited in its respective form.

The external building form is well articulated, with generous shadow play achieved through projections and recesses on all faces of the building. The pitched roofs evokes a traditional “cottage” form compared to the contemporary design of flat roof forms.

The use of integrated screens, balustrades, window, and door penetrations provide coupled with the use of varied materials provide interest and a quality façade appearance that will positively contribute to the Taylor Street streetscape.

- Noise

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

- Privacy and Overlooking

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

The first floor window on the western elevation of the development does present some minor overlooking issues. However, the views from this window are towards the access handle that services 168 Manning Street.

- Overshadowing

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

The orientation of the allotment is such that the submitted shadow diagrams show that the proposed development will overshadow the side and rear setbacks of the subject site and that of the adjoining sites.

Shadow diagrams have been supplied with the development application which indicate that the overshadowing impacts of the proposed development will be reasonable as shown in Figure 10, 11, and 12 below:

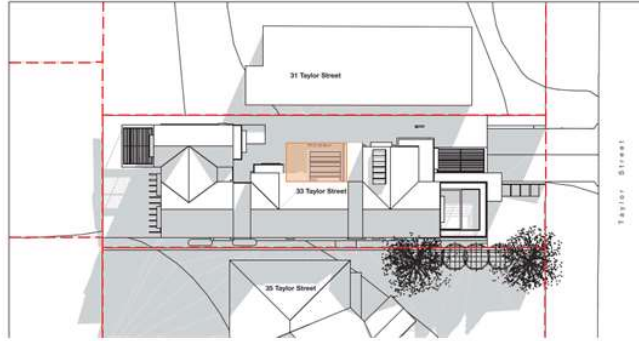


Figure 10 – 9am Shadows Mid-winter

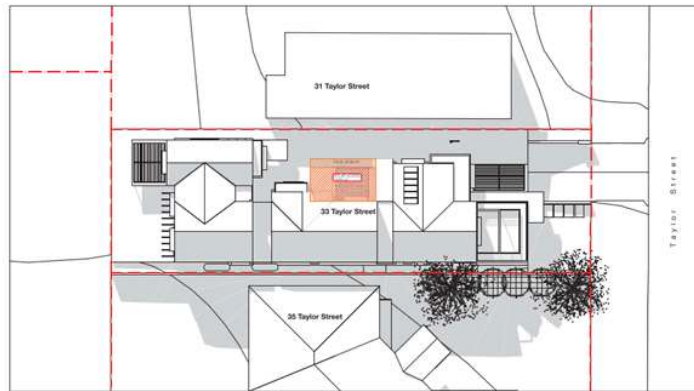


Figure 11 – 12 noon Shadows Mid-winter

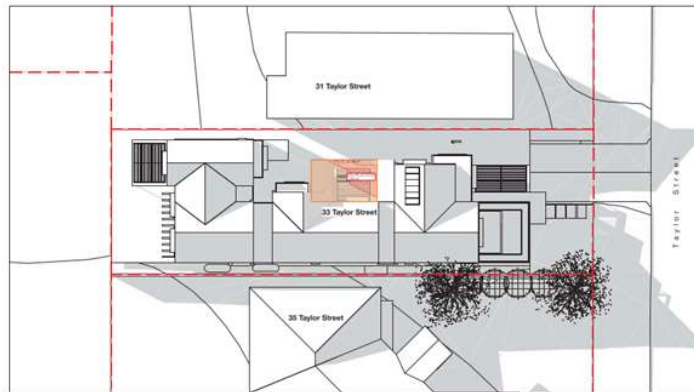


Figure 12 – 3pm Shadows Mid-winter

- Views

The proposal will have no unreasonable impact upon views currently available from neighbours.

The site is relatively flat and level with limited views available from the neighbours' perspective across the subject land due to the position of the existing dwelling.

The design achieves a reasonable balance between the rights of the adjoining neighbours for view sharing and the rights of the Applicant to achieve a realistic development outcome.

- Vehicular Access, Parking and Manoeuvring

Sufficient car parking is proposed.

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

- Stormwater Management

A satisfactory drainage design has been provided with the application. All stormwater will drain to the drainage easement.

- Environmental Impacts

Vegetation Removal – No vegetation is to be removed.

Fauna Impacts – It is unlikely that the proposal will affect any fauna or its habitat.

Impact on Soil Resources – Construction activities have the potential to impact on soil resources by way of erosion and sedimentation. Conditions of consent should be imposed, if consent is granted, in relation to soil and water management controls to be implemented during construction. Satisfactory implementation of these controls will prevent significant impacts on soil resources.

Impact on Water Resources – A rainwater tank will be provided, as required by BASIX. Stormwater will be conveyed to the drainage easement. Controls will be implemented during construction to minimise sedimentation.

- Social and Economic Impacts

The proposed development will likely have minimal adverse social or economic impacts. The amenity impacts of the proposed development have been considered in detail and no concerns raised in submissions warrant refusal of the application.

The Suitability of the Site for the Development

The proposal fits within the locality and the site attributes are conducive to development.

Submissions

Public Submissions

Notification letters were sent to neighbouring property owners who were provided with 14 days in which to comment on the proposal. At the conclusion of the notification period, nil submissions were received.

External Referrals

The application was referred to the following State Government Departments.

- Sydney Water Corporation

The Office of Water issued their General Terms of Approval. No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Endeavour Energy

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

Internal Referrals

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

- Building Assessment Officer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Subdivision & Development Engineer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Landscape Design Officer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- GIS Officer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Waste Officer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

The Public Interest

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

Final Comments and Conclusions

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 4.15 of the Environmental Planning and Assessment Act, 1979. The proposal is consistent with Kiama LEP 2011 and relevant Kiama DCP 2020 Chapters. The proposed development is consistent with the objectives of the R3 Medium Density Residential zone.

Consideration has been given to the social, economic and environmental impacts of the proposed development and no significant concerns are raised.

The proposed development is considered to be reasonable and conditional approval is recommended.

**10.2021.69.1 – 31-33 Taylor Street, Kiama
Draft Conditions of Development Consent**

General

- (1) The development shall be implemented in accordance with the details set out on the plan/drawing and supporting documents endorsed by Council as 10.2021.69.1 dated xx/xx/xxxx except as amended by the following conditions:
(g005.doc)
- (2) The development shall be completed in accordance with the approved colour schedule shown on the approved plans (DWG No. 30.01, Title: Elevations, dated 30/3/2021) (g014.doc)
- (3) No development/work is to take place until a Construction Certificate has been issued for the development and the necessary conditions of development consent satisfied to enable issue of a Construction Certificate. (g030.doc)
- (4) The development shall not be occupied until such time as all conditions of this Development Consent are met or unless other satisfactory arrangements are made with the Principal Certifying Authority. (g040.doc)
- (5) The property owners shall be made aware that all Aboriginal relics in NSW are protected under Section 90 of the National Parks and Wildlife Act 1974, which makes it an offence to knowingly damage, disturb, deface or destroy an Aboriginal relic or site, without first obtaining the written consent of the Director-General of the National Parks and Wildlife Service. If such a site is discovered, the Southern Zone Archaeologist of the National Parks and Wildlife Service shall be contacted immediately. (g050.doc)
- (6) The developer shall provide and maintain temporary fencing around the development site to prevent unauthorised entry into the site by persons or livestock and shall remove the temporary fencing upon completion of all work. (g140.doc)
- (7) The developer shall not carry out any work other than emergency procedures to control dust or sediment-laden runoff outside the normal working hours, namely, 7.00am to 5.00pm, Monday to Friday and 8.00am to 1.00pm Saturday, without the prior written approval of the Principal Certifying Authority. Any request to vary these hours shall be submitted to the Principal Certifying Authority in writing detailing:-
 - a The variation in hours required.
 - b The reason for that variation.
 - c The type of work and machinery to be used. (g165.doc)
- (8) The roadway, footpath or Council reserve shall not be used to temporarily or permanently store building material, plant and/or machinery without the prior approval of Council.
- (9) Road Occupancy approval, pursuant to Section 138 of the Roads Act 1993 shall be obtained from Council prior to any proposed interruption to pedestrian and/or vehicular traffic within the road reserve caused by the construction of the development. The following items shall be submitted to Council with the Road Occupancy application form a minimum of five days before approval is required:
 - A completed application form;

- Fees in accordance with Council's adopted fees and charges;
 - A traffic control plan endorsed by a person with Roads & Maritime Services accreditation. The traffic control plan shall satisfy the requirements of the latest versions of Australian Standard AS1742 – Traffic Control Devices for Works on Roads and the RTMS Traffic Control at Worksites Manual. This plan is required to maintain public safety, minimise disruption to pedestrian and vehicular traffic within this locality and to protect services, during demolition, excavation and construction phases of the development;
 - Public liability insurance for an amount of no less than \$20M;
 - Where excavation of a road or path surface will take place, a security bond in accordance with Council's adopted fees and charges; and
 - Where road and footpath levels will be varied or the surface is altered, plans and specifications to Council's requirements.
- (10) In accordance with AS/NZS 4819:2011 Rural and Urban Addressing, standard Strata Title like addressing shall be applied. Communal (or individual) letterbox to be located at access point and public road boundary. Proposed addressing to be allocated:
- Proposed dwelling 1 – 1/33 Taylor Street, Kiama
 - Proposed dwelling 2 – 2/33 Taylor Street, Kiama
 - Proposed dwelling 3 – 3/33 Taylor Street, Kiama

Sydney Water

Building Plan Approval

The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

The Tap in™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ online service is available at: <https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tapin/index.htm>

Sydney Water recommends developers apply for Building Plan approval early as in some instances the initial assessment will identify that an Out of Scope Building Plan Approval will be required.

Out of Scope Building Plan Approval

Sydney Water will need to undertake a detailed review of building plans that affect or are likely to affect any of the following:

- Wastewater pipes larger than 300mm in size
- Pressure wastewater pipes
- Drinking water or recycled water pipes
- Sydney Water's property boundary
- An easement in Sydney Water's favour
- Stormwater infrastructure within 10m of the property boundary.

Where the building plan includes:

- Construction of a retaining wall over, or within the zone of influence of Sydney Water's assets
- Excavation of a basement or building over, or adjacent to, one of Sydney Water's assets
- Dewatering – removing water from solid material or soil.

The detailed review is to ensure that:

- Sydney Water's assets will not be damaged during, or because of the construction of the development
- Sydney Water can access assets for its operation and maintenance
- Your building will be protected if Sydney Water need to work on its assets in the future.

The developer will be required to pay Sydney Water for the costs associated with the detailed review.

Bonds and Contributions

- (1) A contribution under Section 7.11 of the Environmental Planning and Assessment Act 1979 (as amended) and Kiama Council's Section 94 Contributions Plans Nos. 1 & 2 shall be paid to Council prior to the issuing of the Construction Certificate. The total contribution required for the development is **\$13,983.75**. (bc005.doc)

Prior to Commencement of Works

- (1) Prior to the commencement of any works, apart from the drainage re-routing works shown in the plan prepared by Allen Price & Associates - Reference K128312 – 405 & K128312 – 406 - Issue P3 – dated 30/7/2021 (Plans), the developer shall in the following order:
 - Obtain a Construction Certificate (CC) for works related to the Plans mentioned above; then

- provide Council with a security bond of \$25,000 in the form of an unconditional bank guarantee or cash. The bond shall be refunded in full subject to the twelve (12) months being elapsed from the date of registration of the easement as detailed below and no remedial works being required; then
 - build those works in the approved CC Plans, with the exception of where they connect into the existing system; then
 - have the bedding and pipeline inspected and approved in writing by Council's Director Engineering & Works or their appointed representative (Council Supervision) prior to backfilling; then
 - have the works inspected by close circuit television and provide a copy of the footage to Council for its written acceptance and have a works-as-executed survey prepared by a Registered Surveyor and submitted to Council for its written acceptance; then
 - provide compliance certification from a Certified Practising engineer to Council certifying that the constructed stormwater drainage infrastructure meets with the approved design; then
 - register a minimum 3m wide easement over the pipeline, with terms satisfactory to Council, with NSW Land Registry Services; then
 - connect the pipeline into the existing system at both ends under Council Supervision; then
 - expunge the redundant easement on the site.
- (2) Building work must not commence until the Principal Certifying Authority for the development to which the work relates has been informed of:
- i The licensee's name and contractor licence number;
 - ii That the licensee has complied with Part 6 of the Home Building Act 1989.
- In the case of work to be done by any other person, the Principal Certifying Authority:
- a Has been informed in writing of the person's name and owner builder permit number;
- or
- b Has been given a declaration, signed by the owner/s of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989. (pt005.doc)
- (3) The developer shall lodge with Council a bond of **\$18,000.00**, in the form of an unconditional bank guarantee or cash, prior to the commencement of any work, as a security for new and remedial work associated with the development proposal and covering all work within the public roads administered by Council under the Roads Act 1993 and compliance with the submitted Waste Management Plan during the course of construction.

The developer shall submit a dilapidation survey prior to commencement of any work within the road reserve.

The bond shall be refunded in full subject to the following:-

- a There being no damage to the infrastructure within the road reserve.
- b Twelve (12) months has elapsed from the date of issue of the occupation certificate (where included as a consent condition) and subdivision certificate (where included as a consent condition).

Note: If both certificates are required in this approval, the bond may be returned twelve (12) months from the date of the certificate issued last.

- c The submission and approval by Council of a waste compliance certificate, inclusive of supporting documentation (dockets/receipts) verifying compliance with the Waste Management Plan as provided to Council. (pt013.doc)
- (4) Under the provisions of the Act, work may not commence on the development until the following is carried out:
- a Detailed plans and specifications of the building must be endorsed with a Construction Certificate by Council or an Accredited Certifier; and
 - b You **must** appoint a Principal Certifying Authority (can be either Council or an Accredited Certifier); and
 - c You **must** notify the Council of the appointment; and
 - d You **must** give at least two (2) days' notice to Council of your intention to commence work.

You will find attached an application form for a Construction Certificate. Should you require Council to issue this Certificate you should complete this application and forward it, together with plans and specifications, to Council for approval.

You will find attached a form for the "Notice of Commencement of Building Work and Appointment of Principal Certifying Authority", which you are required to submit to Council at the appropriate time and at least two (2) days prior to the commencement of work.

Should you appoint Council as the Principal Certifying Authority, relevant inspection fees will be required to be paid at the time of lodgement of this form.

(pt020.doc)

- (5) The BASIX commitments shall be indicated on the plans to the satisfaction of Council or an Accredited Certifier prior to the issue of the Construction Certificate.
- (pt034.doc)
- (6) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a Showing the name, address and telephone number of the Principal Certifying Authority for the work;
 - b Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
 - c Stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed. The sign will be provided by the nominated Principal Certifying Authority for the relevant fee. (pt060.doc)

- (7) No building work is to commence until details prepared by a practising structural engineer have been submitted to and accepted by the Principal Certifying Authority for any reinforced concrete slabs, footings or structural steel. (pt062.doc)
- (8) No building work is to commence until details prepared by a practising structural engineer have been submitted to and accepted by the Principal Certifying Authority for the retaining walls in excess of 1.0 metre high. (pt068.doc)

Demolition Works

- (1) Security fencing shall be provided around the perimeter of the demolition site and any additional precautionary measures taken, as may be necessary to prevent unauthorised entry to the site at all times during the demolition period. (dw010.doc)

- (2) **Asbestos – Statement Required**

No later than seven days prior to the demolition of any building or structure, a written statement must be provided to Council indicating whether the building or structure contains asbestos or material containing asbestos and, if so, the following must also be provided:

- (a) A hazardous substances audit report prepared by a competent and appropriately qualified person in compliance with AS2601-1991; and
- (b) A hazardous substances management plan prepared by a competent and appropriately qualified person in compliance with AS2601-1991.

Asbestos – Licensed Contractors

Demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Demolition Licence or a current WorkCover Class 2 (Restricted) Asbestos Licence.

Asbestos – Notification of Neighbours

Fourteen days prior to the commencement of any demolition works involving asbestos, all immediate neighbours must be notified in writing of the intention to carry out asbestos demolition works. Copies of these written notifications must be retained and provided to Council.

Asbestos – Tip receipts

Documentary evidence in the form of tip receipts from an approved Waste Management Facility shall be obtained demonstrating the appropriate disposal of the asbestos waste. Tip receipts shall be provided to Council prior to any further building works being undertaken on the site.

Asbestos – Clearance Certificate

Following the removal of all friable asbestos and prior to further works being carried out on the site, a clearance certificate from an independent competent person in accordance with the National Occupational Health and Safety Commission Code of Practice for the Safe Removal of Asbestos is to be obtained and submitted to Council.

Completion of demolition works

Council will monitor and review the demolition of the structure to ensure all conditions of consent application to the removal of asbestos has been satisfied.

(dw015.doc)

- (3) Safe access to and egress from adjoining buildings shall be maintained at all times for the duration of the demolition work. (dw020.doc)
- (4) The techniques adopted for stripping out and for demolition shall minimise the issue of dust into the atmosphere. (dw030.doc)

Civil Engineering Design

- (1) The developer shall submit details of all civil engineering works on engineering drawings to the accredited Certifying Authority for approval prior to the issue of the construction certificate.

The drawings shall include, but shall not be limited to, the following detailed information:

- a) The hydrologic modelling and hydraulic treatment detail including detailed calculations, drainage network layout, environmental controls (including the post-development first flush mechanism, water quality and sedimentation controls), all stormwater drainage structures and, where required, the proposed method of accessing the existing public stormwater drainage system. All drainage calculations are to be carried out in accordance with Australian Rainfall and Runoff published by Engineers Australia, and are to include a contoured catchment diagram and delineation of flow paths for storms of 1% Average Exceedance Probability (AEP);
- b) Plan, longitudinal and cross sectional detail shall be provided for the proposed access driveways, car spaces & aisles
- c) The proposed pavement treatment to the access driveways, car spaces & aisles. The minimum surface treatment shall either be reinforced concrete, asphaltic concrete or segmental pavers on a reinforced concrete base.
- d) The location and reduced level of all services under the control of public utilities or agencies.
- e) All reduced levels shall relate to Australian Height Datum (AHD). (ced030.doc)

Access Construction

- (1) The developer shall construct the footpath access driveway in compliance with the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking and Council's "Driveway and Footpath Works Procedure Manual". (ac001.doc)
- (2) The developer shall restore any redundant vehicle crossing to barrier kerb in compliance with Council's "Driveway and Footpath Works Procedure Manual". (ac010.doc)
- (3) The access driveway shall be constructed to meet the design requirements of Council's "Driveway and Footpath Works Procedure Manual". The access driveway shall be installed prior to the issue of any occupation certificate.

- (4) The applicant must provide, to Council, the appropriate fee for the inspections required for the construction of the footpath crossing/access driveway in accordance with Council's adopted fees and charges. This inspection fee must be paid prior to the commencement of works within the road reserve area.

Work undertaken within the road reserve may only be undertaken by a Council approved contractor. A list of approved contractors may be obtained from Council's Engineering and Works Department. (ac020.doc)

Car Parking and Vehicular Access

- (1) Car parking and manoeuvring shall comply with the requirements of the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking. (c035.doc)

Stormwater Management

- (1) Stormwater shall be connected to the existing system. (sm005.doc)
- (2) All stormwater kerb and gutter connections to have a minimum of 40 millimetres cover of concrete finishing flush with the top of the existing kerb. Pipe size to achieve this should be 90 millimetres in diameter. (sm010.doc)
- (3) The developer shall provide stormwater outlets to kerb lines converting to 90 millimetre diameter uPVC for barrier kerbs and 127 x 64 x 4 millimetre steel rectangular hollow section hot dip galvanised or aluminium for roll kerb sections. (sm020.doc)
- (4) The developer shall provide a detailed stormwater drainage network in accordance with the design requirements of "Section D5 Stormwater Drainage" of Kiama Development Code as appended to Kiama Development Control Plan 2020. Full hydrological and hydraulic calculations and civil engineering drawings shall be submitted to the accredited Certifying Authority prior to the issue of a Construction Certificate. (sm055.doc)
- (5) The developer shall provide on-site detention storage for stormwater runoff in conjunction with the proposed development drainage network. An on-site detention system shall be designed to ensure that post development flow rates from the site are no greater than pre-developed site runoff at each discharge point for all rainfall events up to 1% Annual Exceedance Probability. The applicant shall provide full hydrological and hydraulic computer modelling of the stormwater drainage system and provide this to the Accredited Certifying Authority for assessment and approval prior to the issue of the construction certificate. (sm080.doc)
- (6) The developer shall provide compliance certification from a certified practising engineer verifying that the constructed stormwater drainage infrastructure meets with the approved design. The certification shall be provided to the accredited Certifying Authority prior to the release of any Occupation Certificate. (sm130.doc)
- (7) The developer shall provide environmental stormwater management controls in the form of post development water quality (including first flush treatments such as trash arresters) and sedimentation control measures to be located within the proposed development site. The proposed treatments shall be submitted to the accredited Certifying Authority for assessment and approval prior to the issue of the Construction Certificate. (sm135.doc)

- (8) The developer shall comply with the design requirements of Council's "Water Sensitive Urban Design" policy in association with the design requirements of "Section D5 Stormwater Drainage" of the Kiama Development Code as appended to Kiama Development Control Plan 2020.

Detail shall be submitted to the accredited Certifying Authority for assessment prior to the issue of the Construction Certificate. (sm150.doc)

- (9) Stormwater runoff from all impervious surfaces on the property shall be collected and conveyed to a point suitable for integration with either the natural or constructed stormwater drainage system. A piped drainage system shall be provided to convey runoff from storms up to the 20 Annual Exceedance Probability (AEP). Defined overland flow paths shall be provided to safely convey runoff from storm events up to the 1% AEP. (sm155.doc)
- (10) Prior to issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the design of the development causes no adverse effects to adjoining properties as a result of stormwater run-off and allowance is made for surface run-off from adjoining properties in the design.

Utility Servicing

- (1) A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The Section 73 Certificate shall be submitted to Council prior to issue of the final Occupation Certificate. (us005.doc)
- (2) The developer shall bear the cost of relocation of any service utilities required in the provision of vehicular access. (us045.doc)

Geotechnical Requirements

- (1) There shall be no loss of support or encroachment of fill onto adjoining properties as a result of excavation or filling within the site.
- (2) Where the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- protect and support the adjoining premises from possible damage from the excavation

Exportation of Fill

- (1) Prior to the exportation of fill or soil from the site, the materials must be tested and classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part 1: Classification of Waste (November 2014).

Testing is required prior to off -site disposal of waste. All materials identified for off-site disposal must be removed by a suitably qualified contractor to an appropriately licensed waste facility.

Inspections

- (1) The building work shall be inspected at critical and other stages as required by the Principal Certifying Authority for the development.

NOTE: Should you choose Council to be your Principal Certifying Authority for this development you will be advised of the required building inspections and applicable fees at the time of that appointment. (bu015.doc)

Building Construction

- (1) All building work must be carried out in accordance with the requirements of the Building Code of Australia. (bu010.doc)
- (2) The roadway, footpath or Council reserve shall not be used to store building material without the prior approval of Council. (bu086.doc)
- (3) All excavations and backfilling must be executed safely in accordance with appropriate professional standards. (bu090.doc)
- (4) All excavations must be properly guarded and protected to prevent them from being dangerous to life or property. (bu095.doc)
- (5) A survey shall be undertaken and a copy be made available to Council or an accredited certifier, certifying that the building is correctly located in relation to the boundaries of the site and in accordance with the approved plans. Such survey shall be submitted at peg out stage. (bu125.doc)
- (6) Construction and demolition work, delivery of materials and plant, etc. shall only take place between the following hours:
 - Monday to Friday - 7.00 am to 5.00 pm
 - Saturdays - 8.00 am to 1.00 pm

No construction work is to take place on Sundays or Public Holidays. (bu151.doc)

Erosion and Sedimentation Controls/Soil and Water Management

- (1) All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur. In particular:
 - a A silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). Such fence must be regularly inspected and cleaned out and/or repaired as is necessary, and all collected silt must be disposed of in accordance with Council's Sedimentation Control Policy.
 - b Unnecessary disturbance of the site (eg; excessive vehicular access) must not occur.
 - c All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.
 - d All the above requirements must be in place for the duration of the construction works. (esc005.doc)

Landscaping Works

- (1) A detailed landscape plan shall be approved by the Principal Certifying Authority prior to issue of the Construction Certificate. The plan shall be prepared in accordance with Chapter 3 of Kiama Development Control Plan 2020 and shall be consistent with the landscape concept plan. Detail will be shown on the landscape plan of the planter boxes construction and drainage. (lw010.doc)
- (2) The landscaping shall be maintained actively and regularly for a period of 26 weeks commencing from the date of issue of the Occupation Certificate. (lw020.doc)
- (3) At the end of the 26 week landscape maintenance period and after any defects that occurred during that period have been corrected, a final Compliance Certificate shall be provided from a suitably qualified landscape professional stating that all landscape works have been completed and maintained in accordance with the approved landscape plans and the conditions of this development consent. (lw035.doc)
- (4) Prior to issue of the Occupation Certificate the developer shall provide a Compliance Certificate from a suitably qualified landscape professional or Council's Landscape Officer stating that all landscape works have been completed in accordance with the approved landscape plans and the conditions of the development consent. (lw170.doc)

Site Facilities

- (1) An appropriate temporary toilet facility shall be provided on site, located inside the property boundaries, prior to commencement of works. The temporary toilet shall be maintained in a clean/sanitary condition at all times. (sf010.doc)

During construction the applicant shall provide, inside the property boundaries a suitable waste container for the disposal of all papers, plastics and other light-weight materials. (sf015.doc)

- (3) A sign must be erected in a prominent position on the premises on which the erection or demolition of a building is being carried out:
 - a Stating that unauthorised entry to the premises is prohibited; and
 - b Showing the name of the builder or other person in control of the worksite and a telephone number at which the builder or other person may be contacted outside working hours.

Any such sign is to be removed when the erection or demolition of the building has been completed. (sf020.doc)

Prior to Occupation

- (1) The completed Waste Management Compliance Sheet (Appendix 1C) shall be submitted to and approved by Council prior to issue of the Final Occupation Certificate.

Supporting documentation (dockets/receipts) verifying recycling and disposal shall be attached to the Compliance Sheet. (po002.doc)

The BASIX schedule of commitments shall be complied with prior to the issue of a Final Occupation Certificate for the development and if required a certificate shall be provided to the Principal Certifying Authority from a properly qualified person to certify that the BASIX schedule of commitments have been provided and/or installed. (po003.doc)

- (3) The whole or part of the building must not be occupied unless an Occupation Certificate has been issued in relation to the building or part in accordance with Section 6.9 of the Environmental Planning and Assessment Act 1979.

NOTE: A Fire Safety Certificate must be provided in accordance with the Environmental Planning and Assessment Regulations 2000 prior to the issue of an Occupation Certificate excepting Class 1(a), 10(a) & 10(b) structures. (po005.doc)

- (4) The developer shall complete all access and drainage works prior to the issue of any occupation certificate. (po010.doc)

Conveyancing Requirements

- (1) Under the provisions of Section 88B/88E of the Conveyancing Act 1919 the developer shall provide a restriction on the use of land and a positive covenant in favour of Kiama Municipal Council detailing protection measures and long-term maintenance requirements for the on-site stormwater detention system and associated stormwater drainage infrastructure.

The document shall meet the standard terms applied by Council and shall be submitted to Council for assessment and approval and shall have these titles registered with NSW Lands & Property Management Authority under Sections 88B/88E of the Conveyancing Act 1919. The above requirement shall be undertaken prior to the issue of any Occupation Certificate (cr040.doc)

13 REPORT OF THE DIRECTOR CORPORATE AND COMMERCIAL SERVICES

Nil

14 REPORT OF THE DIRECTOR ENGINEERING AND WORKS

14.1 Pesticides Notification Plan 2021

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

CSP Strategy: 2.2 Our community and natural environments are adaptive, resilient and sustainable

Delivery Program: 2.2.3 Ensure environmental protection compliance

Summary

The Pesticides Notification Plan 2021 informs the public about Council's use of pesticides in public places. The plan, last adopted in 2018, has been reviewed by staff in accordance with the Pesticides Regulation 2017 and is now in a position ready to be placed on public exhibition to seek community input.

Policy

Pesticides Notification Plan 2021.

Consultation

The draft Plan 2021 has been developed in consultation with relevant internal staff and through discussions with Shellharbour City and Wollongong City Councils, who are fellow-members of the Illawarra District Weeds Authority.

It is proposed to seek community and industry feedback by placing the draft Plan on public exhibition for a period of at least 28 Days. Details of any feedback received through this process, together with the final version of the Plan will be reported to the new Council early in 2022.

Attachments

- 1 Pesticides notification plan 2021 - Draft [↓](#)

Enclosures

Nil

RECOMMENDATION

1. That Council endorses placing the draft Pesticides Notification Plan 2021 on public exhibition for at least twenty eight (28) days for community feedback.
2. That Council receive a future final report on the consultation results from the Pesticides Notification Plan 2021.

BACKGROUND

Pesticides notification is based on the principle that the community has a basic 'right to know' about pesticide use in public places. Giving the community notice about pesticide use provides accurate and timely information about pesticides and enables people to make informed decisions about managing their contact with pesticides. Pesticides refers to herbicides, fungicides, insecticides, fumigants, bactericides, rodenticides, baits, lures, repellents and pesticides used on animals to control external parasites.

The objectives of the Pesticides Notification Plan are:

- to meet the communities general right to know about pesticide applications in public places
- to ensure that pesticides are applied to public places in a safe, responsible manner, without harm to the community or the environment
- to inform the community of the notification arrangements that Council will enact before applying pesticides in public places.

CURRENT POSITION

In accordance with the Pesticides Regulation 2017, Council's Pesticides Notification Plan must be reviewed every three to five years. Staff have reviewed the 2018 Plan taking into consideration any subsequent legislative or regulatory changes and internal feedback on application of the existing Plan.

Based on there being no changes in legislative or external requirements, the draft Pesticide Notification Plan 2021 (copy attached) is substantially unchanged from the 2018 version except to change the review period from three years to five years. The review period change will bring Kiama Council's Plan in line with the review timing of our Illawarra District Weeds Authority partners, Wollongong and Shellharbour Councils, who are also reviewing their Pesticides Notification Plans this year, and every five years thereafter.

CONCUSION

The review of Council's Pesticide Notification Plan is required every three to five years in accordance with the Pesticides Regulation 2017. Council staff have reviewed the 2018 Plan and prepared a revised draft 2021 Plan for community feedback through proposed public exhibition. The final draft Plan will be considered by the new Council in early 2022, taking into account any feedback received.



Pesticides Notification Plan

DRAFT version 2 2021
Engineering and Works



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Date approved/adopted	Click to enter date adopted/approved.
Resolution No	Click to enter Minute No or N/A if an approved document.
Date effective	Click to enter date effective.
Date last reviewed	Click to enter a date last reviewed
Next review date	Click to enter next review date
Department	Click to enter custodian's department
Author	Click to enter author's position
TRIM reference	Click to enter TRIM reference.
Supporting documents	Click to enter links

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Pesticides Notification Plan

1.0 Purpose

Council has a responsibility for the safe use of pesticides in public places. This policy has been prepared in accordance with the requirements of the Pesticides Regulation 2017.

2.0 Objectives

The objectives of this policy are:

- to meet the communities general right to know about pesticide applications in public places
- to ensure that pesticides are applied to public places in a safe, responsible manner, without harm to the community or the environment
- to inform the community of the notification arrangements that Council will enact before applying pesticides in public places.

3.0 Scope

This policy establishes the guidelines for informing the public of pesticide use in public places.

4.0 Definitions

For the purpose of this document the following definitions apply:

Pesticide	Herbicides, insecticides, rodenticides and any other substance intended to kill a living organism

5.0 Introduction

This Notification Plan has been prepared in accordance with the requirements of the Pesticides Regulation 2017. The plan period is from 31 August 2021 to 31 August 2024.

The aim of this plan is to meet the community's general right to know about pesticide applications made to public places. The plan allows members of the community to take action to avoid contact with pesticides, if they wish. It does not mean that the community is at any greater risk or harm from pesticides. Kiama Council ensures that pesticides are applied to public places in a safe, responsible manner, without harm to the community or the environment.

The plan sets out how Kiama Council will notify members of the community of any pesticide applications made by Council to public places. It describes:

- what public places are covered by the Plan
- who is most likely to use or access these public places and an estimate of the level of use
- how and when Kiama Council will provide the community with information about its pesticide applications (i.e. what notification arrangements will be used)
- how the community will be informed of the notification arrangements contained in the Plan
- how future reviews of the plan will be conducted

- contact details for anyone wishing to discuss pesticide notification with Kiama Council.

6.0 Public places covered by this Notification Plan

This Notification Plan must describe where it operates and the categories of public places it covers. Public places include the following areas that the public is entitled to access:

- Public reserves, parks and gardens
- Playgrounds
- Sporting fields and ovals
- Road verges
- Laneways and pathways
- Drains and easements
- Golf courses (owned or controlled by Council)
- Caravan/holiday parks
- Cemeteries
- Swimming pool grounds

A public place also includes any other outdoor property that is leased out but the public is entitled to access.

7.0 Who uses these public spaces

7.1 Public reserves, parks and gardens

Kiama Council estimates that the level of usage and community access to public reserves, parks and gardens is medium to high. The main groups of the community that use or have access to these public places are:

- children and young families
- elderly people
- general recreational users (eg. joggers, dog-walkers, picnickers)
- local residents living adjacent to a reserve, park or garden
- visitors to the area.

7.2 Playgrounds

Kiama Council estimates that the level of usage and community access to public playgrounds is high. The main groups of the community that use or have access to these public places are:

- children and young families.

7.3 Sporting fields and ovals

Kiama Council estimates that the level of usage and community access to public sporting fields and ovals is high. The main groups of the community that use or have access to these public places are:

- sporting clubs and associations
- school sports groups
- general recreational users (eg. joggers, dog-walkers).

7.4 Council laneways and pathways

Kiama Council estimates that the level of usage and community access to laneways and pathways that are owned or maintained by Council is medium to high. The main groups in the community that use or have access to these public places are:

- local residents
- people who work in the area
- visitors to the area.

7.5 Council drains and easements

Kiama Council estimates that the level of usage and community access to drains and easements that are owned or maintained by Council is low to medium. The main groups in the community that use or have access to these public places are:

- local residents living adjacent to a drain or easement
- local residents or visitors who walk or drive past a drain or easement.

7.6 Road shoulders and verges

Rural Roads - Kiama Council estimates that the level of usage and community access to road shoulders and verges on rural roads that are owned or maintained by Council is low. The main groups in the community that use or have access to these public places are:

- local residents or visitors walking or driving on the road.

Urban Roads - Kiama Council estimates that the level of usage and community access to road shoulders and verges on urban roads that are owned or maintained by Council is medium to high. The main groups in the community that use or have access to these public places are:

- local residents or visitors walking or driving on the road.

7.7 Holiday Parks

Kiama Council estimates that the level of usage and community access to public caravan and holiday parks is medium to high, depending on the season. The main groups of the community that use or have access to these public places are:

- families
- visitors to the area.

7.8 Cemeteries

Kiama Council estimates that the level of usage and community access to cemeteries is low to medium. The main groups in the community that use or have access to these public places are:

- families
- visitors to the area
- local residents.

7.9 Swimming pool grounds

Kiama Council estimates that the level of usage and community access to swimming pool grounds is low to high depending on the season. The main groups in the community that use or have access to these public places are:

- children and young families
- visitors to the area
- sporting clubs and associations
- school groups

- general public
- local residents.

8.0 How notification will occur

Whenever a pesticide is applied to a public place as identified above, notice will need to be made according to the notification process detailed below. All signage will carry the information required by item 10 of this plan.

8.1 Public reserves, parks and gardens

Whenever a pesticide is applied by Kiama Council staff to a public reserve, park or garden, notice will be provided by:

- prominently displaying signs at the main entrances to the public reserve, park or garden and/or
- displaying pesticide details on the spray vehicle including a contact number; and
- responding to all reasonable requests for information made to Council.

These notification arrangements are based on Council's assessment that:

- (i) the level of usage by members of the public that use public parks and gardens is high.
- (ii) members of the public regularly use these areas.

8.2 Playgrounds

Whenever a pesticide is applied by Kiama Council staff to a public playground, the playground will be closed and notice will be provided by:

- prominently displaying signs at the main entrances to the playground and/or
- displaying pesticide details on the spray vehicle including a contact number; and
- responding to all reasonable requests for information made to Council.

These notification arrangements are based on Council's assessment that:

- (i) level of usage by members of the public that use public playgrounds is high.
- (ii) members of the public regularly use these areas.

8.3 Sporting fields and ovals

Whenever a pesticide is applied by Kiama Council staff to a public sporting field or oval notice will be provided by:

- prominently displaying signs at the main entrances to the sporting field or oval and/or
- displaying pesticide details on the spray vehicle including a contact number; and
- responding to all reasonable requests for information made to Council.

Where sporting fields or ovals are to be treated with a ground boom spray application, Council will take the additional step of:

- advising all sporting clubs, associations and other user groups who use the sporting fields on a regular basis, by email, fax or post.

These notification arrangements are based on Council's assessment that:

- (i) level of usage by members of the public that use sporting fields and ovals is high.
- (ii) members of the public regularly use these areas.

8.4 Council laneways and pathways

Whenever a pesticide is applied by Kiama Council staff to a laneway or pathway that is maintained or owned by Council, notice will be provided by:

- displaying pesticide details on the spray vehicle, including a contact number; and
- responding to all reasonable requests for information made directly to the operator applying the pesticide or to Council itself.

These notification arrangements are based on Council's assessment that:

- (i) level of usage for public Council laneways and pathways is medium to high.

8.5 Council drains and easements

Whenever a pesticide is applied by Kiama Council staff to a drain or easement that is owned or maintained by Council, notice will be provided by:

- displaying pesticide details on the spray vehicle, including a contact number; and
- responding to all reasonable requests for information made to Council.

These notification arrangements are based on Council's assessment that:

- (i) level of usage for public Council drains is medium to low.

8.6 Road shoulders and verges

Rural Roads - Whenever a pesticide is applied by Kiama Council staff to a road shoulder or verge on rural roads that are owned or maintained by Council, notice will be provided by:

- displaying pesticide details on the spray vehicle including a contact number; and
- responding to all reasonable requests for information made to Council.

These notification arrangements are based on Council's assessment that:

- (i) level of usage by walking or driving on road shoulders, verges and reserves on rural roads maintained by Council is low.

Urban Roads - Whenever a pesticide is applied by Kiama Council staff to a road shoulder or verge on urban roads that are owned or maintained by Council, notice will be provided by:

- displaying pesticide details on the spray vehicle including a contact number; and
- responding to all reasonable requests for information made directly to Council.

These notification arrangements are based on Council's assessment that:

- (i) level of usage by walking or driving on road shoulders, verges and reserves on urban roads that are owned or maintained by Council medium to high.

8.7 Holiday parks

Whenever a pesticide is applied by Kiama Council staff to a public caravan/holiday park, notice will be provided by:

- prominently displaying signage outside the main office to the park and/or
- displaying pesticide details on the spray vehicle including a contact number; and
- responding to all reasonable requests for information made to the Park Manager or operator applying the pesticide.

These notification arrangements are based on Council's assessment that:

- (i) the level of usage by members of the public that use caravan and holiday parks is medium to high (seasonal).
- (ii) members of the public regularly use these areas.

8.8 Cemeteries

Whenever a pesticide is applied by Kiama Council staff to a public cemetery notice will be provided by:

- prominently displaying signs at the main entrances to the cemetery and/or;
- displaying pesticide details on the spray vehicle including a contact number; and
- responding to all reasonable requests for information made to Council.

These notification arrangements are based on Council's assessment that:

- (i) the level of usage by members of the public that use cemeteries is low to medium.
- (ii) members of the public regularly access these areas.

8.9 Swimming pool grounds

Whenever a pesticide is applied by Kiama Council staff to a public swimming pool area, notice will be provided by:

- prominently displaying signage at the main entrance to the pool grounds;
- responding to all reasonable requests for information made directly to the operator applying the pesticide, to pool staff or directly to Council.

These notification arrangements are based on Council's assessment that:

- (i) the level of usage by members of the public that use swimming pools is low to high (seasonal).
- (ii) members of the public regularly use these areas.

9.0 When notification will occur

9.1 Public reserves, parks and gardens

Whenever a pesticide is applied by Kiama Council staff to a public reserve, park or garden, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle and/or at the main entrance to the public place during the application); and removed when the spraying is completed.

9.2 Playgrounds

Whenever a pesticide is applied by Kiama Council staff to a playground, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle and/or at the main entrance to the public place during the application); and removed when the spraying is completed and the product dry.

9.3 Sporting fields and ovals

Whenever a pesticide is applied by Kiama Council staff to a sporting field or oval, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle and/or at the main entrance to the public place during the application); and removed when the spraying is completed.

Additionally, a pesticide applied to a sporting field or oval using ground boom spray application, notice will be provided:

- five days prior to the application via email, fax or post to all association/ groups who have booked use of the space.

9.4 Council laneways and pathways

Whenever a pesticide is applied by Kiama Council staff to a laneway or pathway that is owned or maintained by Council, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle during the application); and removed when the spraying is completed.

9.5 Council drains and easements

Whenever a pesticide is applied by Kiama Council staff to a drain or easement that is owned or maintained by Council, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle during the application) and removed when the spraying is completed.

9.6 Road shoulders and verges

Rural Roads - Whenever a pesticide is applied by Kiama Council staff to a road shoulder or verge on a rural road that is owned or maintained by Council, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle during the application); and removed when the spraying is completed.

Urban Roads - Whenever a pesticide is applied by Kiama Council staff to a road shoulder or verge on an urban road that is owned or maintained by Council, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle during the application); and removed when the spraying is completed.

9.7 Holiday Parks

Whenever a pesticide is applied by Kiama Council staff to a public caravan or holiday park, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle and/or outside the main office to the caravan/holiday park during the application); and removed when the spraying is completed.

9.8 Cemeteries

Whenever a pesticide is applied by Kiama Council staff to a public cemetery, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed on the spray vehicle and/or at the main entrances to the public place during the application) and removed when the spraying is completed.

9.9 Swimming pool grounds

Whenever a pesticide is applied by Kiama Council staff to a public swimming pool area, notice will be provided:

- during the application of the pesticide (Council will ensure that signs are prominently displayed at the main entrance to the public place during the application) and removed when the spraying is completed.

10.0 Types of pesticide use

Public places	Regular user groups	Level of use in public place	Type of pesticide use
a) Public reserves, parks and gardens	General public (families, children, elderly people); recreational users; visitors to the area.	Medium to high	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Spot spraying insecticides • Broadscale boom spraying: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides
b) Playgrounds	Children and young families.	High	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides • Spot spraying insecticides
c) Sporting fields and ovals	Sporting clubs and associations; school sports groups; general recreational users.	High	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Spot spraying insecticides • Broadscale boom spraying: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides
d) Road verges	Rural	Low	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Broadscale boom spraying: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Pre-emergent Herbicides
	Urban	High	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Broadscale boom spraying: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Pre-emergent Herbicides
f) Drains and easements accessible to the public	Local residents	Low to medium	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides

<Document name>

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Public places	Regular user groups	Level of use in public place	Type of pesticide use
g) Holiday parks	Visitors to the area; families	Medium to high (seasonal)	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Spot spraying insecticides • Rodenticides • Spray ant control
h) Cemeteries	General public; visitors to the area	Medium	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Pre-emergent herbicide
i) Swimming pool grounds	General public; visitors to the area	Low to high (seasonal)	<ul style="list-style-type: none"> • Spot spraying herbicides: <ul style="list-style-type: none"> ○ non-selective herbicides ○ selective herbicides • Spot spraying insecticides • Rodenticides • Spray ant control

11.0 Pesticides and use situation not covered by this Notification Plan

Poisons scheduling is the system used to classify substances based on their potential health risk. The National Drugs and Poisons Schedule Committee assess substances and list those that are classified as poisons in the Uniform Poisons Standard. States then enforce this classification – the relevant legislation in NSW is the Poisons and Therapeutic Goods Act 1966.

There are four schedules applicable to pesticides:

- (i) Unscheduled substances are not considered poisons.
- (ii) Schedule 5 (S5) poisons have low toxicity or a low concentration and pose only a low to moderate hazard.
- (iii) Schedule 6 (S6) poisons have moderate to high toxicity and can cause injury if used inappropriately.
- (iv) Schedule 7 (S7) poisons are substances with high to very high toxicity. There are restrictions on the purchase and use of S7 poisons.

For the purposes of this Notification Plan, notification will not be required to be provided in the use of the following pesticides or use situations:

(a) Any unscheduled substance

The heading on the product label indicates which poison schedule the pesticide belongs to. Material Safety Data Sheets (MSDS) also contain this information.

This decision is based on the knowledge that unscheduled substances pose very low health risk and when applied as per label directions should not pose any serious health or safety risk.

(b) Non-spray methods

The application of any pesticide by Cut-stump, Stem Injection or Basal Bark techniques.

(c) Small use situations

Domestic style pesticide use involving knapsack application only using pesticides widely available at retail outlets or in aerosol cans and small baits.

(d) Pesticide use by members of the public

In some circumstances, members of the public may use pesticides to maintain public places such as laneways and pathways or whilst undertaking environmental remediation works in public reserves. Where Kiama Council allows such pesticide use notice will not be required.

(e) Emergency pesticide use

In cases where emergency pesticide applications are required to deal with a dangerous pest infestation, Council will not be required to give notice. Such situations include dealing with biting and dangerous pests or rapidly invasive pest infestations e.g. couch fly, spiders, wasps and rodents. Council will endeavour however, to provide information on the pesticide application on request at Council offices or to the person applying the pesticide.

12.0 Special notification measures for sensitive places

This Notification Plan must separately state what notification arrangements will be in place to provide special protection where pesticides are used in public places that are adjacent to sensitive places. A sensitive place is any:

- school, pre school, kindergarten or childcare centre
- hospital
- community health centre
- nursing home.

Whenever a pesticide is applied by Kiama Council staff to any public place (as listed under Section 2 of this Notification Plan) within 20 metres of a common boundary with a sensitive site, notice will be provided by phone, email, fax, letter box drop or post depending what is practicable at least five working days prior to the application process.

During the application process notification will also be provided by displaying pesticide details on the spray vehicle including a contact number and responding to all reasonable requests for information made directly to Council.

Five days advance notification of sensitive places will also be provided in the use of pesticides or use situations as identified under Section 7 of this Plan, with the exception of *Emergency Pesticide Use*. Notice in this instance however, will still need to be given prior to the application process

13.0 Arrangements governing pesticide use by contractors and lessees of public spaces

Where contractors apply pesticides on Kiama Councils behalf both the Council and the contractor are responsible for ensuring notification occurs in accordance with this plan.

In public places over which persons or organisations hold an existing lease on Council land, or leases on Crown land for which Council is the trustee, Kiama Council will not provide notification of pesticide use. However, it will request the lessee to carry out notification of the lessee's pesticide use in a manner consistent with the plan. Where possible, Kiama Council will require lessees, as a condition of the lease, to comply with this plan.

14.0 What information will be provided

The following information will be provided on all notification required under this plan:

- the product name of the pesticide used as it is listed on the pesticide label
- the purpose of the application, including the pest that is being treated
- the date or date range that the pesticide was or will be applied
- product specific warnings on the subsequent use of the land (if appropriate)
- contact details of the Council officer who people contact regarding the notice
- the place where the pesticide is to be used
- any warnings regarding re-entry to or use of, the place of application specified on the product label or the Australian Pesticides and Veterinary Medicines Authority.

15.0 Future reviews of this Plan

The Notification Plan will be reviewed every five years. The review should coincide with similar notification plan reviews by the member councils of Illawarra District Weeds Authority. The review will include:

- report on progress of implementing the Notification Plan
- public consultation on the notification methods outlined in the Notification Plan
- recommendation for alterations (if applicable) to the Notification Plan.

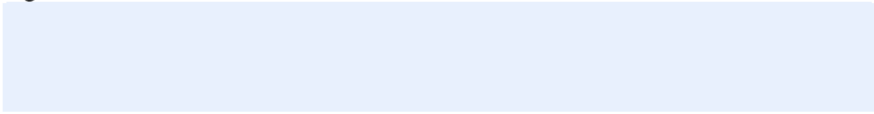
16.0 Contact

Anyone wishing to contact Kiama Council regarding the Notification Plan should contact;
Council's Landscape Officer
Po Box 75 Kiama NSW 2533
Phone 02 4232 0444
Email council@kiama.nsw.gov.au

17.0 Document control

Date reviewed	Date adopted	Amendment
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

18.0 Signature

Name: Click or tap here to enter name.	Date: Click or tap to enter a date.
Signature: 	

How to contact Council

Post

General Manager
Kiama Municipal Council
PO Box 75
Kiama NSW 2533

Telephone

+61 (02) 4232 0444

Facsimile

+61 (02) 4232 0555

Online

Email: council@kiama.nsw.gov.au
Website: www.kiama.nsw.gov.au

Office hours

Our Administration Building located at
11 Manning Street Kiama is open 8.45 am to 4.15 pm
Monday to Friday (excluding public holidays)



KIAMA MUNICIPAL COUNCIL
your council, your community

14.2 Successful Funding Applications - Fixing Local Roads (2022 - 2023)

CSP Objective: 1.0 A healthy, safe and inclusive community

CSP Strategy: 1.3 We live in a safe community

Delivery Program: 1.3.3 Undertake local community safety initiatives

Summary

The State Government, through Transport for NSW (TfNSW) have formally advised Council that its application for grant funding under the Fixing Local Roads (Round 3) program was successful.

This report seeks Council's approval to accept the grant funding for three projects totalling \$305,000, being for asphalt resurfacing works at Barney Street, Kiama and on Meehan Drive and Johnson Street, Kiama Downs.

Financial implication

These projects are fully funded by TfNSW through the NSW Government's Fixing Local Roads and delivered by Council resources. These projects form part of Council's forward capital works program and had been scheduled for delivery in 2022/23 based on current available budgets. Acceptance of this funding would allow reallocation of Council's budget in 2022/23 to other priority projects.

The Funding Deed requires commencement of the projects within 6 months from accepting the funding and completion within 24 months. Pending Council's acceptance of the funding, the new projects will be established in the 2022/23 Capital Works program to track the delivery of each funded project.

Policy

Delivery of these projects supports identified priorities within Council's Asset Management Plans.

Acceptance of external funding for these projects supports Council's Financial Sustainability initiatives by reducing the impact on Council finances and enabling potential reallocation of funds to other priority works.

Communication/Community engagement

The funded projects have previously been identified and adopted as priorities by Council for allocation of resources in a future year.

Attachments

- 1 Funding Deed - Barney Street Kiama - Round 3 - Fixing Local Roads [↓](#)
- 2 Funding Deed - Meehan Drive Kiama Downs - Round 3 - Fixing Local Roads [↓](#)
- 3 Funding Deed - Johnson Street Kiama - Round 3 - Fixing Local Roads [↓](#)

Enclosures

Nil

Report of the Director Engineering and Works

14.2 Successful Funding Applications - Fixing Local Roads (2022 - 2023) (cont)

RECOMMENDATION

That Council:

1. Accept the grant funding of \$305,000 offered by the State Government under their Fixing Local Roads (Round 3) for delivery of asphalt resurfacing works at Barney Street, Kiama and Meehan Drive and Johnson Street, Kiama Downs.
2. Delegate to the Chief Executive Officer authority to sign the funding agreement enabling execution of the funding for asphalt resurfacing works at Barney Street, Kiama and Meehan Drive and Johnson Street, Kiama Downs.

Item 14.2**BACKGROUND**

Kiama Municipal Council was eligible to apply for funding under the NSW Government's Fixing Local Roads (Round 3) program, which is an initiative to help regional Councils repair, maintain and seal priority local roads in their communities.

Applications for funding to Transport for NSW (TfNSW) closed at the start of July 2021. As Council was finalising its Budgets and Programs for 2021/22 in this same period, an application was made for three projects that were original planned for delivery in the 2021/22 financial year, but were re-phased to 2022/23 due to budget limitations. The projects applied for were:

1. Barney Street, Kiama – The project will include the milling and resealing of approximately 688m of existing asphalt surface. Funding amount of \$170,000.
2. Meehan Drive, Kiama Downs - The project will include the milling and heavy patching of large sections of failing pavement over a 1.55km stretch to replace the existing asphalt surface. Funding amount of \$80,000.
3. Johnson Street, Kiama Downs - The project will include the milling and resealing of a section of failing pavement over a 250m stretch to replace the existing asphalt surface. Funding amount of \$55,000.

These projects have been identified through Council's asset management processes as high priorities for renewal and each addressed the grant funding eligibility criteria.

Current Position

Council recently received formal notification from TfNSW that our applications were successful together with a proposed funding agreement (copy attached). The key requirements that Council must adhere to as part of its acceptance of project funding are outlined below, with further detail provided in the Attachments.

1. Council provides written acceptance of funding;
2. Council provides a program of works for achieving significant Milestones;
3. Physical works are commenced within 6 months of signing the Funding Deed and are completed before June 2023;
4. Council submits invoices/ certified expenditure claims and evidence of work completed;

Report of the Director Engineering and Works

14.2 Successful Funding Applications - Fixing Local Roads (2022 - 2023) (cont)

In general, the terms of the Funding Deeds are considered acceptable and can be achieved should Council approve acceptance of the funding.

Conclusion

The State Government's Fixing Local Roads (Round 3) program provides support to regional and rural Council's to supplement Council resources in improving local roads. Acceptance of the \$305,000 offered for delivery of three (3) programmed projects in the 2022/23 financial year will enable Council funds to be reallocated to other priority projects, supporting our Financial Sustainability programs.

Item 14.2



Fixing Local Roads Program

Funding Deed

between

Transport for NSW
ABN 18 804 239 602

and

Kiama Municipal Council
ABN 22 379 679 108

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Parties

This deed is made between

Transport for NSW (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney NSW 2000 (**TfNSW**)

and

the Council described in item 1 of the Key Details below (**Council**).

Background

- (a) The Fixing Local Roads Program (**Program**) has been developed to provide funding for local roads across regional and rural NSW.
- (b) Council has applied to TfNSW for funding to replace one or more priority local roads. The application for funding has been successful and the Project works will be carried out by Council as the asset owner in accordance with the terms of the Program and this Deed.
- (c) This Deed sets out the terms on which the Council has agreed to carry out the Project and TfNSW has agreed to contribute Funding for the Project.

Key Details

Item 1	Council details	
	Council name:	Kiama Municipal Council
	ABN:	22 379 679 108
	Address:	11 Manning St Kiama NSW 2533

Item 2 (clause 1.1)	Project	
	Application ID FLR300135	Project Description Barney Street, Kiama - Resealing The project will include the milling and resealing of approximately 688m to replace the existing asphalt surface.

Funding			
Item 3	Application ID	Funding	Co-contribution by Council or other parties
(clause 1.1)	FLR300135	\$170,000	\$0

Item 4		
(clause 12)	Reports	
	Reports required	Report due
	1) Milestone Certificate	Required as a condition precedent to the payment or advancement for a Milestone within two weeks of reaching the Milestone
	2) Project Completion Report Ref. Clause 11(a)(i)	Required as a condition precedent to the final payment for the Milestone 3 within two weeks of Project completion.
	3) Project Status Report Ref. Clause 11(a)(iv)	Monthly

Item 5	TfNSW's Representative
(clause 1.1)	Ms Joanne Parrott, Director, Regional Community Partner

Item 6	Council's Representative
(clause 1.1)	Ms Jane Stroud, Chief Executive Officer

Item 7 (clause 31(a))	Notices TfNSW: Level 5, 90 Crown Street, Wollongong NSW 2500 Email: LGSouth@transport.nsw.gov.au Council: 11 Manning St, Kiama NSW 2533 Email: janes@kiama.nsw.gov.au
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Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the contrary intention appears:

Actual Costs means the actual costs incurred by Council in delivering the Project without Council applying any margin.

Approvals means all consents, approvals, licences permits, certifications and other authorisations required by Law.

Business Day means any day other than a Saturday, Sunday or public holiday in NSW.

Co-contribution means any funding obtained by Council for the purpose of a Project, from any other source other than the Funding specified in item 3 of the Key Details.

Confidential Information of a Party means any information (whether owned by them or not):

- (a) that is, by its nature, confidential and has been designated by the disclosing party as confidential in the information or document;
- (b) that the receiving party knows or ought to know is confidential, including:
 - (i) where the receiving party is Council:
 - (A) information relating to the policies, strategies, practices and procedures of TfNSW or the State of New South Wales and any information in Council's possession relating to the New South Wales public service;
 - (B) information relating to other contractors of TfNSW; and
 - (C) security classified information; and
 - (ii) where the receiving party is TfNSW, the financial,

corporate and commercial information of Council,

This does not include information that:

- (c) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (d) has been independently developed or acquired by the receiving party.

Contractor Statement means a statement from the Council in the form found at Attachment A. **Council's Representative** means the party named in item 6 of the Key Details.

Construction Commencement means to begin site preparation work, including clearing of vegetation, utility adjustments, fence installation, excavation or removal of existing structures, necessary for the Works.

Deed means this deed and any schedules and attachments to this deed.

Force Majeure Event means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought, epidemic, pandemic or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (e) a labour dispute other than a labour dispute that only involves the party's personnel.

Funding or Funds means the total maximum amount to be contributed by TfNSW for a Project specified in item 3 of the Key Details.

GST Law has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instalment means, for each Milestone, the amount calculated by applying the percentage specified in Schedule 2 for that Milestone to the Funding.

Intellectual Property Rights means all present and future industrial and intellectual property rights conferred by statute, common law or equity and includes copyright, trademarks, patents, designs, circuit layout rights, trade

secrets, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields whether non-registrable, registered or patentable.

Interest means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), plus 1%, on a daily compounding basis.

Key Details means the section of this Deed headed "Key Details".

Milestone means, for each Project, a milestone listed in Schedule 2.

Milestone 1 means the first Milestone listed in Schedule 2.

Milestone 1 Date means Council's nominated date for the Milestone 1 in the form set out in Schedule 4 of this Deed or such other date determined in accordance with this Deed.

Milestone 2 means the date of Construction Commencement.

Milestone 2 Date means the date that is within six months from the date of a signed Funding Deed or such other date determined in accordance with this Deed.

Milestone 3 means the date of Open to Traffic

Milestone 3 Date means the date that is within 24 months of notification from TfNSW or such other date determined in accordance with this Deed.

Milestone Certificate means a certificate in the form set out in Attachment B.

Open to Traffic means the Works for the Project are complete and capable of being opened to the public for the safe, efficient and continuous passage of vehicles.

Project means the project to design, construct and commission works on an existing local road or roads described in item 2 of the Key Details.

Project Completion Report means the final report provided by Council on completion of each Project to satisfy the requirements of the Milestone 3, available on the Fixing Local Road website.

Project Manager means the project manager appointed by Council in respect of each Project for the purposes of this Deed and notified to TfNSW from time to time.

Project Status Report means, in respect of each Project, the report that Council provides on a monthly basis to TfNSW from the date of the Funding Deed until the date of completion of that Project, in the form set out in the Smarty Grants Project Portal.

Records means all documents, reports, plans, drawings, computer disks, specifications, data and all other materials in both hard and electronic formats and all copies and extracts of the same.

Simplified Project Plan and Project Benefits means the plan prepared by Council in respect of each Project in the form set out in Schedule 4. **Technical Requirements** means the matters set out in Schedule 1.

TfNSW's Representative means the party named in item 5 of the Key Details.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all other laws relating to work health and safety which apply in New South Wales.

Works means the physical works to be designed and constructed for each Project as described in Schedule 3.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form and vice versa;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a clause, section, attachment or party is a reference to a clause or section of, or an attachment or party to this Deed;
- (e) a reference to this Deed includes the attachments to this Deed;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to any dollar amounts or \$ is to Australian currency;
- (h) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Deed or any part; and
- (i) anything in this Deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

2. Term and Nature of Deed

2.1 Term

This Deed commences on the date that the last party signs this Deed and will continue for 24 months after the Deed commences, unless extended under clauses 4.3(b)(i) or 4.3(c), or terminated earlier in accordance with this Deed.

2.2 Risk and Cost

- (a) Without limiting clause 13, Council accepts all risks associated with the design, construction and commissioning of each Project, and complying with its obligations under this Deed, including the risk that the final cost of a Project is more than the Funding.
- (b) TfNSW is not responsible for the provision of any money or resources in excess of the Funding specified for a Project.

3. Payment

- (a) Subject to the terms of this Deed, TfNSW must provide Council with Funding for each Project:
 - (i) for an amount not exceeding the amount specified in item 3 of the Key Details; and
 - (ii) in Instalments upon satisfaction of each Milestone as specified in Schedule 2.
- (b) If Council considers that a Milestone has been satisfied, Council must submit to TfNSW:
 - (i) a correctly rendered tax invoice/payment claim;
 - (ii) a completed Milestone Certificate; and
 - (iii) all supporting documentation specified in Schedule 2.
- (c) Within 30 Business Days of receiving a notice from Council under clause 3(b), TfNSW must either:
 - (i) if satisfied (acting reasonably) that the Milestone has been achieved, and subject to clause 3(f), pay Council the Instalment for that Milestone; or
 - (ii) if not satisfied that the Milestone has been achieved, notify Council that the Milestone has not been achieved.
- (d) If Council receives a notice under clause 3(c)(ii), Council may submit a further notice under clause 3(b) and clause 3(c) will apply again.

- (e) For the purposes of this Deed, an invoice/payment claim is not correctly rendered unless the invoice/payment claim:
 - (i) states the amount claimed in the invoice/payment claim is due for payment in accordance with clause 3 and Schedule 2;
 - (ii) states the amount claimed in the invoice/payment claim is correctly calculated under this Deed;
 - (iii) states the approved Funding allocation for the Project, the total expenditure to date on the Project, and the total Funding paid to date for the Project;
 - (iv) states the projected cash flow for the Project (if any);
 - (v) states the current due date for completion of the Project and the percentage completion of the Project to date;
 - (vi) includes the relevant TfNSW project number (WBS and/or purchase order) and is set out in a manner that identifies the specific Project and Milestone;
 - (vii) is addressed to "Transport for NSW" with attention to the TfNSW Representative;
 - (viii) is accompanied by a completed Contractor Statement in the form set out in Attachment A in respect of the period to which the invoice/payment claim relates; and
 - (ix) is certified by Council's authorised delegate/s as follows:
 - (A) a delegate that certifies the expenditure shown on the invoice/payment claim for payment has been actually incurred and only relates to the Project described; and
 - (B) a delegate that certifies the work has been executed in accordance with appropriate prevailing standards and conforms to sound engineering practice and applicable legislation.
- (f) If TfNSW considers that an invoice/payment claim is not correctly rendered, TfNSW must issue to Council a notice setting out the reasons and identifying any issues that are in dispute and/or further documents required to substantiate the amount claimed.
- (g) TfNSW may inspect the Project and make other reasonable enquiries (including carrying out an audit) to satisfy itself that a Milestone has been achieved. Council must co-operate with TfNSW and facilitate any such inspection and enquiry, including by providing access to site/s and Records.

4. Project

4.1 Design and construction obligations

- (a) Council must obtain all Approvals required for each project.
- (b) Council must ensure that the design and construction of the Works complies with:
 - (i) the requirements of this Deed, including but not limited to the Technical Requirements; and
 - (ii) all relevant Approvals and Laws.
- (c) Council must comply with the requirements of the Local Government Act 1993 and the Tendering Guidelines for NSW Local Government dated October 2009.

4.2 Progress and timing

- (a) Council must diligently progress each Project to achieve the Milestones in accordance with the Simplified Project Plan and Project Benefits and the terms of this Deed.
- (b) Council must achieve:
 - (i) the Milestone 1 by the Milestone 1 Date; and
 - (ii) the Milestone 2 by the Milestone 2 Date; and
 - (iii) the Milestone 3 by the Milestone 3 Date.

4.3 Delay and extensions of time

- (a) If for any reason Council:
 - (i) is unable to commence the Project or to continue the Project; or
 - (ii) forms the reasonable opinion that the timeframes specified in clause 4.2(b) will not be met,then Council must promptly provide written notice to TfNSW setting out the cause of the delay, relevant facts, and the expected effect on achievement of the Milestone 2 and/or the Milestone 3.
- (b) Following receipt of Council's notice under clause 4.3(a), TfNSW must determine, in its absolute discretion:
 - (i) that the Milestone 2 Date and/or the Milestone 3 Date are extended, including details of the revised date or dates and the Term of this Deed will be extended accordingly; or

- (ii) not to grant an extension of the Milestone 2 Date and/or the Milestone 3 Date,

and provide written notice to Council of that determination.

- (c) TfNSW may, in its absolute discretion and without any obligation to do so, extend the Milestone 2 Date or the Milestone 3 Date at any time and for any reason and the Term of this Deed will be extended accordingly.

5. Subcontracting

- (a) Council is responsible for ensuring the suitability of any subcontractor it engages to undertake Work on the Project and for ensuring that such Work meets the requirements of this Deed.
- (b) Council must ensure that any contractor engaged by it in connection with this Deed holds and maintains appropriate insurances in accordance with Council policies and good industry practice for the delivery of works similar to the Works.
- (c) Council is responsible for all acts and omissions of subcontractors as if they were those of the Council and Council indemnifies TfNSW against all costs, expenses, and/or liabilities incurred by TfNSW in connection with the acts or omissions of any subcontractors.

6. Management of Funding

- (a) The Funding administered by TfNSW must be spent by Council solely:
 - (i) for the Project;
 - (ii) in accordance with this Deed; and
 - (iii) only once any Co-Contribution has been expended fully on the Project.
- (b) The salary levels and allowances for any staff involved in the Project are to be based on award rates. Council must ensure that award provisions are applied in relation to all employees funded either wholly or in part by the Funding.
- (c) All Project related income which is generated through the Funds (including bank interest, revenue from the sale of Project material, etc.) must be applied towards the Project by Council and must be fully disclosed in Council's financial statements and records.

- (d) Details of the sale, disposal or write-off of any asset acquired with the Funding during the term of the Project must be included in Council's financial statements and records.
- (d) Council must not use the Funding to:
 - (i) pay any wages or other benefits to Council's employees who do not perform Work for or on the Project; or
 - (ii) make a loan, gift or donation.
- (e) Council must:
 - (i) keep full and accurate financial accounts and Records relating to the Project and the Funding that separately identifies the Funds from other income for the Project and enables expenditure on the Project to be verified.
 - (ii) all receipts and payments related to the Project and the Funding are to be identified in Council's accounts and reported in accordance with this Deed by reference to the Project so that at all times the Funds and their use are clearly identifiable;
 - (iii) do all things necessary to ensure that all payments from the Funds that Council makes to third parties are correctly made and properly authorised and that Council maintains proper and diligent control over the incurring of all liabilities; and
 - (iv) ensure that Funds provided by TfNSW are deposited and held in an account in Council's name, and which Council solely controls, with a bank or credit union carrying on banking business in Australia and only withdrawn and applied for liabilities of Council in relation to the Project.
- (f) This clause 6 survives the expiration or termination of this Deed.

7. Repayment of Funding

- (a) Where Council has received additional funding from a different NSW Government program for the same Project (where the funding is provided for the same scope of works under which funding under this Funding Deed is to be utilised), the difference between the Funding amount specified in Item 3 of the Key Details and the total amount received by Council must be refunded by Council to TfNSW.
- (b) Where the Project is withdrawn by the Council or TfNSW reasonably determines that the Project (or part of the Project) is unable to be performed by Council to meet the Milestone timeframes and/or to meet the requirements of this Deed, then with the exception of Funding that

has already been spent or committed for the Project in accordance with this Deed, the Funding must be:

- (i) refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW; or
 - (ii) otherwise dealt with as directed in writing by TfNSW (in its absolute discretion).
- (c) Where TfNSW reasonably determines that Funds have not been spent by Council on the Project in accordance with this Deed, then the Funding must be refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW.
- (d) Where TfNSW reasonably determines that the Actual Costs of construction for the Project totals less than the Funding provided by TfNSW for the Project, then at TfNSW's absolute discretion that portion of the savings must be:
- (i) refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW; or
 - (ii) otherwise dealt with as directed in writing by TfNSW.
- (e) Interest is payable on any amount not paid to TfNSW when due and payable under this clause 7.
- (f) Nothing in this clause affects a party's right to terminate this Deed or TfNSW's right to suspend this Deed.

8. Intellectual Property Rights

- (a) All Intellectual Property Rights of the parties existing before the date of this Deed will be retained by the relevant party.
- (b) Each Party hereby grants to the other Party a royalty-free, non-exclusive and perpetual licence to use its existing Intellectual Property to the extent necessary to carry out the Project.
- (c) In respect of:
 - (i) Intellectual Property Rights in all modifications made to TfNSW existing Intellectual Property Rights made by Council or its subcontractors; and
 - (ii) all other Intellectual Property Rights created by Council or its subcontractors in undertaking the Project,

Council grants TfNSW a non-exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of TfNSW;
- (iv) permit any person to assist TfNSW to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) above to any person.

9. Variations

- (a) Council must not vary the Project or the Works except with the prior written approval of TfNSW.
- (b) Council will not be entitled to any additional Funding from TfNSW in connection with any Project or Works variation approved pursuant to clause 9(a).

10. Records

- (a) Records and accounts maintained for the Project must be retained by Council until at least 7 years after the later of either:
 - (i) completion of the Project; or
 - (ii) the last date on which Funds are provided under this Deed.
- (b) Council must make those Records and accounts available for inspection and/or audit as and when reasonably requested by TfNSW, a regulator, any external auditor or advisor or any of their authorised representatives during normal business hours. Copies and extracts of any Records may be taken for these purposes.
- (c) Council must permit TfNSW to inspect or appoint a third party to inspect Council's premises to confirm compliance with this Deed and must provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith.
- (d) This clause 10 survives the expiration or termination of this Deed.

11. Reporting

- (a) At the times specified in item 4 of the Key Details, and at other times when reasonably requested, Council must provide TfNSW with the following (each in a form satisfactory to TfNSW):

- (i) a Milestone Certificate;
- (ii) an audited detailed statement of income and expenditure in respect of the Funding, which must include a statement verifying that the financial accounts are true and correct, and a statement of the balance of Council's account;
- (iii) an audit statement that the Funding was expended solely for the Project and in accordance with this Deed;
- (iv) a monthly Project Status Report;
- (v) a Project Completion Report; and
- (vi) any other report/s listed in item 4 of the Key Details.

12. Title, insurance and operation and maintenance

- (a) TfNSW and Council acknowledge and agree that at all times the Works are owned by Council and that any materials and/or equipment removed from the site as part of the demolition activities for the Project will remain Council assets.
- (b) Council must:
 - (i) ensure that at all times it has appropriate insurance policies in place for the Project and the Works, that accord with insurance policies generally effected by Council in relation to such Projects and Works; and
 - (ii) where proceeds of insurance are recovered in connection with the loss of, or damage or destruction to, such Works, apply such proceeds solely toward reinstatement of the Works unless otherwise agreed by TfNSW.
- (c) Council takes all risk and is solely responsible for:
 - (i) the delivery of the Project and all costs associated with the Works the subject of the Project;
 - (ii) defects and omissions in the Works;
 - (iii) the Works otherwise not being in accordance with the requirements of this Deed; and
 - (iv) the ongoing operation and maintenance of the Works.
- (d) This clause 12 survives the expiration or termination of this Deed.

13. Third parties, project interfaces and community liaison

- (a) Council is responsible for liaising with all relevant third parties in relation to the Project and the Works, including:
 - (i) owners or occupiers of adjacent or affected land or property; and
 - (ii) utilities and other service providers.
- (b) Council is responsible for and must undertake all required community liaison activities to ensure that the community is satisfied with the proposed Project and, in doing so, must comply with all reasonable requirements of TfNSW.
- (c) Council is responsible for managing all project interface issues arising out of or in connection with the Project and the Works.

14. Taxes, duties and government charges

- (a) Subject to clause 14(b), Council must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Deed, the Project or the Works.
- (b) If GST is payable on any supply made under this Deed, for which the consideration is not expressly stated to include GST, the recipient of that supply agrees to pay to the supplier an additional amount equal to the GST at the same time that the consideration for the supply is to be provided. However:
 - (i) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note; and
 - (ii) if an adjustment event arises in respect of the supply, the additional amount will be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment.

All expressions used in this clause which are defined in the GST Law have the meanings given to them in the GST Law.

- (c) Notwithstanding anything stated to the contrary in this Deed:
 - (i) the imposition or levy of any taxes, duties and government charges in connection with this Deed, the Project or the Works (as stated clause 14(a)); and/or
 - (ii) the liability to pay, or the payment of, any GST (pursuant to clause 14(b)),

will not cause the Funding to exceed the amount of Funding specified for the Project.

15. Force Majeure

- (a) A party does not breach this Deed and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:
 - (i) sets out details of the Force Majeure Event;
 - (ii) identifies the nature and extent of the obligations affected by the Force Majeure Event;
 - (iii) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
 - (iv) provides details of the action that it has taken or proposes to take to remedy the situation.
- (b) A party affected by a Force Majeure Event must:
 - (i) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
 - (ii) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.
- (c) If a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days, or if TfNSW reasonably considers the Force Majeure Event will not cease within that period, TfNSW may immediately terminate this Deed on notice to Council.

16. Termination

- (a) If:
 - (i) Council fails to fulfil, or is in breach of, any of its obligations under this Deed, and does not remedy the failure or breach within 15 Business Days of receiving a notice in writing from TfNSW to do so; or

- (ii) in relation to this Deed, Council breaches any legislative requirement that it is unable to remedy within 15 Business Days of the breach; or
- (iii) an administrator is appointed under Division 6 of Part 2 of Chapter 9 of the *Local Government Act 1993 (NSW)*,

then, in the case of any one or more of these events, TfNSW may immediately terminate this Deed by giving written notice to Council.

- (b) Where TfNSW terminates this Deed under clauses 16(a) or 16(d), TfNSW will be entitled to recover from Council any part of the Funds which:
 - (i) have not been spent or committed for expenditure on the Project in accordance with this Deed and payable by Council as a current liability (written evidence of which must promptly be provided by Council) by the date on which the notice of termination given under clause 16(a) is taken to be received; or
 - (ii) have not, in TfNSW's reasonable opinion, been expended by Council in accordance with the terms and conditions of this Deed.
- (c) If Council does not repay to TfNSW the amount referred to in clause 16(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the notice of termination, that period) Council must also pay TfNSW Interest on the outstanding amount. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to TfNSW under this Deed or otherwise at law or in equity, be recoverable by TfNSW as a debt due to TfNSW by Council.
- (d) TfNSW may terminate this Deed for convenience by giving not less than 60 days' written notice to Council. If Council is able to demonstrate to TfNSW's reasonable satisfaction that prior to receiving notice of termination under this clause 16(d) Council has spent or committed Funding for the Project in accordance with this Deed, then TfNSW must reimburse Council for that Funding. Council must take all reasonable steps to mitigate the expenditure referred to in this clause 16(d) and TfNSW will not be required to pay Funding to the extent that the expenditure could have been avoided or reduced by taking such steps. Council must provide TfNSW with evidence reasonably satisfactory to TfNSW with evidence reasonably satisfactory to TfNSW to substantiate any claim under this clause 16(d).
- (e) Clauses 16(b) and 16(c) do not limit or exclude any of TfNSW's other rights, including the right to recover any other amounts from Council on termination of this Deed.

17. Acknowledgment and publicity

- (a) Council must at all times comply with the NSW Government Funding Acknowledgment Guidelines for recipients of NSW Government infrastructure grants (found at: <https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf>) and any other guidelines or requirements notified by TfNSW.
- (b) Council must acknowledge that TfNSW and the NSW Government contributed funding to the Project in each public announcement and publication Council makes that relates to the Project.
- (c) Council must consult with TfNSW at least 4 weeks prior to each public announcement or publication Council makes about this Deed or the Project to ensure it meets the requirements of TfNSW and provide TfNSW and the Minister for Regional Transport and Roads or their delegate with the option to be involved in any public announcement. If the Minister is jointly participating in an announcement, the Minister will have the first option to publicly release information on the announcement.
- (d) TfNSW and the NSW Government reserves the right to publicise and report on the Project and the provision of Funding to Council and may do this by referring to the Funding provided to Council for the Project in media releases, public announcements and publications including annual reports.
- (e) Council must report on their Projects and milestones in a timely manner through TfNSW nominated system. Councils must ensure that all project milestones (open to traffic, construction starting, etc.) and forecasts are updated monthly and achievement of milestones are reported on the monthly period in which they occur.
- (f) Council must notify with adequate lead time (minimum four weeks) TfNSW of any official opening and/or press related coverage for the Project.
- (g) Council must invite with adequate lead time (minimum four weeks) a representative from TfNSW and the Minister for Regional Transport and Roads to attend any official opening and/or press related coverage for the Project. The timing of such events will need to reflect the Minister's availability. If the Minister is participating in an event or an announcement, the Minister will have first option to publicly release information on the achievement/announcement. Council cannot make a public statement prior to the Minister.
- (h) Prior to Construction Commencement, Council must install signage that acknowledges NSW Government Funding contribution in relation

to the Project. Council must follow the NSW Funding Acknowledgement Guidelines with regard to:

- (i) the sign's design and wording;
- (ii) where the sign should be displayed and the duration of the display; and
- (iii) obtaining any required variation to the signage requirements from NSW Government.

18. Compliance with laws and TfNSW policies

- (a) Council must ensure compliance with all legislative requirements and authority approvals, and must obtain all authority approvals relevant to this Deed, the Project or the Works.
- (b) Council must ensure the delivery of the Project is authorised in accordance with the *Environmental Planning and Assessment Act 1979* (NSW).
- (c) Council must, in carrying out its obligations under this Deed, comply with any of TfNSW's policies as notified, referred to or made available by or on behalf of TfNSW to Council in writing from time to time provided those policies are consistent with the performance of this Deed.
- (d) Council must comply with, and must ensure and procure that all of its employees and contractors comply with, all the requirements of the WHS Legislation and any other requirements relating to work health, safety and rehabilitation management.

19. Dispute resolution

- (a) Subject to clause 19(d), the parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed until the procedure provided by clause 19(b) has been exhausted.
- (b) The parties agree that any dispute arising out of or in connection with this Deed will be dealt with as follows:
 - (i) If a party believes a dispute has arisen between the parties, that party must provide the other party with a written notice setting out the nature and details of the dispute;
 - (ii) If a dispute is notified under clause 19(b)(i), each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to attempt to resolve the dispute.

- (iii) the parties have 15 Business Days (or such extended time as the parties may agree in writing) from the receipt of the notice referred to in clause 19(b)(i) to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (iv) if:
 - (A) following the expiry of the 15 Business Days (or such extended time as the parties may agree in writing) referred to in clause 19(b)(iii), there is no resolution of the dispute, or agreement on the submission of the dispute to mediation or some other alternative dispute resolution; or
 - (B) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 20 Business Days,then, either party may commence legal proceedings.
- (c) This clause 19 does not prevent a party from instituting proceedings to enforce payment due or seeking injunctive or urgent declaratory relief.
- (d) Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their respective obligations in accordance with this Deed.
- (e) This clause 19 survives the expiration or termination of this Deed.

20. Indemnity

The Council is liable for, and indemnifies TfNSW against, all liability or loss arising out of or in connection with the breach of this Deed by the Council or its personnel or the negligence or default of the Council or its personnel except to the extent the liability or loss is contributed to by TfNSW's negligence or breach.

21. Legal relationship

Council acknowledges that:

- (a) its employees, officers, volunteers, partners and advisers will not by virtue of this Deed, be or for any purpose deemed to be employees, partners or agents of TfNSW; and

- (b) it must not purport to represent TfNSW in connection with the carrying out of the Project and it is not empowered to act on behalf of or to bind TfNSW in any way.

22. Entire agreement, variation and severance

- (a) This Deed records the entire agreement between the parties in relation to its subject matter.
- (b) No variation of this Deed is binding unless it is agreed in writing and signed by the parties.
- (c) If at any time any provision of this Deed is or becomes illegal, invalid, void or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and contribute to be valid and enforceable.

23. Waiver

- (a) Waiver of any provision of, right under or breach of, this Deed:
 - (i) must be in writing signed by the party entitled to the benefit of that provision, right or breach; and
 - (ii) is effective only to the extent set out in the written waiver and shall operate as a single waiver only.

24. Assignment and novation

- (a) Council must not assign or novate this Deed, or its rights, obligations and interests under this Deed, without the prior written approval of TfNSW.
- (b) TfNSW may assign or novate this Deed, or its rights, obligations and interests under this Deed to another NSW Government agency, without the need for obtaining the prior written approval of Council.

25. Counterparts

This Deed may be executed in any number of counterparts which together constitute one Deed.

26. Further assurance

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

27. Applicable law and jurisdiction

- (a) The laws of New South Wales govern the terms of this Deed.
- (b) Both parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

28. Confidential Information

- (a) A party who receives Confidential Information ("**Recipient**") must not disclose the Confidential Information supplied by the other party ("**Discloser**") to any person except:
 - (i) its representatives who require the Confidential Information for the purposes of this Deed; or
 - (ii) to enable the Recipient to obtain professional advice in relation to this Deed; or
 - (iii) with the consent of the Discloser; or
 - (iv) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
 - (v) if the Recipient is required to do so in connection with legal proceedings relating to this Deed or other agreement between the parties; or
 - (vi) if the Recipient is TfNSW it is disclosed to the Transport Secretary and/or Ministers of the NSW government.
- (b) If the Recipient discloses the Discloser's Confidential Information under clause 28(a)(i) or 28(a)(iii) then:
 - (i) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 28(a);
 - (ii) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the

Recipient must arrange for all such undertakings to be given promptly; and

- (iii) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.
- (c) The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this Deed or any other agreement between the parties.
- (d) On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:
 - (i) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this Deed or other agreement between the parties; or
 - (ii) the Recipient is otherwise entitled to retain the Confidential Information.
- (e) Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this Deed to any person other than its Representatives on a confidential basis.

29. Representatives and Project Manager

- (a) Council must always ensure that it has a nominated representative (who is notified and acceptable to TfNSW acting reasonably) who has full authority to act on behalf of Council. An instruction or direction

given to the Council Representative will be deemed to be an instruction or direction given to Council.

- (b) Council must deal with TfNSW's Representative, or such other representative as may be notified by TfNSW to Council from time to time.
- (c) Council must nominate a Project Manager who is the TfNSW contact for each Project. Council may nominate a new Project Manager from time to time and must notify TfNSW promptly of any change.
- (d) Notices provided to TfNSW by the Project Manager under this Deed are binding on Council.
- (e) At the date of this Deed, the representatives of the parties are the nominated contact persons specified in items 5 and 6 of the Key Details.

30. Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number or email address shown in item 7 of the Key Details (or to any new address, facsimile number or email address that a party notifies to the other).
- (b) A notice given in accordance with clause 30(a) is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier; or
 - (iii) if sent by or email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

31. No fetter

This Deed does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW or Council to exercise any of their functions and powers pursuant to any legislation.

32. Survival

Unless otherwise stated in this Deed, any clause capable of continuing to apply after the Project is completed or terminated for any reason will do so.

EXECUTION

Executed by the parties as a deed.

Executed for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

Signature of Witness

Signature of Authorised Delegate

Print Name (block letters)

Print Name (block letters)

Position held by TfNSW delegate

Date of signature:

Insert date of signature

Executed for and on behalf of Kiama Municipal Council (22 379 679 108) by its authorised officer in the presence of:

Signature of Witness

Signature of Authorised Officer

Print Name (block letters)

Print Name (block letters)

Position held by Council Authorised Officer

Date of signature:

Insert date of signature

Schedule 1 –Technical Requirements

1. Council must ensure that it understands and adheres to the Fixing Local Roads Program Guidelines (dated June 2021).
2. Council must ensure that the Project is designed and constructed in accordance with all relevant best practice, included but not limited to:
 - (a) Commonwealth Standards;
 - (b) Austroads Guidelines; and
 - (c) TfNSW Technical Supplements (where directed by TfNSW).
3. All designs that include the installation or removal of regulatory devices (including signs and line markings) must be endorsed by the Local Traffic Committee prior to Council proceeding.
4. One or more road safety audits may be required for certain projects. Council is to confirm the road safety auditing requirements at the project development stage. Council is responsible for undertaking any required Road Safety Audits according to the Guidelines for Road Safety Audit Practices and to address all corrective actions. Any audits must be undertaken by an accredited and independent audit team.

Schedule 2 – Milestones

MILESTONE	% OF FUNDING TO BE PAID	FINANCIAL MILESTONE	DOCUMENTATION TO BE PROVIDED TO TFNSW
MILESTONE 1	70%	Agreement and Initial Planning	Milestone Certificate including provision of: - Executed Funding Deed - Completed Schedule 4 Simplified Project Plan and Project Benefits.
MILESTONE 2	0%	Commencement of Construction	Milestone Certificate including provision of: - Confirmation that the Project has entered construction within six months of a signed Funding Deed - Photographic evidence of commencement of construction - Photographic evidence that signage has been installed that acknowledges the Funding contributed to the Project - Confirmation that the Project is authorised in accordance with the <i>Environmental Planning and Assessment Act 1979</i> , by the granting of development consent or otherwise.
MILESTONE 3	Up to 30%	Project Completed and Open to Traffic	Milestone Certificate including provision of:

MILESTONE	% OF FUNDING TO BE PAID	FINANCIAL MILESTONE	DOCUMENTATION TO BE PROVIDED TO TFNSW
			<ul style="list-style-type: none"> - Confirmation that the Project has been completed within 24 months of notification from TfNSW - Project Completion Report including photographic evidence and final certificate of expenditure. Must be provided within two weeks of Project completion.

Schedule 3 – Scope of Works to be delivered for the Project

All works listed below must be eligible for funding under the Fixing Local Roads program as detailed in the Fixing Local Roads Program Guidelines.

Scope of Works
Milling and resealing of approximately 688 metres of collector road to replace existing asphalt surface.

Note: Use as many rows as necessary.

Schedule 4 - Simplified Project Plan and Project Benefits

Financial Forecast

Please provide an initial financial forecast of the expected dollar value of Works to be completed each month of the financial year against each project. Note that this financial forecast is NOT cumulative.

Project Name: Barney Street, Kiama - Resealing													
Financial year	Funding offered	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
2020/21													
2021/22													
2022/23													

Project Milestone Dates

Please provide key project milestone dates for the project as outlined below.

Project Delivery Milestone		
Milestone 1 - Executed Agreement and Initial Planning	Milestone 2 - Commence Construction	Milestone 3 - Project Completed and Open to Traffic
e.g. XX/XX/XXXX		

Project Benefits

Please provide a brief description of proposed benefits to be realised for the project.


Project name: Barney Street, Kiama - Resealing		
Improvement	Examples	Council comment
Maintenance work brought forward (in years)	E.g. 3 years of backlog work completed	
Split between local, regional and metropolitan procurement of goods and services	E.g. 90/10/10	

Project name: Barney Street, Kiama - Resealing		
Improvement	Examples	Council comment
Estimated average corridor travel time improvements, following completion.	E.g. Peak - 5 minutes/ Off-peak 2 minutes	
Estimated increased traffic volumes, following completion.	E.g. 5%	
Estimated reduction of road or lane closures, following completion.	E.g. 5 times per year	
Expected road maintenance costs saved as a result of the project (OPEX)	Expected road maintenance	
Road Condition at completion of the Project	E.g. Excellent, Good, Fair, Poor, Very Poor	
Expected Infrastructure Risk Rating updated at completion	E.g. 2.23 and High	

ATTACHMENT A – CONTRACTOR STATEMENT TEMPLATE

(Clause 3(e)(vii))

 **Transport for NSW** **Contractor Statement**
Payment of Workers, Payroll Tax & Worker's Compensation Premiums

All suppliers/contractors must provide this Statement with every invoice/Payment Claim for all works/services carried out for Transport for NSW (TfNSW). TfNSW is entitled by law to withhold payment until this Statement is provided (see Note 2 overleaf).  Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt

Details

Contractor's Legal Name:

Contractor's Trading / Business Name:

Contractor's ABN: Contractor's ACN:

Contractor's Address:

TfNSW Contract No: Project/Contract Title:

Description of Works:

Period of Work this Statement applies to (see Note 3): From: To:

Invoice or Payment Claim Numbers this applies to:

Invoice or Payment Claim Dates this Statement applies to:

Declaration

Tick one in each row

I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:

All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.	
All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement, or	<input type="checkbox"/>
the Contractor is an exempt employer for workers compensation purposes (see Note 6);	<input type="checkbox"/>
The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement, or	<input type="checkbox"/>
the Contractor is not required to be registered;	<input type="checkbox"/>
The Contractor has not engaged any subcontractors for the works the subject of this Statement, or	<input type="checkbox"/>
The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true	<input type="checkbox"/>
I am authorised to make this declaration and I am in a position to know the truth of its contents	

Signature of Authorised Person: Name of Signatory (print):

Date: Position / Job Title of Signatory (print - see Note 4):

(Electronic copy is available at: <http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf>)

Catalogue No.45062893, Form No. 921 (12/2019)

(see Notes on page 2)

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(Clause 3(c)(vii))

ATTACHMENT B – MILESTONE CERTIFICATE

[WBS/Project name] – REQUEST FOR MILESTONE PAYMENT

In accordance with the agreed Project Milestone schedule for the project, I certify that the [Insert Milestone event] has been achieved. I request payment of \$x,xxx,xxx as agreed in the Project Milestone Schedule in the Project Funding Agreement.

I have provided the following evidence and other supporting documentation to claim for payment:

(Delete Irrelevant Detail)

- Milestone 1 – Executed Agreement and Initial Planning - 70%
o Executed Funding Deed
o Completed Simplified Project Plan and Project Benefits (Schedule 4)
Milestone 2 – Commence Construction - 0%
o Confirmation that the Project has entered construction within six months of the date of the signed funding deed
o Photographic evidence of commencement of construction
o Photographic evidence that signage has been installed that acknowledges the funding contributed to the Project
o Confirmation that the Project is authorised in accordance with the Environmental Planning and Assessment Act 1979, by the granting of development consent or otherwise
Milestone 3 – Project Completed and Open to Traffic - 30%
o Confirmation that the Project has been completed within 24 months of the date of notification from TfNSW
o Project Completion Report including photographic evidence and final certificate of expenditure. Note: must be provided within two weeks of Project completion
Any additional supporting information (at councils discretion):
o List additional supporting information if applicable

Yours Sincerely,

Signed: Date: / /

Name:

Position Title:

Council:



Fixing Local Roads Program

Funding Deed

between

Transport for NSW
ABN 18 804 239 602

and

Kiama Municipal Council
ABN 22 379 679 108

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Parties

This deed is made between

Transport for NSW (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney NSW 2000 (**TfNSW**)

and

the Council described in item 1 of the Key Details below (**Council**).

Background

- (a) The Fixing Local Roads Program (**Program**) has been developed to provide funding for local roads across regional and rural NSW.
- (b) Council has applied to TfNSW for funding to replace one or more priority local roads. The application for funding has been successful and the Project works will be carried out by Council as the asset owner in accordance with the terms of the Program and this Deed.
- (c) This Deed sets out the terms on which the Council has agreed to carry out the Project and TfNSW has agreed to contribute Funding for the Project.

Key Details

Item 1	Council details	
	Council name:	Kiama Municipal Council
	ABN:	22 379 679 108
	Address:	11 Manning St Kiama NSW 2533

Item 2 (clause 1.1)	Project	
	Application ID FLR300279	Project Description Meehan Drive, Kiama Downs - Resealing The project will include the milling and heavy patching of large sections of failing pavement over a 1.55km stretch to replace the existing asphalt surface.

Funding			
Item 3	Application ID	Funding	Co-contribution by Council or other parties
(clause 1.1)	FLR300279	\$80,000	\$0

Item 4		
(clause 12)	Reports	
	Reports required	Report due
	1) Milestone Certificate	Required as a condition precedent to the payment or advancement for a Milestone within two weeks of reaching the Milestone
	2) Project Completion Report <small>Ref. Clause 11(a)(i)</small>	Required as a condition precedent to the final payment for the Milestone 3 within two weeks of Project completion.
	3) Project Status Report <small>Ref. Clause 11(a)(iv)</small>	Monthly

Item 5	TfNSW's Representative
(clause 1.1)	Ms Joanne Parrott, Director, Regional Community Partner

Item 6	Council's Representative
(clause 1.1)	Ms Jane Stroud, Chief Executive Officer

Item 7 (clause 31(a))	Notices TfNSW: Level 5, 90 Crown Street, Wollongong NSW 2500 Email: LGSouth@transport.nsw.gov.au Council: 11 Manning St, Kiama NSW 2533 Email: janes@kiama.nsw.gov.au
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Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the contrary intention appears:

Actual Costs means the actual costs incurred by Council in delivering the Project without Council applying any margin.

Approvals means all consents, approvals, licences permits, certifications and other authorisations required by Law.

Business Day means any day other than a Saturday, Sunday or public holiday in NSW.

Co-contribution means any funding obtained by Council for the purpose of a Project, from any other source other than the Funding specified in item 3 of the Key Details.

Confidential Information of a Party means any information (whether owned by them or not):

- (a) that is, by its nature, confidential and has been designated by the disclosing party as confidential in the information or document;
- (b) that the receiving party knows or ought to know is confidential, including:
 - (i) where the receiving party is Council:
 - (A) information relating to the policies, strategies, practices and procedures of TfNSW or the State of New South Wales and any information in Council's possession relating to the New South Wales public service;
 - (B) information relating to other contractors of TfNSW; and
 - (C) security classified information; and
 - (ii) where the receiving party is TfNSW, the financial,

corporate and commercial information of Council,

This does not include information that:

- (c) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (d) has been independently developed or acquired by the receiving party.

Contractor Statement means a statement from the Council in the form found at Attachment A. **Council's Representative** means the party named in item 6 of the Key Details.

Construction Commencement means to begin site preparation work, including clearing of vegetation, utility adjustments, fence installation, excavation or removal of existing structures, necessary for the Works.

Deed means this deed and any schedules and attachments to this deed.

Force Majeure Event means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought, epidemic, pandemic or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (e) a labour dispute other than a labour dispute that only involves the party's personnel.

Funding or Funds means the total maximum amount to be contributed by TfNSW for a Project specified in item 3 of the Key Details.

GST Law has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instalment means, for each Milestone, the amount calculated by applying the percentage specified in Schedule 2 for that Milestone to the Funding.

Intellectual Property Rights means all present and future industrial and intellectual property rights conferred by statute, common law or equity and includes copyright, trademarks, patents, designs, circuit layout rights, trade

secrets, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields whether non-registrable, registered or patentable.

Interest means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), plus 1%, on a daily compounding basis.

Key Details means the section of this Deed headed "Key Details".

Milestone means, for each Project, a milestone listed in Schedule 2.

Milestone 1 means the first Milestone listed in Schedule 2.

Milestone 1 Date means Council's nominated date for the Milestone 1 in the form set out in Schedule 4 of this Deed or such other date determined in accordance with this Deed.

Milestone 2 means the date of Construction Commencement.

Milestone 2 Date means the date that is within six months from the date of a signed Funding Deed or such other date determined in accordance with this Deed.

Milestone 3 means the date of Open to Traffic

Milestone 3 Date means the date that is within 24 months of notification from TfNSW or such other date determined in accordance with this Deed.

Milestone Certificate means a certificate in the form set out in Attachment B.

Open to Traffic means the Works for the Project are complete and capable of being opened to the public for the safe, efficient and continuous passage of vehicles.

Project means the project to design, construct and commission works on an existing local road or roads described in item 2 of the Key Details.

Project Completion Report means the final report provided by Council on completion of each Project to satisfy the requirements of the Milestone 3, available on the Fixing Local Road website.

Project Manager means the project manager appointed by Council in respect of each Project for the purposes of this Deed and notified to TfNSW from time to time.

Project Status Report means, in respect of each Project, the report that Council provides on a monthly basis to TfNSW from the date of the Funding Deed until the date of completion of that Project, in the form set out in the Smarty Grants Project Portal.

Records means all documents, reports, plans, drawings, computer disks, specifications, data and all other materials in both hard and electronic formats and all copies and extracts of the same.

Simplified Project Plan and Project Benefits means the plan prepared by Council in respect of each Project in the form set out in Schedule 4. **Technical Requirements** means the matters set out in Schedule 1.

TfNSW's Representative means the party named in item 5 of the Key Details.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all other laws relating to work health and safety which apply in New South Wales.

Works means the physical works to be designed and constructed for each Project as described in Schedule 3.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form and vice versa;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a clause, section, attachment or party is a reference to a clause or section of, or an attachment or party to this Deed;
- (e) a reference to this Deed includes the attachments to this Deed;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to any dollar amounts or \$ is to Australian currency;
- (h) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Deed or any part; and
- (i) anything in this Deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

2. Term and Nature of Deed

2.1 Term

This Deed commences on the date that the last party signs this Deed and will continue for 24 months after the Deed commences, unless extended under clauses 4.3(b)(i) or 4.3(c), or terminated earlier in accordance with this Deed.

2.2 Risk and Cost

- (a) Without limiting clause 13, Council accepts all risks associated with the design, construction and commissioning of each Project, and complying with its obligations under this Deed, including the risk that the final cost of a Project is more than the Funding.
- (b) TfNSW is not responsible for the provision of any money or resources in excess of the Funding specified for a Project.

3. Payment

- (a) Subject to the terms of this Deed, TfNSW must provide Council with Funding for each Project:
 - (i) for an amount not exceeding the amount specified in item 3 of the Key Details; and
 - (ii) in Instalments upon satisfaction of each Milestone as specified in Schedule 2.
- (b) If Council considers that a Milestone has been satisfied, Council must submit to TfNSW:
 - (i) a correctly rendered tax invoice/payment claim;
 - (ii) a completed Milestone Certificate; and
 - (iii) all supporting documentation specified in Schedule 2.
- (c) Within 30 Business Days of receiving a notice from Council under clause 3(b), TfNSW must either:
 - (i) if satisfied (acting reasonably) that the Milestone has been achieved, and subject to clause 3(f), pay Council the Instalment for that Milestone; or
 - (ii) if not satisfied that the Milestone has been achieved, notify Council that the Milestone has not been achieved.
- (d) If Council receives a notice under clause 3(c)(ii), Council may submit a further notice under clause 3(b) and clause 3(c) will apply again.

- (e) For the purposes of this Deed, an invoice/payment claim is not correctly rendered unless the invoice/payment claim:
 - (i) states the amount claimed in the invoice/payment claim is due for payment in accordance with clause 3 and Schedule 2;
 - (ii) states the amount claimed in the invoice/payment claim is correctly calculated under this Deed;
 - (iii) states the approved Funding allocation for the Project, the total expenditure to date on the Project, and the total Funding paid to date for the Project;
 - (iv) states the projected cash flow for the Project (if any);
 - (v) states the current due date for completion of the Project and the percentage completion of the Project to date;
 - (vi) includes the relevant TfNSW project number (WBS and/or purchase order) and is set out in a manner that identifies the specific Project and Milestone;
 - (vii) is addressed to "Transport for NSW" with attention to the TfNSW Representative;
 - (viii) is accompanied by a completed Contractor Statement in the form set out in Attachment A in respect of the period to which the invoice/payment claim relates; and
 - (ix) is certified by Council's authorised delegate/s as follows:
 - (A) a delegate that certifies the expenditure shown on the invoice/payment claim for payment has been actually incurred and only relates to the Project described; and
 - (B) a delegate that certifies the work has been executed in accordance with appropriate prevailing standards and conforms to sound engineering practice and applicable legislation.
- (f) If TfNSW considers that an invoice/payment claim is not correctly rendered, TfNSW must issue to Council a notice setting out the reasons and identifying any issues that are in dispute and/or further documents required to substantiate the amount claimed.
- (g) TfNSW may inspect the Project and make other reasonable enquiries (including carrying out an audit) to satisfy itself that a Milestone has been achieved. Council must co-operate with TfNSW and facilitate any such inspection and enquiry, including by providing access to site/s and Records.

4. Project

4.1 Design and construction obligations

- (a) Council must obtain all Approvals required for each project.
- (b) Council must ensure that the design and construction of the Works complies with:
 - (i) the requirements of this Deed, including but not limited to the Technical Requirements; and
 - (ii) all relevant Approvals and Laws.
- (c) Council must comply with the requirements of the Local Government Act 1993 and the Tendering Guidelines for NSW Local Government dated October 2009.

4.2 Progress and timing

- (a) Council must diligently progress each Project to achieve the Milestones in accordance with the Simplified Project Plan and Project Benefits and the terms of this Deed.
- (b) Council must achieve:
 - (i) the Milestone 1 by the Milestone 1 Date; and
 - (ii) the Milestone 2 by the Milestone 2 Date; and
 - (iii) the Milestone 3 by the Milestone 3 Date.

4.3 Delay and extensions of time

- (a) If for any reason Council:
 - (i) is unable to commence the Project or to continue the Project; or
 - (ii) forms the reasonable opinion that the timeframes specified in clause 4.2(b) will not be met,then Council must promptly provide written notice to TfNSW setting out the cause of the delay, relevant facts, and the expected effect on achievement of the Milestone 2 and/or the Milestone 3.
- (b) Following receipt of Council's notice under clause 4.3(a), TfNSW must determine, in its absolute discretion:
 - (i) that the Milestone 2 Date and/or the Milestone 3 Date are extended, including details of the revised date or dates and the Term of this Deed will be extended accordingly; or

- (ii) not to grant an extension of the Milestone 2 Date and/or the Milestone 3 Date,

and provide written notice to Council of that determination.
- (c) TfNSW may, in its absolute discretion and without any obligation to do so, extend the Milestone 2 Date or the Milestone 3 Date at any time and for any reason and the Term of this Deed will be extended accordingly.

5. Subcontracting

- (a) Council is responsible for ensuring the suitability of any subcontractor it engages to undertake Work on the Project and for ensuring that such Work meets the requirements of this Deed.
- (b) Council must ensure that any contractor engaged by it in connection with this Deed holds and maintains appropriate insurances in accordance with Council policies and good industry practice for the delivery of works similar to the Works.
- (c) Council is responsible for all acts and omissions of subcontractors as if they were those of the Council and Council indemnifies TfNSW against all costs, expenses, and/or liabilities incurred by TfNSW in connection with the acts or omissions of any subcontractors.

6. Management of Funding

- (a) The Funding administered by TfNSW must be spent by Council solely:
 - (i) for the Project;
 - (ii) in accordance with this Deed; and
 - (iii) only once any Co-Contribution has been expended fully on the Project.
- (b) The salary levels and allowances for any staff involved in the Project are to be based on award rates. Council must ensure that award provisions are applied in relation to all employees funded either wholly or in part by the Funding.
- (c) All Project related income which is generated through the Funds (including bank interest, revenue from the sale of Project material, etc.) must be applied towards the Project by Council and must be fully disclosed in Council's financial statements and records.

- (d) Details of the sale, disposal or write-off of any asset acquired with the Funding during the term of the Project must be included in Council's financial statements and records.
- (d) Council must not use the Funding to:
 - (i) pay any wages or other benefits to Council's employees who do not perform Work for or on the Project; or
 - (ii) make a loan, gift or donation.
- (e) Council must:
 - (i) keep full and accurate financial accounts and Records relating to the Project and the Funding that separately identifies the Funds from other income for the Project and enables expenditure on the Project to be verified.
 - (ii) all receipts and payments related to the Project and the Funding are to be identified in Council's accounts and reported in accordance with this Deed by reference to the Project so that at all times the Funds and their use are clearly identifiable;
 - (iii) do all things necessary to ensure that all payments from the Funds that Council makes to third parties are correctly made and properly authorised and that Council maintains proper and diligent control over the incurring of all liabilities; and
 - (iv) ensure that Funds provided by TfNSW are deposited and held in an account in Council's name, and which Council solely controls, with a bank or credit union carrying on banking business in Australia and only withdrawn and applied for liabilities of Council in relation to the Project.
- (f) This clause 6 survives the expiration or termination of this Deed.

7. Repayment of Funding

- (a) Where Council has received additional funding from a different NSW Government program for the same Project (where the funding is provided for the same scope of works under which funding under this Funding Deed is to be utilised), the difference between the Funding amount specified in Item 3 of the Key Details and the total amount received by Council must be refunded by Council to TfNSW.
- (b) Where the Project is withdrawn by the Council or TfNSW reasonably determines that the Project (or part of the Project) is unable to be performed by Council to meet the Milestone timeframes and/or to meet the requirements of this Deed, then with the exception of Funding that

has already been spent or committed for the Project in accordance with this Deed, the Funding must be:

- (i) refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW; or
 - (ii) otherwise dealt with as directed in writing by TfNSW (in its absolute discretion).
- (c) Where TfNSW reasonably determines that Funds have not been spent by Council on the Project in accordance with this Deed, then the Funding must be refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW.
- (d) Where TfNSW reasonably determines that the Actual Costs of construction for the Project totals less than the Funding provided by TfNSW for the Project, then at TfNSW's absolute discretion that portion of the savings must be:
- (i) refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW; or
 - (ii) otherwise dealt with as directed in writing by TfNSW.
- (e) Interest is payable on any amount not paid to TfNSW when due and payable under this clause 7.
- (f) Nothing in this clause affects a party's right to terminate this Deed or TfNSW's right to suspend this Deed.

8. Intellectual Property Rights

- (a) All Intellectual Property Rights of the parties existing before the date of this Deed will be retained by the relevant party.
- (b) Each Party hereby grants to the other Party a royalty-free, non-exclusive and perpetual licence to use its existing Intellectual Property to the extent necessary to carry out the Project.
- (c) In respect of:
 - (i) Intellectual Property Rights in all modifications made to TfNSW existing Intellectual Property Rights made by Council or its subcontractors; and
 - (ii) all other Intellectual Property Rights created by Council or its subcontractors in undertaking the Project,

Council grants TfNSW a non-exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of TfNSW;
- (iv) permit any person to assist TfNSW to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) above to any person.

9. Variations

- (a) Council must not vary the Project or the Works except with the prior written approval of TfNSW.
- (b) Council will not be entitled to any additional Funding from TfNSW in connection with any Project or Works variation approved pursuant to clause 9(a).

10. Records

- (a) Records and accounts maintained for the Project must be retained by Council until at least 7 years after the later of either:
 - (i) completion of the Project; or
 - (ii) the last date on which Funds are provided under this Deed.
- (b) Council must make those Records and accounts available for inspection and/or audit as and when reasonably requested by TfNSW, a regulator, any external auditor or advisor or any of their authorised representatives during normal business hours. Copies and extracts of any Records may be taken for these purposes.
- (c) Council must permit TfNSW to inspect or appoint a third party to inspect Council's premises to confirm compliance with this Deed and must provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith.
- (d) This clause 10 survives the expiration or termination of this Deed.

11. Reporting

- (a) At the times specified in item 4 of the Key Details, and at other times when reasonably requested, Council must provide TfNSW with the following (each in a form satisfactory to TfNSW):

- (i) a Milestone Certificate;
- (ii) an audited detailed statement of income and expenditure in respect of the Funding, which must include a statement verifying that the financial accounts are true and correct, and a statement of the balance of Council's account;
- (iii) an audit statement that the Funding was expended solely for the Project and in accordance with this Deed;
- (iv) a monthly Project Status Report;
- (v) a Project Completion Report; and
- (vi) any other report/s listed in item 4 of the Key Details.

12. Title, insurance and operation and maintenance

- (a) TfNSW and Council acknowledge and agree that at all times the Works are owned by Council and that any materials and/or equipment removed from the site as part of the demolition activities for the Project will remain Council assets.
- (b) Council must:
 - (i) ensure that at all times it has appropriate insurance policies in place for the Project and the Works, that accord with insurance policies generally effected by Council in relation to such Projects and Works; and
 - (ii) where proceeds of insurance are recovered in connection with the loss of, or damage or destruction to, such Works, apply such proceeds solely toward reinstatement of the Works unless otherwise agreed by TfNSW.
- (c) Council takes all risk and is solely responsible for:
 - (i) the delivery of the Project and all costs associated with the Works the subject of the Project;
 - (ii) defects and omissions in the Works;
 - (iii) the Works otherwise not being in accordance with the requirements of this Deed; and
 - (iv) the ongoing operation and maintenance of the Works.
- (d) This clause 12 survives the expiration or termination of this Deed.

13. Third parties, project interfaces and community liaison

- (a) Council is responsible for liaising with all relevant third parties in relation to the Project and the Works, including:
 - (i) owners or occupiers of adjacent or affected land or property; and
 - (ii) utilities and other service providers.
- (b) Council is responsible for and must undertake all required community liaison activities to ensure that the community is satisfied with the proposed Project and, in doing so, must comply with all reasonable requirements of TfNSW.
- (c) Council is responsible for managing all project interface issues arising out of or in connection with the Project and the Works.

14. Taxes, duties and government charges

- (a) Subject to clause 14(b), Council must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Deed, the Project or the Works.
- (b) If GST is payable on any supply made under this Deed, for which the consideration is not expressly stated to include GST, the recipient of that supply agrees to pay to the supplier an additional amount equal to the GST at the same time that the consideration for the supply is to be provided. However:
 - (i) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note; and
 - (ii) if an adjustment event arises in respect of the supply, the additional amount will be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment.

All expressions used in this clause which are defined in the GST Law have the meanings given to them in the GST Law.

- (c) Notwithstanding anything stated to the contrary in this Deed:
 - (i) the imposition or levy of any taxes, duties and government charges in connection with this Deed, the Project or the Works (as stated clause 14(a)); and/or
 - (ii) the liability to pay, or the payment of, any GST (pursuant to clause 14(b)),

will not cause the Funding to exceed the amount of Funding specified for the Project.

15. Force Majeure

- (a) A party does not breach this Deed and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:
 - (i) sets out details of the Force Majeure Event;
 - (ii) identifies the nature and extent of the obligations affected by the Force Majeure Event;
 - (iii) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
 - (iv) provides details of the action that it has taken or proposes to take to remedy the situation.
- (b) A party affected by a Force Majeure Event must:
 - (i) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
 - (ii) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.
- (c) If a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days, or if TfNSW reasonably considers the Force Majeure Event will not cease within that period, TfNSW may immediately terminate this Deed on notice to Council.

16. Termination

- (a) If:
 - (i) Council fails to fulfil, or is in breach of, any of its obligations under this Deed, and does not remedy the failure or breach within 15 Business Days of receiving a notice in writing from TfNSW to do so; or

- (ii) in relation to this Deed, Council breaches any legislative requirement that it is unable to remedy within 15 Business Days of the breach; or
- (iii) an administrator is appointed under Division 6 of Part 2 of Chapter 9 of the *Local Government Act 1993 (NSW)*,

then, in the case of any one or more of these events, TfNSW may immediately terminate this Deed by giving written notice to Council.

- (b) Where TfNSW terminates this Deed under clauses 16(a) or 16(d), TfNSW will be entitled to recover from Council any part of the Funds which:
 - (i) have not been spent or committed for expenditure on the Project in accordance with this Deed and payable by Council as a current liability (written evidence of which must promptly be provided by Council) by the date on which the notice of termination given under clause 16(a) is taken to be received; or
 - (ii) have not, in TfNSW's reasonable opinion, been expended by Council in accordance with the terms and conditions of this Deed.
- (c) If Council does not repay to TfNSW the amount referred to in clause 16(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the notice of termination, that period) Council must also pay TfNSW Interest on the outstanding amount. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to TfNSW under this Deed or otherwise at law or in equity, be recoverable by TfNSW as a debt due to TfNSW by Council.
- (d) TfNSW may terminate this Deed for convenience by giving not less than 60 days' written notice to Council. If Council is able to demonstrate to TfNSW's reasonable satisfaction that prior to receiving notice of termination under this clause 16(d) Council has spent or committed Funding for the Project in accordance with this Deed, then TfNSW must reimburse Council for that Funding. Council must take all reasonable steps to mitigate the expenditure referred to in this clause 16(d) and TfNSW will not be required to pay Funding to the extent that the expenditure could have been avoided or reduced by taking such steps. Council must provide TfNSW with evidence reasonably satisfactory to TfNSW with evidence reasonably satisfactory to TfNSW to substantiate any claim under this clause 16(d).
- (e) Clauses 16(b) and 16(c) do not limit or exclude any of TfNSW's other rights, including the right to recover any other amounts from Council on termination of this Deed.

17. Acknowledgment and publicity

- (a) Council must at all times comply with the NSW Government Funding Acknowledgment Guidelines for recipients of NSW Government infrastructure grants (found at: <https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf>) and any other guidelines or requirements notified by TfNSW.
- (b) Council must acknowledge that TfNSW and the NSW Government contributed funding to the Project in each public announcement and publication Council makes that relates to the Project.
- (c) Council must consult with TfNSW at least 4 weeks prior to each public announcement or publication Council makes about this Deed or the Project to ensure it meets the requirements of TfNSW and provide TfNSW and the Minister for Regional Transport and Roads or their delegate with the option to be involved in any public announcement. If the Minister is jointly participating in an announcement, the Minister will have the first option to publicly release information on the announcement.
- (d) TfNSW and the NSW Government reserves the right to publicise and report on the Project and the provision of Funding to Council and may do this by referring to the Funding provided to Council for the Project in media releases, public announcements and publications including annual reports.
- (e) Council must report on their Projects and milestones in a timely manner through TfNSW nominated system. Councils must ensure that all project milestones (open to traffic, construction starting, etc.) and forecasts are updated monthly and achievement of milestones are reported on the monthly period in which they occur.
- (f) Council must notify with adequate lead time (minimum four weeks) TfNSW of any official opening and/or press related coverage for the Project.
- (g) Council must invite with adequate lead time (minimum four weeks) a representative from TfNSW and the Minister for Regional Transport and Roads to attend any official opening and/or press related coverage for the Project. The timing of such events will need to reflect the Minister's availability. If the Minister is participating in an event or an announcement, the Minister will have first option to publicly release information on the achievement/announcement. Council cannot make a public statement prior to the Minister.
- (h) Prior to Construction Commencement, Council must install signage that acknowledges NSW Government Funding contribution in relation

to the Project. Council must follow the NSW Funding Acknowledgement Guidelines with regard to:

- (i) the sign's design and wording;
- (ii) where the sign should be displayed and the duration of the display; and
- (iii) obtaining any required variation to the signage requirements from NSW Government.

18. Compliance with laws and TfNSW policies

- (a) Council must ensure compliance with all legislative requirements and authority approvals, and must obtain all authority approvals relevant to this Deed, the Project or the Works.
- (b) Council must ensure the delivery of the Project is authorised in accordance with the *Environmental Planning and Assessment Act 1979* (NSW).
- (c) Council must, in carrying out its obligations under this Deed, comply with any of TfNSW's policies as notified, referred to or made available by or on behalf of TfNSW to Council in writing from time to time provided those policies are consistent with the performance of this Deed.
- (d) Council must comply with, and must ensure and procure that all of its employees and contractors comply with, all the requirements of the WHS Legislation and any other requirements relating to work health, safety and rehabilitation management.

19. Dispute resolution

- (a) Subject to clause 19(d), the parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed until the procedure provided by clause 19(b) has been exhausted.
- (b) The parties agree that any dispute arising out of or in connection with this Deed will be dealt with as follows:
 - (i) If a party believes a dispute has arisen between the parties, that party must provide the other party with a written notice setting out the nature and details of the dispute;
 - (ii) If a dispute is notified under clause 19(b)(i), each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to attempt to resolve the dispute.

- (iii) the parties have 15 Business Days (or such extended time as the parties may agree in writing) from the receipt of the notice referred to in clause 19(b)(i) to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (iv) if:
 - (A) following the expiry of the 15 Business Days (or such extended time as the parties may agree in writing) referred to in clause 19(b)(iii), there is no resolution of the dispute, or agreement on the submission of the dispute to mediation or some other alternative dispute resolution; or
 - (B) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 20 Business Days,then, either party may commence legal proceedings.
- (c) This clause 19 does not prevent a party from instituting proceedings to enforce payment due or seeking injunctive or urgent declaratory relief.
- (d) Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their respective obligations in accordance with this Deed.
- (e) This clause 19 survives the expiration or termination of this Deed.

20. Indemnity

The Council is liable for, and indemnifies TfNSW against, all liability or loss arising out of or in connection with the breach of this Deed by the Council or its personnel or the negligence or default of the Council or its personnel except to the extent the liability or loss is contributed to by TfNSW's negligence or breach.

21. Legal relationship

Council acknowledges that:

- (a) its employees, officers, volunteers, partners and advisers will not by virtue of this Deed, be or for any purpose deemed to be employees, partners or agents of TfNSW; and

- (b) it must not purport to represent TfNSW in connection with the carrying out of the Project and it is not empowered to act on behalf of or to bind TfNSW in any way.

22. Entire agreement, variation and severance

- (a) This Deed records the entire agreement between the parties in relation to its subject matter.
- (b) No variation of this Deed is binding unless it is agreed in writing and signed by the parties.
- (c) If at any time any provision of this Deed is or becomes illegal, invalid, void or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and contribute to be valid and enforceable.

23. Waiver

- (a) Waiver of any provision of, right under or breach of, this Deed:
 - (i) must be in writing signed by the party entitled to the benefit of that provision, right or breach; and
 - (ii) is effective only to the extent set out in the written waiver and shall operate as a single waiver only.

24. Assignment and novation

- (a) Council must not assign or novate this Deed, or its rights, obligations and interests under this Deed, without the prior written approval of TfNSW.
- (b) TfNSW may assign or novate this Deed, or its rights, obligations and interests under this Deed to another NSW Government agency, without the need for obtaining the prior written approval of Council.

25. Counterparts

This Deed may be executed in any number of counterparts which together constitute one Deed.

26. Further assurance

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

27. Applicable law and jurisdiction

- (a) The laws of New South Wales govern the terms of this Deed.
- (b) Both parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

28. Confidential Information

- (a) A party who receives Confidential Information ("**Recipient**") must not disclose the Confidential Information supplied by the other party ("**Discloser**") to any person except:
 - (i) its representatives who require the Confidential Information for the purposes of this Deed; or
 - (ii) to enable the Recipient to obtain professional advice in relation to this Deed; or
 - (iii) with the consent of the Discloser; or
 - (iv) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
 - (v) if the Recipient is required to do so in connection with legal proceedings relating to this Deed or other agreement between the parties; or
 - (vi) if the Recipient is TfNSW it is disclosed to the Transport Secretary and/or Ministers of the NSW government.
- (b) If the Recipient discloses the Discloser's Confidential Information under clause 28(a)(i) or 28(a)(iii) then:
 - (i) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 28(a);
 - (ii) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the

Recipient must arrange for all such undertakings to be given promptly; and

- (iii) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.
- (c) The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this Deed or any other agreement between the parties.
- (d) On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:
 - (i) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this Deed or other agreement between the parties; or
 - (ii) the Recipient is otherwise entitled to retain the Confidential Information.
- (e) Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this Deed to any person other than its Representatives on a confidential basis.

29. Representatives and Project Manager

- (a) Council must always ensure that it has a nominated representative (who is notified and acceptable to TfNSW acting reasonably) who has full authority to act on behalf of Council. An instruction or direction

given to the Council Representative will be deemed to be an instruction or direction given to Council.

- (b) Council must deal with TfNSW's Representative, or such other representative as may be notified by TfNSW to Council from time to time.
- (c) Council must nominate a Project Manager who is the TfNSW contact for each Project. Council may nominate a new Project Manager from time to time and must notify TfNSW promptly of any change.
- (d) Notices provided to TfNSW by the Project Manager under this Deed are binding on Council.
- (e) At the date of this Deed, the representatives of the parties are the nominated contact persons specified in items 5 and 6 of the Key Details.

30. Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number or email address shown in item 7 of the Key Details (or to any new address, facsimile number or email address that a party notifies to the other).
- (b) A notice given in accordance with clause 30(a) is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier; or
 - (iii) if sent by or email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

31. No fetter

This Deed does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW or Council to exercise any of their functions and powers pursuant to any legislation.

32. Survival

Unless otherwise stated in this Deed, any clause capable of continuing to apply after the Project is completed or terminated for any reason will do so.

EXECUTION

Executed by the parties as a deed.

Executed for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

Signature of Witness

Signature of Authorised Delegate

Print Name (block letters)

Print Name (block letters)

Position held by TfNSW delegate

Date of signature:

Insert date of signature

Executed for and on behalf of Kiama Municipal Council (22 379 679 108) by its authorised officer in the presence of:

Signature of Witness

Signature of Authorised Officer

Print Name (block letters)

Print Name (block letters)

Position held by Council Authorised Officer

Date of signature:

Insert date of signature

Schedule 1 – Technical Requirements

1. Council must ensure that it understands and adheres to the Fixing Local Roads Program Guidelines (dated June 2021).
2. Council must ensure that the Project is designed and constructed in accordance with all relevant best practice, included but not limited to:
 - (a) Commonwealth Standards;
 - (b) Austroads Guidelines; and
 - (c) TfNSW Technical Supplements (where directed by TfNSW).
3. All designs that include the installation or removal of regulatory devices (including signs and line markings) must be endorsed by the Local Traffic Committee prior to Council proceeding.
4. One or more road safety audits may be required for certain projects. Council is to confirm the road safety auditing requirements at the project development stage. Council is responsible for undertaking any required Road Safety Audits according to the Guidelines for Road Safety Audit Practices and to address all corrective actions. Any audits must be undertaken by an accredited and independent audit team.

Schedule 2 – Milestones

MILESTONE	% OF FUNDING TO BE PAID	FINANCIAL MILESTONE	DOCUMENTATION TO BE PROVIDED TO TFNSW
MILESTONE 1	70%	Agreement and Initial Planning	Milestone Certificate including provision of: <ul style="list-style-type: none"> - Executed Funding Deed - Completed Schedule 4 Simplified Project Plan and Project Benefits.
MILESTONE 2	0%	Commencement of Construction	Milestone Certificate including provision of: <ul style="list-style-type: none"> - Confirmation that the Project has entered construction within six months of a signed Funding Deed - Photographic evidence of commencement of construction - Photographic evidence that signage has been installed that acknowledges the Funding contributed to the Project - Confirmation that the Project is authorised in accordance with the <i>Environmental Planning and Assessment Act 1979</i>, by the granting of development consent or otherwise.
MILESTONE 3	Up to 30%	Project Completed and Open to Traffic	Milestone Certificate including provision of:

MILESTONE	% OF FUNDING TO BE PAID	FINANCIAL MILESTONE	DOCUMENTATION TO BE PROVIDED TO TFNSW
			<ul style="list-style-type: none"> - Confirmation that the Project has been completed within 24 months of notification from TfNSW - Project Completion Report including photographic evidence and final certificate of expenditure. Must be provided within two weeks of Project completion.

Schedule 3 – Scope of Works to be delivered for the Project

All works listed below must be eligible for funding under the Fixing Local Roads program as detailed in the Fixing Local Roads Program Guidelines.

Scope of Works
Milling and heavy patching of large sections of failing pavement over a 1.55 km stretch of collector road to replace existing asphalt surface.

Note: Use as many rows as necessary.

Schedule 4 - Simplified Project Plan and Project Benefits

Financial Forecast

Please provide an initial financial forecast of the expected dollar value of Works to be completed each month of the financial year against each project. Note that this financial forecast is NOT cumulative.

Project Name: Meehan Drive, Kiama Downs - Resealing													
Financial year	Funding offered	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
2020/21													
2021/22													
2022/23													

Project Milestone Dates

Please provide key project milestone dates for the project as outlined below.

Project Delivery Milestone		
Milestone 1 - Executed Agreement and Initial Planning	Milestone 2 - Commence Construction	Milestone 3 - Project Completed and Open to Traffic
e.g. XX/XX/XXXX		

Project Benefits

Please provide a brief description of proposed benefits to be realised for the project.


Project name: Meehan Drive, Kiama Downs - Resealing		
Improvement	Examples	Council comment
Maintenance work brought forward (in years)	E.g. 3 years of backlog work completed	
Split between local, regional and metropolitan procurement of goods and services	E.g. 90/10/10	

Project name: Meehan Drive, Kiama Downs - Resealing		
Improvement	Examples	Council comment
Estimated average corridor travel time improvements, following completion.	E.g. Peak - 5 minutes/ Off-peak 2 minutes	
Estimated increased traffic volumes, following completion.	E.g. 5%	
Estimated reduction of road or lane closures, following completion.	E.g. 5 times per year	
Expected road maintenance costs saved as a result of the project (OPEX)	Expected road maintenance	
Road Condition at completion of the Project	E.g. Excellent, Good, Fair, Poor, Very Poor	
Expected Infrastructure Risk Rating updated at completion	E.g. 2.23 and High	

ATTACHMENT A – CONTRACTOR STATEMENT TEMPLATE

(Clause 3(e)(vii))

NSW Transport for NSW **Contractor Statement**
Payment of Workers, Payroll Tax & Worker's Compensation Premiums

All suppliers/contractors must provide this Statement with every invoice/Payment Claim for all works/services carried out for Transport for NSW (TfNSW). TfNSW is entitled by law to withhold payment until this Statement is provided (see Note 2 overleaf). Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt 

Details

Contractor's Legal Name:

Contractor's Trading / Business Name:

Contractor's ABN: Contractor's ACN:

Contractor's Address:

TfNSW Contract No: Project/Contract Title:

Description of Works:

Period of Work this Statement applies to (see Note 3): From: To:

Invoice or Payment Claim Numbers this applies to:

Invoice or Payment Claim Dates this Statement applies to:

Declaration Tick one in each row

I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:

- All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.
- All workers compensation insurance premiums have been paid and **attached** is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement, **or**
- the Contractor is an exempt employer for workers compensation purposes (see Note 6);
- The Contractor is registered as an employer under the *Payroll Tax Act 2007* and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement, **or**
- the Contractor is not required to be registered;
- The Contractor has not engaged any subcontractors for the works the subject of this Statement, **or**
- The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true
- I am authorised to make this declaration and I am in a position to know the truth of its contents

Signature of Authorised Person: Name of Signatory (print):

Date: Position / Job Title of Signatory (print - see Note 4):

(Electronic copy is available at: <http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf>)

Catalogue No.45062893, Form No. 921 (12/2019)

(see Notes on page 2)

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SENSITIVE: NSW GOVERNMENT

(Clause 3(c)(vii))

ATTACHMENT B – MILESTONE CERTIFICATE

[WBS/Project name] – REQUEST FOR MILESTONE PAYMENT

In accordance with the agreed Project Milestone schedule for the project, I certify that the [Insert Milestone event] has been achieved. I request payment of \$x,xxx,xxx as agreed in the Project Milestone Schedule in the Project Funding Agreement.

I have provided the following evidence and other supporting documentation to claim for payment:

(Delete Irrelevant Detail)

- Milestone 1 – Executed Agreement and Initial Planning - 70%
o Executed Funding Deed
o Completed Simplified Project Plan and Project Benefits (Schedule 4)
Milestone 2 – Commence Construction - 0%
o Confirmation that the Project has entered construction within six months of the date of the signed funding deed
o Photographic evidence of commencement of construction
o Photographic evidence that signage has been installed that acknowledges the funding contributed to the Project
o Confirmation that the Project is authorised in accordance with the Environmental Planning and Assessment Act 1979, by the granting of development consent or otherwise
Milestone 3 – Project Completed and Open to Traffic - 30%
o Confirmation that the Project has been completed within 24 months of the date of notification from TfNSW
o Project Completion Report including photographic evidence and final certificate of expenditure. Note: must be provided within two weeks of Project completion
Any additional supporting information (at councils discretion):
o List additional supporting information if applicable

Yours Sincerely,

Signed: Date: / /

Name:

Position Title:

Council:



Fixing Local Roads Program

Funding Deed

between

Transport for NSW
ABN 18 804 239 602

and

Kiama Municipal Council
ABN 22 379 679 108

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Parties

This deed is made between

Transport for NSW (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney NSW 2000 (**TfNSW**)

and

the Council described in item 1 of the Key Details below (**Council**).

Background

- (a) The Fixing Local Roads Program (**Program**) has been developed to provide funding for local roads across regional and rural NSW.
- (b) Council has applied to TfNSW for funding to replace one or more priority local roads. The application for funding has been successful and the Project works will be carried out by Council as the asset owner in accordance with the terms of the Program and this Deed.
- (c) This Deed sets out the terms on which the Council has agreed to carry out the Project and TfNSW has agreed to contribute Funding for the Project.

Key Details

Item 1	Council details	
	Council name:	Kiama Municipal Council
	ABN:	22 379 679 108
	Address:	11 Manning St Kiama NSW 2533

Item 2 (clause 1.1)	Project	
	Application ID FLR300284	Project Description Johnson Street, Kiama Downs - Resealing The project will include the milling and resealing of a section of failing pavement over a 250m stretch to replace the existing asphalt surface

Funding			
Item 3	Application ID	Funding	Co-contribution by Council or other parties
(clause 1.1)	FLR300284	\$55,000	\$0

Item 4	Reports	
(clause 12)	Reports required	Report due
	1) Milestone Certificate	Required as a condition precedent to the payment or advancement for a Milestone within two weeks of reaching the Milestone
	2) Project Completion Report <small>Ref. Clause 11(a)(i)</small>	Required as a condition precedent to the final payment for the Milestone 3 within two weeks of Project completion.
	3) Project Status Report <small>Ref. Clause 11(a)(iv)</small>	Monthly

Item 5	TfNSW's Representative
(clause 1.1)	Ms Joanne Parrott, Director, Regional Community Partner

Item 6	Council's Representative
(clause 1.1)	Ms Jane Stroud, Chief Executive Officer

Item 7 (clause 31(a))	Notices TfNSW: Level 5, 90 Crown Street, Wollongong NSW 2500 Email: LGSouth@transport.nsw.gov.au Council: 11 Manning St, Kiama NSW 2533 Email: janes@kiama.nsw.gov.au
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Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the contrary intention appears:

Actual Costs means the actual costs incurred by Council in delivering the Project without Council applying any margin.

Approvals means all consents, approvals, licences permits, certifications and other authorisations required by Law.

Business Day means any day other than a Saturday, Sunday or public holiday in NSW.

Co-contribution means any funding obtained by Council for the purpose of a Project, from any other source other than the Funding specified in item 3 of the Key Details.

Confidential Information of a Party means any information (whether owned by them or not):

- (a) that is, by its nature, confidential and has been designated by the disclosing party as confidential in the information or document;
- (b) that the receiving party knows or ought to know is confidential, including:
 - (i) where the receiving party is Council:
 - (A) information relating to the policies, strategies, practices and procedures of TfNSW or the State of New South Wales and any information in Council's possession relating to the New South Wales public service;
 - (B) information relating to other contractors of TfNSW; and
 - (C) security classified information; and
 - (ii) where the receiving party is TfNSW, the financial,

corporate and commercial information of Council,

This does not include information that:

- (c) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (d) has been independently developed or acquired by the receiving party.

Contractor Statement means a statement from the Council in the form found at Attachment A. **Council's Representative** means the party named in item 6 of the Key Details.

Construction Commencement means to begin site preparation work, including clearing of vegetation, utility adjustments, fence installation, excavation or removal of existing structures, necessary for the Works.

Deed means this deed and any schedules and attachments to this deed.

Force Majeure Event means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought, epidemic, pandemic or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (e) a labour dispute other than a labour dispute that only involves the party's personnel.

Funding or Funds means the total maximum amount to be contributed by TfNSW for a Project specified in item 3 of the Key Details.

GST Law has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instalment means, for each Milestone, the amount calculated by applying the percentage specified in Schedule 2 for that Milestone to the Funding.

Intellectual Property Rights means all present and future industrial and intellectual property rights conferred by statute, common law or equity and includes copyright, trademarks, patents, designs, circuit layout rights, trade

secrets, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields whether non-registrable, registered or patentable.

Interest means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), plus 1%, on a daily compounding basis.

Key Details means the section of this Deed headed "Key Details".

Milestone means, for each Project, a milestone listed in Schedule 2.

Milestone 1 means the first Milestone listed in Schedule 2.

Milestone 1 Date means Council's nominated date for the Milestone 1 in the form set out in Schedule 4 of this Deed or such other date determined in accordance with this Deed.

Milestone 2 means the date of Construction Commencement.

Milestone 2 Date means the date that is within six months from the date of a signed Funding Deed or such other date determined in accordance with this Deed.

Milestone 3 means the date of Open to Traffic

Milestone 3 Date means the date that is within 24 months of notification from TfNSW or such other date determined in accordance with this Deed.

Milestone Certificate means a certificate in the form set out in Attachment B.

Open to Traffic means the Works for the Project are complete and capable of being opened to the public for the safe, efficient and continuous passage of vehicles.

Project means the project to design, construct and commission works on an existing local road or roads described in item 2 of the Key Details.

Project Completion Report means the final report provided by Council on completion of each Project to satisfy the requirements of the Milestone 3, available on the Fixing Local Road website.

Project Manager means the project manager appointed by Council in respect of each Project for the purposes of this Deed and notified to TfNSW from time to time.

Project Status Report means, in respect of each Project, the report that Council provides on a monthly basis to TfNSW from the date of the Funding Deed until the date of completion of that Project, in the form set out in the Smarty Grants Project Portal.

Records means all documents, reports, plans, drawings, computer disks, specifications, data and all other materials in both hard and electronic formats and all copies and extracts of the same.

Simplified Project Plan and Project Benefits means the plan prepared by Council in respect of each Project in the form set out in Schedule 4. **Technical Requirements** means the matters set out in Schedule 1.

TfNSW's Representative means the party named in item 5 of the Key Details.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all other laws relating to work health and safety which apply in New South Wales.

Works means the physical works to be designed and constructed for each Project as described in Schedule 3.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form and vice versa;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a clause, section, attachment or party is a reference to a clause or section of, or an attachment or party to this Deed;
- (e) a reference to this Deed includes the attachments to this Deed;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to any dollar amounts or \$ is to Australian currency;
- (h) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Deed or any part; and
- (i) anything in this Deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

2. Term and Nature of Deed

2.1 Term

This Deed commences on the date that the last party signs this Deed and will continue for 24 months after the Deed commences, unless extended under clauses 4.3(b)(i) or 4.3(c), or terminated earlier in accordance with this Deed.

2.2 Risk and Cost

- (a) Without limiting clause 13, Council accepts all risks associated with the design, construction and commissioning of each Project, and complying with its obligations under this Deed, including the risk that the final cost of a Project is more than the Funding.
- (b) TfNSW is not responsible for the provision of any money or resources in excess of the Funding specified for a Project.

3. Payment

- (a) Subject to the terms of this Deed, TfNSW must provide Council with Funding for each Project:
 - (i) for an amount not exceeding the amount specified in item 3 of the Key Details; and
 - (ii) in Instalments upon satisfaction of each Milestone as specified in Schedule 2.
- (b) If Council considers that a Milestone has been satisfied, Council must submit to TfNSW:
 - (i) a correctly rendered tax invoice/payment claim;
 - (ii) a completed Milestone Certificate; and
 - (iii) all supporting documentation specified in Schedule 2.
- (c) Within 30 Business Days of receiving a notice from Council under clause 3(b), TfNSW must either:
 - (i) if satisfied (acting reasonably) that the Milestone has been achieved, and subject to clause 3(f), pay Council the Instalment for that Milestone; or
 - (ii) if not satisfied that the Milestone has been achieved, notify Council that the Milestone has not been achieved.
- (d) If Council receives a notice under clause 3(c)(ii), Council may submit a further notice under clause 3(b) and clause 3(c) will apply again.

- (e) For the purposes of this Deed, an invoice/payment claim is not correctly rendered unless the invoice/payment claim:
 - (i) states the amount claimed in the invoice/payment claim is due for payment in accordance with clause 3 and Schedule 2;
 - (ii) states the amount claimed in the invoice/payment claim is correctly calculated under this Deed;
 - (iii) states the approved Funding allocation for the Project, the total expenditure to date on the Project, and the total Funding paid to date for the Project;
 - (iv) states the projected cash flow for the Project (if any);
 - (v) states the current due date for completion of the Project and the percentage completion of the Project to date;
 - (vi) includes the relevant TfNSW project number (WBS and/or purchase order) and is set out in a manner that identifies the specific Project and Milestone;
 - (vii) is addressed to "Transport for NSW" with attention to the TfNSW Representative;
 - (viii) is accompanied by a completed Contractor Statement in the form set out in Attachment A in respect of the period to which the invoice/payment claim relates; and
 - (ix) is certified by Council's authorised delegate/s as follows:
 - (A) a delegate that certifies the expenditure shown on the invoice/payment claim for payment has been actually incurred and only relates to the Project described; and
 - (B) a delegate that certifies the work has been executed in accordance with appropriate prevailing standards and conforms to sound engineering practice and applicable legislation.
- (f) If TfNSW considers that an invoice/payment claim is not correctly rendered, TfNSW must issue to Council a notice setting out the reasons and identifying any issues that are in dispute and/or further documents required to substantiate the amount claimed.
- (g) TfNSW may inspect the Project and make other reasonable enquiries (including carrying out an audit) to satisfy itself that a Milestone has been achieved. Council must co-operate with TfNSW and facilitate any such inspection and enquiry, including by providing access to site/s and Records.

4. Project

4.1 Design and construction obligations

- (a) Council must obtain all Approvals required for each project.
- (b) Council must ensure that the design and construction of the Works complies with:
 - (i) the requirements of this Deed, including but not limited to the Technical Requirements; and
 - (ii) all relevant Approvals and Laws.
- (c) Council must comply with the requirements of the Local Government Act 1993 and the Tendering Guidelines for NSW Local Government dated October 2009.

4.2 Progress and timing

- (a) Council must diligently progress each Project to achieve the Milestones in accordance with the Simplified Project Plan and Project Benefits and the terms of this Deed.
- (b) Council must achieve:
 - (i) the Milestone 1 by the Milestone 1 Date; and
 - (ii) the Milestone 2 by the Milestone 2 Date; and
 - (iii) the Milestone 3 by the Milestone 3 Date.

4.3 Delay and extensions of time

- (a) If for any reason Council:
 - (i) is unable to commence the Project or to continue the Project; or
 - (ii) forms the reasonable opinion that the timeframes specified in clause 4.2(b) will not be met,then Council must promptly provide written notice to TfNSW setting out the cause of the delay, relevant facts, and the expected effect on achievement of the Milestone 2 and/or the Milestone 3.
- (b) Following receipt of Council's notice under clause 4.3(a), TfNSW must determine, in its absolute discretion:
 - (i) that the Milestone 2 Date and/or the Milestone 3 Date are extended, including details of the revised date or dates and the Term of this Deed will be extended accordingly; or

- (ii) not to grant an extension of the Milestone 2 Date and/or the Milestone 3 Date,

and provide written notice to Council of that determination.

- (c) TfNSW may, in its absolute discretion and without any obligation to do so, extend the Milestone 2 Date or the Milestone 3 Date at any time and for any reason and the Term of this Deed will be extended accordingly.

5. Subcontracting

- (a) Council is responsible for ensuring the suitability of any subcontractor it engages to undertake Work on the Project and for ensuring that such Work meets the requirements of this Deed.
- (b) Council must ensure that any contractor engaged by it in connection with this Deed holds and maintains appropriate insurances in accordance with Council policies and good industry practice for the delivery of works similar to the Works.
- (c) Council is responsible for all acts and omissions of subcontractors as if they were those of the Council and Council indemnifies TfNSW against all costs, expenses, and/or liabilities incurred by TfNSW in connection with the acts or omissions of any subcontractors.

6. Management of Funding

- (a) The Funding administered by TfNSW must be spent by Council solely:
 - (i) for the Project;
 - (ii) in accordance with this Deed; and
 - (iii) only once any Co-Contribution has been expended fully on the Project.
- (b) The salary levels and allowances for any staff involved in the Project are to be based on award rates. Council must ensure that award provisions are applied in relation to all employees funded either wholly or in part by the Funding.
- (c) All Project related income which is generated through the Funds (including bank interest, revenue from the sale of Project material, etc.) must be applied towards the Project by Council and must be fully disclosed in Council's financial statements and records.

- (d) Details of the sale, disposal or write-off of any asset acquired with the Funding during the term of the Project must be included in Council's financial statements and records.
- (d) Council must not use the Funding to:
 - (i) pay any wages or other benefits to Council's employees who do not perform Work for or on the Project; or
 - (ii) make a loan, gift or donation.
- (e) Council must:
 - (i) keep full and accurate financial accounts and Records relating to the Project and the Funding that separately identifies the Funds from other income for the Project and enables expenditure on the Project to be verified.
 - (ii) all receipts and payments related to the Project and the Funding are to be identified in Council's accounts and reported in accordance with this Deed by reference to the Project so that at all times the Funds and their use are clearly identifiable;
 - (iii) do all things necessary to ensure that all payments from the Funds that Council makes to third parties are correctly made and properly authorised and that Council maintains proper and diligent control over the incurring of all liabilities; and
 - (iv) ensure that Funds provided by TfNSW are deposited and held in an account in Council's name, and which Council solely controls, with a bank or credit union carrying on banking business in Australia and only withdrawn and applied for liabilities of Council in relation to the Project.
- (f) This clause 6 survives the expiration or termination of this Deed.

7. Repayment of Funding

- (a) Where Council has received additional funding from a different NSW Government program for the same Project (where the funding is provided for the same scope of works under which funding under this Funding Deed is to be utilised), the difference between the Funding amount specified in Item 3 of the Key Details and the total amount received by Council must be refunded by Council to TfNSW.
- (b) Where the Project is withdrawn by the Council or TfNSW reasonably determines that the Project (or part of the Project) is unable to be performed by Council to meet the Milestone timeframes and/or to meet the requirements of this Deed, then with the exception of Funding that

has already been spent or committed for the Project in accordance with this Deed, the Funding must be:

- (i) refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW; or
 - (ii) otherwise dealt with as directed in writing by TfNSW (in its absolute discretion).
- (c) Where TfNSW reasonably determines that Funds have not been spent by Council on the Project in accordance with this Deed, then the Funding must be refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW.
- (d) Where TfNSW reasonably determines that the Actual Costs of construction for the Project totals less than the Funding provided by TfNSW for the Project, then at TfNSW's absolute discretion that portion of the savings must be:
- (i) refunded by Council to TfNSW within 10 Business Days of a written notice from TfNSW; or
 - (ii) otherwise dealt with as directed in writing by TfNSW.
- (e) Interest is payable on any amount not paid to TfNSW when due and payable under this clause 7.
- (f) Nothing in this clause affects a party's right to terminate this Deed or TfNSW's right to suspend this Deed.

8. Intellectual Property Rights

- (a) All Intellectual Property Rights of the parties existing before the date of this Deed will be retained by the relevant party.
- (b) Each Party hereby grants to the other Party a royalty-free, non-exclusive and perpetual licence to use its existing Intellectual Property to the extent necessary to carry out the Project.
- (c) In respect of:
 - (i) Intellectual Property Rights in all modifications made to TfNSW existing Intellectual Property Rights made by Council or its subcontractors; and
 - (ii) all other Intellectual Property Rights created by Council or its subcontractors in undertaking the Project,

Council grants TfNSW a non-exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of TfNSW;
- (iv) permit any person to assist TfNSW to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) above to any person.

9. Variations

- (a) Council must not vary the Project or the Works except with the prior written approval of TfNSW.
- (b) Council will not be entitled to any additional Funding from TfNSW in connection with any Project or Works variation approved pursuant to clause 9(a).

10. Records

- (a) Records and accounts maintained for the Project must be retained by Council until at least 7 years after the later of either:
 - (i) completion of the Project; or
 - (ii) the last date on which Funds are provided under this Deed.
- (b) Council must make those Records and accounts available for inspection and/or audit as and when reasonably requested by TfNSW, a regulator, any external auditor or advisor or any of their authorised representatives during normal business hours. Copies and extracts of any Records may be taken for these purposes.
- (c) Council must permit TfNSW to inspect or appoint a third party to inspect Council's premises to confirm compliance with this Deed and must provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith.
- (d) This clause 10 survives the expiration or termination of this Deed.

11. Reporting

- (a) At the times specified in item 4 of the Key Details, and at other times when reasonably requested, Council must provide TfNSW with the following (each in a form satisfactory to TfNSW):

- (i) a Milestone Certificate;
- (ii) an audited detailed statement of income and expenditure in respect of the Funding, which must include a statement verifying that the financial accounts are true and correct, and a statement of the balance of Council's account;
- (iii) an audit statement that the Funding was expended solely for the Project and in accordance with this Deed;
- (iv) a monthly Project Status Report;
- (v) a Project Completion Report; and
- (vi) any other report/s listed in item 4 of the Key Details.

12. Title, insurance and operation and maintenance

- (a) TfNSW and Council acknowledge and agree that at all times the Works are owned by Council and that any materials and/or equipment removed from the site as part of the demolition activities for the Project will remain Council assets.
- (b) Council must:
 - (i) ensure that at all times it has appropriate insurance policies in place for the Project and the Works, that accord with insurance policies generally effected by Council in relation to such Projects and Works; and
 - (ii) where proceeds of insurance are recovered in connection with the loss of, or damage or destruction to, such Works, apply such proceeds solely toward reinstatement of the Works unless otherwise agreed by TfNSW.
- (c) Council takes all risk and is solely responsible for:
 - (i) the delivery of the Project and all costs associated with the Works the subject of the Project;
 - (ii) defects and omissions in the Works;
 - (iii) the Works otherwise not being in accordance with the requirements of this Deed; and
 - (iv) the ongoing operation and maintenance of the Works.
- (d) This clause 12 survives the expiration or termination of this Deed.

13. Third parties, project interfaces and community liaison

- (a) Council is responsible for liaising with all relevant third parties in relation to the Project and the Works, including:
 - (i) owners or occupiers of adjacent or affected land or property; and
 - (ii) utilities and other service providers.
- (b) Council is responsible for and must undertake all required community liaison activities to ensure that the community is satisfied with the proposed Project and, in doing so, must comply with all reasonable requirements of TfNSW.
- (c) Council is responsible for managing all project interface issues arising out of or in connection with the Project and the Works.

14. Taxes, duties and government charges

- (a) Subject to clause 14(b), Council must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Deed, the Project or the Works.
- (b) If GST is payable on any supply made under this Deed, for which the consideration is not expressly stated to include GST, the recipient of that supply agrees to pay to the supplier an additional amount equal to the GST at the same time that the consideration for the supply is to be provided. However:
 - (i) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note; and
 - (ii) if an adjustment event arises in respect of the supply, the additional amount will be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment.

All expressions used in this clause which are defined in the GST Law have the meanings given to them in the GST Law.

- (c) Notwithstanding anything stated to the contrary in this Deed:
 - (i) the imposition or levy of any taxes, duties and government charges in connection with this Deed, the Project or the Works (as stated clause 14(a)); and/or
 - (ii) the liability to pay, or the payment of, any GST (pursuant to clause 14(b)),

will not cause the Funding to exceed the amount of Funding specified for the Project.

15. Force Majeure

- (a) A party does not breach this Deed and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:
 - (i) sets out details of the Force Majeure Event;
 - (ii) identifies the nature and extent of the obligations affected by the Force Majeure Event;
 - (iii) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
 - (iv) provides details of the action that it has taken or proposes to take to remedy the situation.
- (b) A party affected by a Force Majeure Event must:
 - (i) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
 - (ii) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.
- (c) If a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days, or if TfNSW reasonably considers the Force Majeure Event will not cease within that period, TfNSW may immediately terminate this Deed on notice to Council.

16. Termination

- (a) If:
 - (i) Council fails to fulfil, or is in breach of, any of its obligations under this Deed, and does not remedy the failure or breach within 15 Business Days of receiving a notice in writing from TfNSW to do so; or

- (ii) in relation to this Deed, Council breaches any legislative requirement that it is unable to remedy within 15 Business Days of the breach; or
- (iii) an administrator is appointed under Division 6 of Part 2 of Chapter 9 of the *Local Government Act 1993 (NSW)*,

then, in the case of any one or more of these events, TfNSW may immediately terminate this Deed by giving written notice to Council.

- (b) Where TfNSW terminates this Deed under clauses 16(a) or 16(d), TfNSW will be entitled to recover from Council any part of the Funds which:
 - (i) have not been spent or committed for expenditure on the Project in accordance with this Deed and payable by Council as a current liability (written evidence of which must promptly be provided by Council) by the date on which the notice of termination given under clause 16(a) is taken to be received; or
 - (ii) have not, in TfNSW's reasonable opinion, been expended by Council in accordance with the terms and conditions of this Deed.
- (c) If Council does not repay to TfNSW the amount referred to in clause 16(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the notice of termination, that period) Council must also pay TfNSW Interest on the outstanding amount. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to TfNSW under this Deed or otherwise at law or in equity, be recoverable by TfNSW as a debt due to TfNSW by Council.
- (d) TfNSW may terminate this Deed for convenience by giving not less than 60 days' written notice to Council. If Council is able to demonstrate to TfNSW's reasonable satisfaction that prior to receiving notice of termination under this clause 16(d) Council has spent or committed Funding for the Project in accordance with this Deed, then TfNSW must reimburse Council for that Funding. Council must take all reasonable steps to mitigate the expenditure referred to in this clause 16(d) and TfNSW will not be required to pay Funding to the extent that the expenditure could have been avoided or reduced by taking such steps. Council must provide TfNSW with evidence reasonably satisfactory to TfNSW with evidence reasonably satisfactory to TfNSW to substantiate any claim under this clause 16(d).
- (e) Clauses 16(b) and 16(c) do not limit or exclude any of TfNSW's other rights, including the right to recover any other amounts from Council on termination of this Deed.

17. Acknowledgment and publicity

- (a) Council must at all times comply with the NSW Government Funding Acknowledgment Guidelines for recipients of NSW Government infrastructure grants (found at: <https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf>) and any other guidelines or requirements notified by TfNSW.
- (b) Council must acknowledge that TfNSW and the NSW Government contributed funding to the Project in each public announcement and publication Council makes that relates to the Project.
- (c) Council must consult with TfNSW at least 4 weeks prior to each public announcement or publication Council makes about this Deed or the Project to ensure it meets the requirements of TfNSW and provide TfNSW and the Minister for Regional Transport and Roads or their delegate with the option to be involved in any public announcement. If the Minister is jointly participating in an announcement, the Minister will have the first option to publicly release information on the announcement.
- (d) TfNSW and the NSW Government reserves the right to publicise and report on the Project and the provision of Funding to Council and may do this by referring to the Funding provided to Council for the Project in media releases, public announcements and publications including annual reports.
- (e) Council must report on their Projects and milestones in a timely manner through TfNSW nominated system. Councils must ensure that all project milestones (open to traffic, construction starting, etc.) and forecasts are updated monthly and achievement of milestones are reported on the monthly period in which they occur.
- (f) Council must notify with adequate lead time (minimum four weeks) TfNSW of any official opening and/or press related coverage for the Project.
- (g) Council must invite with adequate lead time (minimum four weeks) a representative from TfNSW and the Minister for Regional Transport and Roads to attend any official opening and/or press related coverage for the Project. The timing of such events will need to reflect the Minister's availability. If the Minister is participating in an event or an announcement, the Minister will have first option to publicly release information on the achievement/announcement. Council cannot make a public statement prior to the Minister.
- (h) Prior to Construction Commencement, Council must install signage that acknowledges NSW Government Funding contribution in relation

to the Project. Council must follow the NSW Funding Acknowledgement Guidelines with regard to:

- (i) the sign's design and wording;
- (ii) where the sign should be displayed and the duration of the display; and
- (iii) obtaining any required variation to the signage requirements from NSW Government.

18. Compliance with laws and TfNSW policies

- (a) Council must ensure compliance with all legislative requirements and authority approvals, and must obtain all authority approvals relevant to this Deed, the Project or the Works.
- (b) Council must ensure the delivery of the Project is authorised in accordance with the *Environmental Planning and Assessment Act 1979* (NSW).
- (c) Council must, in carrying out its obligations under this Deed, comply with any of TfNSW's policies as notified, referred to or made available by or on behalf of TfNSW to Council in writing from time to time provided those policies are consistent with the performance of this Deed.
- (d) Council must comply with, and must ensure and procure that all of its employees and contractors comply with, all the requirements of the WHS Legislation and any other requirements relating to work health, safety and rehabilitation management.

19. Dispute resolution

- (a) Subject to clause 19(d), the parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed until the procedure provided by clause 19(b) has been exhausted.
- (b) The parties agree that any dispute arising out of or in connection with this Deed will be dealt with as follows:
 - (i) If a party believes a dispute has arisen between the parties, that party must provide the other party with a written notice setting out the nature and details of the dispute;
 - (ii) If a dispute is notified under clause 19(b)(i), each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to attempt to resolve the dispute.

- (iii) the parties have 15 Business Days (or such extended time as the parties may agree in writing) from the receipt of the notice referred to in clause 19(b)(i) to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (iv) if:
 - (A) following the expiry of the 15 Business Days (or such extended time as the parties may agree in writing) referred to in clause 19(b)(iii), there is no resolution of the dispute, or agreement on the submission of the dispute to mediation or some other alternative dispute resolution; or
 - (B) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 20 Business Days,then, either party may commence legal proceedings.
- (c) This clause 19 does not prevent a party from instituting proceedings to enforce payment due or seeking injunctive or urgent declaratory relief.
- (d) Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their respective obligations in accordance with this Deed.
- (e) This clause 19 survives the expiration or termination of this Deed.

20. Indemnity

The Council is liable for, and indemnifies TfNSW against, all liability or loss arising out of or in connection with the breach of this Deed by the Council or its personnel or the negligence or default of the Council or its personnel except to the extent the liability or loss is contributed to by TfNSW's negligence or breach.

21. Legal relationship

Council acknowledges that:

- (a) its employees, officers, volunteers, partners and advisers will not by virtue of this Deed, be or for any purpose deemed to be employees, partners or agents of TfNSW; and

- (b) it must not purport to represent TfNSW in connection with the carrying out of the Project and it is not empowered to act on behalf of or to bind TfNSW in any way.

22. Entire agreement, variation and severance

- (a) This Deed records the entire agreement between the parties in relation to its subject matter.
- (b) No variation of this Deed is binding unless it is agreed in writing and signed by the parties.
- (c) If at any time any provision of this Deed is or becomes illegal, invalid, void or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and contribute to be valid and enforceable.

23. Waiver

- (a) Waiver of any provision of, right under or breach of, this Deed:
 - (i) must be in writing signed by the party entitled to the benefit of that provision, right or breach; and
 - (ii) is effective only to the extent set out in the written waiver and shall operate as a single waiver only.

24. Assignment and novation

- (a) Council must not assign or novate this Deed, or its rights, obligations and interests under this Deed, without the prior written approval of TfNSW.
- (b) TfNSW may assign or novate this Deed, or its rights, obligations and interests under this Deed to another NSW Government agency, without the need for obtaining the prior written approval of Council.

25. Counterparts

This Deed may be executed in any number of counterparts which together constitute one Deed.

26. Further assurance

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

27. Applicable law and jurisdiction

- (a) The laws of New South Wales govern the terms of this Deed.
- (b) Both parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

28. Confidential Information

- (a) A party who receives Confidential Information ("**Recipient**") must not disclose the Confidential Information supplied by the other party ("**Discloser**") to any person except:
 - (i) its representatives who require the Confidential Information for the purposes of this Deed; or
 - (ii) to enable the Recipient to obtain professional advice in relation to this Deed; or
 - (iii) with the consent of the Discloser; or
 - (iv) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
 - (v) if the Recipient is required to do so in connection with legal proceedings relating to this Deed or other agreement between the parties; or
 - (vi) if the Recipient is TfNSW it is disclosed to the Transport Secretary and/or Ministers of the NSW government.
- (b) If the Recipient discloses the Discloser's Confidential Information under clause 28(a)(i) or 28(a)(iii) then:
 - (i) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 28(a);
 - (ii) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the

- Recipient must arrange for all such undertakings to be given promptly; and
- (iii) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.
 - (c) The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this Deed or any other agreement between the parties.
 - (d) On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:
 - (i) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this Deed or other agreement between the parties; or
 - (ii) the Recipient is otherwise entitled to retain the Confidential Information.
 - (e) Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this Deed to any person other than its Representatives on a confidential basis.

29. Representatives and Project Manager

- (a) Council must always ensure that it has a nominated representative (who is notified and acceptable to TfNSW acting reasonably) who has full authority to act on behalf of Council. An instruction or direction

given to the Council Representative will be deemed to be an instruction or direction given to Council.

- (b) Council must deal with TfNSW's Representative, or such other representative as may be notified by TfNSW to Council from time to time.
- (c) Council must nominate a Project Manager who is the TfNSW contact for each Project. Council may nominate a new Project Manager from time to time and must notify TfNSW promptly of any change.
- (d) Notices provided to TfNSW by the Project Manager under this Deed are binding on Council.
- (e) At the date of this Deed, the representatives of the parties are the nominated contact persons specified in items 5 and 6 of the Key Details.

30. Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number or email address shown in item 7 of the Key Details (or to any new address, facsimile number or email address that a party notifies to the other).
- (b) A notice given in accordance with clause 30(a) is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier; or
 - (iii) if sent by or email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

31. No fetter

This Deed does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW or Council to exercise any of their functions and powers pursuant to any legislation.

32. Survival

Unless otherwise stated in this Deed, any clause capable of continuing to apply after the Project is completed or terminated for any reason will do so.

EXECUTION

Executed by the parties as a deed.

Executed for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

Signature of Witness

Signature of Authorised Delegate

Print Name (block letters)

Print Name (block letters)

Position held by TfNSW delegate

Date of signature:

Insert date of signature

Executed for and on behalf of Kiama Municipal Council (22 379 679 108) by its authorised officer in the presence of:

Signature of Witness

Signature of Authorised Officer

Print Name (block letters)

Print Name (block letters)

Position held by Council Authorised Officer

Date of signature:

Insert date of signature

Schedule 1 – Technical Requirements

1. Council must ensure that it understands and adheres to the Fixing Local Roads Program Guidelines (dated June 2021).
2. Council must ensure that the Project is designed and constructed in accordance with all relevant best practice, included but not limited to:
 - (a) Commonwealth Standards;
 - (b) Austroads Guidelines; and
 - (c) TfNSW Technical Supplements (where directed by TfNSW).
3. All designs that include the installation or removal of regulatory devices (including signs and line markings) must be endorsed by the Local Traffic Committee prior to Council proceeding.
4. One or more road safety audits may be required for certain projects. Council is to confirm the road safety auditing requirements at the project development stage. Council is responsible for undertaking any required Road Safety Audits according to the Guidelines for Road Safety Audit Practices and to address all corrective actions. Any audits must be undertaken by an accredited and independent audit team.

Schedule 2 – Milestones

MILESTONE	% OF FUNDING TO BE PAID	FINANCIAL MILESTONE	DOCUMENTATION TO BE PROVIDED TO TFNSW
MILESTONE 1	70%	Agreement and Initial Planning	Milestone Certificate including provision of: <ul style="list-style-type: none"> - Executed Funding Deed - Completed Schedule 4 Simplified Project Plan and Project Benefits.
MILESTONE 2	0%	Commencement of Construction	Milestone Certificate including provision of: <ul style="list-style-type: none"> - Confirmation that the Project has entered construction within six months of a signed Funding Deed - Photographic evidence of commencement of construction - Photographic evidence that signage has been installed that acknowledges the Funding contributed to the Project - Confirmation that the Project is authorised in accordance with the <i>Environmental Planning and Assessment Act 1979</i>, by the granting of development consent or otherwise.
MILESTONE 3	Up to 30%	Project Completed and Open to Traffic	Milestone Certificate including provision of:

MILESTONE	% OF FUNDING TO BE PAID	FINANCIAL MILESTONE	DOCUMENTATION TO BE PROVIDED TO TfNSW
			<ul style="list-style-type: none"> - Confirmation that the Project has been completed within 24 months of notification from TfNSW - Project Completion Report including photographic evidence and final certificate of expenditure. Must be provided within two weeks of Project completion.

Schedule 3 – Scope of Works to be delivered for the Project

All works listed below must be eligible for funding under the Fixing Local Roads program as detailed in the Fixing Local Roads Program Guidelines.

Scope of Works
Milling and resealing of a section of failing pavement over a 250m stretch of local road to replace existing asphalt surface.

Note: Use as many rows as necessary.

Schedule 4 - Simplified Project Plan and Project Benefits

Financial Forecast

Please provide an initial financial forecast of the expected dollar value of Works to be completed each month of the financial year against each project. Note that this financial forecast is NOT cumulative.

Project Name: Johnson Street, Kiama Downs - Resealing													
Financial year	Funding offered	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
2020/21													
2021/22													
2022/23													

Project Milestone Dates

Please provide key project milestone dates for the project as outlined below.

Project Delivery Milestone		
Milestone 1 - Executed Agreement and Initial Planning	Milestone 2 - Commence Construction	Milestone 3 - Project Completed and Open to Traffic
e.g. XX/XX/XXXX		

Project Benefits



Please provide a brief description of proposed benefits to be realised for the project.

Project name: Johnson Street, Kiama Downs - Resealing		
Improvement	Examples	Council comment
Maintenance work brought forward (in years)	E.g. 3 years of backlog work completed	
Split between local, regional and metropolitan procurement of goods and services	E.g. 90/10/10	

Project name: Johnson Street, Kiama Downs - Resealing		
Improvement	Examples	Council comment
Estimated average corridor travel time improvements, following completion.	E.g. Peak - 5 minutes/ Off-peak 2 minutes	
Estimated increased traffic volumes, following completion.	E.g. 5%	
Estimated reduction of road or lane closures, following completion.	E.g. 5 times per year	
Expected road maintenance costs saved as a result of the project (OPEX)	Expected road maintenance	
Road Condition at completion of the Project	E.g. Excellent, Good, Fair, Poor, Very Poor	
Expected Infrastructure Risk Rating updated at completion	E.g. 2.23 and High	

ATTACHMENT A – CONTRACTOR STATEMENT TEMPLATE

(Clause 3(e)(vii))

	Transport for NSW	Contractor Statement Payment of Workers, Payroll Tax & Worker's Compensation Premiums
All suppliers/contractors must provide this Statement with every invoice/Payment Claim for all works/services carried out for Transport for NSW (TfNSW). TfNSW is entitled by law to withhold payment until this Statement is provided (see Note 2 overleaf).		
		Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt 
Details		
Contractor's Legal Name:	<input type="text"/>	
Contractor's Trading / Business Name:	<input type="text"/>	
Contractor's ABN:	<input type="text"/>	Contractor's ACN: <input type="text"/>
Contractor's Address:	<input type="text"/>	
TfNSW Contract No:	<input type="text"/>	Project/Contract Title: <input type="text"/>
Description of Works:	<input type="text"/>	
Period of Work this Statement applies to (see Note 3):	From: <input type="text"/>	To: <input type="text"/>
Invoice or Payment Claim Numbers this applies to:	<input type="text"/>	
Invoice or Payment Claim Dates this Statement applies to:	<input type="text"/>	
Declaration		
Tick one in each row		
I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:		
• All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.		
• All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement, or		<input type="checkbox"/>
• the Contractor is an exempt employer for workers compensation purposes (see Note 6);		<input type="checkbox"/>
• The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement, or		<input type="checkbox"/>
• the Contractor is not required to be registered;		<input type="checkbox"/>
• The Contractor has not engaged any subcontractors for the works the subject of this Statement, or		<input type="checkbox"/>
• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true		<input type="checkbox"/>
• I am authorised to make this declaration and I am in a position to know the truth of its contents		
Signature of Authorised Person:	Name of Signatory (print):	
<input type="text"/>	<input type="text"/>	
Date:	Position / Job Title of Signatory (print - see Note 4):	
<input type="text"/>	<input type="text"/>	

(Electronic copy is available at: <http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf>)

Catalogue No.45062893, Form No. 921 (12/2019)

(see Notes on page 2)

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**UNCLASSIFIED
SENSITIVE: NSW GOVERNMENT**

(Clause 3(c)(vii))

ATTACHMENT B – MILESTONE CERTIFICATE

[WBS/Project name] – REQUEST FOR MILESTONE PAYMENT

In accordance with the agreed Project Milestone schedule for the project, I certify that the [Insert Milestone event] has been achieved. I request payment of \$x,xxx,xxx as agreed in the Project Milestone Schedule in the Project Funding Agreement.

I have provided the following evidence and other supporting documentation to claim for payment:

(Delete Irrelevant Detail)

- Milestone 1 – Executed Agreement and Initial Planning - 70%
o Executed Funding Deed
o Completed Simplified Project Plan and Project Benefits (Schedule 4)
Milestone 2 – Commence Construction - 0%
o Confirmation that the Project has entered construction within six months of the date of the signed funding deed
o Photographic evidence of commencement of construction
o Photographic evidence that signage has been installed that acknowledges the funding contributed to the Project
o Confirmation that the Project is authorised in accordance with the Environmental Planning and Assessment Act 1979, by the granting of development consent or otherwise
Milestone 3 – Project Completed and Open to Traffic - 30%
o Confirmation that the Project has been completed within 24 months of the date of notification from TfNSW
o Project Completion Report including photographic evidence and final certificate of expenditure. Note: must be provided within two weeks of Project completion
Any additional supporting information (at councils discretion):
o List additional supporting information if applicable

Yours Sincerely,

Signed: Date: / /

Name:

Position Title:

Council:

14.3 Local Government Road Safety Program (LGRSP) for 2021-2022 - Funding Acceptance

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

CSP Strategy: 2.5 Effectively manage our transport, drainage and other infrastructure and assets

Delivery Program: 2.5.1 Manage road infrastructure through the Road Asset Management Plan

Item 14.3

Summary

Transport for NSW (TfNSW) provide annual funding to all eligible NSW Councils under their Local Government Road Safety Program (LGRSP). Council has been advised that the 2021-2022 funding of \$68,202 plus GST has been allocated to 13 initiatives including contribution towards the salary of Council's Road Safety Officer.

This report seeks Council's approval to accept the funding and give delegated authority to the Chief Executive Officer to action the offer of funding.

Financial implication

The identified projects are fully funded by TfNSW through the LGRSP for 2021-2022 in accordance with the Local Government Guidelines. The value of the grant funding was advised to Council earlier in 2021 and has been included into Council's 2021/22 adopted budget.

The funding includes provision for 50% of the employment costs of Council's Road Safety Officer. Council's operational salaries budget includes an annual allocation to fund the remaining 50%.

Policy

N/A

Consultation (internal)

N/A

Communication/Community engagement

N/A

Attachments

- 1 Local Government Road Safety Project Grant Funding Offer - 2021-2022 [↓](#)

Enclosures

Nil

Report of the Director Engineering and Works

14.3 Local Government Road Safety Program (LGRSP) for 2021-2022 - Funding Acceptance (cont)

RECOMMENDATION

That Council:

1. Accept the funding offer of \$68,202 (plus GST) under the Local Government Road Safety Program for 2021-2022 financial year.
2. Give the Chief Executive Officer delegated authority to sign the Funding Agreement under the Local Government Road Safety Program for 2021-2022.

Item 14.3

BACKGROUND

Transport for NSW (TfNSW) provides annual funding to all eligible NSW Councils under their Local Government Road Safety Program (LGRSP). Council has been advised that the 2021-2022 funding of \$68,202 plus GST has been allocated to the following 13 initiatives, as detailed in the attached funding offer.

Project #	Project Name	Funding
Salary	Road Safety Officer employment costs (50% of estimated costs)	\$55,729
P-2617	National Road Safety Week - Kiama	\$4,200
P-2547	Caravan and Motor Home Road Safety Education	\$100
P-2546	Pedestrians – Look Out Before You Step Out Kiama	\$3,873
P-2544	Road Safety in the Workplace	\$200
P-2543	Kiama Bike Skills Program for Active Kids	\$3,000
P-2542	Helping Learner Drivers Become Safer Drivers (HLDBSD)	\$300
P-2541	Older Road Users 65+ - Kiama	\$200
P-2412	Motorcycle Safety - Kiama	\$600
Joint Projects – in kind support by Council's RSO		
P-2523	Ultimate Learner Log Book Run Experience	
P-2187	Share the Path – The Path is Ours to Share	
P-2516	Motorcycle Safety – Accident Management Training	
TfNSW Funded Project – in kind support by Council's RSO		
P-2545	Speed Monitoring on Local Roads – VMS Project	
Total		\$68,202
	(ex GST)	

Details of each of the funded road safety projects are outlined below:

Kiama Municipal Council Projects***National Road Safety Week – Kiama***

Support National Road Safety Week by implementing activities to promote drivers taking pledges to drive safely on the road, remove distractions such as mobile phones while driving and not put others at risk by speeding, driving while tired or under the influence of alcohol and drugs and to protect vulnerable road users.

Report of the Director Engineering and Works

14.3 Local Government Road Safety Program (LGRSP) for 2021-2022 - Funding Acceptance (cont)

Activities in Kiama LGA will involve lighting up the Kiama Light House in the Road Safety theme colour yellow and holding a market stall at the farmers markets during the week of National Road Safety Week.

Caravan and Motor Home Road Safety Education

This project involves implementation of an educational pop-up stall at the Kiama Markets to educate older road users on caravan and motor-home road safety. The Australian population is ageing and an increasing number of older Australians including many Kiama residents are becoming 'grey nomads', driving long distances on high speed rural roads. While many drivers in this age range are engaging in self-regulation and limiting their driving to known roads, others are often driving on highly unfamiliar roads, and possibly engaging in unfamiliar practices such as towing large loads (e.g. caravans, camping trailers) or driving large vehicles (e.g. motorhomes, large four wheel drives).

Pedestrians – Look Out Before You Step Out, Kiama

This project is aimed at reducing the number and severity of crashes involving pedestrians in the Kiama LGA by the installation of "Look out before you step out" stencils at various locations.

Road Safety in the Workplace

Road safety is everyone's responsibility. In NSW, almost 30 percent of workplace fatalities are as a result of road crashes. All organisations have a duty of care under Work Health and Safety legislation to provide a safe work environment.

The "Road Safety in the Workplace" guide provides workplaces with information about key road safety issues and risks, and ways to help workers get around safety while using the road. It also provides information to help embed road safety within Kiama Municipal Council.

Two (2) workshops will be facilitated in Council's workplace toolbox meetings, focused on business areas with high vehicle and fleet usage.

Kiama Bike Skills Program for Active Kids

This project will deliver an Active Kids bike program at the new Minnamurra Bike Skills Track to promote bicycle safety, bike maintenance and helmet wearing.

Older Road Users 65+ - Kiama

"On the road 65 Plus" publications and programs provide advice and safety tips for people in our community aged 65 or over to help make safer choices when driving, riding, walking, using a mobility scooters. Checklists are included to help develop safer driving habits and make better choices when walking and crossing the road.

The NSW older driver licensing system is explained, including information for those who want to transition from full-time driving to other transport options.

During the program workshops, Council's Road Safety Officer (RSO) clarifies the Top 10 misunderstood road rules. Whether people are experiencing changes in their mobility or planning for the future, this program will help older drivers stay independent and safe.

Report of the Director Engineering and Works

14.3 Local Government Road Safety Program (LGRSP) for 2021-2022 - Funding Acceptance (cont)

Motorcycle Safety – Kiama

The aim of the Project is to conduct a Motorcycle information workshop day based at the Jamberoo Hotel which is a popular meeting spot for weekend motorcycle riders, to identify motorcycle crash risks on the road environment and raise the awareness of the "Ride to Live" campaign. The program will use Jamberoo Mountain Road, which is very popular with motorcycle riders as the local example.

Graduated Licensing Scheme

Six (6) Graduated licensing scheme workshops are to be held in Kiama to help supervisors of learner drivers complete the task of teaching a learner to drive. The presentations outline the restrictions on L and P plate drivers, provide practical advice on completing the learner log book and explore strategies to make for an effective learning experience.

Joint Council Projects:

These projects are collaborative initiatives across multiple Councils in the Illawarra and will involve in-kind contribution only from Council's Road Safety Officer.

Log Book Runs

Six Learner Driver Log Book Runs including the Ultimate Learner Log Book Run experience will be held in conjunction with Shellharbour Council. These events provide an opportunity for learners and their supervisors to experience a wide range of road and traffic conditions as well as experiencing random breath testing, driver revive stop and radar speed check. In addition, these events provide access to road safety professionals, highway police officers and peers in a positive non-threatening environment.

Share the Path – The Path is Ours to Share

As walking and cycling are popular activities across the Region with available facilities being heavily used at peak holiday times, Council has and continues to receive feedback from residents of conflict between shared path users and frustration from people using the paths with some users not obeying the rules.

Council's Road Safety Officer (RSO) will work with Shoalhaven, Shellharbour and Wollongong RSO's to provide a clear and consistent message across the four council areas when it comes to shared paths, cyclist and pedestrian safety in the LGA'S.

Motorcycle Safety – Accident Management Training

It is well understood that prompt medical interventions in emergency situations can often save lives and decrease injury severity. Emergency responses to crashes in rural locations can be delayed due to the relative isolation at the crash site. This campaign supports Accident Management Training for Motorcyclists who are more exposed as road users and risk serious injury if involved in a crash.

TfNSW Funded Project

This project is delivered and funded by TfNSW, supported by the RSOs from each Council.

Report of the Director Engineering and Works

14.3 Local Government Road Safety Program (LGRSP) for 2021-2022 - Funding Acceptance (cont)

Speed Monitoring on Local Roads – VMS Project

The speed monitoring program delivered by Transport for NSW aims to slow speeding drivers as they approach locations identified by Council's RSO of high pedestrian activity such as CBD areas, schools and community events.

The program uses electronic Variable Messages Signs (VMS) to caution drivers, and to collect and analyse speed data over a period of six weeks. The VMS display messages to warn drivers to reduce speeds and also provide data to TfNSW and Council to help develop longer term speed reduction interventions as required.

CONCLUSION

Transport for NSW (TfNSW) provide annual funding to all eligible NSW Councils under their Local Government Road Safety Program (LGRSP). The program has a long history of supporting the provision of Road Safety Officers in Councils and supporting delivery of hands-on road safety messaging and programs.

Council has been advised that the 2021-2022 funding of \$68,202 plus GST has been allocated to 13 initiatives as detailed in this report.



16 September 2021

Ms Jane Stroud
Chief Executive Officer
Kiama Municipal Council
PO Box 75
KIAMA NSW 2533
Janes@kiama.nsw.gov.au

Dear Ms Stroud

**South East Coast Region Local Government Road Safety Program Grant Applications
2021-2022**

Thank you for your continuing support of the Local Government Road Safety Program.

On behalf of Transport for NSW I am pleased to confirm funding to Kiama Municipal Council from the Local Government Road Safety Program (LGRSP) for 2021-2022, as follows:

Project #	Project Name	Funding
Salary	Road Safety Officer employment costs (50% of estimated costs)	\$55,729
P-2617	National Road Safety Week - Kiama	\$4,200
P-2547	Caravan and Motor Home Road Safety Education	\$100
P-2546	Pedestrians – Look Out Before You Step Out Kiama	\$3,873
P-2544	Road Safety in the Workplace	\$200
P-2543	Kiama Bike Skills Program for Active Kids	\$3,000
P-2542	Helping Learner Drivers Become Safer Drivers (HLDBSD)	\$300
P-2541	Older Road Users 65+ - Kiama	\$200
P-2412	Motorcycle Safety - Kiama	\$600
	Joint Projects	
P-2523	Ultimate Learner Log Book Run Experience	
P-2187	Share the Path – The Path is Ours to Share	
P-2516	Motorcycle Safety – Accident Management Training	
	TfNSW Funded Project	
P-2545	Speed Monitoring on Local Roads – VMS Project	
	Total	\$68,202 (ex GST)



All payments to council will be made through the reimbursement process managed by Transport Shared Services. The final project payment will be made on completion and submission of a project evaluation report and project cost summary sheet.

Detailed advice about project funding and reporting requirements has been provided to Darren Brady as the supervisor of your Road Safety Officer, Janelle Burns.

Further information about the Local Government Road Safety Program is available from Kristy Campbell, on 0428 480 335 or email: Kristy.campbell@transport.nsw.gov.au

Yours sincerely

A handwritten signature in black ink that reads 'Joanne Parrott'.

Joanne Parrott
Director, Regional Community Partner

14.4 Questions for Future Meetings: Kiama Harbour Projects

CSP Objective: 4.0 Responsible civic leadership that is transparent, innovative and accessible

CSP Strategy: 4.2 Council embraces good governance and better practice strategies

Delivery Program: 4.2.4 Develop strategic partnerships with regional and other organisations to advance local community priorities

Item 14.4

Summary

At Council's August 2021 ordinary meeting, Councillor Reilly requested a report regarding the timing of Crown Lands project to replace the failed retaining wall. At Council's September 2021 ordinary meeting, Councillor Way requested a report on the reconstruction of the southern wharf at the Kiama Harbour boat ramp.

Both these matters were referred to the Director Engineering and Works for action. This report provides a response to both these requests.

Financial implication

The project to repair and upgrade the Kiama Harbour retaining wall is fully funded by the State Government.

Council's 2021/33 Capital Works program includes a budget allocation for the investigation and design of a floating jetty to replace the existing southern wharf jetty. Funding for construction of the new jetty will likely require external funding and staff are in discussions with the State Government in this regard to support delivery in a future year.

Policy

Nil

Consultation (internal)

N/A

Communication/Community engagement

Transport for NSW have advised that the designs for the retaining wall will be placed on exhibition in October or November 2021 to enable community feedback prior to undertake the works in early 2022.

The design of the replacement jetty will involve consultation with the local community including boat owners and harbour user groups to ensure it meets user needs.

Attachments

Nil

Enclosures

Nil

RECOMMENDATION

That Council:

1. Notes the State Government's timing of delivering the repair and upgrade to the Kiama Harbour Retaining Wall.
2. Notes the status of Council's project to replace the Kiama Harbour southern jetty.

BACKGROUND

At the 17 August 2021 Ordinary Council meeting, Councillor Reilly requested a report providing clarity from Crown Lands around the specific timing of the repair and/or replacement of the retaining wall, on the land that they manage around the Kiama Harbour (which was destroyed over half a decade ago), that creates an unsightly and dangerous scar on our otherwise safe and beautiful harbour.

At the 21 September 2021 Ordinary Council meeting, Councillor Way requested a report on proposed reconstruction by ocean wharf contractors for the southern wharf at Kiama Harbour boat ramp that would also include disabled access, given the Kiama Harbour Revitalisation project has confirmed the boat ramp will remain in its current location.

Both matters were referred to the Director Engineering and Works for action.

Kiama Harbour Retaining Wall

The project to repair and upgrade the retaining wall in Kiama Harbour, located east of the boat ramp is being managed by the Department of Planning, Industry and Environment (Crown Lands), who owns the asset. Council is working in partnership with the State Government to review and finalise the design.

The Project's Manager has advised Council that they were hoping to have notified the public of the proposal by now, however have been delayed finalising the artwork on the face of the wall.

Based on the most recent advice, the proposed designs will be provided to the community for comment in mid-October 2021. Advertising for construction tenders is planned for Nov/Dec with works expected to commence in early 2022.

Kiama Harbour Southern Wharf Jetty

Council's capital works program for 2021/22 includes a budget allocation for the design of a new floating jetty to replace the existing jetty which has structural issues located adjacent to the Crown Lands owned retaining wall.

Requests for Quotations from qualified consultants has recently been issued for the design of the replacement jetty and will involve consultation with the local community including boat owners and harbour user groups to ensure it meets user needs. A decision on whether Council replace the former pontoon, which was destroyed in a 2020 storm event, will be considered as part of this design process for the jetty.

Report of the Director Engineering and Works

14.4 Questions for Future Meetings: Kiama Harbour Projects (cont)

Funding for construction of the new jetty will likely require external funding and staff are in discussions with the State Government in this regard to support delivery in a future year.

Item 14.4

14.5 Proposed Commemorative Garden on Gerringong Headland

CSP Objective: 1.0 A healthy, safe and inclusive community

CSP Strategy: 1.1 Developing and implementing services and programs that promote social cohesion, healthy and active lifestyles for residents of all ages, abilities and interests

Delivery Program: 1.1.7 Manage recreation and open space infrastructure to cater for current and future generations

Item 14.5

Summary

Council has received a request from the Gerringong Lions Club to establish a Commemorative Garden and Dog memorial on Gerringong Headland north of the Cemetery. Staff have advised the Club that the Dog memorial component of the proposal is against Council Policy, however the commemorative garden is can be supported pending Council endorsement and community consultation.

This report provides details of the proposal and Council policies related to the matter.

Financial implication

The Gerringong Lions Club has proposed that establishment and ongoing maintenance of the Commemorative Garden would be fully funded by the Club and volunteers.

Should the proposal go ahead and club membership change, there is a potential for maintenance of the site to reduce, placing resourcing burden on Council.

Policy

In 2010, Council rescinded its former Memorial Seats Policy CR115 which enabled individuals to pay for the installation of memorial plaques and seats on public reserves throughout the Municipality.

As such, a proposal such as for the dog memorial garden is against Council Policy and any formal approval of a memorial plaque or commemorative garden such as the project proposal, would require a formal resolution of Council, following an extended public exhibition process.

Planting of trees and shrubs in the commemorative garden would need to be carried out in accordance with Council's Tree Management Policy for public lands.

Consultation (internal)

Advice was sought from Council's Property, Strategic Planning, Design & Development, Cemetery Operations and Park Maintenance sections in preparing Council's response to the club and in preparing this report.

Communication/Community engagement

No community engagement has occurred by the Club or Council to date.

Should Council decide to support the proposal in some form, broad community consultation would be required to ascertain broader community views on the proposal.

Report of the Director Engineering and Works

14.5 Proposed Commemorative Garden on Gerringong Headland (cont)

Attachments

- 1 Gerringong Lions - request Commemorative Garden Project proposal - South Warri headland [↓](#)
- 2 Response to Gerringong Lions - Commemorative Garden Project Proposal - Mike Dowd [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. Provide in principle support and thank the Gerringong Lions Club for the proposal for a Commemorative Garden at Gerringong Headland to recognize 75 years of service provided to the community by the Lions Club.
2. Note that inclusion of a commemorative dog plaque is not permissible under Council Policy

BACKGROUND

As part of their celebrations to recognise 75 Years of the Lions Club operating in Australia, Lions Club Australia are attempting to establish 75 Commemorative Gardens around Australia by September 2022.

In July 2021, Council received a project proposal from the Lions Club of Gerringong to establish one of these Commemorative Gardens at Gerringong Headland. The proposal also included a component put forward by the Gerringong Dogs Group for a commemorative dogs garden in remembrance of members' dogs who have died.

The proposed garden would be located within the dog off leash area of Gerringong Headland, immediately north of Gerringong Cemetery as shown on Figure 1 below.



Figure 1: Proposed Commemorative Garden Location
(source: Gerringong Lions Club Project Proposal)

Report of the Director Engineering and Works

14.5 Proposed Commemorative Garden on Gerringong Headland (cont)

The detailed proposal is attached to the report and is summarised here.

- The proposed garden is intended to be roughly oval in shape as shown in figure 2, approximately 5m x 15m at its widest and comprises:
 - Plantings in the rear portion (western side) covered in appropriate indigenous trees and shrubs, and the front portion with appropriate ground covers.
 - Garden edging to enable easier edge-mowing.
 - A small concrete apron to allow two large dog water bowls to be added.
 - Two backless bench seats made of composite timber and steel for dog owners, particularly elderly and disabled, to rest on.
 - A plaque on a stone monument located between the bench seats to commemorate the construction and official opening of the garden.
- The additional commemorative Dogs Garden component would comprise:
 - Wooden sleepers embedded at varying heights between the front and rear planting areas for dog owners to have small commemorative plaques attached for their pet dogs that have died.
 - The Club proposes to place a limitation on type and size of plaque for purposes of appearance and consistency, with location on sleepers strictly controlled.

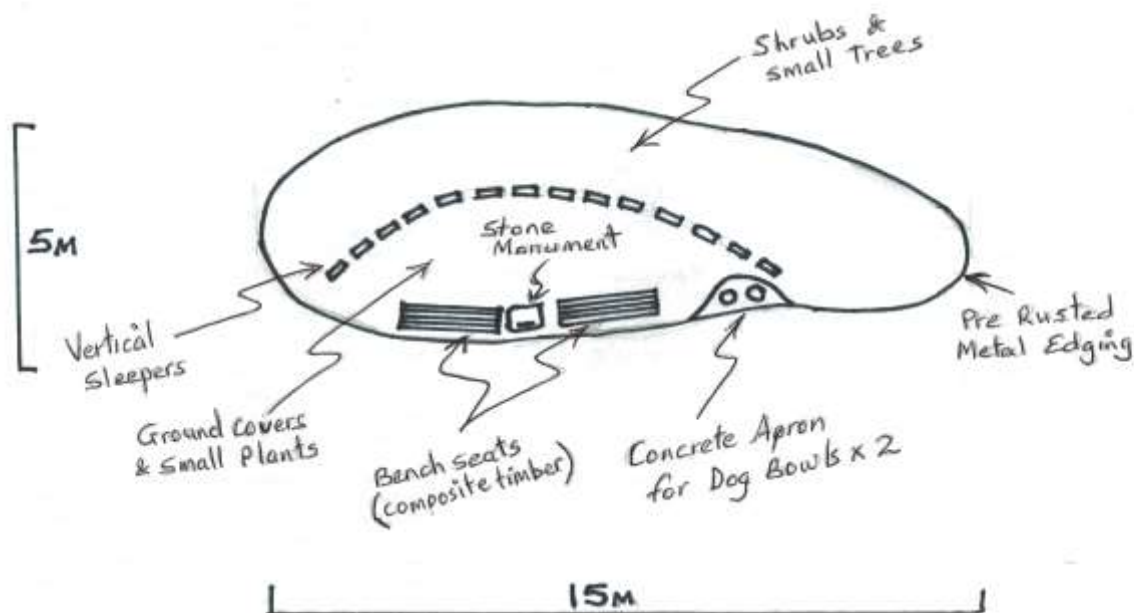


Figure 2: Layout of Proposed Commemorative Garden

(source: Gerringong Lions Club Project Proposal)

- Construction, planting and ongoing maintenance of the garden is proposed to be carried out Lions Club, Dogs Club and Gerringong Mens Shed volunteers utilising volunteer labour, community fund raising and potentially external grant funding as needed and where available.

Report of the Director Engineering and Works

14.5 Proposed Commemorative Garden on Gerringong Headland (cont)

- The proposal mentions that “it is also hoped that Kiama Municipal Council may contribute to this community project”.

CURRENT POSITION

The proposal has been reviewed by staff from Council’ Property, Strategic Planning, Design & Development, Cemetery Operations and Park Maintenance sections. The outcomes of this review were conveyed to the Lions Club in late August (copy attached) and can be summarised as:

1. The concept of a commemorative garden is considered appropriate, particularly recognising the long history of community service provided by the Lions Club,
2. Inclusion of a dog memorial involving individualised plaques is not supported as it is not permissible under Council Policy,
3. As an alternative to the individual dog memorial plaques, recognition of local dogs past and present who have used this beautiful site could be included on the single plaque installed at the Garden to recognise the Lions Club and the construction of the garden.

The following provides key points from the review and the basis for the advice provided to the Club:

Permissibility/Appropriateness

1. The site of the proposed garden is located on Council land, designated as community land for public recreation use and is also designated as a dog off-leash area.
2. This area surrounding the proposed garden is a very well used and much loved recreational area, often used for weddings, Anzac Day commemorations, whale watching, dog exercise and general passive recreation.
3. Gerringong Cemetery is immediately south of the proposed garden. This facility is very close to capacity and opportunities for future expansion into this public recreation area, although not planned, may be considered by a future Council.
4. In regards to the commemorative garden, the proposed location and size is appropriate for its surroundings, noting that the Club would need to refer to Council’s Tree Management Policy and seek guidance from Council staff in regards to the appropriate selection of species for the site, particularly relating to requirements for local species and to not impact on neighbour’s views.
5. In regards to the proposed dog memorial, this proposal is not acceptable to Council on a number of fronts and is not supported by Council Policy.
6. In 2010, Council rescinded its former Memorial Seats Policy CR115 which enabled individuals to pay for the installation of memorial plaques and seats on public reserves throughout the Municipality. As such, a proposal such as for the dog memorial garden is against Council Policy and any formal approval of a memorial plaque or commemorative garden such as this project proposal, would require a formal resolution of Council, following an extended public exhibition process.

Report of the Director Engineering and Works

14.5 Proposed Commemorative Garden on Gerringong Headland (cont)

7. It is considered that the proposal for dog memorial plaques would set an undesirable precedent. If approved in Gerringong, there is potential for any community in the Municipality to ask to establish a similar memorial for their local pets in any local park.

Management/Maintenance

1. The Lions Club proposal outlines their intention to maintain and manage the proposed garden, without Council assistance. However, Council would have a potential ongoing liability and maintenance burden for such a facility, based on recent experiences from other parks where community groups have initially undertaken volunteer work to maintain additional facilities, but subsequently sought assistance and unfunded resources from Council when volunteers lost interest or capacity to look after their improvements.
2. In regards to the proposed dog memorial plaques, more discussion would be required with the Club to ensure any burden placed on the Lions Club or Dog Owners group to manage and control the placement of plaques on the sleepers by dog owners. The proposal states that "*A limitation on type and size of plaque will be set for purposes of appearance and consistency, with location on sleepers strictly controlled*". This suggests that only a limited number of dogs will ever be able to be memorialised at the site and that the community groups would set the rules around who could and could not place a plaque. Once word spreads of the facility, the site could be overwhelmed with applications from all over the Municipality and beyond. There is also the question of who would pay for the plaques, would there be fees attached and who would manage their repair or replacement if lost or damaged?
3. Establishment of fees for such a restricted, limited access activity is not covered in Council's Fees and Charges and this is not considered as an appropriate activity on community land which is freely and openly accessible to all members of the community. Nor is it considered appropriate that Council take on this role.

At the time of preparing this report, the Club has not replied to the initial response provided by Council's Director in later August.

CONCLUSION

The Gerringong Lions Club, Dogs Group and Mens Shed should be congratulated for coming together to prepare a well-structured proposal for a commemorative garden and dog memorial on Gerringong Headland.

The proposal has been reviewed by staff and an initial response provided to the Clubs concluding that establishment of a commemorative garden would be appropriate to recognise 75 years of service provided to the community by the Lions Club, however the inclusion of a commemorative dog plaques as part of the garden is not appropriate. As an alternative, recognition of local dogs past and present who have used this beautiful site could be included on the single plaque installed at the Garden to recognise the Lions Club and the construction of the garden.

Lions Club of Gerringong Commemorative Garden

Introduction:

Lions Club Australia are currently planning for celebrations of 75 years of Lions in Australia. As part of this process, Lions Club Australia are attempting to establish 75 Commemorative Gardens around Australia by September 2022.

The Lions Club of Gerringong would like to participate in this 75 year celebration by establishing a Commemorative Garden in Gerringong. The Club have been approached by members of the local Gerringong Dogs Group with regards assistance in developing a Commemorative Dogs Garden on the Gerringong Headland offleash area, in remembrance of members much loved dogs that have died. The Club thought this to be a most worthwhile project and would also fit in with the intention to be involved in the Lions Club Australia 75 year Commemorative Garden initiative. This is a project which would benefit the community and also involve several community groups in achieving this goal.

Proposal:

The Lions Club of Gerringong would like to establish a Commemorative Garden as part of the Lions Club Australia 75 year anniversary initiative, in conjunction with the Gerringong Dogs Group proposal and seek approval from Kiama Municipal Council for this project. The Commemorative Garden would be located roughly at a mid point of the Gerringong headland off leash area in an area currently covered by lantana. (see pictures 1, 2 & 3)



Project Outline:

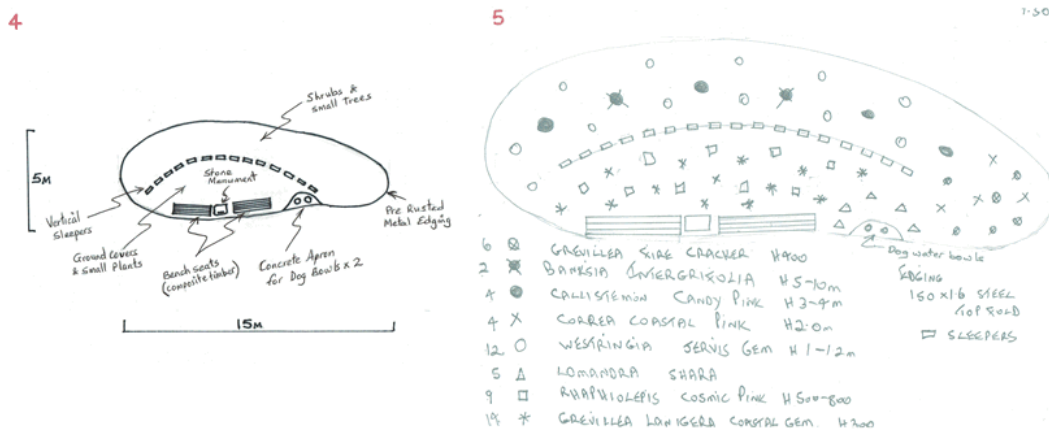
The Commemorative Garden project would see involvement of Lions Club of Gerringong, Lions Club of Australia, Gerringong Men's Shed, Gerringong Dogs Group, members of the Gerringong community and Kiama Municipal Council, should they choose to come onboard.

The basic concept is to make an attractive garden feature on an open area of the headland off leash portion of the hill. A very popular site much frequented by locals and visitors, who utilise the area for whale watching, sight seeing, photography, kite flying and games, family outings and picnics, general walking, exercising, bike riding and dog walking.

Initially, all lantana on the garden site will be removed. The garden will be roughly oval shaped, and be approx. 15m long and 5m wide at the broadest point. (see diagram 4). The concept is to have the rear portion (western side) covered in appropriate indigenous trees and shrubs, and the front portion with appropriate ground covers. (see diagram 5) The key feature of the design concept incorporates wooden sleepers embedded on end at varying heights between the front and rear flora. This barrier of sleepers is for dog owners to have small commemorative plaques attached to the sleepers for pet dogs that have died. **Note** - A limitation on type and size of plaque will be set for purposes of appearance and consistency, with location on sleepers strictly controlled.

The garden will be surrounded by steel top fold edging for durability, and to enable easier edge mowing. In addition, there will be a small concrete apron indented into the eastern side of the garden to allow for 2 large dog water bowls to be added. One currently in situ is utilised very regularly by dogs visiting the area and is topped up with water by dog owners. It is also proposed to have 2 backless bench seats made of composite timber and steel, installed at the front eastern edge of the garden. This is for dog owners, particularly elderly and disabled, to rest on whilst they and their dogs socialise and interact. This has been a favoured meeting spot for many dog owners.

The final component of the garden will be a plaque on a stone monument located between the bench seats to commemorate the construction and official opening of the garden.



At this stage, the estimated cost for this garden is around \$4,000-\$5,000. Should this project be approved to go ahead, the dogs group intend to hold a fund raising activity to assist with costs and Lions will also contribute towards this project in both funds and manpower. It is also hoped that Kiama Municipal Council may contribute to this community project and we will investigate the availability of a grant through Gareth Ward. The Gerringong Men's Shed have been approached to construct the bench seats. Ongoing maintenance of the garden will be supervised by Lions and assisted by the Dogs Group to ensure the plants are watered and the area regularly weeded.

Alyson Hodgekiss

From: [REDACTED]
Sent: Tuesday, 24 August 2021 8:36 PM
To: [REDACTED]
Cc: Alyson Hodgekiss; Cathie Bax
Subject: Lions Club of Gerringong Proposal
Attachments: Lions Commorative Garden Project proposal.pdf

Dear [REDACTED]

Thank you for your email to Council's Chief Executive Officer dated 14 July 2021 attaching a project proposal for a Commemorative Garden and Dog memorial on the Gerringong Headland north of Gerringong Cemetery. The CEO has asked me to respond on her behalf. I apologise for the delay in responding to you.

I have referred the matter to a number of Departments within Council for review and have reached the conclusion that Council would welcome the establishment of a commemorative garden to recognise 75 years of service provided to the community by the Lions Club. I cannot however support the inclusion of a commemorative dog plaques as part of the garden. I provide the following consolidated advice to explain this position:

1. The site of your proposed garden is located on Council land, designated as community land for public recreation use and is also designated as a dog off-leash area.
2. This area surrounding the proposed garden is a very well used and much loved recreational area, often used for weddings, Anzac Day commemorations, whale watching, dog exercise and general passive recreation.
3. Gerringong Cemetery is immediately south of the proposed garden. This facility is very close to capacity and plans may be considered by a future Council to expand the Cemetery further north into this public recreation area.
4. In regards to the commemorative garden, I believe that the proposed location and size is appropriate for its surroundings and I ask you to refer to Council's Tree Management Policy in regards to the appropriate selection of species for the site, particularly relating to requirements for local species and to not impact on neighbour's views.
5. I appreciate your intention outlined in the proposal to maintain and manage the proposed garden. However, I am concerned at Council's potential ongoing liability and maintenance burden for such a facility and would welcome the opportunity for you to discuss arrangements with my Operations Manager at your convenience. This concern is based on recent experiences from other parks where community groups have initially undertaken volunteer work to maintain additional facilities, but subsequently sought assistance and unfunded resources from Council when volunteers lost interest or capacity to look after their improvements.
6. In regards to the proposed dog memorial, this proposal is not acceptable to Council on a number of fronts and is not supported by Council Policy.
7. In 2010, Council rescinded its former Memorial Seats Policy CR115 which enabled individuals to pay for the installation of memorial plaques and seats on public reserves throughout the Municipality. As such, a proposal such as for the dog memorial garden is against Council Policy and any formal approval of a memorial plaque or commemorative garden such as in your project proposal, would require a formal resolution of Council, following an extended public exhibition process.
8. I am also concerned at the undesirable precedent that the proposal would establish. If approved in Gerringong, there is potential for any community in the Municipality to ask to establish one for their local pets in any local park.
9. Moreover, I am concerned at the burden placed on the Lions Club or Dog Owners group to manage and control the placement of plaques on the sleepers by dog owners. Your proposal states that *"A limitation on type and size of plaque will be set for purposes of appearance and consistency, with location on sleepers strictly*

controlled". This suggests that only a limited number of dogs will ever be able to be memorialised at the site and that the community groups would set the rules around who could and could not place a plaque. The site could be overwhelmed with applications from all over the Municipality and beyond. There is also the question of who would pay for the plaques. This would not be an appropriate activity on community land and Council is not prepared to take on this role.

As an alternative, I would be happy to discuss with you the opportunity to amend the proposal to include recognition of local dogs past and present who have used this beautiful site on the single plaque installed at the Garden to recognise the Lions Club and the construction of the garden.

I want to congratulate the Lions Club, Dogs Group and Mens Shed for coming together to prepare a well-structured proposal and hope that we can work together to support its delivery, albeit without the dog memorial plaques. Please contact me on telephone 4232 0444 to arrange a meeting with relevant Council staff to assist in furthering the proposal.

Kind regards
Mike



Mike Dowd
Director Engineering & Works
Kiama Municipal Council
P: 02 4232 0444
PO Box 75, Kiama NSW 2533
www.kiama.nsw.gov.au



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Many of our facilities are closed due to the lockdown, but our essential services continue. Details: www.kiama.nsw.gov.au

RESPECT • INNOVATION • INTEGRITY • TEAMWORK • EXCELLENCE

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From: [REDACTED]
Sent: Sunday, 11 July 2021 8:47 AM
To: [REDACTED]
Subject: Attn. Jane Stroud

Dear Ms Stroud

My name is [REDACTED] and I am the Promotion and Publicity Officer of the Lions Club of Gerringong. Please find attached project proposal from Lions Club of Gerringong for the consideration of Kiama Municipal Council.

Thank you for your time and consideration.

Regards
[REDACTED]
Member -
Lions Club of Gerringong
Gerringong Dogs Group
Gerringong Men's Shed

15 REPORT OF THE DIRECTOR BLUE HAVEN

15.1 Blue Haven Update

CSP Objective: 1.0 A healthy, safe and inclusive community

CSP Strategy: 1.2 Planning for and assisting specific needs groups

Delivery Program: 1.2.1 Operate Blue Haven Care

Summary

This report provides information pertaining to Council's Blue Haven operations. Details related to current state of operations, such as unit occupancy are contained in the report.

Financial implication

Nil

Policy

No policy Changes Required

Consultation (internal)

Consultation with Blue Haven managers in Residential, Community Care and Retirement Living portfolios.

Communication/Community engagement

N/A

Attachments

Nil

Enclosures

Nil

RECOMMENDATION

That Council note the information contained in this report.

BACKGROUND

Blue Haven has been a part of Kiama Council and the Kiama community for over 40 years. In its current state the portfolio provides various levels of services and supports for daily living to seniors in the Illawarra and Shoalhaven.

Report of the Director Blue Haven

15.1 Blue Haven Update (cont)

Governance structure

The services offered through Blue Haven have operated under the direction and governance of Council's leadership structure. This has included the CEO, Director and the Councilors. In recent times, mainly due to increasing regulatory pressure, it has become necessary to review the governance and compliance of Blue Haven and ensure that an adequate governance structure is in place. As previously reported, the Councilors and CEO have been working towards the implementation of a section 355 committee after the Blue Haven section 355 policy was endorsed at the August 2021 ordinary meeting of Council. As per the policy the section 355 committee will be named the Blue Haven Advisory Board.

Advertising for the five available independent member positions was completed in September 2021 and interviews are being held with shortlisted candidates between 5 October and 12 October 2021. It is anticipated that the first meeting of the Blue Haven Advisory Board will be held in November 2021. As well as oversee Blue Havens operations and compliance the Advisory Board will focus on the governance of clinical care and the adherence to the aged care quality standards.

A general update on each of Blue Havens operational areas is provided below:

Residential aged care facility

The Residential Aged Care Facility (RACF) currently has a 94% occupancy rate. This is above the industry standard, which has fallen across the country during the Covid-19 pandemic. During this time Blue Haven has increased its occupancy considerably.

The residential aged care facility has been responding to the extensive final report of the Royal Commission into Aged Care Quality. Numerous continuous improvement and quality initiatives are underway, all aimed at keeping Blue Haven as a provider of choice in the region.

The RACF recently received a 6-month extension to its usual 3 year accreditation cycle, which was due to expire in September. The Blue Haven team will continue to work towards improvements in care and governance with accreditation now expected to occur sometime prior to March 2022. The accreditation process involves the facility submitting a self-assessment to the Aged Care Quality and Safety Commission which has been completed. A team of auditors from the Aged Care Quality and Safety Commission will then be sent to the site unannounced, with staff therefore not having any indication of the date or time of their arrival.

I am pleased to report to Council that Blue Haven RACF has achieved a 100% staff vaccination rate. As required by the public health order, all working staff have received a Covid-19 vaccination prior to September 17th 2021. A big thank you must be extended to the local Primary Health Network for sourcing enough Covid-19 vaccinations and to local GP Jacquie Pinson for her time volunteering to vaccinate staff on site.

Report of the Director Blue Haven

15.1 Blue Haven Update (cont)

Retirement living units

Kiama Council has 260 apartments in Kiama that cater for independent seniors living. People living in these units retain much of their independence. Many still drive to the shops and enjoy a great quality of life without the burden of maintenance and cleaning of a larger home. Council's two retirement village complexes also provide many opportunities for social connection and friendships in shared spaces, organized activities and close social networks. The value of social connection and proximity to the amenities of the Kiama central business district makes ageing in place in our independent living units a genuinely valued lifestyle option for many.

At our Terralong site there are currently 6 vacancies with an occupancy rate of 97%

I am pleased to report that all units at the new Bonaira site have been sold, or are under deposit.

Community aged care

Covid-19 has had a large impact on community-based services. Many seniors are reluctant to receive care in these uncertain times. Blue Haven community staff have worked tirelessly to ensure consumers of our community services feel safe and protected. Although it is not a requirement the community has achieved a 99% vaccination rate. This is a testament to the community team that travel the Illawarra providing in home support.

Blue Haven Community team is also proud of their operation of local community transport fleet. Over 300 clients regularly use this transport service to also help maintain their independence and contact with the community.

You will often see the fleet of Blue Haven Buses driving seniors around the area to necessary appointments, shopping or social groups. Community transport is well supported by an amazing group of local volunteers that provide their time to drive buses, volunteer time in social support and help others access services in their community. As the restrictions of Covid-19 ease Blue Haven will be looking for more amazing volunteers in both the aged care facility and community and transport programs.

Covid-19 Planning and Preparation

Blue Haven continues to refine its response and plans to the Covid-19 pandemic.

We work hard to ensure rigorous safety practices and the ongoing health and wellness of our staff and residents. Management has worked in the last few months to refine our COVID safe plans and outbreak management plans.

As stated above the residential team has achieved 100% vaccination rate and the community team 99%. Both are outstanding results to ensure the safety of our communities most vulnerable residents.

In September the facility fortified its plans with the addition of extra equipment related to correct storage of PPE. Also, stocks of PPE have been recalculated with latest advice on usage and weekly stock takes ensure we maintain an adequate supply.

Report of the Director Blue Haven

15.1 Blue Haven Update (cont)

Blue Haven recently hosted an infection control expert from the health district to review plans and consult on the latest PPE information around masks and mask fitment. The management team at Blue Haven have continued this close work with both the local health district and other aged care providers throughout the pandemic, with meetings held each week to address the latest topics and updates.

Item 15.1

16 REPORTS FOR INFORMATION

16.1 Community donations update - 4th quarter 2020/21 and 1st quarter 2021/22 reporting

Responsible Director: Office of the Chief Executive Officer

In the fourth quarter for the 2020/2021 financial year and the first quarter of the 2021/2022 financial year the Community Donations Panel has approved a \$250 contribution to the following:

Applicant	Funding towards
Jamberoo Public School	Operational costs for Trivia Night
Gerringong Rotary Club	Operational costs for Mental Health First Aid Courses
Kiama Garden Club	Operational costs of running the event and purchase of prizes.

Communication/Community Engagement

Details of Council's Community Donations Policy are available on Council's website.

16.2 Alcohol and Other Drugs Policy and Procedure for Councillors - administrative reviewResponsible Director: Office of the Chief Executive Officer

A biennial review was completed in August 2021 of the Alcohol and Other Drugs Policy for Councillors and the Alcohol and Other Drugs Procedure for Councillors. Minor administrative changes have been made to both documents. The schedule of proposed changes for both documents are attached together with the policy and the procedure.

Item 16.2

Communication/Community Engagement

As the changes to the Procedures were administrative only there is no requirement for the document to be further endorsed by Council, so no public exhibition is required.

Attachments

- 1 Alcohol and Other Drugs Policy for Councillors review 2021 [↓](#)
- 2 Schedule of proposed changes - Policy Review [↓](#)
- 3 Alcohol and Other Drugs Procedure for Councillors review 2021 [↓](#)
- 4 Schedule of proposed changes - Procedure Review [↓](#)



Alcohol and Other Drugs Policy for Councillors



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Date adopted	25 June 2019
Resolution number	19/225OC
Date effective	25 June 2019
Date last reviewed	1 August 2021
Next review date	1 August 2024
Department	Office of the Chief Executive Officer
Author	Risk Management Coordinator
TRIM reference	20/51561
Supporting documents	Alcohol and Other Drugs Procedures for Councillors

Draft

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Draft

1.0 Purpose

Kiama Municipal Council is committed to ensuring all workers are provided with a safe, healthy and productive workplace free from the adverse effect of any drugs and/ or alcohol. Council takes a zero tolerance stance of any use of alcohol or illegal drugs which constitutes a criminal offence or has the potential to adversely affect the health and safety of council's workers and others in the workplace or the conduct of council's operations.

2.0 Objectives

2.1 The objectives of this policy are to:

- a) create a safe and healthy work environment for all workers, contractors and visitors which is free from the hazards associated with the inappropriate use of alcohol and/or other drugs
- b) create a supportive culture that acknowledges and encourages workers to accept individual responsibility for workplace health and safety
- c) provide support for workers who may have difficulty addressing alcohol and/or drug related issues
- d) foster an attitude and culture amongst all workers that it is not acceptable to come to work under the influence of alcohol and/or drugs that will prevent them from performing their duties in a safe manner.
- e) ensure all disciplinary processes are consistently managed in accordance with the Kiama Municipal Council's Code of Conduct for Councillors and Procedures for the Administration of the Code of Conduct, if any disciplinary action is required

3.0 Scope

This policy applies to the Mayor, Councillors and Chief Executive Officer (referred to as 'worker' throughout this policy for consistency with standard WHS practice and legislation) within Kiama Municipal Council.

4.0 References

4.1 This document should be read in conjunction with:

- a) Alcohol and Other Drugs Procedure for Councillors
- b) Work Health and Safety Act 2011 (NSW)
- c) Work Health and Safety Regulations 2017 (NSW)
- d) Code of Conduct for Councillors
- e) Procedures for the Administration of the Code of Conduct
- f) Road Transport Act 2013
- g) Australian Standards:
 - i) AS3547:1997 and any subsequent editions – breath alcohol testing devices for personal use
 - ii) AS4760:2006 and any subsequent editions – procedures for specimen collection and the detection and quantitation of drugs in oral fluid

5.0 Policy

- 5.1 Council recognises its responsibility to ensure the health, safety and welfare of workers and is committed to providing a safe, healthy and productive workplace that is free from hazards relating to alcohol and drug use.
- 5.2 The Alcohol and Other Drugs Procedure which accompanies this policy (to be read together) describes the standard behaviour expected in relation to the:
 - a) use of alcohol and other drugs
 - b) responsibilities of its workers and others in the workplace
 - c) actions and processes that Kiama Council will take to ensure that the purpose of the Policy are met
 - d) consequences of a breach

6.0 Private review

- 6.1 This protocol was formally adopted by Council on 25 June 2019.
- 6.2 Council reserves the right to review or vary this protocol in consultation with employees affected by this protocol.

7.0 Document control

Date reviewed	Date adopted	Amendment
New Policy	25 June 2019	V1
7 November 2019	19 November 2019	V2 – administrative change to clause 4i(i) and 4i(ii) addition of the words “and any subsequent editions” to follow the reference to AS3547:1997 and AS4760:2006
1 August 2021		V3 policy review

8.0 Signature

Name: Click or tap here to enter name.	
Signature: 	

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KIAMA MUNICIPAL COUNCIL
your council, your community

Schedule of proposed changes		
Policy/Protocol Name:	Alcohol & Other Drugs Policy for Councillors	Review commenced: 22/7/21
Reviewed by:	Keti Volkanovski	Last edit: Tuesday, 5 October 2021
Reason for review:	Scheduled Review	

#	Clause	HR Change Proposed	Notes
1	Replaced General Manager with Chief Executive Officer		Title Change
2	2.1 (e)	Deleted 2.1 (e)	Administrative change. Duplication of information
3	2.1 (f)	Deleted 2.1 (f)	Administrative change. Duplication of information
4	2.1 (g)	Deleted 2.1 (g)	Administrative change. Duplication of information
5	4.1 (a)	Deleted "Council's"	Administrative change. Title correction
6	4.1 (d)	Deleted 4.1 (d)	Administrative change. Not required
7	4.1 (e)	Deleted "Council's"	Administrative change. Title correction
8	4.1 (f)	Deleted "Council's"	Administrative change. Title correction
9	4.1 (h)	Deleted 4.1 (h)	Administrative change. Not required
10	5.1	"Council recognises its responsibility to ensure the health, safety and welfare at work of workers" Replaced with "Council recognises its responsibility to ensure the health, safety and welfare of workers"	Administrative change – grammar correction



Alcohol and Other Drugs Procedure for Councillors



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Date adopted	25 June 2019
Resolution number	19/225OC
Date effective	25 June 2019
Date last reviewed	1 August 2021
Next review date	1 August 2024
Department	Office of the Chief Executive Officer
Author	Risk Management Coordinator
TRIM reference	20/51604
Supporting documents	Alcohol and Other Drugs Policy for Councillors

Draft

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Draft

1.0 Purpose

The purpose of this procedure is to:

- a) Manage alcohol and other drugs and their effect on workers' fitness for work whilst performing duties at Council; and
- b) Ensure that Council has a mechanism to appropriately manage the misuse of alcohol and other drugs in the workplace through training, education and where required, rehabilitation.

2.0 Objectives

The objective of this procedure is to:

- a) Eliminate the risks associated with the misuse of alcohol and other drugs in the workplace, thereby providing a safer work environment;
- b) Reduce the risks of alcohol and other drugs impairment in the workplace; and
- c) Promote a supportive culture that encourages a cooperative approach between Mayor and Councillors and builds on the shared interest in workplace health and safety.

3.0 Scope

This policy applies to the Mayor, Councillors and Chief Executive Officer (referred to as 'worker' throughout this policy for consistency with standard WHS practice and legislation) within Council.

4.0 References

This document should be read in conjunction with:

- a) Alcohol and Other Drugs Policy for Councillors;
- b) Work Health and Safety Act 2011 (NSW);
- c) Work Health and Safety Regulations 2017 (NSW);
- d) Code of Conduct for Councillors;
- e) Procedures for the Administration of the Code of Conduct;
- f) Road Transport Act 2013;
- g) Australian Standards:
 - i) AS3547:1997 and any subsequent editions – breath alcohol testing devices for personal use
 - ii) AS4760:2006 and any subsequent editions – procedures for specimen collection and the detection and quantitation of drugs in oral fluid

5.0 Duty of care, responsibilities and obligations

Council recognises its responsibility to ensure the health, safety and welfare at work of workers and visitors and is committed to providing a safe, healthy and productive workplace that is free from hazards relating to alcohol and drug use.

5.1 General requirements

The following **general requirements** apply to all workers on a Council worksite:

- a) At all times workers will present themselves for work, or resume duties in a 'fit for work' condition, that is, not under the influence of alcohol or other drugs except where the drug is legally prescribed by a doctor for the purposes of treating a medical condition and their work is not likely to be affected by the drug;
- b) No worker will ingest, inhale or inject any drug at work except where the drug is legally prescribed by a doctor (or able to be purchased legally over the counter). All workers have a duty of care to ensure that any prescribed/ over the counter medication will not affect their ability to work safely; and
- c) All workers will refer any alcohol and/ or drug related and/ or welfare concerns likely to pose a safety hazard to any person or property to the Mayor. If the issues are not resolved it should be referred to the Chief Executive Officer.

5.2 Specific requirements:

5.2.1 Mayor:

- a) Report to work in a fit state, unimpaired by any substance, including when they return to work following scheduled breaks.
- b) Ensure the implementation and adherence of the alcohol and other drugs procedure throughout the Councillor's workplace.
- c) Ensure workers are aware of their responsibilities and are provided with adequate information, instruction and training.
- d) Ensure compliance with the requirements of this procedure.
- e) Ensure the provision of confidentiality are adhered to.
- f) Advise the Chief Executive Officer if they, or any other worker is known to be, or suspected of being unable to perform their duties due to the effects of alcohol and/ or drugs.

5.2.2 Councillors:

- a) Report to work in a fit state, unimpaired by any substance, including when they return to work following scheduled breaks.
- b) Ensure the law is adhered to in relation to the possession and consumption of any substances including alcohol.
- c) Advise the Mayor if they, or any other worker, including the Chief Executive Officer is known to be, or suspected of being unable to perform their duties due to the effects of alcohol and/ or drugs.
- d) Question their doctor or pharmacist in regard to the effect or side effect, if any, their medications may have on work and/ or safety performance.
- e) Recognise that performance of their duties could be affected by alcohol or drugs and instigate appropriate risk control measures if required.
- f) Not undertake duties if their ability to perform their duties safely, competently and professionally is affected by alcohol or drugs.
- g) Observe all directions from the Mayor in regards to this procedure.
- h) Not possess, distribute or otherwise consume any prohibited substance or deliberately misuse substances while on duty or on Council's premises.

5.2.3 Chief Executive Officer:

- a) report to work in a fit state, unimpaired by any substance, including when they return to work following scheduled breaks.
- b) ensure the implementation and adherence of the alcohol and other drugs procedure throughout Council workplace and operations.
- c) make all workers aware of, and understand, the alcohol and other drugs procedure and the provision therein.
- d) ensure provisions of confidentiality in this procedure are adhered to.
- e) address concerns or issues relating to the procedure, promptly and proactively to ensure the health and safety of all workers.
- f) ensure support is provided to workers who request/ require assistance with issues around substance abuse as appropriate.

5.3 Usage of Council vehicles:

- a) In circumstances where workers are required to operate Council vehicles, workers have an obligation not to drive these vehicles whilst under the influence of alcohol, illegal drugs or prescription/ over the counter medication (if their side effects of the prescription/ over the counter medication prohibit safety usage of vehicle/ plant).
- b) Workers may be personally liable where their actions in these circumstances lead to injury or property damage.
- c) All legal limits for the operation of vehicles will be adhered to.

5.4 Approved work related social events:

- a) The Mayor may grant permission for the consumption of alcohol at social events, meetings or civic functions.
- b) Workers attending any Council approved function will demonstrate moderation, maintain professional conduct at all times and ensure they and other workers are not adversely affected by alcohol.
- c) No worker will ingest, inhale or inject any drug at work except where the drug is legally prescribed by a doctor (or able to be purchased legally over the counter). All staff have a duty of care to ensure that any prescribed/ over the counter medication will not affect their ability maintain professional conduct.

5.5 Approved work related social event at a Council worksite:

- a) In the event that the Mayor permits alcohol to be consumed at a Council owned facility the function must be held away from any machinery or vehicles that are being, or may be, operated.
- b) Council approved work related social events at a Council worksite are to occur at the end of the working day away from the immediate work area.

5.6 Conferences, training courses or seminars:

- a) Workers attending a Council approved function or representing Council at conferences, training courses or seminars must ensure they act in a reasonable and responsible manner when consuming alcohol.
- b) No worker will ingest, inhale or inject any drug at work except where the drug is legally prescribed by a doctor (or able to be purchased legally over the counter). All workers have a duty of care to ensure that any prescribed/ over the counter medication will not affect their ability to work safely.

6.0 Education and training

Council recognises that it is important to develop a safe workplace culture in relation to the use of alcohol and other drugs, through education; where workers are prepared to encourage each other to be safe and not under the influence or impaired at work.

6.1 Information for Mayor and Chief Executive Officer

Council will provide practical guidelines and training for:

- a) responsibilities for the implementation of alcohol and other drugs protocol and procedure
- b) management of strict confidentiality of test results and/or referral for assistance
- c) communication with persons who may be affected by alcohol and other drugs
- d) correct application of disciplinary action
- e) reintegration of a worker into the workplace upon completion of rehabilitation
- f) creation and maintenance of suitable records.

6.2 Information for workers

Workers will receive information through further training, intranet and Council briefings on the following topics:

- a) Alcohol and Other Drugs Policy and Procedures for Councillors
- b) Council's management of privacy and confidentiality of test results and referrals for assistance.

7.0 Supportive culture and employee assistance

A key feature of the way alcohol and other drug use (as it impacts upon the workplace) is managed is by providing supportive culture where open and honest conversations on this subject can be had between the Mayor and Councillors.

It is vital all Kiama Council workers understand that first and foremost Council's preferred option is to provide assistance to staff with an alcohol and/ other drug dependence. It should be noted however that this procedure does provide a process for disciplinary action should repeated non-adherence occur.

7.1 Identifying other workers whose behaviour is risky to themselves and others

- a) It is recognised that there may be reasons why workers feel uncomfortable about identifying fellow workers whose behavior is risky to themselves and others
- b) Council supports workers and will provide assistance through a rehabilitative approach to manage these issues.
- c) Under no circumstances is it permissible to discriminate against a worker who raises a safety issue relating to alcohol and other drug use; nor a worker suspected of breaching this procedure. *Refer to Appendix 1 – Self Disclosure Flowchart.*
- d) At all times the matter of alcohol and other drug use (as it impacts upon the workplace) is to be managed in a confidential and sensitive manner.

7.2 Rehabilitation

- a) The Mayor may where appropriate work with the worker to develop a rehabilitation plan to manage their fitness for work issue.

- b) The details of the plan should be agreed between the parties and may include the aim of the plan, the actions to be taken, the progress reporting procedure, the review date and timeframe for return to work.
- c) The parties may also include a representative of their choice to assist in the development of this plan.
- d) With the approval of Council, unpaid leave may be available to the worker undertaking alcohol and/ or other drugs rehabilitation or counselling. Such approval shall not be unreasonably withheld.
- e) A rehabilitation plan template is included in this procedure. *See Appendix 2.*
- f) If a worker has previously been under a rehabilitation plan and subsequently breaches Council's Alcohol and Other Drugs Policy and Procedure or the workers actions represent gross misconduct, support for rehabilitation may not be available and supported by Council. Council reserves the right to take other appropriate action, which could include disciplinary action in accordance with the Code of Conduct for Councillors and Procedures for the Administration of the Code of Conduct.

7.3 Worker assistance

- a) If a worker has issues of concern including those related to alcohol and other drugs, Council encourages workers to make use of the Employee Assistance Program (EAP) and seek appropriate support and assistance.
- b) Council will provide appropriate education, information, instruction and counselling necessary for workers to understand the risks associated with the use and abuse of alcohol and other drugs at work.

7.4 Mitigating factors

Mitigating factors will be taken into consideration for each instance that a worker does not appear to be in a fit state for work. All workers will be given an opportunity to explain their behaviour (keeping in mind that a person may appear to be impaired from alcohol or other drugs but not necessarily have taken any such substances).

- a) The symptoms of impairment consistent with alcohol and other drugs use may also be similar to other health issues. These may include psychological, behavioural, environmental or medical issues (all of which can have a detrimental effect on Council's ability to provide a safe workplace). In these instances the strength of the relationship between Mayor and Councillors is critical because if a trust relationship is not formed the worker will not feel comfortable discussing these sensitive issues.
- b) Council strongly encourages (but cannot force) workers to disclose any issues they may be suffering which has the potential to adversely impact upon themselves or other workers.
- c) It is expected that if a worker voluntarily discloses psychological, behavioural, environmental or medical personal information that this information is treated with a strict adherence to confidentiality/ privacy principles.
- d) Mitigating factors include things such as, but not limited to:
 - i) unexpected impairment from prescription or over the counter medication;
 - ii) side effects from medical treatment or an illness or injury;
 - iii) impairment from fatigue to a personal trauma, sleep deprivation or other issue; or
 - iv) any similar factor that may cause impairment but is not the result of inappropriate alcohol or other drug consumption.

7.5 Prescription/ over the counter medication

Certain medication may cause impairment whilst at work and return a non-negative result during alcohol and other drug testing. Workers are therefore encouraged to inform the Mayor if they are taking any medication that may either return a result that would indicate impairment or more importantly hinder their ability to perform their duties safely.

- a) Workers should seek advice from their doctor and/or pharmacist if they believe the pharmaceutical and/ or prescribed medication may impact their own and others safety at work,
- b) It is recommended that workers seek alternative medication from their doctor and if not available, ask for information regarding the medication. It is recommended to keep medication packaging on hand while at work.
- c) Whilst taking any form of medication the level of consumption should not be in excess of the recommended dose.
- d) If a worker is taking a medication which hinders their ability to work safely, standing the worker down for that shift should be considered. Should the latter be required, assistance will be given to the worker to ensure they arrive home safely.

8.0 Alcohol and other drugs testing program

Council has established a program of testing that will discourage people from entering a Council workplace where they may be unfit for work because of alcohol or other drugs. Additionally, Council's alcohol and other drugs testing program will assist in identifying people who may be unfit for work.

Council's testing program will:

- a) provide workers with information about the effect of alcohol and other drugs
- b) discourage people from coming to work where they may be unfit for work because of alcohol or other drugs
- c) assist in identifying workers who may be unfit for work.

8.1 Testing methods

- a) Voluntary
- b) Random
- c) Reasonable suspicion
- d) Return to work targeted.

8.1.1 Voluntary testing

- a) Voluntary testing provides workers with the ability to volunteer to be tested for alcohol and other drugs before attending work.
- b) A breath analysis device and/ or oral swab test will be used to conduct the screening in accordance with the Australian Standard.
- c) Workers should request a voluntary test if in doubt, prior to commencing duties.
- d) Any worker who voluntarily undergoes an alcohol and other drugs screening will not be subject to disciplinary action, however they will be encouraged to refer themselves to an EAP provider.
- e) Continued absence from work after returning non-negative results to voluntary screening can invoke disciplinary action.

8.1.2 Random testing

- a) Random testing for alcohol and/ or other drugs for workers may be conducted at any time throughout the workers hours of work (including overtime and/or on-call staff).
- b) Testing will be carried out by a suitably qualified personnel in a private area which contains the adequate facilities for testing.
- c) Random testing may be undertaken with little or no notice and all workers will be eligible for selection for random testing.
- d) Workers will be selected for testing by using a simple random selection process involving the selection of a worker, location or group of workers located in a specific area.
- e) Workers may be randomly selected using the following methods;
 - i) a simple random number generator may be used to randomly select worker identification numbers; or
 - ii) alternatively, an entire work site may be randomly selected with all staff at work at that particular site that day being tested.
- f) Workers who are selected will be required to present themselves for testing immediately.
- g) Testing will be conducted in an appropriate area which contain adequate facilities for testing.

8.1.3 Reasonable suspicion

- a) Reasonable suspicion testing is used in instances where information is received or inappropriate behaviours are observed that may indicate that a worker is not in a fit state to be on a Council worksite.
- b) The worker will be requested to undergo an alcohol and other drug test under the direction of the Mayor; Chief Executive Officer or Delegated Responsible Person.

8.1.4 Return to work targeted testing

- a) The Mayor is accountable for monitoring the frequency of targeted random testing for a worker who provides a non-negative confirmatory result. The Mayor will determine the appropriate action.
- b) Targeted random testing will only be required:
 - i) for drugs, where the non-negative confirmatory result was not in accordance with declared prescribed medication levels; and
 - ii) for alcohol, where a non-negative result above the relevant blood alcohol limit applicable to the worker has occurred.
- c) If a worker has returned a confirmed positive alcohol and other drug test; as part of the return to work process, they must submit to a targeted alcohol and other drug test.
- d) Workers on the targeted random testing program have either;
 - i) previously given a confirmed positive test result for alcohol and/ or other drugs; and/ or
 - ii) unreasonably refused a test for alcohol and/ or other drugs as a result of a random screening program.
- e) Workers will still be included in the random test program.

- f) Where a worker presents a negative result or result lower than the acceptable levels identified in this procedure, the person will be permitted to commence or resume their normal duties.

9.0 Testing procedure – alcohol

- a) Workers identified to participate in alcohol testing will be required to carry out a supervised alcohol test using a calibrated breath testing device in accordance with AS3547: Breath Alcohol Devices for Personal Use
- b) Testing will be administered by a suitably qualified person
- c) An alcohol test will be conducted at a suitable private location in the workplace. The worker has the right to have a nominated representative present during the test and a right to change their mind and refuse the alcohol test
- d) Unless medically required, no food or drink is to be consumed for 15 minutes prior to the test. Smoking shall also not be permitted as it may distort the results
- e) In the event that a non-negative result is registered, a subsequent test will be carried out 15 minutes after the initial test. During this period, the worker is to be supervised continually at all times by the person conducting the tests
- f) Workers with a non-negative second breath analysis test result will be presumed unfit for work until arrangements will be made to transport the person to their home.
- g) Workers with a non-negative second breath analysis will then be required to submit for a further test at the first available opportunity on the next working day before being able to resume normal working duties
- h) If the worker does not wish to have the initial and/or second test, it will be presumed to be treated as though a second non-negative result was achieved and it may invoke disciplinary action in accordance with the KMC Code of Conduct Policy and Procedure
- i) Refusal to undertake a test will be recorded as a “refused test.” It will be presumed to be treated as a non-negative result. Repeated refusal to undertake a test may be referred to the Office of Local Government.
- j) Refer to Appendix 3: Alcohol Testing Flowchart
- k) A confirmatory breath test result is equal to the limits set in prescribed concentration levels of alcohol.

9.1 Prescribed concentration levels of alcohol

Council’s acceptable Prescribed Concentration of Alcohol levels (based on the NSW Governments blood alcohol concentration levels) are as follows:

9.1.1 0.00% applies to:

- Learner drivers
- Provisional 1 drivers
- Provisional 2 drivers
- Visitor drivers holding an overseas or interstate learner, provisional or equivalent licence.

9.1.2 Under 0.02% applies to:

- Drivers of vehicles of ‘gross vehicle mass’ greater than 13.9 tonnes
- Drivers of vehicles carrying dangerous goods

- Drivers of public vehicles such as taxi or bus drivers
- Workers engaged in the operation of major and/ or minor plant
- Workers undertaking activities specified as hazardous under WHS Act 2011 and WHS Regulations 2011.

9.1.3 Under 0.05% applies to:

- All other workers who do not meet any of the above criteria including those who are not required to drive as a part of their employment or who are unlicensed.

10.0 Testing procedure – other drugs

- a) Workers identified to participate in a drug test will be required to undergo an oral swab test as per the Australian Standard AS4760 – Procedures for specimen collection and the detection quantitation of drugs in oral fluid.
- b) This test will be administered by a suitably qualified person.
- c) Where practicable the tester shall provide a list of medications which may provide a false positive result.
- d) Any worker required to undertake drug testing can choose to declare any medication taken immediately prior to the test being conducted or can declare following the test if an initial non-negative result is obtained. Such information is to be kept confidential and only to be used in determining if such medication has contributed to or caused a false positive.
- e) If the worker declares the medication prior to any testing being conducted and the drug class(es) declared is consistent with the drug class(es) detected at the initial screening test, then no disciplinary action is to be taken.
- f) If the worker did not declare the medication prior to the testing being conducted, or if the drug class(es) declared is inconsistent with the drug class(es) detected or there are methamphetamines present, then the person will be assessed as unfit for work and arrangements will be made to transport the person to their home or a safe place.
- g) Refer to Appendix 4 – Other Drugs Flowchart.
- h) Refusal to undertake a test will be recorded as a "refused test". Repeated refusal to undertake a test will be managed by Council in accordance with the Code of Conduct Policy for Councillors and the Procedures for the Administration of the Code of Conduct. Repeated offences may be referred to the Office of Local Government.

11.0 Confirmatory testing

- a) Confirmatory testing is a second analytical test performed to identify the presence of alcohol and/or other drugs in accordance with AS3547 and AS4760.
- b) In instances where confirmatory testing supports the findings of the preliminary test, the worker may be subject to disciplinary action.
- c) Where confirmatory testing is required, it will be undertaken by a suitably qualified person.
- d) If an external party is utilised for confirmatory testing they may require a sample of urine be taken from the worker and screened for alcohol and other drugs.

11.1 Confirmatory testing is non-negative and consistent with medication

- a) A confirmatory non-negative test result for other drugs will be determined by the Australian Standard AS4760.
- b) The accredited testing laboratory will forward all test results to the Chief Executive Officer in writing, identifying the confirmatory test was positive but consistent with medication declared.
- c) If the worker has been stood aside pending the confirmatory tests, the Chief Executive Officer will contact the worker and request that they return to work once the results have been received. On return to work the Mayor in consultation with the Chief Executive Officer will reassess their suitability for duties.

11.2 Confirmatory testing is non negative and not consistent with medication

- a) The accredited testing laboratory will forward all results to the Chief Executive Officer.
- b) The worker and the Mayor will be advised in writing that the confirmatory test was non-negative but inconsistent with the medication disclosed by the worker.
- c) The letter of confirmation will set out a nominated time and date when the worker and if required, their representative, will discuss further action with the Mayor.
- d) As a part of the further actions discussion a worker may request access to leave.

11.3 Confirmatory test is negative

- a) The accredited testing laboratory will forward the results to the Chief Executive Officer who will then advise the worker and the Mayor that the confirmatory test was negative.
- b) If the worker has been stood down pending the outcome of the confirmatory test, the Chief Executive Officer will contact the worker to arrange the workers return to work.

12.0 Procedure for non-negative results

- a) The Mayor will afford the worker procedural fairness and discuss the non-negative result with the person. The Mayor will provide an opportunity for the worker to provide any information or comments that may be a mitigating factor when considering the confirmatory test result.
- b) Workers will be advised of counselling services available through the Employee Assistance Program (EAP).
- c) Before returning to work, a worker will be required to provide a negative test result. Whilst this result is being achieved, workers may be asked to leave the workplace.
- d) Council may initiate disciplinary actions in accordance with the Code of Conduct Policy and Procedure.
- e) *Refer to Appendix 5 – Disciplinary Action Flowchart*

13.0 Tampering with samples

Any attempt to tamper with samples and introduce or alter the concentration of alcohol or other drugs in their own or another's saliva or breath will constitute serious misconduct and will be dealt with according to Council's Code of Conduct Policy and Procedure

14.0 Dealing with aggressive behaviour

- a) If a worker displays aggressive or violent behaviour when required to undertake an alcohol and/ or other drug test, the Mayor should remain calm and not argue with or mirror the workers behaviour.
- b) Emphasis should be placed on getting the worker to calm down and discussion kept away from personal issues. The worker should be asked to comply with the direction and be informed that the worker will have the opportunity to dispute the decision through the normal grievances process utilised by Council.
- c) If the worker refuses to modify their behaviour, the worker should be advised that the discussion is terminated and they must leave the workplace immediately. The worker should be reminded that acts of aggression or violence in the workplace are in breach of the Code of Conduct and not in line with Council's values
- d) In the case of actual or apprehended violent behaviour, the worker is to be advised that the police will be called. This will be utilised as a last option.

15.0 Confidentiality and record keeping

15.1 Confidentiality

- a) Confidentiality is fundamental to dealing with problems in the workplace that are related to the misuse or abuse of alcohol and other drugs.
- b) All information regarding counselling or treatment will be treated confidentially. Workers must give their permission in writing for information to be disclosed by their counsellor. Only work-related information may be disclosed and will be used to support the most effective management of work performance and the reintegration of the worker into the workplace.
- c) In most cases, no information is to be released to a third party, without the written consent of the worker unless it is considered that the matter, if neglected could endanger persons/ property or the matter concerned is subject to a police/ relevant regulator investigation.
- d) In the event of conflict between the maintenance of confidentiality and duty of care, the Mayor has the authority to determine the most appropriate course of action.

15.2 Record keeping

- a) The Mayor must keep written records of any discussions relating to alcohol and other drug use in the workplace.

16.0 Unlawful activities associated with alcohol and drug use

- a) Being affected by alcohol and other drugs at work, particularly in a high risk work environment, can seriously compromise the health, safety and welfare of workers, volunteers, contractors and visitors.
- b) Impairment by alcohol and other drugs can reduce an individual's ability to perform their work safely, competently and professionally.
- c) Council is committed to the following factors regarding illicit alcohol and drug use:
 - i) Unlawful conduct arising from alcohol and drug use will be referred to the police
 - ii) All legal limits for the operation of plant, equipment will be adhered to

- iii) All workers are required to report to work in a fit state at all times, unimpaired by any substance
- d) Council will not tolerate:
 - i) consuming alcohol at work (except in circumstance where the Mayor has given prior approval for a work related function);
 - ii) possessing, selling, distributing or consuming prohibited drugs in the workplace; or
 - iii) being affected by alcohol and other drugs, including medically prescribed and over the counter drugs, such that they are unable to work safely, competently and professionally in accordance with Council's Code of Conduct.
- e) Under the Work, Health and Safety Act 2011 (NSW):
 - i) Council has a duty to ensure the health, safety and welfare of their workers and other people in the work place (s19);
 - ii) workers have a duty of care to take reasonable care for their own health and safety, as well as other people in the workplace and to cooperate with their employer in providing a safe working environment (s28).
 - iii) other persons at a workplace must take reasonable care for his or her own health and safety, take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and comply, so far as the person is reasonably able, with any reasonably instruction that is given by the employer to allow the employer to comply (s29).
- f) There are penalties under legislation for employers and through the application of disciplinary procedures in accordance with the Code of Conduct and for workers who fail to take their work, health and safety responsibilities seriously.
- g) It is an offence under Road Transport Act 2013 to drive or attempt to drive a motor vehicle, truck or mobile equipment when under the influence of alcohol or other drugs in excess of legal limits.

17.0 Grievances/ disputes relating to this procedure

Any dispute relating to the application of this procedure shall be settled in accordance with the Grievance and Dispute Settlement Procedure

18.0 Review

This protocol was formally adopted by Council on 26 June 2019.

Council reserves the right to review or vary this procedure in consultation with the representatives of workers affected by this protocol.

19.0 Definitions

For the purpose of this document the following definitions apply:

alcohol	Includes all food, beverages, medications and any other product containing alcohol
authorised function	A Mayor approved social event or function
authorised organisation	An appointed organisation that can demonstrate it meets the Australian Standard requirements for collectors who will be used for the collection of specimens for alcohol and other drug testing and further analysis of results will require an independent National Association of Testing Authorities (NATA) certified collection agency
chain of custody	The chronological documentation or paper trail, showing the collection, transfer, receipt, analysis, storage and disposal of the sample taken
Delegated Responsible Person	A person who is appropriately trained in the Alcohol and Other Drugs Policy and Procedure for Councillors and in the assessment of fitness for work.
drug	Every substance or article which is a dangerous drug under and within the meaning of the Narcotics Drugs Act 1967 (Cth) or any other substance, article, preparation or mixture (with the exception of alcohol) whether gaseous, liquid, solid or in any other form which may alter the fitness for work of a person
negative	The result at or below the nominated or target concentration used for initial testing
non-negative	The initial positive test as yet unconfirmed by confirmatory testing by a designated collector
over the counter medication	Medicines available through a pharmacy without prescription
social events	Any endorsed event by the Mayor, Chief Executive Officer or Council, including Council meetings
suitably qualified person	A person from the authorised organisation who has been trained and assessed as competent in the use of alcohol and/ or drug testing equipment in accordance with the Australian Quality Training Framework (AQTF) requirements. For drug screening a designated collector also needs to hold NATA certification
workers	Mayor, Councillors, Chief Executive Officer undertaking work for, with, or on behalf of Council. This excludes any person, volunteer, contractor undertaking work for, with or on behalf of Council. Please refer to Alcohol and Other Drugs Protocol and Procedure

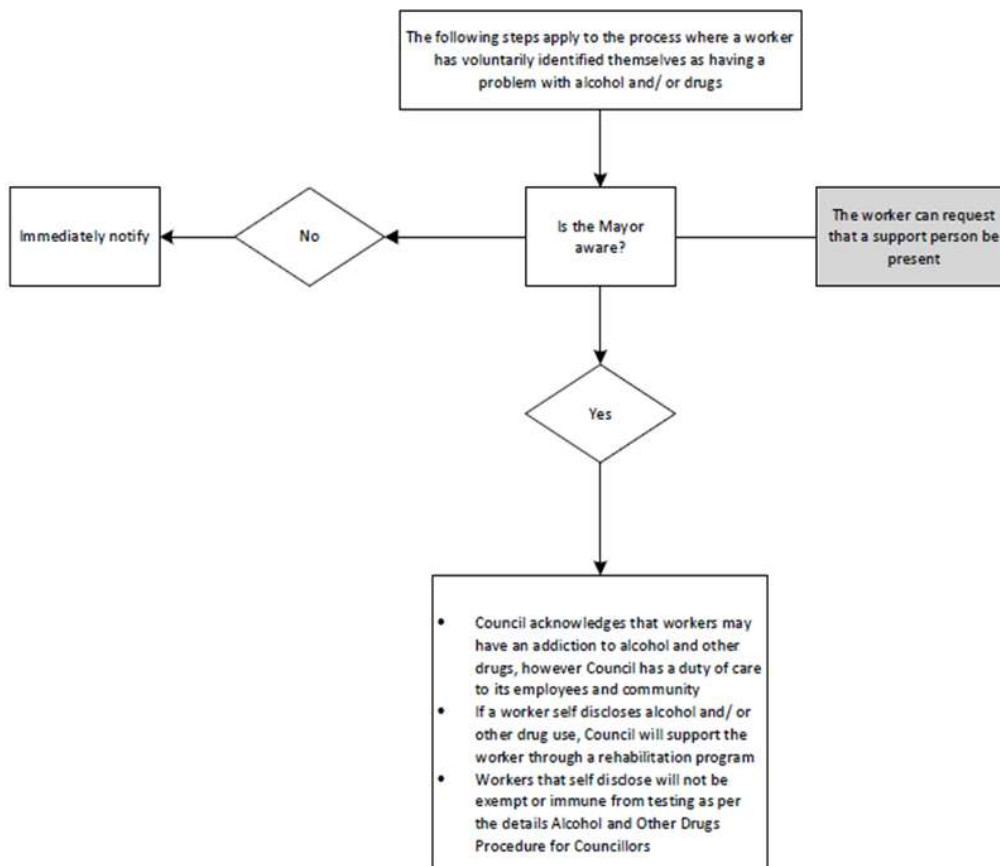
20.0 Document control

Date reviewed	Date adopted	Amendment
New Policy	25 June 2019	V1
7 August 2019	25 June 2019	V2 – administrative changes to 8.1.3 (additional delegations included), 9.0 i) (definition of “refused test” added) and 19.0 (definition of Delegated Responsible Person added) – no Council adoption required
7 November 2019	19 November 2019	V3 – administrative changes to clause 4h(i) and 4h(ii) with the addition of the words “and any subsequent editions” to follow the reference to AS3547:1997 and AS4760:2006; and throughout the document removal of the year reference for the Australian Standards so that the document only refers to AS3547 and AS4760
1 August 2021		Policy review

21.0 Signature

Name:	Date: Click or tap to enter a date.
Signature: 	

Appendix 1 – self disclosure rehabilitation flowchart



Appendix 2 – alcohol and drug rehabilitation plan

Alcohol and/or Other Drugs Rehabilitation Plan - Confidential

The following Rehabilitation Plan has been developed for:

Employee:	Phone:
Goal: To present to work and during work to be in a fit state without impairment that would prevent them from being able to undertake their duties in a manner that is safe and to current legislation.	

Current rehabilitation issues: *can be what has been tested positive for, concerns or issues that they have with their addiction etc*

Steps that have been agreed: *for example, to take time off for an initial review of their addiction, factors affecting their addiction, make appointments with EAP provider, seek further counselling/intervention from organisations that may provide more specific addiction counselling such as alcoholic anonymous, a time frame for these steps to be commenced, review and completion*

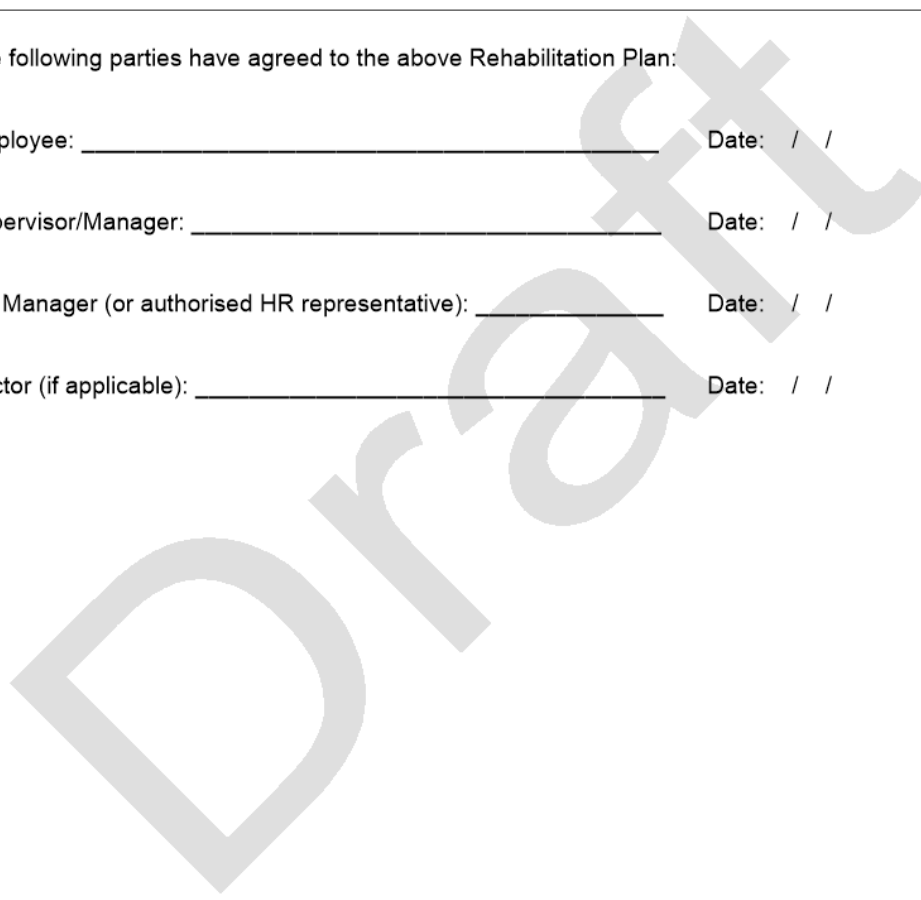
Agreed costs: *what the Council has agreed to fund, eg fees for extra counselling above normal EAP sessions, type of leave to be accessed etc*

Persons involved: *who are the personnel involved with this rehabilitation plan that will have access to information contained, who can authorise (with the person's permission) additional persons etc*

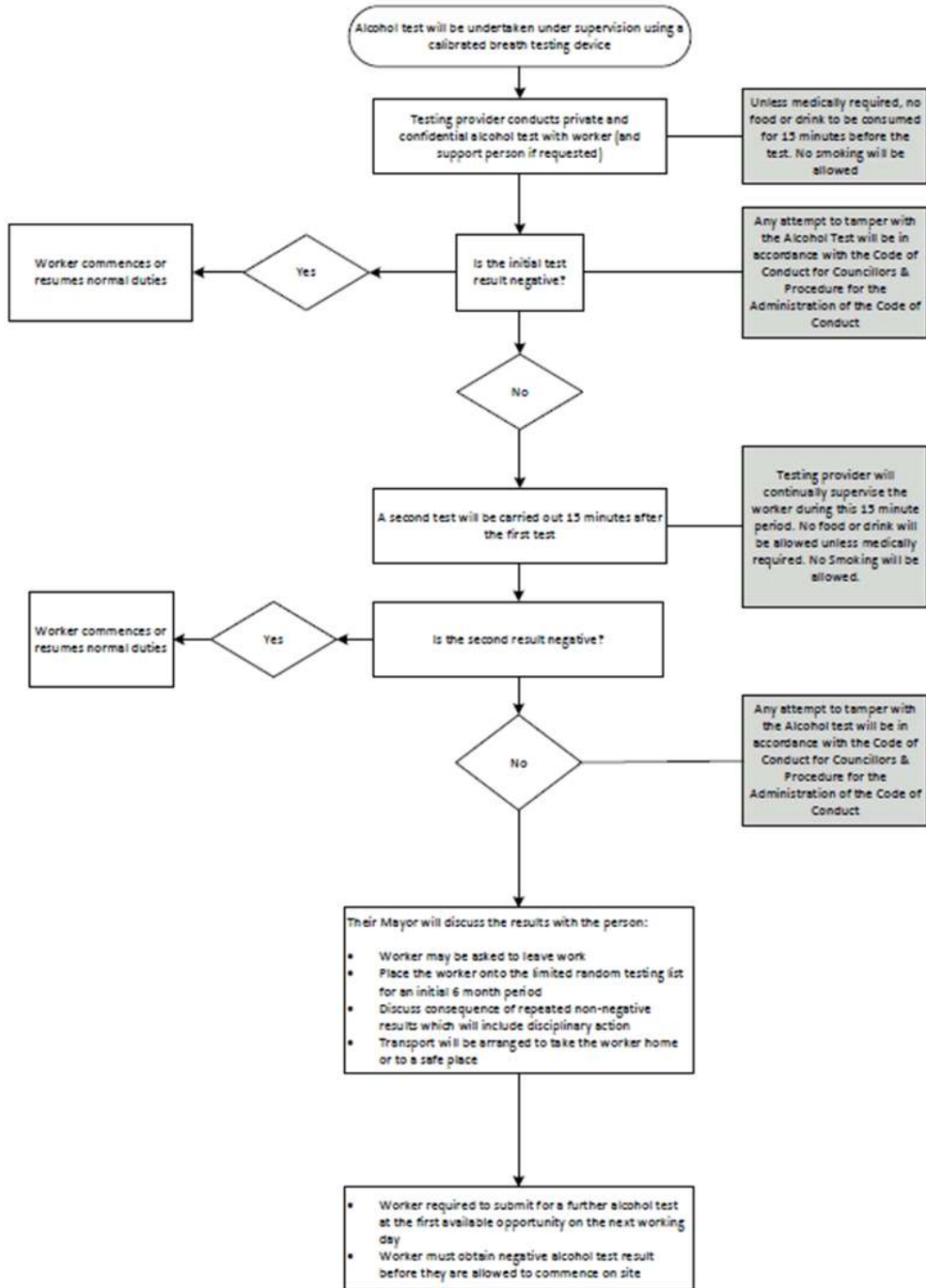
Comments:

The following parties have agreed to the above Rehabilitation Plan:

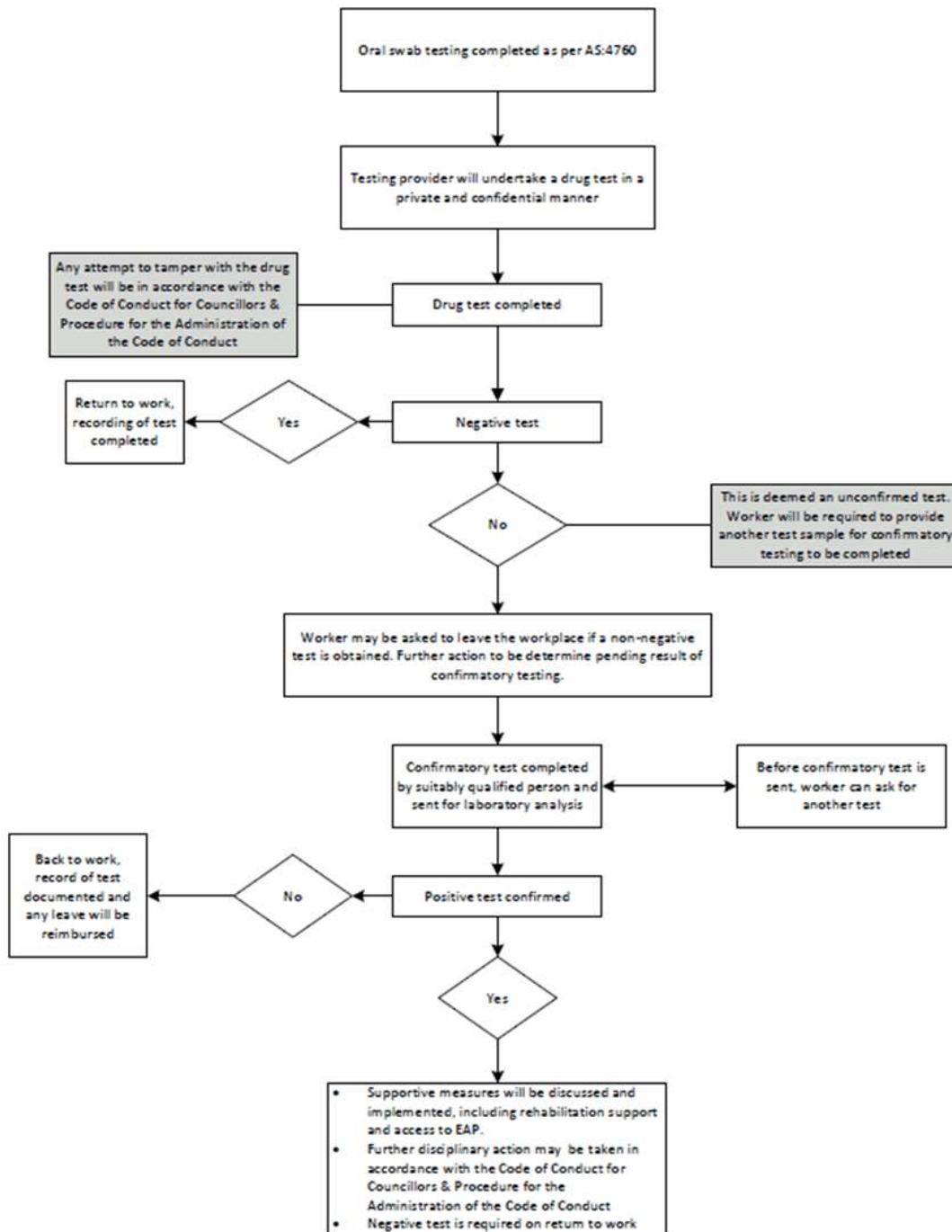
Employee: _____ Date: / /
Supervisor/Manager: _____ Date: / /
HR Manager (or authorised HR representative): _____ Date: / /
Doctor (if applicable): _____ Date: / /



Appendix 3 – alcohol testing flowchart



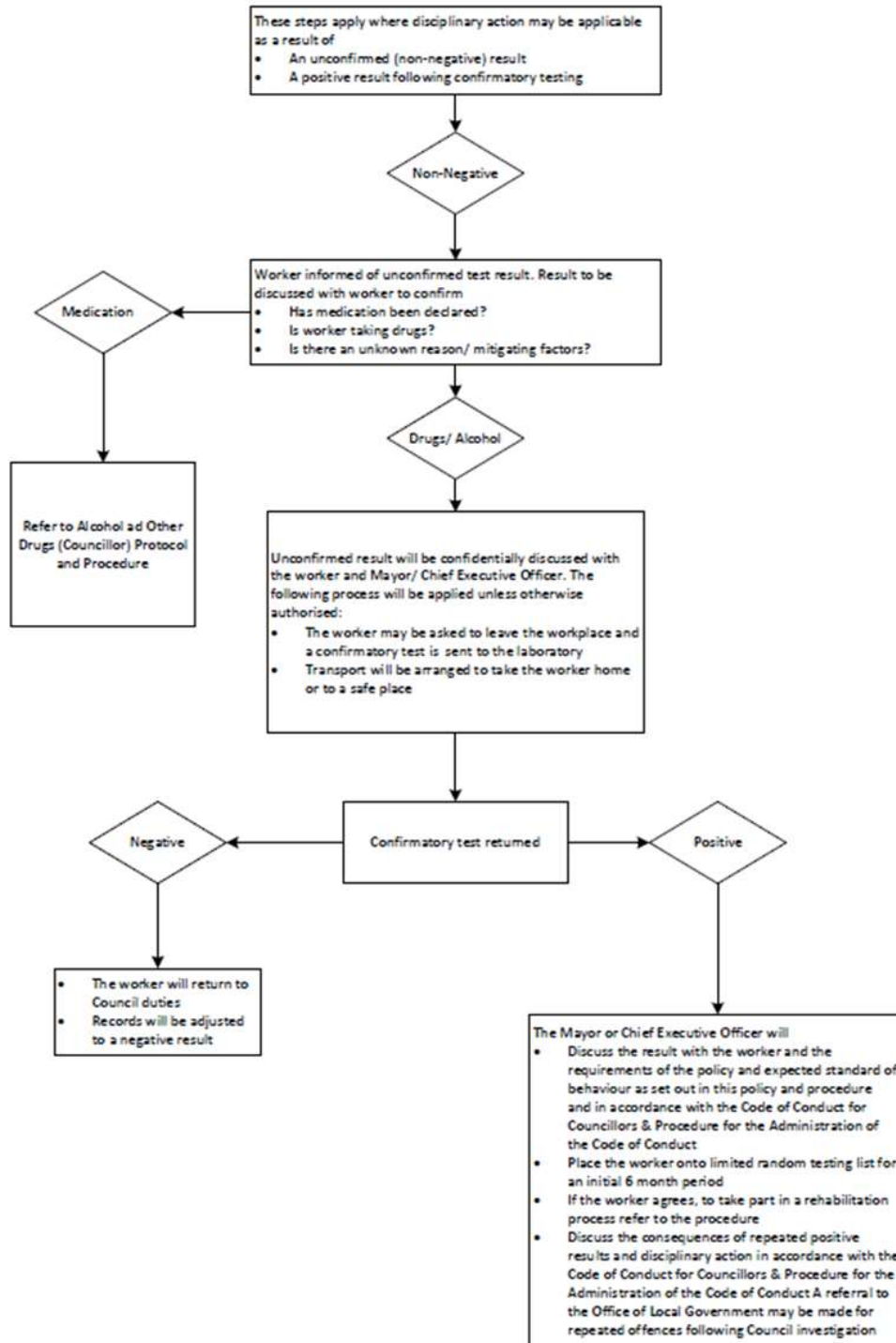
Appendix 4 – drug testing flowchart



Item 16.2

Attachment 3

Appendix 5 – disciplinary action flowchart



How to contact Council

Post

Chief Executive Officer
Kiama Municipal Council
PO Box 75
Kiama NSW 2533

Telephone

+61 (02) 4232 0444

Facsimile

+61 (02) 4232 0555

Online

Email: council@kiama.nsw.gov.au
Website: www.kiama.nsw.gov.au

Office hours

Our Administration Building located at
11 Manning Street Kiama is open 8.45 am to 4.15 pm
Monday to Friday (excluding public holidays)



KIAMA MUNICIPAL COUNCIL
your council, your community

Schedule of proposed changes		
Policy/Protocol Name:	Alcohol & Other Drugs Procedure for Councillors	Review commenced: 22/7/21
Reviewed by:	Keti Volkanovski	Last edit: Tuesday, 5 October 2021
Reason for review:	Scheduled Review	

#	Clause	HR Change Proposed	Notes
1	Replaced General Manager with Chief Executive Officer		Title Change
2	4 (a)	Removed "Council's"	Correct Policy name
	4 (d)	Deleted	Not required
	4 (e)	Removed "Council's"	Correct policy name
	4(f)	Removed "Council's"	Correct procedure name
	4(h)	Deleted	Not required
	5.0	Deleted "(including contractors/ subcontractors, consultants and volunteers)" Added "the"	This group is captured in Alcohol & Other Drugs Protocol & Procedures for Staff
	5.1 (c)	All workers will refer any alcohol and/ or drug related and/ or welfare concerns likely to pose a safety hazard to any person or property to the Mayor.	Grammar correction
	6.2 (a)	Removed "Council's" Added " for Councillors"	Correct Policy Name
	6.2 (b), (c), (d)	Removed	Not required

7.2 (f)	Removed" Policy and Procedure Code of Conduct" Replaced with "Code of Conduct for Councillors and the Procedures for the Administration of the code of conduct"	Correct policy and procedure name
10.00 (h)	Removed "and procedures" Replaced with "for Councillors ad the procedures for the administration of the code of conduct"	Correct policy and procedure name
11 (d)	Removed "screed" replaced with "screened"	Spelling correction
19.0	Removed word "means" under each definition	Not relevant
Appendix 1	Removed Protocol and Procedure" replaced with "Procedure for Councillors"	Administrative change - Correct procedure name
Appendix 3	Removed handled as per KMC Code of Conduct for Councillors Policy & procedure" Replaced with "in accordance with Code of Conduct for Councillors & Procedure for the Administration of the Code of Conduct"	Correct policy and procedure name
Appendix 4	Removed handled as per KMC Code of Conduct for Councillors Policy & procedure" Replaced with "in accordance with Code of Conduct for Councillors & Procedure for the Administration of the Code of Conduct"	Correct policy and procedure name
Appendix 5	Removed handled as per KMC Code of Conduct for Councillors Policy & procedure" Replaced with "in accordance with Code of Conduct for Councillors & Procedure for the Administration of the Code of Conduct"	Correct policy and procedure name Name change

16.3 Questions for Future Meeting Register as at 8 October 2021

Responsible Director: Office of the Chief Executive Officer

Attached for Councillors' information is the Questions for Future Meetings Register as at 8 October 2021.

Attachments

- 1 QFM - Table [↓](#)

Questions for Future Meetings Register

16/73192

No	Details	Actions
9 February 2021		
19.5	<p>Community and Tourism grants / donations / sponsorship Councillor Rice requested a report on the available budget, criteria, repeatability and selection processes for community and tourism grants, donations and sponsorship. The matter was referred to the Acting General Manager for investigation and report.</p>	<p>Further review by Council's Internal Auditor has been requested prior to finalising details for this report.</p>
20 April 2021		
19.2	<p>Scenic Management Guidelines Councillor Rice requested a report on how Council can proceed to establish Scenic Management Guidelines as referenced on page 402 and 403 of the March business paper, which outlined the Guidelines value in development decisions by other Councils. The proposed overlay in our LEP concerning character should also be considered in this report. The matter was referred to the Director Environmental Services for investigation and report.</p>	<p>This investigation and work to be carried out following the completion of the town centre priority projects in the Strategic Planning Works Program. The report to be provided to Council will enable decisions to be made and potential policy changes enacted. Therefore, further detailed investigation needs to occur prior to the report being provided to Council.</p>
19.3	<p>Community Response Policy update Councillor Rice requested a report to provide an update on the development of a Community Response Policy that included manageable timeframes for replying to community concerns and enquiries, which was endorsed by Council at the September 2018 meeting. The matter was referred to the Director Environmental Services for investigation and report.</p>	<p>The Community Response Commitment, Customer Service Charter and Customer Experience Strategy draft documents are currently being developed. This work has allocated budget and resources with the new Customer Service Coordinator commencing with Council in recent months. This work will align with information provided to the new Council to ensure expectations are set for staff, Councillors</p>

No	Details	Actions
15 June 2021		
19.1	<p>New Councillor business cards</p> <p>Councillor Reilly requested a report on the implementation of including an acknowledgement of country on the business cards for the new councillors, as previously agreed. The matter was referred to the Chief Executive Officer for action.</p>	<p>Costing for redesign of business cards is being sought. Will be actioned following the 4 December 2021 local government election</p>
21 July 2021		
19.1	<p>Pump track addition to Minnamurra Bike Skills track</p> <p>Councillor Way requested a report to the August Council meeting on continuing the development of the Minnamurra Bike Skills Track at Sanctuary Place Quarry to be known as Stage 2 – pump track. The report to include a plan for the pump track to be incorporated within existing infrastructure, an estimate to construct the pump track, and investigation and advice on the potential for grant funding to finance the project. The matter was referred to the Director Engineering and Works for action.</p>	<p>Reporting to the November 2021 Council meeting</p>
17 August 2021		
19.1	<p>Kiama Harbour retaining wall</p> <p>Councillor Reilly requested a report providing clarity from Crown Lands around the specific timing of the repair and/or replacement of the retaining wall, on the land that they manage around the Kiama Harbour (which was destroyed over half a decade ago), that creates an unsightly and dangerous scar on our otherwise safe and beautiful harbour. The matter was referred to the Director Engineering and Works for action.</p>	<p>Reporting to the October 2021 Council meeting</p>

No	Details	Actions
19.3	<p>Akuna Street development Councillor Reilly requested that Council have a timeframe to seek the scope of an Expression of Interest for the development of Council land in and around Akuna Street, Kiama, noting that the former developer of that land is already presenting their unapproved plans to community groups without any formal direction from Council. The matter was referred to the Chief Executive Officer for action and report.</p>	Reporting to the November 2021 Council meeting
21 September 2021		
19.1	<p>Strategic Plan 2013-23: engagement opportunities Councillor Reilly requested a report on the gradual implementation of our Strategic Plan 2013-23: engagement opportunities and promote a consistent and positive image of Council to the community with a positive and consistent use of Council's logo. The matter was referred to the Director Environmental Services for action.</p>	Reporting to the November 2021 Council Meeting
19.2	<p>Unauthorised use of a road reserve Councillor Reilly requested a report on the following - can Council, as the owner and asset manager of the road reserves in the municipality, exercise its policy to ensure that an encroachment is either</p> <ol style="list-style-type: none"> 1. removed, or 2. subject to a Council resolution, permitted to remain, by the adjoining owner entering into an appropriate agreement with Council to ensure public liability and public amenity issues are identified and managed, and that a community benefit results which does not adversely impact on the owners of neighbouring properties? <p>The matter was referred to the Director Corporate and Commercial Services for action.</p>	
19.3	<p>Planting of shrubs - Surfleet Place / South Kiama Drive Councillor Reilly requested planting of shrubs between Surfleet Place and South Kiama Drive. The ongoing maintenance would be minimal and would</p>	Reporting to the November 2021 Council meeting

No	Details	Actions
	<p>be no more arduous that the maintenance required when Council plants a shrub on the nature strip in front of properties, as they have done in front of some of the Surfleet Place properties. The verge is at least five metres making the area ideal for shrubs as both visual appeal and a potential noise barrier for the residents of Surfleet Place. The matter was referred to the Director Engineering and Works for action.</p>	
19.4	<p>Kiama Harbour wharf reconstruction Councillor Way requested a report on proposed reconstruction by ocean wharf contractors for the southern wharf at Kiama Harbour boat ramp that would also include disabled access, given the Kiama Harbour Revitalisation project has confirmed the boat ramp will remain in its current location. The matter was referred to the Director Engineering and Works for action.</p>	<p>Reporting to the October 2021 Council meeting</p>
19.5	<p>Vegetation at Jones Beach and Werri Beach Councillor Way requested a report advising when the proposed investigation and report on vegetation for Jones and Werri beaches will commence and be completed. In conjunction with the Director of Engineering and Works please provide a date for the commencement of work to remove dead vegetation on Jones Beach that is not constrained by the report on vegetation across Kiama Municipal beaches. The matter was referred to the Director Environmental Services for action.</p>	<p>This will be a combined report from Director of Environmental Services and Director Engineering and Works. Will be reported to a forthcoming Council Meeting</p>
19.6	<p>Pedestrian safety at Charles Avenue and Federal Street intersection Councillor Way requested a report based on the Kiama Local Traffic Committee September minutes and recommendation 9.6 Item 1 regarding safety work for school children at the intersection of Charles Avenue and Federal Street, Minnamurra, detailing cost of this work and date to commence and complete this work. The matter was referred to the Director Engineering and Works for action.</p>	<p>Reporting to the November 2021 Council meeting</p>
19.7	<p>Local Strategic Planning Statement priorities Councillor Rice requested a report on the anticipated sequence and timeframe for the progression of the remaining Local Strategic Planning</p>	<p>Reporting to the November 2021 Council Meeting</p>

No	Details	Actions
	Statement priorities throughout the next financial year and beyond. The matter was referred to the Director Environmental Services for action.	

16.4 Annual Tabling of Returns of Disclosure of Pecuniary Interests and Other Matters - 2020-2021Responsible Director: Office of the Chief Executive Officer

The *Model Code of Conduct for Local Councils in NSW (the Model Code)* requires the General Manager (or CEO) to table all Annual Returns of Disclosure of Pecuniary Interests and Other Matters (the return) lodged by the prescribed due date of 30 September 2021 at the first Council meeting after that date.

Council Officers forwarded the Office of Local Government guidelines and designated forms for the completion of returns to all relevant Councillors, staff and designated persons outlining their responsibilities to complete the return for the period 1 July 2020 to 30 June 2021 in order to comply with the provisions of the *Model Code*.

All designated persons must lodge their return with the General Manager (CEO) by 30 September each year. A register of these returns will be tabled during the meeting in the Council Chambers.

Communication/Community Engagement

N/A

17 ADDENDUM TO REPORTS**18 NOTICE OF MOTION**

Nil

19 QUESTIONS FOR FUTURE MEETINGS**20 CONFIDENTIAL SUMMARY****CONFIDENTIAL COMMITTEE OF THE WHOLE**

Submitted to the Ordinary Meeting of Council held on 19 October 2021

PROCEDURE

- Recommendation to go into Closed Committee.
- Mayoral call for Public Representations.
- Consideration of Representations and issues to be removed from Closed Committee.
- Recommendation to exclude Press and Public if required.
- Closed Committee discussions if required.

20.1 Exclusion Of Press And Public:***RECOMMENDATION***

That in accordance with Sections 10 and 10A of the Local Government Act, 1993 as amended, Council close the meeting of the Confidential Committee of the Whole to the Press and Public on the grounds detailed under the report headings as detailed below.

21.1 TENDER FOR HINDMARSH PARK, KIAMA - LANDSCAPE DETAILED DESIGN

Reason for Confidentiality: This matter deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business as per Section 10A(2)(c) of the Local Government Act. .

21.2 REQUEST FOR REVIEW OF LEASE RENTAL - FARBREBURN P/L

Reason for Confidentiality: This matter deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business as per Section 10A(2)(c) of the Local Government Act. .

21.3 OLD COUNCIL CHAMBER BUILDING REMEDIATION TENDER REPORT

Reason for Confidentiality: This matter deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business as per Section 10A(2)(c) of the Local Government Act. .

21.4 UPGRADE OF REMAINING 951 NON-LED STREETLIGHTS TO LED LIGHTING - ENDEAVOUR ENERGY

Reason for Confidentiality: This matter deals with details of systems and/or arrangements that have been implemented to protect council, councillors, staff and Council property as per Section 10A(2)(f) of the Local Government Act. .

21.5 AKUNA STREET LANDHOLDINGS

Reason for Confidentiality: This matter deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business as per Section 10A(2)(c) of the Local Government Act. .

21 CONFIDENTIAL REPORTS

21.1 Tender for Hindmarsh Park, Kiama - Landscape Detailed Design

CSP Objective: 1.0 A healthy, safe and inclusive community

CSP Strategy: 1.1 Developing and implementing services and programs that promote social cohesion, healthy and active lifestyles for residents of all ages, abilities and interests

Delivery Program: 1.1.7 Manage recreation and open space infrastructure to cater for current and future generations

REASON FOR CONFIDENTIALITY

This item is classified CONFIDENTIAL under the provisions of Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

21.2 Request for review of lease rental - Farbreburn P/L

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

CSP Strategy: 2.5 Effectively manage our transport, drainage and other infrastructure and assets

Delivery Program: 2.5.4 Manage other assets and infrastructure through the Other Asset and Infrastructure Asset Management Plan

REASON FOR CONFIDENTIALITY

This item is classified CONFIDENTIAL under the provisions of Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

21.3 Old Council Chamber Building Remediation tender report

CSP Objective: 1.0 A healthy, safe and inclusive community

CSP Strategy: 1.3 We live in a safe community

Delivery Program: 1.3.3 Undertake local community safety initiatives

REASON FOR CONFIDENTIALITY

This item is classified CONFIDENTIAL under the provisions of Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

21.4 Upgrade of remaining 951 non-LED streetlights to LED lighting - Endeavour Energy

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

CSP Strategy: 2.2 Our community and natural environments are adaptive, resilient and sustainable

Delivery Program: 2.2.2 Protect and maintain environmentally significant natural areas

REASON FOR CONFIDENTIALITY

This item is classified CONFIDENTIAL under the provisions of Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to details of systems and/or arrangements that have been implemented to protect council, councillors, staff and Council property.

21.5 Akuna Street landholdings

CSP Objective: 4.0 Responsible civic leadership that is transparent, innovative and accessible

CSP Strategy: 4.1 Council is financially sustainable

Delivery Program: 4.1.2 Identify opportunities to diversify and maximise funding sources

REASON FOR CONFIDENTIALITY

This item is classified CONFIDENTIAL under the provisions of Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

22 CLOSURE