



MINUTES OF THE ORDINARY MEETING OF COUNCIL

commencing at 5 pm on

TUESDAY 20 JULY 2021

Council Chambers
11 Manning Street, KIAMA NSW 2533

**MINUTES OF THE ORDINARY MEETING OF
THE COUNCIL OF THE MUNICIPALITY OF KIAMA
HELD IN THE COUNCIL CHAMBERS, KIAMA
ON TUESDAY 20 JULY 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 and
M Way

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

1 APOLOGIES

Apology

21/168OC

Resolved that the apology tendered from Councillor Westhoff be accepted and the leave of absence granted.

(Councillors Watson and Steel)

For: Councillors Brown, Honey, Reilly, Rice, Sloan, Steel, Watson and Way
Against: 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 meeting on 15 June 2021

21/169OC

Resolved that the Minutes of the Ordinary Council Meeting held on 15 June 2021 be received and accepted.

(Councillors Watson and Way)

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

Against: Nil

3.2 Extraordinary Council meeting on 28 June 2021

21/170OC

Resolved that the Minutes of the Extraordinary Council Meeting held on 28 June 2021 be received and accepted.

(Councillors Brown and Way)

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

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

| Name | Item No. | Subject |
|---------------|----------|--|
| Wes Hindmarsh | 17.1 | Planning Proposal - Lot 40 DP 1230679 – 5 Sims Road, Gerringong – Clarifying proposed LEP amendments |
| Derek McMahon | 17.1 | Planning Proposal - Lot 40 DP 1230679 – 5 Sims Road, Gerringong – Clarifying proposed LEP amendments |

8 MAYORAL MINUTE**21/1710C**

Resolved that that at this time, 5.03pm, Council bring forward and deal with Mayoral Minute item 17.2 *COVID-19 response*.

(Councillors Honey and Reilly)

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

Against: Nil

17.2 COVID-19 response**21/1720C**

Resolved that Councillors acknowledge the positive response of Council staff to the continuing changes brought about by COVID-19 restrictions and particularly highlight the exemplary efforts of the Blue Haven staff.

(Councillors Honey and Steel)

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

Against: Nil

9 MINUTES OF COMMITTEES

9.1 Minutes: Kiama Access Committee - 4 June 2021

21/173OC

Resolved that the Minutes of the Kiama Access Committee Meeting held on 4 June 2021 be received and accepted.

(Councillors Reilly and Brown)

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

Against: Nil

9.2 Minutes: Catchment and Flood Risk Management Committee - 1 June 2021

21/174OC

Resolved that the Minutes of the Catchment and Flood Risk Management Committee Meeting held on 1 June 2021 be received and accepted.

(Councillors Sloan and Reilly)

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

Against: Nil

9.3 Minutes: Community Safety Committee - 12 March 2021

21/175OC

Resolved that the Minutes of the Community Safety Committee Meeting held on 12 March 2021 be received and accepted.

(Councillors Rice and Reilly)

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

Against: Nil

9.4 Minutes: Health and Sustainability Committee - 17 June 2021**21/176OC**

Resolved that the Minutes of the Health and Sustainability Committee Meeting held on 17 June 2021 be received and accepted, noting the following resolutions of the Committee:

- a. that Council familiarise itself with the NSW Plastics Action Plan and the grant funding opportunities that may be available under this scheme
- b. the achievements outlined in the Health and Sustainability Committee report are considered for inclusion in Council's End of Term Report and other relevant publications

(Councillors Rice and Reilly)

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

Against: Nil

9.5 Minutes: Jamberoo Youth Hall s355 Committee - 7 June 2021**21/177OC**

Resolved that Council receive and accept the Minutes of the Jamberoo Youth Hall s355 Committee General Meeting held on 7 June 2021.

(Councillors Reilly and Brown)

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

Against: Nil

9.6 Minutes: Kiama Local Traffic Committee - 6 July 2021**21/178OC**

Resolved that

1. the Minutes of the Kiama Local Traffic Committee Meeting held on 6 July 2021 be received and the following recommendations accepted:
 - A. That Council approve a 'Bus zone' and 'No stopping' zone, in Bridges Road Gerringong, with the installation of regulatory signage.
 - B. That line-marking and the signage plan for the 12 Lot Subdivision at 26 Drualla Road, Jamberoo and 2A Downes Place, Jamberoo as provided is endorsed for implementation, with the following amendments:
 - (i) That the no stopping signs are changed to no stopping lines

- (ii) That the speed hump warning signs are changed to 25kph.
 - (iii) That consideration is given for a one-way circulation of Drualla Road, accessing via Drualla Road, and exiting at Downes Place.
2. Council note the staff review, and not further pursue consideration of a one-way circulation of Drualla Road, Jamberoo accessing via Drualla Road, and exiting at Downes Place.

(Councillors Reilly and Brown)

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

Against: Nil

COMMITTEE OF THE WHOLE

21/1790C

Resolved that at this time, 5.14pm, 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
Addendum to Reports

(Councillors Sloan and Steel)

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

Against: Nil

10 PUBLIC ACCESS REPORTS

21/1800C

Committee recommendation that at this time, 5.14pm, Council bring forward and deal with the matters pertaining to the Public Access Meeting.

(Councillors Way and Reilly)

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

Against: Nil

17.1 Planning Proposal - Lot 40 DP 1230679 - 5 Sims Road, Gerringong - Clarifying Proposed LEP Amendments

A **Procedural motion** was moved by Councillor Steel and seconded by Councillor Brown that the committee recommendation be put.

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

Against: Councillors Rice and Sloan

The Motion on being put was CARRIED.

21/1810C

Committee recommendation that Council:

1. support the proponent led Planning Proposal on Lot 40 DP 1230679, 5 Sims Road Gerringong, proceeding to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination (the next step in the planning proposal process) as it satisfies the strategic merit and site specific merit test.
2. prior to proceeding for a Gateway Determination, request that the proponent update the Planning Proposal so that it seeks to amend the *Kiama Local Environmental Plan (KLEP) 2011* to include the site in Schedule 1 and list *general industries and landscaping material supplies* as additional permitted uses on the site.
3. following receipt of the amended Planning Proposal, request a Gateway Determination from DPIE and provide advice that Council's preference for the proposed change to *KLEP 2011* is to amend Schedule 1. This option allows for the retention of the existing RU1 Primary Production zone.
4. provide further detailed communication to the community about the process that is to be followed for all planning proposals and the future further engagement that is required to occur for this process under legislation.

(Councillors Way and Brown)

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

Against: Councillors Rice and Sloan

11 REPORT OF THE CHIEF EXECUTIVE OFFICER

11.1 2020/21 Capital Works Program Performance and Carryovers

21/182OC

Committee recommendation that Council:

1. notes the status of approved projects at the completion of the 2020/21 Capital Works Program
2. approves the carry-over of \$1,864,000 from the 2020/21 Capital budget into the 2021/22 Capital budget to enable completion of identified projects.

(Councillors Brown and Steel)

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

Against: Nil

11.2 Senior Staff Role

21/183OC

Committee recommendation that Council:

1. change the position title of the Director Blue Haven role to Chief Operating Officer – Blue Haven
2. approve the position of Chief Operating Officer – Blue Haven to be established as a Senior Staff role in accordance with the Local Government Act (NSW) 1993.

(Councillors Sloan and Watson)

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

Against: Nil

11.3 Statement of Investments June 2021

21/184OC

Committee recommendation that Council receive and adopt the information relating to the Statement of Investments for May 2021.

(Councillors Reilly and Sloan)

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

Against: Nil

12 REPORT OF THE DIRECTOR ENVIRONMENTAL SERVICES

12.1 10.2020.197.1 – 30 Cedar Ridge Road, Kiama – 3 Lot Torrens Title Subdivision

21/185OC

Committee recommendation that Council approve Development Application No 10.2020.197.1 under Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to conditions at the end of this report.

(Councillors Brown and Steel)

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

Against: Nil

12.2 10.2020.218.1 – Lot 1 DP 1018217 – Dido Street, Kiama – Concept Development for New Dwelling

21/186OC

Committee recommendation that Council refuse Development Application No 10.2020.218.1 under Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to following reasons:

DPIE Concurrence Refused

1. Pursuant to the provisions of Clause 4.6(5) of Kiama LEP 2011, the delegate of the Secretary has declined the granting of concurrence to the Clause 4.6 exception to the lot size development standard in Clause 4.2A Erection of dwelling houses on land in certain rural and environment protection zones of Kiama LEP 2011 and must be refused because:
 - a) the proposed 98% variation from the minimum lot size for the erection of a dwelling is considered to be beyond the appropriate scope of Clause 4.6 under Kiama LEP 2011;
 - b) the applicant has not demonstrated that the 40ha development standard for the erection of a dwelling is unreasonable or unnecessary;
 - c) it is in the public interest that a variation of this size is not supported. Any dwelling proposed to be erected on the site should be considered through a strategic planning process ideally considering a larger area than just this site;
 - d) the proposal could set an undesirable precedent for the erection of dwellings on other undersized lots;
 - e) the proposal is considered to be inconsistent with the objectives of the RU1 Primary Production zone and Clause 4.2A(2) through proposing unplanned rural residential development;

- f) the proposal could set a precedent for adverse impacts on agricultural land that would be inconsistent with both the Illawarra Shoalhaven Regional Plan and the Draft Illawarra Shoalhaven Regional Plan 2041; and
- g) Council has not abandoned the development standard since the notification of Kiama LEP 2011.

Inappropriate Use of the Planning Regime

2. Pursuant to Section 4.24 of the EP&A Act, the provisions of Section 4.15(1)(a)(i) of that Act and Clause 4.2A of Kiama LEP 2011 relating to development applications and development consents apply to the concept DA.

The effect of the application of Clause 4.2A(3)(a) of Kiama LEP 2011 is that development consent must not be granted for the erection of the proposed single dwelling house on the 0.7041ha site having regard to the 40ha minimum lot size specified for that land.

The dispensational power to uphold a written request pursuant to Clause 4.6 of Kiama LEP 2011 for exception to that development standard would not be exercised in the circumstances of the case. In the alternative, the concept DA is of no utility and is an inappropriate use of the planning regime established by the EP&A Act and must be refused because:

- a) Section 4.24(1) of the EP&A Act provides that the provisions of or made under the EP&A Act or any other Act relating to development applications and development consents apply, except as otherwise provided by or under the EP&A Act or any other Act, to a concept development application and a development consent granted on the determination of any such application;
- b) Section 4.24(2) of the EP&A Act provides that while any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site;
- c) Section 4.15(1)(a) of the EP&A Act provides that in determining a development application, a consent authority is to take into consideration matters including the provisions of any environmental planning instrument as are of relevance to the development the subject of the development application;
- d) Clause 4.2A of Kiama LEP 2011 applies to the site such that development consent must not be granted for the erection of a dwelling house on land in the RU1 Primary Production zone and on which no dwelling house has been erected unless the land is a lot that is at least the minimum lot size specified for that land by the Lot Size Map;
- e) The minimum lot size specified for the site by the Lot Size Map is 40ha;
- f) The site has an area of 0.7041ha;
- g) Having regard to Clause 4.2A(4) and (5), there is no other exception which applies to the minimum lot size development standard in Clause 4.2A(3)(a);

- h) A development standard which is not relaxed by dispensation granted under Clause 4.6 of a local environmental planning instrument prohibits the carrying out of development.

It follows that a development standard that requires a lot to be not less than 40ha in size for the erection of a dwelling and which is not relaxed by a dispensation granted under Clause 4.6, will prohibit the carrying out of the relevant development. In the present case, the effect of this is that the erection of a dwelling on the site, where that standard is not and cannot be met, will be prohibited development;

- i) The concept DA expressly forecasts a proposed single dwelling house with associated garage and vehicular access, to be situated on the south-western portion of the site with frontage to Jamberoo Road, and seeks a 220m² building envelope for the proposed dwelling house;
- j) The dispensational power to uphold a written request pursuant to Clause 4.6 of Kiama LEP 2011 would not be exercised in the circumstances of the case, for the reasons which are detailed further below;
- k) In the alternative, on the basis that a variation to the minimum lot size development standard would not be supported in relation to any subsequent development application for the erection of the proposed dwelling house, for the reasons which are detailed further below, any development consent granted to the concept DA is futile;
- l) It is appropriate that the applicant's proposal be properly examined through the strategic planning process and not through an individual development application or multiple development applications (including a concept development application) as is proposed in this case.

Inadequate Clause 4.6 Variation Request

3. The development that is anticipated by the concept DA is for a rural residential use on a small lot and is inconsistent with the objectives of Clause 4.2A(1)(a) of Kiama LEP 2011, one of which aims 'to minimise unplanned rural residential development'.

The development anticipated by the concept DA will create a use of the site for rural residential development on a lot that is 98% under the minimum lot size which applies for such development pursuant to Clause 4.2A (3)(a) of Kiama LEP 2011 and must be refused because:

- a) Clause 4.6(4) of Kiama LEP 2011 establishes preconditions that must be satisfied before a consent authority or the Court exercising the functions of a consent authority can exercise the power to grant development consent.

The consent authority must form two positive opinions of satisfaction under Clause 4.6(4)(a).

These preconditions are a jurisdictional fact because the formation of the opinion of satisfaction enlivens the power of the consent authority to grant development consent.

The consent authority could and would not be satisfied that the applicant's written request has adequately addressed the matters required to be

addressed by Clause 4.6(3) and that the development anticipated by the concept DA will be in the public interest;

- b) The proposed variation to the applicable minimum lot size development standard which would be required in any subsequent application for the erection for a dwelling is representative of a 98% variation. Such a significant variation is beyond the appropriate scope of clause 4.6 of Kiama LEP 2011 and fails to meet the objectives of this clause which are as follows:
- i. to provide an appropriate degree of flexibility in applying certain development standards to particular development;
 - ii. to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- c) The Clause 4.6 written request that has been submitted with the concept DA fails to adequately demonstrate the following matters which the consent authority must be satisfied of in order to support any variation of the minimum lot size development standard that is sought:
- i. that compliance with the development standard is unreasonable or unnecessary in the circumstances;
 - ii. that there are sufficient environmental planning grounds to justify contravening the development standard;
 - iii. that it is in the public interest to allow a variation to the development standard.
- d) As identified by Preston CJ in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 at [24], there are two respects in which an applicant's Clause 4.6 written request needs to be 'sufficient' in relation to the environmental planning grounds so as to justify the contravention of a development standard. These are:

"First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole [emphasis], and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole [emphasis]: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]."

The Clause 4.6 written request included in the concept DA fails to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard;

- e) The development anticipated by the concept DA fails to meet the objectives of the minimum Lot size standard specified at Clause 4.2A(3)(a) of Kiama LEP 2011. The objectives of this standard are as follows:
- (a) to minimise unplanned rural residential development;
 - (b) to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones.

As a result, compliance with this development standard is not unreasonable or unnecessary and the applicant's Clause 4.6 written request is not well founded. On this basis the concept DA must fail because the development that it anticipates will fail;

- f) The consent authority cannot be satisfied that the proposed development will be in the public interest because it is not consistent with the objectives of the particular development standard (Clause 4.2A(3)(a) of Kiama LEP 2011) or the objectives of the RU1 Primary Production zone.

Incompatibility of Development with Flood Hazard

4. The development that is anticipated by the concept DA is for a rural residential use on a small lot and is not consistent with the objectives of and fails to satisfy the matters for consideration under Clause 6.3 – Flood Planning of Kiama LEP 2011 and must therefore be refused because:
- a) The site is inundated by the 1% AEP flood event;
 - b) The flood affectation of the site has been classified as high hazard flood way in the Spring Creek Catchment Flood Study prepared by GHD dated May 2014. The Study notes the NSW Government Floodplain Development Manual defines High Hazard as follows:

“... possible danger to personal safety; evacuation by trucks difficult; able-bodied adults would have difficulty in wading to safety; potential for significant structural damage”.
 - c) The flood affectation of the land has been classified as floodway in the Spring Creek Catchment Flood Study prepared by GHD dated May 2014. The Study notes the NSW Government Floodplain Development Manual defines floodway as follows:

“... those areas of the floodplain where a significant volume of water flows during floods. They tend to be areas of natural channel and overland flow paths. Floodways are identified as those areas which, if blocked, would result in a significant increase in flood levels or a significant redistribution of flood flows”.
 - d) The consent authority could not be satisfied that the development anticipated by the concept DA is compatible with the flood hazard of the site, nor that that it incorporates appropriate measures to manage risk to life from flood contrary to the provisions of Clause 6.3 of Kiama LEP 2011.

Detrimental Visual Impact

5. The development that is anticipated by the concept DA is for a rural residential use on a small lot and will have a detrimental impact on the scenic value and amenity of the locality and must therefore be refused because:
- a) The site is a gateway site to Kiama and provides uninterrupted sweeping rural views comprised of low-lying grazing land set in a landscape dominated by steep vegetated land and on the northern side which is the dominant view when entering Kiama from the west;
 - b) The site and its immediate surrounds form the interface between rural land and urban land at the western entry to Kiama. This interface is the deliberate and strategic outcome of a series of environmental planning processes administered by Council in accordance with the Kiama Urban Strategy and Kiama Local Strategic Planning Statement. Noting that the DA anticipates development for residential related purposes, and not rural related ones, this will undermine the strategic outcome that has been achieved and negatively impact the interface that has been established;
 - c) The dwelling proposed to be erected on the site under a subsequent development application is to be located 10m from Jamberoo Road and is to have dimensions of 10m wide and 21m long having an area of 220m² and a maximum height of 8.5. This will be a very large building and its bulk and scale would be the dominant built element in this significant rural landscape which would diminish the importance and appreciation of the view, and is not acceptable considering the significant departure from the applicable minimum lot size for dwellings in the RU1 Zone;
 - d) The concept DA lacks any Visual Impact Analysis of the potential impact of the development anticipated by the concept DA on the site and on the surrounding land. Therefore, the consent authority is unable to consider and assess the likely visual impacts of the development anticipated by the concept DA; and
 - e) For the reasons described above, the erection of the dwelling that is anticipated by the concept DA conflicts with the objectives of the Kiama Urban Strategy and Kiama Local Strategic Planning Statement which have been prepared to ensure and promote the protection, restoration and enhancement of areas, such as the site, which have special aesthetic value.

Inconsistent with Primary Production Zone Objectives

6. The concept DA anticipates development that is inconsistent with the objectives for development in the RU1-Primary Production Zone and should therefore be refused because:
- a) The concept DA anticipates development for rural residential purposes on such a significantly undersized lot which will not be used for a sustainable primary industry but will be for rural residential development, and this will preclude any future sustainable primary industry production of the site and will not maintain or enhance the natural resource base;
 - b) The concept DA anticipates development for residential related purposes only, which will not encourage diversity in primary industry enterprises and systems appropriate for the area;

- c) The concept DA anticipates development for residential related purposes on a significantly undersized Lot and this will lead to more fragmentation of the area;
- d) The size of the lot and its intended use has the potential to lead to land use conflict with any adjoining agricultural use of the land;
- e) The concept DA anticipates development for rural residential use, which will dominate any future agricultural use of the land on the undersized allotment and will not protect agricultural land for long term agricultural production; and
- f) The concept DA anticipates development for rural residential use, which will not provide any opportunities for employment generating agricultural development.

Inconsistent with the Aims of Kiama LEP 2011

7. The development that is anticipated by the concept DA is for a rural residential use on a small lot and is inconsistent with a number of the aims of Clause 1.2 of Kiama LEP 2011 and must be refused because:

a) The development anticipated by the concept DA (being the erection of a dwelling on the site) cannot comply with the minimum Lot size development standard and does not meet the objectives of this standard. The proposal is considered contrary to the following aims of Clause 1.2 (set out in italics below) and the following reasons for refusal are made in respect of these:

- to maintain, protect and improve the natural environment including native vegetation, endangered ecological communities, natural habitat corridors, riparian land, groundwater dependent ecosystems and wetlands for their biodiversity values.

The use of the site for rural residential purposes on such an undersized lot will be contrary to these aims because it will not protect and improve the natural environmental values listed.

- to protect agricultural land and restrict its fragmentation for purposes other than primary production.

The use of the site for rural residential purposes on such an undersized lot will be contrary to these aims because it will not protect agricultural land and will lead to further fragmentation of the agricultural land by adding more rural residential development into the landscape rather than primary production.

- 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 use of the site for rural residential purposes on such an undersized lot will be contrary to these aims because it will not protect and enhance the coastal and rural character and the characteristic scenic landscapes that contribute to Kiama's liveability and identity and will in fact hinder the attainment of the objective.

- to protect and maintain land used or to be used for employment in rural and urban areas

The use of the site for rural residential purposes on such an undersized lot will be contrary to these aims because it does not protect and maintain land that is used for employment in rural areas of the LGA.

Coastal Protection

8. The development that is anticipated by the concept DA is for a rural residential use on a small lot and is inconsistent with the aims of the “SEPP Coastal Management” and does not satisfy the matters for consideration prescribed in Clause 11 and 13 of this SEPP and must therefore be refused because:
- a) The site is situated within the ‘Coastal Zone Land Application area’, ‘Coastal Wetlands Proximity Area’ and ‘Coastal Environmental Area’, all of which have been mapped by the SEPP Coastal Management;
 - b) Having regard to clause 10(4) of the SEPP Coastal Management, a consent authority could not be satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest and therefore development consent must not be granted for the Concept DA; and
 - c) Having regard to Clause 13(2) of the SEPP Coastal Management, a consent authority could not be satisfied that the development will not have an impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental values and natural coastal processes and therefore development consent must not be granted for the concept DA.

Inconsistent with Provisions of Kiama LEP 2011

9. The development that is anticipated by the concept DA is for a rural residential use on a small lot and is inconsistent with Clauses 5.10, 5.16, 6.1, 6.2, 6.5 and 6.12 of Kiama LEP 2011 and should therefore be refused because:

Heritage

- a) The concept DA anticipates development that will be in the vicinity of five (5) Heritage Items listed in Schedule 5 of Kiama LEP 2011. The concept DA fails to adequately consider and assess the impact of the proposal on these listed heritage items;
- b) All of the items of local environmental heritage which are located in the vicinity of the site contribute to the scenic value and amenity of the locality and the development anticipated by the DA will diminish the heritage and scenic values of the area.

Land Use Conflict

- c) Clause 5.16(3) of Kiama LEP 2011 provides that a consent authority must take certain matters into account when determining a development application for a dwelling house on land in the RU1 zone;
- d) Pursuant to Clause 5.16(4) the development of the site for rural residential development is likely to be incompatible with agricultural

production which is the preferred and predominant land use in the vicinity of the site;

- e) The concept DA has failed to adequately consider and assess the impacts of this potential land use conflict.

Acid Sulphate Soils

- f) The concept DA fails to satisfy and adequately address those matters for consideration referred to under Clause 6.1 – Acid Sulphate Soils of Kiama LEP 2011 and must therefore be refused;
- g) An acid sulphate soils management plan as required by Clause 6.1(3) of Kiama LEP 2011 has not been provided in the concept DA and therefore development consent cannot be granted as there is no information before the consent authority to confirm that the development anticipated with the concept DA will not disturb, expose or drain acid sulphate soils and cause environmental damage.

Earthworks

- h) The concept DA fails to satisfy and adequately address the matters for consideration under Clause 6.2 – Earthworks of Kiama LEP 2011 and must therefore be refused;
- i) The concept DA anticipates the construction of a large area of cut and fill to construct the future dwelling house on and this has not been adequately considered and addressed. The concept DA provides inadequate information to allow for an assessment of the matters listed in Clause 6.2(3) of Kiama LEP 2011.

Riparian Land and Watercourses

- j) The development anticipated by the concept DA is for a rural residential use on a small lot and fails to satisfy the matters for consideration under Clause 6.5 – Riparian Land and Watercourses of Kiama LEP 2011 and must therefore be refused;
- k) The concept DA fails to adequately address Clause 6.5 of Kiama LEP 2011 – Riparian Land and Watercourses, particularly with respect to likely Section 3) (ii) aquatic and riparian species, habitats and ecosystems of the watercourse and (v) any future rehabilitation of the watercourse and its riparian area;
- l) The concept DA anticipates development that will involve encroachment of large areas of cut, fill and encroachment of engineered retaining walls into the 20m RPZ buffer area, and excavation works potentially within 5-10m from the top of bank in the south-east corner of the site. Given the sensitive nature of downstream wetlands, and large areas of work within the floodplain in close proximity to the creek;
- m) As there is no VMP submitted with the concept DA it is not clear how and what species would be utilised in the RPZ buffer area. There is also no information to assess how the maintenance of the bushfire APZ and the provisions of a VMP may interact and can be dealt with for a satisfactory rehabilitation of the riparian area through the site. Section 7.3.3 of the Statement of Environmental Effects (SEE) identifies that there is no conflict between the APZ and RPZ, 'as the predominant vegetation for

the proposed development is managed grassland with existing development located to the south'. A VMP developed in accordance with NRAR guidelines for riparian corridors and VMPs must be provided in order for the consent authority to be able to determine this assertion in section 7.3.3 of the SEE. Given the proximity of the proposed dwelling anticipated by the concept DA to the creek, and the potential impacts, the consent authority would expect that there would be revegetation of the RPZ buffer area in line with the DPIE Water 'Guidelines for vegetation management plans on waterfront land'. The potential conflict with the recommendations in the bushfire protection assessment, which identifies much of the property as managed grassland must also be considered.

Essential Services

- n) Clause 6.12 of Kiama LEP 2011 states that development consent must not be granted until services that are essential for the development are available and this includes the disposal and management of sewage as well as stormwater drainage and suitable road access;
- o) The concept DA fails to address the disposal and management of sewage and there is no evidence of arrangements being made for this to be carried out and so the application must be refused;
- p) The concept DA fails to address stormwater drainage and so the application must be refused;
- q) The proposed road access will interfere with the bus acceleration bay to the east of the bus stop and evidence is required to address the adequate road access to the site.

Vehicular Access

- r) The proposed vehicular access from Jamberoo Road (a Classified Road) fails to satisfy Clause 100 of SEPP Infrastructure because alternative vehicular access to the site that is practicable and safe, is available from Dido Street, which is a Local Road.

Unsuitable Site for the Proposed Development

- 10. The development that is anticipated by the concept DA is for a rural residential use on a small lot and having regard to the significant environmental constraints that affect the site, in the absence of information which adequately addresses the suitability of the site and the location of the proposed building envelope for the development that is anticipated, the application must be refused because:
 - a) The site and the location of the proposed building envelope is unsuitable for the development anticipated by the Concept DA due to the following environmentally significant constraints which affect the site:
 - i. the site's proximity and impacts on Spring Creek traversing the site;
 - ii. the site's proximity and impacts on mapped Coastal Wetlands within 100m of the site;
 - iii. the impact on the Class 2 and 3 riparian zones traversing the site;
 - iv. the flood affection of the site;

- v. the site's proximity and impacts on a number of local heritage items in the vicinity of the site;
 - vi. the site's proximity and the impacts of mapped Bushfire Prone Land;
 - vii. the site's proximity and the impacts of high voltage transmission lines traversing the site;
 - viii. the proposed vehicle access to the classified road when alternative access via a local road is available to the site;
 - ix. the impact of the Class 5 Potential Acid Sulphate Soils mapped on the site;
 - x. the potential for contamination to exist on the site;
 - xi. the site's importance in defining the edge of the rural land and its interface with the Kiama urban area with respect to protecting the scenic quality of the landscape at this key location;
 - xii. the potential impact on aboriginal cultural heritage.
- b) The Concept DA lacks information which adequately demonstrates that the development that is anticipated is capable of achieving the relevant objectives of the EP&A Act.

Potential site Contamination

11. The unauthorised earthworks on the site have not been considered in the Concept DA and must be refused because:
- a) Section 4.4 of the SEE which considers the provisions of SEPP 55 fails to consider and address the unauthorised works carried out on the site in recent years (referred to under 'Background') and the potential for these works to have contaminated the site;
 - b) Given that the unauthorised works may have contaminated the site, the proposal invokes the requirements of State Environmental Planning Policy No 55 – Remediation of Land, in particular, whether the land is contaminated and requires remediation, and consideration of whether a consent authority can be satisfied that the land is suitable for the residential purpose for which the development is proposed to be carried out.

Aboriginal Cultural Heritage Conservation

12. The concept DA fails to consider the effect of the development that is anticipated on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement) as required by 5.10(8) – of Kiama LEP 2011 and must be refused because:
- a) It is contrary to what is specified in the applicant's SEE (at page 13) the results from a search of the AHIMS conducted by Council indicate that there is an Aboriginal place or object of significance in the locality to the west of the site. This is not unexpected given the site's close proximity to the coastline and the watercourse;
 - b) In accordance with clause 5.10(8) of Kiama LEP 2011, consent cannot be granted until Council has been provided with sufficient information to

enable it to consider the effect of the development that is anticipated by the DA on the Aboriginal place or object of significance that has been identified by the AHIMS.

Public Interest and Undesirable Precedent

13. The development that is anticipated by the concept DA is for a rural residential use on a small lot and is not in the public interest. Approval of the concept DA would create an unacceptable and undesirable precedent for future development of the site and similarly inappropriate applications in the RU1 zone which have the effect of significantly undermining Council's Local Strategic Planning Strategy, and Urban Land Strategy. Accordingly, the concept DA must be refused because:
- a) The development that is anticipated by the concept DA is for a rural residential use on a small lot that requires a variation of the minimum lot size standard in Kiama LEP 2011 and the built form is of such bulk and scale that it will result in an adverse impact on the scenic quality of the northern side of Jamberoo at this key gateway to Kiama and this adverse impact on amenity impacts on the environment and nearby properties and this is not in the public interest;
 - b) Approval of the concept DA in circumstances where the development it anticipates is unsupported by Council's local strategic planning and urban land strategies would establish an undesirable precedent for the construction and siting of dwelling houses on similarly undersized lots within the RU1 Zone. This precedent could subsequently result in development which directly conflicts with strategic planning outcomes envisaged Council's Local Strategic Planning Strategy, and Urban Land Strategy delivered through Kiama LEP 2011 and Kiama DCP 2020.

Reasons for Refusal that Relate to the Lack of Information

14. Having regard to the matters for consideration in the Environmental Planning and Assessment Act contained in Section 4.15(1)(e) the application is not adequately made in accordance with the requirements of Clause 50 of the Environmental Planning and Assessment Regulation, and must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1 and must be refused on the basis that:
- a) Flood Planning
 - i. Engineering details of the retaining structure, as described in the supporting flood assessment report must be provided;
 - ii. Detailed cross-sections must be provided through the filling and encroachment off-set areas must be provided;
 - iii. The flood modelling (post filling) advises that there will be an increase in flood levels on adjoining properties and in Dido Street. Council could not support this outcome in any circumstance;
 - iv. A Scour Analysis Report for the road bridge in Dido Street to the east of the site is required to be prepared by a suitably qualified civil engineer. The report must take into account the proposed filling and excavation on the development site and include, but not be limited

to, geomorphic changes that would affect the scour potential of the bridge must be provided;

- v. A geotechnical report must be provided which addresses the suitability of the filling and proposed structures (e.g. retaining walls) in the riparian corridor. If required, as per Kiama LEP requirements, an Acid Sulfate Soils Management Plan must be provided.
- b) Acid Sulphate Soils
 - i. An acid sulphate soils management plan as required by Clause 6.1(3) of Kiama LEP 2011 must be provided; and
- c) Earthworks
 - i. Adequate information must be provided to allow for an assessment of the matters listed in Clause 6.2(3) of Kiama LEP 2011.
- d) Access And Parking
 - i. Architectural Plans for the dwelling must be provided to assess the necessary car parking and stormwater requirements must be provided;
 - ii. A driveway longitudinal section that demonstrates compliance with Australian Standard AS2890.1:2004 and Councils Driveway and Footpath Works Procedure Manual is required.

The proposed longitudinal section should nominate level points at kerb line, property boundary, intermediate points and the proposed garage level.

The proposed longitudinal section should demonstrate that sag grade changes are not in excess of 15% algebraically and summit grade changes are not in excess of 12.5% algebraically.

A sample longitudinal section is provided in Standard Drawing R07 of the Manual must be provided.
 - iii. The driveway crossover widths shall be indicated on revised plans. A standard width of 3.0m should be applied. The maximum access driveway width at kerb line of 4.5m and at the property boundary 5m is permissible in certain circumstances; and
 - iv. The revised plans should demonstrate that compliance with Australian Standard AS2890.1:2004 - Fig 3.2 in relation to meeting sight distance requirements is capable of being achieved must be provided.
- e) Utility Services
 - i. Utility services available to the site must be documented. If sewer is not available to the site any onsite sewer management system should be shown on revised plans and a geotechnical report advising on its suitability must be provided.
- f) Current site Survey
 - i. A survey of the site by registered surveyor is required to enable the proposed assessment of the concept DA and must be provided.

g) Effluent Disposal

- i. The concept DA lacks relevant information required to determine if the site is capable of adequately dealing with the development anticipated by the concept DA (i.e. the erection of a dwelling). At present the following is noted:
 - a. The concept DA provides no detail on how wastewater is to be dealt with. There appears to be little or no viable land on the site to locate an effluent disposal area outside of a flood affected area or proposed area of fill;
 - b. The recommended buffer distances stipulated by the NSW Department of Local Government, 'Environment & Health Protection Guidelines: Onsite Sewage Management for Single Households', DLG, Sydney, 1998 (the 'Silver Book'), of 100m for effluent disposal near a permanent water source, are unachievable on the lot. Any area above the 20 year flood level appears to be constrained by slope and/or buffer distance to Spring Creek;
 - c. A detailed wastewater management report is required to determine if effluent from the development anticipated by the concept DA is able to be dealt with on the site. The report needs to be prepared by a suitably qualified consultant and address the requirements of AS/NZS 1547:2012 – On site domestic wastewater management and the 'Silver Book'.

h) Heritage Conservation

- i. A heritage management document is required to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of heritage items located within the vicinity of the site; and

The concept DA fails to consider the effect that the development that is anticipated by the Concept DA may have on numerous items of local heritage significance which are located within the vicinity of the site (which may involve consideration of a heritage impact statement), as is required by clause 5.10(5) of Kiama LEP because:

- a. The application is within the vicinity of a number of items of local heritage significance which are listed in Schedule 5 of Kiama LEP 2011;
- b. In accordance with Clause 5.10(5) of Kiama LEP 2011, consent cannot be granted until Council has been provided with sufficient information to enable it to consider the effect of the development that is anticipated by the concept DA on these items of local heritage significance.

i) Visual Impacts

- i. Visual Impact Analysis of the development anticipated by the concept DA on the site and surrounding land and development, and their viewing locations, which addresses the Land and Environment Court's Tenacity Planning Principles is required;

- ii. Photomontages of the development anticipated by the concept DA (depicting in the location and context) that is proposed should be prepared by a qualified visual impact assessment expert. The photomontages should capture the various key viewing locations and must be prepared in accordance with the Land and Environment Court of New South Wales “Photomontage Policy”.
- j) Vegetation Management Plan
 - i. The concept DA must be accompanied by detailed information on construction soil and water management, details of re-establishment of vegetation within a VMP and identify how and where effluent disposal will be located and any potential impacts on the creek water quality.
 - k) Site Contamination
 - i. The proposal involves a change of use land therefore under the requirements of SEPP 55 a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines is required to be prepared and submitted including testing for contamination from the building waste dumped at the site.

(Councillors Watson and Brown)

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

Against: Nil

12.3 Community Battery Initiative

21/1870C

Committee recommendation that Council:

- 1) support the partnership with Endeavour Energy to undertake a community consultation process, on a proposed Community Battery Project, to be located on “Community Land” at Lot 538 DP 808034 Henry Parkes Drive, Kiama Downs (Subject Site) and a further report be submitted to Council at the completion of the consultation process.
- 2) provide in-kind financial support, up to the value of \$2,000, for the Kiama Downs Community Battery Initiative Project, by foregoing the required easement application fee and the compensation price payable to Council to accommodate the community battery on Council Community Land, subject to the preparation of a survey plan and land valuation being submitted to Council.

(Councillors Brown and Reilly)

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

Against: Nil

12.4 Housekeeping Amendments to Kiama LEP 2011 to address mapping anomalies - Additional sites and Urban Release Area clause

21/188OC

Committee recommendation that Council:

1. Endorse the preparation of an amended Planning Proposal for housekeeping amendments to Kiama LEP 2011 to:
 - a. Rezone Lot 2 DP 793745, Gwinganna Avenue, Kiama from R2 Low Density Residential to SP2 - Water Supply System;
 - b. Rezone 15 North Street, Minnamurra from R2 Low Density Residential to SP2 Water Supply System;
 - c. Rezone Lot 400 DP 801403, Newing Circuit, Kiama Downs from R2 Low Density Residential to SP2 Water Supply System;
 - d. Rezone 46 Union Way, Gerringong from R2 Low Density Residential to SP2 Water Supply System;
 - e. Amend Kiama LEP 2011 to include provisions for Urban Release Areas.
2. Forward the amended Planning Proposal to the Department of Planning, Industry and Environment for an amended Gateway Determination.
3. Following receipt of an amended Gateway Determination undertake the appropriate community and State agency consultation.

(Councillors Watson and Way)

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

Against: Nil

12.5 Kiama Town Centre Study Implementation - Update

21/189OC

Committee recommendation that Council:

1. Note the update on the Kiama Town Centre Study Implementation Strategy, contained in the report;
2. Note that Expressions of Interests will be undertaken to form a 'community review panel' to review the deliverables from GML Heritage and Studio GL prior to formal exhibition of the plans; and
3. Note that a separate report will be prepared and provided to the new Council, (following the election) to address relevant/appropriate recommendations, made by GML Heritage and Studio GL, including:
 - a. Amendments to the *Kiama Local Environmental Plan 2011*;

- b. The draft Chapter 4 - Heritage Conservation of the Kiama Development Control Plan 2020; and
- c. Draft Topic 12.10 – Kiama Town Centre of the Kiama Development Control Plan 2020.

(Councillors Watson and Sloan)

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

Against: Nil

12.6 Proposal from Reduce, Reuse, Recycle Kiama for Council collaboration in establishing the Worn Up project in local schools

21/1900C

Committee recommendation that Council

1. Participate in the Reduce, Reuse, Recycle Kiama (R3), Worn Up trial program in a co-partnership arrangement aimed at recycling old school uniforms to be undertaken at Gerringong Public School and Kiama High School.
2. Provide and allocate a financial contribution of \$1,000 from the 2021-2022 Recycling Programs budget, to support the recycling initiative.
3. Congratulate R3 for undertaking the trial 'Worn Up' school uniform recycling program.

(Councillors Rice and Sloan)

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

Against: Nil

12.7 Review of Kiama Development Control plan DCP 2020 - Finalisation of Environmental Guideline Amendments

21/1910C

Committee recommendation that Council:

1. Endorse amendments to the following sections of the Kiama Development Control Plan (DCP) 2020:
 - Chapter 3: Common Requirements
 - Topic 3.1 – Waste Minimisation and Management
 - Topic 3.4 – Utilities and Infrastructure
 - Chapter 6: Residential Accommodation
 - Topic 6.3 – Home Businesses, Industries and Occupations

- Chapter 7: Commercial Premises
 - Topic 7.1 – Business Premises
 - Topic 7.2 – Retail Premises
 - Chapter 10: Visitor Accommodation and Tourism
 - Topic 10.3 – Serviced Apartments
 - Introduction of Topic 10.5 – Events
2. Adopt the following Environmental Health Guidelines:
 - Waste Collection Services Guideline Waste
 - Waste Management for Proposed Development Guideline
 - Onsite Sewage Management System Guideline
 - Beauty Premises Guidelines
 - Food Premises Guideline
 - Events Guideline
 3. Publish the amended DCP Chapters and Environmental Health Guidelines on Council's website.
 4. Provided notification to all Precinct Committees and Community Associations of Council's resolution.

(Councillors Way and Brown)

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

Against: Nil

12.8 Corporate Emissions Reduction Plan 2021-2031

21/192OC

Committee recommendation that Council:

1. Adopt the Corporate Emissions Reduction Plan 2021-2031, with the aim of achieving Net Zero Emissions for Council's operations and facilities by 2031.
2. Adopt a milestone emissions reduction target that aims to have, by 2025, at least 50% of electricity, used annually by Council, provided from renewable energy sources.
3. Require a further report, outlining the recommended process to be adopted by Council, for the development of a Community Emissions Reduction Plan for the Kiama Local Government Area.

(Councillors Reilly and Watson)

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

Against: Nil

13 REPORT OF THE DIRECTOR CORPORATE AND COMMERCIAL SERVICES

13.1 Draft Plan of Management - Council managed crown land

21/193OC

Committee recommendation that Council:

1. In accordance with the *Crown Lands Management Act 2016* endorse the draft Plan of Management prepared by Kiama Municipal Council for submission to the NSW Department of Planning, Industry and Environment – Crown Lands for Ministerial approval, and
2. Subsequent to Ministerial approval authorise Council officers to undertake public exhibition of the Plan of Management for Council managed crown land for a period 42 days to allow for community feedback.

(Councillors Brown and Watson)

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

Against: Councillors Reilly and Rice

14 REPORT OF THE DIRECTOR ENGINEERING AND WORKS

14.1 Draft Public Tree Management Policy

21/194OC

Committee recommendation that Council:

1. note that the Draft Public Tree Management Policy, as attached to the report, will be refined through targeted stakeholder engagement
2. following refinement, endorse the draft Public Tree Management Policy being placed on public exhibition for a period of 28 days seeking community feedback
3. note that a report will be prepared to a future Council meeting after the close of the public exhibition on submissions received and seeking Council adoption of the final policy.

(Councillors Rice and Watson)

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

Against: Nil

14.2 Question for future meeting: Spectator safety - Picnic Steam Train**21/195OC**

Committee recommendation that Council note the information contained in this report and that further advice will be provided when available.

(Councillors Brown and Way)

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

Against: Nil

14.3 Question for future meeting: Bong Bong Street speed humps**21/196OC**

Committee recommendation that Council note the Kiama Local Traffic Committee minutes relating to this matter as adopted by Council on 15 June 2021.

(Councillors Brown and Steel)

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

Against: Nil

15 REPORT OF THE DIRECTOR BLUE HAVEN

Nil

16 REPORTS FOR INFORMATION**21/197OC**

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

- 16.1 Clause 4.6 Variations to LEP Development Standards - 1 April to 30 June 2021
- 16.2 Executive summary: Central Precinct meeting - 22 June 2021
- 16.3 Minutes: Jamberoo Valley Ratepayers and Residents Association - 6 July 2021
- 16.4 Minutes: Kiama Liquor Accord Meeting - 23 June 2021
- 16.5 Minutes: Minnamurra Progress Association - 6 July 2021
- 16.6 Parking Statistics - May and June 2021
- 16.7 Quarterly Dwelling Approvals

- 16.8 Questions for Future Meeting Register as at 9 July 2021
- 16.9 Question for future meeting: Motorised scooters and golf carts
- 16.10 SpendMapp - April 2021 Update.

(Councillors Reilly and Way)

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

Against: Nil

RESUMPTION OF ORDINARY BUSINESS

21/198OC

Committee recommendation that at this time, 6.15pm, Council resume the ordinary business of the meeting with all Councillors and Staff present at the adjournment of the meeting being present.

(Councillors Brown and Watson)

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

Against: Nil

ADOPTION OF COMMITTEE OF THE WHOLE REPORT

21/199OC

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 21/180OC to 21/198OC above.

(Councillors Reilly and Way)

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

Against: Nil

17 ADDENDUM TO REPORTS

Item 17.1 was dealt with as part of Public Access Reports and item 17.2 was dealt with in Mayoral Minutes.

18 NOTICE OF MOTION

18.1 Notice of Motion: Reconciliation Action Plan

21/2000C

Resolved that Council commence a Reconciliation Action Plan process for the Kiama Local Government Area, working collaboratively with interested members of our community, and seeking direct assistance from the Gerringong First Stories Aboriginal Advisory Group.

(Councillors Reilly and Sloan)

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

Against: Nil

19 QUESTIONS FOR FUTURE MEETINGS

19.1 Pump track addition to Minnamurra Bike Skills track

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.

19.2 Footpath to link North Kiama Drive to Johnson Street, Kiama Downs

Councillor Way requested a report to the August Council meeting providing a plan and estimate to construct a footpath from North Kiama Drive (adjacent to the new Kiama Downs Surf Club car park) to link with the shops in Johnson Street, Kiama Downs. The matter was referred to the Director Engineering and Works for action.

20 CONFIDENTIAL SUMMARY

21/2010C

Resolved that at this time, 6.21, 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 Watson)

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

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:**21/2020C**

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 PROJECT UPDATE: ENTERPRISE SOFTWARE SOLUTION

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 and information that would, if disclosed, confer a commercial advantage on a competitor of the council as per Section 10A(2)(dii) of the Local Government Act.

21.2 REVIEW OF WERRI BEACH HOLIDAY PARK REMUNERATION

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 TENDER FOR CROOKED RIVER BRIDGE CONCRETE REMEDIATION AND PROTECTION

Reason for Confidentiality: This matter deals with commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it as per Section 10A(2)(di) of the Local Government Act.

21.4 TENDER FOR TOOLIJOOA ROAD RECONSTRUCTION

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.

21.5 SUPPLY AND LAY OF ASPHALTIC CONCRETE 2021-2022

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 Watson and Way)

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

21 CONFIDENTIAL REPORTS

21.1 Project Update: Enterprise Software Solution

21/203OC

Committee recommendation that Council authorise the Chief Executive Officer and Mayor to continue to sign and seal documentation relating to the project in line with Council's recommended 2021/22 budget of \$2,065,000.

(Councillors Brown and Watson)

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

21.2 Review of Werri Beach Holiday Park remuneration

21/204OC

Committee recommendation that Council approve an increase in the contracted commission for the Werri Beach Holiday Managers H &C Robbins Pty Ltd in line with similar increases granted to other holiday park managers so that they can continue to operate the Park at an optimal level.

(Councillors Rice and Reilly)

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

21.3 Tender for Crooked River Bridge concrete remediation and protection

21/205OC

Committee recommendation that Council:

1. in accordance with clause 178(1)(a) of the Local Government (General) Regulation 2005, accept the tender of Duratec Limited for KIAMA-967852 – Crooked River Bridge Concrete Remediation and Cathodic Protection, for the

sum of \$480,261 including GST, plus a contingency allocation of \$96,052.20 (20%) for costs associated with potential latent conditions relating to concrete repair works on bridge piers submerged from mid tide and below.

2. delegate to the CEO the authority to finalise and execute the contract and any other documentation required to give effect to this resolution.
3. grant authority for the use of the Common Seal of Council on the contract and any other documentation, should it be required, to give effect to this resolution.
4. note the reallocation of any costs savings from this project towards the proposed Toolijooa Road reconstruction project, within the Council adopted budget for renewal of Roads and Bridges.

(Councillors Watson and Brown)

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

21.4 Tender for Toolijooa Road Reconstruction

21/206OC

Committee recommendation that Council:

1. in accordance with clause 178(1)(a) of the Local Government (General) Regulation 2005, Council accept the tender of Cleary Bros (Bombo) Pty Ltd for Tender KIAMA-972510 – Toolijooa Road Reconstruction, for the sum of \$504,000 (excluding GST), but including a construction contingency allowance.
2. delegate to the Chief Executive Officer the authority to finalise and execute the contract and any other documentation required to give effect to this resolution.
3. grant authority for the use of the Common Seal of Council on the contract and any other documentation, should it be required, to give effect to this resolution.
4. note the reallocation of costs savings from Crooked River Bridge concrete remediation project to this project, within the Council adopted budget for renewal of Roads and Bridges.

(Councillors Watson and Rice)

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

21.5 Supply and lay of asphaltic concrete 2021-2022**21/207OC****Committee recommendation** that Council:

1. in accordance with clause 178(1)(a) of the Local Government (General) Regulation 2005, accept the quotation of Roadworx for the supply and lay of approximately 5,000 tonnes of asphaltic concrete under LGP Contract LGP 213, at an average cost of \$165.20 + GST per tonne.
2. delegate to the Chief Executive Officer the authority to finalise and execute the contract and any other documentation required to give effect to this resolution.
3. grant authority for the use of the Common Seal of Council on the contract and any other documentation, should it be required, to give effect to this resolution.

(Councillors Way and Steel)

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

Against: Nil

Close of Confidential Committee of the Whole:**21/208OC**

Committee recommendation that at this time, 6.35pm, the Confidential Committee of the Whole revert to Open Council.

(Councillors Reilly and Way)

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

Against: Nil

Adoption of Report

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

21/209OC

Resolved that that the Confidential Committee of the Whole recommendations numbered 21/202OC to 21/208OC be confirmed and adopted.

(Councillors Rice and Way)

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

Against: Nil

22 CLOSURE

There being no further business the meeting closed at 6.41pm.

These Minutes were confirmed at the Ordinary Meeting of Council held on 17 August 2021.

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Mayor