

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy

CSP Objective: Outcome 14: Council has the right structures, technology, processes and procedures to support their role in delivering for the public

CSP Strategy: 14.2 Reduce risk and promote, maintain and improve the safety culture within the organisation

Delivery Program: 14.2.2 Support good governance through systems and processes for legislative compliance

Summary

In response to feedback and legislative requirements, Council staff have been developing and implementing a Planning Reform Program for our Local Government Area (LGA). Significant work has been occurring to focus on improving our development application (DA) assessment timeframes, systems, strategic framework, customer experience, responsiveness, and communication to applicants. This work has been based on the NSW Government's Planning Reform Action Plan and Development Assessment Best Practice Guide.

As part of Council's Planning Reform Program, Council resolved, at its Ordinary September 2021 meeting, to develop a draft Development Assessment Policy to support and guide both community and staff and set expectations required in the process.

This Policy has now been prepared and has incorporated the recent changes made to the *Environmental Planning and Assessment (EP&A) Regulation 2021* to strengthen transparency and accountability in the planning system.

The purpose of this report is to seek endorsement to commence consultation with the community and customers on the draft Kiama Development Assessment Policy.

Financial implication

Consideration of the ongoing resource requirements for the team is being undertaken including consideration of the need for ongoing allocation of resources to support the reform program. Any budget implications will be considered as part of the annual budget process, to support ongoing implementation of future recommendations and priorities.

Risk implication

The processing of development applications is an essential service and legislative requirement of Local Government. The Environmental Planning and Assessment Act requires that DAs are processed in accordance with the provisions of the Act and the timeframes contained within these provisions. Failure to meet the requirements of the Act can have implications for appeal rights for applicants and for objectors.

Most importantly however, given the recently passed legislative changes to the Act, the most significant and very real risk to Council is those DAs that are processed over 180 days. The new provisions adopted by the Minister allow for the Minister to assume

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy (cont)

any councils planning delegations if they are consistently determining applications over the 180 gross days' time frame.

Staff have therefore been making a significant and focused effort to reduce our overall timeframes and to especially focus on aged DAs in the system. This also has a resulting impact as aged DAs are determined, they instantly increase our overall statistics each time they are cleared from the system.

Policy

Development and Modification Applications need to be assessed having regard to the requirements of a number of Acts, Regulations, Government Policies, Planning Circulars, State Environmental Planning Instruments, Kiama Local Environmental Planning Instrument, Kiama Development Control Plan and other related planning policies.

The attached draft Development Assessment Policy seeks provide guidance to both customers and officers, about the expectations aligned with the DA process.

Amendments to the Kiama Community Participation Plan (CPP) 2019 are also proposed to comply with the recent changes to the *Environmental Planning and Assessment (EP&A) Regulation 2021*.

Consultation (internal)

Ongoing internal consultation occurs between the Development Assessment and Strategic Planning teams.

Communication/Community engagement

The *Kiama Community Participation Plan (CPP) 2019 and the Environmental Planning & Assessment Act and Regulation*, require certain Development and Modification Applications (that trigger certain thresholds) to be notified or publicly exhibited. This public exhibition and notification process occurs within strict adherence of our CPP and the Act and Regulation, as failure to do so can result in appeal rights for the application. These requirements should also not be varied or extended as they add to the total days during which an assessment cannot occur.

Formal community consultation regarding the draft Development Assessment Policy and amendments to the existing CPP will, in accordance with the CPP, following Council endorsement.

Attachments

- 1 Council-related Development Application Conflict Of Interest Guidelines - September 2022
- 2 Kiama Community Participation Plan - draft Amendment No 2 - with Track Changes
- 3 Draft Development Assessment Policy

Enclosures

Nil

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy (cont)

RECOMMENDATION

That Council seek feedback from the community and other external stakeholders on the draft Kiama Development Assessment Policy and draft amendments to the Kiama Community Participation Plan by placing the draft Policies on public exhibition until 30 January 2023.

Background

In response to feedback and legislative requirements, Council staff have been developing and implementing a Planning Reform Program for our Local Government Area. Significant work has been occurring to improve our DA assessment timeframes, systems, strategic framework, customer experience, responsiveness, and communication to applicants. This work has been based on the NSW Government Planning Reform Action Plan and Development Assessment Best Practice Guide.

As outlined in the Quarterly Planning Update and Statistic reports, the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021* contain several 'timeframes' for determining Development Applications. This includes:

- The 40-day deemed refusal period of local DAs,
- The 90-day deemed refusal period for State Significant DAs, and
- The 180-day Ministerial expectation period.

The greatest risk currently to Council is the very clear legislative timeframe that we must meet under the *Environmental Planning and Assessment (Statement of Expectations) Order 2021*, to ensure we retain our planning functions.

There are several issues that can impact DA timeframes. These include, but are not limited to:

1. Staff delegations

As has previously been advised to Council, the current delegations that have been afforded to Council staff are low compared to other councils. Councillors have currently, and historically, wanted to operate within the development assessment process and often at an operational level. This is against the recommendations of the Department of Planning & Environment's 'Development Assessment Best Practice Guide' and the recommendations made about assessment processes by ICAC. Significant community interest has been classified as five (5) objectors who may constitute any objectors including multiple family members.

It remains the staff recommendation that delegations need to be improved for professional staff.

2. Complexity of development applicants and officer support

There continues to be a misconception that the DA process provides an opportunity for applicants and community to negotiate and work through additional information, this approach can last for months. Our focus is on shortening the process by insisting on all the information being provided upon lodgement.

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy
(cont)

3. Resourcing

Councils, and other organisations, are currently experiencing an industry wide shortage of planners and building certifiers. Our Development Assessment team is currently at less than 50 percent capacity.

Recruitment of qualified and experienced assessing officers continues to be difficult.

4. Applicant delays

Significant time is spent seeking additional information from applicants. Recently, extended delays have been experienced due to COVID-19 and the NSW Floods.

Council staff have worked on the attached draft Development Assessment Policy, to assist in addressing the issues raised above and to provide guidance to both customers and officers, about the expectations aligned with the DA process.

Draft Kiama Development Assessment Policy

The draft Kiama Development Assessment Policy outlines how Council will conduct the following steps in the Assessment Process:

A. Pre-lodgement advice

The draft Policy acknowledges that high quality and complete applications can be more quickly determined by Council. The draft Policy outlines and discusses the different types of Pre-lodgement Advice services Council offers.

B. Lodgement and allocation

The draft Policy outlines that a pre-lodgement review of all applications will be undertaken to determine their completeness. Applications where the necessary information, as required by the NSW Planning Portal, Council's DA Checklists or NSW 'Application Requirements', is not provided will be returned. Council will no longer request additional information as part of the pre-lodgement review, instead any incomplete application will be returned to the applicant and removed from the system.

Following the payment of the legislative lodgement fees Council's Preliminary Assessment Unit's (PAU) will review all applications to determine their adequacy.

If Council's PAU determine that an application is inadequate, as it has not addressed LEP and/or DCP non-compliances etc. additional information will be requested. The PAU will Stop the Clock when requesting additional information. Once the requested information has been satisfactorily provided the Clock will recommence and the application will progress to the assessment stage. The PAU will only request additional information once. If the request is not adequately responded to the PAU will request that the application be withdrawn.

If Council's PAU are of the opinion that the additional information cannot be provided within 28 days it will request that the application be withdrawn. If applications are withdrawn at this stage all DA Fees paid by the applicant will be refunded, upon request.

Council's PAU is comprised of the following staff:

- Planning Reform Officer (PAU Chair)

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy (cont)

- Manager Development Assessment
- Development Assessment Coordinator
- Building Assessment Coordinator
- Secretary Development Assessment
- Other specialist staff as required.

C. Assessment

The draft Policy outlines that there are two (2) components to the assessment stage, the preliminary assessment and the final assessment.

As part of the preliminary assessment the assessing officer will inspect the site, assess an application’s compliance with the relevant provisions of the LEP and DCP etc., review any internal and external referrals and review any public submissions received. The preliminary assessment will occur within 20 calendar days of the application be allocated to an assessing officer.

If non-compliances are identified or issues are raised, the Assessing Officer will request additional information. Once the requested information has been satisfactorily provided the Clock will recommence and the application will progress to the assessment stage. The Assessing Officer will only request additional information once.

If the Assessing Officer is of the opinion that the additional information cannot be provided within 28 days it will request that the application be withdrawn. If applications are withdrawn at this stage all DA fees paid by the applicant will be refunded, upon request.

When applicants choose not to withdraw an application the assessing officer will determine the application based on the information it has, likely resulting in a refusal of the application. Once refused no refund of fees can be provided.

As part of the final assessment the assessing officer will prepare and finalise their assessment report. The assessment reports are peer reviewed either by other assessing officers, the Manager of Development Assessment, or Council’s Executive Assessment Unit (EAU).

The final assessment will occur within 14 calendar days.

D. Determination

Given the Ministerial Expectations and the advice of the NSW Department of Planning & Environment’s ‘Development Assessment Best Practice Guide’, the draft Policy recommends the following delegation framework is imbedded for Council to ensure applications are efficiently processed and that decisions are made in accordance with the adopted planning instruments (i.e. LEP & DCP) of Council:

Staff	Delegations
Development Assessment Staff	Approve local development applications <u>which comply with the relevant development</u>

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy (cont)

Staff	Delegations
	<p><u>standards and development controls of the Kiama LEP 2011 and the Kiama DCP 2020</u>, with the exception of the following development applications:</p> <ol style="list-style-type: none"> 1. Applications with an estimated cost of works exceeding \$5,000,000.00, 2. Applications for subdivision of over 30 allotments, 3. Applications which receive more than ten (10) objections, and 4. Applications where two (2) Councillors request that the determination be made by the elected Council. <p>Refuse local development applications <u>which do not comply with the relevant development standards and development controls of the Kiama LEP 2011 and the Kiama DCP 2020</u>, with the exception of the following development applications:</p> <ol style="list-style-type: none"> 1. Applications with an estimated cost of works exceeding \$5,000,000.00, 2. Applications for subdivision of over 30 allotments, and 3. Applications where two (2) Councillors request that the determination be made by the elected Council.
<p>Manager Development Assessment</p>	<p>In addition to the delegations afforded to Council’s Development Assessment Team, Council’s Manager can <u>approve</u> the following variations:</p> <ul style="list-style-type: none"> • 5% variations to numerical development standards, with the exception of variations to the minimum lot size for dwellings in Rural and Environmental zones, of the <i>Kiama LEP 2011</i> • variations to front, side and rear setback controls of the Kiama DCP 2020 which are consistent with the relevant complying development standards

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy (cont)

Staff	Delegations
	<ul style="list-style-type: none"> • variations to earthwork and retaining wall controls of the Kiama DCP 2020 which are consistent with the relevant complying development standards • variations to building materials and colours controls of the Kiama DCP 2020 which are consistent with NSW BASIX requirements.
Executive Assessment	<p>In addition to the delegations afforded to Council's Development Assessment Team and Council's Manager, the EAU can approve the following variations:</p> <ul style="list-style-type: none"> • 10% variations to numerical development standards, with the exception of variations to the minimum lot size for dwellings in Rural and Environmental zones, of the <i>Kiama LEP 2011</i> • variations to front, side and rear setback controls of the Kiama DCP 2020 which are slightly inconsistent with the relevant complying development standards • variations to earthwork and retaining wall controls of the Kiama DCP 2020 which are slightly inconsistent with the relevant complying development standards

These delegations have been developed to enable applications to be assessed in an efficient manner whilst still upholding the intended outcomes of Council's planning instruments.

It is recommended that the submission/objection threshold of the existing development assessment staff delegation be increased to ten (10) when consistency with the LEP and DCP is achieved. Council's development assessment staff should also have the delegation to refuse applications which do not comply with the LEP and DCP irrespective of the number of submissions/objectives.

It is recommended that the existing delegations of the Manager Development Assessment be refined/clarified. Currently the Manager is able to approve 'minor' variation. The existing delegations do not define 'minor'. The draft Policy has sought to align 'minor' with what is permissible as complying development. For an example the DCP requires that low density residential development have a front building line of

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy (cont)

6m. The Manager would be able to grant a variation to establish a front building line of 4.5m.

The draft Policy seeks to also enable Executive Assessment. Within the NSW Planning System, complying development should have less impact than development approved through the DA process. The draft Policy recommends that the EA be delegated authority to grant variations beyond what is permitted as complying development.

Process for identifying and managing potential conflicts of interest

In response to the recommendations made by the NSW Ombudsman, changes have been made to the Environmental Planning and Assessment (EP&A) Regulation 2021 to strengthen transparency and accountability in the planning system.

Amendments to the regulation come into effect on 3 April 2023 and will require all councils to:

- have a conflict of interest policy in place that advises how they would manage any potential conflict of interest that may arise when a council assesses development applications, where they have a commercial interest in the outcome
- prepare a management statement which must be exhibited with the development application, which details the potential conflict and the way they propose to manage it
- exhibit council-related development applications for a minimum of 28 days and record in their DA register the steps taken to manage any conflicts.

The attached draft Kiama Development Assessment Policy incorporates the mandatory conflict of interest policy. Within this Policy, the following management controls are proposed:

Category of Council-related DA	Controls
<p>Minor DA</p> <p>Minor DAs refers to development that is small-scale, routine operational and/ or non-controversial.</p>	<ol style="list-style-type: none"> 1) Assessment must be by Council staff not involved in the application and peer reviewed by immediate supervisor, and 2) A management statement to be prepared and exhibited with DA 3) Determination under delegated authority (Other than for development on community land under section 47E of the Local Government Act 1993.)
<p>Routine DA</p> <p>Routine DA (not minor) or other form of DA that takes place within Council's industrial estates or on Council reserves</p>	<ol style="list-style-type: none"> 1) Assessment by Council staff not involved in the application and peer reviewed by senior member of staff,

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy (cont)

Category of Council-related DA	Controls
<p>and complies with zoning, landuse provisions and Council policies, with no substantial or numerous submissions</p>	<ol style="list-style-type: none"> 2) Assessment by external independent town planning consultant (in accordance with Council’s Procurement Policy) may be required, if determined by the Director, Environmental Services, 3) Management statement to be prepared and exhibited with DA, and 4) <i>Potential</i> referral to Audit, Risk & Improvement Committee. 5) Determination under delegated authority (Other than for development on community land under section 47E of the Local Government Act 1993.)
<p>Major DA Major DAs refer to development that is large-scale, significant and/ or controversial.</p>	<ol style="list-style-type: none"> 1) Engage external independent town planning consultant (in accordance with Council’s Procurement Policy), 2) Management Statement to be prepared and exhibited with DA, and 3) For applications that do not trigger referral to the Regional Planning Panel, a referral may be required to the Audit, Risk & Improvement Committee. 4) Report to council for determination Or 5) Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is >\$5million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021.

As required by the changes to the Regulation, draft amendments have been made to the Kiama CPP to outline that council-related DA will be exhibited for a minimum of 28 days.

Report of the Director Environmental Services

12.3 Endorse for public exhibition: Draft Development Assessment Process Policy
(cont)

Modifications

The draft Policy seeks to confirm the circumstances when a new DA is required rather than modifying an existing DA. The draft Policy outlines that, generally, Council will not permit the lodgment of modification applications for developments which have received a final occupation certificate. In these cases, it is more appropriate to submit new applications for additions and alterations.

The exception to this is a modification to commercial hours of operation.

Complying Development Certificates

The draft Policy seeks to reaffirm that there is no merit assessment of applications for Complying Development Certificates.

If Council's Development Assessment staff determine that an application for complying development certificate does not comply, they are legally required to refuse the application. Once refused, Council is unable to issue any refunds.

Conclusion

The draft Development Assessment Policy has been drafted as a key deliverable of Council's Planning Reform Program.

The primary aim of the draft Policy is to support and guide both community and staff and set expectations required in the process, specifically in regard to lodgment requirements, requests for additional information and staff delegations.

If resolved, feedback from the community and other external stakeholders on the draft Kiama Development Assessment Policy and draft amendments to the Kiama Community Participation Plan by placing the draft Policies on public exhibition for at least 28 days