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1. Policy Statement/Objectives

Kiama Council is committed to creating great places to live, work and enjoy in our Municipality. Council's Development Assessment and Plan Making processes provide effective opportunities to create these places.

In response to feedback and legislative requirements, Council has been developing and implementing a Planning Reform Program for our Local Government Area. An action of this Planning Reform Program is to prepare and adopt a Development Assessment Policy

The objectives of the policy are to:

- establish an efficient and effective assessment framework to ensure Council retains its planning functions.
- set clear standards and expectations for information required to lodge Development Applications.
- set clear expectations for when and how Council will request additional information from applicants.
- set clear standards and expectations for how and when Council will communicate with applicants and/or owners of Development Applications.
- set a clear relationship between other policies of Council, including the Kiama Community Participation Plan 2019.
- outline how Council will manage conflicts of interests when assessing Development Applications.
- establish a delegations hierarchy to enable efficient determinations of Development Applications.

2. Scope

This policy applies to all applications for development consent, including Development Applications, Modifications of Consent and Complying Development Certificates, under Part 4 of the *Environmental Planning and Assessment Act 1979*.

3. References

- *Environmental Planning and Assessment Act 1979*.
- *Environmental Planning and Assessment Regulation 2021*.
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
- *Kiama Local Environmental Plan 2011*.
- Kiama Development Control Plan 2020.
- Kiama Community Participation Plan 2019.
- KMC 'Guide to carrying out Development or an Activity in the Kiama Municipality'.
- NSW Department of Planning & Environments' 'Development Assessment Best Practice Guide'.
- NSW Application Requirements.

4. Consultations

- Ongoing internal consultation with Development Assessment team and internal referral officers.
- Quarterly Planning & Development Forum.
- Formal, 28-day, public exhibition (yet to occur).

5. Definitions

Applicant	Person/s authorised to lodge applications on NSW Planning Portal and act as the primary contact for dealings with applications.
Application	Means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent it does not include an application for a complying development certificate.
Complying Development Certificate (CDC)	A form of development consent, issued under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> . Complying development must comply with all applicable development standards.
Community Participation Plan (CPP)	Council policy which establishes the mandatory requirements for community participation with respect to Council's planning functions.
Construction Certificate (CC)	Certificate which confirms if proposed buildings comply with Building Code of Australia and structural engineering requirements.
Council	Means Kiama Municipal Council
Council-related development	Means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority.
Delegations	Authority conferred on staff, by the elected Council, to determine applications.
Development Assessment Unit (DAU)	Team of staff, involved in the DA process, who meet with prospective applicants and provide advice/guidance on their proposal.
Development Application (DA)	A form of development consent, issued under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> . Development Applications can seek variations to applicable development standards.

Development Control Plan (DCP)	Council policy which contains controls which need to be considered when assessing DAs. DCP controls must be flexibly applied.
Development process	Means application, assessment, determination, and enforcement
Executive Assessment Unit (EAU)	Team of executive and management staff which have delegation to determine certain applications.
Exempt Development	Development which can be carried out without any development consent.
Local Environmental Plan (LEP)	Council legislation which contains the zoning and development standards which need to be considered when assessing DAs. Variations to development standards can be sought.
Modifications	Applications to amend conditions of consent or components of the approved development.
NSW Planning Portal	NSW Government online lodgement platform
Occupation Certificate (OC)	Certificate and inspection process which confirms if building has been constructed in accordance with Building Code of Australia and structural engineering requirements.
Owner	Person, peoples, corporations who registered as owners of properties on Council database.
Preliminary Assessment Unit (PAU)	Team of staff who review applications to determine their adequacy and determine the appropriate assessment pathway.
Request for additional information (RFI)	Requests, made via the NSW Planning Portal, for additional information required to determine compliance/consistency with LEP & DCP.
Stop the Clock	Assessment timeframe stopped when RFI issued within 25 days of date of lodgement.
Subdivision Certificate (SC)	Certificate which authorises the registration of a subdivision.
Subdivision Works Certificate (SWC)	Certificate which confirms if proposed subdivision works comply with civil engineering requirements.
The Act	Means the <i>Environmental Planning and Assessment Act 1979</i>

6. Variation and review

Council reserves the right to review, vary or revoke this policy.

Review History

Date reviewed	Date adopted/ endorsed	Brief detail of amendments

7. Policy

This Policy outlines the development assessment process and establishes how Council will assess applications for development consent.

The NSW Department of Planning & Environment's 'Development Assessment Best Practice Guide' promotes the following stages and principles to improve approval times:

7.1. Pre-lodgement Advice

Once a DA is lodged Council staff are unable to provide extensive planning advice as Council holds the role of assessing officer and the provision of detailed advice once the application has been lodged would be a conflict of interest.

Council staff can provide this advice during the pre-lodgement phase and encourage all potential applicants to seek pre-lodgement advice if required. Council offers a range of pre-lodgement advice services.

Checklists

Council has prepared checklists for different types of DAs. These checklists are available on Council's [website](#) and have been prepared in conjunction with the NSW 'Application Requirements'.

Council officers use these checklists when undertaking the pre-lodgement review of DAs.

Counter and Phone Enquiries

Council's Development Assessment staff are available for counter and phone enquires. This advice is general in nature and is often sought at the initial stage of determining if a proposal is possible/permissible.

Pre-DA Informal Advice

Council's Pre-DA informal advice service should be used when specific feedback/advice is sought on a proposal. This is an informal meeting to discuss the proposal and to seek initial feedback from Council.

Written Advice

This is a pay per service, in accordance with Council's Fee and Charges, and a written response to the request will be provided within 10 business days.

Formal Pre-lodgement Meeting

Council's Development Assessment Unit (DAU) provides an opportunity for potential applicants to discuss specific matters, including design options, of their proposal with Council's technical staff. This is a formal pre-lodgement meeting which is encouraged for large scale proposals or complex matters.

Council's DAU meet, upon request and at the authorisation of the Director. Minutes of the DAU meeting will be provided to applicants as a record of the advice given and any agreements made.

Council's DAU will provide verbal and written advice on:

- Ways to address identified non-compliances with LEP and/or DCP controls,
- Advice/suggestions to improve the overall built quality of the proposal,
- Advice on the approval pathway, including any State Agency involvement, and
- Advice on likely assessment timeframes

7.2. Lodgement & Allocation

The Lodgement & Allocation phase begins once an application has been submitted on the NSW Planning Portal.

7.2.1. Pre-lodgement Review

A pre-lodgement review of applications is undertaken by Council's Planning Reform Officer.

When necessary, information as required by the NSW Planning Portal, Council's DA Checklists or NSW 'Application Requirements', is not provided Council's Planning Reform Officer will **return** the application. Applicants will need to resubmit their application once they have prepared/compiled all necessary information.

This will ensure that only complete applications are lodged.

Council's Planning Reform Officer will request the payment of the legislative lodgement fees for complete applications. This will generally occur within 14 calendar days once submitted on the NSW Planning Portal.

7.2.2. Preliminary Assessment Unit

Council's Preliminary Assessment Unit's (PAU) role is to perform a preliminary assessment on Development Applications once they have been lodged (i.e. fees receipted).

Council's PAU meets on Tuesdays and Thursdays to ensure lodged DAs are processed and allocated within three (3) business days.

Council's PAU determines:

- The adequacy of the application
- Any public exhibition requirements
- Any referrals required
- The appropriate assessment pathway

If Council's PAU determine that an application is inadequate, as it has not addressed LEP and/or DCP non-compliances etc., a RFI letter will be sent to the applicant requesting the additional information be submitted within 28 days. The PAU will Stop the Clock when issuing these RFIs. 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 issue one (1) RFI.

If the RFI 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. When applicants choose not to withdraw an application the PAU will determine the application based on the information it has, likely resulting in a refusal of the application.

Public exhibition occurs in accordance with the requirements of the CPP. All DAs, including information submitted by the application, are made available for public inspection on Council's DA Tracker.

When direct notification is required, affected owners will be notified by the method outlined within Council's Records System.

Following a PAU meeting the DA Tracker is updated and applicants and the community will be able to follow the progress of their application. The tasks that the PAU are responsible for that show on DA Tracker are: Preliminary Assessment, Officer Allocation, Public exhibition and Referrals.

Applications will be identified as one of the following categories:

- Fast-Track – those applications which don't require public exhibition/neighbour notification under the CPP
- Standard
- Commercial or Business
- Major – those applications which require comments and/or conditions from State Agencies.

Council's PAU is comprised of the following staff:

- Planning Reform Officer (PAU Chair),
- Manager Development Assessment,
- Development Assessment Coordinator,
- Building Assessment Coordinator,
- Secretary Development Assessment, and
- Other specialist staff as required

7.3. Assessment

There are two (2) components to the assessment stage, the preliminary assessment and the final assessment.

7.3.1. Preliminary 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 issue a RFI letter requesting the additional information be submitted within 28 days.

If the RFI is issued within 25-days of the application's lodgement, then the assessing officer will Stop the Clock.

Once the requested information has been satisfactorily provided the Clock will recommence and the application will progress to the final assessment stage. The assessing officer will only issue one (1) RFI. If the RFI is not adequately responded to the assessing officer will request that the application be withdrawn.

If the assessing officer is of the opinion that the additional information cannot be provided within 28 days, they 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.

7.3.2. Final assessment

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 EAU.

7.4. Determinations

On 26 November 2021, the Minister for Planning and Public Spaces signed the *Environmental Planning and Assessment (Statement of Expectations) Order 2021 (Order)*.

The new Order sets out the Minister's expectations in relation to all Councils' performance in dealing with Development assessment.

The Order outlines that the Minister expects Council to assess development applications within the following timeframes:

- 250 days to prepare assessment reports for regionally significant development applications and refer them to Regional Panels,
- 180 days to determine a Development Application,

This Order enables the Minister to revoke Council's planning and development functions (i.e. assess and determine DAs etc.) if Council routinely fails to meet these timeframes.

The NSW Department of Planning & Environment's 'Development Assessment Best Practice Guide' notes how delegations of staff are often a hinderance to Council's ability to efficiently process Development Applications.

The 'Development Assessment Best Practice Guide' recommends that Council provide staff delegations which:

- Facilitate decisions which reflect the nature of the DA.
- Acknowledge the judgement of their professional staff, particularly in planning and environmental management.
- Seek the continued merit assessment at the appropriate level to minimise politicisation of the decision-making process

The following delegation framework seeks to ensure applications are efficiently processed and that decisions are made in accordance with the adopted planning instruments (i.e. LEP & DCP) of Council.

7.4.1. Delegated Authority

Council's Development Assessment staff can reject local Development Applications, in accordance with clause 39 of the *Environmental Planning and Assessment Regulation 2021*.

Council's Development Assessment staff can assess and local Development Applications within their delegated authority.

7.4.2. Executive Assessment Unit

Council's Executive Assessment Unit's (EAU) role is to provide executive oversight on significant Development Applications and peer review applications to ensure probity and compliance with legislative requirements.

7.4.3. Southern Regional Planning Panel

In accordance with the *State Environmental Planning Policy (Planning Systems) 2021*, regionally significant Development Applications will be reported to the Southern Regional Planning Panel for determination.

7.5. Process for identifying and managing potential conflicts of interest

7.5.1. Management controls and strategies

The following management controls apply to:

- a) the assessment and determination of an application for Council-related development:
 - i. refer to Attachment 1 for controls
- b) the regulation and enforcement of approved Council-related development:
 - i. use of independent consultants
 - ii. enter into a shared services arrangement with a neighbouring Council
 - iii. Public reporting on key milestones such as construction and occupancy certificates

The management strategy for the following kinds of development is that no management controls need to be applied:

- a) commercial fit outs and minor changes to the building façade
- b) internal alterations or additions to buildings that are not a heritage item
- c) advertising signage
- d) minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- e) development where the Council might receive a small fee for the use of their land.

7.5.2. Identifying whether a potential conflict of interest exists

Development applications lodged with the council that are council-related development are to be referred to the Chief Executive Officer (or a delegate) for a conflict-of-interest risk assessment.

The Chief Executive Officer or their delegate is to:

- a) assess whether the application is one in which a potential conflict of interest exists.

- b) identify the phase(s) of the development process at which the identified conflict of interest arises.
- c) assess the level of risk involved at each phase of the development process.
- d) determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in clause 5 of the policy and the outcome of the general manager's assessment of the level of risk involved as set out in section (c) above of the policy,

Note: The Chief Executive Officer could determine that no management controls are necessary in the circumstances.

- e) document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

7.5.3. Staff and Councillors potential conflict of interest

The following principles must be adhered to:

- a) If a Council staff member is the applicant and/or landowner or is the delegated staff member to act as an applicant for a Council project/development, any discussion relating to the affected DA processing, status, etc, must be undertaken in the staff member's (ie, applicant) own time (if the matter is a private or personal project), in a public location (eg, foyer, front counter).
- b) If a Councillor or staff member is the applicant and/ or landowner, the Councillor or staff member must not use his/ her position to influence the Assessing Officer in the processing of his/ her application.
- c) The assessing officer is to ensure that all processes undertaken during the assessment of any DA are in accordance with Council's policies, procedures and legislative requirements. The applicant is not to be given any special, preferential treatment nor discriminated against.
- d) Trim containers are to be 'blocked' where a staff member or a Council officer as delegate/applicant for a Council application is applicant/owner.

Generally, any DA lodged where the applicant and/ or landowner is a Council staff member or Councillor, the DA should be processed in the normal manner, which may include determination under delegated authority.

7.5.4. Declarations of Conflicts of Interest

Where a staff member, team within Council, or a Councillor, is party to a Development Application as applicant and/or landowner, the person(s) must advise their supervisor of their conflict of interest and ensure that this procedure and Council's Code of Conduct are adhered to. Declarations must be made when submitting an application via the NSW Planning Portal.

7.6. Modifications

Sections 4.55 and 4.56 of the *Environmental Planning and Assessment Act 1979* enable Council, upon request, to modify development consents. Modifications are generally sought for changes to the proposed built form or imposed conditions of consent.

Generally, Council will not permit the lodgement 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.

7.7. Complying Development Certificates

There is no merit assessment of applications for Complying Development Certificates. Division 4.5 of the *Environmental Planning and Assessment Act 1979* clearly outlines that Council, or private certifiers are to determine:

- (a) whether or not the proposed development is complying development, and
- (b) whether or not the proposed development complies with the relevant development standards.

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.

8. Related Forms/Documents

- Nil

9. Attachments

Attachment 1	Assessment & Determination Criteria
Attachment 2	Example management statement

10. Authorisation

Name: Council Resolution No: ****

Date: Date adopted by Council xx/xx/xxxx

Draft Development Assessment Policy

Attachment 1 – Assessment & Determination Criteria

Category of Council DA	Assessment Controls	Determination Controls
<p>Minor DA</p> <p>Minor DAs refers to development that is small-scale, routine operational and/ or non-controversial. The determination of “minor” shall be made after consideration of the following criteria, at the discretion of the Director:</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will lead to any financial benefit for Council. <p>Examples include replacement amenities block, internal refurbishment of a building. Less than 5 lot subdivision.</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 (refer to Attachment 2) to be prepared and exhibited with DA 	<ul style="list-style-type: none"> • Determination under delegated authority. <p>(Other than for development on community land under section 47E of the Local Government Act 1993.)</p>
<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 and complies with zoning, landuse provisions and Council policies, with no substantial or numerous submissions</p> <p>Examples include, a 5 lot subdivision, a new amenities block, alterations and addition to existing buildings. A new fire station.</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, 2) Assessment by external independent town planning consultant (in accordance with Council’s Procurement Policy) may be 	<ul style="list-style-type: none"> • Determination under delegated authority.

	<p>required, if determined by the Director</p> <p>3) Management statement to be prepared and exhibited with DA, and</p>	<p>(Other than for development on community land under section 47E of the Local Government Act 1993.)</p>
<p>Major DA</p> <p>Major DAs refer to development that is large-scale, significant and/ or controversial. The determination of ‘major’ shall be made after consideration of the following criteria, at the discretion of the Chief Executive Officer / Director.</p> <p>The estimated value of the works to be undertaken;</p> <ul style="list-style-type: none"> • If the DA is Regional Development (under the State Environmental Planning Policy (Planning Systems) 2021. • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will lead to any financial benefit for Council. <p>Examples include: Coastal protection works, new industrial estates, new community facilities and libraries.</p>	<ul style="list-style-type: none"> • Engage external independent town planning consultant (in accordance with Council’s Procurement Policy), • Management Statement to be prepared and exhibited with DA, and <p>For applications that do not trigger referral to the Regional Planning Panel, a referral may be required to the Audit, Risk & Improvement Committee.</p>	<ul style="list-style-type: none"> • Report to council for determination <p>or</p> <ul style="list-style-type: none"> • 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. <p>Regional applications must be independently assessed.</p>

Attachment 2 – Example Management Statement

Council conflict of interest management statement	
Project name	
DA number	
Potential conflict	
Management strategy	<p>Refer to Attachment 1 for guidance. The strategy could include (examples only):</p> <ul style="list-style-type: none"> • The DA to be peer reviewed • Assessment staff are not project team staff • 'Independent assessment • Determination by the Regional Planning Panel • Key milestones post determination reported to Council and published
Contact	Anyone with concerns about Council fulfilling its obligations should report their concerns to the Council.