



# EXTRAORDINARY MEETING OF COUNCIL

To be held at 5pm on

## Thursday 1 February 2024

Council Chambers, 11 Manning Street, KIAMA NSW 2533

### Order of Business

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- 2 Webcasting Statement
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- 4 Statement of Ethical Obligations
- 5 Apologies
- 6 Disclosure of Interest
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### Members

Mayor  
Councillor N Reilly  
Deputy Mayor  
Councillor I Draisma  
Councillor M Brown  
Councillor M Croxford  
Councillor J Keast  
Councillor S Larkins  
Councillor K Renkema-Lang  
Councillor K Rice  
Councillor W Steel

29 January 2024

To the Chairman and Councillors:

**NOTICE OF EXTRAORDINARY MEETING**

You are respectfully requested to attend an **Extraordinary Meeting** of the Council of Kiama, to be held in the **Council Chambers, 11 Manning Street, KIAMA NSW 2533** on **Thursday 1 February 2024** commencing at **5pm** for the consideration of the undermentioned business.

Yours faithfully

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

Jane Stroud

**Chief Executive Officer**

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**AGENDA FOR THE  
EXTRAORDINARY MEETING OF KIAMA MUNICIPAL COUNCIL  
THURSDAY 1 FEBRUARY 2024**

**1 OPENING OF MEETING**

**2 WEBCASTING STATEMENT**

This meeting is being recorded and made publicly available on the Council website and persons attending the meeting should refrain from making any defamatory statements.

**3 ACKNOWLEDGEMENT OF COUNTRY**

Kiama Municipal Council acknowledges the Traditional Custodians of Dharawal Country, the Wodi Wodi people and recognises their continued connection to the land. We pay our respects to elders past, present and emerging and the contribution that they make to our community.

**4 STATEMENT OF ETHICAL OBLIGATIONS**

Councillors are reminded of their oaths or affirmations of office under section 233A of the Act and their obligations under the Code of Conduct to disclose and appropriately manage any conflicts of interest.

**5 APOLOGIES**

**6 DISCLOSURE OF INTEREST**

**7 PUBLIC FORUM SUMMARY**

## 8 NOTICE OF MOTION

### 8.1 Notice of Motion: Open letter to Council - Blue Haven

Clr Kathy Rice has submitted the following Notice of Motion for Council's consideration:

#### **MOTION**

That Council:

1. Suspends all action on the process of the divestment of assets located at Blue Haven Bonaira, on the basis that the process lacks a social licence, has not been transparent, has been flawed due to incorrect and changing financial statements during the course of the debate, and that the process has lacked any serious reference to the historical corporate knowledge of what has been a successful model of operation of the service by Kiama Municipal Council over decades.
2. Following a suspension of action (as per 1. above), seek an intervention by the Minister for Local Government to independently review the entire process (reclassification and proposed sale) so that both Councillors and the Community can be fully informed before such a major decision is made

Signed Councillor Kathy Rice

#### **Attachments**

- 1 Letter to Councillors re Social Licence [↓](#)
- 2 Blue Haven resolutions [↓](#)

#### **Purpose**

Debate of this motion is a necessary response to the open letter recently submitted by two prominent citizens. Media coverage and the consequent further circulation of the letter has exposed the perception that the events it chronicles are not as seamlessly acceptable as previously imagined. The community will be interested in how their Council responds to the letter.

#### **Background**

Events that have led towards the open tender for Blue Haven Bonaira have aroused community sensitivity and concern. With many of the details behind the sale decision remaining confidential, further transparency and a review of assumptions would assist Council to build community trust in the appropriateness of its responses and generate broader community acceptance.

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

**Chief Executive Officer response*****Unlawfulness of the Notice of Motion***

Section 55 of the Local Government Act 1993 (LG Act) and Part 7 “Tendering” of the Local Government Regulation 2021 sets out the requirements for entering into contracts and the undertaking of a Tender to enter into a contract.

As set out in this report **Notice of Motion: Open letter to Council - Blue Haven**, council has undertaken a tender process, in accordance with earlier resolutions of Council, the Act and Regulation with the intention of entering into a contract to divest the land and business operations of Blue Haven Bonaira.

The tenders have closed and under the Regulation Section 177, Council must:

177 *Consideration of tender submissions*

- (1) *As soon as practicable after the tender submissions for a proposed contract have been formally received under section 175, the council must assess the tender submissions.*

Further, under Regulation section 178, council must:

178 *Acceptance of tender submissions*

- (1) *After considering the tender submissions for a proposed contract, the council must either—*
- (a) *accept the tender submission that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) *decline to accept any of the tender submissions.*

The Notice of Motion proposed recommendation 1 seeks to have a resolution that appears to be in contravention of the regulation by suspending (pausing) a regulated process. There is no such term or allowance made for “pausing” a tender in the Local Government Act 1993, therefore the wording of the recommendation cannot be lawfully considered by Council.

It is also the firm advice of the CEO that as the Blue Haven Bonaira public tender is currently active and under consideration, this NoM poses a material and significant risk to destabilising the tender process and negatively impacts on selective tenderers confidence in Council’s decision making and is not in accordance with the Act for tenders. Feedback from the Tender process supports this.

As a consequence, the CEO formally advises Council that the NoM should not be debated and recommendation 1 cannot be considered as lawful. Recommendation 2 has other issues, which could have been resolved through wording changes had the Councillor consulted the CEO and met the requirements of the Meeting Code of Conduct.

The Notice of Motion (NoM) submitted by Councillor Kathy Rice met the timing criteria for the Code of Meeting Practice (CoMP) as it was submitted at 11:35am on 6 December 2023 before the midday deadline. Clause 10.2 of the Meeting Code of Practice clearly states that “Councillors are to send any proposed draft Notice of motions to the CEO, prior to the council meeting, for advice / comment”. The timing of

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

25 minutes before close of NoM's at midday did not leave sufficient time to provide advice to the Councillor on the contents of the NoM as is customary.

After considering the NoM, it became apparent that it did not satisfactorily address the requirements of the adopted CoMP in particular clauses 3.13, 3.14 and 10.10. Subsequently, Council were advised that the matter must be deferred to be discussed at the ordinary meeting of February 2024. It is also apparent (as explained above that Recommendation 1 can not be lawfully considered by Council and requires amended wording. Recommendation 2 likewise requires re-wording.

The wording of proposed recommendations 1 and 2 in the NoM to be lawful would be required to be reworded to:

1. *"That Council cease the tender for the Blue Haven Bonaira divestment".*
2. *"That Council advocate to the Minister of Local Government the Hon. Ron Hoenig to exercise his powers under Section 438A of the Local Government Act 1993 (the Act) which enables the Minister (or his delegate) to issue an order to a council, or to individual councillors or to both, to do or refrain from doing anything further on the divestment of Blue Haven Bonaira".*
3. *That Council urgently considers its cash flow and going concern status as a direct result of this decision to cease divestment.*

The rationale for changing the wording of the resolutions as the following:

1. The Local Government Act does not allow for "pauses" in tender processes and to do so would frustrate the process and expose Council to legal risks associated with entering into a commercial transaction in bad faith.
2. The second recommendation relies on the unlawful action of recommendation 1 being agreed to by Council through the explicit wording of "Following a suspension of action (as per 1. above)". This cannot occur, as it is not permitted in the Act.
3. Recommendation 2 also seeks the Minister to intervene on prior lawful decisions made by Council. The Minister for Local Government can take action against a Council under Section 6, 7 and 8 of the Act under the provision of 438 A through to H. These provisions are quite specific in terms of performance improvement orders, administrators etc and do not include provisions to overturn prior decisions on land classifications or resolutions concerning tenders.
4. Recommendation 2 does not adequately consider the powers of the Minister and the required performance management provisions of the Act, and lacks specificity. The wording should be amended to state "Call on the Minister for Local Government to take performance management interventions as available under Section 6 438 of the Local Government Act 1993".
5. Recommendation 2 as it is currently worded also seeks for Council to review and change it's a lawfully made decision on a land classification decision for the Bonaira land. The wording of the recommendation essentially suggests review or reclassification, without following any due process or the required steps as specifically outlined within the Local Government Act and the Environmental Planning and Assessment Act 1979. Land Classifications cannot be pre-empted by a decision of Council. Lawfully made planning decisions should be upheld,

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

unless due process has been followed and therefore Land Classifications cannot be pre-empted by a decision of Council, so the current wording of the recommendation would require changing prior to Council voting on this.

6. The cash flow and Council's going concern status would be at risk due to the resolutions proposed in the recommendations. The Councillor ought to have adequately considered fiduciary responsibilities for the organisation and included a recommendation that addresses this situation and risks.

It is the CEO's view that this circumstance of this NoM is intentionally politically motivated and not in the greater public interest. The tabling of this letter in the business paper as a NoM is disruptive, and an expression of dissatisfaction with Council's democratically and lawfully made prior resolutions regarding Blue Haven Bonaira in October 2022 (by majority vote) and again February 2023 (by unanimous vote).

The full wording of the February 2023 and the reclassification decisions resolutions is recommended to be read and understood in considering the information in this NoM. The recorded vote is a matter of public record and the specific and full wording ought to be considered. Accordingly, these resolutions are attached at the end of this report along with other resolutions pertaining to Blue Haven divestment matters.

Councillors are reminded of their obligations under the Local Government Act 1993 and the Councillor Code of Conduct regarding confidential and/or privileged legal information not being released publicly or during the public discourse and debate at either public access or the ordinary meeting debate on this NoM.

To ensure that every aspect of the Project is carried out impartially and without bias, all conflicts of interest are to be disclosed and effectively managed. Council and Council Associates involved in the Project are to disclose any conflicts of interest to their duties, whether actual, perceived or potential. This is discussed in more detail in clause 6 of the Probity Plan that is attached to the tender report. Councillors are specifically recommended to read carefully the questions posed at page 20 of the Probity Plan (attachment 1) and consider any election commitments, union and political party membership or affiliation that could give rise to conflicts, actual, potential or perceived. This is particularly pertinent given the public campaign coordinated by the United Services Union on the matter.

***It is the CEO's professional advice that the Chair must make a ruling on whether or not this NoM should be debated as the CEO has determined that the recommendation 1 is not lawful, and recommendation 2 requires rewording. It is the CEO's advice, in line with the Meeting Code of Practice that the NoM is not unlawful and should not be considered by Council.***

However, given the political dynamics at Council, **the CEO has requested that the Mayor (Chair) make a ruling on the NoM and that if debate is allowed to occur, that the following responses to the open letter be considered.**

The responses explain the risks and respond to parts of the open letter. Not all aspects of the open letter are addressed as they are on occasion irrelevant, speculative and do not align with the public record.

### Reponses to the Open Letter

The CEO response is provided in the following structure;



## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

- 
1. The role of Councillors, Prior Decisions, and complaints handling,
  2. Response to the social license term in the open letter,
  3. Strategic, Financial and Legal issues associated with the NoM and the recommendations,
    - 3.1 Commercial and strategic risk / issues
    - 3.2 Contractual and Legal risks and issues
    - 3.3 Going Concern, Financial risk and issues
    - 3.4 Financial Statements
  4. Lack of Information and Confidentiality of Information, and
  5. Conclusion

**1. The role of Councillors, prior decision, and complaints handling**

*The role of a Councillor and democracy as defined in the Local Government Act 1993 in Section 232 is:*

- (1) The role of a councillor is as follows--
  - (a) to be an active and contributing member of the governing body,
  - (b) to make considered and well informed decisions as a member of the governing body,
  - (c) to participate in the development of the integrated planning and reporting framework,
  - (d) to represent the collective interests of residents, ratepayers and the local community,
  - (e) to facilitate communication between the local community and the governing body,
  - (f) to uphold and represent accurately the policies and decisions of the governing body,
  - (g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.
- (2) A councillor is accountable to the local community for the performance of the council.

Section 232 (1) (f) of the Local Government Act 1993 requires Councillors “to uphold and represent accurately the policies and decisions of the governing body”. While councillors are free, subject to their obligations under the Act and Council’s Code of Conduct, to advocate a position on matters that are before the council for a decision, once a decision has been made they are required to ‘uphold’ the policies and decisions of the council.

The legislative requirement to uphold the policies and decisions of the council should be read in the context of the implied freedom of political communication under the Australian Constitution. In regard to the NoM it is abundantly clear that Council has

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

lawfully resolved its position on the Blue Haven Bonaira divestment on many occasions. A copy of prior decisions made on Blue Haven is attached for information.

The NoM does not properly consider the legal, financial and risk implications that underpin, support and flow on from the recommendations put forward. The risks associated with the negative reputational damage that this NoM may have during a public tender process are significant. Significant concern is expressed about the enduring adverse effects that this NoM has on stakeholders, including the residents of Blue Haven for whom Council staff provide direct care; the staff of the whole organisation who work diligently to implement the decisions of Council; and lastly on the community's trust in its local government authority.

It is evitable that constituents may disagree or hold differing views from those decisions resolved by Council, or for that matter towards any level of government who are charged with making decisions for citizens. Many people take the opportunity to express their views through emails, social media, in correspondence or different forms of media or community organisations. Council receives letters such as the open letter that is the subject of this NoM from time to time on a range of matters, for example stormwater, tree management, noise complaints or budget related matters. Such correspondence is typically replied to by staff and personally by Councillors. Several Councillors have already replied to the open letter authors personally, prior to it being included in the business paper as a NoM.

It is not usual practice to table such a letter in the form of a Councillor NoM, nor for a Councillor to agree precisely with the recommendations suggested in the complaint. It Usually the Councillor would consult with the CEO and give sufficient consideration to the financial, legal and strategic risks and implications for the organisation, and costs associated with the NoM.

In direct opposition to Section 232 (f) of the LG Act, previous lawfully made resolutions on the Blue Haven Bonaira matter determined in May, June, October (2022) and February (2023) and classification of land resolution made in June 2023, were ignored in the choice to table this open letter.

Likewise, Councillors have also made a series of prior resolutions and decisions where the Blue Haven Bonaira tender and potential sale were relied upon or reiterated including the following (Please refer the list at the end of this report) but additionally the following:

- Long Term Financial Plan, (adopted 29 June 2023)
- Strategic Improvement Plan 2 (adopted 18 April 2023)
- TCorp Loan (adopted on 29 June 2023)
- Working draft of property divestment plan (28 February 2023)
- Financial sustainability and Cash Flow strategy (adopted 28 February 2023)
- Operational Plan 2023/24 (adopted 29 June 2023)
- Decision to divest of Blue Haven Bonaira 28 February 2023, resolution 23/038OC
- Financial Statements 2020/21(April 2023)
- Financial statements 2021/22 (September 2023)

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

In this term of Council, it is the first time a letter of complaint or disagreement with previously made Council decisions has been tabled as a NoM by a Councillor. The political decision made by the Councillor to do so, at a time when the tender process is closing and the decisions as required by the Local Government Act 1993 in respect to tenders are to be made, creates intentional disruption, additional work, negative media and substantial risk for the whole organisation and by extension for the community.

This choice has an impact on the good faith negotiations currently underway as part of the tender. There are contractual implications associated with this and serious financial consequences.

The Councillor role is often likened to a board of directors for a company. It stands to reason that fiduciary responsibilities associated with the company / community / local government entity which the Councillor is elected to represent (vis a vis a Director for), ought to have been better explored prior to the tabling of a community members complaint regarding the decisions of the elected body, without edit or amendment and without consultation with the CEO.

Complaints about Public Officials and staff must be handled in line with relevant policies of the organisation. This has not occurred on this occasion. Usual practice would have seen this letter provided to the CEO for an official reply with copies sent to Councillors as a courtesy.

It is noted that some parts of the open letter could be interpreted as amounting to a code of conduct complaint by including several unsubstantiated allegations made against staff and public Officials (i.e the CEO). In the interest of caution, the CEO requested Council's Complaints Coordinator review the open letter's content. It is noted that by drafting this response procedural fairness and workplace rights of natural justice, which ought to have been provided to the staff and public officials have been foregone. Complaints about Council decisions, or the organisation's Officials and staff are required to follow the complaints procedure. As the procedure was not followed an erosion of staff workplace rights has occurred.

## 2. Response to the social license term in the open letter

Kiama Municipal Council is empowered to make decisions under the NSW Local Government Act 1993. The system of democracy in Australia is based on the ability for citizens (registered voters) to vote for individuals in the community who have nominated, and who, following the declaration of the polls, become public officials / Councillors / Elected Representatives for a specified term once they swear an oath or state an affirmation.

Councillors subsequently make decisions (through a majority of votes) on their constituent's behalf, in respect to municipal services and operations. It is imperative to firmly establish that it is the NSW Local Government Act 1993 which gives legitimacy to Kiama Municipal Council and its Elected Representatives.

The Local Government Act of NSW 1993 makes no mention of social licence and it is not included as a requirement or specification in the Act for local government decision making. The assertion of social licence being required for the Blue Haven Bonaira decision, or in fact any decision resolved by Council is therefore not legally applicable.

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

Importantly, neither the Local Government Act 1993, nor the Federal Government Aged Care Act 1997, nor the Retirement Villages Act 1999 and Regulations make no reference to the term social licence. Given the legislative context for decision making within local government is very specific and limited to the acts and regulations that govern a local authority, it would be neither sensible or wise for Council to commence making decisions or seeking to overturn previous decisions, based on ideological terminology.

Accordingly, no further attention will be given to the use of this term as outlined in the open letter as it holds no meaning that is relevant to the legislation concerning local government.

### **3. Strategic, financial and legal issues associated with the NoM and the recommendations**

#### **3.1 Commercial and strategic risk / issues**

As noted above, the Councillors who were elected this term have made a series of very clear decisions concerning Blue Haven Bonaira and have on multiple occasions resolved either unanimously or by majority, on a range of strategic, legal and policy positions. Having made the above decisions lawfully and within the legislation of the NSW Local Government Act 1993, those decisions have become binding and must be duly implemented by staff. Council staff have significantly progressed these decisions and regularly reported on their progress to Council.

The Local Government Act 1993 has strict controls that guide public tender processes and commercial in confidence information. As Council lawfully resolved to proceed with the tender for Blue Haven Bonaira over twelve months ago, significant work has occurred to implement this resolution.

An Expression of Interest process commenced 18 August 2023 that moved to a selective tender process that opened on 7 November of 2023, and a due diligence stage with final tenders due by 19 December 2023. Probity lawyers and independent experts were appointed to support the process and expenditure has occurred as permitted via resolutions to facilitate this process.

The outcome of the tender process is currently before Council for consideration at this extraordinary meeting. Negative publicity impacts the reputation of the organisation and in turn has a bearing on public and market confidence in the decision-making capacity of Council and trust in the execution of the commercially based sale process.

Public discourse on the tender and decision making processes destabilises, introduces risk and therefore materially impacts on the commerciality and value of the tender. In fact, it is known to staff that this is precisely what occurred in December 2023 when this NoM was first tabled.

There is the possibility that this enduring media and political cycle impacts on the submitted tender value, and bidder confidence. This is disadvantageous to the community as public monies were used to fund the construction and operation of this asset and service, and the ongoing risk and financial costs, or value at market continue to be borne by the ratepayer.

Any media that negatively detracts from the value captured at point of sale and offer is clearly not in the best interest of the community and is not in line with prior decision

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

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ratified by Council. The value proposition of the asset reflects market confidence in decision making. Therefore this NoM carries financial risk.

**3.2 Contractual and Legal risks and issues**

There are legal risks associated with the executed loan agreement between Council and TCorp loan agreement. On 29 June 2023 Council resolved to enter into a TCorp loan agreement renegotiation process via resolution 23/150OC (majority vote) and specifically clause 2 (a)(iii) 6.4 Mandatory Prepayment referring the loan be paid in connection with the Bonaira sale.

This report was public and the loan document is a legally binding contract. Therefore this NoM has the potential to affect the loan contract and would require Council to inform TCorp of the changed circumstance should the Bonaira sale not occur mid-2024 as indicated at the time the loan extension was agreed. There are clauses within the loan concerning financial performance and liquidity and there is the potential that should the NoM be upheld default provisions due to the material nature of the change may result. Loan interest is currently just under \$700K per annum.

There are also legal risks associated with any proposal to pause or interfere with an open tender process. Tenderers have been selected in good faith, entered due diligence and expended a deal of their own funds through hiring consultants and attending site visits, reviewing material and preparing bid information to enable them to submit a tender and now are awaiting a decision. Tenderers have entered an expression of interest and tender process in good faith and there are commercial and contractual risks associated with the NoM which may adversely impact Council if the tender is suspended. Council may expose itself to counter claims.

As already noted above the Local Government does not allow pauses in tenders. Council would need to end the current tender and commence a whole new process. The replication of this work would incur a duplication of costs associated with the tender. It is also reasonable to suggest that the future interest of the market may be negativity impacted by the duplicated process and a lack of confidence in decision making.

There are also significant governance risks to Council (and every aged care provider) with a rapidly expanding compliance and reform agenda by the Federal Government following the Aged Care Royal Commission.

The aged care industry has changed profoundly over the past 10-15 years and in recent years many smaller and single service providers have divested or exited the system, either voluntarily as a strategic decision by the organisation's governing body or forced due to general compliance, clinical reviews and accreditation, building certification, lack of senior staffing, national staffing shortages, support structures and/or financial circumstances required to consistently provide quality care services.

For Council, not only is there the direct risk from owning and managing the operations noted here, but also the broader governance, viability and reputational risk that the remainder of the Council's operations may be subjected and adversely impacted as a result.

There are plenty of specific risk exposures for Council that have arisen due to this overinvestment in aged care services, lack of asset management plans, omission of

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

dedicated reserves for replacement and renewal, lack of operation plans and workforce strategies to name a few. The current administration is working diligently to address these risks and prepare required business documentation, including deliberate monthly financial reporting to Council on the separated accounts.

There is little point comparing the past and current state, as so much of the current operational state for aged care services has changed since the 2013 and 2015 feasibility studies were prepared. No doubt prior Council's and administrations did their best at managing the assets and services that the organisation had at that time, based on the information they had at that time. It is not in the communities' best interest to attribute blame for legacy decisions.

Rather, this administration has remained focused on addressing the urgent need to correct the financial situation, prepare required aged care business documentation and protect the local government's future state. The finances of the organisation simply require collective and decisive action based on the very real set of financial circumstances that the organisation finds itself in.

To put it in the most rudimentary of terms, Council borrowed \$60 million, spent \$105 million on construction and used over \$20 million of internal reserves and cash to fund shortfalls in construction costs. Council owes \$15 million to TCorp in just over a year and continues to make operational losses on aged care services. In a nutshell the organisation has close to \$8 million in unrestricted cash deficit and the Bonaira operation is a major contributing factor to this. Consequently, there is recurring cash shortfall, a drain on reserves (that forces Council to dip into reserves) and repeated deficit annual budgets. That is the definition of an unsustainable financial model for any business and is the situation that requires immediate correcting.

This elected Council were briefed on this situation and the need for urgent action the instant they were sworn in on the 11 January 2022, in the presence of the Office of Local Government. The elected officials have had the benefit of Ministerial Appointed Financial Advisor for 7 months and a performance improvement order directing their attention and focus on decision making. Countless briefings and reports have been provided on this situation to Councillors. Experts and specialists have given their advice and advisory committees have worked alongside Council to provide quality advice and highlight risks.

The administration remains exasperated that regardless of the information, the many resolutions, substantial bodies of work undertaken that this constant circular conversation continues. The cycle of making and unmaking decisions requires constant resourcing and rework. This continued pattern of behaviour negativity impacts on the culture / reputation of the business, the communities perception of the Council and directs effort and energy into regressive areas that do not assist in improving the future state.

### **3.3 *Going Concern, financial risk and issues***

The design, construction and funding for the Bonaira development and the significant use of internal cash reserves to supplement the escalating development cost has been well documented in public reports and noted as a main contributor to the balance sheet and cash difficulties facing Council. The significant operating losses and debt financing costs add to this situation. The public can access all of this information in past reports.

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

Delays as proposed at point 1 of the NoM recommendation carry real monthly costs in the continuation of service delivery and the projected financial situation of the organisation, which remains precarious and at times dire, in relation to month-to-month liquidity. The operating cash deficit of Bonaira is continually reported in Council's monthly financial reports. The current year position is a deficit of approximately \$4M. This follows similar results in recent years since opening.

The Bonaira Development cash flow position has been reported to Councillors in June 2022, December 2022 and August 2023 and showed the cash shortfall from resident deposits compared to the total development costs of \$21M with additional loan finance costs now amounting to over \$6M.

It is likely that if a pause called for, and the completion of the review of work (as proposed in this NoM) occurred, that by May or June 2024 Council would again place itself at risk of accessing internally restricted reserves in order to remain in a positive unrestricted cash position.

The Financial Sustainability & Cash Flow Strategy which is built on asset divestment during and up to June 2024 followed by operational efficiencies is not only heavily reliant on the Bonaira divestment but is also a key document that supports the ability of Council to satisfy its Going Concern obligations and satisfy NSW Audit Office and NSW OLG concerns.

Council's ability to generate revenue is limited by regulation and legislation, and in the main is derived from rates, fees and charges. Council has already voted to not pursue a special rate variation application to IPART for the 23/24 year. Any future application would not be considered and implemented until 26/27 year.

The SIP clearly explains that Council's liquidity strategy is based Financial Sustainability & Cash Flow Strategy, short – medium term LTFP and Liquidity Strategy is based on asset divestment including Bonaira sale in June 2024 and operational efficiencies (part stemming from the removal of the aged care losses). The LTFP was placed on public exhibition for a period of 28 days and community feedback at this time did not object to the proposed divestment. All feedback was reported to Council.

Any delay in the sale process will continue the current operating cash deficit of \$4M or \$330K per month.

It is also noted that the reclassification process has concluded with the land being gazetted as operational. The previous work on the reclassification incurred significant cost in terms of external consultants and staff time. The open letter and NoM would result in a likely duplicated cost.

The implementation of point 1 of the NoM recommendation would have costs associated if the Minister for Local Government were to proceed with exercising its powers under the Local Government Act. The Minister would need to exercise those powers through the form of notice of intention to issue either a PIO, or to place Council into an administration. Then a public enquiry would be held. The wording simply asks for a review and an independent investigation, and it is important to note that Minister must act within the bounds of the LG Act and that all costs associated with Ministerial interventions are borne by the local authority and ratepayers. Council has already spent \$77,000 on the State appointed Financial Advisor; costs associated with the current review completed in January 2024 are not yet known.

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

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The NoM gives no alternate financial suggestions to improve liquidity and continue to meet required local government performance ratios, or loan requirements. The NoM does not provide a source of funding for this work as required by the CoMP.

**3.4 Financial Statements**

In October 2023 Council resolved the 2021/22 Financial Statements. The 2021/22 statements represented a significant step forward for Council's financial reforms, and the goal of achieving an unmodified audit opinion.

It is important to remember the 2020/21 financial statements, which were only finalised in April 2023, received a pervasive and qualified audit opinion from the Audit Office of NSW. Therefore to complete the following financial year (2021/22) obtaining just qualifications on only three items being,

1. the opening balances from 2020/21,
2. fixed assets valuations cycle (which is not complete) and
3. a component of restricted and unrestricted cash reserves.

This a remarkable achievement considering the historically difficult and tumultuous year that 2021 was. It also speaks to the improvement in financial records management, and governance across the board.

The open letter fails to properly understand what the fixed asset register is and the value of assets being balance sheet related. Council has publicly addressed spurious misreporting on the financial statements in statement released on 4 October 2023 and in an ABC live interview. The actual market valuation of Blue Haven and Terralong were undertaken by specialist firms and were provided to Council in reports for information. That information has never changed, regardless of financial statements.

Community members are reminded that the best source of independent evidence and statements on the progress made with regards to Council's financial position and reporting, is the Audit Office of NSW. The lead auditor for the AO made a series of public positive comments regarding the financial statements when addressing full Council at their meeting on 19 September 2023. See Audit Office presentation at 31m 58 seconds of the livestream:

<https://webcast.kiama.nsw.gov.au/archive/video23-0919.php>

Likewise, the Councillors and open letter authors may wish to study again page 70 of the financial statements which are on Council's website, for facts concerning the Independent Auditors report.

[www.kiama.nsw.gov.au/financialstatements2022](http://www.kiama.nsw.gov.au/financialstatements2022)

Dwelling on already well-known historical issues is simply a repetitious distraction to the operations of Council.

It is not accurate to say that faulty financial information has been used to make decisions concerning Blue Haven Bonaira or Terralong for that matter. In fact, the corporate knowledge and improvements to policy, operational plan, master roster, operating costs, depreciation, prudential standards, dilapidation, compliance with regulations exceed all historical documentation. The separating and public reporting on the accounts for Blue Haven and Municipal operations has been fundamental in



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## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

this reform and improved financial management and the community should take great confidence in this transparency.

Organisational reform to ensure that expenditure is within available means must continue to be the unwavering priority of this Council, and future Councils.

This NoM does nothing to consider the financial reality facing the organisation and the open letter also fails to recognise the acuity of the situation.

**4. Lack of information and confidentiality of information**

Over the past two years Councillors have been provided a large volume of information concerning a wide range of issues including finances and aged care services. The Local Government Act 1993 has strict requirements concerning confidential information particularly as it relates to tenders, commercial interests, advantaging (or disadvantaging) other parties.

Councillors had more than sufficient information and advice on which to base the 28 February 2023 decision to divest of Blue Haven Bonaira. Obviously, during the preparation of the business case for Bonaira the service and its operations were compared to competitors. Hence this information must be kept confidential as a tender is being facilitated. The commerciality of Council's business interests must be given primacy when tenders are in the marketplace.

Information has not been unreasonably withheld from the community and as with all commercial matters, will be reviewed in the future for currency of rationale for confidentiality.

Item 14.9 (through to Item 14.17) of the Meeting Code of Practice makes it plain "The Council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed". The authors of the open letter could have appealed under this on any occasion to address their confidentiality concerns. It is noted that the public record shows they did not.

Information on the classification of the land at Bonaira has likewise been answered on many occasions. A good deal of public information abounds on this lawful decision to recognise that a site used to house over 200 staff, provide 134 beds, has over 90 permanent residents and which operates 24 hours a day, 7 days a week, is best categorised as operational land. Nonetheless having resolved its position on this matter, staff have progressed and finalised this issue.

The authors of the open letter and Councillors are encouraged to accurately use the wording of the resolution in full, and to ensure that due recognition is paid to the words "subject to any decision on the reclassification". It is apparent that this appears to be deliberately omitted on occasions in the open letter in favour of building an alternate narrative.

Councillors were provided advice responding to this same claim of "pre-determined decision" submitted by a Councillor in October 2023. Councillors have had ample opportunity to consider the facts of this.

It is reasonable to expect that there will always be a difference in quality / quantity and type of information provided to those who were democratically elected and swore an oath to represent the community and to member of the public. Every effort is made to

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

ensure reports provide the best available advice that councillors can use to make decisions. Staff have provided as much information publicly as possible.

If Councillors aren't satisfied with the advice they have received or need more information, they have the ability to raise questions, seek deferral or vote against items. Likewise, the CEO has the right to ask for information that explains why this material is requested and is necessary to perform the official functions of a Councillor.

The public record shows that Councillors have had significant volumes of information relating to Blue Haven and the financial circumstances of the organisation. There have been countless briefings, workshops and reports on this subject and it is not correct to state that details are insufficient. This Council has had more information about Blue Haven and Council's finances than any previous elected body. In fact since taking office this term the Elected Body has had over 130 reports on the following:.

Blue Haven = 62

Financial Matters = 35

Investment reports = 24

Strategic Improvement Plan = 10

Councillors have also had 20 briefings and 17 workshop, primarily focusing on finance, Blue Haven or risk matters. Given the volume, it is not accurate to state that Councillors lack information or reports on the subject matter.

## 6. Conclusion

Since being appointed to the role in June 2021 as the CEO, I have been honest and transparent about the challenges facing Kiama Municipal Council and diligent in our reporting to the community or government entities such as ICAC, the Minister and the Office of Local Government. Appropriate disclosures have been made concerning maladministration, financial sustainability and reportable ICAC matters. To date each disclosure has been handled appropriately and no further action required or taken. It is publicly known that these circumstances have led to the need for a State issued performance improvement order and it would be reasonable to assume that until the financial sustainability of the organisation improves significantly that it would be likely that the orders will remain in place.

Over the passage of two and half years, hard and sometimes uncomfortable truths have been shared publicly in reports such as the State of the Organisation, the Strategic Improvement Plan, and release of information concerning the construction of Blue Haven Bonaira. Sharing this information at the time drew negative feedback and campaigns, which continues to this day.

I have a personal appreciation that community members are passionate about their Council and interested in its decisions and critical choices. Given the dire circumstances of the organisation I can empathise to an extent with the reaction to the financial circumstances of Council but take exception to assertions made in the open letter concerning historical expertise in aged care missing in current administration, ideological positions and lack of impartiality in Officer decision making, lack of fiduciary responsibility and accusations of using confidentiality provisions inappropriately or financial mismanagement. Such allegations are not based in fact, or supported by the

## Notice of Motion

## 8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

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public record, and do little to assist the organisation and community in moving forward or improving organisational reputation.

The CEO role implements the decisions of Council, all staff are charged with providing facts and information to enable decisions to be made. I remain committed to that role, regardless of how uncomfortable some of the information is to hear, or how challenging the necessary decisions are to be made and implemented. It has been no easy task to lead an organisation through this journey of discovery and course correction, but to be plain, there is simply no alternative, the state of the organisation is what it is, and requires swift and decisive action ideally driven by a united Elected body who also share a healthy care and concern for the sustainability of the local government authority.

I do genuinely appreciate that my decisions to share the challenges of KMC with the public have been controversial but consider this was in the public interest. There has been no intention to tarnish the legacy or reputations of those involved in prior decisions. The authors of the open letter served their community diligently for many years and no doubt worked hard, making the best decisions they could with the information that they had at the time. I thank them for their previous efforts and for the continuing good work they do in our community to this day.

It is the job of every leader to manage the hand they are dealt, the culmination of past decisions, current circumstances, and future requirements. As I have said on multiple occasions, much good work occurred at KMC in the past and much good work continues every single day. Right now, is not the moment to assign blame, to criticize the past or current, no one benefits from continued public quarrelling and revisionist decision making. Collective forward momentum and effort is required to significantly change the business and become financially sustainable. It is my belief that is what the vast majority of the community expect Council to do, to make decisions and improve the organisation.

It is true that the divestment of aged care is a significant decision that changes the composition of the business and presents a whole new direction for the organisation. People respond differently to change and have varying levels of acceptance and capacity to adjust.

The value of having shared information about the state of the business cannot be understated. I remain convinced this path was in the best interest of the community in terms of transparency and the long road to rebuilding community understanding of Council's prior investment decisions, financial situation and the future plan to address sustainability.

Both Councillors and staff have and continue to work tirelessly to address the financial challenges facing the organisation since those challenges were made public, and I thank them for their efforts. Progress has been carefully monitored and measured by the Office of Local Government through the performance improvement order and watched over by the Ministerial Appointed Financial Advisor. This additional scrutiny and attention has helped give the State confidence that the organisation can right its own path and meet its obligations.

The Audit, Risk and Improvement Committee, the Blue Haven Advisory Committee and the Finance Advisory Committee have played a pivotal role in supporting and providing strong advice to Council on its financial position. I remain grateful for their

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8.1 Notice of Motion: Open letter to Council - Blue Haven (cont)

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hard work, regulatory oversight and advice. I am sure that this level of scrutiny and performance management will continue as the situation continues to be worked on, and while ever the performance improvement order remains. The public should take a great deal of confidence in these continuing checks and balances.

It is a fact that the only constant in life is change. The NoM and open letter are an articulation of dissatisfaction with impending changes. It is always understandable that reaction to change and transformation will vary. However, efforts of staff and the scant resources of Council are best directed towards supporting the required changes, rather than defending unsubstantiated allegations and responding to NoM's that ought not to have been tabled with Council without the required consideration.

**Item 8.1**

## OPEN LETTER

Monday 4<sup>th</sup> December 2023

Mayor Reilly and Councillors  
Kiama Municipal Council

**Re: Lack of Social Licence for the proposed sale of Blue Haven Bonaira and call for an independent review.**

Council's website indicates that the closing date for tender proposals is 19<sup>th</sup> December 2023. This suggests that Councillors will be called upon to select a new owner early in 2024.

Kiama Aged Care Centre of Excellence a.k.a. Blue Haven Bonaira, is part of Kiama's most significant public asset, an asset which has helped to define Kiama LGA for many years, an asset which is part of the highest employer in the LGA and which has touched the lives of a large part of the Kiama area community.

These facts place a serious burden on the Council to ensure that the community is prepared to give Council a "social licence" to sell the asset. The term refers to the "acceptance" granted to the Council by the community to act in some way. It goes beyond whether or not the Council has acted legally. The Ethics Centre suggests:

*The social license to operate is made up of three components: legitimacy, credibility, and trust.*

- **Legitimacy:** *this is the extent to which an individual or organisation plays by the 'rules of the game'. That is, the norms of the community, be they legal, social, cultural, formal or informal in nature.*
- **Credibility:** *this is the individual or company's capacity to provide true and clear information to the community and fulfil any commitments made.*
- **Trust:** *this is the willingness to be vulnerable to the actions of another. It is a very high quality of relationship and takes time and effort to create.*

In this letter we highlight matters which suggest the community remains unconvinced that all avenues leading to retention have been investigated, that much of the decision making has been out of sight and that confusion in the status of Kiama's financial circumstances has allowed an ideological belief that Aged Care is not core business for Kiama Council to dominate the outcome from the beginning.

The lack of trust engendered by this process will have long term implications for Council's relationship with its community as we face the challenges of the next decade.

Sandra McCarthy and Howard R Jones: Lack of Social Licence for the proposed sale of Blue Haven Bonaira. Call for an independent review. 1

**Our Request:**

We call on Council to support a motion:

- 1. To suspend all action on the process of the divestment of assets located at Blue Haven Bonaira, on the basis that the process lacks a **social licence**, has not been transparent, has been flawed due to incorrect and changing financial statements during the course of the debate, and that the process has lacked any serious reference to the historical corporate knowledge of what has been a successful model of operation of the service by Kiama Municipal Council over decades.*
- 2. Following a suspension of action (as per 1. above), to seek an intervention by the Minister for Local Government to independently review the entire process (reclassification and proposed sale) so that both Councillors and the Community can be fully informed before such a major decision is made.*

**Background to these concerns:**

A sale of Blue Haven Bonaira and Community services would be the finalisation of what has been a confusing and complicated process for Council and the Community and would involve the loss of Kiama Community's most significant public infrastructure asset, and an aged care service for the Kiama Community which has been part of defining Kiama as a compassionate and caring Local Government Area for decades.

Such a profound sale must not only tick any legal boxes, but should also satisfy the requirements of a "social licence" to make such a decision on behalf of the Kiama Community. As such, it must also tick the boxes of "legitimacy", "credibility", and "trust".

For over two years the Community and Councillors have been provided via media reports, a negative view and future for a much-loved asset and service to support an **ideological** opinion that aged care services are not core Council business, despite aged care being a core Kiama Council business for 40 years. This negative public campaign appears to have been to boost support for a **sale** and inadvertently or otherwise, we believe has unnecessarily harmed the reputation of Blue Haven.

Further, such an ideological position flies in the face of the Royal Commission into Aged Care Quality and Safety which found that **not-for-profit** agencies such as Local Government provide a better level of care than **for-profit** services. It also immediately establishes a bias towards the sale of the asset and suggests to the Community an

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unwillingness to properly assess and balance the financial and social factors. We believe that Council has demonstrated **apprehended bias** in this regard.

Given the importance of the facility in the lives of so many people, the growing older demographic of the LGA and the ongoing standing of Kiama LGA, we believe that a **social licence** to sell has not been established with the Kiama Community.

It is extremely concerning on reading the recent Independent Auditor's Reports that the elected Councillors voted to sell Blue Haven Bonaira on information and reports that were deemed to be incorrect and subject to a disclaimer. This would appear to be a breach of fiduciary duty and trust of the elected Council. Councillors are elected to protect the public interest.

Early publicity relating to Council's troublesome financial position was quickly blamed on Blue Haven Bonaira and yet the **most recent** audited financial statements (for the financial year ended 30 June 2022) show that Blue Haven was out-performing Council's other municipal operations in that year. Given the financial "moving feast" described in the public reports and financial statements over recent times and more detailed forensic reviews being subject to confidentiality restrictions, together with an unwillingness by the auditors to fully sign off on Council's "books", the Community is justified in having very little confidence in any decision to sell.

The difficult financial status of Kiama Council was from the beginning, both linked to the Blue Haven Bonaira facility as well as to supposed systemic financial problems dating back many years to previous administrations and elected Councils. Under the cloak of confidentiality, little of any comprehensive detail required to support such allegations has been made available to the Community, nor to those whose reputations have been questioned as a result.

Councillors and the Community were assured from the beginning that all avenues open to Council would be assessed however the Community is yet to see the full detailed comparison of the long-term business plans that supported a "sell" rather than "lease", "joint venture", or "retain" options.

As so often happened in this matter, principal documents remained confidential, and the community saw only those extracts which supported the case for sell. Why has the Community been shielded from these business cases and proof that all avenues have been exhausted?

The highly publicised "existential threat" posed by Council's loan commitments, were originally only seen as being resolved through the sale of Blue Haven. Over time we

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have seen Council assets sold which have contributed to all but \$15 million of the loan being repaid. This latter amount is now the subject of a renegotiated agreement with TCorp, questionably tied to a sale of Blue Haven Bonaira.

Very little information has been made public about whether the sale of other assets being considered by Council might fill the "TCorp" gap allowing Blue Haven Bonaira to remain in public hands.

We highlight a number of specific matters below and request Councillors note with concern that these inconsistencies and/or lack of clarity and transparency undermine any "social licence" needed to take the profound action of "sale" on behalf of the Kiama Community.

**1. The promised detailed study of the relative benefits of the "lease", "sell", "joint venture" or "retain" options prior to Council making a decision to "sell", has not been presented in full to the Community.**

Comprehensive business cases, outlining the "lease", "sell", "joint venture" or "retain" options as per a Council resolution of 23 May 2022, were also a requirement of the Performance Improvement Order in November 2022.

The Community is entitled to see the full detailed business cases for each option, particularly given the early call for a sale, the comments about aged care not being a core business of Council and the uncertainty about the financial status of council.

Access to these cases is fundamental if the community is to understand the reasons for choosing "sell" over the other options.

Given the full report was confidential, the Community should not have to "second guess" the basis of decisions being made about a sale.

**This lack of transparency and fulfilment of both the promises via Council resolution and Ministerial directive undermines any social licence the Council may believe it has to make a sale.**



**2. Report on the general purpose financial statements does nothing to provide the community with confidence in Council's decision.**

There is significant uncertainty implicit in the 28 September 2023 Disclaimer of Opinion of the Independent Auditor's Report where the Director, Financial Audit Branch, Lisa Berwick, states:

"I do not express an opinion on the accompanying financial statements of the Council. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements."

"Council disclosed \$53.9 million of externally restricted cash in Note C1-3 'Restricted and allocated cash, cash equivalents and investments' at 30 June 2022. I was unable to obtain sufficient appropriate audit evidence to support the completeness and accuracy of the amount that Council has designated as externally restricted as at 30 June 2022 with respect to holiday parks (Crown Land); **Blue Haven aged in-home care unspent client fund**; domestic waste management; **Blue Haven ILU Maintenance Levy carried forward surplus (Terralong and Bonaira)**; **Blue Haven Residential aged care prudential standards** and **Blue Haven Community Services Bus replacement fund**. These components are reported at \$11.5 million."

"The material nature and pervasiveness of these issues means I cannot express an opinion on the accompanying financial statements for the year ended 30 June 2022."

"I draw attention to Note A1-1 'Basis of Preparation', where the Council reported it has accessed externally restricted funds without the required Ministerial approval. Such unapproved use does not comply with sections 409 and 410 of the LG Act."

"The Councillors are responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the LG Act, and for such internal control as the Councillors determine is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error."

“In preparing the financial statements, the Councillors are responsible for assessing the Council’s ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.”

“..... because of the matters described in the Basis for Disclaimer of Opinion section of my report, I was not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements.”

**Such uncertainty undermines any social licence the Council may believe it has to make a sale.**

**3. Report on the special purpose financial statements does nothing to provide the community with confidence in Council’s decision.**

There is significant uncertainty implicit in the 28 September 2023 Disclaimer of Opinion of the Independent Auditor’s Report, where the Delegate of the Auditor-General for New South Wales, Lisa Berwick, states in relation to the Declared Business Activities of Council, i.e., Holiday Parks, **Blue Haven (Residential Aged Care Facility and Independent Living Units)**, Commercial Waste and Plant Hire Activities, and the Pavilion:

“I do not express an opinion on the accompanying special purpose financial statements of the Council’s Declared Business Activities. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the special purpose financial statements.”

The Income Statement of Blue Haven for the financial year ended 30 June 2022 showed a surplus of \$1.080 million. This figure is in contrast to the long running statements by some Councillors and Council staff during 2022, that Blue Haven was operating at a loss and the underlying cause of potential financial ruin of the Council.

It has taken until the October 2023 meeting for Councillors to be provided with more reliable financial facts for Blue Haven - **a year after** Council resolved to sell Blue Haven Bonaira.

It appears that we are faced with the spectre of a potentially profitable business of Council for decades providing a highly regarded community service, being sold and that services which are a greater drain on Council's finances being retained.

**Such uncertainty undermines any social licence the Council may believe it has to make a sale.**

**4. The overstated value of Blue Haven Bonaira Residential Aged Care by \$49.1M**

Such an error does not engender Community confidence in the accuracy of information presented to Councillors when assessing the need to sell and the longer-term impacts of the sale. Was this over-valuation used as part of Council's assessment of the value of a sale?

**Such uncertainty undermines any social licence the Council may believe it has to make a sale.**

**5. Inconsistencies in Council resolutions and statements regarding the future of Home Care packages and Community Transport.**

Throughout the divestment process there has been considerable uncertainty regarding the future of the Home Care Packages and Community Transport which had their offices in Blue Haven Bonaira. It has been an "on again, off again" merry-go-round driven by public statements, Council resolutions and Council reports. This uncertainty, associated with matters which were at the heart of support for residents and others gave little confidence in the process.

**Such uncertainty undermines any social licence the Council may believe it has to make a sale.**

**6. Reclassification process and the Public Hearing**

In response to a Council resolution of 23 May 2022 requesting an analysis of all options for Blue Haven in its entirety, i.e., "lease, sell, joint venture, or retain" being presented to Councillors "for approval of the preferred option", a Council report was issued for the 28 June 2022 Council meeting, which stated:

**"Reclassification of the Bonaira site to operational land must be undertaken to allow existing site usage to occur legally regardless of any option" [lease,**

sell, joint venture, retain] and that “\$60,000” was required “for planning work and public hearing required for classification”.

Considering the language used that the land “**must**” be reclassified for existing site usage to occur “**legally**”, it was understandable that a majority of Councillors would vote to put \$60,000 towards planning work and Public Hearing required for reclassification, and thereafter support a reclassification.

The community is yet to see information in support of the statement that a reclassification “**must**” occur for Blue Haven Bonaira to operate “**legally**”.

**It is extremely concerning that Councillors were provided with unsubstantiated advice to facilitate a reclassification process.**

Further, it was not until the Public Hearing for the Planning Proposal to reclassify the land from Community to Operational that the Community became aware of the restriction on the use of the land (by the Health Administration Corporation) that until 2027, the land is not to be used otherwise than for the construction and operation of a 134 bed Residential Aged Care Facility, seniors living accommodation including independent living units and assisted living units, and all ancillary facilities and uses.

This was agreed to by Council to expand aged care services for Kiama and the region.

NSW Health was supportive of the Council project as it provided aged care for citizens that were taking up public hospital beds awaiting nursing home placement. Any purchaser of Blue Haven Bonaira would be entitled to do whatever they wish with the land and buildings after 18 January 2027 despite the hollow attempt to argue that somehow Council would be able to control what happened after the sale. The Council website states:

“Council has already said that any sale must be to an approved Aged Care Provider. Further, in the clear acknowledgement of its intention that the operations continue, it has stated the provider needs to operate under the Aged Care Act and Retirement Villages Act.”

All Aged Care Providers need to operate under the Aged Care Act and the Retirement Villages Act. This does **not** preclude any Aged Care Provider that may purchase the complex repurposing the land and buildings after 18 January 2027.

The Independent Living Units are subject to contract, but as for caring for our most vulnerable nursing home citizens there is absolutely no obligation after 18 January 2027. One future possibility is the closing of the **only** publicly owned nursing home in Kiama LGA and a loss of 134 aged care beds in the Illawarra region.

**Such a lack of transparency undermines any social licence the Council may believe it has to make a sale.**

**7. A determination to sell seven (7) months prior to the Public Hearing, including resolutions of Council and many public statements to that effect, provided an unequal “playing field” in which the various Community concerns were not treated with seriousness**

Council’s frantic search for reasons as to why the land had not been classified within three (3) months of acquisition, ultimately settling on the questionable “oversight” reason stated in the Planning Proposal, and unsubstantiated reasons provided in Council reports as to why the facility “should” be reclassified to “Operational” **did not cover up the fact that it simply needed to be reclassified in order for a sale to be made.**

Whilst the Mayor said publicly that the Department of Planning and Environment “agreed” with Council’s proposition that the land defaulted to being “Community” due to an “oversight”, another more likely interpretation is that the Department was simply taking on face value that the “oversight” reason provided by Council in the Planning Proposal was correct.

We have ascertained that there is **no letter** from the Department to Council mentioning the word “oversight” nor “agreeing” with “oversight” as a reason for the default “Community” land classification.

At the time of acquisition of the Bonaira land, due to Council’s long term and continuing commitment to aged care, there was no suggestion that the land needed to be “Operational” nor was there any intention in the future to sell. It was totally reasonable for Council to let the default “Community” classification occur after 3 months of acquisition, as the Local Government Act provides.

Council concluded that the absence of a Plan of Management (POM) for Blue Haven Bonaira supported an “Operational” land classification, however the absence of a POM can reasonably be explained by “timing”.

We note that residents of Independent Living Units and the Residential Aged Care Facility did not move to the new facility until mid-December 2019, and Barroul House did not open until mid-2020 with the opening delayed due to COVID-19 restrictions. The former General Manager took leave a few months later in November 2020 and resigned in December 2020, with the current CEO not commencing with Council until June 2021.

Enquiries were made with Council as to whether a Plan of Management would be produced, however the topic of a Plan of Management was disregarded in the pursuit of an "Operational" land classification. Enquiries were made with the Office of Local Government with their advice being that a Plan of Management be pursued with the Council. All attempts to address this issue with the Council proved fruitless.

Council's decision to sell Blue Haven Bonaira in October 2022 made a mockery of the Public Hearing in May 2023 which effectively had a predetermined outcome and gave lip service to the Community concerns raised. This is evidenced in the Executive Summary for the finalisation of the Planning Proposal for the 20 June 2023 Council meeting, which states: "Council has previously resolved to reclassify the land in October 2022."

Fifteen (15) out of sixteen (16) speakers at the Public Hearing either opposed the reclassification completely or opposed the inclusion of Barroul House. The 15 speakers opposing, represented significant involvement with and knowledge of the history, management, and social significance of Blue Haven.

The Public Hearing Report noted Community interest in Council's ongoing decisions about the proposed reclassification and future of Blue Haven Bonaira and stated that the provision of information regarding questions raised "may assist in responding to community concerns and will need to be given consideration in furthering the reclassification process". Council responded by issuing a half-page report which did not satisfactorily answer the questions raised in the Public Hearing Report.

The Public Hearing process of May 2023 was undermined by the prior decision of Council to "sell" in October 2022 and purportedly "again" in February 2023.

**The Public Hearing process therefore undermined any social licence the Council may believe it has to make a sale.**

**8. Community faith in the process has been further eroded by the fact that Council made no public references to the perceived conflict of interest that saw some of those who advised the Council to sell then taking a major role in the sale process.**

Although not implying that any wrongdoing resulted from these actions, there are concerns that Council did not demonstrate to the community that the potential for conflicts of interest had been identified and publicly responded to.

The Community was also given no explanation about the “en-masse” resignation of the Blue Haven Board and experts in mid-2022, contributing to the concerns about management and the perception of reduced Community involvement in the governance of Kiama Council’s largest asset.

**The lack of transparency in these fundamental processes, and concerns about governance undermine any social licence the Council believes it has.**

**9. Retention of Barroul House as a public asset, on land which remained “Community” land was simply ignored as an option by Council staff and Councillors who voted for the reclassification.**

This was a total rejection of the submissions and arguments in favour of the well documented “public” and “community” role that the refurbished historic building should play. For example, as shown in the Commonwealth Standard Grant Agreement – Building Better Regions Fund – Barroul House, which provided Council with \$1.4 million for the refurbishment, there are a substantial number of statements confirming the “Community” values, including:

- a. “The proposal will maximise the public access to Barroul House providing a safe entrance and use, and enhance the community engagement of the project and understanding of Barroul House.”
- b. “The vision for Barroul House precinct is to be arts, cultural and community hub, helping to overcome social isolation in our aging population and provide opportunities for children and aging to link together in a community setting.”
- c. “Council will liaise with the local Wodi Wodi Indigenous people to create a sensory and indigenous garden that tells the story of the local indigenous community in a landscaped and engaging way. It will be a combine plants, landscaping ie pathways, materials, story boards and opportunities for community to touch, smell and taste our local indigenous food. These

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components will also be linked café [sic] and where possible indigenous people and suppliers will be used.”

- d. “The heritage listed Barroul House will be restored and re-opened to the public through the inclusion of a café, art gallery, art studio, meeting room space, landscaped gardens to provide a safe sensory area for dementia patients and dementia sufferers from the local area to visit.”
- e. “The intention is that the entire site be vibrant and inviting to the community and the residents and act as the nucleus of Blue Haven Aged Care Facility.”
- f. “Our Project has the ability to become a community and social hub both for residents, workers and the community. Improving community connection and social inclusion for our aging population is improve to maintain active wellbeing, including mental health. A community hub that engages with all ages of our community will improve connections within our community. Barroul House will improve our community connections.”
- g. “Kiama Council have been working on the overall strategy since 2008 to ensure the region of Kiama have an aged care facility on the Kiama Hospital site. Part of this site includes the Historic Barroul House. The funding for Barroul House will ensure that the Kiama Aged Care Centre of Excellence (KACCOE) provides the residents and community with a safe meeting space away from the aged care facility, that will provide a sensory environment and garden area benefiting both dementia residents and the general community assisting with their quality of life. These senses will be not only sight, but sound, touch, taste and smell.”
- h. “This part of the project is seen as the priority by the community and is an essential benefit to our community through the reusing of the old Kiama Hospital Site. It is only by achieving the full redevelopment of that site that Council will be able to provide the community of Kiama with a fully integrated health and aged care living precinct that will be a centre of excellence that also offers community facilities and welcomes people onto the site.”
- i. “This project represents a vision from Kiama Council for its community.

The Commonwealth Grant Agreement for Barroul House, dated 15 September 2018, contains a substantial amount of information to show that the land at Blue

Sandra McCarthy and Howard R Jones: Lack of Social Licence for the proposed sale of Blue Haven Bonaira. Call for an independent review. 12



Haven Bonaira was always intended to be classified as ‘Community’ land. Even from a “devil’s advocate” standpoint, if not the whole of the land at the very least Barroul House and its curtilage, the latter being supported by a “hatched plan” in the “Request To Note Retirement Village” that Council signed on 10 September 2019, which **excluded** Barroul House and its curtilage from being recorded as a “retirement village”.

The totality of this information discredits the “oversight” reason that was stated in Council’s Planning Proposal, on the Council website, by a Council staff presentation at the Public Hearing, by the Mayor, and reported in The Bugle newspaper.

It is extremely concerning that relevant content within the aforesaid Commonwealth Grant Agreement was not included in Council’s Planning Proposal or mentioned by Council at any time during the reclassification process, and that the document was not produced until the day before the 20 June 2023 Council meeting was held to reclassify the land.

On Monday, 19 June 2023 at 4:53:29 PM, Council issued a second Supplementary Agenda containing the Commonwealth Grant Agreement, with that timing **preventing** members of the Community from being able to read the 65-page document or register to speak about it at Public Access which was held at 5:00 PM.

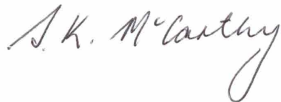
**The refusal of the Council to embrace their “public” and “community” responsibilities through the retention of Barroul House contributes to the Council failing to obtain the “social licence” needed to proceed with a sale.**

**Finally, as indicated on page 2 of this letter, we request that Councillors exercise the power of good governance and act with care and due diligence:**

- (1) By suspending all action on the process of the divestment of assets located at Blue Haven Bonaira; and
- (2) By seeking an intervention by the Minister for Local Government to independently review the entire process (reclassification and proposed sale).

It is the most **fundamental** duty of elected Councillors to protect the assets and services that are **owned** by the Community.

**We reassert that Council has not earned a social licence from the Community to proceed with a sale of any assets located at Blue Haven Bonaira.**



Emeritus Mayor, Sandra McCarthy OAM  
**0409 366 723**



Former Councillor and Deputy Mayor, Howard R Jones  
0404 149 374

Cc: The Hon. Ron Hoenig, MP, Minister for Local Government.

**ATTACHMENT to Notice of Motion report**

**Background of Council Resolutions regarding Blue Haven**

Contained in the following detail is the history of decisions that have been made culminating in where Council is at this point in time with the divestment of Blue Haven – Bonaira.

**Council Meeting 15 March 2022**

Council at its Meeting held on 15 March 2022 resolved the following:

**22/043OC**

*Resolved that Council contact the Member for Gilmore Mrs Fiona Phillips MP, seeking a meeting with the local member and minister for aged care services:*

1. *highlighting, as detailed in the Royal Aged Care Commission report, the urgent need for increased federal funding across the aged care sector*
2. *seeking advice on all existing grant and other funding sources available to aged care providers.*
3. *acknowledging the joint responsibility of aged care providers and the Federal Government to provide a duty of care for residents in aged care facilities and recipients of aged care services*
4. *acknowledging the joint responsibility of providers and Federal Government to provide ongoing aging in place options for residents who live in aged care facilities such as Bonaira and Terralong Street independent living units*
5. *acknowledging the broad ranging benefits that Blue Haven, under Council ownership and management, has brought to our community.*

**Council Meeting 12 April 2022**

Council at its Meeting held on 12 April 2022 resolved the following:

**22/054OC**

*Committee recommendation that Council invite the preferred consultant, McVay Real Estate to provide a written quote for services related to asset options and exploration for Blue Haven.*

**Council Meeting 12 May 2022**

Council at its meeting held on 12 May 2022 resolved the following:

**22/058OC**

*The motion as varied by consent was resolved being that Council:*

1. *Receive the confidential forensic accounting assessment report of historic data, noting the findings and actions which will be required to be updated in the Strategic Improvement Plan for Kiama Municipal Council.*
2. *That following improvements in Kiama Municipal Council's financial position and preferably by the 2023-2024 financial year, that the forensic accounting assessment report be publicly released, subject to legal advice.*
3. *For the purposes of protecting and sustaining the core role of the local government authority that delegated authority be given to the Chief Executive Officer to sign all documentation associated with the contract to McVay Real Estate for the purposes of undertaking a sale through public tender for Blue Haven Lot 71 DP831089 and Lot 2 DP1215276.*
4. *List for inclusion in the conditions of the contract with McVay Real Estate specified at two (2) above, the following:*
  - *The high standard in quality of care for the residents and families of the Blue Haven Residential Aged Care Facility be maintained, protected and uninterrupted and continue to meet the requirements of the Federal Government Aged Care Act 1997 requirements.*
  - *The good reputation and care invested in our Blue Haven Independent Living Unit Community and Home Care Support Services be maintained, protected, uninterrupted and continue to meet the requirements of the Retirement Villages Act 1999.*
  - *The good reputation, working environment, and conditions for Blue Haven Staff of Kiama Municipal Council be maintained and protected.*
  - *Probity lawyers are appointed to act in Council's interest and sound tender processes are used to ensure compliance with the Local Government Act.*
5. *Develop for consideration at the next extraordinary meeting of Council a strategic liquidity plan for submission to the Audit Office and the Office of Local Government (including accelerating the sale of appropriate englobo parcels of land identified in the Property Divestment Opportunity Register).*
6. *Delegate to the Chief Executive Officer to advise TCorp of the above decisions and commence discussions and negotiations on acceptable loan repayment options.*

**Council Meeting 23 May 2022**

Council at its meeting held on 23 May 2022 resolved the following:

**22/1040C**

*That Council rescind motion 22/0580C and replace with:*

1. *receive the confidential Forensic Accounting Assessment Report of historic data, noting the findings and actions which will be required to be updated in the Strategic Improvement Plan for Kiama Municipal Council*
2. *develops and implements a community consultation plan in accordance with the Community Engagement Strategy that includes Blue Haven staff and residents, as well as publicly releasing:*
  - a) *the background to any proposed divestment of community assets in response to the Strategic Improvement Plan*
  - b) *an Executive Summary of the Forsyth's Forensic Accounting Assessment Report, adopting advice from Maddocks dated 17 May 2022*
  - c) *the Forsyth's report, preferably by the 2023-2024 financial year, subject to further legal advice.*
3. *gives delegated authority to the Chief Executive Officer to sign all documentation associated with the contract to McVay Real Estate for the purposes of undertaking a sale through public tender for Blue Haven Lot 71 DP831089 and Lot 2 DP1215276, subject to:*
  - a) *an analysis of all options (lease, sell, joint venture, or retain) of the component parts of Blue Haven Care, including the RACF, ILUs and home care packages and sites (Lot 2 DP1215276 and Lot 71 DP831089) being presented to Councillors for approval of the preferred option*
  - b) *Council adoption of a Strategic Liquidity Plan, draft Acquisition and Disposal of Land and Easements Policy*
  - c) *Council endorsement of the 2022-23 budget and Long-Term Financial Plan*
  - d) *appointment of Probity lawyers to act in Council's interest and sound tender processes are used to ensure compliance with the Local Government Act*
4. *commit to ensuring decisions relating to Blue Haven, including those made in negotiations with McVay Real Estate will maintain the following:*
  - a) *the high standard in quality of care for the residents and families of the Blue Haven Residential Aged Care*

- Facility be maintained, protected and uninterrupted and continue to meet the requirements of the Federal Government Aged Care Act 1997 requirements*
- b) the good reputation and care invested in our Blue Haven Independent Living Unit Community and Home Care Support Services be maintained, protected, uninterrupted and continue to meet the requirements of the Retirement Villages Act 1999*
  - c) the good reputation, working environment, and conditions for Blue Haven Staff of Kiama Municipal Council be maintained and protected*
- 5. develop for consideration at the next available opportunity a Strategic Liquidity plan for submission to the Audit Office and the Office of Local Government including, identification of appropriate parcels of land from the Property Divestment Opportunity Register that could be accelerated for sale) and provides the CEO delegated authority to engage third parties as necessary to complete the business case*
  - 6. further to 22/0430C write to the federal Minister for Aged Care and the relevant NSW Ministers and NSW Shadow Ministers for advice on potential financial assistance and loans available to aged care providers*
  - 7. delegate to the Chief Executive Officer to advise TCorp of the above decisions and commence discussions and negotiations on acceptable loan repayment options.*

**Council Meeting 28 June 2022**

Council at its meeting held on 28 June 2022 resolved the following:

**22/1480C**

*Resolved that Council note the extent of work undertaken to date on the implementation of its resolution from 23 May 2022 and approve the proposed approach for future actions, noting that funding of \$730,000 be utilised from the land development reserve to progress this work.*

*Report 16.3 BH Bonaira Development Cash Position Review*

**RECOMMENDATION**

*That Council notes the information regarding the Blue Haven Bonaira development, funding, feasibility, history and resultant cash position.*

**Council Meeting 19 July 2022**

Council at its meeting held on 19 July 2022 resolved the following:

**22/1750C**

*Resolved that the Minutes of the Blue Haven Advisory Committee Extraordinary meeting held on 25 May 2022 be received and the recommendations therein accepted, being:*

1. *Blue Haven Independent Non-Executive Board Members be immediately removed as Key Personnel as per the Aged Care Act.*
2. *That Mayor Neil Reilly and CEO Jane Stroud confirm the latest version of the Blue Haven Board Policy and amend by removing Blue Haven Non-Executive Board Members as key personnel, include Extraordinary Meeting of Council 12 May 2022 items 5.2.2 and remove all other reference to roles and responsibilities.*
3. *Meeting attendees unanimously agreed budget consideration should be centred around achieving compliance i.e. spending to meet accreditation, therefore cost cutting measures not identifiable at this time.*
4. *Blue Haven Chair to request current prudential policy referred to in email dated 25 May 2022 from CEO to be sent to all Blue Haven Board members for context. Blue Haven Chair to seek clarification from CEO as to whether a draft liquidity policy template developed by the Blue Haven Board is being requested.*
5. *Blue Haven Chair to set up a meeting with Blue Haven Board members, CEO and Blue Haven COO to further understand the compliance implementation plan including tracking of CSS recommendations.*
6. *Blue Haven Chair to propose to Mayor Neil Reilly and CEO Jane Stroud the assistance of the Blue Haven Board in providing due diligence advice on the sale of retirement and aged care assets.*

**Council Meeting 20 September 2022**

Council at its meeting held on 20 September 2022 resolved the following:

**22/2830C**

*Resolved that Council:*

1. *Note the urgent need to improve cash flow in the next two years to demonstrate going concern status and improve the long-term financial position of Council, which in the outer years of the long-term financial plan shows continued deficits.*
2. *Restore cash reserves and the balance sheet in the order of \$30 to \$40 million by exploring all divestment and capital works reductions opportunities and prepare an*

*options report to Council and the community that fully considers the following significant divestments:*

- a. Call for Expressions of Interest (EOI) to explore the subdivision and sale for only the decommissioned Blue Haven aged care facility which is located on Lot 71 DP 831089. This will be managed through delegated authority of the CEO in alignment with Council Policy and the Local Government Act 1993.*
- b. Undertake an EOI process for the Barney Street Quarry Lot 9 DP 850163.*
- 3. Additionally consider the following to restore cash reserves and balance sheet:*
  - a. Service reductions and cost efficiencies that reduce Council's capital program*
  - b. Paid parking and resident permits*
  - c. Special rate variation/s*
- 4. Continue the work on previously resolved sell/keep/lease options for Blue Haven and receive the reports on valuation, asset management plan and accreditation results prior to the December ordinary meeting.*
- 5. Include in the options paper noted at resolution (2) above how revenue generated from any sale or divestment of any assets may be invested in strategies for generation of income and continuous revenue streams will be used to restore the balance sheet.*
- 6. Continue to inform and engage with the broader community and those who are cared for by Blue Haven to reassure all parties that the quality of care and standard of service will be maintained.*
- 7. Examine the 2022/23 Capital Budget at the Quarterly Budget Review, with the intention to reduce expenditure.*

**22/2920C**

*Committee recommendation that Council:*

- 1. Note the significance of the correspondence from the NSW Audit Office and follow-up meeting with the Minister for Local Government, recognising the urgent need to improve Cash Flow, Cash Reserves and its Balance Sheet in the next two years to demonstrate going concern status and improve the long-term financial sustainability of Council and confirm that Council is taking all steps possible to correct the situation.*
- 2. Accept the Cash Flow Option requiring the short-term restoration of cash reserves and the balance sheet in the order of \$30 to \$40 million by exploring all possible asset*



*divestment opportunities and capital works reductions over the next 2 years*

3. *Delegate to the CEO to release the cash flow scenarios as detailed in the confidential report to the Audit Office of NSW, Office of Local Government and TCorp, noting that Council is still to formally decide:*
  - *Other revenue raising opportunities*
  - *Sale of Blue Haven, in full or part*
  - *Other property divestment opportunities*
4. *Supplement the cash flow scenarios with a letter that describes all the other ways that Council is becoming more efficient, and forward this to the abovementioned bodies.*

**Council meeting 13 October 2022**

Council at its meeting held on 13 October 2022 resolved the following:

**22/296OC**

*Resolved that Council rescind motion 22/283OC from the September 2022 ordinary meeting and replace with the following:*

*That Council*

1. *Retain Blue Haven Terralong (Lot 71 DP 831089) in Council ownership and ensures comprehensive engagement with the community and residents, giving consideration to future use of the decommissioned aged care facility.*
2. *Undertake to sell Blue Haven Bonaria (Lot 2 DP1215276) subject to the completion of the required notice in accordance with Section 34 of the Local Government Act (public notice to classify or reclassify public land) and the associated planning proposal process, which council has previously resolved to allocate funding towards at its June ordinary meeting.*
3. *Continue to inform and engage with the community, including those who are cared for by Blue Haven, to reassure all parties that the quality of care and standard of service of the Independent Living Units and Residential Aged Care Facility will be maintained, regardless of ownership.*
4. *Continue the work on the urgent need to improve cash flow to demonstrate 'going concern' status and improve the long-term financial position of Council, including, but not limited to:*
  - a. *paid parking and resident permits*
  - b. *ensuring a proportion of revenue generated from any sale or divestment of any assets be invested in*

*c. strategies for the generation of income and continuous revenue streams.*

5. *Rescind its previous resolution on the sale through open tender for Barney Street lot and refer to the separate confidential report on this subject matter.*

In October 2022 Council resolved to sell the Blue Haven – Bonaira site and all aged care services operating from that location. This included the 134 place Residential Aged Care Facility, 59 Independent Living Units, 220 In-Home Aged Care and Commonwealth Home Support Aged Care services along with approximately 300 clients accessing Community Transport services.

The land on which Blue Haven Bonaira is located was not classified as operational and a reclassification process was required. Following progress through relevant NSW Government Gateway received on 10 February 2023 and advertising public hearings were held on 22 May 2023. Council resolved at its meeting held on 20 June 2023 to reclassify this parcel of land to operational classification (Resolution number 23/159OC).

**Council Meeting 20 December 2022**

Council at its meeting held on 20 December 2022 resolved the following:

**22/422OC**

*Committee recommendation that Council notes the timeline for the processes and activities related to the sale of Blue Haven Bonaira.*

*Report item 20.7 confidential – BH Bonaira development cash flow update*

**RECOMMENDATION**

*That Council notes the updated financial information and use of cash reserves for the Blue Haven Bonaira Development.*

**Council Meeting 28 February 2023**

Council at its meeting held on 28 February 2023 considered a detailed independent review / business case of the entire Blue Haven operation, This review was primarily to determine the feasibility of Council continuing to operate residential aged care, in home aged care and retirement living.

The business case considered whether Blue Haven should be:

1. Kept in Council ownership;
2. Operated in partnership with another provider (potentially leased or as a joint venture); or
3. Sold.

The analysis, conducted by Paul Sadler Consultancy and StewartBrown Chartered Accountants was presented to Councillors at a Workshop held on 31 January 2023.

The business case covered key areas which form the remit of a Board of Directors or ultimate governing body in the Local Government context (i.e. Council), including strategic, governance, risk and financial and considered:

- The policy environment in the aged care sector including significant changes for providers
- Market conditions in the Illawarra region in both aged care and retirement village
- Blue Haven's performance against financial and quality benchmarks
- Current service operations including internal resources and support structures
- Overall financial position

Work leading up to and part of the consultant review included a detailed assessment of financial, quality, compliance and other operational documents, site visits and interviews with staff and some residents, and a review of the aged care and retirement village sector.

While many details in the review remain commercial-in-confidence and need to do so, a summary of its key observations and findings are replicated below:

The matrix below summarised the options:

Table 2 – Evaluation of Options against review requirements

Criterion	Keep Option	Partnership Option	Sell Option
Strategic	Services remain in LGA	Services remain in LGA	Services remain in LGA
Governance	Difficult to support high quality as standalone provider. Will require extensive effort by Council to stay on top of reforms	Improves support for high quality but would require tight contract management. Lease or partner contract arrangement may still place onus on Council as ultimate owner	Industry specific purchaser best placed to provide high quality care for residents and clients, and workplace support for staff
Risk	Will require extensive effort by Council to stay on top of compliance and reforms. Combined with Governance & Finance, risk to Council overall is significant	Lease or partner contract arrangement may still place onus on Council as ultimate owner. Financial and reputational risk may also exist	Council and LGA community is removed from risks of owning / operating aged care. Purchaser can stay on top of reforms and is responsible for risk
Finance	Even if the significant recurrent financial viability issues can be resolved by say 2025, does little to address the capital and balance sheet financial structural deficits	Any middle ground arrangement (between Sell & Keep) will require a recurrent financial cost eg \$1M-\$2M depending on share of risk and finance. No improvement to the capital and balance sheet financial structural deficits	Sale of Bonaira immediately improves operating financial position of Council and contributes to addressing financial structural deficits. Adding Terralong would improve this

At its meeting held on 28 February 2023 Council resolved the following:

**23/0530C**

*That Council:*

1. *Receive the commercial in confidence report titled “Business Case for Blue Haven”, authored by Paul Sadler Consultancy and StewartBrown Chartered Accountants”.*
2. *Note that the commercial in confidence report substantiates the previous resolution of Council in October 2022 to divest of all aged care assets and operations (residential, aged care, home care, community transport) located on the Blue Haven Bonaira site.*
3. *Note the steps proposed to progress a tender, property sale/s and transition of aged care, community care, community transport and residential operations.*
4. *Note that Council divesting and transferring ownership of the assets, does not mean the service will close, with an expectation existing aged care operators and home care providers will expand into those operations. Under legislation the Terralong and Bonaira sites will continue as aged care services, dedicated to residential age care services, home care or retirement village communities for the people of Kiama to access.*
5. *Note the Section 55 Local Government Act exemptions to appoint Trademark Consulting (in accordance with existing delegations and process outlined in the procurement policy) as the Project Manager for the defects works for Blue Haven, and Bonaira and*

*StewartBrown Advisory as the aged care experts coordinating the tender and divestment process on behalf of Kiama Municipal Council.*

6. *Fund the specialist and other expenses for a sale and transition from the Blue Haven budget.*
7. *Receive a further report from the Chief Executive Officer outlining staff and community engagement around right sizing the organisation post aged care divestment and establishes service expectations for Kiama Municipal Council.*
8. *Seek a dilapidation/asset report (and cost) along with a subdivision redevelopment or sale of Havilah Place.*
9. *Receive a report on the potential subdivision and excising of the portion of land occupied by Kiama Community Garden.*

**Council Meeting 20 June 2023**

**23/159OC**

**Committee recommendation** that Council as the plan making authority exercises its authority under s 3.36 of the Environmental Planning and Assessment Act 1979 to:

1. *Finalise the Planning Proposal for Lot 2 DP 1215276, 14A Bonaira Street Kiama to reclassify this parcel of land to operational classification*
2. *Insert Lot 2 DP 1215276, 14A Bonaira Street Kiama into Schedule 4 (classification and reclassification of public Land) Part 1 (Land classified or reclassified as operational land - no interests changed).*
3. *Forward the resolution of Council and finalised documents to the Department of Planning and Environment.*
4. *Advise those making a submission of the decision of Council.*

## 9 CONFIDENTIAL REPORTS

### 9.1 Tender - Blue Haven - Bonaira Divestment

CSP Objective: Outcome 5.1: Public funds and assets are managed strategically, transparently, and efficiently

CSP Strategy: 5.1.4 Commercial investments are managed to maximise their value; and in accordance with legislative obligations.

Delivery Program: 5.1.4.2 Continue to implement Council Resolution 22/1040C for Blue Haven and Resolution 23/0530C

#### **REASON FOR CONFIDENTIALITY**

*This item is classified CONFIDENTIAL under the provisions of Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.*

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## 10 CONFIDENTIAL SUMMARY

### CONFIDENTIAL COMMITTEE OF THE WHOLE

Submitted to the Ordinary Meeting of Council held on 1 February 2024

#### PROCEDURE

- Recommendation to go into Closed Committee.
- Mayoral call for Public Representations.
- Consideration of Representations and issues to be removed from Closed Committee.
- Recommendation to exclude Press and Public if required.
- Closed Committee discussions if required.

#### 10.1 Exclusion Of Press And Public:

#### **RECOMMENDATION**

That in accordance with Sections 10 and 10A of the Local Government Act, 1993 as amended, Council close the meeting of the Confidential Committee of the Whole to the Press and Public on the grounds detailed under the report headings as detailed below.

#### **9.1 TENDER - BLUE HAVEN - BONAIRA DIVESTMENT**

**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. .

**11 CONFIDENTIAL REPORTS**

**12 CLOSURE**

**Item 2.1 CONFIDENTIAL**