



# ORDINARY MEETING OF COUNCIL

To be held at 5pm on

**Tuesday 16 August 2016**

Council Chambers

11 Manning Street, KIAMA NSW 2533

## Order of Business

- 1 Apologies
- 2 Acknowledgement of Traditional owners
- 3 Confirmation of Minutes of Previous Meeting
- 4 Business Arising From The Minutes
- 5 Public Access Summary
- 6 Mayoral Minute
- 7 Minutes of Committees
- 8 Public Access Reports
- 9 Report of the Director Environmental Services
- 10 Report of the General Manager
- 11 Report of the Director Finance, Corporate and Commercial Services
- 12 Report of the Director Engineering and Works
- 13 Report of the Director Community Services
- 14 Reports for Information
- 15 Addendum To Reports
- 16 Notice of Motion
- 17 Questions for future meetings
- 18 Confidential Summary
- 19 Confidential Reports
- 20 Closure

## Members

His Worship the Mayor  
Councillor B Petschler  
Councillor W Steel  
Deputy Mayor  
Councillor M Honey  
Councillor G McClure  
Councillor N Reilly  
Councillor K Rice  
Councillor D Seage  
Councillor A Sloan  
Councillor M Way

## COUNCIL OF THE MUNICIPALITY OF KIAMA

Council Chambers  
11 Manning Street  
KIAMA NSW 2533

10 August 2016

To the Chairman & Councillors:

### NOTICE OF ORDINARY MEETING

You are respectfully requested to attend an **Ordinary Meeting** of the Council of Kiama, to be held in the **Council Chambers**

**11 Manning Street, KIAMA NSW 2533** on **Tuesday 16 August 2016** commencing at **5pm** for the consideration of the undermentioned business.

Yours faithfully



Michael Forsyth  
**General Manager**

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**AGENDA FOR THE  
ORDINARY MEETING OF KIAMA MUNICIPAL COUNCIL  
TUESDAY 16 AUGUST 2016**

**1 APOLOGIES**

**2 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**

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

### **3 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

#### **3.1 Ordinary Council Meeting held on 19 July 2016**

##### **Attachments**

- 1 Minutes - Ordinary Council - 19/7/16

##### **Enclosures**

Nil

##### ***RECOMMENDED***

That the Minutes of the Ordinary Council Meeting held on 19 July 2016 be received and accepted.



# MINUTES OF THE ORDINARY MEETING OF COUNCIL

commencing at 5pm on

## TUESDAY 19 JULY 2016

Council Chambers  
11 Manning Street, KIAMA NSW 2533

Item 3.1

Attachment 1

**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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**MINUTES OF THE ORDINARY MEETING OF THE COUNCIL OF THE MUNICIPALITY OF KIAMA HELD IN THE COUNCIL CHAMBERS, KIAMA, ON TUESDAY 19 JULY 2016 AT 5PM**

**PRESENT:** Mayor – Councillor B Petschler,  
Deputy Mayor – Councillor W Steel,  
Councillors M Honey, G McClure, N Reilly, K Rice, A Sloan and M Way

**IN ATTENDANCE:** General Manager, Director Environmental Services, Director Finance, Corporate and Commercial Services, Director Engineering and Works and Director Community Services

**1 APOLOGIES**

Councillor Seage

**2 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**

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

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

**3 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**3.1 Ordinary Council on 28 June 2016**

*16/235*

**Resolved** that the Minutes of the Ordinary Council Meeting held on 28 June 2016 be received and accepted, subject to the following amendment:

Item 9.3 - Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama - Proposed attached dual occupancy and strata subdivision (10.2016.41.1) should read as follows:

That Council refuse development application 10. 2016.41.1 due to significant non-compliance with controls C2, C29 C42, C54 and potentially C26 of Chapter 4 of Development Control Plan 2012.

For: All

Against: Nil

(Councillors Steel and Rice)

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**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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**4 BUSINESS ARISING FROM THE MINUTES**

Item 15.26- Iluka Reserve, Riverside Drive, Kiama Downs - Councillor Reilly raised the need for Council to address the Management Plan applying to the subject land in conjunction with the Gateway proposal. Councillor Reilly further raised the possibility of Council developing instead Council owned land on the western side of Riverside Drive opposite Iluka Reserve, Kiama Downs. The Mayor referred the matter to the General Manager for investigation.

**5 PUBLIC ACCESS**

Garry Long - Item 9.3 – Modification of Consent – Lot 2 Hothersal Street (10.2000.246.3)

Richard Warfield - Item 9.4 – Lot 25 SP89199, 25/25 Noble Street, Gerringong, proposed variation to existing operating hours (10.2016.109.1)

Paul Davies - Item 9.4 – Lot 25 SP89199, 25/25 Noble Street, Gerringong – proposed variation to existing operating hours (10.2016.109.1)

**6 MAYORAL MINUTE**

**6.1 Demystifying solar power**

*16/236*

**Resolved** that Council endorse the information contained in this report being forwarded to the Kiama & District Chamber of Commerce for distribution to their members.

(Councillors Petschler and Sloan)

**6.2 Re-election of Federal Member for Gilmore, Ann Sudmalis**

*16/237*

**Resolved** that Council extend its best wishes to Mrs Ann Sudmalis MP on her re-election as the Member for Gilmore.

(Councillors Petschler and Steel)

Council held a minutes silence in memory of the 5,533 Australian lives lost in the Battle of Fromelles, France, on 19 July 1916, as well as in memory of the 84 innocent people killed at the recent Bastille Day attack in Nice, France.

**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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**7 MINUTES OF COMMITTEES**

**7.1 Kiama Local Traffic Committee - 5 July 2016**

*16/238*

**Resolved** that the Minutes of the Kiama Local Traffic Committee meeting held electronically on 5 July 2016 be received and accepted.

(Councillors Steel and Way)

**COMMITTEE OF THE WHOLE**

*16/239*

**Resolved** that at this time, 5.15pm, Council form itself into a Committee of the Whole to deal with matters listed in the reports as set out below:

- Report of the Director Environmental Services
- Report of the General Manager
- Report of the Director Finance, Corporate and Commercial Services
- Report of the Director Engineering and Works
- Report of the Director Community Services
- Addendum to Reports

(Councillors McClure and Way)

**8 PUBLIC ACCESS REPORTS**

*16/240*

**Resolved** that at this time, 5.15pm, Council bring forward and deal with the matters pertaining to the Public Access meeting.

(Councillors McClure and Way)

**9 REPORT OF THE DIRECTOR ENVIRONMENTAL SERVICES**

**9.3 Modification of Consent - No 2 Hothersal Street Kiama (10.2000.246.3)**

*16/241*

**Committee recommendation** that Council approve modification of consent application 10.2000.246.3, pursuant to section 96(AA) of the Environmental Planning and Assessment Act 1979, for the modification of the Residential Flat Building at Lot 100 DP 1219840, 2 Hothersal Street Kiama subject to the conditions within this report.

(Councillors Steel and Reilly)

**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

For: Councillors Honey, McClure, Petschler, Reilly, Rice, Sloan, Steel and Way

Against: Nil

**9.4 Lot 25 SP 89199, 25/25 Noble Street, Gerringong - proposed variation to existing operating hours (10.2016.109.1)**

*16/242*

**Committee recommendation** that Council approve development application 10.2016.109.1 pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, subject to conditions at the end of this report.

(Councillors Honey and Way)

For: Councillors Honey, McClure, Petschler, Reilly, Rice, Sloan, Steel and Way

Against: Nil

**9.1 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1)**

*16/243*

**Committee recommendation** that Council defer consideration of this matter.

(Councillors Way and Reilly)

For: Councillors Honey, McClure, Petschler, Reilly, Rice, Sloan, Steel and Way

Against: Nil

**9.2 Draft Amendments Kiama DCP 2012 - Chapter 5 Medium Density, Expressions of Interest - Architectural Panel, Development Assessment Unit**

*16/244*

**Committee recommendation** that :

1. Council adopt the attached 'draft' revised Chapter 5 – Medium Density Development for inclusion within Kiama Development Control Plan 2012.

(Councillors Sloan and Reilly)

2. Council endorse the expressions of interest in regard to appointment to the architectural panel giving advice on medium density development to Council Development Assessment Unit.

(Councillors Way and Reilly)

For: Councillors Honey, McClure, Petschler, Reilly, Rice, Sloan, Steel and Way



**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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Against: Nil

**9.5 Draft Amendments to Kiama DCP 2012 - Chapter 32 – Cedar Grove Stage 2**

*16/245*

**Committee recommendation** that Council adopt the attached version of Chapter 32 – Cedar Grove Stage 2 subject to amendments providing clarification in relation to lots smaller than 450 square metres.

(Councillors Sloan and Honey)

For: Councillors Honey, McClure, Petschler, Reilly, Rice, Sloan, Steel and Way

Against: Nil

**10 REPORT OF THE GENERAL MANAGER**

**10.1 Appointment of Local Controller - NSW SES Kiama Municipality**

*16/246*

**Committee recommendation** that Council endorses the appointment of Christopher Warren as the Local Controller for the Kiama State Emergency Service Unit.

(Councillors Steel and Sloan)

**10.2 Slam Down Under Masters Wheelchair Basketball Tour - request for funding support.**

*16/247*

**Committee recommendation** that Council supports the Slam Down Under Masters Wheelchair Basketball Tournament through a donation of the hire fees of the Kiama Leisure Centre and promotes the event through Council and Tourism websites and social media channels.

(Councillors Steel and Sloan)

**10.3 Markets - Request for Assistance**

*16/248*

**Committee recommendation** that Council endorses the reduction of the market stall holder fee from \$9 to \$4 for the Kiama Seaside, Farmers and the Makers & Growers Markets whilst Black Beach is unavailable for two (2) months from the beginning of July to 1 September 2016.

(Councillors Steel and Sloan)

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**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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**10.4 Joint Organisations**

16/249

**Committee recommendation** that Council endorse the comments made in this report in relation to the proposed joint organisation model.

(Councillors Steel and Sloan)

**11 REPORT OF THE DIRECTOR FINANCE, CORPORATE AND COMMERCIAL SERVICES**

**11.1 Statement of Investments - June 2016**

16/250

**Committee recommendation** that the information relating to the Statement of Investments for June 2016 be received and adopted.

(Councillors Steel and Sloan)

**12 REPORT OF THE DIRECTOR ENGINEERING AND WORKS**

**12.1 Kevin Walsh Oval amenities building renewal, Jamberoo**

This item was replaced by item 15.1 in the Addendum to Reports.

**15 ADDENDUM TO REPORTS**

16/251

**Resolved** that at this 5.40pm Council bring forward and deal with matters pertaining to the Addendum to Reports.

(Councillors Steel and Honey)

**15.1 Kevin Walsh Oval amenities building renewal - replaces Item 12.1**

16/252

**Committee recommendation** that Council:

1. proceed with the advertising of public tenders for the construction and refurbishment of the Kevin Walsh Amenities Building.
2. re-allocate 2016/17 project funding to cover the expected funding shortfall, from either:
  - a) the Kiama harbourside crib-wall replacement, pending the storm damages

**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

- insurance claim outcome; or  
b) the deferral of the Blowhole Point tennis court bank stabilisation works.

(Councillors Steel and Sloan)

**12.2 2016/2017 Plant Replacement Program - purchase 11 Plant items**

16/253

**Committee recommendation** that Council purchase:

1. seven (7) Ford Ranger utilities from Harrigan Ford with a total capital value of \$199,245 + GST
2. one (1) Isuzu FRR 110-260 truck and body from Dwyers Truck Centre with a total capital value of \$158,456 + GST
3. one (1) Hino 917 truck with Garwood compaction body from Illawarra Hino with a total capital value of \$177,388 + GST
4. one (1) road sweeper from Bucher Municipal with a total capital value of \$330,835 + GST
5. one (1) Mack Trident truck and dog trailer from Southern Truck Centre with a total capital value of \$373,759 + GST

(Councillors Steel and Sloan)

**12.3 Bicycle safety rails - grant funding acceptance**

16/254

**Committee recommendation** that Council accept the grant funding offer from the Roads and Maritime Services and delegate authority for the General Manager to sign the funding agreement.

(Councillors Steel and Sloan)

**13 REPORT OF THE DIRECTOR COMMUNITY SERVICES**

Nil

**14 REPORTS FOR INFORMATION**

16/255

**Resolved** that the following Reports for Information listed for the Council's consideration be received and noted

- 14.1 Question for future meeting: underpass on Federal Street, Minnamurra
- 14.3 South Precinct Meeting Minutes
- 14.4 Questions for Future Meetings - 2011 Urban Strategy

**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

- 14.5 Economic Development Committee Meeting Minutes
- 14.6 Investment Options
- 14.7 Bert Flugelman Sculpture, Making Waves, Installation and Unveiling
- 14.8 Kiama Ice Forum - Methamphetamine and our Community
- 14.9 Minutes of the Kiama Access Committee held 8 July 2016
- 14.11 Town Centre Footpath Bollard Colours
- 14.12 World Junior Surfing Championships 2017/2018
- 14.13 Local Government NSW - Policy Review
- 14.14 Questions For Future Meetings Register as at 11 July 2016
- 14.15 National General Assembly Canberra - 19-22 June 2016
- 14.16 Biodiversity Reforms submission from Kiama Municipal Council, submitted to the Office of Environment and Heritage – Biodiversity Reforms Team – 28 June 2016
- 14.17 Councillor Meeting Register
- 14.18 Regional Cooperation and Development Forum

(Councillors Steel and Sloan)

**14.2 Parking Statistics - June 2016**

**16/256**

**Moved** by Councillor McClure and seconded by Councillor Steel that Council writes to Australia Post seeking advice on what times of the day they actually collect mail from the Terralong Street post box.

The **Motion** was Put and Carried.

**14.10 Regional Tourism Organisation (RTO) Review Announcement -**

**16/257**

**Moved** by Councillor Reilly and seconded by Councillor McClure that Kiama Municipal Council re-visit our relationship with our local Board of Tourism by the setting up of an advisory committee (possibly out of the Economic Development Committee) to explore how the new Destination Network may improve our strategic position and in doing so review our tourism structure and that a report come back to Council on the structure and objectives of the committee.

The **Motion** was Put and Carried.

**RESUMPTION OF ORDINARY BUSINESS**

**16/258**

**Resolved** that at this time, 6.07pm, Council resume the ordinary business of the meeting with all Councillors and Staff present at the adjournment of the meeting being present.

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**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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(Councillors Steel and McClure)

**ADOPTION OF COMMITTEE OF THE WHOLE REPORT**

16/259

**Resolved** that Council formally confirm, adopt and endorse the Committee recommendations made by Council sitting as a Committee of the Whole as detailed in the Committee recommendations numbered 1/235 to 16/258 above.

(Councillors Steel and Sloan)

**16 NOTICE OF MOTION**

Nil

**17 QUESTIONS FOR FUTURE MEETINGS**

**17.1 Pedestrian Crossings**

Councillor McClure requested a report be supplied to confirm that all pedestrian crossings are of approved standard. This includes road markings, signage, plantings and additionally markings for pedestrian awareness. In the event that there is work required, the report should identify this.

The Mayor referred this matter to the Director Engineering and Works for investigation and report.

**17.2 Release of confidential documents**

Councillor McClure requested a report be provided confirming if and when confidential reports can become public. This would also include confidential recorded meetings.

The Mayor referred this matter to the General Manager for investigation and report.

**17.3 Council acknowledgement**

Councillor Rice advised that at the April meeting, Council resolved to contact the Safe Schools Coalition and register its interest in becoming a supporter. Although the new Inner West Council is already listed on their website as being a supporter, Kiama's support is not yet acknowledged. Councillor Rice asked what action has been taken by Kiama Council in relation to this matter?

The Mayor referred this matter to the Director Community Services who advised the paperwork has been completed and is to be submitted as soon as possible.



**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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**17.4 Consent regarding hours of operation**

Councillor Reilly asked under what consent can the garage/newsagency at the top of Manning Street operate on a 24/7, 365 day basis given the recent renovations and extension.

The Mayor referred this matter to the Director Environmental Services for investigation and report.

**18 CONFIDENTIAL SUMMARY**

*16/260*

**Resolved** that at this time, 6.11pm, Council form itself into a Confidential Committee of the Whole to deal with matters listed in the recommendations as set out below subject to the consideration of any representations relating to such action.

(Councillors Way and Sloan)

**Public Representations:**

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

**18.1 Exclusion Of Press And Public:**

*16/261*

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

**19.1 COUNCIL OWNED LAND AT THE CORNER OF SHOALHAVEN AND AKUNA STREETS, KIAMA (LOT 200 DP 1017091, LOT 100 DP 1211384) AND THE FORMER MITRE 10 SITE (LOT 1 DP 50674 AND LOT 1 DP 50193) TERRALONG STREET AND AKUNA STREET, KIAMA**

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

(Councillors Way and Honey)

MINUTES OF THE ORDINARY MEETING

19 JULY 2016

**19 CONFIDENTIAL REPORTS**

**19.1 Council owned land at the corner of Shoalhaven and Akuna Streets, Kiama (Lot 200 DP 1017091, Lot 100 DP 1211384) and the former Mitre 10 site (Lot 1 DP 50674 and Lot 1 DP 50193) Terralong Street and Akuna Street, Kiama**

16/262

**Resolved** that Council:

1. confirm the sale price and option terms; and
2. enter into the Option Agreement subject to advice from ALDI regarding their agreement.
3. advise that any proposal to lease space below or above the laneway that separates the sites will be subject to a rental based on valuation.

(Councillors Way and Sloan)

For: Councillors Honey, Petschler, Rice, Sloan, Steel and Way

Against: Councillors McClure and Reilly

**Close of Confidential Committee of the Whole:**

16/263

**Resolved** that at this time, 6.26pm, the Confidential Committee of the Whole revert to Open Council.

(Councillors Steel and Honey)

**Adoption of Report**

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

16/264

**Resolved** that that the Confidential Committee of the Whole recommendation numbered 16/262 be confirmed and adopted.

(Councillors Sloan and Way)

**MINUTES OF THE ORDINARY MEETING**

**19 JULY 2016**

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**20 CLOSURE**

There being no further business the meeting closed at 6.26pm

These Minutes were confirmed at the Ordinary Meeting of Council held on 16 August 2016

.....  
Mayor

.....  
General Manager

Item 3.1

Attachment 1



**4 BUSINESS ARISING FROM THE MINUTES**

**5 PUBLIC ACCESS SUMMARY**

## 6 MAYORAL MINUTE

### 6.1 2016 Local Government Regional NAIDOC Awards

#### Attachments

Nil

#### Enclosures

Nil

#### **RECOMMENDED**

That Council note the success of this year's Awards and congratulate the organising committee on another successful event showcasing the important contributions Aboriginal and Torres Strait Islander people and their organisations make to the Illawarra Community.

#### **REPORT**

Each year, the Local Government Regional NAIDOC Awards are organised involving the four local Councils' (Wollongong, Shellharbour, Kiama & Shoalhaven) Aboriginal Liaison Officers (ALOs); along with support from other key staff in their respective councils and their respective Aboriginal Reference Groups. Each year one of the councils take their turn in hosting the awards, with the 2016 Awards hosted by Shellharbour Council and staged at WIN Entertainment Centre. This year's NAIDOC celebrations marked the 60<sup>th</sup> year of celebrating NAIDOC.

The Awards provide a prestigious platform, and are the premier event for the region in celebrating NAIDOC week and for promoting and recognising the talents, excellence, and significant contributions that Aboriginal and Torres Strait Islander people and their organisations make to their own and broader communities in the Illawarra and Shoalhaven regions.

It is a keenly anticipated event each year where people enjoy coming together to celebrate their collective achievements, where excellence is rewarded, promoted and encouraged. This event serves a very important role in promoting regional cooperation between Aboriginal and non-Aboriginal people, local councils and other organisations and businesses. It is a significant contributor to the social capital that helps bind our collective interests, and provides a platform that helps promote and encourage partnerships that provide opportunities for further growth.

Each year 7 categories are awarded; Female & Male Elder of the Year (2), Worker of the Year (1), Organisation of the Year(1), Male & Female Young Achiever of the Year (2), and Community Representative of the Year (1).

Mayoral Minute

6.1 2016 Local Government Regional NAIDOC AWards (cont)

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This year's winners were:

**Young Achiever of the Year - Male**

Darnell Walker

**Young Achiever of the Year - Female**

Samantha D'Elboux

**Aboriginal Community Volunteer of the Year**

Glenn Pagett

**Aboriginal Elder of the Year - Male**

Uncle James Carlson

**Aboriginal Elder of the Year - Female**

Aunty Lindy Lawler

**Aboriginal Worker of the Year**

Jocelyn Burns

**Aboriginal Organisation of the Year**

Illawarra Aboriginal Medical Service

**Outstanding contribution to Reconciliation**

Colin Markham

I would like to congratulate the organising committee on the success of this year's awards, and congratulate all award nominees and recipients. The awards dinner was a wonderful evening of entertainment and celebration where local Aboriginal and Torres Strait Islander people and their organisations were honored and acknowledged.

**6.2 2016 NSW Local Government Week Awards****Attachments**

Nil

**Enclosures**

Nil

**RECOMMENDED**

That Council extend its congratulations to Regan Figg and Brodie Brady for their work on the Garden to Table Program which was awarded the Heart Foundation 2016 Local Government Week Award for populations 5000-25000 category.

**REPORT**

On Thursday 4 August, the 2016 Local Government NSW Awards were held at the Grace Hotel in Sydney. I am pleased to inform that Kiama Council won the Heart Foundation 2016 Local Government Week Award for populations' 5,000 – 25,000 category.

The award nomination was written and submitted by Council's current Health Promotions Officer (Parent Leave Cover) Brodie Brady, based on the Garden to Table Program designed and implemented last year by Council's permanent Health Promotions Officer Regan Figg; who is currently on maternity leave.

The Garden to Table Program aims to improve access for residents to, and knowledge of, healthy affordable food, and to increase the community's capacity to implement sustainable food and gardening practices into their everyday lives. Additionally the program also aims to increase social connectedness and cohesion through building community connections to community groups who have an interest in health and sustainability.

The award was accepted by Councillor Kathy Rice and Council's Manager Community & Cultural Development Nick Guggisberg, who attended the award dinner. In addition to the usual trophy and certificate, Council also received a cheque for \$2,000 to contribute to Council's health promotions work.

I would like to congratulate all staff involved in the work recognised by the award, and particularly Brodie Brady for writing the successful nomination and Regan Figg for designing and delivering an award winning program.

**6.3 Arthur Campbell Reserve Dedication - 5 August 2016****Attachments**

Nil

**Enclosures**

Nil

**RECOMMENDED**

That Council record its appreciation for the service of Emeritus Mayor, the late Arthur Campbell, to this municipality and note the formal dedication of the Arthur Campbell Reserve in Gerringong.

**REPORT**

Following Council approving the naming of the reserve on the corner of Fern Street and Willawa Avenue, Gerringong, and the subsequent approval being received from the Geographic Name Board, the formal dedication of the reserve as the Arthur Campbell Reserve was held on Friday, 5 August 2016.

The opening was attended by members of the late Arthur Campbell's family, including his wife, Mrs Loma Campbell, his daughter Sandra Alberthsen with her husband David with their family. Mr Campbell's son Garry was unable to attend and sent his apology. Both Mrs Campbell and Mrs Alberthsen spoke at the dedication.

Councillors Warren Steel, Neil Reilly, Gavin McClure, Dennis Seage, Mark Honey and Mark Way attended, along with the General Manager, Michael Forsyth, Council officers and representatives of the Gerringong branch of the RSL and a large number of Gerringong residents who had known Mr Campbell.

Reverend Peter Chapman opened the official part of the event with a dedication prayer, the Campbells being regular parishioners at the Gerringong Uniting Church during their life in Gerringong.

He was followed by Mr John Kaehler, President of the RSL who spoke of Mr Campbell's service to both that organisation and to the Gerringong Naval Association.

During the mayoral address, I provided a summary of Mr Campbell's lifelong links to Gerringong and of his service to the Kiama Municipality, to the region and to the state of NSW.

He was elected to the Kiama Municipal Council in 1977 and served as an alderman for 14 years until 1991. He was deputy mayor from 1981 to 1983, becoming the Mayor in 1983 and served in that role until 1987. He was a member of many council committees, including Bush Fire Prevention, Kiama Promotions, and particularly the Blue Haven management advisory committee, on which he served from 1979 to 2000, a period of some 21 years.

Mayoral Minute

6.3 Arthur Campbell Reserve Dedication - 5 August 2016 (cont)

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Regionally, he was the chairman of IROC for four years, a member of the Illawarra Area Assistance Scheme Board and served on the Illawarra Industry Development board, the IRIS Board, the Steel Industry Region Assistance Scheme and the Illawarra Bush Fire Prevention Regional Committee, amongst others.

At the State level, he was chairman of the LG Gas Advisory Committee for four years and served on the NSW Local Government Association Executive (1988 – 1991).

Following his retirement from local government he was recognised with the NSW Local Government Association's highest award, as an "Emeritus Mayor" and subsequently was honoured with a citizenship award from our municipality in 1991.

He was later honoured with an Australian award, the Order of Australia Medal (OAM).

The late Arthur Campbell served his municipality well and the dedication of the reserve will ensure future generations will recognise his service.

**6.4 2012/2016 Council Term Ends****Attachments**

Nil

**Enclosures**

Nil

**RECOMMENDED**

I extend:

1. Best wishes to all Councillors standing for re-election;
2. Appreciation to Councillor Dennis Seage for his contribution;
3. Thanks to the General Manager, his senior officers and the staff of Council for their support over the last four years; and
4. Appreciation to the municipal community for its support of this Council.

**REPORT**

On 10 September 2016, the term of this Council will formally end and the electorate of the Kiama Municipality will be formally asked to vote for nine Councillors for the next four years. It would appear from the nominations that I am aware of it will be a wide and interesting group of aspiring Councillors.

Both Councillor Dennis Seage and I will not be seeking re-election, leaving seven of the current Councilors to face the electorate. I am sure I can speak for both of us in wishing you all good luck in that election.

While we all have had our share of differences over the past four years, as is to be expected, we have been able to maintain good personal communication and civility when dealing with each other and with senior staff, a feature which has served this municipality well over the term of Council.

From a personal point of view, I will leave Council with a great deal of satisfaction, having watched the extraordinary community response to the recent merger proposal. That response succeeded in defeating the plan to amalgamate Kiama and Shoalhaven Councils. Without the community support, the strong backing of all Councillors, the magnificent efforts of the community based committee and the excellent submissions made by so many of our residents, saving our unique area would have been well-nigh impossible.

Kiama Council has shown that its financial future is secure. It can look forward to a bright future. The transformation of the hospital site into an Aged Care Centre of Excellence is proceeding and a number of other major initiatives are close to commencement.

I thank the Councillors with whom I have served for their commitment to our area. I also thank Councillors Warren Steel and Neil Reilly, the Deputy Mayors, who have

Mayoral Minute

6.4 2012/2016 Council Term Ends (cont)

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provided me with great support during my term as Mayor. Councillor Steel has outstanding service to local government, covering more than 20 years in total, and is standing for re-election in September. Councillor Reilly and I were both elected to Council for a total of eight years. He is also to seek re-election next month and I wish both him and Councillor Steel all the best.

I am pleased to recognise the work of the General Manager, Mr Michael Forsyth, in providing advice and support to the Councillors. It has been greatly appreciated. We recently lost two of his senior officers (Mr Chris Quigley and Mr Bryan Whittaker) and I wish them well in retirement. We have had two new senior officers replace them (Mr Kerry McMurray and Mr Gino Belsito), both of whom have settled in well with Ms Clare Rogers and Mr Phil Costello to provide a strong senior management team to support the General Manager and the Councillors.

I thank them and all the staff of the council who continue to serve this community so well, particularly for the courtesy and support all staff have provided to me as Mayor.

**Item 6.4**



## 7 MINUTES OF COMMITTEES

### 7.1 Kiama Local Traffic Committee - meeting held on 2 August 2016

Responsible Director: Engineering and Works

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#### Attachments

1 Kiama Local Traffic Committee - meeting minutes - 02 August 2016

#### Enclosures

Nil

#### **RECOMMENDED**

That the minutes of the Kiama Local Traffic Committee meeting held on 2 August 2016 be received and accepted.

#### **BACKGROUND**

The minutes of the Kiama Local Traffic Committee meeting held on 2 August 2016 are attached for information.

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MINUTES OF THE KIAMA LOCAL TRAFFIC COMMITTEE MEETING HELD IN COMMITTEE ROOM 1, COUNCIL ADMINISTRATION BUILDING ON 2 AUGUST 2016

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**COMMENCING AT:** Meeting commenced at 9.03am

**PRESENT:** Mayor Councillor Brian Petschler (Chairperson), Kristian Pinochet (RMS Representative), Kevin Brown (NSW Police Representatives), Darren Brady (Manager Design & Development), Janelle Burns (Kiama Council Road Safety Officer) and Narelle Mousdale (Minutes)

**APOLOGIES:** Darrell Clingan (Local Member's Representative), Gino Belsito (Director Engineering & Works)

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**1 Minutes of Previous Meeting**

**CR073**

**Committee recommendation** that the Minutes of the 5 July 2016 meeting be received and accepted.

**Matters arising**

Nil

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**FORMAL ITEMS (UNDER RMS DELEGATIONS)**

**2 Noble and Belinda Streets, Gerringong – Work Zone**

**CR074**

**Committee recommendation** that approval be given to the implementation of work zones in Noble and Belinda Streets, Gerringong subject to the contractor and suitably qualified traffic controllers complying with the following conditions:

1. The work zones and traffic management be undertaken by suitably qualified traffic controllers in compliance with the traffic management plan No. T2305-1815 prepared by Traffic Management Services Pty Ltd.
  2. The work zone in Noble Street to be reduced in length to free up carparking spaces and is approved for a period of 3 months only with a review to be undertaken at the end of that period.
  3. The Belinda Street work zone shall be implemented from 7am – 5pm Monday to Friday and 8am – 1pm Saturdays only. On-street vehicle parking shall be made available outside of these times.
  4. Notification of the work zone closures be given to local businesses and residents affected by the closure.
  5. An advertisement be placed in the local media advising of the work zone closures.
-

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MINUTES OF THE KIAMA LOCAL TRAFFIC COMMITTEE MEETING HELD IN COMMITTEE ROOM 1, COUNCIL ADMINISTRATION BUILDING ON 2 AUGUST 2016

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6. That all work zones be removed as soon as practicable, following completion of applicable construction work within the adjacent site.
  7. Investigation of the implementation of 2 hour timed parking zones in Noble Street during business hours be undertaken.
- 

**3 Stafford Street, Gerroa – ‘No Parking’ zone**

**CR075**

**Committee recommendation** that a ‘No Parking’ zone be created through the installation of regulatory signage on the southern side of Stafford Street, Gerroa between the driveways of numbers 142 and 144, near public walkway entry as per the attached plan.

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**4 Hothersal and Minnamurra Streets, Kiama – ‘Give Way’ sign**

**CR076**

**Committee recommendation** that a ‘Give Way’ sign be created through the installation of regulatory signage and kerbside line marking at the junction of Hothersal and Minnamurra Streets to control traffic.

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**INFORMAL ITEMS (TRAFFIC ENGINEERING ADVICE)**

**5 Pacific Avenue, Gerringong – ‘No Parking’ restriction**

Noted.

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There being no further business the meeting closed at 9.35am.

**The next meeting of the Committee will be held on Tuesday 6 September 2016.**

## 8 PUBLIC ACCESS REPORTS

### Committee Of The Whole

#### *RECOMMENDATION*

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

- Report of the Director Environmental Services
- Report of the General Manager
- Report of the Director Finance, Corporate and Commercial Services
- Report of the Director Engineering and Works
- Report of the Director Community Services
- Reports for Information
- Addendum to Reports

## 9 REPORT OF THE DIRECTOR ENVIRONMENTAL SERVICES

### 9.1 Developer Contributions Review - Stage 1

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.15 Ensure the maximum multi-purpose use of our community's buildings and facilities

Delivery Program: 2.15.2 Ensure Section 94 Developer Contributions Plans and Voluntary Planning Agreements are aligned with community development plans

#### Summary

The purpose of this report is to identify the need for a new developer contributions plan and to outline the options for the formulation of such a plan. This report and attached document analyse the existing situation with regards to the collection of developer contributions and outlines the options available going forward.

#### Finance

Contributions collected through Section 94 and 94A Plans contribute a significant amount to Council's annual works program. It will be necessary to review this program to reallocate the unallocated revenue should Council resolve to prepare a new contributions plan.

#### Policy

The application of the contributions plans and application of the capital works program is tied to a number of Council policies. If the report is accepted and a new Section 94A Plan prepared as recommended, there should not be any additional strategic work to be carried out and minimal impact on Council's existing policies and strategies.

#### Attachments

- 1 Final draft contributions review stage 1 report - by Julia Kaul Planning and Policy

#### Enclosures

Nil

### **RECOMMENDATION**

That Council resolve to prepare a new Section 94A Contributions Plan to cover the entire Municipality and develop a new works schedule for the redistribution of the unallocated funds already collected. These documents are to be endorsed by Council prior to any formal public exhibition.

### **BACKGROUND**

Council commissioned a review into its existing Section 94 and 94A Developer Contributions Plans as a result of the existing plans being no longer relevant to the

## Report of the Director Environmental Services

## 9.1 Developer Contributions Review - Stage 1 (cont)

works schedules that they were tied to. Stage one of the review has been carried out by Julia Kaul Planning & Policy on behalf of Council (see attached document).

Section 94 Plans allow Council's to collect a monetary contribution for development that is likely to require the provision of or increase the demand for public amenities and services within the area. It is important to note that the plan must show a clear nexus between the development and the demand for the additional facilities.

Section 94A Plans are more flexible and simpler to implement. They do not need to demonstrate a nexus and can be applied to the whole of the Municipality. They apply a fixed rate that is set by Clause 25K of the Environmental Planning and Assessment Regulation 2000 based on the following scale:

<b>Proposed development cost</b>	<b>Maximum percentage of the levy</b>
Up to \$100,000	Nil
\$100,001 to \$200,000	0.5%
More than \$200,000	1.0%

Kiama Council currently has seven (7) Section 94 plans and one (1) Section 94A plan applicable across the municipality as outlined below:

- Section 94 Contribution Plan No 1 – Municipal Wide
- Section 94 Contribution Plan No 2 – Northern Region
- Section 94 Contribution Plan No 3 – Southern Region
- Section 94 Contribution Plan No 4 – Carparking Contribution – Kiama
- Section 94 Contribution Plan No 5 – Carparking Contribution – Gerringong
- Section 94 Contribution Plan No 6 – Carparking Contribution – Jamberoo
- Section 94 Contribution Plan No 7 – West Kiama Urban Release Area and Cedar Ridge/Silver Hill
- Section 94A Indirect Contributions Plan 2010

The Section 94 Plans were adopted in the 1990's and are beyond their intended timeframe. The Section 94A Plan was adopted in 2010 however the works schedule that it is linked also requires upgrading.

The benefits of moving onto a single Section 94A contributions plan include:

- No need to demonstrate nexus – simple to prepare with minimal background documentation required and no need to identify catchments. A single contributions plan can apply to the whole municipality.
- No apportionment requirement means that there is no financial obligation on the Council's behalf when adopting the plan.
- Simpler to implement as contributions are allocated to the projects listed in the works schedule as funds are available rather than having to adhere to an established timeframe for delivery.
- Costs are spread across a wider range of development reducing the burden on individual developers.

## Report of the Director Environmental Services

## 9.1 Developer Contributions Review - Stage 1 (cont)

- 
- Conditions of consent applied under the plan cannot be appealed (Section 94B(4) of the Act) on the basis of reasonableness.
  - No detailed catchment/population studies are required.

**Consultation and communication**

If endorsed, it is expected that a draft Section 94A Developer Contributions Plan will go on public exhibition later in this calendar year.

**Financial implications**

The preparation of a single plan to replace the existing plans will require the existing revenue to be reallocated to other projects. Options identified in the attached report include:

Option 1: Reallocated to general revenue

There has been some recent discussion about the legality of returning any unspent funds remaining after a contributions plan has been repealed to general revenue allowing the funds to be spent in any area in council administration. This approach is not recommended for the following reasons:

- There is no case law to support it and is based on a single untested legal opinion
- The transparency and accountability that should be inbuilt into the system is removed as there is no way of tracing the expenditure of these funds. This does little to promote community trust in Council.
- The contributions received were paid for a specific purpose and to return them to general revenue would undermine the reason for levying such contributions.
- There will be nothing to show for the funds collected.
- It may make it more difficult to justify future imposition of contributions.

This approach is not recommended as it lacks transparency, does little to provide infrastructure to the community and could potentially undermine the community's trust in Council's ability to act strategically.

Option 2: Reallocate the funds to other items within the contributions plan

Best practice in the past has been to reallocate the unspent funds to other similar projects within the new contributions plan. The allocation of funds is usually based on an assessment of two factors:

- The catchment from which the contributions were received and
- The category of infrastructure for which they were levied.

For example, funds levied for a community centre in a specific catchment should be reallocated to another community facility within the same catchment that is still in the plan.

This approach to the allocation of unspent funds is not appropriate for Council for the following reasons:

## Report of the Director Environmental Services

## 9.1 Developer Contributions Review - Stage 1 (cont)

- 
- There are no future projects within the existing plans to which the funds could be allocated. If a project has not been undertaken by now it is unlikely to in the future.
  - The preferred option for the review of the current plans is that they be replaced with a single Municipality-wide Section 94A plan. The method of calculating contributions and the funding of infrastructure under Section 94A plans is such that there is no benefit from taking this approach.

Option 3: The allocation of funds to relevant community projects

The allocation of funds to specific community projects is considered to be the most appropriate for Kiama Municipality. Under this approach the outstanding funds would be allocated to projects that are not necessarily included in a contributions plan but which serve a similar purpose and catchment to those for which the contributions were levied. The process of reallocation should be open and accountable with documented justification for the allocation decisions made and a clear trail of expenditure.

The largest outstanding item is the extension of the Council administrative building. When reviewing the current contributions plans Council will need to determine whether this project will proceed. If Council chooses to proceed then the unexpended funds currently held should continue to be held as a restricted asset for this purpose and the project transferred to the works schedule in any future plan. It is suggested that, if Council are considering retaining the project that they undertake cost-benefit analysis to justify its continued inclusion and prepare detailed designs and cost estimates to make sure it is financially feasible.

If Council resolves not to proceed with the extensions to the administrative building, then these funds should be combined with the unexpended funds for community facilities for both the Municipal-wide and Northern region plan catchments. These combined funds should then be allocated to a community facility project that will service that catchment. When choosing the project to reallocate the funds to care should be taken to service the broadest cross-section of the community possible, in keeping with the purpose for which the contributions were made.

As the West Kiama Urban Release Area is covered by a plan that is specific to that area, any unallocated funds from that plan should be pooled and spent on infrastructure within that catchment such as traffic management or an upgrade of a local park.

The unallocated contributions for parking within the Kiama CBD should be allocated towards the upgrade of parking within the catchment. Council should review the existing car parking provision to identify projects that may either provide more parking through the more efficient use of existing space or the formalisation of existing parking to improve efficiency of use and reduce maintenance.

It is also noted that there are unallocated funds against the current Section 94A Plan. These funds should be transferred to the new Section 94A Plan when it is adopted.

**Conclusion**

It is recommended that Council resolve to prepare a new Municipal-wide Section 94A Contributions Plan and develop a new works schedule for the redistribution of



Report of the Director Environmental Services

9.1 Developer Contributions Review - Stage 1 (cont)

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the unallocated funds already collected. The timeframe for the preparation of the new plan is anticipated to be three to four months.



# DEVELOPER CONTRIBUTIONS REVIEW – STAGE 1 Setting the Direction

Kiama Municipal Council

Julia Kaul  
Julia Kaul Planning & Policy

Kiama Municipal Council  
Contributions Plan Review – Stage 1

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Contributions Plan Review – Stage 1*

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## Executive summary

### General findings

Development contributions plans are an important source of funding to assist councils provide the infrastructure needed as their community grows. They benefit from regular review to ensure that they accurately reflect the infrastructure needs of growing communities. They are also a complex and specialised area of planning and there are many councils in NSW that have not reviewed their contributions plans since they were first prepared in the 1990s.

Kiama Council has in place seven Section 94 contributions plans and one Section 94A plan. The Section 94 plans have been in force since the 1990s. The Section 94A plan is more current, having been adopted in 2010.

The contents of these plans have been reviewed and a number of issues were identified including:

- The population assumptions on which the plans are based require upgrading
- There is insufficient information regarding apportionment in the calculation of contributions
- There is questionable nexus between the works and current development
- The cost estimates in the plans no longer reflect the current cost of providing the infrastructure
- With the exception of the S94A plan, the plans do not apply to complying development
- The Section 94A plan is focussed on maintenance of existing infrastructure rather than providing, extending or augmenting infrastructure.

A review of the scope of works in the current contributions plans and the income and expenditure patterns showed that the plans were being implemented with Council holding a relatively small balance of unspent contributions of \$3.5 million and regular expenditure from the accounts.

Based on the review of the current plans it was determined that the plans were in need of review and that consideration should be given to the options available to Council under the existing legislation.

### The preferred option

The options available to Council for development contributions towards infrastructure include:

- Section 94 contributions
- Section 94A levies
- Planning agreements
- Section 80A(1)(f) conditions.

Council may choose to use any of these options, or a combination of two or more of them (Note: Both a Section 94 contribution and a Section 94A levy cannot be imposed on the same development). The best option available will depend on a variety of factors including population growth, development mix and the scope of infrastructure required.

Based on the dwelling targets in the Kiama Urban Strategy (2011) and the Illawarra-Shoalhaven Regional Strategy (2016), future development in Kiama will be characterised by relatively low growth rates with the majority of growth attributable to dispersed infill development. The relatively small amount of greenfield growth there is will be limited to the existing zoned lands on the urban fringe, with the majority of the identified sites being in single ownership.

The optimal approach to development contributions for this form and scale of growth is the use of a single Section 94A plan that covers the whole municipality. Infrastructure that is required specifically for new greenfield development can be addressed either through the negotiation of a planning agreement

Kiama Municipal Council  
Contributions Plan Review – Stage 1

or the imposition of a condition of development consent under Section 80A(1)(f) of the *Environmental Planning and Assessment Act 1979*.

### Reallocation of unspent contributions

When Council repeals a contributions plan it is not required to refund any unspent contributions and it will be necessary for Council to determine how these funds are to be reallocated.

The majority of unspent funds are currently being held for the extension of the Council administration building and before reallocating these funds Council will need to determine whether this project will proceed. If the project proceeds, then the unspent contributions should be held for that purpose otherwise they will need to be reallocated.

The reallocation of funds should be based on the following parameters:

- The project will serve a similar purpose to that for which the contributions were levied
- The project will serve a similar catchment to that which the original infrastructure item would have served
- The project will serve the widest cross-section of the community possible so as to benefit the most people.

### Timeframe for reviewing the current plans

The preferred option is to replace the current contributions plans with a single Section 94A plan. The timeframe for the preparation of this form of plan is considerably shorter than that for the preparation for a Section 94 plan due to the reduced level of detail and supporting documentation required.

It is estimated that the preparation of a Section 94A plan would take approximately three to four months.

### Financial implications for Council

The need for Council to manage their funds is acknowledged and the preferred option has two distinct financial benefits for Council:

- The size of the future population of Kiama Municipality is not sufficient to warrant the provision of significant new infrastructure as no thresholds for provision will be crossed. As such there is little benefit to Council in investing in the preparation of the strategic documents required to support a S94 plan. These strategic documents will not be required to support a S94A plan.
- There is no requirement for apportionment under a S94A plan and as such the financial burden on Council is limited. This is of particular significance in an area such as Kiama where the majority of demand will come from the existing population.

Kiama Municipal Council  
Contributions Plan Review – Stage 1

## Introduction

Kiama Municipal Council has a collection of development contributions plans that have been developed over a number of years. These plans need to be reviewed to ensure that they remain current and that the approach taken to funding infrastructure is the most appropriate to ensure that infrastructure can be provided when it is needed.

The review Council's contributions plans is proposed to be undertaken in two stages. This report is Stage 1 of the process and will identify the approach to infrastructure funding that best suits Kiama Municipality and recommend an optimal way forward. Stage 2 will involve the preparation of revised contributions plans in accordance with the preferred approach.

## Purpose of this report

The central purpose of this report is to provide Council with guidance on the most appropriate approach to infrastructure funding and contributions planning for the Municipality to guide the review of Councils current contributions plans. It will also provide direction on the reallocation of contributions being held following the review of the current plans.

## Methodology

The following methodology will be used to identify the optimal approach for Council in reviewing its contributions plans:

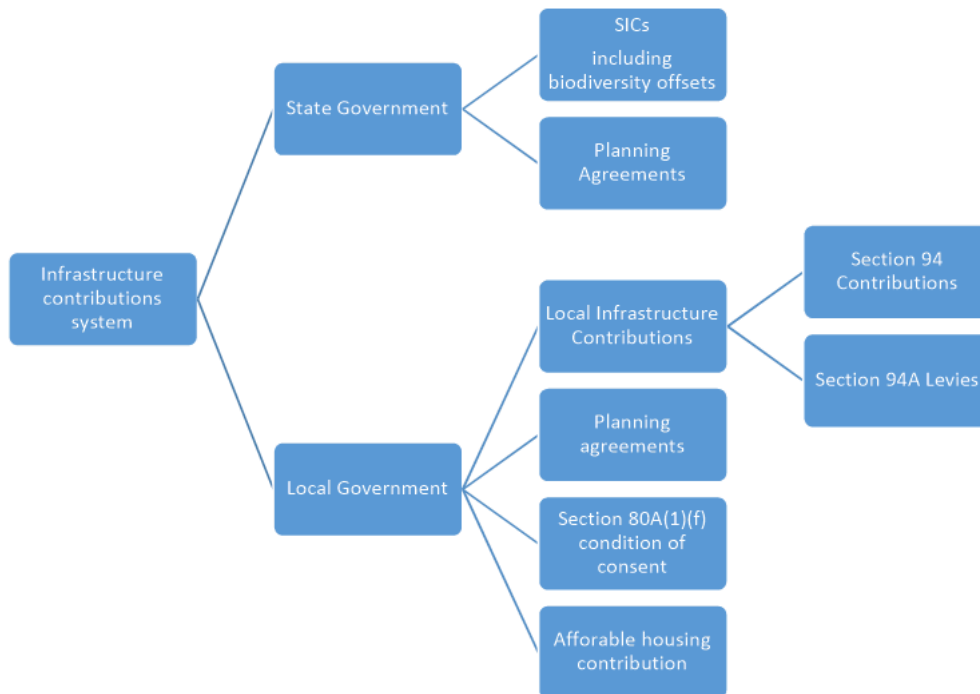
1. Evaluate the current plans:
  - a. How relevant are they
  - b. The validity of the content
  - c. The scope of works they are providing
  - d. The cost of the infrastructure
2. Examine how the plans are being implemented
  - a. What infrastructure has already been provided
  - b. What is still to be provided
  - c. The income, expenditure and cash balance
3. Examine the future growth patterns for the municipality to determine what population the future plans will need to cater for
4. Review the contributions options available against to future growth to determine the best approach or combination of approaches to contributions based on the characteristics of growth
5. Review unspent contributions to determine how they can best be reallocated if the current plans are repealed.

## Legislative and policy context

In NSW, infrastructure is funded from a variety of sources including budget allocations, grants (Federal and State), private sector provision, private/public partnerships, cost recovery through fees and contributions from developers.

The *Environmental Planning and Assessment Act, 1979* (the Act) contains provisions relating to the imposition of development contributions by consent authorities such as Council. This system is referred to as the development contributions system. The system established under the Act is outlined in Figure 1. It has both state and local components. Although the state components are acknowledged they are not relevant for the following analysis and this report addresses the local components of the contributions system only.

Figure 1: The NSW Development Contributions System



### Local contributions

Local contributions are made by developers towards the provision of local infrastructure such as local roads, open space, libraries and community centres. These contributions are imposed through a condition of development consent.

Councils must have an adopted plan under Section 94 or Section 94A of the Act before they can impose conditions requiring contributions. The content and procedures relating the development of these plans are governed by clauses 251 to 38 of the *Environmental Planning and Assessment*



Kiama Municipal Council  
Contributions Plan Review – Stage 1

Regulation 2000 (the Regulation) and further advice is given by the *Development Contributions Practice Notes* (July 2005).

Any funds raised through development contributions must be held as a restricted asset and can only be spent for the purpose for which they were collected.

Section 94 contributions

- Under Section 94 of the *Act*, Councils are allowed to require contributions from developers towards community facilities and infrastructure.
- Under the *Environmental Planning and Assessment Regulation 2000* (the Regulation) a Section 94 plan must:
  - Show nexus: a link between the development and the need for additional facilities
  - Be reasonable: to Council, developers and the community
  - Be accountable: financial, timing of work
  - Show apportionment: how the costs are to be distributed among those who will benefit
- The contribution rate is based on a unit of charge that reflects the demand generated by type of development to be levied e.g. per bedroom for dwellings, per square metre for non-residential
- These contributions may take the form of a cash payment, dedication of land, the provision of works, or a combination of these methods.
- Conditions of consent imposed under a Section 94 plan can be appealed on the grounds of reasonableness in the circumstances of the case.

Section 94A levies

- Section 94A of the *Act* allows councils to levy a contribution toward the provision of infrastructure and facilities based on a percentage of the cost of development.
- Unlike Section 94 levies, Section 94A levies do not have requirements relating to the demonstration of nexus or the apportionment of costs.
- These contributions can only take the form of a cash payment.
- The maximum percentage that can be levied is set by Clause 25K of the *Regulation* with the maximum amount that can be levied based on the following scale:

Proposed development cost	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001 to \$200,000	0.5%
More than \$200,000	1.0%

- Conditions of consent imposed under a Section 94A plan are non-appealable on grounds of reasonableness.

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Planning agreements

- In addition to, or instead of, the two forms of contribution outlined above, local infrastructure can be provided/funded through a planning agreement.
- Planning agreements are covered by sections 93F to 93L of the Act
- Regulatory requirements are covered by clauses 25B to 25F of the Regulations
- Planning agreements can be used to:
  - Impose planning obligations to rectify impact from a development
  - Meet demand created by development e.g. provision of infrastructure
  - Prescribe inclusions in a development – ensuring the implementation of planning policies
  - Impose recurrent funding associated with infrastructure, facilities and services e.g. water quality management in a sensitive wetland.

Conditions of development consent

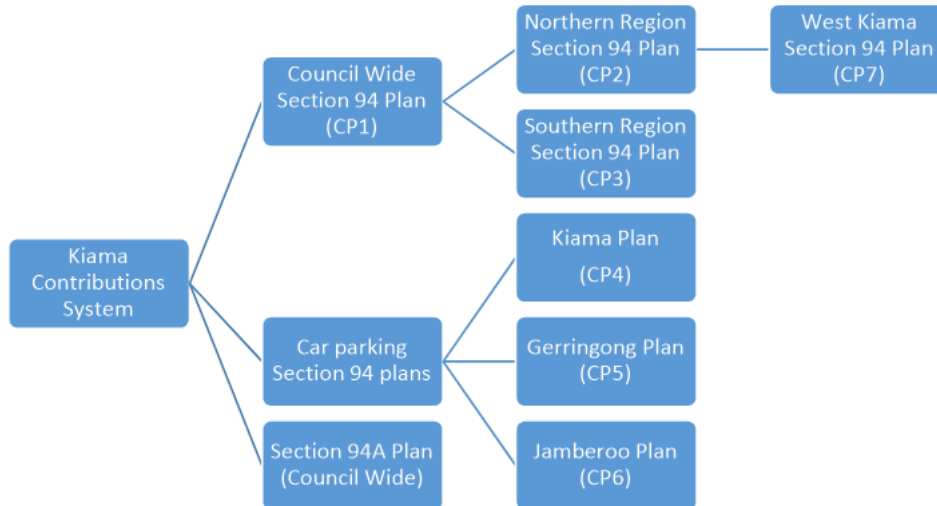
- Under Section 80A(1)(f) of the Act, Council can impose a condition of consent requiring works to be carried out, either on or external to the development site that relates to any matter of consideration under Section 79C of the Act.
- This can include the provision of infrastructure that relates specifically to the development of that site for example the provision of a local park or a roundabout.
- These conditions should not address infrastructure that is already covered by a contributions plan.

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## The existing Kiama system

Kiama Municipal Council currently has seven Section 94 Plans and one Section 94A Plan in force. The way these plans interact is outlined in Figure 2.

Figure 2: The Current Kiama Contributions System



### Key points

The following are some key points to note about the current system of contributions used by Kiama Council.

#### Section 94 Plans

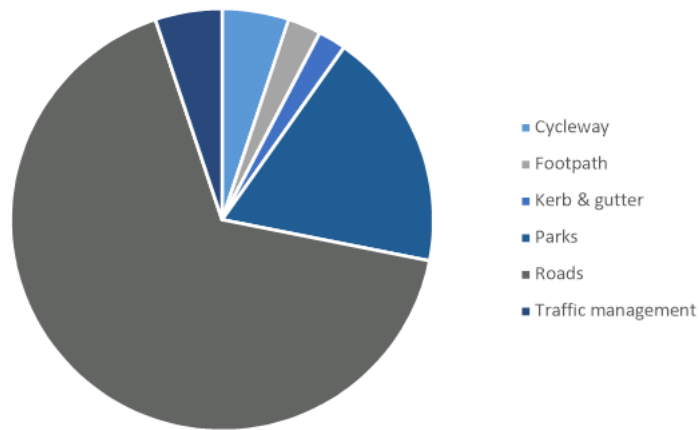
- Six of the Section 94 Plans were adopted in 1993 which coincides with the commencement of current regulatory approach to contributions.
- Four of these plans apply specifically to residential and tourist development.
- Three of these plans are for car parking in the town centres of Kiama, Gerringong and Jamberoo respectively
- Contributions Plan No 7 is the only Section 94 plan that has been adopted since the initial adoption of plans in 1993 and it was adopted in 1998 to coincide with the release of land in West Kiama.
- When these plans were adopted they contained \$9.8 million of works. This is the equivalent of \$16.4 million of works today.
- 45% of the costs of infrastructure included in the plans when they were adopted were the recoupment of money already spent.
- 78% of costs within the adopted plans were attributed to new developers.
- Council liability under these plans is \$3.6 million (in 2016 \$).
- With the exception of the West Kiama Urban Release Area, contribution rates are less than \$10,000 per dwelling.

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Section 94A

- The Section 94A plan was adopted in 2010 and operates concurrently with the other adopted plans.
- The works schedule for the plan contains \$1.2 million of proposed works to be provided between 2009 and 2012.
- A breakdown of the proposed works is shown in Figure 3
- 67 % of the value of works in the works schedule are road projects with the focus being on the funding of asset renewal and resealing.

Figure 3: Section 94A Works Schedule



Planning agreements

- Voluntary Planning Agreement Policy was adopted by Council in 2010.
- This policy provides guidelines for the use and content of planning agreements in the Municipality
- There are no current planning agreements in force for Kiama Municipality.

Summary

The system of development contributions currently used by Council is characterised by:

- The use of Section 94 with limited use of Section 94A and no use of planning agreements
- The use of a number of separate plans based on geographic area and type of development
- Focus is on the recoupment of costs and
- The majority of costs apportioned to developers.

## Evaluation of existing plans

Contribution rates for section 94 plans are generally calculated in the following way:

$$A = \frac{B}{C}$$

Where

A = Contribution rate per person

B = Cost of providing infrastructure required

C = Total people benefitting from the infrastructure

The accuracy of the calculation of the contribution depends on the accuracy of the assumptions relating to the infrastructure required, how much it will cost and how many people are going to benefit from it.

The following evaluation will look at these components of Council’s contributions plans to determine the extent to which they are relevant in funding the infrastructure they are supposed to provide for the populations that created that demand.

### Timeframe for implementation

Section 94 contributions plans should be prepared with a defined timeframe for implementation. The growth and infrastructure demand assumptions on which the contributions plans are based and contribution rates are calculated on are based on the timeframe of the plan. This timeframe is usually in the order of five to ten years from the date of adoption. Best practice is to review a contributions plan prior to the end of its timeframe for implementation to determine whether the assumptions on which it is based remain current and whether projected growth will require a review of the infrastructure to be funded through the plan.

Clause 33A of the Regulations requires contributions plans to undergo regular review and that, where a date for review is stated in the plan Council is required to ensure that the review is completed by that date.

### Background

Six of the current contributions plans were adopted in 1993. The stated timeframe for the implementation of these plans was five to seven years. The scope of works and population projections on which the contribution rates are calculated based on these timeframes and have not been reviewed since the adoption of the plans.

Contributions Plan No 7 that covers the West Kiama and Cedar Grove/Silver Hill release areas was adopted in 1998 and coincided with the release of land in this area for residential development. The plan had an implementation timeframe of ten years which reflected the expected time frame of development within the catchment of the contributions plan.

The Section 94A contributions plan was adopted in 2010 and is the most recently adopted by Council. Contributions under this plan are calculated as a percentage of the capital investment value of the development and as such do not have the same defined implementation timeframes. The schedule of works that contributions will fund which is contained in this plan shows no items with a timeframe after 2011-12.

### Implications of exceeding implementation timeframe

All of Council’s plans are currently operating outside of their stated implementation timeframe. This has implications for the relevance and reasonableness of the contributions plans as well as Council’s ability to fund the infrastructure its community needs.

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*Population projections*

The population projections used as the basis for the calculation of contributions rates for all plans with the exception of Plan No 7 were based on the estimated growth until 2000. These population projections are now considerably out of date. This has the following implications for the operation of the contributions plan:

- Contributions are no longer being based on apportionment that reflects future demand. By not updating the projections to reflect the extended implementation timeframe currently being used means that the amount levied per person is incorrect.
- The population creating demand for facilities has been underestimated resulting in the potential for the underestimation of the scope of infrastructure required.

*Estimated cost of works*

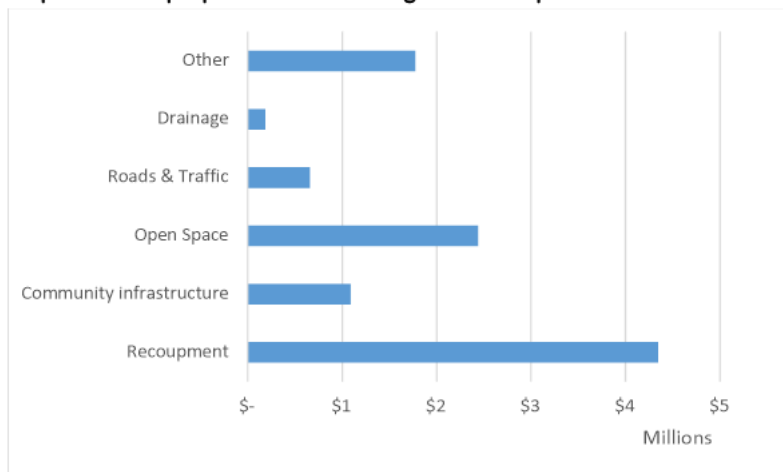
The cost of infrastructure changes over time usually, but not always, in line with inflation. As part of the implementation of the plans the contribution rates have been indexed over time and thus reducing the impact of inflation.

Many of the items in Council’s plans will have already been provided, simply because of how long the plans have been in operation. For these items Council will have an actual cost of provision and this cost should be reflected in the plans, allowing for greater accuracy in calculating contribution rates. Where items have not been provided, the standard of provision and cost of provision should be reviewed to ensure they are current. Not doing this could result in lost revenue to Council.

*Scope of works proposed*

Council’s contributions plans cover a wide range of works including recoupments, community facilities, open space and recreation, traffic management and drainage. This range of infrastructure is typical of contributions plans in general. Figure 4 shows the breakdown of the scope of works within the Section 94 plans by category of infrastructure.

Figure 4: Scope of works proposed under existing Section 94 plans



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### Recoupment items

Although these items cover a range of infrastructure categories, they have one common feature. Council have already spent the money on these items and are seeking to recoup that proportion of the costs that can be attributed to new development.

The contribution rates for recoupment items are calculated by dividing the cost of the infrastructure that can be attributed to new development by the projected population increase over the implementation timeframe for the plan. If these assumptions are correct, at the end of the implementation timeframe for the contributions plan it is expected that all funds will have been recouped and the item should be removed from the plan. As all plans have exceeded their implementation timeframe the amount recouped may have exceeded that stated in the plan.

As infrastructure identified in the plan is provided it becomes a recoupment item and the plan should be revised to reflect the actual cost of provision rather than a cost estimate. This ensures the contributions are calculated are based on the most accurate costs available. As the plans have not been reviewed since first implemented this has not occurred.

### Community Facilities

This category contains such infrastructure as libraries and community/neighbourhood centres. Council's plans contain a relatively small number of community facilities with the focus being on the recoupment of past expenditure rather than future provision.

### Open space and recreation

With the exception of Plan No 7, the open space and recreation items within the current plans are for embellishment only with no costs for the acquisition of new land. The lack of land acquisition in the plans has shielded Council from the impact of recent increases in land values.

The age of the plans is, however, problematic as the embellishment that was to be funded under it is likely to now need renewal. Development contributions may therefore be seen to be contributing to embellishment they cannot take advantage of and a revised plan should address current embellishment requirements.

### Roads and traffic management

As with the other categories of infrastructure, the majority of roads and traffic management items in the plans have been provided since the plans were adopted. Plans should have been reviewed to reflect the actual cost of provision.

### Drainage

Plan No 7 is the only plan that contains drainage provisions. This plan is the most recently adopted of the contributions plans and applies to a specific land release area only. As the development in this release area is complete there is little impact from these costs not being updated.

### Other items

This category contains a variety of items that do not fit within the other categories including the extension to the administrative building, rural fire service buildings and, in the case of Plan No 7, plan administration.

The extension to the council administrative building has not been undertaken and Council should confirm the status of this project.

The inclusion of rural fire services is difficult to justify due to the funding arrangements that are in place for these facilities and the need to demonstrate nexus, apportionment and reasonableness. They do, however, account for a very small proportion of the total costs in the plans.

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It is generally accepted that the cost of administering contributions plans can be passed on through development contributions. Only one of the current plans has a contribution towards administration. This has implications for the implementation of Council's plans as Council has foregone an opportunity to fund the necessary staff and studies that may have permitted the regular review of the contributions plans.

### Validity of content

All plans exceed their stated implementation timeframe and as such it could be argued that they are contrary to Clause 33A of the Regulation. In addition to this the following threaten the validity of the content of the current plans:

- The plans do not include sufficient information based on current practices regarding the cost estimates for individual items or the method of apportionment of costs.
- There is no reference to the application of the S94 plans to complying development and as such contributions cannot be imposed for this form of development. As the use of complying development provisions increases so too will this issue.

### Section 94 plans

- The population projections used underestimate the size of the population benefiting from the infrastructure included in the plans and the scope of infrastructure that might be required
- The cost estimates used in the plans do not reflect actual costs for those items that have been provided since the plans were adopted or current cost estimates for those that are yet to be provided.
- The plans are beyond their implementation timeframes and if an item of infrastructure included in them is yet to be provided, the need for it should be reviewed.

### Section 94A plan

- The Section 94A plan uses terminology that reflects the changes that were proposed in Part 5B contributions reforms. These reforms were not commenced and as such the terminology in the plan does not reflect the current legislation.
- Although the Section 94A plan states that it operates in conjunction with Council's Section 94 plans it does not show how the plans interact or how to determine which contribution rate applies
- The majority of works listed in the works schedule are asset renewal/maintenance projects. This is not in keeping with the requirements of Section 94A(3) of the Act which limits the works to the provision, extension or augmentation of the infrastructure.
- The works schedule has not been kept up to date with no current works listed. This plan is recouping for maintenance works that were programmed to be undertaken up to 6 years ago.
- As the works schedule is out of date and the works included in the schedule are not for the provision, extension or augmentation of infrastructure, the plan requires review.



## Implementation of current plans

### Provision of infrastructure identified

Almost half of the infrastructure to be funded through Council’s contributions plans had already been provided before the plans were adopted, with Council seeking to recoup the costs through the plans. Council’s financial records show that regular repayments have been made from contributions received for these items. As the plans have been in force for longer than was initially intended the cost of providing these items should have been fully recouped.

Of those items within the plans that were still to be provided when the plans were adopted, the majority have now been provided. The main exceptions to this are the provision of additional car parking in Kiama CBD and the extensions to Council’s administration building.

### Income and expenditure

Council’s financial reporting for contributions (Note 17 to the Annual Financial Statements) have been reviewed for the last five reporting periods. This helps build a picture of how well the existing plans are being implemented and the cash being held in reserve.

Figure 5 outlines the income, expenditure and cash balances held over the five years reviewed and the following are a few key characteristics:

- As expected the contributions received vary from year to year but average around \$500,000
- There is a greater variation in the expenditure of contributions than contributions received with expenditure ranging from \$250,000 (2011/12) to \$857,000 (2012/13) which is normal for contributions plans
- Cash balances held average \$3 million
- For the last reporting period (2014-15) the following totals were reported relating to contributions (both Section 94 and Section 94A):
  - Income received           \$1,114,000
  - Expenditure                 \$801,000
  - Cash balance held         \$3,510,000
- Income and expenditure for Section 94A levies were only separately reported for the last two financial years (2013/14 and 2014/15) with \$286,000 received over that time and \$183,000 expended.

### Analysis

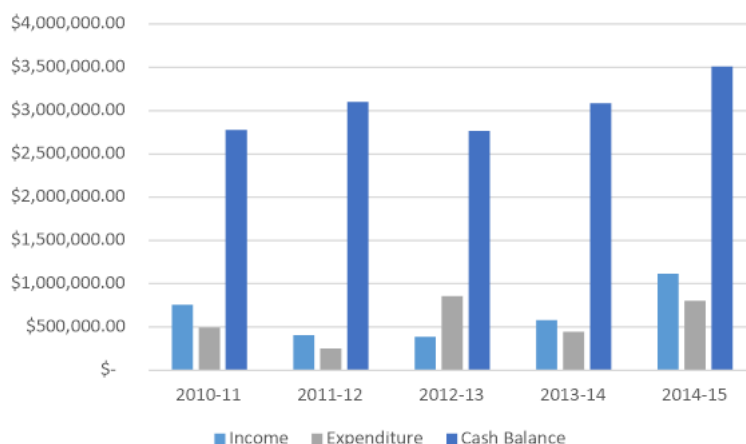
#### Income

The majority of contributions received come from Section 94 contributions (83%) rather than Section 94A levies (17%). This is expected as the majority of development in Kiama Municipality is residential in nature and is therefore levied under the Section 94 plans.

There is a significant variation in the income received each year from contributions. This is reflective of the nature of development in Kiama Municipality where development is dominated by dispersed infill developments with only a relatively small amount of greenfield land release. This lack of consistency in contributions income makes the forward financial planning of expenditure difficult, although in a plan that is largely based on recoupment items this is less critical than one with significant infrastructure still to be provided.

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Figure 5: Summary of contributions related finances – 2010/11-2014/15



*Expenditure*

The financial reporting shows regular expenditure against the contributions plan although this expenditure is usually lower than the income received. The majority of the expenditure would appear to be reimbursements for recoupment items with few items in the current contributions plans still to be provided. The rate of repayment does not seem consistent which may indicate some minor procedural issues.

The regular expenditure is a key factor in maintaining a consistent cash balance and is a sign of a plan that is financially well managed.

*Cash Balance*

At the end of the 2014/15 financial year councils across NSW were holding approximately \$1.2 billion in unspent contributions – that is an average of \$8 million per council (although a few are holding reserves greater than \$70 million). Kiama Council’s cash balance at the end of 2014/15 financial year was \$3.5 million which is well below the average and is indicative of a council that is managing its funds efficiently.

Of the \$3.5 million cash balance held nearly \$2.5 million is being held against one item – extensions to the Council administrative building. This is the single most expensive item under the current plans and it is yet to be provided.

*Summary of analysis*

- The income against the contributions plan is indicative of that expected from the type of development that is typical of the Municipality.
- Expenditure is regular and it appears that regular payments are being made for items that have been forward funded.
- The cash balance of the plan is considered reasonable and indicative of the items still to be provided under the plan.
- There is nothing within the income or expenditure that would indicate that significant changes need to be made to the financial management of the current system until such time as a new system is implemented.

## Growth scenarios

### Future growth scenarios for Kiama

There are two main documents that are guiding future growth in Kiama Municipality:

- Kiama Urban Strategy (2011)
- Illawarra-Shoalhaven Regional Strategy (2016)

The growth targets set by these documents are reflected in Council's Local Environmental Plan.

#### Kiama Urban Strategy

The Kiama Urban Strategy (KUS) was adopted in 2011 and reflected the growth targets outlined in the Illawarra Regional Strategy 2006.

The following are the key features of the growth scenario for Kiama Municipality under the KUS:

- Strategy covers period from 2011 to 2021
- New dwellings required by 2021 – 1,200
- Projected population growth – 2,380
- Expected growth rate around 1% per annum
- The majority of growth to be provided through infill development throughout the Municipality
- Small amounts of growth to be provided through greenfield development utilising already zoned land
- Sites identified for future greenfield are typically single owner sites or sites with a small number of landowners where the development will be undertaken in stages based on ownership patterns.

#### Illawarra-Shoalhaven Regional Strategy

The Illawarra-Shoalhaven Regional Strategy (ISRS) was approved in 2016 and aims to provide a strong decision-making framework for the future strategic direction of the region. It also provides a regional context for the future direction of development in Kiama Municipality.

The following are some key features of the growth scenario for Kiama Municipality as outlined in the ISRS:

- Strategy covers period from 2016-2036
- New dwellings required by 2036 – 2,850
- Projected population growth approximately 5,700
- Projected total Kiama population for 2036 – 28,370 persons
- Expected growth rate around 1% per annum
- Protection of rural lands a feature therefore majority of development to be infill
- Some additional greenfield land may be required.

#### Summary

Both documents show growth scenarios that are dominated by low growth, infill development with no substantial urban encroachment beyond the current rural-urban borders. Although the timeframes for the two documents are different, the rate of growth is not substantially different and the future population size will remain below 30,000 people.

### Implications for infrastructure demand and contributions

Population size is one of the best indicators for expected demand for infrastructure – the bigger the community the higher the order of infrastructure required. Having regard to the rate of growth, the projected population size and the expected location of the development it is unlikely that the future

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population will exceed the thresholds required to justify a significant increase in the infrastructure required. In this regard the investment of Council resources into detailed strategic planning for infrastructure would not be justified.

## Options analysis

There are a number of options available to Council for funding infrastructure including:

- General budget allocations
- Grant funding
- Private Public Partnerships and
- Development contributions

The best approach to use will depend on a variety of factors such as the total cost, who will benefit and the availability of external support such as the private sector or government grants.

Although the other funding options are acknowledged, the following discussion focusses on the development contributions option.

There are three components of the development contributions system that Council can utilise:

- Section 94 contributions
- Section 94A levies and
- Planning agreements

There are certain situations where each of these options are more appropriate than the others these are summarised in Figure 6.

There are also common features of both Section 94 contributions and Section 94A levies that should be acknowledged:

- Both forms of contributions can only be imposed by council in accordance with an adopted contributions plan (Section 94B(1) of the Act)
- The process that needs to be followed when preparing a contributions plan is the same for both Section 94 and Section 94A (Clauses 26-33A of the Regulation).
- There are common content to both types of plan (Clause 27 of the Regulation)
- The validity of both Section 94 and Section 94A plan can be challenged on the basis of the process followed within 3 months of the adoption of the plan (Section 94EB(3) of the Act).

Figure 6: Optimal use of development contributions mechanisms

Mechanism	This mechanism is likely to be optimal:
Section 94  (Monetary contribution, dedication of land free of cost, provision of a material public benefit)	<ul style="list-style-type: none"> <li>✓ In urban release areas and major urban renewal precincts;</li> <li>✓ In areas where growth is faster and higher levels of contributions are able to offset the considerable administration costs, financial risks and inefficiencies of managing money amongst and within the funds;</li> <li>✓ In areas with multiple owners who are unable to co-ordinate in offering dedications or provision of a material public benefit; or</li> <li>✓ Where the council can access supplementary funds to meet the non-development demand for the infrastructure included in the contributions plan.</li> </ul>
Section 94A  (Monetary contribution only)	<ul style="list-style-type: none"> <li>✓ In established urban areas where supplementary funding of infrastructure to meet non-development demands is uncertain;</li> <li>✓ In areas where both the rate, and the infrastructure impacts, of future development is difficult to predict; (e.g. rural areas);</li> </ul>

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Mechanism	This mechanism is likely to be optimal:
	<ul style="list-style-type: none"> <li>✓ Where the provision of the infrastructure benefits a dispersed set of contributors;</li> <li>✓ Where resources to manage the development contributions system are limited;</li> <li>✓ In areas with multiple ownership with little scope for land dedications or provision of a material public benefit as alternatives to paying a monetary contribution; or</li> <li>✓ Where the costs of needed infrastructure are relatively low and spread over time.</li> </ul>
Planning agreements  (refer to Section 6 for details on Planning Agreements)	<ul style="list-style-type: none"> <li>✓ In relation to a major development site or precinct that is owned a single land owners or a consortium of land owners;</li> <li>✓ Where the owner or owners have an incentive to be directly involved in the delivery of community infrastructure;</li> <li>✓ Where the owners agree to be involved in the 'provision of public infrastructure', rather than just community infrastructure;</li> <li>✓ Where the owners want to provide community infrastructure additional to, or at a higher standard than, what has been specified under a contributions plan;</li> <li>✓ A council and the developer(s) can, by negotiation, achieve different and better or more innovative outcomes than can be achieved through imposing direct or indirect contributions; or</li> <li>✓ Where a developer(s) wishes to package different contributions into the one instrument (for example, section 80A(1)(f) works requirements, provision of a material public benefit offered by an applicant, monetary contributions and the dedication of land).</li> </ul>

### Section 94 contributions

Section 94 contributions are the most commonly used form of development contributions. They are based on the following principles:

- Nexus – a demonstrated link between the contributing development and demand for the infrastructure
- Apportionment – new development only contributes to that proportion of the demand it generates
- Reasonableness – the level of infrastructure provided, the timeframe for delivery and the cost of providing it must be reasonable
- Accountability – there must be transparency surrounding the calculation of the contribution, what it is paying for and the income and expenditure relating to the contributions.

This approach to development contributions carries with it the highest level of rigour with all contributions having to be justified either through the plan itself or through supporting documentation.

#### Advantages

- A Section 94 plan is a detailed plan that shows what infrastructure will be provided, when it will be provided and who will be funding it.
- The rigour associated with the development of the plan provides a sound basis for the strategic provision of infrastructure.



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- There is a level of certainty for all stakeholders in the provision of infrastructure contained within the plan
- Contributions are only required where there is a demonstrated need
- The contributions received are generally higher per dwelling than those received under Section 94A levies

#### Disadvantages

- Considerable work is required to prepare the plan with extensive supporting documentation required to justify the inclusion of items of infrastructure and the estimated cost of providing them.
- The cost of providing infrastructure is apportioned based on who benefits. Council is required to meet any cost that is related to demand from the existing community.
- Implementation of the plan requires significant administration.
- Conditions of consent imposed requiring contributions can be appealed based on reasonableness in the circumstances of the case (Section 94B(3) of the Act).

#### Implications for Council

As outlined in the Kiama Urban Strategy growth rates are expected to be relatively low with the majority of growth coming from dispersed infill development. This type of development is unlikely to be a significant demand for new infrastructure.

If Council was to prepare new Section 94 plans they would need to undertake considerable strategic work (Community Facilities Strategy, Open Space & Recreation Strategy, Traffic Management Plan) on which to base the new plan. This strategic work would require significant resources and would take at least 3-6 months to prepare. As the Municipality appears to have a relatively high standard of existing provision of infrastructure and relatively low levels of growth it is unlikely this strategic work would identify significant new infrastructure. The cost of undertaking this work would outweigh any benefit from doing it. It would also add significantly to the timeframe for implementing a new plan.

In addition to this, when using Section 94 all costs associated with providing infrastructure must be apportioned between *all* who benefit. Developers are only to be levied for the demand their development generates. Council is responsible for funding any demand that is attributed to the existing population. As Kiama is an area with a large established population the majority of demand for any new infrastructure to be provided is likely to be attributed to the existing population. If Council was to replace the current contributions plans with revised Section 94 plans Council would be likely to have a substantial associated financial obligation under such plans.

#### Section 94A levies

Section 94A levies were introduced in the Act in 2005 and are a percentage based levy which are levied over a wide range of development. They do not have the nexus, reasonableness and apportionment requirements that relate to Section 94 contributions and in many ways are simpler to implement. Council has had an adopted Section 94A plan in force since early 2010.

#### Advantages

- No need to demonstrate nexus – simple to prepare with minimal background documentation required and no need to identify catchments. A single contributions plan can apply to the whole municipality.
- No apportionment requirement means that there is no financial obligation on the Council's behalf when adopting the plan.
- Simpler to implement as contributions are allocated to the projects listed in the works schedule as funds are available rather than having to adhere to an established timeframe for delivery.

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- Costs are spread across a wider range of development reducing the burden on individual developers.
- Conditions of consent applied under the plan cannot be appealed (Section 94B(4) of the Act) on the basis of reasonableness.

#### Disadvantages

- The plan does not have the detail of a Section 94 contributions plan which reduces its transparency.
- Without the need to undertake the supporting analysis in preparing the plan there is a lack of motivation for the plan to be a strategic document.
- The contribution rates received for some forms of development are lower than could be levied under a Section 94 contributions plan.
- Development that does not generate demand still has to contribute which can be seen as inequitable.
- Contributions are restricted to cash contributions only. There is no opportunity for works-in-kind or land dedication to offset the contribution required.

#### Implications for Council

The use of Section 94A is most appropriate for areas such as Kiama where development is relatively dispersed and growth rates are moderate to low. It is a substantially simpler system to administer and as Kiama Municipality does not have a sufficiently large population or rapid growth to justify employing contributions manage, a simpler system with a lower administrative burden is advantageous.

Although contributions levied would be lower for many types of development this would be offset by the levying of a wider range of development and the reduced administrative burden. Financial modelling should be carried out as part of the preparation of the new plan to determine a reasonable work schedule. The removal of the apportionment requirements would also reduce the financial burden of the plan for Council and the removal of the opportunity for appeal would provide greater certainty.

#### Planning agreements

Council has an existing planning agreement policy but is yet to use such agreements. Planning agreements can be used either as a stand-alone document or to supplement an adopted contributions plan.

#### Advantages

- Highly flexible and can be used for a variety of purposes.
- They can be used to implement infrastructure provision as proposed by a contributions plan or in addition to the contributions plan.
- Encourages innovation.
- Removes the need for the development and implementation of a site specific contributions plan where owners/developers are agreeable.
- Can be implemented without the need for a contributions plan to be in place.

#### Disadvantages

- Legal agreement – costly and time-consuming to prepare.
- Requires the agreement of the developer/land owner – must be entered into voluntarily.
- Requires on-going management to ensure that milestones are met and appropriate money has been paid.
- Financial risk to Council if the developer fails to comply with the agreement e.g. go into liquidation.



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#### Implications for Council

Planning agreements are a worthwhile component for Council to have in their development contributions system and should be used to supplement, but not replace, either of the contributions forms outlined above.

Situations in which Council might consider using them would include:

- As an alternative to the development of a new contributions plan where there is a new land release with few owners e.g. Spring Creek or
- Where a developer wants to provide infrastructure which is not covered by the contributions plan or
- Where there is a car parking shortfall.

Planning agreements are expensive to prepare, carry with them financial risk and require significant ongoing administration. It is not recommended that Council use them instead of having a contributions system in place.

## Moving forward

As identified in this report the existing contributions plans have exceeded their implementation timeframes and have not kept pace with current expectations regarding detail and content. It is recommended that Council reviews these plans and as a matter of priority develop a new system that is better able to meet the needs of the future community of Kiama Municipality.

### Preferred approach

It is recommended that Council replace the existing system of contributions plans with a single Section 94A plan which levies all forms of development across the Municipality for the following reasons:

- Future growth rates are low and the expected development is dispersed
- The preparation of a Section 94A plan would not require Council to undertake expensive and time-consuming supporting studies that would be required if a Section 94 Plan was to be prepared.
- The size of the growth is not sufficient to require substantial new infrastructure to be provided which makes an investment in the supporting documentation required for a Section 94 plan difficult to justify
- It is easier to administer and would require fewer council resources.
- The cost of infrastructure would be spread across a broader cross-section of development thus easily capturing development such as employment lands and tourist development that would otherwise have not contributed to the provision of infrastructure.

In situations where there is a one-off need for a certain item of infrastructure, for example a shortfall in on-site parking, a planning agreement should be used to address that need. It is acknowledged that these agreements can be costly and time-consuming to prepare and it is suggested that Council consider preparing standard agreements that can be used for commonly occurring situations such as parking shortfalls.

It is not necessary to prepare separate contributions plans for those areas identified for greenfield development as these areas are generally in a single ownership, or will be undertaken in stages by a small number of owners. In this situation the most appropriate approach to infrastructure provision and funding would be either through a s80A(1)(f) condition or through a planning agreement.

### Management of existing funds

As outlined earlier in this report Council is currently holding approximately \$3.5 million in unspent contributions. A breakdown in these funds is outlined in Figure 7.

If the current contributions plans are to be repealed Council will identify what is to be done with these funds. It should also be noted that due to the time lag between development approval and payment of the contribution funds could continue to be received for up to five years and whatever approach chosen will need to cater for this.

Figure 7: Unallocated contributions summary

Infrastructure Item	Catchment	Amount held
<b>Council administration building</b>	Municipal-wide	\$2,452,000
<b>Community facilities</b>	Municipal-wide	\$277,000
<b>Community facilities</b>	Northern-region	\$40,000
<b>Community facilities</b>	West Kiama	\$179,000
<b>Traffic management</b>	West Kiama	\$172,000
<b>Car Parking</b>	Kiama CDB	\$162,000

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Contributions Plan Review – Stage 1

### Options available

Although contributions received are required to be held as a restricted asset and spent for the purpose for which they were received, there is no legislative or regulatory direction as to what councils should do with contributions received when a plan is repealed and the item for which they were collected is no longer to be provided. In this regard there are three main options available to Council.

#### *Option 1: Reallocated to general revenue*

There has been some recent discussion about the legality of returning any unspent funds remaining after a contributions plan has been repealed to general revenue allowing the funds to be spent in any area in council administration. This approach is not recommended for the following reasons:

- There is no case law to support it and is based on a single untested legal opinion
- The transparency and accountability that should be inbuilt into the system is removed as there is no way of tracing the expenditure of these funds. This does little to promote community trust in Council.
- The contributions received were paid for a specific purpose and to return them to general revenue would undermine the reason for levying such contributions.
- There will be nothing to show for the funds collected.
- It may make it more difficult to justify future imposition of contributions.

This approach is not recommended as it lacks transparency, does little to provide infrastructure to the community and could potentially undermine the community's trust in Council's ability to act strategically.

#### *Option 2: Reallocate the funds to other items within the contributions plan*

Best practice in the past has been to reallocate the unspent funds to other similar projects within the new contributions plan. The allocation of funds is usually based on an assessment of two factors:

- The catchment from which the contributions were received and
- The category of infrastructure for which they were levied.

For example, funds levied for a community centre in a specific catchment should be reallocated to another community facility within the same catchment that is still in the plan.

This approach to the allocation of unspent funds is not appropriate for Council for the following reasons:

- There are no future projects within the existing plans to which the funds could be allocated. If a project has not been undertaken by now it is unlikely to in the future.
- The preferred option for the review of the current plans is that they be replaced with a single Municipality-wide Section 94A plan. The method of calculating contributions and the funding of infrastructure under Section 94A plans is such that there is no benefit from taking this approach.

#### *Option 3: The allocation of funds to relevant community projects*

The allocation of funds to specific community projects is considered to be the most appropriate for Kiama Municipality. Under this approach the outstanding funds would be allocated to projects that are not necessarily included in a contributions plan but which serve a similar purpose and catchment to those for which the contributions were levied. The process of reallocation should be open and accountable with documented justification for the allocation decisions made and a clear trail of expenditure.

The largest outstanding item is the extension of the Council administrative building. When reviewing the current contributions plans Council will need to determine whether this project will proceed. If Council chooses to proceed then the unexpended funds currently held should continue to be held as a restricted asset for this purpose and the project transferred to the works schedule in any future plan. It is suggested

*Kiama Municipal Council  
Contributions Plan Review – Stage 1*

that, if Council are considering to retain the project that they undertake cost-benefit analysis to justify its continued inclusion and prepare detailed designs and cost estimates to make sure it is financially feasible.

If Council resolves not to proceed with the extensions to the administrative building, then these funds should be combined with the unexpended funds for community facilities for both the Municipal-wide and Northern region plan catchments. These combined funds should then be allocated to a community facility project that will service that catchment. When choosing the project to reallocate the funds to care should be taken to service the broadest cross-section of the community possible, in keeping with the purpose for which the contributions were made.

As the West Kiama Urban Release Area is covered by a plan that is specific to that area, any unallocated funds from that plan should be pooled and spent on infrastructure within that catchment such as traffic management or an upgrade of a local park.

The unallocated contributions for parking within the Kiama CBD should be allocated towards the upgrade of parking within the catchment. Council should review the existing car parking provision to identify projects that may either provide more parking through the more efficient use of existing space or the formalisation of existing parking to improve efficiency of use and reduce maintenance.

It is also noted that there are unallocated funds against the current Section 94A plan. These funds should be transferred to the new Section 94A plan when it is adopted.

*Kiama Municipal Council  
Contributions Plan Review – Stage 1*

## Summary of recommendations

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The following is a summary of the key recommendations of this report:

- That the current contributions plans be reviewed as they have exceeded their stated implementation timeframes
- That the current system of Section 94 plans and an associated Section 94A plan be replaced with a single Section 94A plan that applies to the Municipality as a whole.
- That the works schedule within the new Section 94A plan should focus on the upgrading of facilities to provide a better level of service rather than maintenance.
- That Council resolve whether to proceed with the extension of the Council administration building project before redistributing unallocated funds
- That unallocated funds be redistributed to projects that are similar in purpose and catchment to those that are no longer included in the works schedule for the new contributions plan.

**9.2 Planning Proposal for Part of Lot 73 DP 1153471, 35 Bland Street, Kiama**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.3 Prepare and process planning proposals in a timely manner in accordance with the Environmental Planning and Assessment Act requirements

**Summary**

The Planning Proposal for part of Lot 73 DP 1153471, 35 Bland Street, Kiama was endorsed for Gateway consideration by Council on 17 March 2015. The Department of Planning and Environment granted a Gateway Determination for this proposal on 14 June 2016. In accordance with the conditions of this determination Council placed the Planning Proposal and supporting information on exhibition.

As no submissions were received this report seeks endorsement to proceed with the amendment to the Kiama Local Environmental Plan (LEP) 2011.

**Finance**

N/A

**Policy**

N/A

**Reason for Report to Council**

This report overviews the results of the exhibition period and seeks endorsement to proceed with the LEP amendment.

**Attachments**

- 1 Gateway Determination
- 2 Council Report - 17 March 2015
- 3 Council Minute - 17 March 2015

**Enclosures**

Nil

**RECOMMENDATION**

That Council exercise its delegation in relation to the preparation of the amendment to the *Kiama Local Environmental Plan 2011* to rezone part of Lot 73 DP 1153471, 35 Bland Street Kiama from SP2 Infrastructure to R2 Low Density Residential, introduce a minimum lot size of 450m<sup>2</sup>, and apply a maximum building height of 8.5m.

**BACKGROUND**

Council received a Planning Proposal (PP) to rezone part of Lot 73 DP 1153471, 35 Bland Street, Kiama (the subject site) from SP2 Infrastructure to R2 Low Density

## Report of the Director Environmental Services

9.2 Planning Proposal for Part of Lot 73 DP 1153471, 35 Bland Street, Kiama  
(cont)

Residential, introduce a minimum lot size of 450m<sup>2</sup>, and apply a maximum building height of 8.5m under the provisions of the *Kiama LEP 2011*.

On 17 March 2015 Council resolved to support the PP to commence.

**“Committee recommendation (15/080) that a planning proposal commence for that part of Lot 73 DP1153471 Bland Street Kiama currently zoned SP2 Infrastructure to R2 Residential under Kiama LEP 2011 and that Council meet the costs in the preparation and lodgement of the planning proposal.”**

Accordingly the PP was submitted to the NSW Department of Planning and Environment (DoPE) for a Gateway Determination. DoPE issued a Gateway Determination on 14 June 2016 (see attachment), with the following conditions:

1. *Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 as follows:*
  - a) *The planning proposal is to be made publicly available for 14 days; and*
  - b) *The relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for materials that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing local environmental plans (Department of Planning and Infrastructure 2012).*
2. *No public authority consultation is required under section 56(2)(d) of the Environmental Planning and Assessment Act 1979.*
3. *No public hearing is required to be held into the matter under section 56(2)(e) of the Environmental Planning and Assessment Act 1979. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission).*
4. *The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.*

The subject PP was placed on public exhibition from 6 July 2016 to 19 July 2016. Adjoining neighbours were notified in writing and notification provided on Council's website. While some general enquires were made no submissions concerning the PP were received.

The PP is recommended to proceed with the preparation and finalisation of the amendment to the *LEP 2011* in conjunction with Parliamentary Counsel and the Department of Planning and Environment.

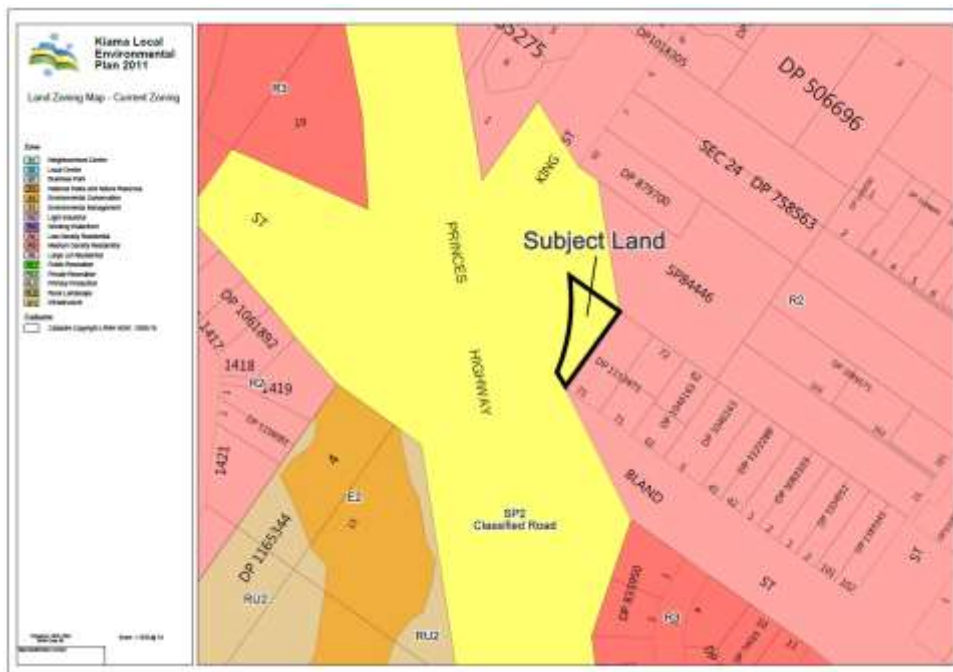
**PROJECT TIMELINE**

Stage	Date/Details
Date draft LEP exhibited	06/07/2016 – 19/07/2016
Date of Public Hearing (if held)	Nil
Date Council resolved to adopt LEP	Anticipated to be adopted 16/08/2016
Date sent to PCO seeking opinion	Opinion to be sought upon formal adoption by elected Council

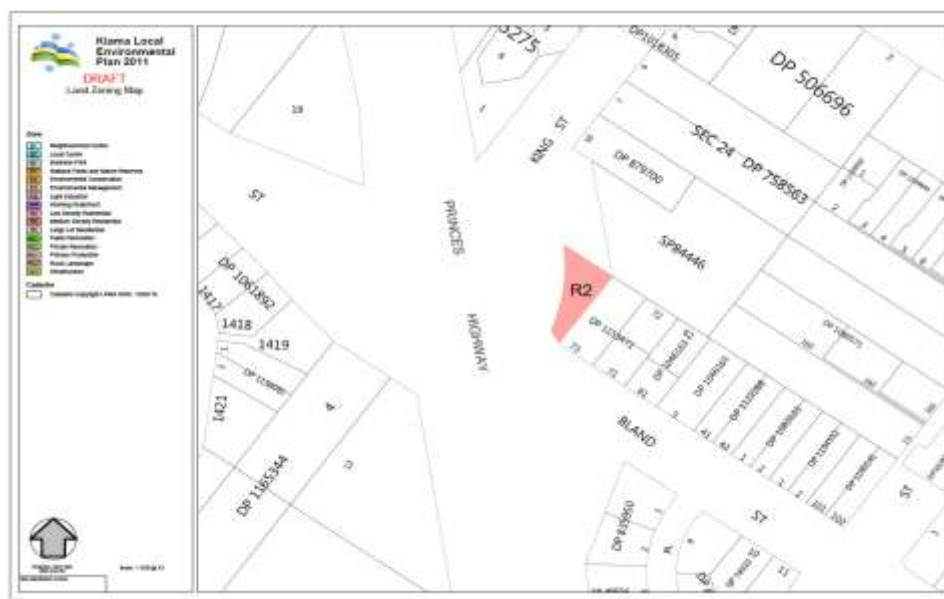
Report of the Director Environmental Services

9.2 Planning Proposal for Part of Lot 73 DP 1153471, 35 Bland Street, Kiama  
(cont)

Date opinion received	N/A at this stage
Date LEP made by GM (or other) under delegation	N/A at this stage
Date sent to DoPE requesting notification	N/A at this stage



**Current Zoning**



**Proposed Zoning**

**Item 9.2**





## Planning & Environment

### Gateway Determination

**Planning proposal (Department Ref: PP\_2016\_KIAMA\_001\_00):** to rezone part of Lot 73 DP1153471, 35 Bland Street, Kiama from SP2 Infrastructure to R2 Low Density Residential; introduce a minimum lot size of 450m<sup>2</sup> and apply a maximum building height of 8.5m.

I, Linda Davis, Acting Director Regions, Southern at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Kiama Local Environmental Plan (LEP) 2011 as described above should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the *Environmental Planning and Assessment Act 1979* as follows:

- (a) the planning proposal is to be made publicly available for 14 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing local environmental plans (Department of Planning and Infrastructure 2012).

2. No public authority consultation is required under section 56(2)(d) of the *Environmental Planning and Assessment Act 1979*.

3. No public hearing is required to be held into the matter under section 56(2)(e) of the *Environmental Planning and Assessment Act 1979*. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission).

4. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

Dated 14<sup>th</sup> day of June 2016

A handwritten signature in black ink, appearing to read 'Linda Davis'.

**Linda Davis**  
Acting Director Regions, Southern  
Planning Services  
Department of Planning and Environment  
Delegate of the Minister for Planning

**ORDINARY MEETING**

17 MARCH 2015

Report of the Director Engineering and Works

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**13.2 Former Sale of Council Land and Planning Proposal**

CSP Objective: 4 Responsible Civic Leadership that is Transparent, Innovative and Accessible

CSP Strategy: 4.2 Ensure finances are managed responsibly to meet the goals of the Community Strategic Plan and to protect financial investments and assets

Delivery Program: 4.2.3 Ensure maximum revenue return is achieved

**Summary**

In 2003, Council entered into a contract for the sale of land in Kiama. The land was previously part of an adjoining road reserve and a road closure was undertaken in order to sell the land. The section of land was zoned for road purposes at that time. This zoning carried through into Kiama LEP 2011 albeit under a different name/description. This report recommends that steps be taken through a planning proposal to rezone the subject section of land as residential.

**Finance**

A planning proposal for rezoning will incur costs of approximately \$10,000 for the preparation and normal statutory fees. This cost will be met by Council.

**Policy**

Environmental Planning and Assessment Act 1979  
Roads Act 1993

**Attachments**

1 Plan of Land - Bland Street Kiama

**Enclosures**

Nil

**RECOMMENDATION**

That a planning proposal commence for that part of Lot 73 DP1153471 Bland Street Kiama currently zoned SP2 Infrastructure to R2 Residential under Kiama LEP 2011 and that Council meet the costs in the preparation and lodgement of the planning proposal.

**BACKGROUND**

In December 2003, Council entered into a contract to sell land on the corner of Bland and King Street Kiama to the adjoining private property owner. The section of land was formerly part of the adjoining road reserve. Council took steps to close the section of road (584m<sup>2</sup>) under the Roads Act and the land was subdivided and consolidated in title with the adjoining privately owned land.

The land is now described as Lot 73 DP1153471.

**ORDINARY MEETING**

**17 MARCH 2015**

Report of the Director Engineering and Works

13.2 Former Sale of Council Land and Planning Proposal (cont)

In the negotiations for closure and sale of the subject section of land, a valuation assessment was made on the basis of the land having a residential zoning. The land sale proceeded on the basis of this assumed residential land value.

It has recently been brought to Council's attention that the subject land has never been made a residential zoning. The purchaser claims that it was always the understanding during negotiations with Council that the land would become residential zoned and is the reason why the purchase took place on the basis of a residential-zoned parcel in 2003.

Council incorrectly indicated in correspondence during the initial road closure process in 2003 that the land was zoned residential, although this has never actually been the case. The purchaser cites this previous Council correspondence and has commented that they were given the notion that the land was in the process of, or soon to be rezoned as residential.

The previous planning regulations at that time, allowed for developments within 20 metres of a zoning boundary the ability to adopt the adjacent zoning classification. In this instance a residential development could have been applied to the entire lot without the need for rezoning and may be the reasoning why this was never pursued. Unfortunately this zoning boundary proximity clause no longer applies in the current LEP.

Council's current Kiama LEP 2011 planning maps confirm that the land is currently zoned SP2 Infrastructure. However the Kiama LEP 2011 floor space ratio (FSR) maps indicate the subject part of Lot 73 is assigned an FSR of 0.45:1 contiguous with the adjoining residential zoned land in the proximity. This indicates some intention of Council to treat the land as residential zoned at some stage in the future. It is considered appropriate to amend the Kiama LEP accordingly on the basis no extraordinary issues such as geotechnical or contamination arise during the planning proposal process.

From review of the documentation related to this matter it is clear that sole purpose of proceeding with the initial road closure, land disposal and consolidation of land titles was for the subject area of land to be able to be used expressly for residential purposes. It then follows that the land needs to be appropriately zoned for this to take place.

It is recommended that the required planning proposal application be commenced by Council with the intention of rezoning the subject part of Lot 73 DP1153471 to R2 Residential.

Item 13.2

Item 9.2

Attachment 2





**MINUTES OF THE ORDINARY MEETING**

**17 MARCH 2015**

Park to replace the Director Corporate and Commercial Services, Chris Quigley as the alternate board member of Metro Pool and United Independent Pools; and

2. authorise the Manager Human Resources and Commercial Services, Russell Park to attend the Metro Pool/ UIP overseas study tour and PRIMA conference in Texas in June 2015.

(Councillors Way and Seage)

**12 REPORT OF THE MANAGER CORPORATE SERVICES**

**12.1 Statement of Investments**

*15/079*

**Committee recommendation** that the information relating to the Statement of Investments for January 2015 and February 2015 be received and adopted.

(Councillors Way and Seage)

**13 REPORT OF THE DIRECTOR ENGINEERING AND WORKS**

**13.2 Part Lot 73 DP1153471 Bland Street Kiama - Former Sale of Council Land and Planning Proposal**

*15/080*

**Committee recommendation** that a planning proposal commence for that part of Lot 73 DP1153471 Bland Street Kiama currently zoned SP2 Infrastructure to R2 Residential under Kiama LEP 2011 and that Council meet the costs in the preparation and lodgement of the planning proposal.

(Councillors Way and Seage)

For: Councillors Reilly, Honey, Way, Rice, Sloan, Seage, McClure and Petschler  
Against: Nil

**13.3 Exhibition of Draft Policy - Commercial/Personal Fitness Training Public Reserves**

*15/081*

**Committee recommendation** that Council place the draft policy for the use of public reserves for commercial fitness activities and personal training on public exhibition for comment and re-reported to Council after consideration of submissions.

(Councillors Way and Seage)

**9.3 Sunset Clause in Kiama Local Environmental Plan 2011**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.2 Ensure Council's Local Environment Plan and Urban Strategy are current and incorporate the principles of sustainable development

**Summary**

Clause 4.2A of the Kiama Local Environmental Plan (LEP) 2011 contains a sunset clause regarding the right to submit a development application for the erection of a dwelling on certain land which is due to expire five (5) years from the commencement of the plan.

**Finance**

N/A

**Policy**

N/A

**Attachments**

Nil

**Enclosures**

Nil

**RECOMMENDATION**

That Council prepare a media release for distribution in September advising the community of the expiration provisions within Clause 4.2A of Kiama Local Environment Plan 2011.

**BACKGROUND**

Kiama LEP 2011 was gazetted on 16 December 2011 with the following clause regarding the erection of dwellings on certain land:

**4.2A Erection of dwelling houses on land in certain rural and environmental protection zones**

- (3) *Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is:*
- (a) *a lot that is at least the minimum lot size specified for that land by the [Lot Size Map](#), or*

## Report of the Director Environmental Services

## 9.3 Sunset Clause in Kiama Local Environmental Plan 2011 (cont)

- 
- (b) *a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
  - (c) *a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or*
  - (d) *an existing holding.*

**Note.** A dwelling cannot be erected on a lot created under clause 9 of [State Environmental Planning Policy \(Rural Lands\) 2008](#) or clause 4.2.

- (4) *Subclause (3) (b), (c) and (d) ceases to apply if:*
  - (a) *an application for development consent referred to in that subclause is not made in relation to that land within 5 years after the day this Plan commences, or*
  - (b) *an application for development consent referred to in that subclause is made in relation to that land within 5 years after the day this Plan commences, but the application is refused.*

The intention of this clause was to allow the owners of these lots a chance to exercise the right to construct a dwelling on their lot before the clause phased this landuse out. The deadline to exercise this right expires on 16 December 2016, being five (5) years from the gazettal of the Kiama LEP 2011.

To ensure Council is proactive in their communication with the public, it is recommended that a media release be prepared, both on Council's website and in local media, advising landowners of the upcoming expiration of this clause.

**9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1)**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.1 Comply with Development Regulation

**Summary**

The subject development application seeks approval to build a machinery shed, pool cabana, driveway extension and retaining walls on an existing rural property.

**Finance**

N/A

**Policy**

N/A

**Reason for the Report**

The development application is reported to Council as 7 submissions have been received following notification of the proposal.

**Attachments**

- 1 10.2016.81.1 - location plan
- 2 10.2016.81.1 - plans

**Enclosures**

Nil

**RECOMMENDATION**

That Council approve development application 10.2016.81 pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, subject to conditions at the end of this report.

**BACKGROUND**

Council at its meeting held on 19 July 2016 considered a report on this matter and resolved the following:

*“16/001 - Committee recommendation that Council defer consideration of this matter.”*

The development application is now resubmitted for Council’s consideration.



Report of the Director Environmental Services

9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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### **Development Site**

The property is described as Lot 9 DP 285560 located at No 47 Byrnes Run, Curramore. The site is zoned RU2 Rural Landscape/Part E3 Environmental Management pursuant to Kiama Local Environmental Plan (LEP) 2011.

The subject property has an area of 26,380m<sup>2</sup> and is part of a community title subdivision developed under the Community Land Development Act 1989. The control and preservation of the subject land is managed under the Byrnes Run Neighbourhood Management Statement.

The site is located on the southern side of Byrnes Run road and connects to this road via a 90m battle-axe access handle. The site falls to the south, towards the rear adjoining property and the Minnamurra River.

The pattern of development that has occurred within this subdivision comprises of rural dwelling houses and sheds, spatially separated by vegetative screening with dwelling separation distances ranging between 60m – 120m.

### **Description of the Proposed Development**

The proposal involves the construction of a shed, swimming pool, cabana, driveway extension and is assessed as development ancillary to the existing dwelling house.

Specifically, the proposal involves:

- Extension of the existing driveway. Removal of the existing retaining wall located in the proposed driveway location and construction of new retaining walls adjacent to the proposed driveway extension and shed area.
- Erection of a 360m<sup>2</sup> shed in the northern corner of the property.
- Construction of a pool
- Construction of a cabana and terrace area adjacent to the pool.
- Extension to the existing deck located on the southern side of the existing dwelling that will provide direct access to the new pool area.

The proposed erection of the shed would occur outside of the designated building envelope for this allotment and is the subject of a development control variation of Control C1 under Section 1, Chapter 21 Kiama Development Control Plan 2012 (DCP 2012).

The shed would be located in the northern corner of site, is screened from the eastern boundary by existing trees and is proposed to be cut into the site approximately 2m. The proposal involves the use of land within the curtilage of the existing dwelling house.

### **Section 79C Assessment**

The proposed development has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) and the following matters are considered relevant:-

### **Relevant Environmental Planning Instruments**

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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

A BASIX Certificate was lodged with the application which demonstrates that the dwelling has been designed in accordance with the SEPP.

- Kiama LEP 2011

The subject land is zoned RU2 Rural Landscape/Part E3 Environmental Management pursuant to Kiama LEP. *Dwelling-houses and their ancillary structures* are permitted with consent in the zone. The proposal is considered to be consistent with the zone objectives.

Specific clauses requiring consideration:

- Clause 4.3 – Height of Buildings

Maximum 8.5m vertical distance between the existing ground level and the highest point of the building, including plant and lift overruns. The proposal is consistent with this standard.

- Clause 4.4 – Floor Space Ratio

The proposal is consistent with this standard.

- Clause 1.9A - Suspension of covenants, agreements and instruments

Under Part 2 DP: 285560 – The Terms of Restriction Firstly referred to for all lots, clause 1.1 requires that *“no building can be erected on the land burdened unless all buildings are contained within the building envelope marked on the deposited plan”*.

Kiama Council is acknowledged on the 88B Instrument as the authority benefited and empowered to release vary, modify or suspend restrictions on the use of land.

Clause 1.9A of Kiama LEP 2011 maintains the following provision in regard to development where there are existing covenants, agreements and instruments:

*“(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.”*

The development application seeks approval to construct a 360m<sup>2</sup> shed outside of the marked building envelope, overlapping at the north east corner of the envelope. The submission made by the applicant does acknowledge the terms of the 88B Instrument and provides justification for the proposed shed location based on factors including topography, accessibility, visual impact, natural screening and existing land uses.

The applicant’s submission in relation to the building envelope is summarized as follows:

- *The majority of the proposed shed would be located outside the building envelope. Other options within the building envelope are less desirable.*

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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*Specifically, the western side of the existing driveway which is steep and more heavily vegetated than the proposed location. Land within the building envelope to the south of the existing dwelling is steeper than the proposed location and vehicle access to this portion of the site would be difficult due to either gradient or the length of driveway required to avoid areas of steep gradient.*

- *The lower southern portion of the building envelope is open with limited screening hence the shed would be more visually noticeable than the proposed location. The proposed location provides a more levelled site area than options within the building envelope.*

*The proposed shed location is well screened from public areas and allows the building to be clustered with other buildings provided along Byrnes Run. Furthermore, as detailed elsewhere in this report the proposed location is suitable with regards to bushfire and other land constraints.*

- *Given the topography of the land, the location of the shed would be on land significantly below the habitable floor levels of the properties of the adjoining land.*
- *Design and location of the primary dwelling on the adjoining site - the primary dwelling located on the adjoining site is orientated to the east with a tank located along the elevation directed to the subject shed location. This dwelling is also offset from the proposed shed location and the vegetation on this adjoining site further screens it from the proposed shed location.*
- *Outlook from other structures - the tennis court and associated building is orientated to the south where the shed is proposed to be located. The tennis court has been built up to a level site with grassed embankments. The detached building is located to the north of this tennis court and overlooks this area. To the south of the tennis court the gradient of the land falls away down to the proposed shed location. The setback between the tennis court and the adjoining property contains maintained grassland with shrubs and trees.*
- *The proposed building is not for habitable purposes. No large openings are proposed along the northern elevation and the shed which is proposed for storage purposes, will not create privacy impacts for the dwellings on the adjoining property.*
- *The shed is proposed to be positioned in the top north eastern corner of the site. The land slopes down toward the south-eastern corner of the site. It is this lower rear portion of the site that contains paddocks set aside for agricultural grazing. The top northern portion of the site is used and maintained in conjunction with the existing dwelling and currently forms part of the dwelling's outdoor recreation space. The location of the proposed shed ensures that lower rear portion of the site is retained in an unrestricted manner. These paddocks adjoin land used for agricultural grazing purposes to the southern and eastern.*
- *The shed presents as an agricultural shed and is suited to the agricultural land uses in the locality. The shed is well screened by established vegetation from public places. The proposed shed materials will be recessive in colour thereby allowing the surrounding landscape to dominate. The shed is located such that*

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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*existing trees along the eastern boundary will screen it from public places to the east. Vegetation along the river screens the site from public places to the south (Jamberoo Mountain Road).*

- The proposed shed will not adversely impact on adjoining land used for agricultural purposes. The location of the shed in this location will result in the need for some trees to be removed. These trees appear less mature than other trees proposed to be retained on the site and are located at the fringe of the larger vegetation pocket to the north-west. These trees are in an already semi-disturbed environment within a mowed and maintained grassland setting. Removal of these trees is considered unlikely to have a significant adverse impact on the larger vegetation pocket.*
- The shed is for the storage of farm machinery, vehicles and vessels owned by the property owner. The storage of these items are unlikely to create a land use conflict. While land in the vicinity of the subject site has agricultural capacity, most of the lots in the Byrnes Run subdivision are lifestyle lots, where it is not unusual for the specific interests of an owner to be accommodated on land (weather by large garages, storage areas or tennis courts etc). Notwithstanding this, the shed has a rural character which is not out of character with the agricultural uses provided for in the larger locality. The proposed use of this shed will not conflict with these agricultural uses in the locality.*
- As detailed above, the topography of the site, the position and orientation of existing dwellings on the adjoining site combined with the proposed use of the shed, the cut proposed and the recessive colour will all work together to protect the rural residential amenity of the dwelling on the adjoining site.*
- In a locality context, the position of the shed within the cluster of existing buildings along Byrnes Run, the natural screening provided in the locality, the agricultural appearance of the shed and its recessive colours all assist to protect the rural residential amenity of the locality.*
- All trees located along the eastern boundary are to be retained. These provide a screening buffer to the eastern adjoining property which contains items of heritage significance.*

**Council Assessment Comments - 88B Instrument**

The underlying objectives for the creation of the building envelopes within this subdivision were set in position to allow the orderly development of the subject land within the spatial parameters set by the envelopes. The envelopes were created to provide a level of predictability for future development, taking into account the natural site contours, geotechnical constraints, ecological sensitivity, visual catchment sight lines and accessibility.

The justification provided within the applicant's submission together with Council's site analysis of the whole property, has confirmed that alternative development options within the envelope are limited given the natural site characteristics. The existing site constraints would therefore limit the orderly development of the shed if it were to be situated within the existing building envelope.

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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The location of the proposed shed as illustrated on the site plan, together with the applicant's submission, demonstrates that the proposed shed location would achieve compliance with the specific development control plan objectives for Byrnes Run, Chapter 21 (Kiama DCP 2012) as well as the objectives of Chapter 6 (Kiama DCP 2012) Rural Dwellings.

**Development Control Plans (DCPs)**

- DCP 2012

The applicable sections of the Kiama DCP are as follows:

- Chapter 2 – Overall Controls – The development proposal and has been assessed and would fully comply with the relevant development controls.
- Chapter 6 – Rural Development – The development proposal has been assessed and will comply with this chapter with exception to Control C20 – ‘Adjoining Dwellings’ and Control 75 – ‘Design of Earthworks’
  - Control C20 requires that a dwelling and ancillary development must be located at least 100m from another dwelling on an adjoining property. The original subdivision pattern demonstrates that the majority of spatial separation between the building envelopes is generally less than 100m apart and This development control is not appropriate in the context of Byrnes Run. The existing pattern of development within the Byrnes Run Subdivision was measured on Council's mapping aerial photograph and illustrates that existing dwelling separation distances range between 60m – 120m. The proposed shed site would be located approximately 64m from the main dwelling, 60m from the guest house and 45m from the tennis court on the adjoining property. The applicant has sought a variation in regard to this control and the applicant's submission is supported for approval.
  - Control 75 – ‘Design of Earthworks’ requires: - *“development to minimise the extent of cut and fill to reduce the potential for land slip and visual impact on the landscape; restrict excavation for a building to not more than 1 metre below ground level (existing); restrict the height of any external retaining wall outside the walls of a building to not more than 1 metre above ground level (existing).”* The proposed excavation for the shed will exceed 1m however it would be retained by structural Engineer designed retaining wall which will not be physically visible when viewed from outside the property. A variation has been sought by the applicant and is supported for approval.
- Chapter 11 - *Waste Requirements* - A waste management plan was supplied with the application which deals with demolition and construction waste. Conditions will be imposed, should consent be given, requiring compliance with the waste management plan during both demolition and construction.

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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- Chapter 21 – Byrnes Run – The development proposal has been assessed and will comply with the relevant controls with exception to Control C1 of this Chapter.
    - Control C1 - requires that “*all dwelling-houses and ancillary structures must be located within the specified building envelope*”. The applicant has sought a variation of Control C1 and provided justification, as previously highlighted, that logically supports the chosen location of the shed. The variation request is supported for approval.

**Any Matters Prescribed by the Regulations**

Nil

**The Likely Impacts of the Proposed Development**

- Streetscape

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

- Noise

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

- Privacy and Overlooking

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

- Overshadowing

Shadow impacts on adjoining properties are negligible.

- Views

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

- Vehicular Access, Parking and Manoeuvring

Sufficient car parking is proposed. Manoeuvring is compliant with AS/NZS 2890.1 and the driveway will comply with required driveway long sections.

- Stormwater Management

All stormwater will drain to the existing rainwater tank.

- Environmental Impacts

*Vegetation Removal* - The construction of the proposed shed would require the removal of fourteen (14) trees of varying size and maturity. These are located near

Report of the Director Environmental Services

9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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the northern boundary adjoining No 37 Byrnes Run Road, fringing land mapped as being terrestrial biodiversity. Vegetation in this area is not as dense given the existing development from previous land clearing. This aspect of the development application was referred to Council's Landscape Officer for comment (please see separate Landscape Officer's Referral comments).

The trees to be removed are planted in a row and appear to have been planted by previous owners of the site as boundary screen planting. Removal of these trees is considered unlikely to have a significant adverse impact on the dominant vegetation or any endangered or threatened flora or fauna. The shed would be positioned such that the larger trees along the boundary to the eastern property could be retained.

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

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

- Social and Economic Impacts

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

### **The Sustainability of the Site for the Development**

The site attributes are considered to be conducive to development.

*Slip/Geotechnical constraints* – The site has been assessed and there are no known geotechnical constraints.

*Heritage issues* – Four heritage items are located on the adjoining property to the east of the subject site. These items are listed as having local heritage significance under Kiama Local Environmental Plan 2011 and they are known as the Woodstock Saw Mill site, the Woodstock Piggery site, the Woodstock Co-operage, the Butter Factory site and Wangaruka Homestead.

The proposed shed site would be screened by existing vegetation to be retained. The additions to the existing house will not be within the same visual catchment of the above heritage items. Overall, the proposed development will not have significant adverse impact these heritage items.

*Easements and 88B Instruments* – The development application seeks formal approval to construct the storage shed outside of the designated building envelope required under Clause 1.1 of the 88B Instrument. The variation request has been assessed and is supported for approval.

*Bushfire risk* – The site is a Bush Fire Prone Land and is compliant with Planning for Bush Fire Protection.

### **Submissions Received**

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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Notification letters were sent to neighbouring property owners who were provided with fourteen (14) days in which to comment on the proposal. At the conclusion of the notification period, seven (7) submissions were received.

The following summarised concerns were raised in submissions:

***Item 1: The shed size, height and bulk/scale are considered inappropriate within the Byrnes Run setting. Its visual impact will be significant and would set an undesirable precedent in Byrnes Run.***

Comment: The subject property owner hopes to store a large volume of various, privately owned equipment, vehicles & vessels within the proposed shed and requires a large shed footprint to accommodate the large number of articles. The owner has advised Council that shed manufacturer produces prefabricated stock standard shed sizes and that the shed heights are designed to be proportionate to the standard floor dimensions.

Despite the scale of the shed, it is still considered to be congruous with scale & size of the subject allotment, the height & scale of the surrounding trees, the natural land contours and the general spatial parameters of the site.

While concerns have been received from the neighbourhood regarding the scale of the shed, it would only be visible to the common boundary on Lot 8 Byrnes Run. The proposed shed would not be seen from Byrnes Run Road, Jamberoo Road or any other location within close proximity to view the scale of the shed.

The western elevation of the subject shed would be the only elevation exposed to the adjacent guest house and tennis court located on Lot 8 Byrnes Run which stands approximately 45m from the proposed shed site. The western elevation of the shed is proposed to be excavated approximately 2m into the site therefore the overall height of the exposed portion of the shed facing Lot 8 would be a 4m high elevation (including the roof).

The proposed shed site, when viewed from the adjacent tennis court and guest house, is limited due to the natural screening of trees and the significant ground level distances between the tennis court and the proposed shed floor level. The ground level difference would be approximately 8m due to the natural slope gradient. The tendency for the occupants of the guest house/tennis court at Lot 8 would be to look out over the roof of the shed, rather than directly at the shed due to the slope level difference.

It is understood that the shed colour finish will be a medium to dark grey colour which would assist conceal its bulk & scale and ensure that the shed would remain hidden within the landscape.

The applicant has indicated willingness to densely plant along the whole western elevation of the shed which would substantially screen the shed from Lot 8 if the application were to be approved.

***Item 2: The shed is outside the building envelope and does not comply with the 100m rural setback. There are alternative superior site locations for a shed.***

Comment: - The applicant has demonstrated that by locating the shed outside the building envelope as proposed, would conceal the shed and provide more functional



## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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vehicle accessibility within the curtilage of the dwelling. This is consistent with Control C12 of Chapter 6 – Rural Development Kiama DCP 2012 which maintains: *“Ancillary development should be, where possible and practicable, clustered around the principal dwelling, or able to utilise the same access ways.”*

The existing pattern of development within the Byrnes Run subdivision comprise of rural dwelling houses and sheds, separated by vegetative screening and natural topographies. The spatial separation distances between neighbouring buildings range between 60m – 120m. It is considered that the proposed shed would not be inconsistent with this existing pattern of development.

The Byrnes Run Neighbourhood Committee has asserted that there are *‘alternative site locations for the shed’* but did not suggest any other suitable location. The proposed shed location as selected is based on the most suitable slope contours available within the curtilage of the dwelling without being inappropriately close to the principal dwelling or visible when viewed from Byrnes Run Road or Jamberoo Road.

**Item 3:** *There will be (24) mature trees screening trees removed that currently provide visual screening between Lots 8 & 9 and there is a lack of any proposed landscaping associated with the development.*

Comment: - Removal of these trees is considered unlikely to have a significant adverse impact on the dominant vegetation. The shed would be positioned such that the larger trees along the boundary to the eastern property can be retained.

The maximum height of the subject trees to be removed is estimated to range between 4m - 6m and appear to have been planted by previous owners of the site as boundary screen planting. The existing tree screening would be replaced by a 30m long x 4m high, recessively coloured, rear shed wall when viewed from Lot 8 Byrnes Run. The applicant has submitted a landscape concept plan to densely plant along the whole western elevation of the shed. The tree species as indicated vary from 5m – 6m in height, will be densely planted and would substantially conceal the view of the shed when viewed from Lot 8, should the application be approved.

**Item 4:** *Concerns are raised with regard to the proposed use of the shed for commercial or industrial use.*

Comment: - The subject property owner was interviewed with regard to the proposed use of the shed and confirmed that the shed would be used exclusively for private storage and minor mechanical repairs to his private, domestic vehicles, consistent with residential use. The subject shed is proposed to be sound insulated as a matter of course and additional development consent conditions could be applied to the development consent that would prohibit the use of the shed for commercial or industrial use.

**Item 5:** *- Substantial cut & fill is required together with 120 linear metres of retaining wall is incorporated with the development.*

Comment: - The subject site is topographically constrained as illustrated by the contour levels on the site plan and there is a need to ensure there are adequate benched levels for the proposed development and vehicle access to be created. The majority of the proposed retaining wall will be along the driveway and would involve the construction of a low, tapering retaining wall to form the proposed vehicle

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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access to the shed. The retaining walls for this development site would assist in concealing the shed as well as manage soil erosion and to provide greater stability on this site rather than leaving potentially unstable earth batters.

**Item 6:** *Concerns are raised in relation to stormwater management and erosion control.*

Comment: - A stormwater management plan has been submitted by the applicant and has been endorsed by Council's Engineering & Works Department. The plan illustrates the connection of the shed to the existing concrete water tank via a 150m diameter uPVC pipe. Stormwater & erosion management measures are proposed to manage the existing overland flow path away from the shed that includes suitable disposal measures. Specific development consent conditions would be recommended if development consent is granted.

**Item 7:** *The shed will impact on the amenity of adjoining properties.*

Comment: - The applicant has specifically commented that the tennis court and associated building is orientated to the south where the shed is proposed to be located. The tennis court has been built up to a level site with grassed embankments. The detached building is located to the north of this tennis court and overlooks this area. To the south of the tennis court the gradient of the land falls away down to the proposed shed site. As the western elevation of the shed is proposed to be densely planted and given the disassociation of the levels between the proposed shed site and the adjacent land, it is considered that amenity impact would be negligible.

**Item 8:** *- The application has failed to make any reference to or compliance with the Byrnes Run Neighbourhood Management Statement.*

Comment: - The heads of consideration in the assessment of a development application under the EP&A Act is not required to have regard to the Neighbourhood Management Plan.

### **The Public Interest**

The proposal is considered to be consistent with Kiama LEP 2011 and Kiama DCP 2012 and accordingly is considered to be consistent with the public interest.

### **Landscape Officer Referral**

The tree removal aspect of the development application was referred to Council's Landscape Officer for the assessment of the proposed tree removal at the proposed shed site. The following comments are recorded below:

*"There is a gum tree to the north of the shed. I checked the distance from the shed regarding Tree Protection Zone and Structural Root Zone. On a trunk diameter of 0.5 metres the TPZ is 6 m and the SRZ is 2.47 metres. Scaling off the A3 copy of the site plan A03 the retaining walls are outside the TPZ. The 14 trees to be removed were planted after 2003 and are not remnant local forest.*

*The trees species are a collection of Melaleuca linariifolia, Melaleuca styphelioides, Callistemon salignus, Pittosporum undulatum, Pittosporum revolutum, Acacia binervata and Syncarpia glomulifera.*

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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*On the site of the proposed pool is an immature Ornamental Pear. There is no objection to the removal of this tree. The driveway will require the removal of some Grevillea 'Moonlight', shrubs which are not really protected by DCP Chapter 3.*

*The Ornamental Pear tree in the footprint of the proposed pool may be removed for the development. The trees shown in red on the Site Plan Sheet A03 may be removed for the proposed shed."*

**Final Comments and Conclusions**

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 79C of the Environmental Planning and Assessment Act, 1979. The proposal is consistent with Kiama LEP 2011 and relevant Kiama DCP 2012. The proposed development is consistent with the objectives of the RU2 Rural Landscape/Part E3 Environmental Management zone.

Consideration has also been given to the social, economic and environmental impacts of the proposed development and no significant concerns are raised. Concerns raised in submissions have been considered and do not warrant refusal of the application. The proposed development is considered to be reasonable and conditional approval is recommended.

**Draft Conditions of Consent****General**

- (1) The development shall be implemented generally in accordance with the details set out on the plan/drawing and supporting documents endorsed by Council as 10.2016.81.1 dated - except as amended by the following conditions: (g005.doc)
- (2) The proposed shed shall not be used for commercial or industrial purposes or any other purpose contrary to the Byrnes Run Neighbourhood Management Statement prepared by Kearns & Garside Solicitors.
- (3) The developer shall submit a dilapidation survey in accordance with the geotechnical recommendations given in the Geotechnical Inspection Report prepared by Network Geotechnics, dated 20/06/2016. The dilapidation survey must be submitted to the accredited certifying authority **prior to the release of the Construction Certificate.**
- (4) The applicant shall submit engineers details of the foundation material based on geotechnical advice prepared by a suitably qualified geotechnical engineer. Such detail and advice shall be provided to the accredited certifying authority **prior to the release of the Construction Certificate.**
- (5) The proposed shed must be designed and constructed so that the use of the shed or any associated noise producing equipment must not exceed 5 decibels above the background level when measured at any point along the common property boundaries. Details of sound attenuation measures must be submitted to the accredited certifying authority **prior to the release of the Construction Certificate.**
- (6) The development shall be completed in accordance with the approved Landscape Plan prepared by Captivate Landscaping Design dated 22/06/2016 and certification of the completed landscaping shall be submitted to the

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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accredited certifying authority **prior to the release of any Occupation Certificate.**

- (7) The proposed development shall be undertaken in strict accordance with the recommendations listed in the Arboricultural Development Assessment Report prepared by Moore Trees, dated 14/06/2016.

**Prior to Commencement of Works**

- (1) Building work must not commence until the Principal Certifying Authority for the development to which the work relates has been informed of:

- i The licensee's name and contractor licence number;
- ii That the licensee has complied with Part 6 of the Home Building Act 1989.

In the case of work to be done by any other person, the Principal Certifying Authority:

- a Has been informed in writing of the person's name and owner builder permit number;

or

- b Has been given a declaration, signed by the owner/s of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989. (pt005.doc)

- (2) Under the provisions of the Act, work may not commence on the development until the following is carried out:

- a Detailed plans and specifications of the building must be endorsed with a Construction Certificate by Council or an Accredited Certifier; and
- b You **must** appoint a Principal Certifying Authority (can be either Council or an Accredited Certifier); and
- c You **must** notify the Council of the appointment; and
- d You **must** give at least two (2) days' notice to Council of your intention to commence work.

You will find attached an application form for a Construction Certificate. Should you require Council to issue this Certificate you should complete this application and forward it, together with plans and specifications, to Council for approval.

You will find attached a form for the "*Notice of Commencement of Building Work and Appointment of Principal Certifying Authority*", which you are required to submit to Council at the appropriate time and at least two (2) days prior to the commencement of work.

Should you appoint Council as the Principal Certifying Authority, relevant inspection fees will be required to be paid at the time of lodgement of this form. (pt020.doc)

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

- 
- (3) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a Showing the name, address and telephone number of the Principal Certifying Authority for the work;
  - b Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - c Stating that unauthorised entry to the work site is prohibited.

**Note:** Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed. The sign will be provided by the nominated Principal Certifying Authority for the relevant fee. (pt060.doc)

- (4) No building work is to commence until details prepared by a practising structural engineer have been submitted to and accepted by the Principal Certifying Authority for any reinforced concrete slabs, footings or structural steel. (pt062.doc)

**Stormwater Management**

- (1) The shed stormwater shall be connected in accordance with the approved concept stormwater. Certification of the correct hydraulic loading and distribution of stormwater shall be submitted to the accredited certifying authority for assessment and approval prior to the release of the Construction Certificate.

**Inspections**

- (1) The building work shall be inspected at critical and other stages as required by the Principal Certifying Authority for the development.

**NOTE:** Should you choose Council to be your Principal Certifying Authority for this development you will be advised of the required building inspections and applicable fees at the time of that appointment. (bu015.doc)

**Building Construction**

- (1) All building work must be carried out in accordance with the requirements of the Building Code of Australia. (bu010.doc)
- (2) The roadway, footpath or Council reserve shall not be used to store building material without the prior approval of Council. (bu086.doc)
- (3) All excavations and backfilling must be executed safely in accordance with appropriate professional standards. (bu090.doc)
- (4) All excavations must be properly guarded and protected to prevent them from being dangerous to life or property. (bu095.doc)
- (5) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must:

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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- a Preserve and protect the building from damage;
  - b Underpin and support the building in an approved manner, if necessary, and;
  - c At least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work. (bu100.doc)
- (6) Where retaining walls exceed 1.0 metre in height, the wall is to be certified by a practising structural engineer prior to occupation of the building being permitted. (bu110.doc)
  - (7) The Reduced Levels (RL) of the proposed development must be in accordance with the approved plans. Certification of these levels by a registered surveyor must be submitted to an accredited certifier or Council prior to proceeding past that level. (bu120.doc)
  - (8) A survey shall be undertaken and a copy be made available to Council or an accredited certifier, certifying that the building is correctly located in relation to the boundaries of the site and in accordance with the approved plans. Such survey shall be submitted at peg out stage. (bu125.doc)
  - (9) Construction and demolition work, delivery of materials and plant, etc shall only take place between the following hours;
    - Monday to Friday - 7.00 am to 6.00 pm
    - Saturdays - 8.00 am to 1.00 pm
 No construction work is to take place on Sundays or Public Holidays. (bu151.doc)
  - (10) The Waste Management Plan shall be strictly adhered to at all stages during the demolition, construction and/or subdivision work. All waste nominated for disposal must be disposed of at a licensed landfill facility. All waste nominated for recycling must be reused or recycled. (bu153.doc)
  - (11) The fences, gates and latches for the swimming pool shall be provided and constructed in accordance with the provisions of Australian Standards AS1926 - Fences and Gates for Private Swimming Pools. (bu250.doc)
  - (12) All excavations shall be enclosed with a temporary fence during construction of the pool. (bu255.doc)
  - (13) The swimming pool shall not be filled with water until the permanent safety fence has been erected. (bu260.doc)
  - (14) An instructional poster for resuscitation which bears the words "*Young Children Should Be Supervised When Using This Swimming Pool*", together with details of resuscitation techniques for adults, children and infants shall be located in a prominent position within the pool enclosure. (bu265.doc)

**Erosion and Sedimentation Controls/Soil and Water Management**

- (1) All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur. In particular:

## Report of the Director Environmental Services

## 9.4 Lot 9 DP 285560, 47 Byrnes Run Curramore - shed, pool, cabana and driveway extension (10.2016.81.1) (cont)

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- a A silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). Such fence must be regularly inspected and cleaned out and/or repaired as is necessary, and all collected silt must be disposed of in accordance with Council's Sedimentation Control Policy.
  - b Unnecessary disturbance of the site (eg; excessive vehicular access) must not occur.
  - c All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.
  - d All the above requirements must be in place for the duration of the construction works. (esc005.doc)

**Site Facilities**

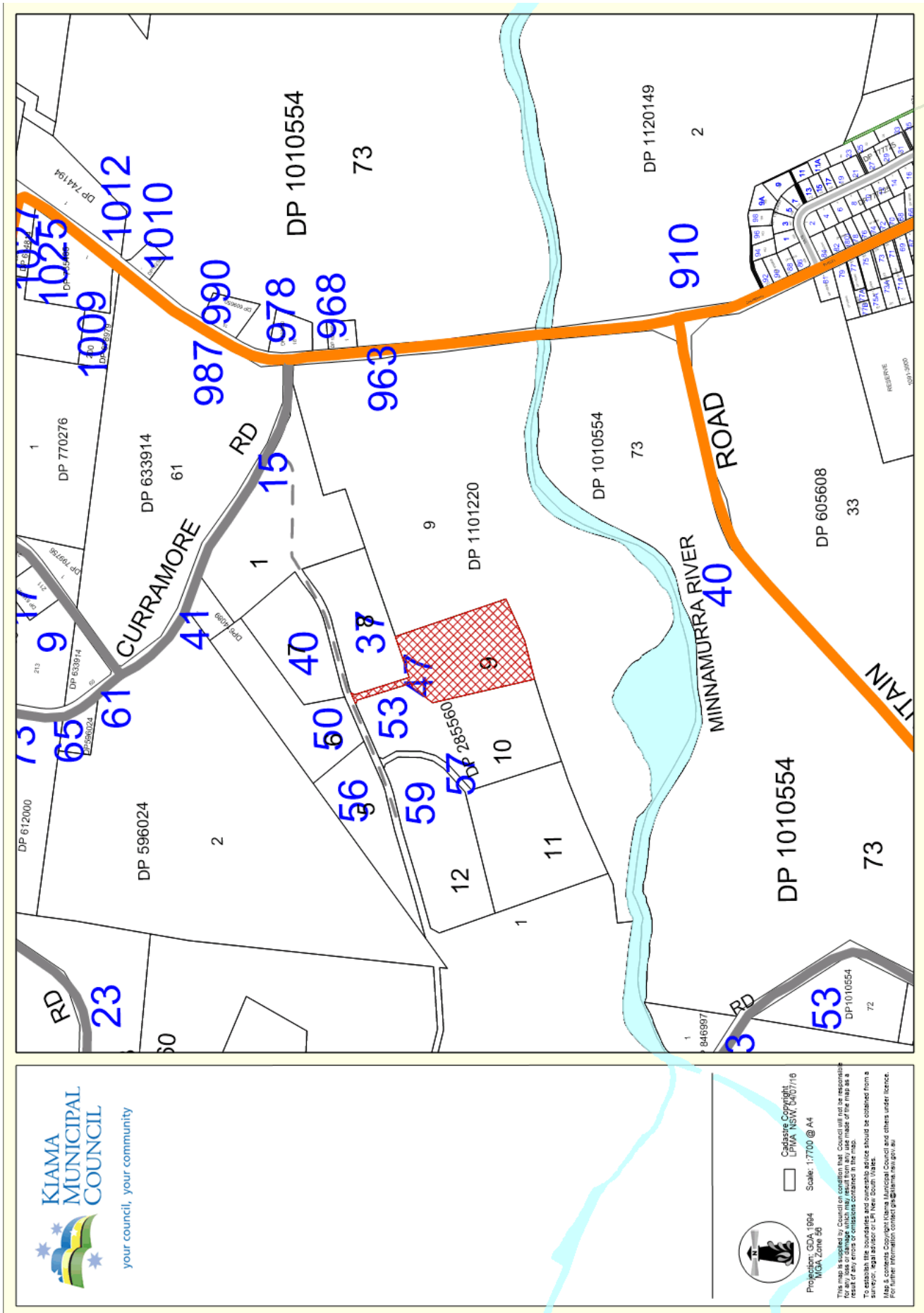
- (1) During construction the applicant shall provide, inside the property boundaries a suitable waste container for the disposal of all papers, plastics and other lightweight materials. (sf015.doc)
- (2) A sign must be erected in a prominent position on the premises on which the erection or demolition of a building is being carried out:
  - a Stating that unauthorised entry to the premises is prohibited; and
  - b Showing the name of the builder or other person in control of the worksite and a telephone number at which the builder or other person may be contacted outside working hours.

Any such sign is to be removed when the erection or demolition of the building has been completed. (sf020.doc)

**Prior to Occupation**

- (1) The completed Waste Management Compliance Sheet (Appendix 1C) shall be submitted to and approved by Council prior to release of the Final Occupation Certificate.

Supporting documentation (dockets/receipts) verifying recycling and disposal shall be attached to the Compliance Sheet. (po002.doc)
- (2) The BASIX schedule of commitments shall be complied with prior to the issue of a Final Occupation Certificate for the development and if required a certificate shall be provided to the Principal Certifying Authority from a properly qualified person to certify that the BASIX schedule of commitments have been provided and/or installed. (po003.doc)
- (3) The development shall be completed in accordance with the approved Landscape Plan prepared by Captivate Landscaping Design dated 22/06/2016 and certification of the completed landscaping shall be submitted to the accredited certifying authority prior to the release of any Occupation Certificate.





*Public Plans*

# PROPOSED SHED, POOL & CABANA

47 Byrnes Run, Curramore  
LOT 9 in DP 285560

- ### DRAWING NOTES
1. THIS PLAN IS TO BE READ IN CONJUNCTION WITH ALL OTHER CONSULTANTS AND STATUTORY PLANS, THAT IS, SURVEYS, DEPOSITED PLANS, ENGINEERING PLANS, LANDSCAPING PLANS AND RELEVANT COUNCIL APPROVALS.
  2. IT IS THE BUILDERS RESPONSIBILITY TO CROSS CHECK BOTH EXISTING SITE CONDITIONS AND PROPOSED SITE CONDITIONS. THE LOCATION OF BOTH EXISTING AND PROPOSED BUILDINGS PRIOR TO WORK COMMENCING.
  3. IF ANY DISCREPANCIES BETWEEN DRAWINGS ARE DISCOVERED, TASMAN DESIGN GROUP OR THE RELEVANT CONSULTANT IS TO BE NOTIFIED BEFORE CONSTRUCTION.
  4. ALL DIMENSIONS ARE IN MILLIMETERS. ALL DIMENSIONS SHALL BE SITE CHECKED PRIOR TO COMMENCEMENT OF CONSTRUCTION. ANY OBVIOUS WORK REQUIRED BUT NOT SPECIFIED ON THE PLAN OR ON THE SPECIFICATION IS UNDERSTOOD TO BE INCLUDED.
  5. ALL CONSTRUCTION SHALL BE IN CONFORMITY WITH THE BUILDING CODE OF AUSTRALIA
  6. THIS PLAN REMAINS THE PROPERTY OF TASMAN DESIGN GROUP, AND IS SUBJECT TO AUSTRALIAN COPYRIGHT LAWS ©

### SHEETS

- A01 COVER SHEET
- A02 SITE PLAN / SITE ANALYSIS PLAN
- A03 SHED FLOOR PLAN
- A04 POOL FLOOR PLAN
- A05 ELEVATIONS
- A06 ELEVATIONS AND SECTIONS
- A07 ELEVATIONS AND SECTIONS
- A08 PERSPECTIVE VIEWS



LOCATION PLAN

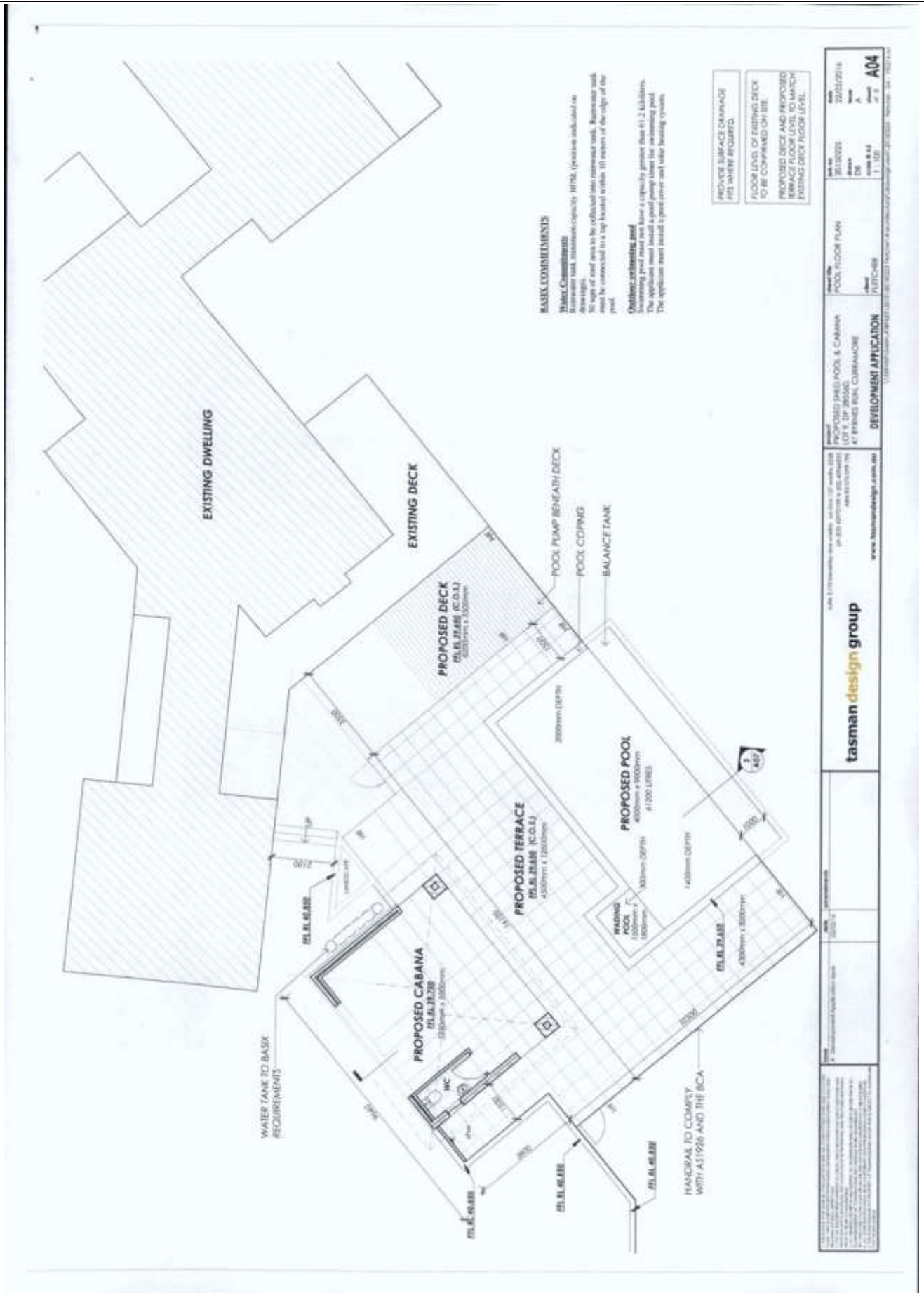
<p>tasman design group www.tasmandesign.com.au</p>		<p>PROPOSED SHED, POOL &amp; CABANA LOT 9, DP 285560 47 BYRNES RUN, CURRAMORE</p>		<p>DATE: 2016/07/16 SCALE: AS SHOWN DRAWN BY: A01</p>
<p>PROJECT NO: 1607160001</p>	<p>DATE: 2016/07/16</p>	<p>PROJECT NO: 1607160001</p>	<p>DATE: 2016/07/16</p>	<p>PROJECT NO: 1607160001</p>
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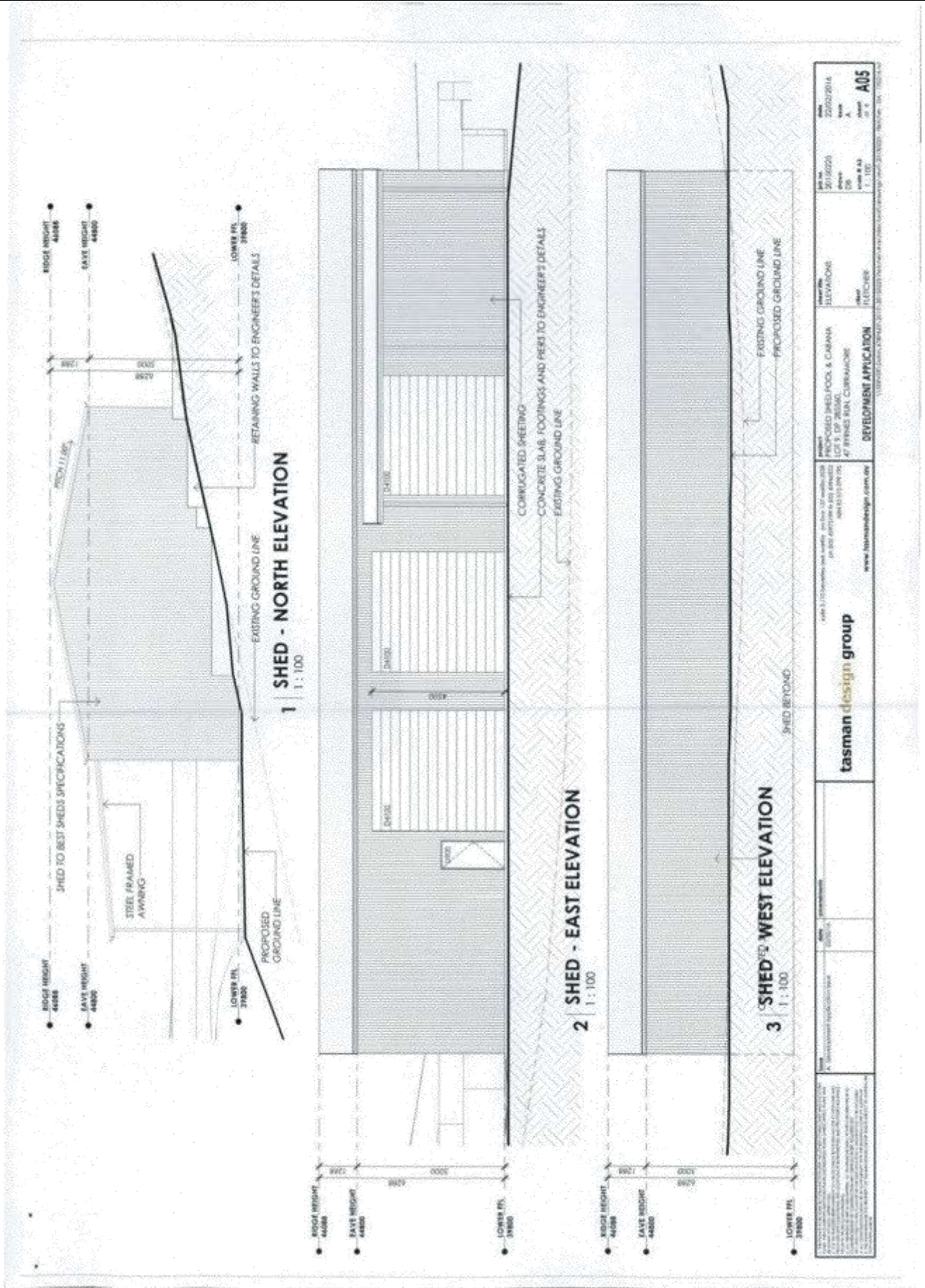








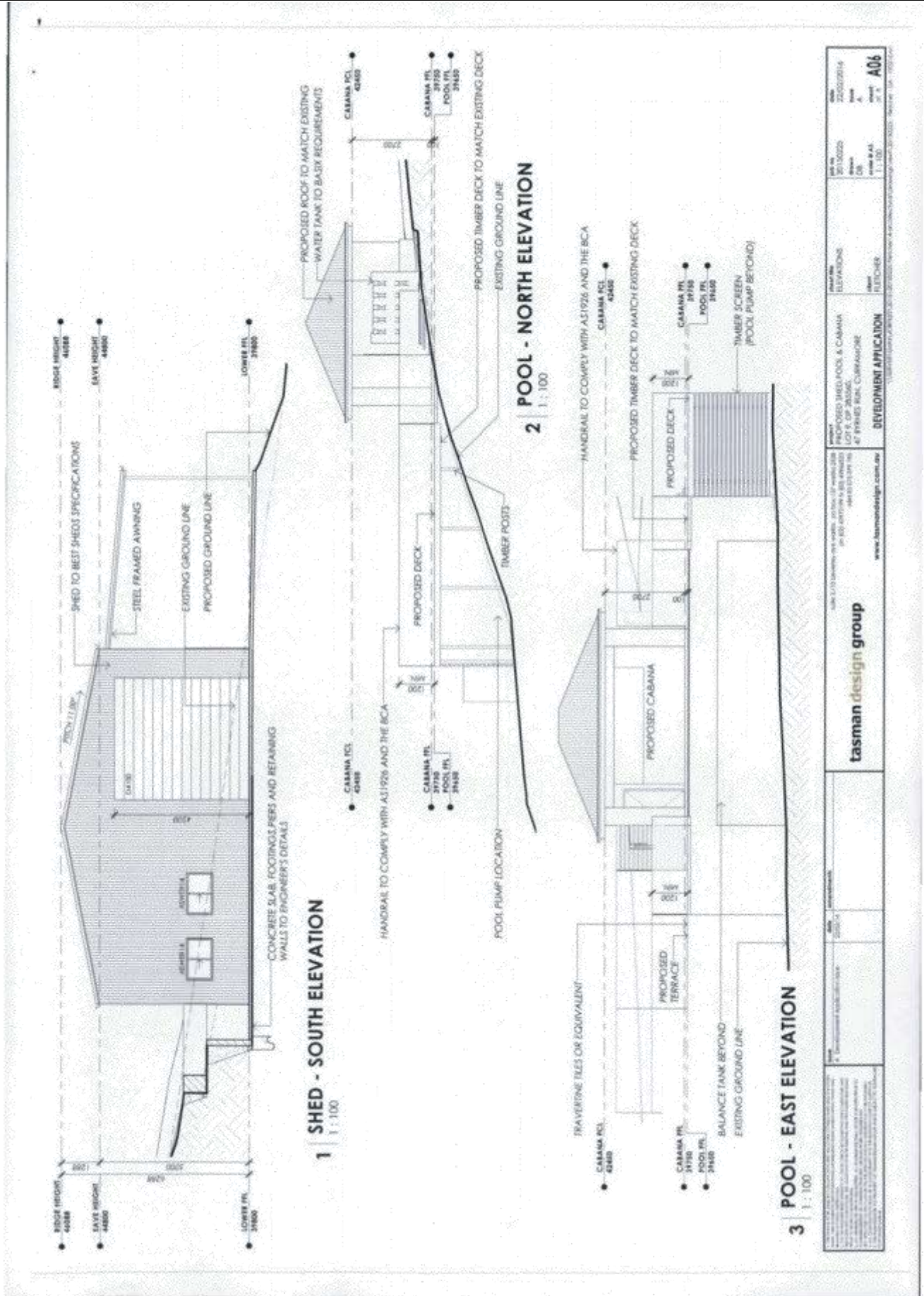




Item 9.4

Attachment 2

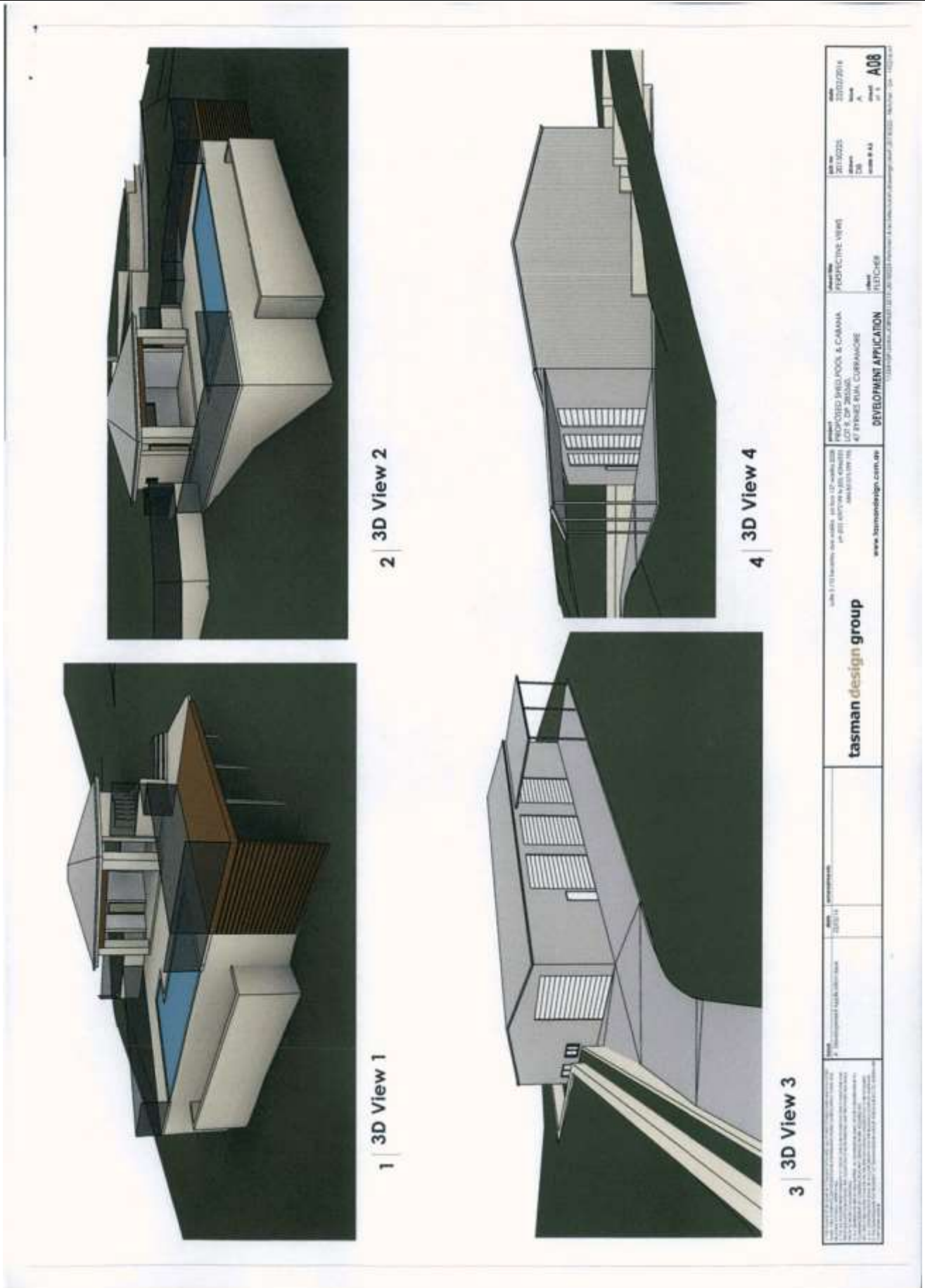




<p>tasman design group</p> <p>www.tasmandesign.com.au</p>		<p>PROPOSED SHED, POOL &amp; CABANA LOT 9 DP 285560 47 BYRNES RUN CURRAMORE</p> <p>DEVELOPMENT APPLICATION</p>		<p>DATE 22/02/2014</p> <p>SCALE A</p> <p>PROJECT NO 1010022</p> <p>DRAWN OR</p> <p>CHECKED 1:100</p> <p>DATE 11/02/14</p> <p>PROJECT A06</p>	
<p>tasman design group</p>		<p>REVISIONS</p> <p>DATE</p> <p>BY</p> <p>DESCRIPTION</p>		<p>DATE</p> <p>BY</p> <p>DESCRIPTION</p>	









**9.5 Lot 12 DP 664055 & Lot 1 DP 25919, 22 Stafford Street Gerroa - General store & dwelling alterations & additions (10.2015.169.1)**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.1 Comply with Development Regulation

**Summary**

This report reviews the Development Application 10.2015.169.1 which seeks consent for alterations and additions to a general store and dwelling.

The report recommends that Council approve Development Application 10.2015.169.1 subject to conditions.

**Finance**

N/A

**Policy**

N/A

**Reason for the Report**

This report is resubmitted to Council following a deferral from Council's meeting held on Tuesday 15 March 2016 which recommended the deferral pending discussions with the applicant with a view to modifying the height of the roof.

**Attachments**

- 1 10.2015.169.1 - Amended plans Council meeting attachment - 22 Stafford Street Gerroa
- 2 Height profiles for amended plans

**Enclosures**

Nil

**RECOMMENDATION**

That Council approve Development application 10. 2015.169.1, pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, subject to the conditions contained within this report.

**BACKGROUND**

*This proposal was considered at Council's meeting of 15 March 2016 at which time Council resolved as follows:*

*"That Council defer consideration of this Development application 10.2015.169.1, pending discussions with the applicant with a view to modifying the height of the roof."*

Report of the Director Environmental Services

9.5 Lot 12 DP 664055 & Lot 1 DP 25919, 22 Stafford Street Gerroa - General store & dwelling alterations & additions (10.2015.169.1) (cont)

In response to Council's resolution the applicant has submitted an amended plan incorporating a lower pitched roof and reconfiguration of the upper floor in an attempt to address the concerns of both Council and the previous objectors.

The amended plans were renotified and the following report is provided as an assessment of the amended plans and submissions responding to those plans.

Additional height poles were erected, by the applicant, outlining the amended roof configuration.

Site inspections were undertaken from each property that made a submission to determine the level of impact.

### Property Information

The property is described as Lot 12 DP 664055 and Lot 1 DP 25916, 22 Stafford Gerroa. The zoning of the property is B1 Neighbourhood Centre pursuant to Kiama LEP 2011. A location map is included in the attachments to this report. The total area of the property is 581.8m<sup>2</sup> and is irregular in shape. Consolidation of the two sites will be required through conditions should consent be granted.

The site is currently occupied by an existing shop & dwelling. Stafford Street bounds the site to the north and properties at the rear fronting Burke Parade with residential dwellings to the east and west in Stafford Street.

### Description of the Proposed (Amended) Development

The site currently contains an existing single storey general store and residential accommodation with attached garages, accessed by a concrete driveway. A large timber deck extends from the southern side of the building. The building is partially painted fibrous sheeting and compressed fibrous 'weatherboards' with an iron (clip lock) roof.

The amended proposal involves:

- Rearrangement of the ground floor area to provide a functional shop, loading area and storage, together with upgraded and expanded living and sleeping spaces. A first floor addition comprising of a rumpus, bedrooms, deck, bathroom and ensuite areas with a total floor area of approximately 104m<sup>2</sup>:

To achieve the required ground floor layout, a marginal increase in building footprint (approximately 4m<sup>2</sup>) is required. This results from the addition of a ground floor ensuite along the western elevation of the building.

### Section 79C Assessment

The proposed development has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) and the following matters are considered relevant:

### Relevant Environmental Planning Instruments

- State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71)

The site is located within the coastal zone, as defined by SEPP 71.

The proposed development is considered to satisfy the SEPP.

Report of the Director Environmental Services

9.5 Lot 12 DP 664055 & Lot 1 DP 25919, 22 Stafford Street Gerroa - General store & dwelling alterations & additions (10.2015.169.1) (cont)

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

A BASIX Certificate was lodged with the application which demonstrates that the dwelling has been designed in accordance with BASIX.

- Kiama LEP 2011

The subject land is zoned B1 Neighbourhood Centre under Kiama LEP 2011.

The site currently contains an existing store (general & post office) and residential accommodation.

The proposal is permissible with consent and complies with Clauses 4.3 Height of Buildings maximum of 8.5m and 4.4 Floor space ratio maximum of 0.5:1.

### **Any draft Environmental Planning Instruments**

Nil.

### **Development Control Plans (DCPs)**

- Kiama Development Control Plan (DCP) 2012

The proposed development does satisfy the Objectives and performance controls within the DCP.

### **Chapter 2 – Overall Controls**

#### Section 5 - Maintenance of Views and Vistas

Comment: The proposed development is of a size and scale that will not significantly alter the main views within the locality and will not have an unreasonable impact on the views and scenic qualities of the site and the surrounding area.

View impact is discussed in detail under Visual Impact.

The following objectives have been considered:

- *To maintain view sharing principles through the development and redevelopment of areas.*

*Comment – The development will not unreasonably affect the primary views from adjoining properties and therefore satisfies this objective.*

- *To ensure that where practical new development is designed and sited not to significantly alter views (including water and or escarpment views)*

*Comment – The proposal will not unreasonably interfere with the main ocean views or the view along Seven Mile Beach currently enjoyed by properties at Nos 11, 13, 15, 17, 19 and 24 Stafford Street.*

- *To ensure that primary private views are maintained through the addition of new development.*

*Comment – Primary ocean views will not be significantly affected by the proposal.*

- *To retain views to and from the water.*

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

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*Comment – Primary ocean views will not be affected. Some view loss of beach sand and the Crooked River mouth will occur.*

- *To protect conserve and maintain the landform of the municipality*

*Comment – The proposal is consistent with surrounding developments in the area.*

- *To limit potential for large bulky housing and development*

*Comment – The proposal is not out of character with other development in the area with respect to bulk and scale considerations.*

- *To encourage sensitive siting of housing.*

*Comment – The dwelling is not unreasonably sited on the property*

- *To maintain or enhance significant public view corridors and other opportunistic views available from the public domain.*

*Comment – There is no unreasonable interference with views available from the public domain.*

In the assessment of the effect on views resulting from the proposal, reference is to be made to principles handed down in the Land and Environment Court with regard to view sharing.

*“The control refers to “Tenacity Consulting v Waringah [2004] NSWLEC 140 “which provides the following guiding principles in the assessment of views:*

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.”*

Response: The views such as the views of Black Head, the Crooked River estuary (parts of), Seven Mile Beach and Mount Coolangatta could be considered highly valued. The primary views from 11, 13, 15, 17, 19 and 24 Stafford Street are to the south and south/west looking out towards the ocean water views.

*“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”*

In response, the main view loss is from dwellings directly opposite the proposal in Stafford Street. However their view is not totally removed principally due to their elevated position. It is unrealistic to expect that the whole view to the south of the dwellings in Stafford Street should be preserved in total as this view is already currently impeded by the existing building and Norfolk Island pine trees that punctuate the view.

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

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*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”*

Response: the view loss experienced by 11, 13, 15, 17, 19 and 24 Stafford Street is partial. A portion of both beach and ocean views will be affected to varying degrees by each property, however extensive views to the beach and ocean will still be available to each property.

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable”*

Response: There are no breaches to the Kiama LEP 2011 and Kiama DCP 2012. Having regard to the site constraints, the proposed addition is considered reasonable and no viable alternative has been identified to achieve the same development outcome. The proposal as presented complies with the building line setbacks and the design response is considered to be appropriate and reasonable in the circumstances.

### Section 7 – Building Lines

Comment: The proposed development is excluded from minimum building line setback requirement mapping in the DCP and therefore is to be considered on its merit. The proposal also involves a metal awning in front of the existing garage area approx. 7.5m wide and approx. 200mm from the front boundary. This awning area is an open structure with an approx. height of 2.7m at the front boundary. The existing dwelling on the western side front boundary is also only approx. of 1.085m with a roof overhang on the boundary. The proposed set backs are considered reasonable.

### **Any Matters Prescribed by the Regulations**

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

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

### **The Likely Impacts of the Proposed Development**

#### Visual Impact

Report of the Director Environmental Services

9.5 Lot 12 DP 664055 & Lot 1 DP 25919, 22 Stafford Street Gerroa - General store & dwelling alterations & additions (10.2015.169.1) (cont)

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To assist Council in its consideration of the visual impacts of the amended proposal, site inspections were undertaken during the erection of height poles from the following properties:

- 11 Stafford Street (existing dwelling)
- 13 Stafford Street (existing dwelling)
- 17 Stafford Street (existing dwelling)
- 19 Stafford Street (existing dwelling)

Photos were taken from these properties and are attached to this report.

The owners of 15 and 24 Stafford Street were not available during the erection of the poles but were considered during the assessment of view loss.

Comment:

The proposed development will have partial impact on significant views, by way of the removal of some of the southern portion of Gerroa Beach and Crooked River Estuary and distance views to Coolangatta Mountain from dwellings 11, 13, 15, 17, 19 and 24 Stafford Street.

The visual impact concerns raised in submissions have been assessed and are not considered to be significant enough to warrant refusal of the application.

### **Public Domain**

The proposed development will not significantly affect views from the public domain.

- Noise

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

- Privacy and Overlooking

No significant concerns are raised in relation to privacy loss and overlooking resulting from the proposed development. This is discussed below under Public Submissions.

- Overshadowing

The attached shadow diagrams show that there is no significant increase in overshadowing of adjoining properties above that presently occurring. The diagrams show that shadows cast by the embankment to the rear of the site already overshadow properties to the south in winter. The proposed development will have no unreasonable increased impact in terms of overshadowing.

- Views

The amended proposal is considered to be of a scale and size that is not out of character with the surrounding area. The proposed development is consistent with other 2 storey development in the street. The amended plans have included a pitched roof with a minimal pitch and the upper floor has been narrowed and moved

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

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further to the west. The dwellings on the northern side of Stafford Street are raised above the level of the street which assists in the maintenance of existing views. Given the topography of the land, the views from neighboring properties will not be unreasonably obstructed by the proposed alterations and additions.

On this basis the proposal will not have an unreasonable impact on views currently available.

**View from the Public Road Reserve Stafford Street**

The existing store & dwelling building already restricts views and therefore the changes are not significant with regards to obstruction of the view from the public domain.

- Vehicular Access, Parking and Manoeuvring

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

- Stormwater Management

A satisfactory drainage design has been provided with the application.

- Environmental Impacts

*Vegetation Removal* – No vegetation is to be removed.

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

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

*Impact on Water Resources* – Rainwater tanks will be provided, as required by BASIX. Controls will be implemented during construction to minimise sedimentation.

- Social and Economic Impacts

It is considered that the proposed development will not result in any significant adverse social impact.

**The Suitability of the Site for the Development**

As discussed throughout this report, the development is of a size, bulk, scale and sitting that are considered to be reasonable having regard to the site. The development is proposed within the B1 zone and bounded by residential dwellings. The site is considered to be suitable for the proposed development.

**Amended Plan Submissions**Public Submissions

Notification letters were re-sent to neighbouring property owners who were provided with fourteen (14) days in which to comment on the amended proposal. At the conclusion of the notification period, one (1) submission for and six (6) submissions received against which raised the following (summarised) matters of concern:

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

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Item 1:- View Loss.

Response: - This matter has been discussed in detail within this report and it is considered that the proposal does not constitute an unreasonable view loss.

Item 2:- The proposal represents overdevelopment of the land and is of a size and scale not compatible with the surrounding area.

Response: - This matter has been discussed in detail within this report and it is considered that the overall development is of a size, bulk and scale and setting that is not out of character with the area.

Item 3:- The proposal will have an unacceptable visual impact on the streetscape.

Response: - This matter has been discussed in detail within this report and it is considered that the development will not have a substantial or unacceptable impact on the streetscape.

Item 4:- The proposed development provided overshadowing.

Response: - The proposed development does not unduly increase the effect of overshadowing which is currently occurring. Shadow diagrams have been provided and shadowing impact particularly to the properties adjoining in Burke Parade are considered to be negligible. The late afternoon solar access to 24 Stafford Street will have a slight impact that does not warrant refusal of the application.

Item 5:- The development is over the floor space ratio (FSR).

Response: - The design complies with the FSR of 0.5:1. (.50:1)

Item 6:- Concerns were expressed about the impact on the dwellings in Burke Parade with regards to stormwater runoff.

Response: - A detailed stormwater management system has been provided and reviewed by Council's Engineering Officer who has accepted the report.

Item 7:- Concerns were raised regarding the height of the proposal.

Response: - The design complies with the height requirements of maximum 8.5m. (the original design was 7.9m to the top most ridge. The amended design is 7.08m to the top most ridge representing a lowering of approx. 900mm).

Item 8:- Concerns were expressed about asbestos.

Response: - Work cover requirements will ensure that any asbestos will be removed and disposed of correctly. Conditions will be imposed should consent be granted.

Item 8:- Privacy concerns

Response: - Privacy screens will be provided to the upper and lower level decks to protect the amenity of the property to the east.

### Internal Referrals

No additional internal referrals were required for the amended proposal.

### The Public Interest

The proposal is considered to be consistent with relevant Environmental Planning Instruments and DCP 2012, is not expected to cause significant adverse impacts on



## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

the visual amenity of the area or streetscape and is considered to be suitable for the site having regard to the zoning. The proposed development is considered to be consistent with the public interest.

### Final Comments and Conclusions

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 79C of the Environmental Planning and Assessment Act, 1979. The proposed development is consistent with Kiama LEP 2011 and relevant DCP 2012.

Consideration has been given to the social, economic and environmental impacts of the proposed development and no significant concerns are raised in relation to the environmental impact of the proposal, particularly the likely visual impacts or view loss.

Concerns raised in submissions have been considered and do not warrant refusal of the application.

The applicant provided revised plans as a result of the Council resolution. This has resulted in a roof height reduction of approx. 900mm. The second storey addition has also been relocated further to the west.

The proposed amended development is considered to be acceptable and approval is recommended.

### Draft Conditions of Development Consent

#### General

- (1) The development shall be implemented generally in accordance with the details set out on the plan/drawing and supporting documents endorsed by Council as 10.2015.169.1 dated - except as amended by the following conditions: (g005.doc)
- (2) The development shall be completed in accordance with the approved colour schedule. (g014.doc)
- (3) The proposal currently sits over Lots 12 and 1. The lots must be consolidated prior to the issue of the Construction Certificate. (g014.doc)

#### Prior to Commencement of Works

- (1) Building work must not commence until the Principal Certifying Authority for the development to which the work relates has been informed of:

- i The licensee's name and contractor licence number;
- ii That the licensee has complied with Part 6 of the Home Building Act 1989.

In the case of work to be done by any other person, the Principal Certifying Authority:

- a Has been informed in writing of the person's name and owner builder permit number;

or

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

- 
- b Has been given a declaration, signed by the owner/s of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989. (pt005.doc)
- (2) Under the provisions of the Act, work may not commence on the development until the following is carried out:
- a Detailed plans and specifications of the building must be endorsed with a Construction Certificate by Council or an Accredited Certifier; and
  - b You **must** appoint a Principal Certifying Authority (can be either Council or an Accredited Certifier); and
  - c You **must** notify the Council of the appointment; and
  - d You **must** give at least two (2) days' notice to Council of your intention to commence work.

You will find attached an application form for a Construction Certificate. Should you require Council to issue this Certificate you should complete this application and forward it, together with plans and specifications, to Council for approval.

You will find attached a form for the "*Notice of Commencement of Building Work and Appointment of Principal Certifying Authority*", which you are required to submit to Council at the appropriate time and at least two (2) days prior to the commencement of work.

Should you appoint Council as the Principal Certifying Authority, relevant inspection fees will be required to be paid at the time of lodgement of this form. (pt020.doc)

- (3) The BASIX commitments shall be indicated on the plans to the satisfaction of Council or an Accredited Certifier **prior to the release of the Construction Certificate**. (pt034.doc)
- (4) Details of compliance with condition of consent (1) & (2) under the heading **Existing Swimming Pool** shall be shown on the plans and provided to the Accredited Certifier **prior to the release of the Construction Certificate**. (pt065.doc)
- (5) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a Showing the name, address and telephone number of the Principal Certifying Authority for the work;
  - b Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - c Stating that unauthorised entry to the work site is prohibited.

**Note:** Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed. The sign will be provided by the nominated Principal Certifying Authority for the relevant fee. (pt060.doc)

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

- 
- (6) A certificate from a practising structural engineer shall be obtained to indicate that the existing structure is capable of supporting the proposed additional loads, and shall be submitted to the Principal Certifying Authority, prior to work commencing. (pt063.doc)

**Stormwater Management**

- (1) Stormwater shall be connected in accordance with the stormwater drainage layout by Bilkey Reilly & Associates Pty Ltd. Plans reference 07048- C1, C2 & C3.

**Inspections**

- (1) The building work shall be inspected at critical and other stages as required by the Principal Certifying Authority for the development.

**NOTE:** Should you choose Council to be your Principal Certifying Authority for this development you will be advised of the required building inspections and applicable fees at the time of that appointment. (bu015.doc)

**Building Construction**

- (1) All building work must be carried out in accordance with the requirements of the Building Code of Australia. (bu010.doc)
- (2) The roadway, footpath or Council reserve shall not be used to store building material without the prior approval of Council. (bu086.doc)
- (3) The Reduced Levels (RL) of the proposed development must be in accordance with the approved plans. Certification of these levels by a registered surveyor must be submitted to an accredited certifier or Council prior to proceeding past that level. (bu120.doc)
- (4) A survey shall be undertaken and a copy be made available to Council or an accredited certifier, certifying that the building is correctly located in relation to the boundaries of the site and in accordance with the approved plans. Such survey shall be submitted at peg out stage. (bu125.doc)
- (5) Construction and demolition work, delivery of materials and plant, etc shall only take place between the following hours;
- |                  |                      |
|------------------|----------------------|
| Monday to Friday | - 7.00 am to 6.00 pm |
| Saturdays        | - 8.00 am to 1.00 pm |
- No construction work is to take place on Sundays or Public Holidays. (bu151.doc)
- (6) The Waste Management Plan shall be strictly adhered to at all stages during the demolition, construction and/or subdivision work. All waste nominated for disposal must be disposed of at a licensed landfill facility. All waste nominated for recycling must be reused or recycled. (bu153.doc)

**Existing Swimming Pool**

- (1) The swimming pool shall be fenced in accordance with the NSW Swimming Pools Act 1992.

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

- 
- (2) The fences, gates and latches for the swimming pool shall be provided and constructed in accordance with the provisions of Australian Standards AS 1926 Fences and Gates for Private Swimming Pools. (bu250.doc)
  - (3) An instructional poster for resuscitation which bears the words "*Young Children Should Be Supervised When Using This Swimming Pool*", together with details of resuscitation techniques for adults, children and infants shall be located in a prominent position within the pool enclosure. (bu265.doc)

**Erosion and Sedimentation Controls/Soil and Water Management**

- (1) All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur. In particular:
  - a A silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). Such fence must be regularly inspected and cleaned out and/or repaired as is necessary, and all collected silt must be disposed of in accordance with Council's Sedimentation Control Policy.
  - b Unnecessary disturbance of the site (eg; excessive vehicular access) must not occur.
  - c All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.
  - d All the above requirements must be in place for the duration of the construction works. (esc005.doc)

**Site Facilities**

- (1) An appropriate temporary toilet facility shall be provided on site, located inside the property boundaries, prior to commencement of works. The temporary toilet shall be maintained in a clean/sanitary condition at all times. (sf010.doc)
- (2) During construction the applicant shall provide, inside the property boundaries a suitable waste container for the disposal of all papers, plastics and other lightweight materials. (sf015.doc)
- (3) A sign must be erected in a prominent position on the premises on which the erection or demolition of a building is being carried out:
  - a Stating that unauthorised entry to the premises is prohibited; and
  - b Showing the name of the builder or other person in control of the worksite and a telephone number at which the builder or other person may be contacted outside working hours.

Any such sign is to be removed when the erection or demolition of the building has been completed. (sf020.doc)

**Prior to Occupation**

- (1) A contribution pursuant to Section 94A of the Environmental Planning and Assessment Act 1979 (as amended) and Kiama Council's Section 94A (Indirect Contributions) Plan shall be paid to Council prior to the issuing of any

## Report of the Director Environmental Services

## 9.5 Lot 12 DP 664055 &amp; Lot 1 DP 25919, 22 Stafford Street Gerroa - General store &amp; dwelling alterations &amp; additions (10.2015.169.1) (cont)

Occupation Certificate. The total contribution required for the development is **\$3,560.00**.

The amount of the contribution shown on the development consent will be indexed to the time of payment in the following manner:

$$\text{Contribution (at time of payment)} = \frac{C \times \text{CPIP}}{\text{CPIc}}$$

Where:

C = The original contribution amount as shown in the development consent.

CPIP = The *Consumer Price Index: All Groups Index for Sydney* as published by the Australian Bureau of Statistics and which applied at the time of payment.

CPIc = The *Consumer Price Index: All Groups Index for Sydney* as published by the Australian Bureau of Statistics and which applied at the time of issue of the development consent. (po001.doc)

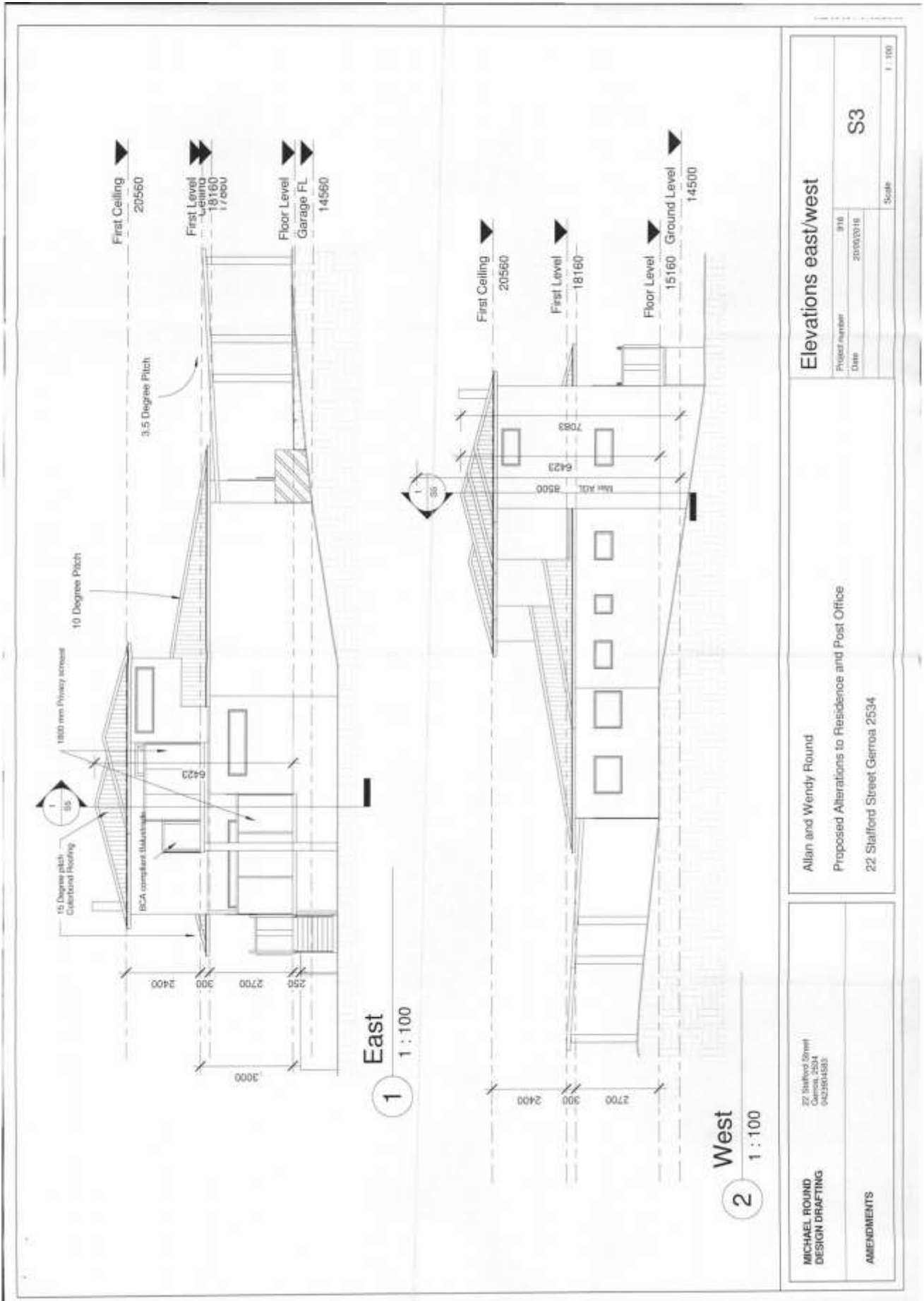
- (2) The completed Waste Management Compliance Sheet (Appendix 1C) shall be submitted to and approved by Council prior to release of the Final Occupation Certificate.

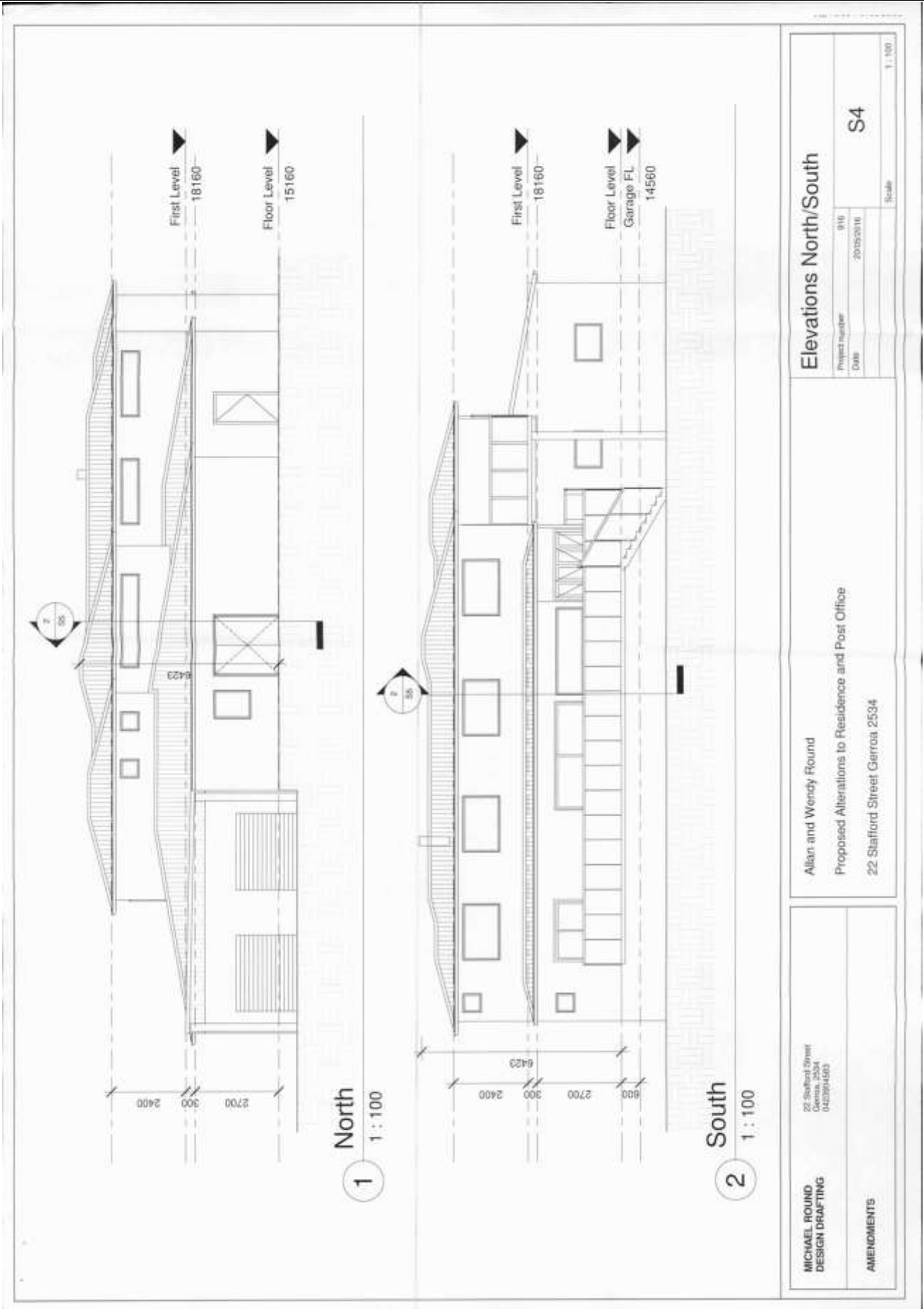
Supporting documentation (dockets/receipts) verifying recycling and disposal shall be attached to the Compliance Sheet. (po002.doc)

- (3) The BASIX schedule of commitments shall be complied with prior to the issue of a Final Occupation Certificate for the development and if required a certificate shall be provided to the Principal Certifying Authority from a properly qualified person to certify that the BASIX schedule of commitments have been provided and/or installed. (po003.doc)

- (4) The whole or part of the building must not be occupied unless an Occupation Certificate has been issued in relation to the building or part in accordance with Clause 109M of the Environmental Planning and Assessment Act 1979.

**NOTE:** A Fire Safety Certificate must be provided in accordance with the Environmental Planning and Assessment Regulations 2000 prior to the issue of an Occupation Certificate excepting Class 1(a), 10(a) & 10(b) structures. (po005.doc)

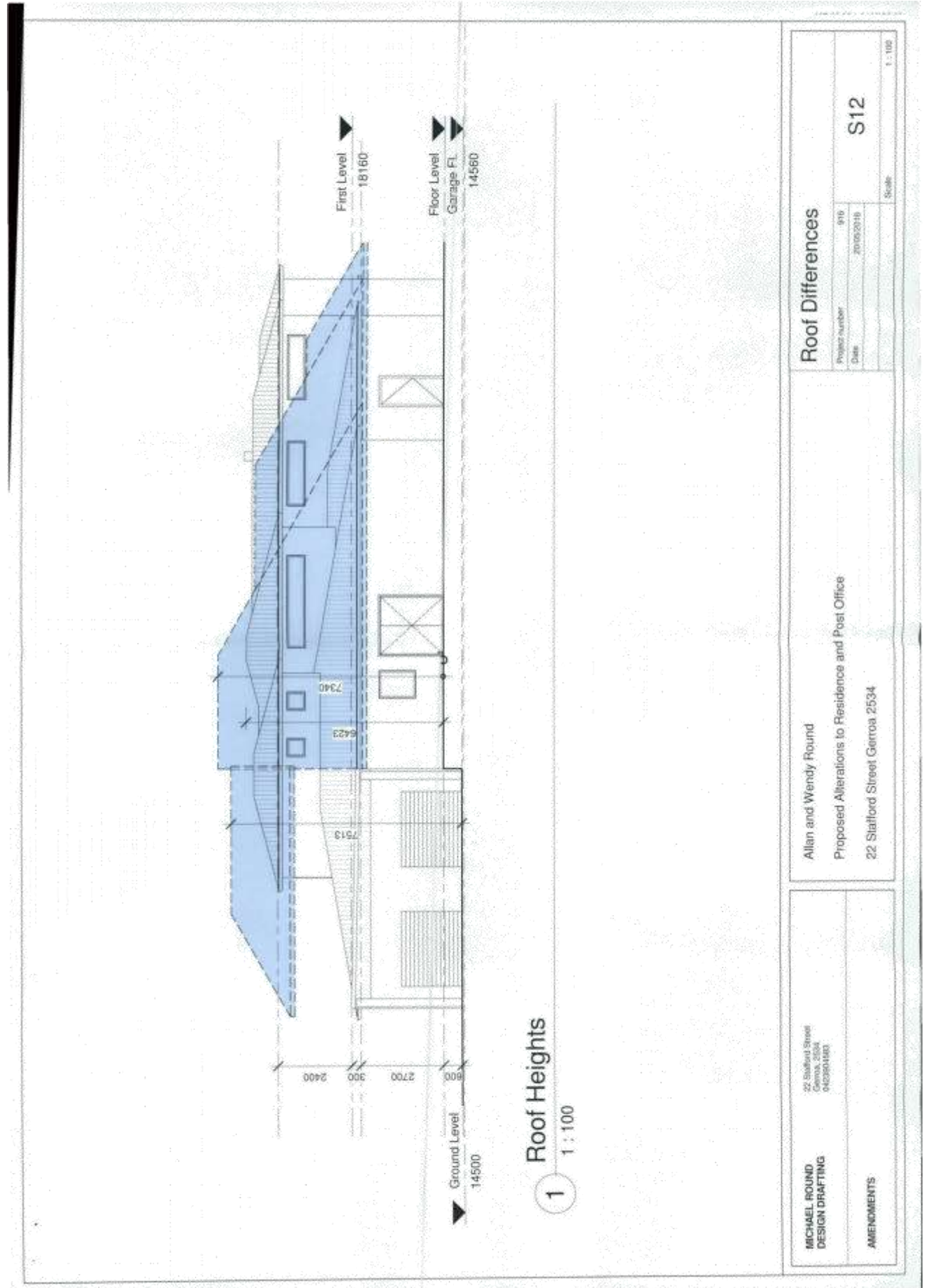






<b>MICHAEL ROUND                  DESIGN DRAFTING</b>  22 Stafford Street Gerroa, NSW 0423004583	<b>Site</b> Project number: 914 Date: 20/02/2016		S6  Scale: 1:200
	Allan and Wendy Round Proposed Alterations to Residence and Post Office 22 Stafford Street Gerroa 2534		
AMENDMENTS			







View from 11 Stafford Street



View from 13 Stafford Street





View from 17 Stafford Street



View from 19 Stafford Street

**9.6 Lot 1 DP 1115030, Lot 1 DP 200068, Lot A DP 161881, Lot 7016 DP 1074643, Lot 1 DP: 615423, 10 Bong Bong Street, Kiama - Demolition of Existing Building and Construction of Mixed Used Development Consisting of 9 Serviced Apartments & 14 Shop Top Housing Units (10.2015.307.1)**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.1 Comply with Development Regulation

**Summary**

This report reviews the development application seeking consent for the demolition of the existing Kiama Cove Motel and construction of a mixed used development consisting of nine (9) serviced apartments and fourteen (14 - including the ground floor managers unit) residential units.

The maximum overall height of the proposed building is some 16.022m, which breaches the maximum 11m building height limit of Clause 4.3 of Kiama LEP 2011. An exception to the development standard is sought pursuant to Clause 4.6 of the LEP.

It is considered that the ground floor level of the proposed development does not include 'business premises' or 'retail premises' in order for the residential accommodation to qualify as 'shop top housing'. The proposed residential accommodation is otherwise prohibited in the zone.

Following notification of the proposal fifteen (15) submissions were received objecting to the proposed development, most prevalently on the basis of the proposed building height breach.

The report recommends that the application be refused for the reasons contained in this report.

**Finance**

N/A

**Policy**

N/A

**Reason for the Report**

The development application is reported to Council because fifteen (15) submissions have been received following notification of the proposal.

**Attachments**

1 10.2015.307.1 - location map

2 10.2015.307.1 - plans

**Enclosures**

Nil

## Report of the Director Environmental Services

- 9.6 Lot 1 DP 1115030, Lot 1 DP 200068, Lot A DP 161881, Lot 7016 DP 1074643, Lot 1 DP: 615423, 10 Bong Bong Street, Kiama - Demolition of Existing Building and Construction of Mixed Used Development Consisting of 9 Serviced Apartments & 14 Shop Top Housing Units (10.2015.307.1)  
(cont)
- 

**RECOMMENDATION**

That Council refuse development application 10. 2015.307.1 pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, for the following reasons:

1. It is considered that the proposed residential accommodation does not qualify as shop top housing as it is not located above a ground floor retail premises or business premises. The residential accommodation proposed is thereby prohibited under the terms of Kiama LEP 2011.
2. It is considered that the proposed building height breach (Kiama LEP 2011 Clause 4.3) is unacceptable and the Clause 4.6 exception request does not adequately justify why the development standard should be varied.
3. It is considered that the proposed development does not satisfy LEP 2011 Clause 6.8, which requires the development to have an active street frontage.
4. It is considered that the proposed development is incompatible with the existing streetscape, predominantly on account of the excessive building height.
5. It is considered that the proposed development is inconsistent with the provisions of Kiama DCP 2012 Chapter 5 – Medium Density Development, in particular in relation to control C4 adaptable dwellings, Section 13 drying areas and the three (3) storey height limit under Chapter 26.
6. Submissions have been received making valid objections to the development on the grounds of excessive building height and view loss.
7. It is considered that in the circumstances of the case, approval of the development would not be in the public interest.

**BACKGROUND**

**Applicant:** Dartanyon Developments Pty Ltd

**Owner:** Dartanyon Developments Pty Ltd & Rogan Property Group Pty Ltd

**Development Site**

The property is described as Lot 1 DP 615423, Lot 1 DP 1115030, Lot 1 DP 200068, Lot A DP 161881 & Lot 7016 DP 1074643 which is located at Bong Bong Street, Kiama.

The subject Lot 1 DP: 615423 measures 2593m<sup>2</sup> in area and is irregular in shape. This lot currently contains the Kiama Cove Motel and is bounded by Bong Bong Street to the northeast, other commercial land to the northwest and public open space to the southeast and south.

The other lots identified (Lot 1 DP 200068, Lot A DP 161881 & Lot 1 DP 1115030 & Lot 7016 DP 1074643) form part of the Chittick Oval and Coronation Park complex.

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The site is zoned B2 Local Centre and RE1 Public Recreation pursuant to Kiama Local Environmental Plan (LEP) 2011.

The site is predominantly cleared and slopes gently from the north downward to the south.

Access to the property is obtained from Bong Bong Street.

The site is serviced by electricity and telecommunications and by reticulated water and sewer.

The site is subject to the following constraints:

- Heritage items indicated in the Kiama LEP 2011 on adjacent land (Kiama Uniting Church, the Grand Hotel)
- Covenant – BK.2476 No. 940

**Description of the Proposed Development**

The proposal involves the demolition of existing Kiama Cove Motel building and construction of a mixed used development consisting of nine (9) serviced apartments, fourteen (14) residential units (including the ground floor Manager’s unit U-1A) and basement car parking accommodating forty (40) cars.

The proposed building footprint utilises the same alignment as the existing Kiama Cove Motel on the site, which is setback from Bong Bong Street further at its western end than at its eastern end, enhancing its orientation to Surf (Main) Beach and the ocean.

The proposed building consists of five (5) levels, outlined as follows:

Level	Proposed use
Basement Level 1	<ul style="list-style-type: none"> <li>○ 26 resident car parking spaces;</li> <li>○ 9 serviced apartment car parking spaces;</li> <li>○ 1 care taker car parking space;</li> <li>○ 1 garbage tractor trailer space;</li> <li>○ 4 resident visitor car parking spaces;</li> <li>○ 2 waste rooms;</li> <li>○ Community room (97.7m<sup>2</sup>) with WC; and</li> <li>○ Pool pump room</li> </ul>
Ground floor level	<ul style="list-style-type: none"> <li>○ Entrance A &amp; entrance B foyers;</li> <li>○ 1 Managers residential unit (unit 1A);</li> <li>○ 9 serviced apartments</li> </ul>

**Item 9.6**



Report of the Director Environmental Services

9.6 Lot 1 DP 1115030, Lot 1 DP 200068, Lot A DP 161881, Lot 7016 DP 1074643, Lot 1 DP: 615423, 10 Bong Bong Street, Kiama - Demolition of Existing Building and Construction of Mixed Used Development Consisting of 9 Serviced Apartments & 14 Shop Top Housing Units (10.2015.307.1) (cont)

Level 1	○ 5 single level 3 bedroom residential units (units 2A – 2E);
Level 2	○ 5 single level 3 bedroom residential units (units 3A – 3E);
Level 3	○ 2 single level 4 bedroom residential units (units 4B & 4C); ○ 1 single level 3 bedroom residential unit (unit 4A).

The overall residential component of the proposal consists of:

- 1x1 bedroom residential units (Managers ground floor unit);
- 11x3 bedroom residential units; and
- 2x4 bedroom residential units.

The floor area of the residential units ranges from 54.4m<sup>2</sup> (Managers ground floor unit 1A) to 238.3m<sup>2</sup> (Unit 4C), with an average residential unit floor area of 188.4m<sup>2</sup>.

Onsite car parking is proposed in a basement levels, in total accommodating 40 car parking spaces and 1 garbage tractor trailer space.

Vehicular access is proposed from Bong Bong Street at a common entry/exit point.

Two (2) basement level waste rooms are proposed for garbage bin storage with collection to occur from Bong Bong Street.

The proposed external finishing materials/colours are a combination of precast concrete panels/concrete slab edge (Dulux 'White on White' and 'Crust P1285'), precast concrete panels/metal wall cladding (Colorbond 'Monument'), rendered masonry street level blade walls (Dulux 'Sunlounge P10H9'), sandstone masonry feature wall, Colorbond metal roof ('Shale Grey' in colour) and clear glass balustrades with 'Vintage Silver' aluminium framing.

**Section 79C Assessment**

The proposed development has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) and the following matters are considered relevant:-

**Relevant Environmental Planning Instruments**

- State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71)

The site is located partially within the sensitive coastal location, as defined by SEPP 71. No subdivision is proposed and therefore no Master plan is required from the Department of Planning as part of this development.

Consideration has been given to the objectives of the SEPP 71 and the matters prescribed by Clause 8. The proposed development is considered to be generally consistent with the SEPP.

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

Item 9.6

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(cont)

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A BASIX Certificate was lodged with the application which demonstrates that the residential dwellings have been designed in accordance with BASIX.

- State Environmental Planning Policy No 55 - Remediation of Land

A Phase I Preliminary Site Investigation has been undertaken by A D Envirotech Australia Pty Ltd, which concluded that a Phase II Detailed Site Investigation is warranted.

In accordance with DCP 2012 Chapter 10 Figure 2, a detailed site investigation report was requested for Council's consideration prior to determination of the development application. The applicant responded to this request by highlighting that the proposed excavation of the site for basement parking would likely remove any such contamination. The applicant has requested that a Phase II Detailed Site Investigation be conditioned either by way of Deferred Commencement consent or as an operational condition of consent to be satisfied prior to issue of the Construction Certificate.

Under the circumstances described it would be reasonable to condition the submission of a Phase 2 Detailed Site Investigation, should Council approve the proposed development.

- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)

This Policy aims to improve the design quality of residential apartment development in New South Wales.

A Design Verification Statement signed by architect Daniel Donai (NSW Registration No. 9068); Director of de angelis taylor + associates (DTA) architects (being a suitably qualified person) was lodged in support of the application, in accordance with the SEPP. This statement verifies that the proposal satisfies the 9 Design Quality Principles in SEPP 65 together with the supporting Apartment Design Guide (ADG).

- Kiama LEP 2011

The subject land is zoned B2 Local Centre pursuant to Kiama LEP 2011. Mixed use development consisting of serviced apartments and shop top housing is permitted with consent in the zone and the proposed mixed use development is generally considered to be consistent with the zone objectives.

The B2 zone objectives are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

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(cont)

In this instance, the proposed mixed use development consists of serviced apartments and shop top housing (as claimed by the applicant). Both these uses are permissible with consent in the zone and are therefore deemed to satisfy the zone objectives.

Notwithstanding the objectives of the zone, as discussed below it is considered that the proposed residential accommodation does not constitute shop top housing, as serviced apartments do not constitute a qualifying ground floor use to enable shop top housing. In this regard:

'Serviced apartment' means "a building (or part of a building) providing self-contained accommodation to tourist or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents." Serviced apartments are a type of 'tourist and visitor accommodation', which is permissible with consent in the zone.

'Shop top housing' means "one or more dwellings located above ground floor retail premises or business premises."

'Business premises' means "a building or place at or on which:

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaner, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex service premises or veterinary hospital".

In order for residential accommodation to qualify as shop top housing, it must, by definition, be above ground floor retail premises or business premises.

The applicant contends that serviced apartments are a type of business premises because serviced apartments are a building or place at or on which a service is provided directly to members of the public on a regular basis. As such, the applicant contends that serviced apartments constitute business premises and thereby serviced apartments are argued to be a qualifying ground floor use for shop top housing.

Although serviced apartments are clearly a permissible use within the B2 Town Centre zone, Council's assessing officers are of the contrary view that serviced apartments are not a qualifying ground floor use for shop top housing, because serviced apartments are categorised as a type of 'tourist and visitor accommodation', not a type of business premises. The residential accommodation component of the mixed use development is only permissible where it is above ground floor retail premises or business premises in order for it to qualify as shop top housing. As it is not accepted that serviced apartments are appropriately categorised as a type of

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(cont)
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business premises, the residential accommodation in this instance does not qualify as shop top housing and is therefore prohibited.

In addition to this, the amended plans submitted to Council identify the use of ground floor unit 1A as the Managers unit. As a Managers unit it is not a dedicated serviced apartment and instead must be classified as a residential unit, which is prohibited on the ground floor. The applicant's themselves state that "*where shop top housing is referred to separately in the Land Use Table as being permitted in a zone but residential accommodation is prohibited in that same zone **development which proposes any type of residential accommodation on the ground floor or below the ground floor will be prohibited** irrespective of the fact that the development also includes a "retail premises" or "business premises" at ground level and dwellings above.*" [Emphasis added]

In light of the discussion above it is considered that the development application cannot be approved in its current form as serviced apartments (although permissible in the zone) are not considered to qualify as business premises or retail premises and thereby the residential accommodation above does not qualify as shop top housing. Furthermore, the amended proposal includes a ground floor residential unit (Managers unit U-1A), which is prohibited.

Specific clauses requiring consideration:-

Clause 1.19A enables Council to suspend covenants, agreements and instruments that would otherwise undermine the achievement of a development outcome permissible under the LEP or an environmental planning instrument. The clause does not apply in instances such as where Council has imposed the covenant or where Council requires the covenant to be imposed.

The development site is the subject of a registered covenant (BK.2476 No. 940), relating to the construction of a service station or similar business on the land and to the construction of a fence without the consent of the vendor. The covenant dates back to 1959 and has no bearing or implications on Council's assessment of the proposed development.

Clause 4.3 requires that the height of the building does not exceed the maximum height shown on the Height of Buildings Map (being 11 metres in this instance – measured vertically from the **highest point of the building** to the existing ground level below). The maximum overall height of the proposed building is some 16.022m (at the rear roofline above proposed unit U-4B, as identified in Section 1). The proposed development thereby breaches the 11m building height development standard by some 5.022m. The front roofline (Bong Bong Street frontage) of that same unit has a height of some 14.903m, exceeding the height limit by 3.903m at this point.

The applicant has sought an exception to the building height development standard pursuant to Clause 4.6 (see below).

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Clause 4.4 requires that the floor space ratio does not exceed the maximum floor space ratio shown for land on the Floor Space Ratio (FSR) map. In this instance the LEP permits an FSR of 1.5:1. The FSR of the proposed development is 1.47:1 as identified by the applicant.

Clause 4.6 provides for exceptions to certain development standards where requested and justified in writing by the applicant and where Council is satisfied that:

- the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) (i.e. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard); and
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

In this instance it is proposed to construct to a height of some 16.022m, thereby breaching the 11m building height development standard of Clause 4.3. The proposed building height breach represents the entire top floor roof of the development and the majority of the fifth floor level of the building.

The applicant has provided a submission, pursuant to LEP Clause 4.6, seeking exception to the building height development standard of Clause 4.3 of the LEP.

### **Applicant's Submission**

In addressing Clause 4.6 and seeking exception to Clause 4.3, the applicant has lodged a submission that, in summary, argues that:

- The proposed development is consistent with the stated aims and objectives of the B2 Local Centre zone under the Kiama LEP (discussed above);
- The proposed development is consistent with the Clause 4.3 building height objective (a) "*to ensure future development is in keeping with the desired scale and character of the street and local area*", for reason that, as argued by the applicant, the proposed height "*supports its location and yet at the same time does not unreasonably interfere with existing view corridors than one constructing a building of lesser height.*" It is argued that this approach promotes the orderly and economic use of the land.
- The proposed development is consistent with the Clause 4.6 Exceptions to development standard objectives, being:
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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(cont)

In this regard the applicant contends that, given the specific circumstances of the site (such as the fall from the front of the site to the rear), *“a better more appropriate outcome for the proposed building is achieved by allowing flexibility to the development standard, in this particular circumstance.”*

- The applicant contends that strict compliance with the 11m building height *“is not appropriate given the desired future character of the locality and the minimal adverse environmental impacts, including amenity impacts on neighbouring properties, resulting from the proposed building.”*
- The applicant cites building height precedent brought about by developments at 2 Barney Street and 28 Bong Bong Street, Kiama.

### Response

The objectives underpinning Clause 4.3 height of buildings are:

- to ensure future development is in keeping with the desired scale and character of the street and local area,*
- to allow reasonable daylight access to all developments and the public domain.*

The proposed development is not considered to be consistent with objective (a) as it is considered to be incompatible with the desired scale and character of the street on account of its excessive building height. In this regard the desired scale and character is derived from the maximum 11m building height development standard principally, but also derived in part by the established streetscape. As is evident in the diagram below, the proposed development is a whole floor level higher than the adjoining development to the west at 20 Bong Bong Street, which is a relatively recent development unlikely to be redeveloped in the foreseeable future.



Aside from streetscape, Clause 4.3 objective a) also makes reference to the scale and character of the local area. In this regard there are significant concerns about the proposed height of the building as viewed from Surf (Main) Beach, Coronation Park and Chittick Oval. From these directions the full five (5) storeys and 16m building height will be exposed and will be directly comparable to the surrounding 2 and 3 storey development. In this regard the proposed development will be perceptibly higher than any other development in the area and with that out of scale and character.

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(cont)
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Another part of the justification for the building height breach as put forward by the applicant, is the height breach precedent set by the new residential flat development at 2 Barney Street (10.2014.214.1) and the 'Bathers' mixed use development approved at 28 Bong Bong Street (10.2015.28.1).

The applicants claim that the residential flat development at 2 Barney Street breaches the 11m height limit is incorrect. The Section 79C assessment report for that development clearly states that the "*proposal does not exceed the height of 11m shown on the Height of Buildings Map.*" The approved plans and sections for the development reinforce this.

The 'Bathers' development at 28 Bong Bong Street, as approved by the Joint Regional Planning Panel (JRPP), does involve height breaches but these were specifically justified and accepted on the merits and circumstances of that particular site and that particular proposal. For instance, the tallest part of that development is the building element on the corner of Bong Bong Street and Manning Street, directly opposite the Grand Hotel. Reinforcing this prominent, gateway corner with a taller building element is consistent with the principles endorsed under DCP 2012 Chapter 26 – Kiama Town Centre. Beyond this the other height breaches were effectively point encroachments along the Manning Street frontage of the development brought about by the substantial cross fall of the site. The impacts of the building height breaches on streetscape (the building height breaches reasonably and appropriately step up and transition the building from adjoining lower development in the south toward the taller Grand Hotel to the north), view loss, overshadowing and the like were considered in detail with that application and were considered to be acceptable in the instance specific to that development.

The characteristics of the subject site and the development proposed are different to that of the Bathers site, so it is not an acceptable argument to request building height variation simply on the basis that it was granted for the Bathers development. For instance, the entire top storey of the proposed development breaches the building height limit, not just point encroachments as occurred with the Bathers development. Furthermore, as discussed above the proposed development is incompatible with the streetscape in the eastern section of Bong Bong Street due to its excessive height. Unlike the Bathers development, the height breach cannot be justified on the basis of transitioning infill building form or on the basis of providing strong building form on a prominent, gateway corner.

In relation to Clause 4.6(3)(a) of the LEP the applicant argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

- *"The proposed building has been carefully designed to minimise adverse amenity impacts on adjoining properties. Careful site responsive design has ensured that the technical non-compliance with the height proposed does not give rise to significant amenity impacts for the immediate adjoining residential development;*

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(cont)

- 
- *..... the proposed building is consistent with the objectives of Clause 4.3 of Kiama LEP 2011; and*
  - *The site is highly constrained by existing development and if an increase in the height is not granted, then a different development outcome will be achieved which will significantly impact on the loss of views for adjoining residential buildings and loss of amenity."*

Comment

As discussed earlier, contrary to the applicants assertion it is considered that the proposed development does not satisfy objective a) of Clause 4.3, being "to ensure future development is in keeping with the desired scale and character of the street and local area" due to the incompatibility of the building with both the scale and character of Bong Bong Street and the scale and character of the local area as can be derived when the site is viewed from Surf (Main) Beach, Coronation Park and Chittick Oval.

On account predominantly of the proposed building height breach, the development is considered to be incompatible with the streetscape/townscape. This is discussed in detail below under 'The Likely Impacts of the Proposed Development – Streetscape/Townscape'.

In relation to Clause 4.6(3)(b) of the LEP the applicant argues that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- *"The design of the proposed building is generally consistent with applicable planning controls contained Kiama LEP 2011 and Kiama DCP 2012, and also SEPP 65 and the Residential Flat Design Code.*
- *The height, boundary setbacks, depth and length of levels, deep soil landscaping, car parking, and solar access are generally compliant with development standards and controls in Kiama LEP 2011 and Kiama DCP 2012 that are applicable to the site.*
- *The proposed building has been designed to minimise amenity impacts such as overshadowing, visual privacy and bulk and scale on the adjoining south western residential property.*
- *The articulated contemporary design makes use of attractive vertical and horizontal building elements while also varying the material, finishes and colours of the building's facade. This provides visual interest when viewing the development from the public domain and ensures that the proposed building will make a positive contribution to the redevelopment of the locality and the Kiama City Centre generally."*

Comment

The LEP 2011 development standards of building height and floor space ratio are not given rights, but rather they are the maximum development standards that a



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(cont)
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building can be designed to where there will be no unreasonable adverse impact in terms of view loss, streetscape compatibility and the like.

The applicant appears to contend that, to achieve the permissible floor space ratio (1.5:1 permitted, 1.47:1 proposed) it has been necessary to exceed the building height development standard to avoid building in the southern corner of the site, which would otherwise block views of neighbours. Arguably the most appropriate location on the site to develop to minimise the impact on adjoining neighbours is along Bong Bong Street in the northern corner of the site, yet this area is not proposed to be built upon. Instead the proposed building has been aligned, not square with Bong Bong Street, but at an angle, with the greatest setback from the street at the northern end of the street frontage.

It would appear that the overriding factor motivating the proposed unorthodox alignment of the building is to maximise the exposure of the southern façade of the building to Surf Beach and the ocean views.

Overall, it is not accepted that the proposed development satisfies the objectives underpinning the building height development standard. The height limit breach essentially encompasses the bulk of the fifth storey and the building height does not appropriately respect and respond to the height and form of adjoining and adjacent development. The proposal is thereby considered to be contrary to the public interest under the circumstances.

As the proposed exception to the building height development standard has not satisfactorily addressed Clause 4.6(3) of Kiama LEP 2011, the application for variation is not supported.

Clause 5.5 lists requirements for development within the coastal zone. The proposal is not inconsistent with the objectives of the clause. The proposal does not cause increased coastal hazards or adverse impacts by way of diminished foreshore access, treatment of effluent and disposal of stormwater.

Clause 5.9AA stipulates that trees or vegetation which are not of a species or kind prescribed for preservation in a development control plan may be cut down, lopped or removed. The proposal includes species on the site which are not included within the development control plan and are permitted to be removed as part of the development approval.

Clause 5.10 lists requirements for heritage conservation for items listed in Schedule 5 of the Kiama LEP 2011. An item of heritage exists on two (2) adjacent properties, listed in Schedule 5 as “Grand Hotel” (Item I116) and “Kiama Uniting Church, church trees and grounds” (Items I114 & I115).

Council’s Heritage Advisor provided the following comment on the proposal:

*“There are heritage items in the vicinity of the subject site including the Grand Hotel, Uniting Church and the Catholic Presbytery all located in Manning Street. The proposed development would likely have little impact on the setting of these places. There would most likely be some loss of views from the upper levels of the Grand*

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*Hotel, although this cannot be verified and the DA does not address this. In any event, the potential impact would not be so great as to warrant any change to the development.”*

The proposal meets the objectives of clause 5.10 and is not likely to adversely affect the heritage significance of the adjacent heritage items.

Clause 6.2 lists considerations for proposals which involve earthworks. The proposal meets with the objectives of the clause and the matters prescribed for consideration are satisfied.

Clause 6.8 requires the proposal to have an active street frontage in B1 & B2 zones. The objective of the clause is to “*promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones.*” In this respect, serviced apartments do not engage with or activate the street, or promote pedestrian traffic, in the way that retail premises or business premises do. The objective of Clause 6.8 is not considered to be satisfied with the ground floor serviced apartments as proposed.

Furthermore, Clause 6.8(5) states that “*a building has an **active street frontage** if all premises on the ground floor facing the street are used for the purposes of business premises or retail premises.*” As discussed above in reference to the permissibility of the proposal, serviced apartments are not considered to be appropriately categorised as business premises, rather they are a type of tourist and visitor accommodation. In this regard the applicant’s assertion that the ground floor serviced apartments constitute business premises is not supported. It follows therefore that, based on sub-clause (5), serviced apartments do not satisfy the active street frontage requirement of the LEP.

Clause 6.9 - Serviced apartments. This Clause has the objective of preventing substandard residential building design occurring by way of converted serviced apartment development. The proposed development seeks consent for serviced apartments - it does not seek to convert serviced apartments to residential accommodation.

### **Any draft Environmental Planning Instruments**

Nil.

### **Development Control Plans (DCPs)**

- Kiama Development Control Plan (DCP) 2012

#### *Chapter 5 – Medium density development*

The proposed development is generally consistent with the requirements of Chapter 5 of the DCP, except in relation to the following matters, where variation is sought:

- Control C1 – meet the principal development standards under LEP 2011.

The proposed breach of the building height development standard is addressed above under LEP 2011 Clause 4.3 and exception sought pursuant to Clause 4.6.

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This matter has been discussed in detail and the building height breach is not considered to be acceptable in this instance.

- Control C4 requires the provision of Adaptable Housing at a ratio of 1:4 dwellings or part thereof. In this instance 14 residential apartments are proposed, therefore a minimum of 4 residential apartments are required to be adaptable.

Comment: The applicant has nominated serviced apartment 1K as an adaptable dwelling, as well as residential apartments 2D, 3D & 4B.

This development control only applies to the residential apartment component of the development, not to the serviced apartments. The proposed development is therefore deficient by one (1) adaptable apartment.

- Section 13 – Drying areas. This section of Chapter 5 requires that drying areas must be provided for each unit at a rate of 5 lineal meters of line per unit. No clothes drying lines are proposed for this development.

The applicant has commented that they note the DCP control but also note that the approved apartments at 2 Barney Street (10.2014.214.1) and the 'Bathers' mixed use development at 28 Bong Bong Street (10.2015.28.1) do not provide clothes drying areas and that "*these apartments provide dryers within the units, the same as any apartment complex.*"

Comment: The development at 2 Barney Street, in fact, has been provided with a dedicated outdoor clothes drying areas for the apartments, so the applicants assertion in relation to this development is incorrect.

In relation to the mixed use development at 28 Bong Bong Street, a concerted effort was made to provide the residential units with outdoor drying areas, before this was abandoned by the Joint Regional Planning Panel (JRPP) on account of concerns raised about the visual impact of airing of clothes on balconies, particularly along Manning Street and adjacent the rail corridor, being main thoroughfares through Kiama. A small dedicated communal drying area was still provided at ground level for this development.

No properly considered or justified variation has been made for this development in relation to Section 13. Irrespective of the fact that the Apartment Design Guide supporting SEPP 65 makes no reference to provision of clothes drying areas, it is not acceptable to disregard the drying area development controls within the DCP.

#### *Chapter 9 – Car parking requirements*

The proposed development incorporates basement car parking accommodating 40 cars.

Overall, Council's DCP (as applying at the time the development application was lodged) requires the provision of 34 on-site car parking spaces (24 residential + 10 serviced apartment = 34 (see below)). In total, 40 on-site car parking spaces are proposed, satisfying the requirements of Chapter 9.

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The proposed mixed use development triggers separate parking requirements between the service apartment component of the development and the residential component. In this respect, and as outlined in the DCP, car parking is calculated on the basis of each distinct use.

Serviced apartment component

Based on the DCP requirements, serviced apartments require 1 space per 1-2 bedroom apartment plus 1 space per site manager.

In this instance 9 x 2 bedroom serviced apartments are proposed, thereby requiring nine (9) on-site parking spaces, which are provided on-site. One (1) space is available on-site for the site manager (doubling as visitor space no. 4). Overall, 10 on-site parking spaces are required for the serviced apartment component of the development.

Residential component

The residential component of the development draws on the RMS Guide to Traffic Generating Developments for medium density residential development. The Guide recommends a minimum number of off-street, residential parking spaces of:

- 1 space for each unit (14 units = **14 spaces**), plus
- an additional 1 space per each 2 x 3 plus bedroom units, thus 13 units ÷ 2 = **7 spaces**, plus
- an additional one space per each five units for visitor parking or part thereof *is recommended* (14 units = (2.8) **3 visitor spaces**).

Consequently a total of 24 onsite car parking spaces are required for the residential units and 31 (including 3 visitor parking spaces (excluding the manager's space)) are proposed in this instance.

With the exception of car parking for unit U-4C, car parking for each residential unit is provided in a stacked parking arrangement.

Overall 13 bicycle parking spaces are available i.e. 1 in each of the residential unit garages.

The proposed development satisfies Council's DCP requirements for onsite parking.

*Chapter 26 – Kiama Town Centre*

The proposed development is generally consistent with the requirements of Chapter 26 of the DCP, except in relation to the following matters:

- Section 4 – Future Building Design – “A *general building height of no more than three (3) storeys*” applies; and
- Section 7(a) – Scale, building height and bulk – “*On major public corners and prominent entrance sites, a three (3) storey height limit should be imposed.*”

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Comment: The 3 storey height limit performance controls within Chapter 26 were effectively carried through from the preceding DCP 13 – Kiama Town Centre, which was adopted by Council in 1997. The former DCP 13 was in turn directly connected with the provisions of then Kiama LEP 1996. In this respect, Clause 50(2)(a) of LEP 1996 specified a maximum 3 storey height limit for development in the Kiama central business district.

As opposed to LEP 1996, the current LEP 2011 stipulates a maximum 11m building height limit at the site, leaving the number of storeys that may be accommodated within that height limit dependent upon design and Building Code of Australia (BCA) standards. In this respect there is a disparity/disconnect between the DCP height control and the prevailing LEP height control (the LEP being the dominant and prevailing instrument).

As discussed previously, the proposal seeks to breach the 11m building height limit, which is not supported in this instance having regard to the circumstances of the case. The proposed development constitutes five (5) storeys, albeit presents as four (4) storeys along the Bong Bong Street frontage. As discussed above under LEP Clause 4.6 and below under 'Streetscape', the proposed development is considered to be incompatible with the streetscape on account of its excessive building height.

The proposed breach of the 11m building height development standard is not supported and, in conjunction with this, concern is raised with the extent of the proposed non-compliance with the 3 storey height limit under DCP Chapter 26.

As discussed above, the proposed development is inconsistent with various controls within Kiama DCP 2012 Chapters 5 & 26. The applicant has not made sufficient requests to vary these performance controls.

### **Any Planning Agreement**

Nil

### **Any Matters Prescribed by the Regulations**

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

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

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

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

### **Any Coastal Zone Management Plan**

Nil

### **The Likely Impacts of the Proposed Development**

- *Streetscape/Townscape*

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The proposed development is five (5) storeys and some 16m in height. In terms of the Bong Bong Street streetscape, the proposed development, as it presents to Bong Bong Street, is a whole floor level higher than the adjoining development to the west at 20 Bong Bong Street. This adjoining development is a relatively recent, so it unlikely to be redeveloped in the foreseeable future. This building is therefore significant in terms of the established streetscape.

In relation to the northern side of Bong Bong Street opposite the development site, existing buildings and recently approved buildings are generally 11m in height. The approved development at 9 Bong Bong Street, for instance, was granted a minor exception to the 11m building height limit, having a height of 12.3m at the rear of the development away from Bong Bong Street. The Bong Bong Street elevation of that building was only marginally above the 11m limit. The height of buildings on the northern side of Bong Bong Street is depicted in the diagram below:



*(NB: the line identified does not depict the 11m building height, but rather the height line set by existing development to justify the height of the building at the centre of the diagram)*

It should be noted from the diagram above that the buildings on the northern side of Bong Bong Street predominantly present as 3 storeys in height to the street. Where there is a 4<sup>th</sup> storey (as in the building at the centre of the above diagram), it constitutes only a small component of the building form and is heavily recessed from Bong Bong Street. It should also be noted that there is a reasonable degree of uniformity in streetscape building height.

The height of the proposed development is not compatible with the adjoining development at 20 Bong Bong Street and is greater in height to development on the northern side of Bong Bong Street. Furthermore, the proposed fifth floor level (which encompasses the height breach), although slightly recessed from the Bong Bong Street frontage, is nonetheless a substantial component of the building that undermines the streetscape compatibility of the proposal.

Beyond the immediate Bong Bong Street streetscape, on a level between streetscape and townscape, there are significant concerns about the proposed height of the building as viewed from Surf (Main) Beach, Coronation Park and

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Chittick Oval. From these directions the full five (5) storeys and 16m building height will be exposed and will be directly comparable to the surrounding 2 and 3 storey development. In this regard the proposed development will be perceptibly higher than any other development in the area and, with that, out of scale and character with the streetscape/townscape.

In light of the discussion above the design of the proposed development is considered to be incompatible with the context of the site and is not consistent with the streetscape/townscape.

- Noise

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

- Privacy and Overlooking

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

- Overshadowing

Shadow diagrams have been supplied with the development application, which indicate that the overshadowing impacts of the proposed development will be reasonable.

- Views

The proposal will have an unreasonable impact on views currently available from neighbouring properties. This is discussed further under 'Public Submission' below.

- Vehicular Access, Parking and Manoeuvring

Sufficient car parking is proposed, as discussed above under Kiama DCP 2012 Chapter 9.

Manoeuvring is compliant with AS/NZS 2890.1 – 2004 and the driveway will be conditioned to comply with required gradients, should Council approve the development.

- Stormwater Management

A satisfactory drainage design has been provided with the application.

All stormwater will drain to the proposed drainage easement.

- Environmental Impacts

*Vegetation Removal* – The existing trees on site, including the three (3) Norfolk Island Pines, are proposed to be removed. This issue has been considered by Council's Landscape Officer and no concerns have been raised.

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

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

*Impact on Water Resources* – A central 9000L rainwater tank will be provided, as required by BASIX. Stormwater will be conveyed to the drainage easement proposed to be created, should consent be granted. Controls will be implemented during construction to minimise sedimentation.

- Social and Economic Impacts

The proposed development will likely have minimal adverse social or economic impacts.

The amenity impacts of the proposed development have been considered in detail and concerns raised in submissions are considered to warrant refusal of the application, as discussed below.

### **The Suitability of the Site for the Development**

- Traffic

Access to the proposed development is obtained from Bong Bong Street.

The development application is supported by a Traffic, Access & Car Parking Impact Assessment (prepared by Transport & Urban Planning), which concludes that *“the proposal is a moderate traffic generating development and will result in minimal traffic impacts on the adjacent road network. The proposal will have adequate parking in accordance with Council’s requirements and the internal low volume vehicle circulation and manoeuvring for the 85<sup>th</sup> % design vehicle is considered to be satisfactory.”*

The impact of the proposed development in relation to traffic and the local road network has been assessed by Council’s Development Engineers, who have raised no objections to the development on the grounds of traffic.

- Contamination from Previous Land Uses

A Phase I Preliminary Site Investigation has been undertaken by A D Envirotech Australia Pty Ltd, which concluded that a Phase II Detailed Site Investigation is warranted. As discussed above under SEPP 55, the applicant has requested that the Phase II report be conditioned, should development consent be granted.

- Effect on Public Domain

As discussed previously, the excessive height of the proposed development is not considered to be acceptable due to the resulting incompatibility with the streetscape/townscape. The development will thereby likely have an adverse effect on



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the public domain, particularly as observed from Surf (Main) Beach, Coronation Park and Chittick Oval to the south of the site where the full height and bulk of the proposed development will be visible.

It is also considered that the proposed development does not have an active street frontage, which is required under LEP 2011 Clause 6.8. In this regard the proposed ground floor use as serviced apartments does not constitute a 'business premises' or 'retail premises'. It is also arguable that the setback of the building from Bong Bong Street and its unorthodox alignment to the street also does not advocate an active street frontage in the B2 Town Centre zone. This is again to the detriment of the public domain as it relates the commercial precinct.

On a more positive note, the promotion of residential accommodation (where it qualifies as permissible shop top housing) and serviced apartments would contribute to the vibrancy and vitality of Kiama town centre and its public domain.

- Utility Needs and Supply

The proposal is serviced by all essential services.

- Safety, Security and Crime Prevention

The proposal has been considered against Crime Prevention Through Environmental Design (CPTED) principles and is considered to be acceptable.

- Operational Waste

The proposal properly considers waste storage and retrieval. Council's Waste Services have considered the proposal and have not raised any concerns.

- Operational Noise

No on-going significant noise impacts are expected as a result of the development.

- Risks to People and Property from Natural and Technological Hazards

There are no known natural & technological hazards on the land.

- BCA Compliance

Council building officer has reviewed the proposal and raises no issues in relation to BCA compliance.

- Construction Impacts

Construction works will generate some noise, though conditions of consent can be imposed to ensure that works are undertaken only within specified hours to limit impacts upon neighbours.

## Submissions

### Public Submissions

Notification letters were sent to neighbouring property owners who were provided with fourteen (14) days in which to comment on the proposal. At the conclusion of

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the notification period, fifteen (15) submissions were received which raised the following (summarised) matters of concern (in order of the frequency with which the concern is raised):

Item 1:- Concern is expressed that the proposed development exceeds the 11m building height development standard and, as a result, will:

- have a height “*far in excess of the roof line of 20 Bong Bong Street*”;
- be “*one floor level higher than all other buildings on the southern side of the street in close proximity to this development*”;
- “*dominate the skyline around Surf (Main) Beach and Coronation Park*”.

Response:- The height limit breach has been discussed in detail above under LEP 2011 Clause 4.6. Under the circumstances it is concluded that the building height, as proposed, is unacceptable and refusal of the application is accordingly recommended.

Item 2:- View loss concerns are raised from residents at 20 Bong Bong Street and 62 Manning Street (ocean views) and 11 Bong Bong Street (hinterland views).

Response:- As the concerns are raised in relation to 3 separate properties, the issue is discussed below in relation to each address separately.

- 20 Bong Bong Street – Concern is expressed about the loss of primary ocean views from unit living rooms.

Comment: 20 Bong Bong Street is situated immediately west of the proposed development. Ocean views are currently available over the existing Kiama Cove Motel and between the motel and the adjacent three (3) storey development at 64 Manning Street. The proposed development will impede these views because views over the motel will be lost with the proposed replacement building, being a much taller building; and also because there will be a narrower view corridor between the proposed development and the existing development at 64 Manning Street, particularly on account of the protruding unit U-2A (and U3A) kitchen in the proposed development.

The applicant partly justifies the proposal on the basis that it occupies the footprint of the existing motel building; however in effect the proposed building is much larger and bulkier than the existing motel and the footprint of proposed development is substantially broader than that of the existing motel. This broader building footprint and bulkier building encroaches on the view corridor identified above (particularly at the point adjacent the eastern corner of 64 Manning Street) to an extent beyond that of the existing motel building.

The impacts of view loss from 20 Bong Bong Street, as a consequence of the proposed development, are considered to be significant and arguably more avoidable with alternative design. For instance, the northern sector of the subject site is currently under-utilised by the proposed development, being where the façade of the building is setback greatest from Bong Bong Street. More intensive use of this

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area would have no unreasonable adverse view loss impact on neighbouring 20 Bong Bong Street, as there are no windows from 20 Bong Bong Street directly facing the site.

The view loss impacts of the proposed development on 20 Bong Bong Street are considered to be unreasonable.

- 62 Manning Street – *“The proposed building and footprint will severely effect current ocean view of building of Strata Plan #67863”*

Comment: 62 Manning Street is situated immediately west of the proposed development, adjoining 20 Bong Bong Street. As with 20 Bong Bong Street, ocean views at 62 Manning Street are currently available over and between the existing Kiama Cove Motel and the adjacent three (3) storey development at 64 Manning Street and; therefore; the discussion above is reiterated in principle.

- 11 Bong Bong Street – These residents have generally accepted that development of the site will inevitably lead to the loss of their current beach view; however express objection that the excessive height of the building will block their *“primary views of iconic green hills surrounding Kiama”*.

Comment: It is anticipated, based on comparison of the proposed development against the existing development at 20 Bong Bong Street, that these hinterland views will be blocked by the proposed development. It is also evident that a building with a compliant 11m height would allow for hinterland views toward the south west to be retained from the upper level units living areas and front balconies at 11 Bong Bong Street. Ocean views toward the south and south-east will still be available from this address.

In the absence of the beach views (that will be lost), the hinterland views become a more important view subject. The extent of the hinterland view loss expected to be brought about by the proposed development is unacceptable. This view loss is a consequence of the excessive building height, which is not considered to be reasonable as discussed above under LEP 2011 Clause 4.6.

Overall it is considered that view loss from neighbouring properties as a result of the proposal is unreasonable, both on account of the excessive height of the building (as it relates to 11 Bong Bong Street) and on account of the siting and bulk of the building (as it relates to view loss from 20 Bong Bong Street and 62 Manning Street).

Item 3:- Concern is expressed about increased traffic brought about by the development and the expected reduced availability of street parking.

Response:- As discussed earlier, the impact of the proposed development in relation to traffic and the local road network has been assessed by Council’s Development Engineers, who have reviewed the Traffic, Access & Car Parking Impact Assessment (which accompanied the development application) and no objections to the development on the grounds of traffic have been raised by Council’s Engineers.

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Furthermore, the proposed development satisfies Council on-site car parking requirements, as applicable at the time the development application was lodged.

Item 4:- Concern is expressed about dilapidation of adjoining developments, where it is requested that the developer should undertake a dilapidation report should the development be approved.

Response:- Should Council grant consent to the proposal a condition should be included in any consent notice requiring the developer to prepare a dilapidation report covering adjoining development.

Item 5:- Concern is expressed about the impact of the proposed development on the streetscape, with comments along the lines that the development:

- is *“too large and imposing”*;
- *“does not blend with the surrounding area”*;
- *“will damage the visual amenity around the beach area”*.

Response:- The issue of streetscape is addressed earlier in the report. Under the circumstances it is agreed that the proposed building is unacceptable in terms of its streetscape impact and refusal of the application is recommended on this basis.

Item 6:- Objection is made to the proposed removal of the Norfolk Island Pines on the site, as these are an attractive part of the streetscape.

Response:- An Arborist Assessment accompanies the development application and Council's Landscape Officer has considered the proposal to remove the trees on site, including three (3) Norfolk Island Pines. No objection to the removal of these trees is raised. The mature Norfolk Island Pine in Bong Bong Street will be retained and protected.

Item 7:- Objection is raised to the development on the basis that it does not include any shops.

Response:- As discussed in detail earlier in the report, it is agreed that the ground floor does not include 'retail premises' or 'business premises' for the purposes of 'shop top housing'. Refusal of the application is recommended on this basis. As an otherwise independent land use; however, it should be noted that 'serviced apartments' are a permissible land use in the zone.

Item 8:- Concern is expressed about potential noise nuisance from the automated garage entry door and the plant room.

Response:- Should Council grant consent to the proposal a condition should be included in any consent notice requiring that noise from garage door and plant room not exceed allowable threshold of 5dBA above background noise levels at the property boundary. It is likely that any such noise would be most keenly observed within the development, so in any event it would be in the interest of the proposed development and its future occupants that such noise impact be minimised.

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Item 9:- Concern is expressed that the proposed development will substantially reduce the number of tourists who visit due to the loss of motel accommodation.

Response:- There are other operating motels within Kiama that would benefit by the loss of the existing motel on-site. Furthermore, there are alternative accommodation options available in the form of serviced apartments (including 9 within the proposed development), short term rental of houses/units, bed & breakfast accommodation, holiday parks etc. It is not considered that the proposed development will have a significant adverse impact on tourism.

Item 10:- Concern is expressed about the removal of potential asbestos materials in the building proposed to be demolished.

Response:- Should Council grant consent to the proposal a condition should be included in any consent notice regarding the safe removal and disposal of any asbestos materials.

Item 11:- Concern is expressed about noise and dust during the demolition and construction.

Response:- Conditions of consent will be imposed, should consent be granted, to address such issues and minimise the impacts on neighbours, including restricting the hours during which construction activities may occur and employing dust suppression measures.

Item 12:- Concern is expressed that stormwater back flow could cause damage to neighbouring buildings.

Response:- Stormwater disposal and management would be appropriately engineered should Council grant consent to the development.

Item 13:- Concern is expressed that proposed landscaping in the south-western corner will cut out morning sunlight to 64 Manning Street. It is requested that this landscaping be replaced with 1-1.5m high shrubs.

Response:- A condition of consent may be imposed to address this concern should Council approve the development.

Item 14:- Concern is raised about the impacts of construction traffic on school buses and other traffic.

Response:- A consent condition would be imposed, should consent be granted, that a Traffic Control Management Plan be prepared by an accredited person, prior to the commencement of any works on site.

Item 15:- Concern is expressed that three (3) visitor parking spaces is insufficient for the development.

Response:- The proposed development satisfies Council's DCP requirements for on-site parking, as applicable at the time the development application was lodged. It should also be noted that on-site visitor parking is only required for the residential units, not the serviced apartments.

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Item 16:- Concern is expressed about garbage bin congestion on the kerb-side during collection.

Response:- Issues surrounding garbage bin servicing have been considered by Council Environmental Services – Waste unit and no objections are raised to the proposal.

Item 17:- Concern is expressed about overshadowing of Chittick Oval.

Response:- Shadow diagrams have been provided which indicate that overshadowing of this public space will not be unreasonable.

### External Referrals

Nil

### Internal Referrals

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

- Development Assessment Officer - Building

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

- Subdivision & Development Engineer

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

- Property Manager

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

- Landscape Design Officer

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

- Environmental Health Officer - Waste

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

- Heritage Advisor

No objection has been raised in relation to the proposed development on the grounds of heritage impact. Notwithstanding this, concerns have been expressed as to the streetscape compatibility of the proposed development and the proposed finish colours, as has been discussed within this report.

- GIS Officer

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

## Report of the Director Environmental Services

- 9.6 Lot 1 DP 1115030, Lot 1 DP 200068, Lot A DP 161881, Lot 7016 DP 1074643, Lot 1 DP: 615423, 10 Bong Bong Street, Kiama - Demolition of Existing Building and Construction of Mixed Used Development Consisting of 9 Serviced Apartments & 14 Shop Top Housing Units (10.2015.307.1)  
(cont)
- 

**The Public Interest**

The proposal is considered to be inconsistent with Kiama LEP 2011 in terms of land use (the proposed residential accommodation does not constitute shop top housing), in terms of the requirement for an active street frontage (because the ground floor does not comprise business premises or retail premises), and because the proposed development breaches the 11m building height development standard of the LEP, which has not been adequately justified under the circumstances. The proposed development is also non-compliant with various development controls under DCP 2012 Chapters 5 & 26.

The proposed development is not likely to cause significant adverse social and economic impacts, but is likely to cause significant adverse impacts to the built environment due to its incompatibility with the streetscape and, as such, is not considered to be suitable for the site.

On balance the proposed development is not considered to be consistent with the public interest.

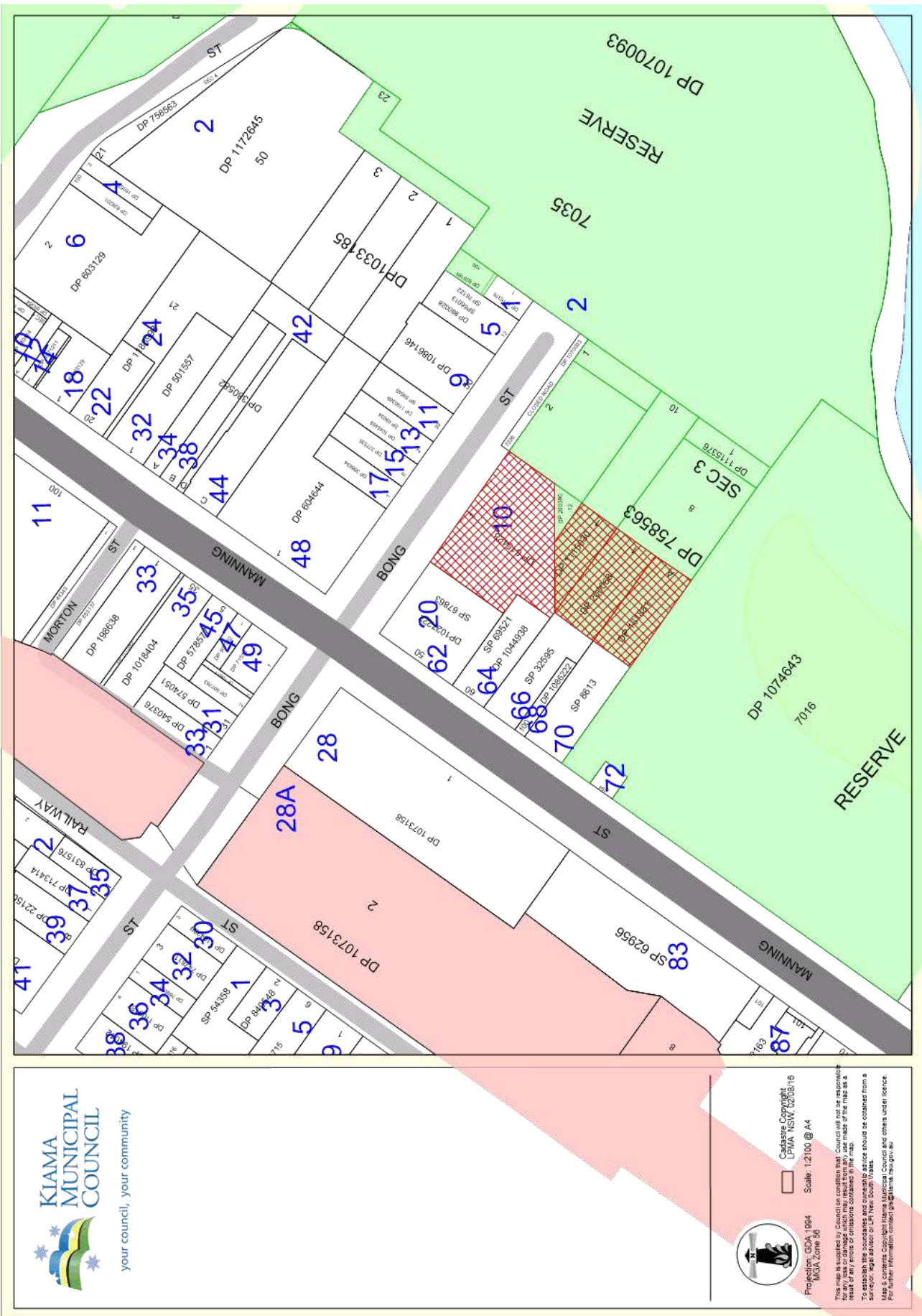
**Final Comments and Conclusions**

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 79C of the Environmental Planning and Assessment Act, 1979. The proposal is not consistent with Kiama LEP 2011 or with DCP 2012. The proposed development, as a mixed use development, is generally consistent with the objectives of the B2 Town Centre zone, although the residential accommodation component is prohibited as it is not considered to qualify as shop top housing.

Consideration has been given to the social, economic and environmental impacts of the proposed development and significant concerns are raised in relation to the likely environmental impacts. Concerns raised in submissions have been considered and are consideration warrant refusal of the application.

The proposed development is considered to be unacceptable and refusal is recommended.

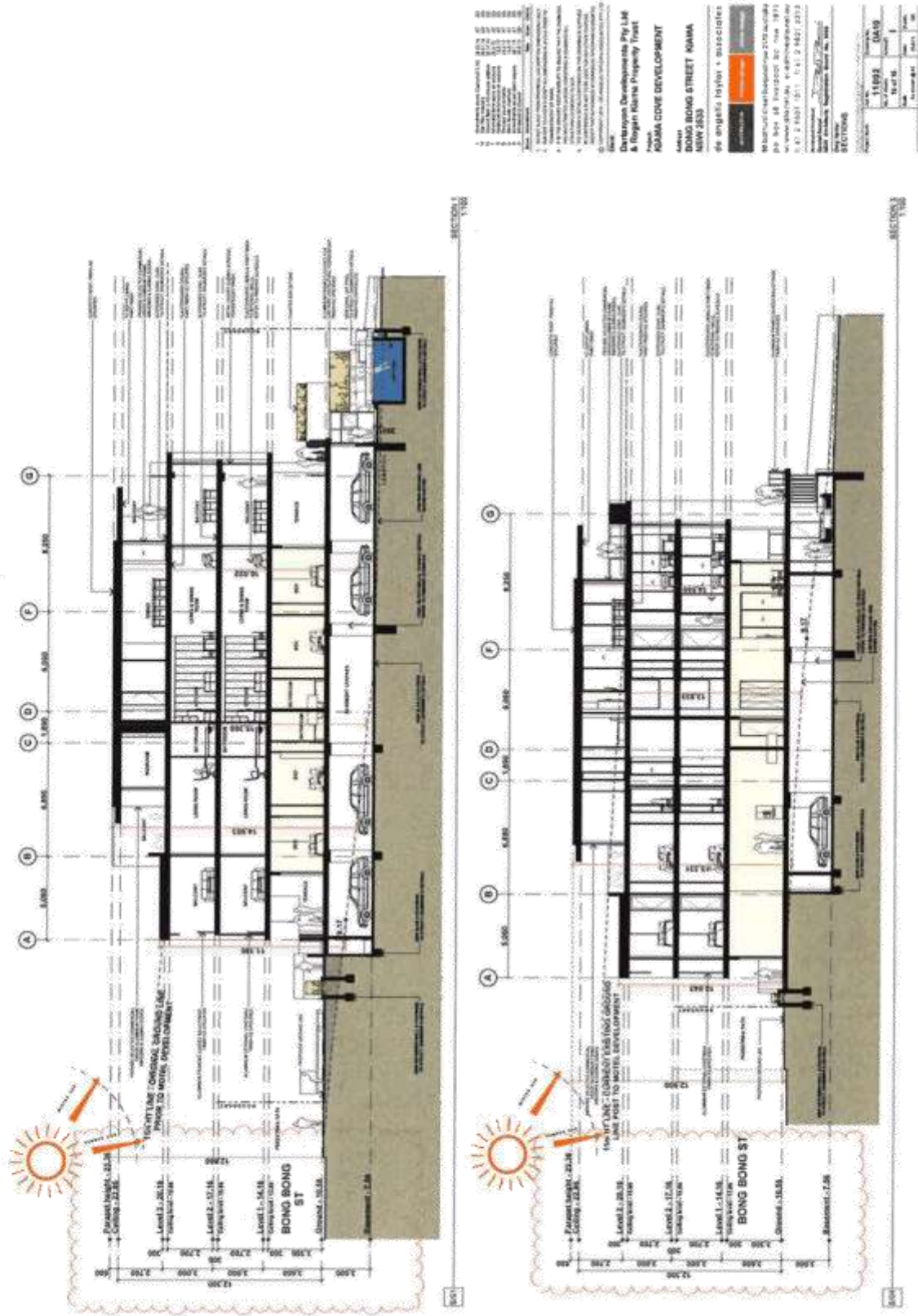
















**Item 9.6 - Lot 1 DP 1115030, Lot 1 DP 200068, Lot A DP 161881, Lot 7016 DP 1074643, Lot 1 DP: 615423, 10 Bong Bong Street, Kiama - Demolition of Existing Building and Construction of Mixed Used Development Consisting of 9 Serviced Apartments & 14 Shop Top Housing Units (10.2015.307.1)**

**Attachments 2 - 10.2015.307.1 - plans**



**de angelis taylor associates**

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 Email: info@deangelistaylor.com.au  
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 A.C.N. 116 621 101 F.A.S. 1853 2227

**Project Name:** Kiama Cove Development  
**Site No.:** 10.2015.307.1  
**Scale:** 1:100  
**Author:** [Name]  
**Check:** [Name]  
**Date:** 11/01/15

Item 9.6

Attachment 2









**9.7 Review of Determination - Lot 5204 DP 1210287 3 Bourrool Street, Kiama - Proposed attached dual occupancy and strata subdivision (10.2016.41.1)**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.1 Comply with Development Regulation

**Summary**

This report considers a request by the applicant for a review of determination of development application 10.2016.41.1 which was refused by Council at its June 2016 meeting.

**Finance**

N/A

**Policy**

N/A

**Attachments**

- 1 10.2016.41.1 - S82A Council Report- attachments
- 2 10.2016.41.1 - Council Report 28 June 2016

**Enclosures**

- 1 10.2016.41.1 - Review of Determination Plans

**RECOMMENDATION**

That Council review its determination and, having regard to the amended proposal put forward by the applicant, approval DA 10.2016.41.1 as amended subject to the conditions of consent included in the original report and included as an attachment to this report.

**BACKGROUND**

The applicant for the subject development application has lodged with Council a request for a review of Council's decision to refuse development consent for the proposal. Development consent was refused by Council on 28 June 2016 for the following reason:

*"The proposed development involves significant non-compliance with controls C2, C29, C42, C54 and potentially C26 of Chapter 4 of Development Control Plan 2012."*

The original report to Council (28 June 2016) is attached to this report. The non-compliances with DCP 2012 controls were identified in the original report under the heading 'Kiama Development Control Plan (DCP) 2012', where each of the non-compliances were addressed in detail.

## Report of the Director Environmental Services

## 9.7 Review of Determination - Lot 5204 DP 1210287 3 Bourrool Street, Kiama - Proposed attached dual occupancy and strata subdivision (10.2016.41.1) (cont)

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Under Section 82A of the Environmental Planning & Assessment Act 1979 the applicant is entitled to request a review of a determination of a development application. Section 82A(6) states:

*“(6) If the council reviews the determination, the review must be made by:*

- (a) if the determination was made by a delegate of the council—the council or another delegate of the council who is not subordinate to the delegate who made the determination, or*
- (b) if the determination was made by the council—the council.”*

In accordance with this section, since the determination was made by the Council, the Council is the body that must consider the redetermination.

**History**

In June 2016 Council considered a report which recommended conditional development consent be granted for an attached dual occupancy and two (2) lot strata subdivision. The application was referred to Council for determination because notification of the proposal attracted six (6) submissions.

The proposed development involved variation to Council’s Development Control Plan (DCP) 2012 Chapter 4 - Low Density Development.

The report to Council discussed in detail the proposed DCP variations, which were generally supported by Council’s assessment officers.

Councilors expressed concern; however, about the perceived degree of DCP variations sought and the Development Application was subsequently refused for the reason quoted.

**Report**

The applicant has considered the reason for refusal and has provided the following in response to the concerns of Councilors.

In accordance with Section 82A(3A) the applicant may make amendments to the original application and lodge those amendments for consideration in the review.

To that end the applicant has made the following amendments to the original proposal:

- Privacy screens have been provided to the upper floor habitable rooms overlooking 16 Chapman Street to the south.
- The height from ground floor to underside of the upper level concrete floor has been reduced by 200mm by deleting one course of supporting concrete blockwork.
- It is proposed to abandon the use of hollow floor concrete floor planks to the upper floor structure, and use a fully formed concrete suspended slab. This will reduce the overall depth of the floor system and have the effect of lowering the overall height of the building a further 130mm.



## Report of the Director Environmental Services

## 9.7 Review of Determination - Lot 5204 DP 1210287 3 Bourrool Street, Kiama - Proposed attached dual occupancy and strata subdivision (10.2016.41.1) (cont)

- 
- It is proposed to reduce the roof pitch of the building to an absolute minimum 1.5 degrees, from the original proposed 4 degrees. This, when coupled with eliminating any vertical upstand of the parapet above the roof surface and the other reductions, has the effect of reducing the overall height by 630mm.
  - Additional shadow modelling (attached) has been provided to take account of the reduced height and to demonstrate the compliant shadowing effect on 16 Chapman Street.

The Controls (C2, C29, C42, C54 and C26) as listed in the reason for refusal of the original application are considered as follows:

*C2 Generally, where development greater than single storey is proposed, that component greater than one storey shall be located within 12.0 metres of the applicable front building line:*

- *Development in excess of one storey beyond this point will be more critically analysed in respect to the amenity impacts on adjoining properties, by the development, with particular reference to the following:*
- *Maintenance of privacy into the adjoining dwellings and private open space areas*
- *Access to natural light and/or overshadowing*
- *Visual bulk*
- *Treatments to reduce the likely amenity impacts on adjoining properties might include screens, opaque glazing, highlight windows, increased side setbacks, broken roof lines, split floor levels or a general height reduction.*
- *New development shall comply with the Building Height Plane.*

Comment - The amendments provide for an increased amenity to adjoining properties through the provision of screening to the southern upper floor habitable room windows. Overshadowing and visual bulk are also reduced through the lowering of the building and removal of parapets.

It should be noted that Control C2 does not deny an opportunity for a second storey beyond the 12 metres behind the applicable building line and should therefore not be seen as a prohibition, but certainly, any such proposal will need to be critically assessed. It highlights the need for greater care to be taken in the area of amenity impacts on adjoining properties.

*C29 A deck/balcony may count as part but not all of a dwellings private open space, subject to the following merit based assessment:*

- *A maximum of 1/3 of the total open space can be in the form of a balcony;*
- *That the dimensions and location of the deck would provide for useful practical multipurpose open space;*
- *The location of the deck will not compromise any amenity issues (such as noise or privacy) for surrounding dwellings/occupants;*

## Report of the Director Environmental Services

## 9.7 Review of Determination - Lot 5204 DP 1210287 3 Bourrool Street, Kiama - Proposed attached dual occupancy and strata subdivision (10.2016.41.1) (cont)

- 
- *Balconies located on the side of developments are not permitted;*
  - *A minimum dimension of 2 metres is required for any balcony.*

Comment – The proposal has not been altered to address this control. However, as noted in the original report, the proposed dual occupancy is composed of one unit above another which limits the practicality and opportunity for private open space to be provided at ground level for the upper level unit.

The balcony space available to the first floor dwelling is accessed directly from the main living area, making it highly functional and practical. The balcony provides for coastal views from the northeast through southeast, provides for good morning to midday solar access, provides for excellent passive surveillance of the street and does not result in unreasonable privacy loss to neighbours.

*C42 Lots must have a minimum frontage of 15m for dual occupancy/secondary dwelling development. The minimum width will be measured at the building line for irregular shaped lots.*

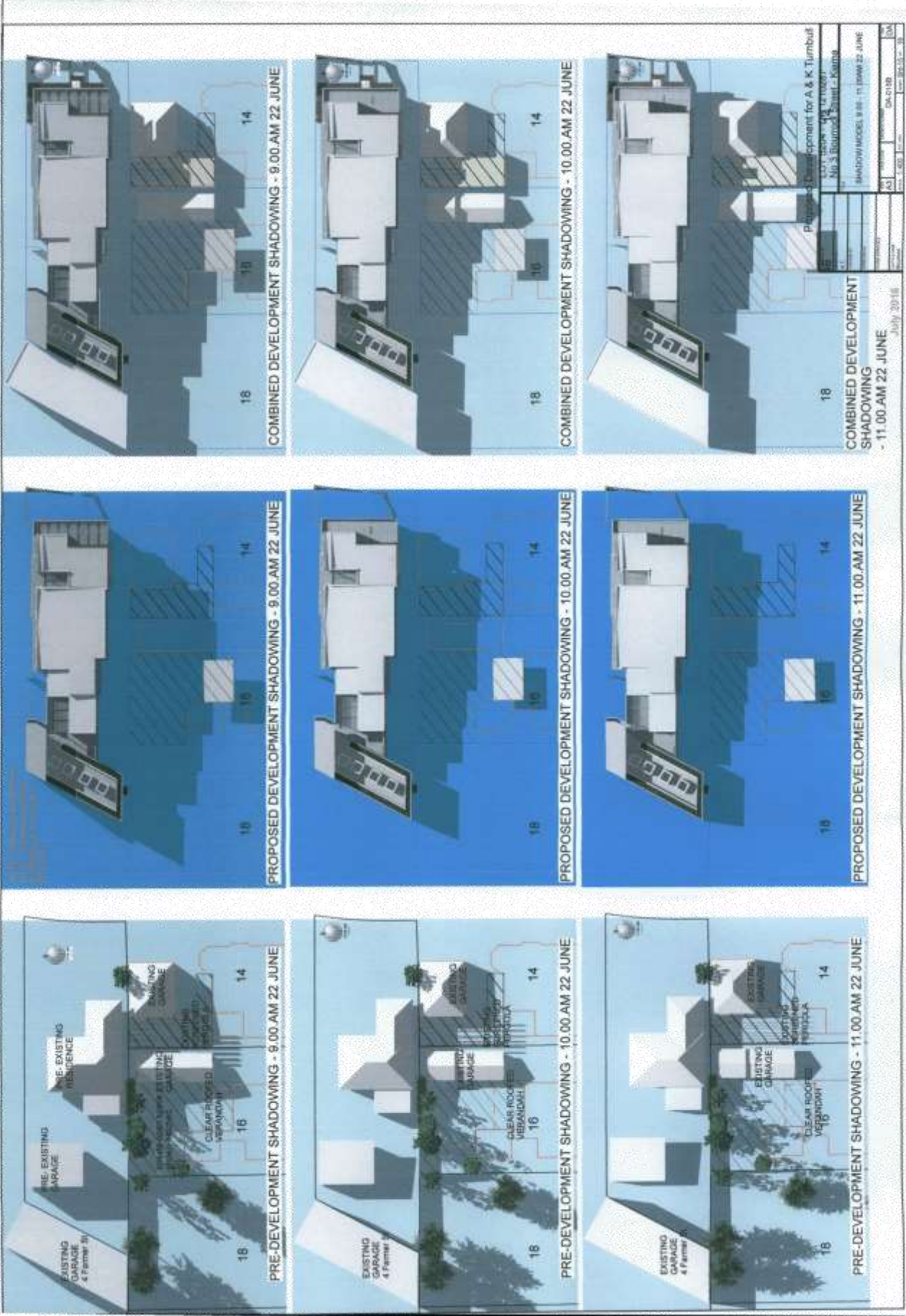
Comment – The lot is located in an R3 medium density zone within which dwelling houses are prohibited. The minimum residential development permissible on the property is a dual occupancy. Therefore, the use of this control as a reason for refusal would essentially sterilize the development potential of this site as there is nothing the applicant can do to achieve the required site width.

*C54 Windows in a habitable room should be designed and located so as not unreasonably interfere with the privacy of adjoining dwellings.*

Comment – The applicant has provided privacy screens to the upper floor habitable room windows to the southern elevation in order to satisfy this requirement.

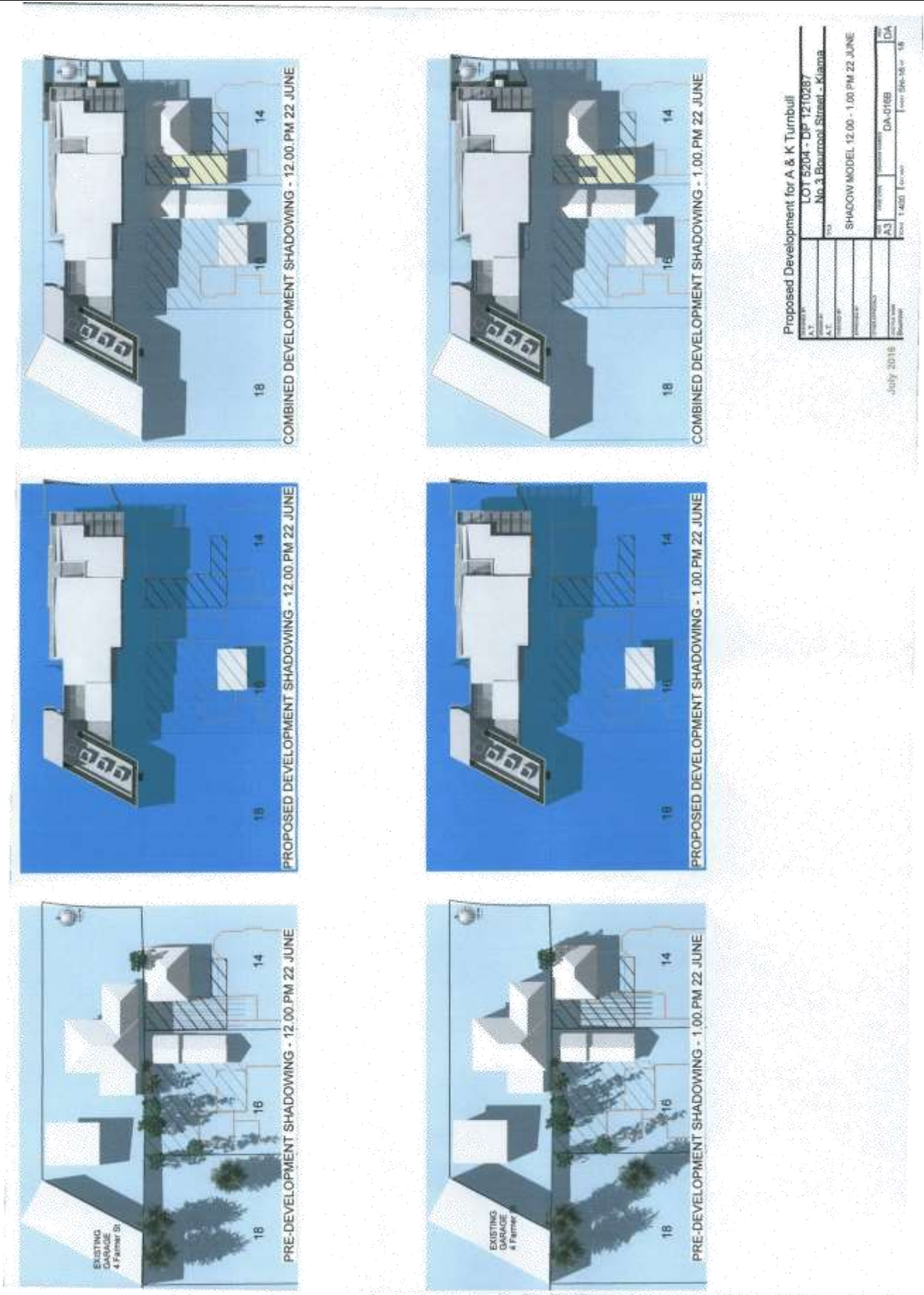
*C26 A minimum of 50% of the provided private open space areas are to receive a minimum of 3 hours of sunlight between 9.00am and 3.00pm on June 22. The sunlight must be able to cover the area measured at 1.0 metre above the finished level of the private open space area.*

Comment – This control relates to the amenity of the property upon which the development is proposed and not the impact on adjoining properties. The proposed private open space areas comply with this control.



Attachment 1  
 Item 9.7





Item 9.7

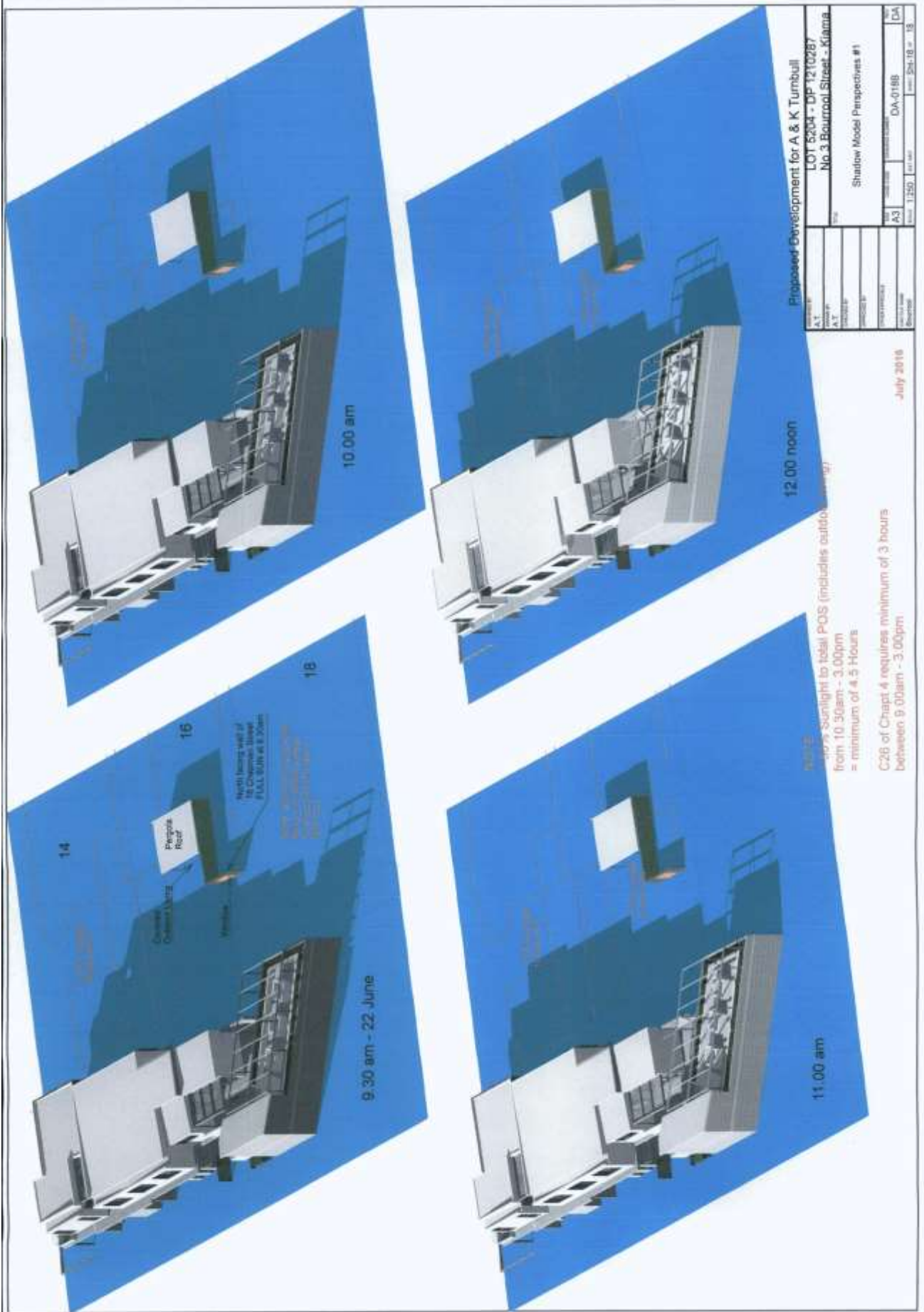
Attachment 1

Proposed Development for A & K Turnbull	
LOT 5204 - DP 1210287	
No. 3 Bourrool Street - Kiama	
SHADOW MODEL 2.00 - 3.00PM 22 JUNE	
DATE: 14/06/16	SCALE: DA-0178
PROJECT NO: 1400	DATE: 28/11/15
PROJECT NAME: Bourrool	DATE: 28/11/15

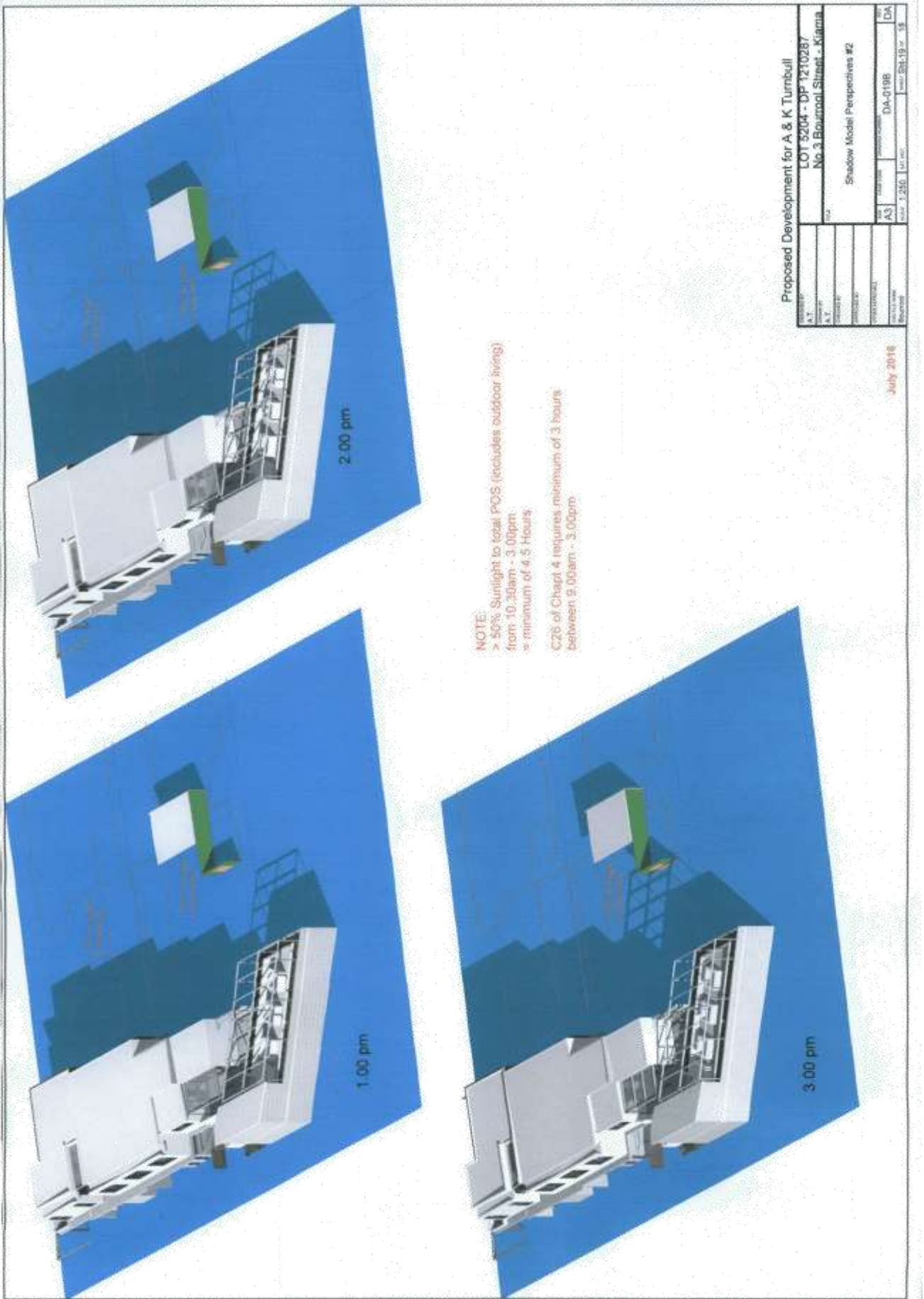
Item 9.7

Attachment 1

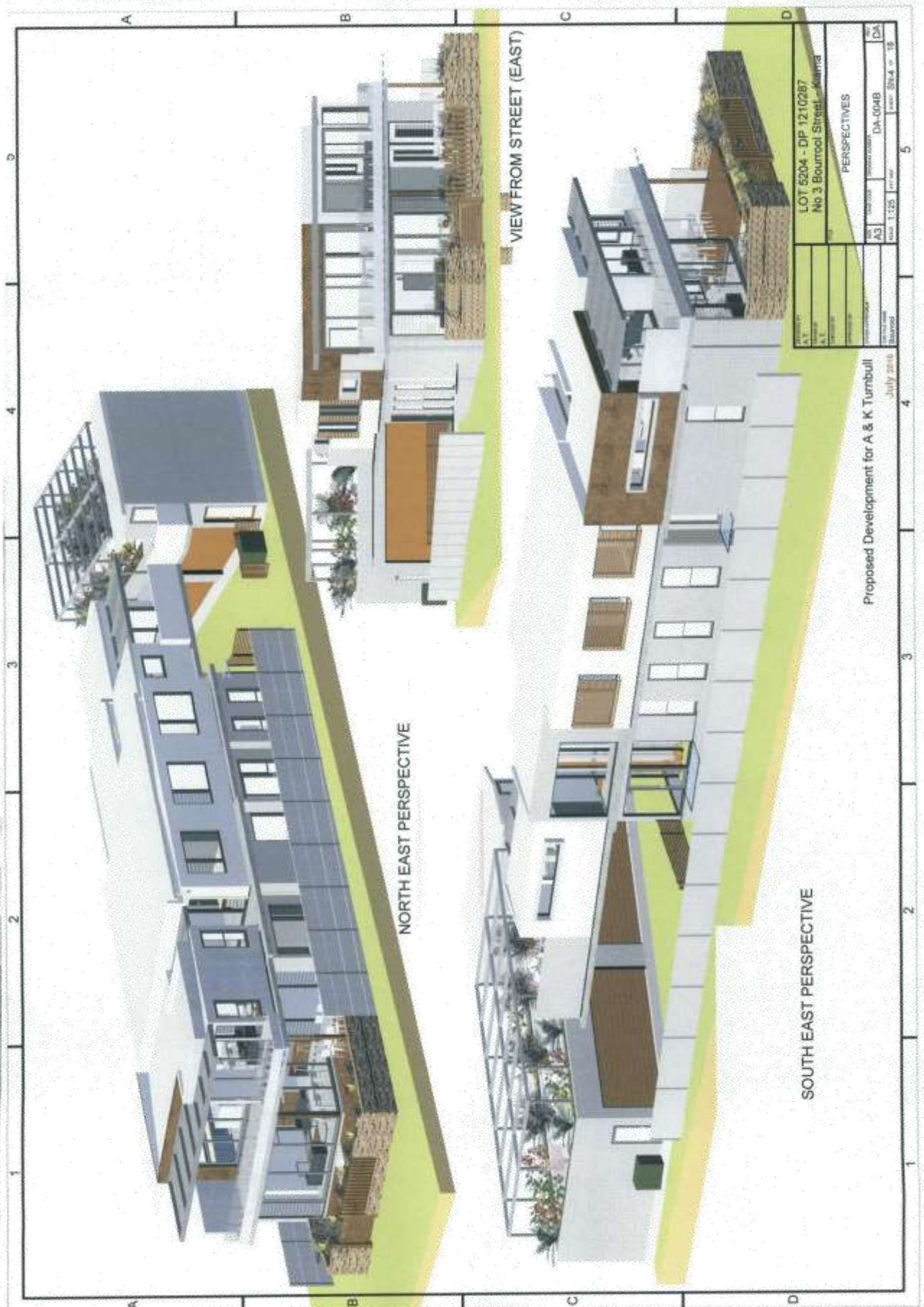




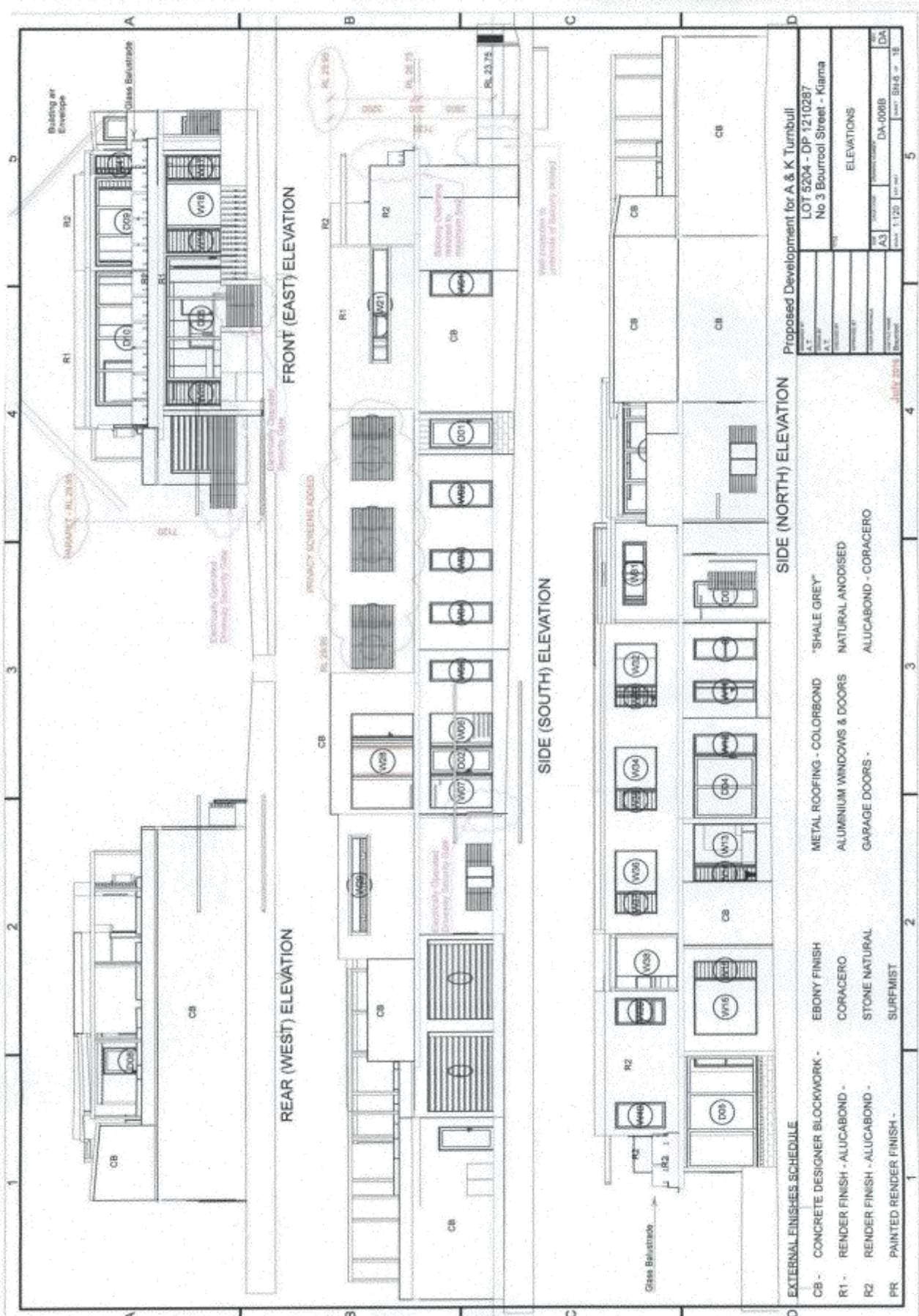
Attachment 1  
 Item 9.7













**ORDINARY MEETING**

28 JUNE 2016

Report of the Director Environmental Services

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**9.3 Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama - Proposed attached dual occupancy and strata subdivision (10.2016.41.1)**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.1 Comply with Development Regulation

**Summary**

This report reviews the amended development application seeking consent for the construction of an attached dual occupancy development with subsequent two (2) lot strata subdivision.

The proposed development involves variation to DCP 2012 Chapter 2 (Overall Controls) in relation to building height plane and setbacks, as well as Chapter 4 (Low Density Development) in relation to the first floor dwelling balcony private open space (control C29) and minimum lot width (control C42).

The report recommends Conditional approval of the application.

**Finance**

N/A

**Policy**

N/A

**Reason for the Report**

The development application is reported to Council as six (6) submissions have been received following notification of the proposal.

**Attachments**

1 10.2016.41.1 - plans

**Enclosures**

Nil

**RECOMMENDATION**

That Council approve development application 10. 2016.41.1 pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, subject to conditions at the end of this report.

Item 9.3 - Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama -  
Proposed attached dual occupancy and strata subdivision  
(10.2016.41.1)

1 - 10.2016.41.1 - plans

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## BACKGROUND

**Owner/Applicant:** Mr A J & Mrs K A Turnbull

**Site Zoning:** R3 Medium Density Residential

### Development Site

The property is described as Lot 5204 DP 1210287 which is located at 3 Bourrool Street Kiama.

The overall site measures 668.1m<sup>2</sup> in size and is rectangular in shape. The site currently contains a garage and is bounded by residential land containing principally dwellings to the north, west and south with Bourrool Street to the east.

The site is zoned R3 Medium Density Residential pursuant to Kiama Local Environmental Plan (LEP) 2011.

The site is cleared and generally level.

The site drains to Bourrool Street, from which access to the property is also obtained.

The site is serviced by water, sewer, electricity and telecommunications.

### Description of the Proposed Development

The proposal involves the construction of an attached dual occupancy and subsequent strata subdivision. Demolition of the existing structures on-site has been approved under DA 10.2015.24.1, which has been partially enacted with the demolition of the dwelling (the detached garage still remains).

The proposed ground floor dwelling has a floor area of 176m<sup>2</sup> comprising an open plan kitchen/living/dining area opening onto a north-easterly oriented deck, three (3) bedrooms (master with ensuite), laundry, bathroom and media room.

The proposed first floor dwelling has a floor area of 204m<sup>2</sup> comprising an open plan kitchen/living/dining area opening onto an easterly oriented balcony, three (3) bedrooms (master with ensuite and walk in robe), laundry, bathroom, office and media room, as well as ground floor entry foyer. Access to the first floor is available by both internal lift and stairs.

Access to the dual occupancy is from Bourrool Street, with the proposed driveway extending along the southern length of the property.

A detached four (4) car garage is proposed at the rear of the site. The garage is divided so that each proposed dwelling has access to a double lock-up garage.

It is proposed to finish the development externally as follows:

- Walls a combination of:
  - Concrete smooth stone blockwork – Ebony finish
  - Render finish (R1) – Alucabond – Coracero (oxidised) finish
  - Render finish (R2) – Alucabond – Stone/Natural finish
- Roofing: Colorbond metal roofing "Shale Grey" in colour
- Garage doors: Alucabond – Coracero finish

Bin storage areas are identified on-site, with kerbside waste collection to occur in Bourrool Street.

### Section 79C Assessment

Item 9.3 - Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama -  
Proposed attached dual occupancy and strata subdivision  
(10.2016.41.1)

1 - 10.2016.41.1 - plans

The proposed development has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) and the following matters are considered relevant:-

**Relevant Environmental Planning Instruments**

- State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71)

The site is located within the coastal zone, as defined by SEPP 71. The site is not located within a 'sensitive coastal location' as defined by SEPP 71

Consideration has been given to the objectives of the SEPP 71 and the matters prescribed by Clause 8. The proposed development is considered to be consistent with the objectives of the SEPP.

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

A BASIX Certificate was lodged with the application which demonstrates that the dwelling has been designed in accordance with BASIX. A light solar absorbance roof colour (Colorbond Shale Grey) is proposed, consistent with BASIX commitments.

- State Environmental Planning Policy No 55 - Remediation of Land

The land is suitable for the proposed use.

- Illawarra Regional Environmental Plan No. 1 (IREP1)

The proposal is not inconsistent with the aims and objectives of IREP 1.

- Kiama LEP 2011

The subject land is zoned R3 Medium Density Residential pursuant to Kiama LEP 2011. The proposal (*attached dual occupancy*) is permitted with consent in the zone and is considered to be consistent with the zone objectives.

Specific clauses requiring consideration:

Clause 4.1 requires that the minimum subdivision lot size is not less than the minimum size shown on the Lot Size Map. Strata subdivision of the proposed dual occupancy is proposed, which is not bound by minimum lot size under sub-clause (4).

Clause 4.3 requires that the height of the building does not exceed the maximum height shown on the Height of Buildings Map (8.5m in this instance). The proposal does not exceed the height shown on the Height of Buildings Map, having a height in the order of 7.78m.

Clause 4.4 requires that the floor space ratio does not exceed the maximum floor space ratio shown for land on the Floor Space Ratio map (0.7:1 in this instance). Council's calculations verify that the proposal does not exceed the floor space ratio shown for land on the Floor Space Ratio map, having a FSR of 0.62:1.

Clause 5.5 lists requirements for development within the coastal zone. The proposal is not inconsistent with the objectives of the clause. The proposal does not cause increased coastal hazards or adverse impacts by way of diminished foreshore access, treatment of effluent and disposal of stormwater.

Clause 6.2 lists considerations for proposals which involve earthworks. The proposal meets with the objectives of the clause and the matters prescribed for consideration are satisfied.

**Any draft Environmental Planning Instruments**

Nil.

Item 9.3 - Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama -  
Proposed attached dual occupancy and strata subdivision  
(10.2016.41.1)

1 - 10.2016.41.1 - plans

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### Development Control Plans (DCPs)

- Kiama Development Control Plan (DCP) 2012

As the proposal is for a dual occupancy development, Chapter 4 of Kiama DCP 2012 – Low Density Development contains the primary controls for the development.

It is noted that as the proposal is located in a R3 – Medium Density Residential zone, some matters contained in Chapter 5 of Kiama DCP 2012 have also been considered in the assessment of the proposal.

#### Chapter 2 – Overall Controls

- Section 6 – Building Height Plane. This requires that, for low density development only, no part of the structure (excluding eaves, fascia and roof gutter to a maximum width of 600mm) exceeds the building height plane projected at an angle of 45° from a point 5m vertically above the existing ground level at any boundary of the site.

The proposed garage roof top pergola (adjacent the western boundary) and storage room (adjacent the northern and western boundary) breach the prescribed building height plane.

The proposed building height plane breaches do not have any amenity impact on the adjoining land to the west, as this land is currently occupied by a garage building that is built to the property boundaries.

In terms of the building height breach adjacent the northern property boundary as brought about by the storage room, the affected dwelling to the immediate north has its concrete car park, driveway and service area in this location, so the amenity impacts of the building height breach on the neighbouring development are considered to be minor. Similarly, there are no significant overshadowing impacts resulting from this element of the building. It is also prudent to note that the landowner to the north has raised no objection to the proposal.

No objection is raised to the proposed building height plane breach under the circumstances.

- Section 7 – Building Lines

Front setback – The building line map identifies a 6m front setback applying to the site. However the land is zoned R3 Medium Density and DCP 2012 Chapter 5 control C9 permits a 4.5m front setback for medium density development.

Although the proposed dual occupancy is not technically a 'medium density' development, it is considered reasonable that a 4.5m setback should be applied as it otherwise would for medium density development (eg a three unit development), as such development will progressively occur in the area in accordance with the R3 zone.

In addition to the above, the applicant has highlighted the context of the site, pointing out that the adjacent dwelling to the south (being on a corner allotment) has a setback of approximately 3m to the Bourrool Street boundary and also the dwelling diagonally opposite the development site has a setback of only approximately 1m to the Bourrool Street boundary.

In conjunction with the existing setbacks of adjoining and adjacent development, it is also noted that Bourrool Street curves away from the development site at its southern boundary, at which point the road reserve width substantially broadens. This means that the development is physically and perceptibly further away from the street pavement (as it otherwise would be had the street alignment been straight), which in turn means that the proposed 4.5m front setback will be more compatible in the context of the streetscape.

Item 9.3 - Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama -  
Proposed attached dual occupancy and strata subdivision  
(10.2016.41.1)

1 - 10.2016.41.1 - plans

Rear setback – As above, the building line map identifies a 6m rear setback applying to the site. In this instance a zero lot line is proposed for the garage of the proposed development.

The justification underpinning the proposed garage built to the rear (and side (northern)) boundaries, is largely centred on the existing garage adjoining the western boundary of the site at 4 Farmer Street, Kiama. This neighbouring garage occupies a narrow, irregular 'protrusion' of the rear of that lot and the garage adjoins three boundaries of the lot, including the entire length of the rear boundary of the subject lot. The proposed garage would adjoin the length of the existing garage at 4 Farmer Street.

The proposed garage does not result in any unreasonable adverse impact to neighbours in terms of privacy loss, view loss or overshadowing. Of the neighbours most impacted by the proposed zero lot line of the garage (to the northern and western boundaries), being the neighbours at 4 Farmer Street and 18 Chapman Street; neither raised any objection to the proposed rear building line breach.

Under the circumstance the proposed zero lot line of the garage is considered to be a rational design response to the existing garage to the west that is built to the boundary.

o Section 36 – Fencing

Control C54 requires front fences in excess of 900mm high and less than 1500mm high to be at least 70% visually permeable.

The proposed front fence is 1200mm high and has approximately 40% visual permeability to Bourrool Street. Had the fence been 1500mm high it would be necessary to more strictly apply the 70% visual permeability; however the proposed fence is only 1200mm high, which is not unreasonable for a front boundary fence. The fence is proposed to be clad with stone, incorporate hardwood timber inserts and timber gate and these materials, combined with the design of the fence, means it presents very attractively to the street and provides security and privacy for the development.

The driveway of the proposed development is along the southern boundary of the site, but bends northward at the point where it intersect Bourrool Street so as to avoid an existing power pole within the road reserve. The front fence therefore tapers away from the southern boundary within the front building line, which creates a broader field of vision for vehicles egressing from the site. The proposed variation to the 70% visual permeability of the proposed 1.2m high front fence does not result in any unacceptable safety loss implications to street users. Council's Engineers have raised no objection to the proposed front fence on the grounds of traffic and road safety.

Chapter 4 – Low Density Development

o Control C29 – States that a "deck/balcony may count as part but not all of a dwellings private open space, subject to the following merit based assessment:

- A maximum of 1/3 of the total open space can be in the form of a balcony.
- That the dimensions and location of the deck would provide for useful practical multipurpose open space;
- The location of the deck will not compromise any amenity issues (such as noise or privacy) for surrounding dwellings/occupants.
- Balconies located on the side of developments are not permitted.
- A minimum dimension of 2 metres is required for any balcony."

Item 9.3 - Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama -  
Proposed attached dual occupancy and strata subdivision  
(10.2016.41.1)

7 - 10.2016.41.1 - plans

The proposal is for a relatively unorthodox dual occupancy, whereby one dwelling is positioned fully above the other dwelling with a semi-detached garage at the rear. As a result of this configuration, the first floor dwelling does not have access to a ground floor private open space (POS) area, instead relying entirely on balcony space to provide for POS. The balcony space available to the first floor dwelling is accessed directly from the main living area, making it highly functional and practical. The balcony provides for coastal views from the northeast through southeast, provides for good morning to midday solar access, provides for excellent passive surveillance of the street and does not result in unreasonable privacy loss to neighbours.

Kiama DCP Chapter 5 (Medium Density Development) control C32 requires that dwellings in a medium density development have:

- a minimum area of 25m<sup>2</sup> for each dwelling, and
- a minimum dimension in one direction of 5m, and
- not include drying facilities or garbage storage areas.
- be directly accessible from an indoor living area.

The proposed first floor unit POS fully complies with these requirements.

Under these circumstances it is reasonable that the Chapter 4 control C29 should not be strictly applied to the proposed dual occupancy development, proposed within the R3 medium density development zone.

Control C42 – requires a minimum 15m frontage to the street for dual occupancy development. The subject lot has a 14.835m frontage to Bourrool Street.

The subject lot is currently vacant following the demolition of the dwelling which previously existed on the land. Dwelling houses are prohibited in the R3 Medium Density Residential zone, so it is not possible to erect a new dwelling house on the land. Furthermore, the allotment is likely to have insufficient proportions to support medium density development; hence dual occupancy development has been proposed.

An argument could be mounted that, due to the <15m street frontage and the generally constrained proportions of the lot, then the land should be amalgamated with adjoining land to create a more developable medium density site. However the subject allotment does not neatly match up with adjoining lot boundaries, which makes amalgamation in this instance generally impractical (as boundaries do not line up to create a regularly shaped larger allotment). For instance, amalgamation of the land with the adjoining lot to the north (2 Farmer Street) would result in an irregular shaped lot that would likely be problematic to develop. Similarly, to create a functional redevelopment lot by amalgamating with adjoining lots to the south would require at least 2 of the adjoining lots (e.g. 14 & 16 Chapman Street). These 2 dwellings are currently permanently occupied and are solid, well maintained dwellings, with 14 Chapman Street previously being renovated and modernised. It is considered to be unlikely that these two lots would be amalgamated with the subject lot in the foreseeable future.

Although the existing lot has a street frontage marginally less than 15m (14.835m), the only development permissible and foreseeably appropriate for the allotment is dual occupancy development. Under the circumstances, variation to control C42 is considered to be appropriate.

Overall, with the exception of the variations noted and discussed above, the proposed development is generally consistent with Kiama DCP 2012.



Item 9.3 - Lot 5204 DP 1210287 No 3 Bourrool Street, Kiama -  
Proposed attached dual occupancy and strata subdivision  
(10.2016.41.1)

1 - 10.2016.41.1 - plans

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### Any Planning Agreement

Nil

### Any Matters Prescribed by the Regulations

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

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

### Any Coastal Zone Management Plan

Nil

### The Likely Impacts of the Proposed Development

- Streetscape

The design of the proposed development is considered to be reasonable when considered in relation to the context of the site. The contemporary styling of the proposed development is consistent with the dwelling situated at 4 Farmer Street, adjoining the development site.

The bulk, scale and design of the proposal are consistent with relevant planning instruments and are not inconsistent with the streetscape.

- Noise

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

- Privacy and Overlooking

No significant concerns are raised in relation to privacy loss and overlooking resulting from the proposed development. This is discussed further below under 'Public Submissions'.

- Overshadowing

Shadow diagrams have been supplied with the development application, which indicate that the overshadowing impacts of the proposed development will be reasonable. This is discussed further below under 'Public Submissions'.

- Views

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

- Vehicular Access, Parking and Manoeuvring

Sufficient car parking is proposed.

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

- Stormwater Management

A satisfactory drainage design has been provided with the application.

All stormwater will drain to the street.

- Environmental Impacts

*Vegetation Removal* – No vegetation is to be removed.

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

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

*Impact on Water Resources* – Rainwater tanks will be provided, as required by BASIX. Stormwater will be conveyed to the street. Controls will be implemented during construction to minimise sedimentation.

- Social and Economic Impacts

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

**The Suitability of the Site for the Development**

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

- Traffic

The proposed dual occupancy development is not expected to result in unacceptable levels of additional traffic movement. The existing local road network is capable of accommodating additional traffic movements generated by the proposed development. Council's Engineers have raised no concerns with the proposal on the grounds of traffic, parking, manoeuvring, road safety or the like.

- Contamination from previous land uses

There is no evidence of site contamination on this or adjacent sites. The site is unlikely to be contaminated.

- Effect on public domain

The proposal is expected to have an acceptable impact on the public domain. The development is not of a height, bulk or design that is not acceptable for the site in the context of the public domain.

- Utility needs and supply

The proposal is serviced by all essential services. Condition of consent will require Section 73 Compliance Certificate from Sydney Water Authority.

- Safety, security & crime prevention

The proposal has been considered against Crime Prevention through Environmental Design (CPTED) principles and is generally considered to be acceptable. Amendments have been made to the proposal including incorporation of electronic security gating and signage to more clearly delineate and identify the two dwellings, thereby reducing potential excuse for trespassing.

- Operational waste

The proposal properly considers waste storage and retrieval from Bourrool Street.

- Operational noise and vibration

No significant concern is raised.

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- Risks to people & property from natural & technological hazards

There are no known natural & technological hazards on the land.

- Construction impacts

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

### **Submissions**

#### Public Submissions

Notification letters were sent to neighbouring property owners who were provided with fourteen (14) days in which to comment on the proposal. At the conclusion of the notification period, six (6) submissions were received which raised the following (summarised) matters of concern:-

Item 1:- Overshadowing of neighbouring outdoor living areas will be excessive

Response:- Following the concerns raised by neighbours about overshadowing impact, Council requested the applicant amend the proposal with the view to reducing the overshadowing impact of the development. In response to this, the applicant has reduced the pitch of the roof, which equates to a lowering of the building height by 300mm.

Analysis of the amended shadow diagrams submitted confirm that, in overall terms, the shadow impacts of the proposed development are within accepted thresholds of not overshadowing more than 50% of neighbouring private open space or living areas for more than 3 hours between 9.00am and 3.00pm on June 22 (DCP 2012 Chapter 4 control C26).

It is evident from the shadow diagrams submitted that the neighbouring property at 16 Chapman Street is the most heavily affected by overshadowing from the proposed development, with overshadowing being most prevalent during the morning. During the period from around 11.30am to 3.00pm on June 22; however, less than 50% of the properties backyard area is overshadowed. This satisfies the performance standard established by the DCP.

In relation to 14 Chapman Street, the backyard/private open space area of this dwelling is smaller than that of 16 Chapman Street, so although this property is less impacted by overshadowing (than the neighbouring lot) from the proposed development, because of the more confined nature of the space the impact of overshadowing is more keenly felt. Notwithstanding this, analysis of the shadow diagrams submitted indicates that, between the hours of 11.00am and 2.00pm on 22 June, less than 50% of the properties backyard area is overshadowed. This satisfies the performance standard established by the DCP.

Item 2:- Height, bulk and architectural style - Streetscape impact – the proposed development is out of character with surrounding development

Response:- The presentation of the development is contemporary, which in itself is entirely acceptable within the urban environment. Furthermore, the contemporary styling is compatible with the modern styling of the existing dwelling at 4 Farmer Street, being an adjoining site.

Although much of the existing housing stock in the area is of an older type/style, this is progressively changing with redevelopment of the surrounding area, which is being brought about by the R3 Medium Density Residential zoning and the redevelopment potential this zone entails.

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Furthermore, the building height and density development standards applying to the site permit development which is taller and bulkier than that proposed i.e. 8.5m height limit permitted, 7.78m height proposed and 0.7:1 FSR permitted, 0.62:1 FSR proposed. The development satisfies Council's height and bulk development standards.

Item 3:- Privacy loss as a result of windows from the upper level will look directly into the backyards/private open space areas of neighbouring properties to the south.

Response:- The windows in question are windows to the kitchen, study, third bedroom and the entry foyer.

- The kitchen window – this narrow, elongated window measures 0.6m high by 4.27m wide and is a hooded window setback some 2.5m from the southern boundary. The window is low set, sitting just above the kitchen countertop and sink, with a sill height of 1m (meaning the field of vision is at a height of between 1m and 1.6m).

The window is directly opposite the backyard and private open space area of the dwelling at 14 Chapman Street, with the single storey garage to that dwelling sited in-between.

Under the circumstances it would be appropriate to raise the sill height of this window, to ensure the vision from the window is not directed downward, but rather better ensure it is over the neighbouring dwelling. A condition of consent will be imposed, should Council approve the development, requiring this window to have a sill height of not less than 1.6m from the floor level. This, in conjunction with the window hood, should better serve to protect the neighbour's privacy.

- The study, third bedroom and bathroom windows – These windows are all of the same dimensions (1.6m x 1.6m plus a 1.6m x 0.8m louvered window component). These windows are setback some 3m from the southern boundary. These rooms are low volume/low usage rooms which are not likely to result in unacceptable privacy loss implications for neighbours. Should development consent be granted, the bathroom window will be conditioned to incorporate opaque glass.
- The entry foyer window – This window is a fixed window measuring 2.4m high x 3.6m wide and is setback 4.175m from the southern boundary. This window is directly opposite the backyard and covered pergola of the property at 16 Chapman Street. Although this is a foyer and thoroughfare type area and although there are established trees on the neighbours land to provide some privacy screening, it is considered to be appropriate that this window incorporate opaque glass, to protect the privacy of the neighbour while also allowing natural light to penetrate the space.

Item 4:- View loss – concern was expressed about loss of northward view along Bourrool Street from the neighbour's back yard.

Response:- As pointed out previously, it is noted that Bourrool Street curves away from the development site at its southern boundary, whereby the road reserve tapers outward creating a broad view corridor down the Bourrool Street. The proposed development does not encroach upon the current view corridor along the street to such an extent that amendment to the development, or refusal, is warranted. The proposal complies with the minimum 4.5m building line permitted in medium density zones and whilst it is a low density development the 4.5m building line is not considered to be inappropriate.

Item 5:- The zero lot line of the proposed garage to the southern boundary would have unacceptable visual and amenity impact. It was requested that the garage wall be setback 900mm from the boundary.

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Response:- In accordance with the neighbours request, the garage was amended by the applicant to observe a 900mm setback to the southern property boundary.

#### **External Referrals**

Nil

#### **Internal Referrals**

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

- Development Assessment Officer - Building

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

- Subdivision & Development Engineer

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

- Landscape Design Officer

Concern was initially expressed about the two Jacaranda trees that overhang the southern boundary, which would need pruning of the canopy to clear the proposed garage and rooftop garden. An arborists report was initially required assessing the impact on the jacaranda trees from the garage and associated branch pruning; however the owner of the Jacaranda trees advised they had no concern about the pruning of the trees and had Council's approval for them to be removed. This was subsequently discussed this with the Landscape Officer and it was agreed the arborist report was not required.

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

- GIS

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

#### **The Public Interest**

The proposal is considered to be consistent with all relevant Environmental Planning Instruments and Development Control Plan 2012, is not likely to cause significant adverse impacts to the natural or built environment, is not likely to cause significant adverse social and economic impacts, is suitable for the site and therefore is considered to be consistent with the public interest.

#### **Final Comments and Conclusions**

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 79C of the Environmental Planning and Assessment Act, 1979. The proposal is consistent with Kiama Local Environmental Plan 2011 and relevant Development Control Plans. The proposed development is consistent with the objectives of the R3 Medium Density Residential zone.

Consideration has been given to the social, economic and environmental impacts of the proposed development and no significant concerns are raised. Concerns raised in submissions have been considered and do not warrant refusal of the application.

The proposed development is considered to be reasonable and conditional approval is recommended.

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### Draft Conditions of Development Consent

#### General

- (1) The development shall be implemented generally in accordance with the details set out on the plan/drawing and supporting documents endorsed by Council as 10.2016.41.1 dated - except as amended by the following conditions: (g005.doc)
  - i. The first floor kitchen window is to have a minimum sill height of 1.6m from floor level.
  - ii. The first floor entry foyer window and first floor bathroom window are each to consist of opaque glass.
- (2) The development shall be completed in accordance with the approved colour schedule. (g014.doc)
- (3) No development/work is to take place until a Construction Certificate has been issued for the development and the necessary conditions of development consent satisfied to enable release of a Construction Certificate. (g020.doc)
- (4) This approval is in respect of the plans submitted with the development application and as modified by the terms of this consent. If for any reason, including the making of alterations necessary to meet the requirements of another Authority, changes to the approved building design layout are proposed, then the approval of Council shall be obtained prior to commencement of any works on site. (g005.doc)
- (5) The developer shall provide a traffic control management plan complying with the design requirements of the Roads and Maritime Services (RMS) "Traffic Control at Work Sites" manual. The traffic control management plan must be designed by an RMS accredited designer and must be provided to Council prior to the commencement of any works. (g120.doc)
- (6) The developer shall under Section 138 of the Roads Act 1993 make application to the Road Authority for permission to occupy the public road reserve, Bourrool Street for the purpose of carrying out activities associated with the development. All of the conditions of approval shall be complied with at all times during occupation of the public road reserve. (g145.doc)
- (7) The developer shall not carry out any work other than emergency procedures to control dust or sediment-laden runoff outside the normal working hours, namely, 7.00am to 5.00pm, Monday to Friday and 8.00am to 1.00pm Saturday, without the prior written approval of the Principal Certifying Authority. Any request to vary these hours shall be submitted to the Principal Certifying Authority in writing detailing:
  - a The variation in hours required.
  - b The reason for that variation.
  - c The type of work and machinery to be used. (g165.doc)
- (8) The nominated adaptable housing unit shall, as a minimum requirement, meet "Adaptable house class C" requirements set out in Appendix A of Australian Standard As 4299-1995 Adaptable housing. Certification from a suitably qualified professional stating that the Construction Certificate plans have met the requirements listed above shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.



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### Contributions

- (1) A contribution pursuant to Section 94 of the Environmental Planning and Assessment Act 1979 (as amended) and Kiama Council's Section 94 Contributions Plans Nos. 1 & 3 shall be paid to Council prior to the issuing of the Construction Certificate. The total contribution required for the development is **\$6,592.87**. (bc005.doc)

### Prior to Commencement of Works

- (1) Building work must not commence until the Principal Certifying Authority for the development to which the work relates has been informed of:
- i The licensee's name and contractor licence number;
  - ii That the licensee has complied with Part 6 of the Home Building Act 1989.

In the case of work to be done by any other person, the Principal Certifying Authority:

- a Has been informed in writing of the person's name and owner builder permit number;
- or
- b Has been given a declaration, signed by the owner/s of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989. (pt005.doc)

- (2) The developer shall lodge with Council a bond of **\$2,700** in the form of an unconditional bank guarantee or cash, prior to the commencement of any work, as a security for new and remedial work associated with the development proposal and covering all work within the public roads administered by Council under the Roads Act 1993 and compliance with the submitted Waste Management Plan during the course of construction.

The developer shall submit a dilapidation survey prior to commencement of any work within the road reserve.

The bond shall be refunded in full subject to the following:

- a There being no damage to the infrastructure within the road reserve.
- b Twelve (12) months has elapsed from the date of issue of the occupation certificate and/or subdivision certificate.
- c The submission and approval by Council of a waste compliance certificate, inclusive of supporting documentation (dockets/receipts) verifying compliance with the Waste Management Plan as provided to Council. (pt013.doc)

- (3) Under the provisions of the Act, work may not commence on the development until the following is carried out:
- a Detailed plans and specifications of the building must be endorsed with a Construction Certificate by Council or an Accredited Certifier; and
  - b You **must** appoint a Principal Certifying Authority (can be either Council or an Accredited Certifier); and
  - c You **must** notify the Council of the appointment; and
  - d You **must** give at least two (2) days' notice to Council of your intention to commence work.

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You will find attached an application form for a Construction Certificate. Should you require Council to issue this Certificate you should complete this application and forward it, together with plans and specifications, to Council for approval.

You will find attached a form for the "Notice of Commencement of Building Work and Appointment of Principal Certifying Authority", which you are required to submit to Council at the appropriate time and at least two (2) days prior to the commencement of work.

Should you appoint Council as the Principal Certifying Authority, relevant inspection fees will be required to be paid at the time of lodgement of this form. (pf020.doc)

- (4) The BASIX commitments shall be indicated on the plans to the satisfaction of Council or an Accredited Certifier prior to the release of the Construction Certificate. (pf034.doc)
- (5) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a Showing the name, address and telephone number of the Principal Certifying Authority for the work;
  - b Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - c Stating that unauthorised entry to the work site is prohibited.

**Note:** Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed. The sign will be provided by the nominated Principal Certifying Authority for the relevant fee. (pf060.doc)

- (6) No building work is to commence until details prepared by a practising structural engineer have been submitted to and accepted by the Principal Certifying Authority for any reinforced concrete slabs, footings or structural steel. (pf062.doc)

#### Site Facilities

- (1) An appropriate temporary toilet facility shall be provided on site, located inside the property boundaries, prior to commencement of works. The temporary toilet shall be maintained in a clean/sanitary condition at all times. (pf010.doc)
- (2) During construction the applicant shall provide, inside the property boundaries a suitable waste container for the disposal of all papers, plastics and other light-weight materials. (pf015.doc)
- (3) A sign must be erected in a prominent position on the premises on which the erection or demolition of a building is being carried out:
  - a Stating that unauthorised entry to the premises is prohibited; and
  - b Showing the name of the builder or other person in control of the worksite and a telephone number at which the builder or other person may be contacted outside working hours.

Any such sign is to be removed when the erection or demolition of the building has been completed. (pf020.doc)

- (4) The development is to be provided with mail boxes in accordance with Australian Standard AS/NZS 4253 - 1994 which covers the dimensions, installation and positioning for mail boxes for receipt of mail. Standard Strata Title addressing applies. (pf050.doc)

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### Erosion and Sedimentation Controls/Soil and Water Management

- (1) All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur. In particular:
  - a A silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). Such fence must be regularly inspected and cleaned out and/or repaired as is necessary, and all collected silt must be disposed of in accordance with Council's Sedimentation Control Policy.
  - b Unnecessary disturbance of the site (eg; excessive vehicular access) must not occur.
  - c All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.
  - d All the above requirements must be in place for the duration of the construction works. (ese005.doc)
- (2) The developer shall submit to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate, a detailed Soil and Water Management Plan (SWMP) designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction* Volume 1 (Landcom 2004) and *Managing Urban Stormwater: Soils and Construction* Volume 2 (Department of Environment and Climate Change 2007).

All works on the site must be in accordance with the approved SWMP for the full duration of construction works and must provide an overall site detail. For staged development a SWMP shall be provided for each stage of the development. (ese010.doc)
- (3) The developer shall ensure that sediment-laden runoff from the site is controlled at all times subsequent to commencement of construction works. Sediment control measures must be maintained at all times and checked for adequacy at the conclusion of each day's work. (ese020.doc)

### Stormwater Management

- (1) All stormwater kerb and gutter connections to have a minimum of 40 millimetres cover of concrete finishing flush with the top of the existing kerb. Pipe size to achieve this should be 90 millimetres in diameter. (sm010.doc)
- (2) The developer shall provide stormwater outlets to kerb lines converting to 90 millimetre diameter uPVC for barrier kerbs and 127 x 64 x 4 millimetre steel rectangular hollow section hot dip galvanised or aluminium for roll kerb sections. (sm020.doc)
- (3) The developer shall provide a detailed stormwater drainage network in accordance with the design requirements of "Section D5 Stormwater Drainage" of Kiama Development Code as appended to Kiama Development Control Plan 2012. Full hydrological and hydraulic calculations and civil engineering drawings shall be submitted to the Principal Certifying Authority prior to the release of a Construction Certificate. (sm055.doc)
- (4) The developer shall provide on-site detention storage for stormwater runoff in conjunction with the proposed development drainage network. An on-site detention system shall be designed to ensure that post development flow rates from the site are no greater than pre-developed site runoff at each discharge point for all rainfall events up to 1% Annual Exceedance Probability. The applicant shall provide full hydrological and hydraulic computer modelling of the stormwater drainage system and provide this

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to the Principal Certifying Authority for assessment and approval prior to the issue of the Construction Certificate. (sm060.doc)

- (5) The developer shall provide compliance certification from the hydraulic engineer verifying that the constructed stormwater drainage infrastructure/water quality system meets with the approved design. The certification shall be provided to the Principal Certifying Authority prior to the release of any of the Occupation Certificate. (sm130.doc)
- (6) The developer shall provide environmental stormwater management controls in the form of post development water quality (including first flush treatments such as trash arresters) and sedimentation control measures to be located within the proposed development site. The proposed treatments shall be submitted to the Principal Certifying Authority for assessment and approval prior to the release of the Construction Certificate. (sm135.doc)
- (7) The developer shall comply with the design requirements of Council's "Water Sensitive Urban Design" policy in association with the design requirements of "Section D5 Stormwater Drainage" of the Kiama Development Code as appended to Kiama Development Control Plan 2012.  
  
Detail shall be submitted to the Principal Certifying Authority for assessment prior to the release of the Construction Certificate. (sm150.doc)
- (8) Stormwater runoff from all impervious surfaces on the property shall be collected and conveyed to a point suitable for integration with either the natural or constructed stormwater drainage system. A piped drainage system shall be provided to convey runoff from storms up to the 20% Annual Exceedance Probability (AEP). Defined overland flow paths shall be provided to safely convey runoff from storm events up to the 1% AEP. (sm155.doc)

### Access Construction

- (1) The developer shall construct the footpath access driveway in compliance with the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking and Council's "Driveway and Footpath Works Procedure Manual". (ac001.doc)
- (2) The developer shall restore any redundant vehicle crossing to barrier kerb in compliance with Council's "Driveway and Footpath Works Procedure Manual". (ac010.doc)
- (3) The access driveway shall be constructed to meet the design requirements of Council's "Driveway and Footpath Works Procedure Manual". The access driveway shall be installed prior to the issue of any Occupation Certificate. (ac015.doc)
- (4) The applicant must provide, to Council, the appropriate fee for the inspections required for the construction of the footpath crossing/access driveway in accordance with Council's adopted fees and charges. This inspection fee must be paid prior to the commencement of works within the road reserve area.

Work undertaken within the road reserve may only be undertaken by a Council approved contractor. A list of approved contractors may be obtained from Council's Engineering and Works Department. (ac020.doc)

### Car Parking and Vehicular Access

- (1) Car parking and manoeuvring shall comply with the requirements of the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking. (ac025.doc)

### Inspections

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- (1) The building work shall be inspected at critical and other stages as required by the Principal Certifying Authority for the development.

**NOTE:** Should you choose Council to be your Principal Certifying Authority for this development you will be advised of the required building inspections and applicable fees at the time of that appointment. (bu015.doc)

#### Building Construction

- (1) All building work must be carried out in accordance with the requirements of the Building Code of Australia. (bu010.doc)
- (2) The roadway, footpath or Council reserve shall not be used to store building material without the prior approval of Council. (bu020.doc)
- (3) All excavations and backfilling must be executed safely in accordance with appropriate professional standards. (bu030.doc)
- (4) All excavations must be properly guarded and protected to prevent them from being dangerous to life or property. (bu035.doc)
- (5) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must:
- Preserve and protect the building from damage;
  - Underpin and support the building in an approved manner, if necessary, and;
  - At least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work. (bu100.doc)
- (6) The Reduced Levels (RL) of the proposed development must be in accordance with the approved plans. Certification of these levels by a registered surveyor must be submitted to an accredited certifier or Council prior to proceeding past that level. (bu120.doc)
- (7) A survey shall be undertaken and a copy be made available to Council or an accredited certifier, certifying that the building is correctly located in relation to the boundaries of the site and in accordance with the approved plans. Such survey shall be submitted at peg out stage. (bu125.doc)
- (8) Construction and demolition work, delivery of materials and plant, etc shall only take place between the following hours;
- Monday to Friday - 7.00 am to 6.00 pm  
Saturdays - 8.00 am to 1.00 pm
- No construction work is to take place on Sundays or Public Holidays. (bu151.doc)
- (9) The Waste Management Plan shall be strictly adhered to at all stages during the demolition, construction and/or subdivision work. All waste nominated for disposal must be disposed of at a licensed landfill facility. All waste nominated for recycling must be reused or recycled. (bu153.doc)

#### Utility Servicing

- (1) A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The Section 73 Certificate shall be submitted to Council prior to issue of the final Occupation Certificate. (us006.doc)

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- (2) All electricity, telecommunications and natural gas services shall be located underground. Common or shared trenching and the document "A Model Agreement for Local Councils and Utility/Service Providers" prepared by the NSW Streets Opening Conference are policies adopted for the Kiama Municipal Council Local Government Area. (us035.doc)
- (3) The developer shall bear the cost of relocation of any service utilities required in the provision of vehicular access. (us045.doc)

#### Landscaping Works

- (1) A detailed landscape plan shall be approved by Council prior to release of the Construction Certificate. The plan shall be prepared in accordance with Chapter 8 of Kiama Development Control Plan 2012 and shall be consistent with the landscape concept plan. (lw010.doc)
- (2) The landscaping shall be maintained actively and regularly for a period of 26 weeks commencing from the date of issue of the Occupation Certificate. (lw020.doc)
- (3) At the end of the 26 week landscape maintenance period and after any defects that occurred during that period have been corrected, a final Compliance Certificate shall be provided from a suitably qualified landscape professional stating that all landscape works have been completed and maintained in accordance with the approved landscape plans and the conditions of this development consent. (lw035.doc)
- (4) Prior to release of the Occupation Certificate the developer shall provide a Compliance Certificate from a suitably qualified landscape professional or Council's Landscape Officer stating that all landscape works have been completed in accordance with the approved landscape plans and the conditions of the development consent. (lw170.doc)

#### Prior to Occupation

- (1) The completed Waste Management Compliance Sheet (Appendix 1C) shall be submitted to and approved by Council prior to release of the Final Occupation Certificate.  
Supporting documentation (dockets/receipts) verifying recycling and disposal shall be attached to the Compliance Sheet. (po002.doc)
- (2) The BASIX schedule of commitments shall be complied with prior to the issue of a Final Occupation Certificate for the development and if required a certificate shall be provided to the Principal Certifying Authority from a properly qualified person to certify that the BASIX schedule of commitments have been provided and/or installed. (po003.doc)
- (3) The whole or part of the building must not be occupied unless an Occupation Certificate has been issued in relation to the building or part in accordance with Clause 109M of the Environmental Planning and Assessment Act 1979.  
**NOTE:** A Fire Safety Certificate must be provided in accordance with the Environmental Planning and Assessment Regulations 2000 prior to the issue of an Occupation Certificate excepting Class 1(a), 10(a) & 10(b) structures. (po005.doc)
- (4) The developer shall complete all drainage and access works prior to the issue of any Occupation Certificate. (po010.doc)
- (5) Prior to the issue of an Occupation Certificate the developer shall obtain accurate street numbering for the development from Council's Geographical Information Services section. (po025.doc)



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### Conveyancing Requirements

- (1) Under the provisions of Section 88B/88E of the Conveyancing Act 1919 the developer shall provide a restriction on the use of land and a positive covenant in favour of Kiama Municipal Council detailing protection measures and long term maintenance requirements for on-site stormwater detention and associated stormwater infrastructure.

The document shall meet the standard terms applied by Council and shall be submitted to Council for assessment and approval and shall have these titles registered with NSW Lands & Property Management Authority under Sections 88B/88E of the Conveyancing Act 1919. (cr040.doc)

### Prior to Issuing of Subdivision Certificate

- (1) The Subdivision Certificate shall not be released until all conditions of this Development Consent are complied with or satisfactory arrangements are made with the Principal Certifying Authority. (sub005.doc)
- (2) The developer shall submit the following items to the Principal Certifying Authority prior to the issue of a Subdivision Certificate:

- a) All relevant Construction and Compliance Certificates (where these have not been issued by Council).
- b) Payment of fees in accordance with Council's adopted fees and charges.
- c) A Final Plan of Subdivision and four (4) copies.

A copy of the satisfactory final plan of subdivision shall also be provided as an electronic file in either DXF or DWG format. In this regard the electronic copy must be on MGA (Zone 56) orientation, where this is required by the Surveying Regulation 2001, and should preferably use co-ordinates based upon the MGA values of the nearest established permanent survey mark connected as part of the survey. It is preferred the raw boundary line work only be provided, excluding final page layout and text where possible. This must be provided either on disc or thumbdrive.

- d) An original Deposited Plan Administration Sheet and one copy, prepared in accordance with NSW Land & Property Information requirements.
- e) An original Section 88B Instrument and one copy, prepared in accordance with the requirements of the Conveyancing Act 1919.
- f) An original Subdivider/Developer Compliance Certificate (Section 73 Certificate) from Sydney Water Corporation which references the relevant development application number.
- g) An Occupation Certificate for each dwelling to be separately titled. (sub020.doc)

## 10 REPORT OF THE GENERAL MANAGER

### 10.1 End of Term Report

CSP Objective: 4 Responsible Civic Leadership that is Transparent, Innovative and Accessible

CSP Strategy: 4.5 Foster positive relationships with our community through open communications, opportunities for participation in decision making and sharing of information

Delivery Program: 4.5.4 Provide opportunities for inclusive community engagement in decision making, recognising social justice and cultural diversity as integral components

#### Summary

Council is required to prepare an End of Term Report as a report to the community on the achievements of the current Council in meeting the strategies and objectives of the Community Strategic Plan (CSP). The End of Term Report is required to be provided to the current Council before the end of its term.

#### Finance

Not applicable.

#### Policy

The End of Term Report is a function of s. 428 of the Local Government Act and the Planning and Reporting Guidelines for Local Government in NSW 2013.

#### Attachments

Nil

#### Enclosures

1 End of Term Report

### **RECOMMENDATION**

That Council endorse the End of Term Report.

### **BACKGROUND**

As prescribed under s428 of the *Local Government Act 1993* Council is required to prepare an annual report within five months of the end of the financial year. The annual report in the year of an ordinary Council election will also include an outline of achievements in implementing the Community Strategic Plan. The Planning and Reporting Guidelines for local government in NSW indicate that a report on the progress on implementation of the Community Strategic Plan (CSP) must be presented at the final meeting of an outgoing Council.

This End of Term Report separates the CSP objectives and strategies and provides a summary of the major or significant undertakings of Council that give effect to meeting the CSP strategies.

## Report of the General Manager

## 10.1 End of Term Report (cont)

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Some of the notable highlights include;

- In early 2013 Council worked with other emergency agencies in proactively and effectively responding to the severe damage caused by tornados with successful recovery.
- Council was able to maintain its autonomy and avoid a NSW Government proposed forced amalgamation of Kiama with Shoalhaven Council (as part of the Government's broader local government reform agenda). The outcome was largely the result of the comprehensive community and council led campaign opposing the proposal and the campaign that resulted in significant community engagement and action both during the public inquiry process and after, where elected officials, community groups and individuals were unequivocal in their opposition to the proposal.
- Throughout the period, we continued to provide a range of community services that offered programs for children, youth, older people, and people with a disability. Some examples include: we hosted the 2014 Local Government Regional NAIDOC Awards at The Pavilion Kiama in partnership with Wollongong, Shellharbour and Shoalhaven councils; in 2013-14 alone Council provided over \$165,000 in cultural grants, community donations and regional contributions to encourage community participation in our municipality ; our Youth Centre engaged with over 1700 young people through educational, recreational and community development programs and events, as well as employment related activities and helping our youth develop workplace skills.
- Community safety was recognised as an issue for our community and it became an important strategy within the Community Strategic Plan. As a result Council, through the Kiama Crime Prevention Plan secured funding support from the Federal and State Governments and installed CCTV cameras in the Kiama and Gerringong CBD's.
- Kiama Council proactively supported the community's rapid uptake of the National Broadband Network (NBN) by offering training and information sessions to residents; we received Federal funding from the Digital Local Government Program which gave Council the opportunity to combine the NBN with state-of-the-art videoconference software to bring some services to the community online as well as public webcasting of Council meetings; we successfully completed our Digital Hub, Digital Enterprise and Digital Local Government Programs.
- From an economic development perspective Council has been working with government agencies, other Councils, networks and consortiums to generate an environment that is conducive to fostering and growing economic development opportunities. Council launched the Kiama Economic Development Strategy and provided support for the Economic Gardening program.
- With an ageing population higher than the NSW average, Council's dedication to provide aged care services remained a priority. The Australian Government's Aged Care (*Living Longer Living Better*) Bill 2013 introduced reforms that affected the way aged care services are funded and delivered.

## Report of the General Manager

## 10.1 End of Term Report (cont)

The reforms kick-started a Council rebranding and integration project that resulted in 'Blue Haven Care' being established in 2015. Illawarra In Home Support (IHHS) and Blue Haven Aged Care facility combined to form the new entity which brings all our aged care services under one banner and highlights the true scale of care that Council provides. With the assistance of re-start Illawarra funding Council has progressed re-developing the Kiama Hospital site with the aim of creating the \$73M Blue Haven Centre of Aged Care Excellence which includes a 134-bed aged care facility, community services offices, a community hall and 51 Independent Living Units. The project also includes the refurbishment of the heritage-listed Barroul House.

- A number of renewal projects, assisted by the NSW Government's Local Infrastructure Renewal Scheme loan interest subsidy resulted in an improvement to our infrastructure backlog. Projects Council completed ranged from road resurfacing, new footpaths and cycleways, to new and refurbished amenities buildings and playground upgrades. We also reviewed and updated various plans of management for community land, and conducted a major review which led to the decision to decommission Jerrara Dam.
- Residents continued their support for our waste and recycling events including Second Hand Saturday, electronic waste collection, and World Environment Day activities. Council secured over \$0.5million of NSW Environment Protection Authority (EPA) *Waste Less, Recycle More* grants, part of which was used to build a Community Recycling Centre at our Minnamurra waste facility in 2016. We introduced the OK-Organics program – the service enables all residents in urban environments to dispose of kitchen organic waste into specially provided organics bins.
- In 2012 Council hosted the NSW Coastal Conference; this is the peak annual coastal zone management conference in NSW and over 200 delegates attended the conference held at The Pavilion Kiama.
- Council's Dementia Friendly Project won the National Award for Local Government in Disability Access and Inclusion and also secured a \$20,000 grant from the IRT Foundation to assist with funding the project for a further 12 months.
- Kiama Holiday Parks continue to win various Tourism Awards with Kiama Harbour Cabins and Seven Mile Beach Holiday Park winning awards.
- Projects at Council that have won awards include; RH Dougherty NSW Local Government Award 2015 for 'Excellence in Communications' - the Kiama Connect project; Local Carer's Award for the 2014 NSW Carer's Award - Blue Haven Care (Illawarra In Home Support) Carer's Support Group; NSW Cancer Council - Alive & Well Local Government Partnership Awards 2013 Category - Pioneering Spirit and Early Adopters of Smoke-free Policy; Heritage Awards 2013 Research & Investigation/Analysis - *Aboriginal Cultural Heritage Management Development Assessment Toolkit* - Highly Commended; NSW Local Government Environment Awards 2013 - Division B & Overall Category - Seven Mile Beach Reserve Rehabilitation Project; NSW Local Government Environment Awards 2013 - Division B - GO Organics Program; Food Authority

Report of the General Manager

10.1 End of Term Report (cont)

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- Food Surveillance Champion Award for Group-Country 2013 - Illawarra Regional Food Group - "Food\_env\_i" Forum.
- Council staff have achieved several awards during this term. John Holland from our IT Department won the Australian Government ICT Professional of the Year in 2013 and Pip Spence won the RH Dougherty Award for Outstanding Individual Contribution in Communication in 2014.

**10.2 Local Government NSW Annual Conference 2016**

CSP Objective: 4 Responsible Civic Leadership that is Transparent, Innovative and Accessible

CSP Strategy: 4.10 Provide training and professional development for Councillors and staff to promote a culture of strong leadership, good governance and ethical practice

Delivery Program: 4.10.1 Ensure understanding of, and compliance with, Council's Code of Conduct and relevant policies and procedures

**Summary**

This report seeks endorsement of the registration of interested Councillors to attend the Local Government NSW Annual Conference from 16-18 October 2016 in Wollongong.

**Finance**

To be funded from the Travel and Conference budget for Members.

**Policy**

Not applicable

**Attachments**

1 Draft Program LGNSW Annual Conference 2016

**Enclosures**

1 LGNSW Policy Review Discussion Paper

**RECOMMENDATION**

That Council endorse the registration of Councillors interested in attending the Local Government NSW Annual Conference. Further, that three Councillors be registered as voting delegates.

**BACKGROUND**

Council has received correspondence from the President of LGNSW, Cllr Keith Rhoades, advising details of the LGNSW Annual Conference to be held at the WIN Entertainment Centre Wollongong from 16 October to 18 October 2016.

Registration for the Conference is now open and delegates who register prior to 31 August 2016 are eligible for the early bird registration fee of \$899. Registration after that date is \$999 and closes on 30 September 2016. Delegate registration includes all papers, the Opening Reception, Gala dinner, all day sessions including refreshments.

Due to the close proximity of the Conference accommodation has not been booked at this stage however Council may wish to consider transport options rather than accommodation.



## Report of the General Manager

## 10.2 Local Government NSW Annual Conference 2016 (cont)

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Councillors who are interested in attending the Conference should advise the General Manager's Executive Assistant as soon as possible. Registrations prior to the Local Government elections can be substituted at a later date if required.

Councillors who wish to submit motions for consideration for the Conference should raise them at the meeting. LGNSW are encouraging councils to submit motions by 22 August 2016 to facilitate compilation and printing with the final deadline being 18 September 2016. Motions must advance the local government policy agenda (enclosed) and will only be included in the Conference Business Paper where they:

1. are consistent with the objects of the Association;
2. relate to Local Government in NSW and/or across Australia;
3. concern or are likely to concern Local Government as a sector;
4. seek to advance the Local Government Policy agenda of the Association and/or improve governance of the Association;
5. have a lawful purpose (a motion does not have a lawful purpose if its implementation would require or encourage non-compliance with prevailing laws);
6. are clearly worded and unambiguous in nature; and
7. do not express preference for one or several members over one or several other members.

Additional information on writing motions is available at <http://lgnsw.org.au/events-training/local-government-nsw-annual-conference/submit-motion-conference>

Council is categorised as a Regional/Rural Council and is entitled to three voting delegates. Registration of voting delegates closes 30 September 2016. Council can choose to determine and register voting delegates prior to the election on 10 September 2016 as Rule 34 of the LGNSW Rules allows that a 'member may substitute the name(s) of its voting delegates, at any time'.



## Local Government NSW Annual Conference 2016

**Sunday 16 – Tuesday 18 October 2016**

Main conference venue is WIN Entertainment Centre, Crown and Harbour Streets, Wollongong, 2500

This program is correct at the time of publication; speakers and program details may have changed due to unforeseen circumstances.

### DRAFT PROGRAM (as of 18 July 2016)

SUNDAY 16 OCTOBER	
1.00pm – 4.45pm	Bump in sponsors to WIN Entertainment Centre Foyer
1.00pm – 4.00pm	Registration opens in WIN Entertainment Centre Foyer
2.00pm – 4.45pm	Councillor training sessions in Winners Room 1, Winners Room 2, Victory Room <ul style="list-style-type: none"> <li>- Understanding changes to the Local Government Act</li> <li>- Know your planning</li> <li>- Principles of good governance</li> </ul>
2.00pm – 4.45pm	LGNSW briefing for General Managers and Interim General Managers in Premiers Room. This briefing will give progress on negotiation for a new 2017 Local Government (State) Award and workplace reform.
3.00pm – 3.30pm	Afternoon Tea meet the sponsors in trade exhibition next to Premiers Room
4.45pm – 5.00pm	Pre-booked local transfer buses from WIN to Lagoon Seafood Restaurant, Stuart Park, George Hanley Drive, North Wollongong
5.00pm – 7.00pm	President's Opening Reception in Lagoon Seafood Restaurant <ul style="list-style-type: none"> <li>- Welcome To Country</li> <li>- Welcome from <b>Cr Gordon Bradbery OAM</b>, Lord Mayor of Wollongong City Council</li> <li>- Opening from <b>Cr Keith Rhoades AFSM</b>, President, LGNSW</li> </ul>
7.00pm	Pre-booked local transfer buses will drop off back to WIN Entertainment Centre
MONDAY 17 OCTOBER – Business Session Day 1	
Chaired by Cr Keith Rhoades AFSM, WIN Entertainment Centre	
7.00am – 5.00pm	Registration opens in Box Office of foyer WIN Entertainment Centre Distribution of voting materials and electronic handsets
7.30am – 8.45am	NSW Reconciliation Council Breakfast, Winners Room 1 <ul style="list-style-type: none"> <li>- Welcome from the Hon Leslie Williams MP, Minister for Aboriginal Affairs</li> <li>- Address from <b>Mick Gooda</b>, Aboriginal and Torres Strait Islander Social Justice Commissioner</li> <li>- Address from <b>Stan Grant</b>, journalist, author, and Referendum Councillor</li> </ul> Supported by NSWALC and sponsored by Aboriginal Affairs NSW
8.15am -9.00am	Trade exhibition opens in WIN Entertainment Centre Foyer
9.00am – 9.30am	Address from <b>The Hon Mike Baird MP</b> , Premier of New South Wales

9.30am – 10.00am	Address from <b>Cr Keith Rhoades AFSM</b> , President, LGNSW
10.00am – 11.00am	Opening of the Federal Conference, chaired by <b>Cr Keith Rhoades AFSM</b> including demonstration of voting units, adoption of standing orders, presentation of the auditor's report, general financial report and operating report to members. Business session and consideration of motions.  Opening of the State Conference, chaired by <b>Cr Keith Rhoades AFSM</b> including adoption of standing orders, business session and consideration of motions
11.00am - 11.30am	Morning tea in trade exhibition sponsored by LG Super
11.30am – 1.00pm	Consideration of Conference business continued, chaired by the President
1.00pm – 2.00pm	Lunch in trade exhibition sponsored by LG Super General Managers Lunch: StateCover, LG Super, LGP, LGNSW Member Services and councils: Building Mutually Beneficial Partnerships, Winners Room 1 and 2
2.00pm – 3.30pm	Consideration of Conference business continued, chaired by the President
3.30pm – 4.00pm	Afternoon tea in trade exhibition
4.00pm – 5.30pm	Consideration of Conference business continued, chaired by the President Collection of all electronic handsets and voting cards  Conference business session closes
5.30pm – 6.30pm	Delegate networking function in trade exhibition
6.30pm	Trade exhibition closes. Free night for delegates
<b>TUESDAY 18 OCTOBER – Business Session Day 2</b> <b>WIN Entertainment Centre</b>	
7.00am – 5.00pm	Registration opens in WIN Entertainment Centre Foyer
7.30am – 8.45am	Australian Local Government Women's Association (ALGWA) Breakfast Winners Room 1: <b>Tracy Howe</b> , Chief Executive Officer, NSW Council of Social Service (NCOSS) Anti-Poverty Week 'Fighting Poverty Together', Room 1
8.00am – 5.30pm	Trade exhibition opens in WIN Entertainment Centre Foyer
9.00am – 9.15am	Introduction by Master of Ceremonies, <b>Tracey Spicer</b>
9.15am – 9.30am	Address from <b>The Hon Paul Toole MP</b> , Minister for Local Government
9.30am – 9.45am	Facilitated questions from the conference to the Minister
9.45am – 10.00am	<b>Launch of NSW Workforce Development Strategy</b>
10.00am – 10.05am	Premier Sponsor Meridian IT Company Update
10.05am – 10.30am	Morning tea in trade exhibition sponsored by EPA
10.30am – 10.45am	Address from <b>The Hon Peter Primrose MLC</b> , Shadow Minister for Local Government
10.45am – 11.00am	Facilitated questions from the conference to the Shadow Minister

11.00am – 11.45am	<b>Keynote: Rethinking the role of Local Government, Peter McKinlay</b> , Executive Director, McKinlay Douglas Ltd.
11.45am – 12.30pm	<b>Tracey Spicer</b> facilitates a Local Government Reform Panel: Challenges and Achievements. Panellists: - <b>Jane Mills</b> , Chief Operating Officer, City of Parramatta Council - <b>Luke Johnson</b> , General Manager, Wollondilly Shire Council
12.30pm – 12.45pm	Address on Association business from <b>Cr Keith Rhoades AFSM, President, LGNSW</b>
12.45pm – 1.00pm	Treasurer's Report
1.00pm – 1.45pm	Lunch in the trade exhibition WIN Entertainment Centre sponsored by EPA
<b>1.45pm – 3.00pm</b>	<b>MOVE TO CONCURRENT SESSIONS</b>
1.45pm – 3.00pm	<b>CONCURRENT SESSION 1 - Natural Resources and Environment Stream</b> Facilitated by <b>Barry Buffier</b> , Chair and Chief Executive Officer, NSW Environment Protection Agency
1.45pm – 2.30pm	Working Together to Keep our Environment Clean, with presentations on litter prevention by <b>Steve Beaman</b> , Executive Director Waste and Resource Recovery Developing sound planning decisions, and underground petroleum storage systems presented by <b>Justin Turk</b> , Operations Officer, Hazardous Incidents and Environmental Health
2.30pm – 2.50pm	Crown Lands Review Update, <b>David Clarke</b> , Group Director Governance & Strategy, NSW Department of Primary Industries – Lands
<b>1.45pm – 3.00pm</b>	<b>CONCURRENT SESSION 2 - Infrastructure and Planning</b>
1.45pm – 2.10pm	Fixing Country Roads, <b>Fredric Horst</b> , Principal Manager for Freight Strategy and Investment, Transport NSW
2.10pm – 2.30pm	Engaging councils in the process of allowing access to local roads for heavy vehicles, <b>Sal Petrocchio</b> , Chief Executive Officer, National Heavy Vehicle Regulator
2.30pm – 2.50pm	Councils investment in Human and Cultural Infrastructure /Sporting Facilities, <b>Paul Doorn</b> , Executive Director – Sport Infrastructure, NSW Office of Sport
<b>1.45pm – 3.00pm</b>	<b>CONCURRENT SESSION 3 - Capacity Building and Diversity</b> Facilitated Sarah Artist, Senior Manager, Innovation and Capacity, LGNSW
1.45pm – 2.05pm	Designing a Capability Framework for NSW Local Government – towards an integrated package for job design, recruitment, performance management and capacity building, <b>Jo Grisard</b> , Principal, Grisard Consulting (invited)
2.05pm – 2.30pm	Developing Council's Workforce: Case Studies from Wollongong and Port Stephens Councils presented by <b>David Farmer</b> , General Manager, Wollongong Council and <b>Wayne Wallis</b> , General Manager, Port Stephens Council (invited)
2.30pm – 2.50pm	Change – Fit for Purpose presented by <b>Nigel Ward</b> , Chief Executive Officer and Director, Australian Business Lawyers & Advisors



3.00pm – 3.15pm	<b>RETURN TO PLENARY SESSION AND CLOSE OF CONFERENCE</b>
3.30pm – 4.00pm	<b>Final Keynote: TBC</b>
4.00pm – 4.30pm	Afternoon tea and delegate networking function in trade exhibition
<b>7.30pm – 11.00pm</b>	<b>CONFERENCE DINNER WIN Entertainment Centre (within the conference room)</b>
7.30pm	Doors Open
7.45pm	Delegates seated and entrée served
8.00pm	LGNSW President introduces Elite Sponsor, StateCover Mutual Limited
8.10pm	LGNSW President and Elite Sponsor present the Outstanding Service Awards
8.30pm	LGNSW Chief Executive and Bluett Trustees present A R Bluett Awards
9.00pm	Main Course served
	Entertainment and dancing
11.00pm	Function finishes
<b>CLOSE OF CONFERENCE</b>	

**10.3 Gerringong Surf Music Festival - Proposal for Funding 2017**

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.2 Promote and support a range of social, cultural and artistic activities, practices and programs for creating sustainable health and well being

Delivery Program: 1.2.1 Promote and support cultural and artistic programs for young people

**Summary**

This report informs Council of a sponsorship proposal from Ad-Lib Events to assist in the funding of the event to be held 6-8 May 2017.

**Finance**

Financial Support of \$3000 per year in 'seed funding' for 3 years

Donation in-kind of the Gerringong Town Hall for two days and the Town Hall Park Reserve for one day.

**Policy**

Not applicable

**Attachments**

Nil

**Enclosures**

- 1 Gerringong Surf Music Festival 6-8 May 2017 Proposal for Event Funding - Adam Loxley

**RECOMMENDATION**

That Council provides support for the Gerringong Surf Music Festival by:

1. providing \$2000 financial assistance;
2. donating the use of Gerringong Town Hall and Old School Park Reserve; and
3. carrying out the waste, recycling and cleaning services

**BACKGROUND**

Ad-Lib is the promoter of the Gerringong Surf Music Festival (GSMF). Adam Loxley, a Gerringong local has been the director of Ad-Lib since its inception in 1998.

Ad-Lib Events has approached Council to assist with funding the 2017 GSMF in an expanded format of a weekend long event. The festival is quickly outgrowing the Gerringong Bowling Club and Gerringong Surf Club and is looking to relocate to Gerringong Town Hall and Old School Park. The event will continue to run over the same weekend as the annual Werri Board Riders' Werri Slash competition. The



Report of the General Manager

10.3 Gerringong Surf Music Festival - Proposal for Funding 2017 (cont)

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GSMF will be a weekend long celebration of surf culture involving live bands, an exhibition of surf craft, surf films and food.

The 2016 GSMF was hosted by the Gerringong Bowling Club. Funded by local businesses and Kiama Council; it included ten bands from Gerringong, Kiama and Wollongong playing Saturday afternoon to an audience of approximately 800 people.

In order to create a sustainable future, in 2017 GSMF will expand to a whole weekend with multiple event formats with an aim to attract an audience of 2,650 across the weekend. The new format will generate 60% of its total income via a major ticketed event. Ten percent of the total income will be generated by stall sales for a Surf Expo and Live Music In the Park event and the remaining 30% from sponsorships. Additional satellite events hosted by businesses may include a Festival Launch and Awards Afternoon that will be fully sponsored by local business.

The GSMF in 2017 will include free events a combination of free (audience aged 16 – 70) and ticketed events (aged 18+) across the weekend.

It is a policy of GSMF to source at least 50% of bands from the local region.

The holding of the event in conjunction with the Werri Slash annual surf competition provides the opportunity to build on and expand a long term popular Gerringong event for the benefit of locals and tourists. The Werri Slash attracts competitors from outside the Municipality and the South Coast.

Council's Events budget is limited and it is proposed that Council's support be limited to \$2,000 financial contribution as well as donating the use of the Gerringong Town Hall (two days) inclusive of sound system and microphones and Old School Park (one day) for the weekend of the festival as well as waste, recycling and cleaning services (approximately \$1,000).

## 10.4 Kiama Rugby Sevens

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.2 Promote and support a range of social, cultural and artistic activities, practices and programs for creating sustainable health and well being

Delivery Program: 1.2.4 Implement and support community, cultural and artistic activities and development programs

### Summary

This report recommends that Council again provide a monetary contribution and in-kind donation to the Kiama Rugby Sevens to be held from 24 – 26 February 2017.

### Finance

The organiser of the Kiama Rugby Sevens is seeking a financial assistance of \$5,000 in addition to provision of waste and cleaning services, ground maintenance and use of the Pavilion facilities during the Kiama Rugby Sevens.

### Policy

Not applicable

### Attachments

1 Kiama Sevens - Request for Funding for 2017 - Mark Bryant

### Enclosures

Nil

## **RECOMMENDATION**

That Council provide support for the Kiama Rugby Sevens by:

1. providing \$5,000 financial support
2. donating the use of the Pavilion and grounds; and
3. carrying out the waste, recycling and cleaning services.

## **BACKGROUND**

Council has received a letter from the Kiama Sevens Tournament Director requesting Council again provide financial and in-kind assistance towards the running of the Kiama Sevens tournament in 2017. A copy of the letter is attached.

The 2017 event will take place from 24 – 26 February and will again include Tier 1 & 2 Men's and Tier 1 Women's competitions as well as the Country Cup.

In previous years Council has provided various levels of assistance and last year provided \$5,000 financial assistance as well as donating the use of the Pavilion and grounds for the weekend of the tournament as well as waste, recycling and cleaning services (approximately \$1,500).



Contact Kiama Sevens  
Mail: PO Box 229, Kiama NSW 2533  
Mark Bryant: Kiama Sevens Tournament Director M: 0439 640 896  
Email: kiamarugbysevens@kiamarugby.com - Web: www.kiamarugby.com

Celebrating 45 Years of Great Sevens Rugby • Kiama Showground • 25 February 2017

Carole Johnston  
Strategic Tourism and Marketing Manager  
Kiama Municipal Council  
PO Box 75, KIAMA, 2533

18<sup>th</sup> July, 2016

Dear Carole,

The Kiama Sevens is entering its 45th year. With the restructure of the tournament, in consultation with the ARU, the pathway has been set in alignment with the 2016 Olympics. The 2016 Kiama Sevens saw 40 rugby sevens sides travelling to Kiama, in-turn showcasing the region.

The 2017 tournament will include the following competitions:

- \* Tier 1 Men's competition 16 teams;
- \* Tier 1 Women's competition 8 teams;
- \* Country Cup Competition 8 men's teams;
- \* Tier 2 Men's competition 8 teams;

To help with the successful running of the 2016 Kiama Sevens I would like to ask for the following assistance from Kiama Municipal Council:

- 1) Use of the Pavilion from Friday 26th to Sunday 28th of February;
- 2) Waste and Recycle management;
- 3) Restroom cleaning;

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Proudly supported by:



KIAMA SEVENS • KIAMA SEVENS • KIAMA SEVENS • KIAMA SEVENS • KIAMA SEVENS



Contact Kiama Sevens  
Mail: PO Box 229, Kiama NSW 2533  
Mark Bryant: Kiama Sevens Tournament Director M: 0439 640 896  
Email: kiamarugbysevens@kiamarugby.com - Web: www.kiamarugby.com

Celebrating 45 Years of Great Sevens Rugby • Kiama Showground • 25 February 2017

- 4) Ground maintenance;
- 5) \$5,000.00 financial assistance.

I look forward to hearing from you in regards to the above request.

Regards,

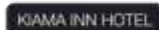
Mark Bryant

Kiama Sevens Tournament Director

Item 10.4

Attachment 1

Proudly sponsored by:



Proudly supported by:



KIAMA SEVENS • KIAMA SEVENS • KIAMA SEVENS • KIAMA SEVENS • KIAMA SEVENS

**10.5 Gerringong Lions Motor Fest / Car Show**

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.2 Promote and support a range of social, cultural and artistic activities, practices and programs for creating sustainable health and well being

Delivery Program: 1.2.4 Implement and support community, cultural and artistic activities and development programs

**Summary**

This report recommends that Council provide an in kind donation to The Lions Club of Gerringong for their Motor Fest/Car Show to be held 18 February on Cronin Oval, Gerringong.

**Finance**

The organiser of the Motor Fest / Car Show is seeking an in kind donation of reserve hire in addition to the provision of waste services for the Michael Cronin Oval in Gerringong.

**Policy**

Not applicable

**Attachments**

- 1 Proposed Motor Fest/Car Show - 18/02/17 - Michael Cronin Oval Gerringong - Request Permission & Support - Lions Club of Gerringong

**Enclosures**

Nil

**RECOMMENDATION**

That Council provide support for the Gerringong Lions Motor Fest / Car Show by:

1. donating the use of the Michael Cronin Oval; and
2. carrying out the waste and recycling services

**BACKGROUND**

As a not-for-profit service organisation, the Lions Club of Gerringong are holding the Motor Fest / Car Show to raise funds for Childhood Leukemia.

The date has been specifically selected to compliment the Gerringong Market Day to provide another offering for visitors to Gerringong as well as attract additional motoring enthusiasts that will benefit the markets, the business community and tourism as a whole.

This event is expected to attract a selection of Collectable, Performance and Exotic vehicles both old and new.

Report of the General Manager

10.5 Gerringong Lions Motor Fest / Car Show (cont)

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Marshalling of vehicles onto the site and into position will be carried out by Lions Club members as will the overall coordination on the day.



*The Lions Club of Gerringong Inc.*

District 201N2

President Bruce Ray 4234 1095  
Secretary Mark Westhoff 4234 0554  
Treasurer Ron Brett 4234 2100

PO Box 257  
Gerringong  
NSW 2534

ABN: 45 908 406 652



Mr Michael Forsyth

General Manager

Kiama Municipal Council

PO Box 75

Kiama NSW 2533

**Motor Fest/Car Show**

**Dear Michael**

Gerringong Lions Club is proposing to hold a *Motor Fest / Car Show* on Saturday 18th February 2017 on Cronin Oval Blackwood Street Gerringong.

The purpose of this letter is to seek Kiama Council approval and support for the proposed event on Saturday 18th February 2017. We have specifically chosen this date to compliment the Gerringong Market Day which is held in the Town Hall and old school park in town on the same date. We believe that this can provide the township an increased opportunity to attract tourism to the area while also providing local members of the public an enjoyable day out in the township. We have taken the opportunity to speak with Col Rathbone of the Kiama District Sports Association to ensure that our proposed event does not clash with any known sporting event on the same day. Col Rathbone has confirmed to us in writing that our request has been granted subject to weather conditions.

**About The Event**

We propose to limit the numbers of participating vehicles, thought to be a maximum of 120 vehicles (though maybe a few more are possible). We will have

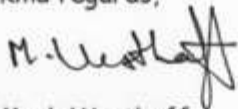
specific sites for each motor club group and some special invited guests and their vehicles. This event is structured to be a little different than just another car display day. We intend to invite some very specific and unorthodox vehicles along with specifically Collectable, Performance and Exotic vehicles both old and new. We have allocated lots of room around each vehicle to ensure those participating can feel safe in knowing that their vehicle is safe whilst parked while also ensuring that the public attending have easy access and safety. Marshalling of vehicles onto the site to the specific parking positions will be carried out by Lions Club members as will the overall coordination of the event on the day.

As you are aware the Lions organisation operates as not for profit. For that reason we have chosen to have all proceeds raised by the event to be donated to Childhood Leukaemia specifically to a local in need.

We anticipate a healthy interest in this proposed event which is our intention to conduct annually. With Kiama Council approval for the event we also propose to make further contact with yourself or appointed contact, the Mayor and local member Gareth Ward to assist us with promoting the event with a tourism perspective.

We look forward to your continued support and receiving your written approval for this proposed Motor Fest / Car Show on Saturday 18th February 2017.

Kind regards,



Mark Westhoff

Secretary Lions Club of Gerringong

Ph: 42340554

Email: [mark.westhoff56@hotmail.com](mailto:mark.westhoff56@hotmail.com)

## 11 REPORT OF THE DIRECTOR FINANCE, CORPORATE AND COMMERCIAL SERVICES

### 11.1 Revotes of Expenditure 2015/16

CSP Objective: 4 Responsible Civic Leadership that is Transparent, Innovative and Accessible

CSP Strategy: 4.2 Ensure finances are managed responsibly to meet the goals of the Community Strategic Plan and to protect financial investments and assets

Delivery Program: 4.2.1 Ensure all Statutory accounting and reporting is carried out to meet legislation

#### Summary

This report recommends the revote of expenditure for works not completed in 2015/16 to the 2016/2017 budget year.

#### Finance

Variations to Council's 2016/2017 Budget.

#### Policy

This report is a requirement under the Local Government Act 1993.

#### Attachments

1 Revotes from 2015/16 Operations

#### Enclosures

Nil

### **RECOMMENDATION**

[That the expenditure items as listed be revoted to the 2016/2017 budget year.](#)

### **BACKGROUND**

There are a number works and services that have not been completed in 2015/2016. A number of these are funded from unexpended grants and contributions received totalling \$389,611, Section 94 funds and Recoupments of \$476,135, Restricted Asset works of \$7,226,423 and revenue funded works of \$2,299,446. The carry over works from 2015/2016 budget totals \$2,299,446. It is recommended that these works be revoted into the 2016/2017 budget.

There are a number of larger projects funded from grants and contributions which need to be carried forward including the Digital Asset Management System for the Library, Coral Tree Removal at Gainsborough Oval and Surf Beach Flood Study totaling \$147,111. A significant number of projects totaling approximately \$7,934,872

## Report of the Director Finance, Corporate and Commercial Services

## 11.1 Revotes of Expenditure 2015/16 (cont)

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have been commenced and not completed during the year, including \$5,920,000 of work on the Kiama Aged Care Centre of Excellence.

Other items include Holiday Park capital of \$248,330, Youth Cottage Improvements of \$109,705 and grants and contributions that need to be carried forward under funding agreements.

The overall effect on the 2016/2017 budget is nil as the funding is provided from Restricted Assets as at 30 June 2016.

The attached table is a summary of the works and services which have not been completed in 2015/2016. The works total and the sources of funds are indicated. The amount of revoted works over the past three years are as follows:

2014/2015	\$4,199,506
2013/2014	\$4,128,897
2012/2013	\$3,284,848

REVOTES OF EXPENDITURE FROM 2015/2016 OPERATIONS

Department	Revenue	Section 94 Recoups	S94 Grants/Contribs.	Loans	Restricted Asset	Total
<b>Works &amp; Services Not Commenced</b>						
0042.1551.100 Economic Development-Strategic Planning	27,000					27,000 nc
0506.0160.920 Life saving program - capital equipment	11,600					11,600 nc
1096.0089.100 Art Acquisition Fund	400					400 nc
1096.0256.100 Community Gardens	18,402					18,402 nc
2420.0160.920 Environmental Admin - Capital purchases					38,000	38,000 nc
2420.0163.920 Capital Renewal - Transfer station					363,284	363,284 nc
2420.0260.920 Capital New - Transfer station					206,197	206,197 nc
2605.1562.100 Studies - Kiama LEP 2011 Review	33,000					33,000 nc
2605.1565.100 Studies - Kiama Town Centre DCP	7,000					7,000 nc
3150.2930.920 Footpath Henry Prkes Dr - Meehand to Cycleway	2,000	50,000				52,000 nc
3150.2945.920 Kiama Harbour/Blowhole Pt Picnic Shelter	87,500	46,000				133,500 nc
3160.2920.920 Dog Pound Office (Waste Depot)	80,000					80,000 nc
3160.2930.920 Footpath - Boneyard Reserve	90,000					90,000 nc
3160.2945.920 Kiama Harbour/Blowhole Pt Bank Stabilisation	192,641					192,641 nc
3160.2945.920 Kiama Harbour/Blowhole Pt Retaining Wall	128,050					128,050 nc
3508.1674.100 Flood Study - Ooaree Creek	90,000					90,000 nc
6020.1123.105 7 Mile Holiday Park					17,853	17,853 nc
6300.3200.920 7 Mile Holiday Park					30,000	30,000 nc
7317.0171.920 DWM Equipment Purchase - Transport trailers					400,000	400,000 nc
	<b>767,593</b>	<b>46,000</b>	<b>50,000</b>	<b>-</b>	<b>1,055,334</b>	<b>1,918,927</b>

<b>Works &amp; Services commenced but not completed</b>						
1096.1214.100 Cultural Cont - Municipal Health Plan	2,000					2,000 c
2020.0456.100 DA Archive	25,828					25,828 c
2345.1242.105 Peace Park	5,314					5,314 c
2365.1547.100 Studies - Disposal Depot					32,886	32,886 c
3150.2930.920 Footpath - Pheasant Point Drive	1,340					1,340 c
3150.2935.920 Riverside Dr/Oxley Ave Roundabout & Ped Crossing	51,696					51,696 c
3150.2945.920 Kiama Harbour/Blowhole Point New Bin Enclosures	53,300					53,300 c
3150.2945.920 West Kiama 'Silver Hill' - Reserve Upgrade		261,930				261,930 c
3150.2950.920 Jerrara Dam Safety Upgrade	29,039					29,039 c
3160.2920.920 Kevin Walsh Sports Fields - Amenities/Change Rooms	436,458					436,458 c
3160.2935.920 Cloonty Bridge Renewal	488,600					488,600 c
3160.2940.920 Union Creek Bridge - Culvert Replacement	14,329					14,329 c

REVOTES OF EXPENDITURE FROM 2015/2016 OPERATIONS

Department	Revenue	Section 94	S94	Grants/ Contribs.	Loans	Restricted Asset	Total
			Recoups				
3160.2945.920 Kiama Harbour/Blowhole Point Lighthouse Carpark & Lar	199,807	-					199,807 c
3508.1672.100 Jerrara Reserve Option Study	10,120						10,120 c
3508.1676.100 Burra Creek Legal & Survey	10,448						10,448 c
3508.2686.100 Planning Proposal Study	22,895						22,895 c
3508.2687.100 Saddleback Site Licence	20,444						20,444 c
6150.3209.920 Surf Beach Holiday Park						18,625	18,625 c
6200.3200.920 Kendall's Beach Cabins						26,730	26,730 c
6250.0160.920 Werri Beach Holiday Park						42,740	42,740 c
6702.0179.920 Leisure Centre Building Alterations	130,235						130,235 c
5850.0160.920 ACF - Land purchase						2,820,000	2,820,000 c
5850.0181.920 ACF - Demolition costs						500,000	500,000 c
5850.3208.920 ACF - Remediation						2,600,000	2,600,000 c
7317.0260.920 DWM Equipment Purchase - New Office & Amenities						87,644	87,644 c
2451.0163.920 Community Recycling Centre						42,464	42,464 c
	<b>1,501,853</b>	<b>261,930</b>	-	-	-	<b>6,171,089</b>	<b>7,934,872</b>
<b>Unspent S94 Contributions</b>							
1132.3409.920 Youth Cottage Improvements		109,705					109,705 c
3150.2930.920 Jamberoo Valley Cycleway			8,500				8,500 c
	-	<b>109,705</b>	<b>8,500</b>	-	-	-	<b>118,205</b>



REVOTES OF EXPENDITURE FROM 2015/2016 OPERATIONS

Department	Revenue	Section 94	S94	Grants/ Contribs.	Loans	Restricted Asset	Total
<b>Unspent Grants &amp; Contributions</b>							
0600.3439.100 Life saving program - Observation Tower Funding				2,550			2,550
1081.0001.005 Dementia Friendly Community Project				18,500			18,500
1130.1716.100 Young Women's Group				3,724			3,724
1150.0498.100 Digitisation -Kiama Independent				2,781			2,781
1165.1302.100 Library Local Priority Projects				7,150			7,150
1890.3331.920 Digital Asset Management System				60,546			60,546
1167.0160.920 Library Purchases Childrens Books				1,100			1,100
1050.1234.100 CT - HACC Transition				16,580			16,580
1050.1278.100 CT - Disability donation				8,234			8,234
1288.3205.920 HACC - 65 & Over (CHSP) vehicle purchase				21,995			21,995
1023.1277.100 HACC - 65 & Over (CHSP) Donation				30,000			30,000
2020.1736.100 Electronic Housing Code Funding				13,306			13,306
2605.1950.100 Agricultural Promotion & Diversification				5,000			5,000
3150.2945.920 Minnamurra Whale Watching Platform				2,354			2,354
2345.0461.100 Crooked River Estuary				11,459			11,459
2345.1196.100 Minnamurra Estuary Plan Review				19,908			19,908
2346.3437.100 Minnamurra CVA Wetland Weed Control				11,795			11,795
2346.3440.100 Coral Tree Removal - Gainsborough Reserve				43,870			43,870
2353.1700.100 Kiama's Litter Hotspots Project				4,789			4,789
2354.1700.100 CRC Communication & Education Program				10,000			10,000
2370.2691.100 OK Organics Kiama Home Composting W/shop				19,634			19,634
3381.1145.100 Regional Roads - Block Grant				27,241			27,241
3508.1673.100 Surf Beach Flood Study	30,000			42,695			72,695
3150.2945.920 Hillside Native Food Forest Land				4,400			4,400
	30,000	-	-	389,611	-	-	419,611
	2,299,446	417,635	58,500	389,611	-	7,226,423	10,391,615

REVOTES OF EXPENDITURE FROM 2015/2016 OPERATIONS

<u>Department</u>	<u>Revenue</u>	<u>Section 94</u>	<u>S94</u>	<u>Grants/</u>	<u>Loans</u>	<u>Restricted</u>	<u>Total</u>
			<u>Recoups</u>	<u>Contribs.</u>		<u>Asset</u>	
<u>Effect on 2016/17 Budget</u>							
Expenditure votes							10,391,615
less funding votes -							
Restricted asset-Carry-over Works			0792.5655.999				-2,299,446
Restricted asset-Grants/Contrib			0787.5655.999				-389,611
Restricted asset-Waste & Sustainability			2845.5655.999				-38,000
Restricted asset-Domestic Waste Management			7833.5655.999				-644,831
Restricted asset-Waste unit plant replacement			7816.5655.999				-487,644
Restricted asset-Kendalls Beach Holiday Park			6455.5655.999				-26,730
Restricted asset-Crown Holiday Parks			6495.5655.999				-109,218
Restricted asset-Residential			5984.5655.999				-1,200,000
Restricted asset-Hostel			5983.5655.999				-4,000,993
Restricted asset-ILU			5985.5655.999				-719,007
S94 Recoupsments			3887.5350.999				-58,500
S94 Plan			1835.5475.999				-109,705
S94 Plan			3896.5697.999				-261,930
S94 Plan			3896.5698.999				-46,000
<u>Total votes to 2015/16 ledger</u>							<u>0</u>

**11.2 Statement of Investments - July 2016**

CSP Objective: 4 Responsible Civic Leadership that is Transparent, Innovative and Accessible

CSP Strategy: 4.2 Ensure finances are managed responsibly to meet the goals of the Community Strategic Plan and to protect financial investments and assets

Delivery Program: 4.2.3 Ensure maximum revenue return is achieved

**Summary**

This report recommends receipt and adoption of the Statement of Investments for July 2016.

**Finance**

N/A

**Policy**

Clause 625 of the Local Government Act 1993 (NSW)

Clause 212 of the Local Government (General) Regulation 2005

Kiama Municipal Council – Investment Policy

**Attachments**

1 Statement of Investments July 2016

**Enclosures**

Nil

***RECOMMENDATION***

That the information relating to the Statement of Investments for July 2016 be received and adopted.

**BACKGROUND**

Attached is a copy of the Statement of Investments for July 2016.

**Investment Commentary**

The total Investment portfolio increased by \$1.4M during July 2016.

<b>Income Received:</b>		<b>Expenses Incurred:</b>	
Rate payments	\$0.6 M	Employee salaries	\$1.2 M
User Fees & Charges	\$1.3 M	Payment to suppliers	\$3.0 M
Grants & Contribution	\$1.5 M		
Debtor Receipts	\$1.1 M		
ILU & Hostel Bonds	\$1.1 M		
<b>Total</b>	<b>\$5.6 M</b>	<b>Total</b>	<b>\$4.2 M</b>

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

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

Interest rates have been dropping for a number of years. With the Reserve Bank cash rate now at 1.5% there does not appear to be any likelihood of any change in rates upward in the short term.

The National Australia Bank is quoting the following rates:

<b>Previous Month</b>	<b>As at 31/7/16</b>	<b>As at 31/7/15</b>	<b>90 days</b>	<b>1 year</b>	<b>2 years</b>	<b>3 years</b>
2.85%	2.75%	2.85%	2.75%	2.75%	2.70%	2.65%

**Certification – Responsible Accounting Officer**

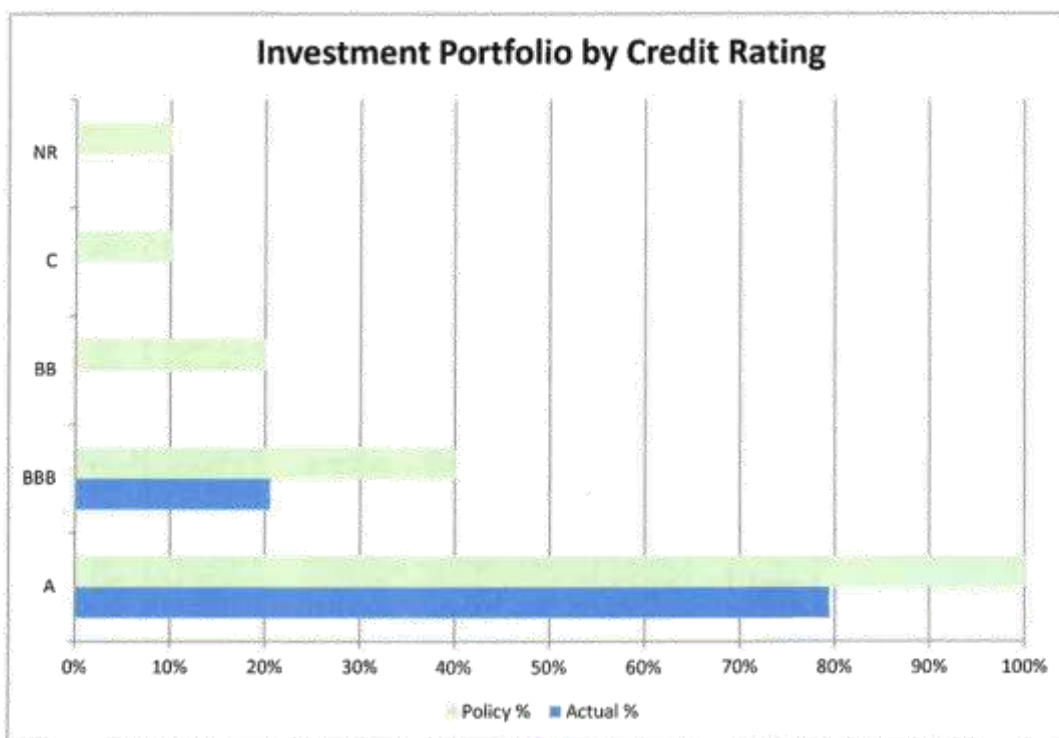
I hereby certify that the investments listed in this report have been made in accordance with Section 625 of the Local Government Act 1993, clause 212 of the Local Government (General) Regulation 2005 and Council's Investment Policy.

(b) Council Investments as at 31 July, 2016

DIRECT INVESTMENTS: INSTITUTION	S & P RATING	MARKET VALUE \$	INVESTMENT TYPE	DATE LODGED	MATURITY DATE	TERM (DAYS)	RATE %
AMP	A+	500,000.00	Term Deposit	09/03/16	12/09/16	187	3.00
AMP	A+	1,000,000.00	Term Deposit	09/05/16	09/11/16	184	3.00
AMP	A+	1,000,000.00	Term Deposit	23/05/16	23/11/16	184	3.00
AMP	A+	1,000,000.00	Term Deposit	01/06/16	30/11/16	182	3.00
Beyond Bank	BBB+	1,000,000.00	Term Deposit	26/05/16	29/08/16	95	3.00
Beyond Bank	BBB+	1,000,000.00	Term Deposit	31/05/16	07/09/16	99	3.00
Bankwest	AA-	1,000,000.00	Term Deposit	05/04/16	15/08/16	132	3.00
Bankwest	AA-	1,000,000.00	Term Deposit	14/07/16	21/09/16	69	2.75
Bank of Qld	A-	1,000,000.00	Term Deposit	06/07/16	11/01/17	189	2.95
Bank of Qld	A-	1,000,000.00	Term Deposit	30/03/16	02/11/16	217	3.10
Bank of Qld	A-	1,500,000.00	Term Deposit	15/02/16	17/08/16	184	3.10
Bank of Qld	A-	1,000,000.00	Term Deposit	18/07/16	25/01/17	191	2.95
Bank of Qld	A-	1,000,000.00	Term Deposit	21/07/16	01/02/17	195	2.90
Bank of Qld	A-	1,000,000.00	Term Deposit	02/05/16	02/11/16	184	3.10
Bank of Qld	A-	1,500,000.00	Term Deposit	23/03/16	26/10/16	217	3.10
Bendigo	A-	1,000,000.00	Term Deposit	03/02/16	04/08/16	183	2.95
Bendigo	A-	1,000,000.00	Term Deposit	22/06/16	04/01/17	196	2.75
ME Bank	BBB+	1,000,000.00	Term Deposit	15/03/16	15/03/17	365	3.07
ME Bank	BBB+	1,500,000.00	Term Deposit	24/02/16	22/02/17	364	3.05
ME Bank	BBB+	1,000,000.00	Term Deposit	01/03/16	05/09/16	188	3.00
ME Bank	BBB+	1,000,000.00	Term Deposit	20/04/16	20/04/17	365	3.15
NAB	AA-	1,000,000.00	Term Deposit	05/07/16	04/01/17	183	2.97
NAB	AA-	1,000,000.00	Term Deposit	20/07/16	14/12/16	147	2.93
NAB	AA-	1,000,000.00	Term Deposit	26/04/16	28/09/16	155	3.13
NAB	AA-	2,000,000.00	Term Deposit	09/03/16	11/08/16	155	3.12
NAB	AA-	1,000,000.00	Term Deposit	11/05/16	12/10/16	154	3.01
Newcastle B/S	BBB+	1,000,000.00	Term Deposit	20/06/16	21/12/16	184	2.70
IMB Society	BBB	1,000,000.00	Term Deposit	13/07/16	19/10/16	98	2.75
ING Bank	A-	1,000,000.00	Term Deposit	27/07/16	25/01/17	182	2.77
ING Bank	A-	1,000,000.00	Term Deposit	02/02/16	03/08/16	183	2.95
ING Bank	A-	1,000,000.00	Term Deposit	09/02/16	10/08/16	183	2.96
Rural Bank	A-	1,000,000.00	Term Deposit	11/07/16	07/12/16	149	2.85
Suncorp	A+	1,000,000.00	Term Deposit	27/04/16	31/10/16	187	3.10
Suncorp	A+	1,000,000.00	Term Deposit	30/05/16	01/12/16	185	3.00
Suncorp	A+	1,000,000.00	Term Deposit	16/06/16	18/01/17	216	3.03
Westpac	AA-	1,813,546.87	Bank Account	-	AT CALL		0.84
Westpac	AA-	2,581,578.82	Maxi Account	-	AT CALL		1.30
<b>TOTAL DIRECT INVESTMENTS</b>		<b>41,395,125.69</b>					<b>Average Rate-July 2016</b> <b>2.87</b>
							<b>Average Rate-July 2015</b> <b>2.84</b>

<b>TOTAL INVESTMENTS JUNE 2016</b>	<b>40,008,985.23</b>	<b>3.35%</b>	Change in total investment over prev 1 month
<b>TOTAL INVESTMENTS JULY 2015</b>	<b>42,150,209.69</b>	<b>-1.79%</b>	Change in total investment over prev12 months

**Note:** The Westpac Bank Account balance shown above of \$1.4M includes deposits at month-end not processed to Council's financial System and cheques that have not been presented.  
Council staff have been reviewing investment rates with 3 short to medium term investments currently included in our portfolio



(c) Application of Invested Funds

Restricted Funds:	Description	Value (\$)
Externally Restricted	S94 Developer Contributions	3,511,541.52
	Grants	1,025,442.00
	Domestic Waste	1,922,907.00
	Waste & Sustainability	228,464.18
	Carer Respite Centre	1,012,143.91
	Southern Council's Group	1,717,600.01
Internally Restricted	Blue Haven ILU	4,238,450.00
	Blue Haven Care-Residential	9,907,920.00
	Land Development	3,206,920.00
	Waste Business Unit (Plant Replacement)	1,775,436.00
	Plant Replacement - Engineers	1,315,375.00
	Employee Leave Entitlements	1,000,000.00
	S94 Recoupments	818,620.96
	Carry-over works	1,625,084.00
	Holiday Parks - Crown Reserves	1,213,526.00
	Holiday Park - Kendall's Beach	607,585.00
	Contingencies	779,730.00
	Property Insurance	120,000.00
Unrestricted Funds:	Community Bus	174,969.00
	CACP	66,983.00
	Funds to meet current budgeted expenditure	5,126,428.11
<b>TOTAL INVESTMENTS</b>		<b>41,395,125.69</b>

**Note:**

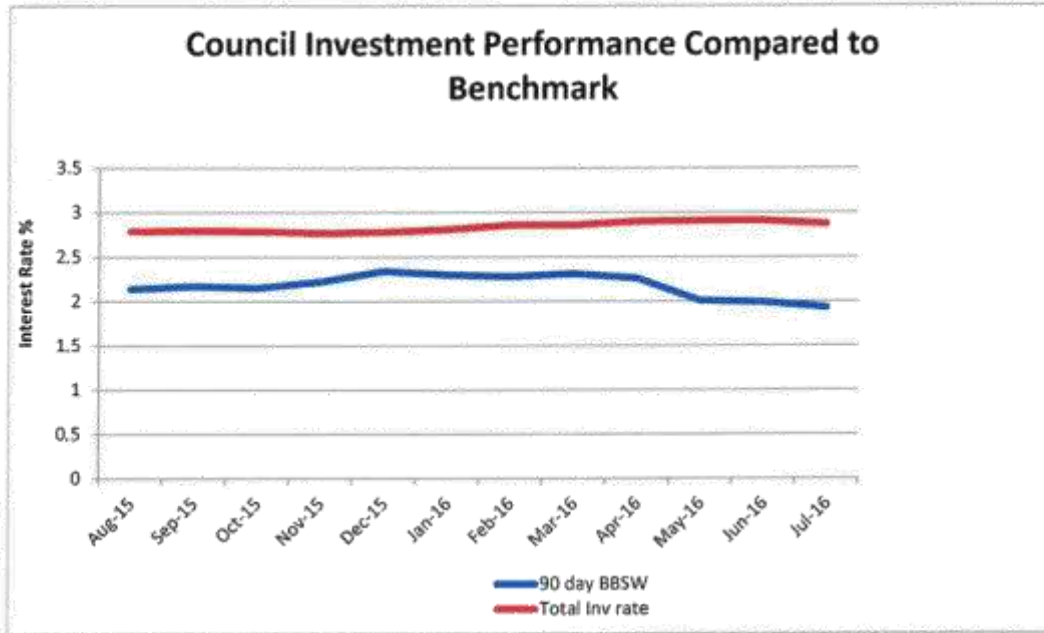
The above Application of Invested Funds reflects audited balances as at 30 June 2015. Actual movement in these balances are recorded at the end of the financial year. Movements for 2015/16 have not yet been finalised. The Unrestricted Funds balance forms available cash to fund Council's ongoing budget operations.



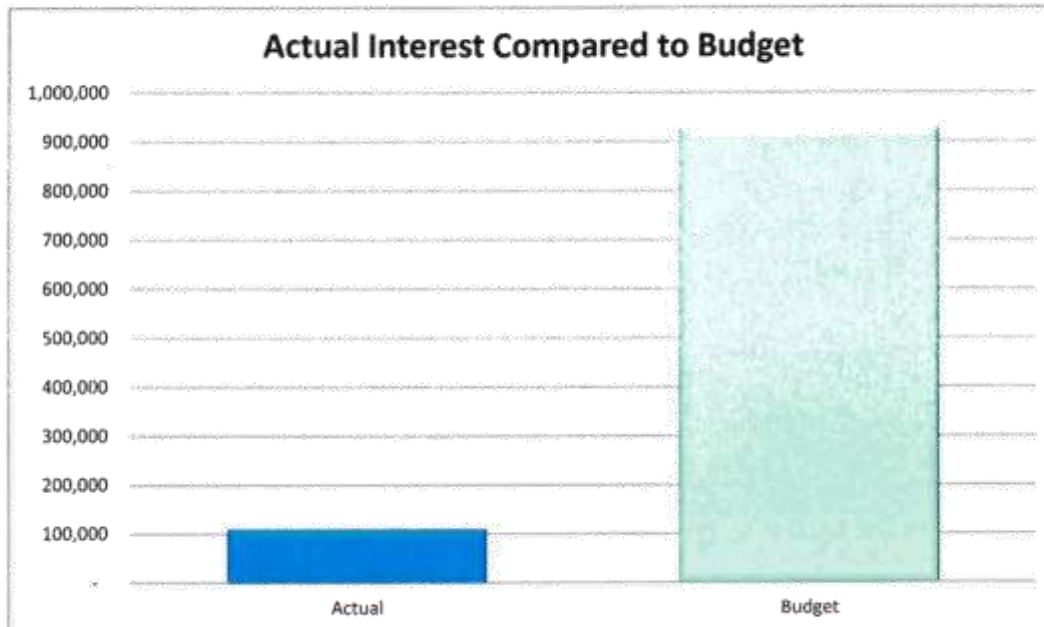
(d) Investment Portfolio Performance

Investment Performance vs Benchmark

	Investment Portfolio Return (%pa)	Benchmark: BBSW 90 day Bank Bill Index (source RBA)
1 month	2.87	1.93
3 months	2.90	1.98
6 months	2.89	2.13
12 Months	2.84	2.18



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



Council's interest on investment budget estimate has been conservative based on the trend with interest rates.

**11.3 Investment Policy**

CSP Objective: 4 Responsible Civic Leadership that is Transparent, Innovative and Accessible

CSP Strategy: 4.2 Ensure finances are managed responsibly to meet the goals of the Community Strategic Plan and to protect financial investments and assets

Delivery Program: 4.2.3 Ensure maximum revenue return is achieved

**Summary**

This report recommends adoption of a revised Investment Policy.

**Finance**

Not Applicable

**Policy**

Requirement of the Local Government (General) Regulations 2005.

**Attachments**

Nil

**Enclosures**

- 1 Investment Policy Revised August 2016
- 2 Investment Policy Revised January 2015

***RECOMMENDATION***

That the Investment Policy Revised August 2016 be received and adopted.

**BACKGROUND**

Under Guidelines issued by the Office of Local Government, Council is required to revise its Investment Policy at least annually. The policy is governed by the Investment Order issued by the Minister and this order is still current.

Finance staff have reviewed the policy. The policy was sent to TCorp for review. The policy now incorporates recommendations from Tcorp and is enclosed. The previous policy has also been enclosed for review purposes.

**11.4 NSW Department of Education - Request for Reduction of Pool Entry**

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.5 Plan for and support Young People

Delivery Program: 1.5.2 Develop and maintain partnerships with local schools to provide health and wellbeing based initiatives and programs

**Summary**

This report considers a request from the NSW Department of Education to reduce pool entry fees for students participating in the "School Swimming and Water Safety Program".

**Finance**

May have a minor impact upon the 2016/2017 Leisure Centre income.

**Policy**

n/a

**Attachments**

Nil

**Enclosures**

Nil

**RECOMMENDATION**

That Council approves a reduction in fees for pool entry for students participating in the School Swimming and Water Safety Program from \$3.40 to \$2.00.

**BACKGROUND**

For many years the NSW Department of Education has conducted a very successful "School Swimming and Water Safety Program" at numerous swimming venues throughout NSW. The Program operates lessons of 45 minutes over 10 consecutive school days. The success of the Program is based around the intensity and repetitive nature of the course.

The Program is fully funded by the NSW Government but participating schools are required to cover transport and pool entry costs.

It is the Government's aim to provide access to this Program for all children. However, the cost involved in pool entry and transport reduces the participation rate.

Council has received a request from Joanne Fryer, the Department of Education and Training School Swimming and Water Safety Program, South Coast Coordinator requesting a reduction or removal of the pool entry fee to encourage greater access and inclusion to the Program.

At the present time Council's fees and charges are as follows:

\$4.00 – child single entry – swim

Report of the Director Finance, Corporate and Commercial Services

11.4 NSW Department of Education - Request for Reduction of Pool Entry (cont)

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\$3.40 – child single entry – school program – swim

In previous years Council has changed the child single entry – school program – swim fee for students participating in this Program. Last year 3,305 pool entries were recorded which resulted in \$10,906.50 income to Council.

Shellharbour Council has made a decision to remove the entry fee but charges lane hire at \$11.25 per lane for each 45 minutes. Wingecarribee Council has reduced the entry fee to \$2.00 per student.

Given the cost to Council in hosting the Program (hot showers, extra chlorination, staff supervision and administration) and the loss of income while the Program is in operation, it would not be practical to remove the entry fee altogether. However, to support the Program and still meet Council's costs, it is proposed to reduce the entry fee for the Program to \$2.00 per student in line with the fee charged by Wingecarribee Shire Council.

There is no lane hire fees in addition to the entry fee. At \$2.00 per entry this will result in \$6,610 income to Council if the numbers remain the same. However, some schools have already indicated that there will be greater student participation if the entry fee is reduced.

## 12 REPORT OF THE DIRECTOR ENGINEERING AND WORKS

### 12.1 Assignment of Lease - Seven Mile Beach Kiosk Gerroa

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.13 Effectively manage other assets to cater for current and future generations (including car parks, community buildings, cemeteries and dams)

Delivery Program: 2.13.2 Manage other assets and infrastructure by the creation and implementation of the Other Assets and Infrastructure Asset Management Plan actions

#### Summary

The current lessees of the Seven Mile Beach Kiosk at Gerroa have sought Council's approval for the assignment of their lease to enable the sale of the business. This report recommends the assignment of the lease subject to the consent of the Department of Primary Industries (Lands). The current proposal follows a previous attempt to assign the lease which did not proceed.

#### Finance

The lessee or assignee is responsible for costs associated with assignment of the lease.

#### Policy

Crown Lands Act 1989

#### Attachments

Nil

#### Enclosures

Nil

### **RECOMMENDATION**

That Council (Reserve Trustee);

1. agree to the assignment of the current lease of the Seven Mile Beach Kiosk located on crown reserve (R83972) from Kylie Pickett and Kevin Chilver to Rick McKenzie subject to the formal approval of Department of Primary Industries (Lands);
2. give delegated authority to the General Manager and Mayor to sign all documentation associated with the lease assignment including the seal of Council.

Report of the Director Engineering and Works

12.1 Assignment of Lease - Seven Mile Beach Kiosk Gerroa (cont)

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## BACKGROUND

The Seven Mile Beach Kiosk is located on Crooked River Road Gerroa on crown reserve R83972 (Seven Mile Beach Reserve Trust) and Kiama Council is the reserve trustee.

The current lessee purchased the Seven Mile Beach kiosk business in 2011. The current lease commenced 1 July 2014 and will expire 30 April 2019. The current lessees are in the process of selling the business and under the terms of the lease require the lessor to agree to lease assignment. Council (as Reserve Trustee) can agree to the assignment of the lease but requires the formal approval of Lands. It is not considered that there are any short term alternative usage options for the premises and so a lease assignment should be considered for the remaining thirty two months of the lease.

The lessee has found a potentially suitable purchaser to continue the kiosk business. The nominated assignee has hospitality industry background as well as previously being a small business owner with experience in customer services, stock control and staff supervision. These experiences appear to be relevant and suitable in this case.

The current lessee has specifically requested that Council agree to the lease assignment.

Council will secure a bank guarantee with lease assignment the equivalent of three months' rent (approximately \$7,500). This is normal commercial practice and is a minimum requirement for any Council commercial/retail lease arrangements.

It is likely that a competitive process for the management of the Seven Mile Beach kiosk will be required under a new lease term at the end of the current lease in 2019 meaning a new lessee through a lease assignment will have no guaranteed continuation of a lease beyond 30 April 2019.



**12.2 Creation of Easement and Compulsory Acquisition**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.12 Effectively manage recreation and open space infrastructure to cater for current and future generations

Delivery Program: 2.12.1 Manage recreation and open space infrastructure for the community by the implementation of the Recreation and Open Space Asset Management Plan actions

**Summary**

This report recommends that Council grant an easement across a public reserve at Bombo for the purposes of a relocated gas main and for appropriate compensation for the additional burden on the land.

**Finance**

Costs incurred in the creation of the easement and registration of the plan (LPI NSW) will be met by Jemena and compensation payable to Council for easement acquisition.

**Policy**

Land Acquisition (Just Terms Compensation Act) 1991

Local Government Act 1993

**Attachments**

1 Gas main easement location Lot 2 DP1152102

**Enclosures**

Nil

***RECOMMENDATION***

That Council;

1. proceed with compulsory acquisition for an easement over Lot 2 DP1152102 for the purposes of a gas main in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991;
2. determine a compensation amount of \$5000 ex GST as recommended by Council's Valuer under the Land Acquisition (Just Terms Compensation) Act 1991;
3. create an easement for gas main pursuant to section 88B of the Conveyancing Act 1919 over Lot 2 DP1152102;
4. give the Mayor and General Manager delegated authority to the signing of all documents associated with the creation of the easement and compulsory acquisition including the seal of Council.

Report of the Director Engineering and Works

12.2 Creation of Easement and Compulsory Acquisition (cont)

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**BACKGROUND**

Lot 2 DP1152102 is public reserve owned by Kiama Council located generally between Hothersal Street, the South Coast railway line and the Princes Highway at Bombo. The land is community land and public utility provision is permitted.

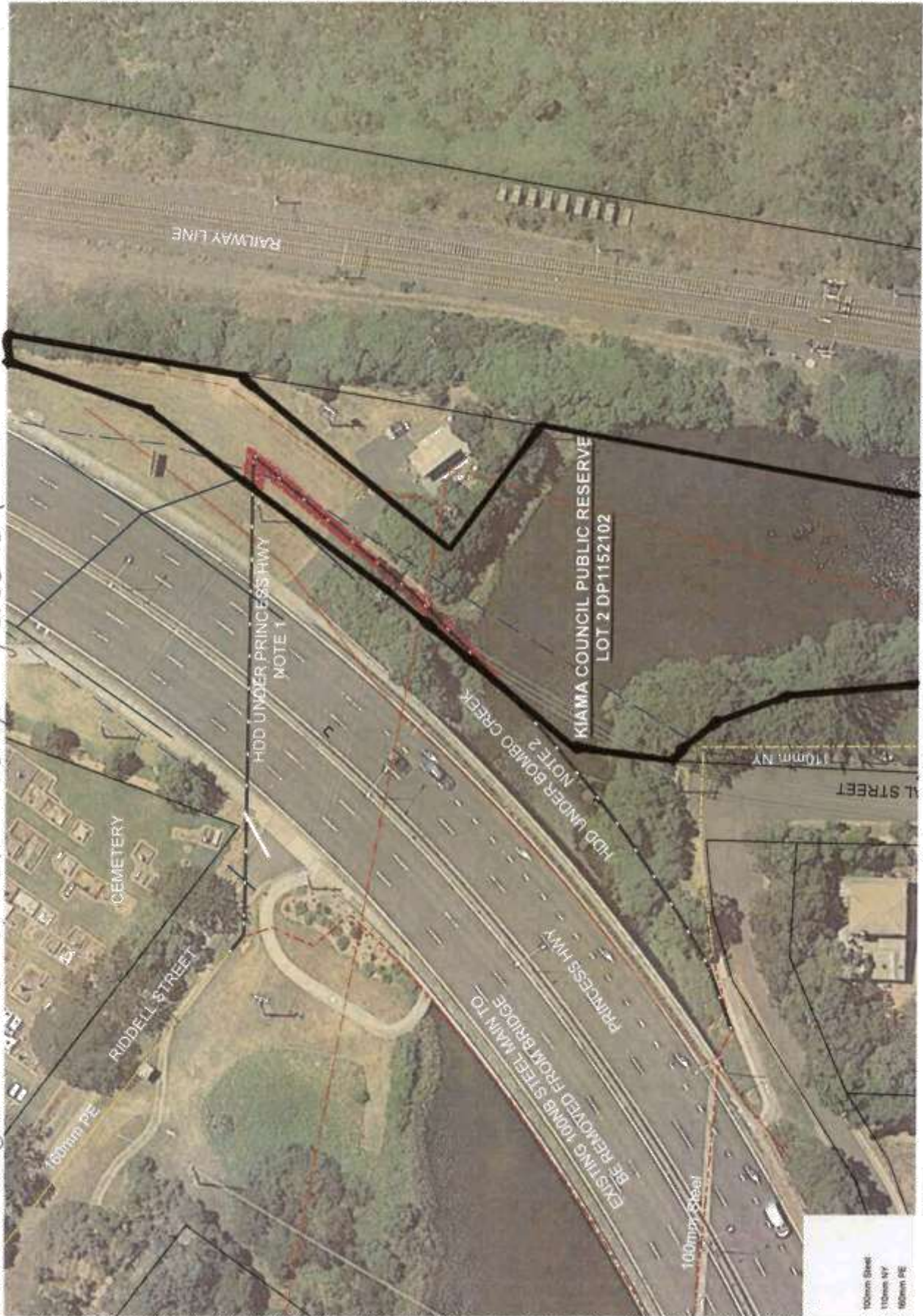
Council has been approached by Jemena to replace a corroded gas main which currently runs along the western side of the Princes Highway bridge over Spring Creek and then under the highway construction at Bombo. Replacement of the gas main is an essential work. Investigations by Jemena indicate the most feasible option is to locate the new gas main under Spring Creek on the eastern side of the Princes Highway bridge instead of re-attaching it to the side of the road bridge.

In order for this to occur an easement needs to be created over Council's land. In addition a compensation amount needs to be determined by compulsory acquisition method for the additional burden on Council's land. Council's valuer has assessed the compensation amount payable to Council in this case.

During the works phase, Jemena will occupy the land under temporary licence agreement and no public access will be restricted to the existing path/cycleway system through the area.

The public reserve where the proposed new gas main is to be placed will not be adversely affected for future public use or enjoyment following the works. All works are to take place underground.

gas main over Lot 2 DP1152102 requiring easement



## 13 REPORT OF THE DIRECTOR COMMUNITY SERVICES

### 13.1 BISI 2017 - 2020 Cultural Planning

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.2 Promote and support a range of social, cultural and artistic activities, practices and programs for creating sustainable health and well being

Delivery Program: 1.2.4 Implement and support community, cultural and artistic activities and development programs

#### Summary

This report seeks Council approval for the new cultural planning document BISI 2017 – 2020 and advises of the outcomes of the review of the current cultural planning document BERT 2013 – 2016.

#### Finance

2016/17 Budget

#### Policy

BERT 2013-2016 Cultural Planning document

BISI 2017-2019 Cultural Planning document

#### Attachments

- 1 BERT 2013-2016 - Cultural Planning - In Review - July 2016
- 2 BISI - Cultural Planning Document - 2017 to 2020

#### Enclosures

Nil

### **RECOMMENDATION**

That Council:

1. Accept the BERT 2013-16 review
2. Approve the BISI 2017-2020 Cultural Planning document

### **BACKGROUND**

In 2013 Council approved the current cultural planning document BERT 2013-2016. The document outlines strategies for the continued growth and development of the arts in Kiama.

It has a range of purposes:

- *For Council:* as statement about the direction and work it will undertake in regards to the Cultural Arts.
- *For Kiama Cultural Board and Cultural Arts Staff:* as a working document

## Report of the Director Community Services

## 13.1 BISI 2017 - 2020 Cultural Planning (cont)

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describing the projects and work direction for the four years.

- *For the Community:* as a document to support funding applications, suggest compatible work directions and provide information about Council's work in the Cultural Arts.

As Council comes to the end of the four year term of BERT, the document has been reviewed and a new four year planning document has been developed.

In reviewing BERT it is apparent that Council's commitment to the arts is not only present in spirit but also in practice.

A range of activities and programs have been undertaken each year, either under the direct funding and auspice of Council or partly funded by Council and implemented by community. Further activities, both big and small, have also been undertaken by community members, groups and organisations.

BERT was designed to reflect five key focus areas and the review document outlines activities undertaken from 2013 to 2016 in each.

- **Connecting** local artists with each other
- **Celebrating** the Cultural Arts
- **Growing** the public profile of the Cultural Arts in Kiama
- **Honouring** the value of our local artists
- **Building** an exciting arts environment for the Kiama Municipality and its visitors

The activities documented are those that have included Kiama Council in their funding, planning, support, resourcing, facilitating and/or implementation stages. Some projects have been undertaken by Council independently, most in conjunction with community and other organisations or Councils.

It is acknowledged that there are also a wealth of other arts based activities, programs and events that Council is not involved in, that are planned and implemented by our creative, committed and energetic community members that may not be reflected in this document.

Our local artists pursue their passion bringing; life, connection, joy, thoughtfulness, reflection and artistic expression to our community, enriching our economy, tourism, social connection and cohesion, and health & wellbeing through their work.

**BISI 2017-2020**

A new cultural planning document has been developed in conjunction with the Kiama Cultural Board, bringing together ongoing engagement with our arts community through our social media, artist's gatherings, day to day interactions, and conversations with exhibitors and event organisers.

It provides four focus areas of:

- Build creative community infrastructure
- Invest in supporting artists and enterprises



Report of the Director Community Services

13.1 BISI 2017 - 2020 Cultural Planning (cont)

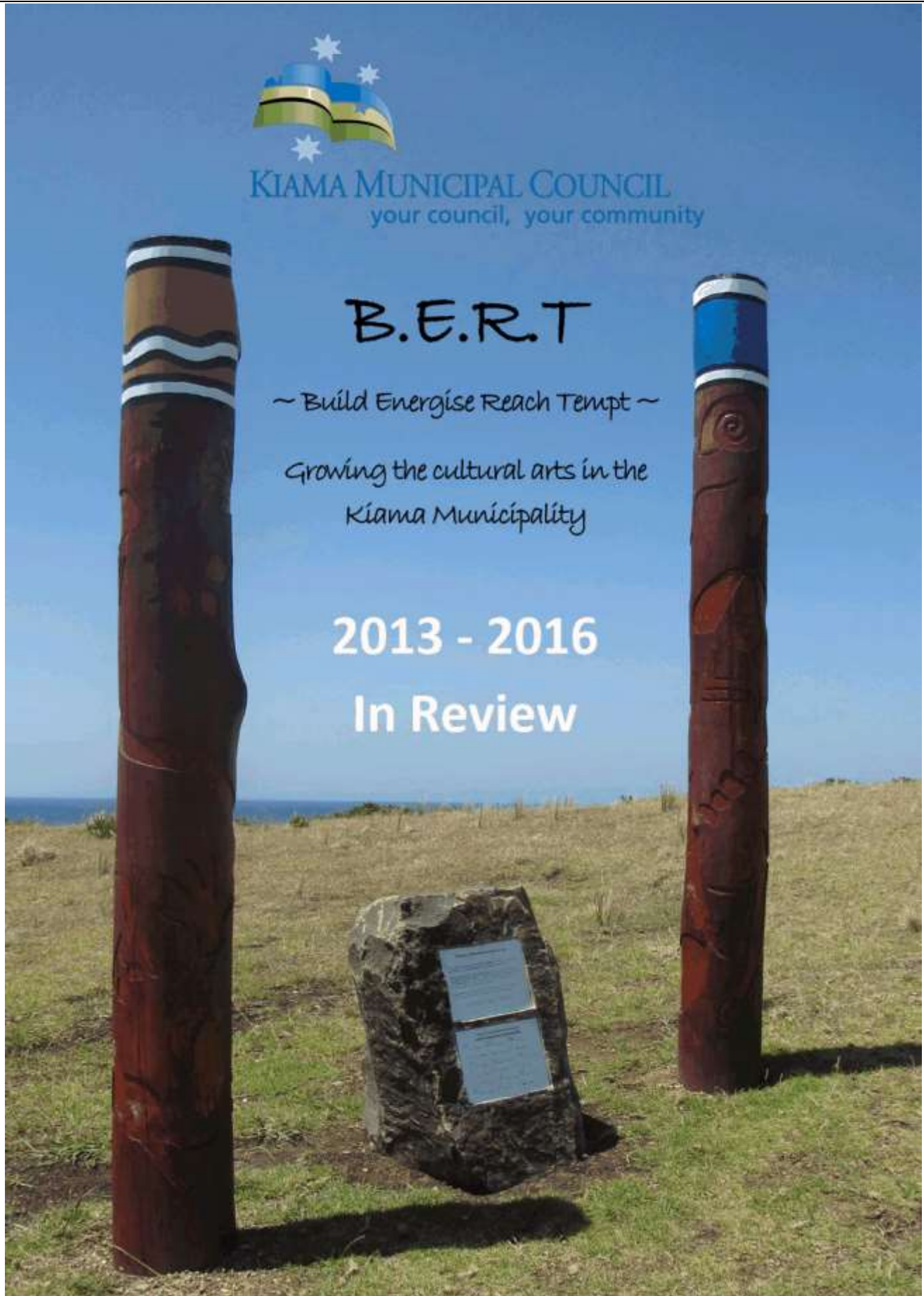
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- Sustain arts practitioners, connections and creative spaces
- Integrate a creative community with all facets of community life, including tourism, health and business

Building on the work of the past four years, BISI 2017-2020 provides strategies to move our arts community and industry forward.

Council's approval is sought for the new cultural planning document BISI 2017-2020 and that the review of BERT 2013-2016 be noted and accepted.





# BERT?

As a document of Council but also of our arts community, BERT (2013 - 2016) combines the bureaucratic requirements of Local Government with the dynamic, creative presence of the Cultural Arts.

BERT is a living breathing document, containing thoughts, hopes and directions for the future of Cultural Arts in Kiama.

It has a range of purposes:

- *For Council:* as statement about the direction and work it will undertake in regards to the Cultural Arts.
- *For Kiama Cultural Board and Cultural Arts Staff:* as a working document describing the projects and work direction for the next four years.
- *For the Community:* as a document to support funding applications, suggest compatible work directions and provide information about Council's work in the Cultural Arts.

Kiama Municipal Council's commitment to the Cultural Arts is inherent in its Integrated Planning and as a document designed to provide direction in the Arts, BERT also sits comfortably under this planning structure.

In reviewing BERT at the end of its four year term, it is apparent that Council's commitment to the arts is not only present in spirit but also in practice.

A range of activities and programs have been undertaken each year, either under the direct funding and auspice of Council or partly funded by Council and implemented by community. Further activities, both big and small, were also undertaken by community members, groups and organisations.

BERT was designed to reflect five key focus areas and this review document outlines activities undertaken from 2013 to 2016 in each of these areas.

- **Connecting** local artists with each other
- **Celebrating** the Cultural Arts
- **Growing** the public profile of the Cultural Arts in Kiama
- **Honouring** the value of our local artists
- **Building** an exciting arts environment for the Kiama Municipality and its visitors

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It is acknowledged that there are also a wealth of other arts based activities, programs and events that Council is not involved in, that are planned and implemented by our creative, committed and energetic community members that may not be reflected in this document.

Our local artists also pursue their passion bringing; life, connection, joy, thoughtfulness, reflection and artistic expression to our community, enriching our economy, tourism, social connection and cohesion, health and wellbeing through their work.

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*Connecting local artists, community and visitors with each other, by:*

#### Developing an Events Calendar

Improved promotion and synchronisation of events through:

- Council's Strategic Tourism and Marketing Manager
- Council's online events calendar
- Promotion of planned festivals, workshops, seminars, training, programs and projects through numerous Facebook pages including Kiama Council, Kiama Cultural Arts Network, SENTRAL, Kiama Community Page, What's on Kiama—Events
- A Council corporate events booking system.

#### Using the skills of Kiama Cultural Board

Diversity of Board members in gender, arts practice, local geography, culture and age.

- Cultural Board has included representation from:
  - Young and older people
  - Writers and poets
  - Painters
  - Performers
  - Musicians
  - Graphic design
  - Jamberoo, Gerringong and Kiama
- Expertise of the Board has been utilised for:
  - Art Acquisition
  - Cultural Grants Assessment
  - Policy development – busking & public art
  - U3A and Probus talks
  - Research and update of the Council Art Collection
  - Advice to Marketing interns
  - Ongoing support and advice to the Community and Cultural Development Officer
  - Strategic planning

### Marketing the Cultural Arts

Raising the profile of the cultural arts in Kiama and connecting artists with community

- University of Wollongong Interns engaged to develop a marketing plan.
- Presentations undertaken for Kiama U3A and Gerringong Probus
- Artist video interviews – displayed on blog site, promoted through social media
- Ongoing promotion through Kiama Cultural Arts Network blog site and Facebook page
- Videos produced regularly showcasing various arts activities and promoted through social media and available on YouTube. These have included:
  - Flugelman Sculpture Launch, 2016
  - Music in the Park Promo, 2016
  - Mardi Gras Regional Prize, 2016
  - Arts Overview, 2015
  - Pop Art Exhibition Launch, 2015
  - Daisy the Cow, 2015
    - Relaunch
    - Home Coming
    - Leaving
  - Sorry Day, 2015
  - Arts Biz Conference, 2015
  - Council Art Collection, 2015
  - NAIDOC Regional Awards, 2014
  - Daisy Song, 2014
  - World Poetry Day, 2014
  - KISS ARTs Festival, 2014
  - Blowhole Buskers, 2013
  - Dreaming Pole's Launch, 2013



### Fostering Staff

Paid and voluntary personnel who work to support the Cultural Arts in Kiama

- Kiama Cultural Board members
- Council Community and Cultural Development Officer
- Council Special Events Officer

### Promoting Cross Regional Arts Development

The Cultural Arts in the Kiama Municipality are linked with the Illawarra region (including the Shoalhaven)

- Regional Local Government Cultural Development Officer quarterly meetings undertaken throughout 2013 and 2014, including Wingecarribee, Wollongong, Shellharbour, Kiama and Shoalhaven Councils.
- Partnership projects:
  - Weave online Artist Directory
  - Planning for cross region Artist's Gatherings





### Promoting Cultural Trails

- Establishment of the Kiama Arts Trail
- Community committee established
- Launch of Kiama Arts Trail held at The Old Fire Station 29 Oct to 4 Nov 2013.
- Arts Trail operating the 1<sup>st</sup> weekend of each month.
- <http://www.kiamaartstrail.com/>
- Regular exhibitions held at OFS to promote trail artists.
- Committee received a successful Kiama Cultural Grant
- Promotion of Trail through Kiama Cultural Arts Network blog site and Facebook page



### Building an Arts Centre

Connecting artists through a central location of exhibition, performance, workshop, meeting, working and sharing space

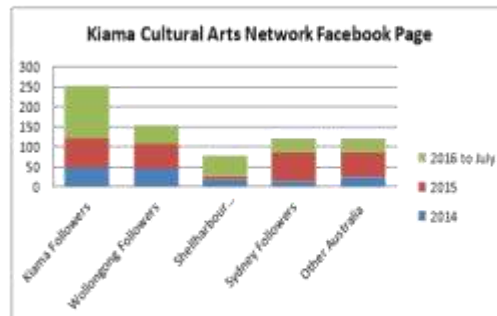
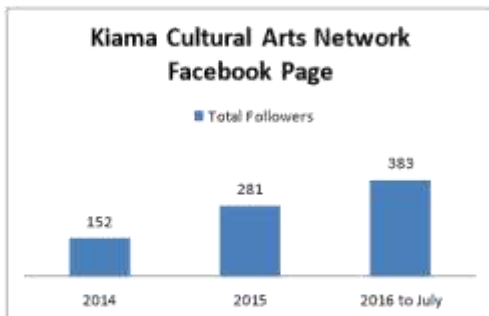
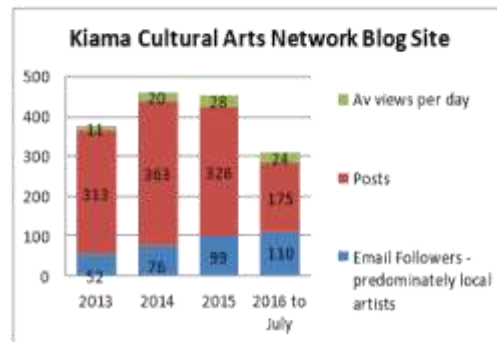
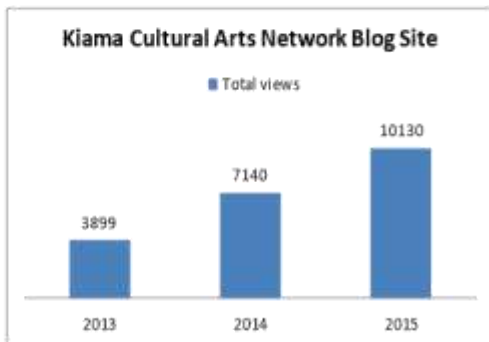
- Consultant engaged by Council to undertake a site assessment for a potential Art Centre.
- Site assessment completed and ratified by Council, two sites identified; Joyce Wheatley Community Centre and Old Fire Station
- Sites for pop up Maker Spaces explored including old Weston Printery and Mitre 10 spaces
- BHI Architects engaged to design plans for a new Art Centre on the Old Fire Station site and adapted use of the Joyce Wheatley Community Centre



**Expanding the Kiama Cultural Network**

Connecting artists, business and art lovers together through shared information and opportunities to interact.

- Artist Gatherings re-established in 2015 and held every three months
- Involvement in Illawarra RAW Awards judging 2015





# Celebrate

*Celebrating our culture through:*

## Maintaining the Old Fire Station Community Arts Centre

A central public space for the exhibition and creation of the Cultural Arts.

- Exhibition space fully booked across each 6 month period - waiting list of up to 12 unsuccessful applicants each of the last 3 booking rounds
- Poetry and Prose Workshop series held in March 2013
- Art workshop series held in October 2013
- Fees and charges established for use on Monday evenings and Tuesday mornings.
- Use agreement established and terms and conditions of use reviewed
- OFS used for KISS Arts and Jazz and Blues Festivals. Both held opening nights and exhibitions and utilised as information station for the festivals
- Kiama Art Society and one other exhibitor used extended hours of opening, in particular when other activities such as markets and events are also on in town
- 3 Multimedia, cross medium exhibitions undertaken by local artists in 2014 and 2015



Old Fire Station Community Arts Centre  
Exhibitors Guide

April 2016



## Holding Annual Events

An annual program of events and projects linked to current running themes.

- Council funded, organised and facilitated
  - Busking Competition, 2015
  - Arts Biz Conference, 2013 & 2015
- Council funding contribution, community organised and facilitated
  - KISS Arts Festival, 2013, 2014, 2015, 2016
  - Jazz and Blues Festival, 2013, 2014, 2015, 2016
  - Folk by the Sea, 2015, 2016
  - Kiama Arts Society Annual Exhibition, 2013, 2014, 2015, 2016

- Carols by Candlelight, 2013, 2014, 2015, 2016
- Community and/or business funded, organised and facilitated
  - Battle of the Choirs, 2013, 2014, 2015, 2016
  - Opera in the Valley (Jamberoo), 2013, 2014, 2015, 2016
  - Gerringong Live events at Gerringong Townhall

#### Creating Exhibitions

Regular and ongoing display of visual artwork by local artists

- Council's Art Collection available for online viewing  
[http://www.flickr.com/photos/kmc\\_art\\_collection/](http://www.flickr.com/photos/kmc_art_collection/)
- Kiama Arts Society Annual Exhibition, 2013, 2014, 2015, 2016
- Old Fire Station maintained as an accessible community arts exhibition space
- Art @ the Library exhibition program developed

#### Maintaining Daisy the Decorated Dairy Cow

Celebrating Kiama's farming history, public art and artistic expression through Daisy the Cow.

- Booking forms and policy established for painting Daisy.
- Regular repainting has occurred
- Daisy's repairs were undertaken in 2015



### Continuing the Kiama Cultural Grants

Supporting the Kiama Municipality's cultural arts scene.

- Cultural Grants budget increased to \$20 000
- Funding rounds held twice a year in 2013, 2014, 2015 & 2016
- Funding distributed to a range of projects including:
  - Arts festivals
  - Musical theatre
  - Arts trail
  - Music albums
  - Music videos
  - Podcasting project
  - Photography workbook
  - Multi genre exhibitions
  - Music dinner night
  - Arts marketing
  - Cabaret shows
- Dedicated Youth Arts Scholarships distributed each year
- Annual grants presentation to recipients and Council November 2013, 2014 and 2015



**Lloyd Rees Festival 2013**  
31 October - 3 November  
Gerringong

Exhibition of Lloyd Rees works  
Years of painting sites  
HafordLanes  
Lighter  
Sculpture and Film  
New (re)vised concert  
Art activities for all ages  
Indigenous art and storytelling  
Food and wine  
Exhibition of local memorabilia

Contact: lloydreese@lloydreese.com.au

A Place of Mine. The arts, the heritage and the art.



*Raising the public profile of the Cultural Arts in the Kiama Municipality using:*

**A New Residents Pack**

Promoting cultural arts within the broader community and facilitating new artist's engagement with the area.

- Cultural Arts information included in revised pack

**Public Art**

The presence of artists and artwork in the mainstream areas of Kiama's communities

- New Busking policy and procedure approved and implemented, 24 current active permits in place
- Aboriginal Dreaming Poles by Uncle Stephen Russell and Phyllis Stewart, installed on the Kiama Coastal Walk at Loves Bay Headland, Kiama and Werri Beach Lagoon, Werri Beach., 2013
- Unsuccessful artwork pursued
  - Crab Sculpture – 2 year loan unsuccessfully negotiated with Gillie and Marc
  - Whale sculpture – commissioning of a whale sculpture put to Council by Cr Way
- Ephemeral Chalk artwork by Ulla Taylor, Terralong St, 2015
- Bert Flugelman sculpture, Making Waves, purchased 2015, install Storm Bay 2016
- Mural by Mikey Freedom, Kiama Scout Hall, 2016





### Funding

Obtaining appropriate resources to grow Kiama Municipality's Cultural Arts

- Successful Country Arts Support Program funding for cross regional Weave Artist Directory with Shellharbour Council

### Staffing

Supporting local cultural arts infrastructure and future development of Kiama arts industry

- Community and Cultural Development Officer
- Special Event Officer

### The Cultural Grants Program

Supporting local arts through a local funding program

- Program promoted through:
  - Council's social media
  - local newspaper/s
  - The Bugle
  - Kiama High School
  - Kimunico
- Cultural Grants budget increased to \$20 000
- Funding rounds held twice a year in 2013, 2014, 2015 & 2016
- Funding distributed to a range of projects including:
  - Arts festivals
  - Musical theatre
  - Arts trail
  - Music albums
  - Music videos
  - Podcasting project
  - Photography workbook
  - Multi genre exhibitions
  - Music dinner night
  - Arts marketing
  - Cabaret shows
- Dedicated Youth Arts Scholarships distributed each year
- Annual grants presentation to recipients and Council November 2013, 2014 and 2015

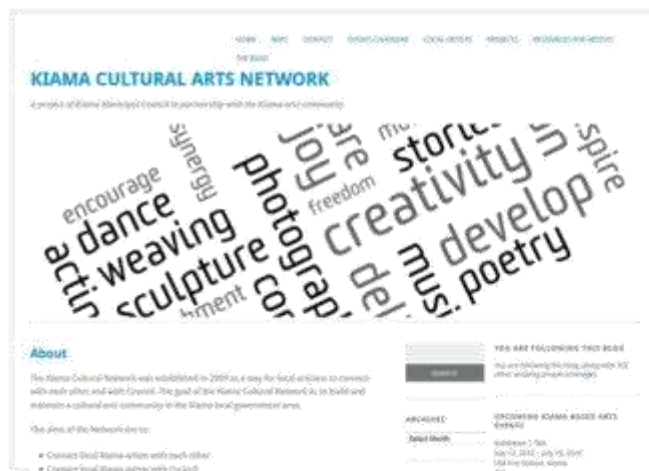




**Marketing**

Promotion of cultural arts within Kiama Municipality.

- Wollongong University Interns engaged to develop Marketing strategy
- Survey undertaken of artists and community on arts and marketing
- Use of social media ie Blog site, Facebook page and YouTube
- Coverage by Kiama Independent, The Bugle and the Illawarra Mercury on a range of arts related programs and activities



# HONOUR

Past, Present and Future

*Honouring the value of our local artists and art culture, through:*

## Reconciliation

Honouring the Indigenous peoples of Kiama, past present and future

- Aboriginal Dreaming Poles by Uncle Stephen Russell and Phyllis Stewart, installed on the Kiama Coastal Walk at Loves Bay Headland, Kiama and Werri Beach Lagoon, Werri Beach., 2013
- Dreaming Poles Launch held at Gerringong Town Hall, 7 March 2013
- Sorry Day commemorative ceremony held, 2013, 2014, 2015 and 2015
- 2014 Regional NAIDOC Week Awards hosted and facilitated by Kiama Council in conjunction with Wollongong, Shellharbour and Shoalhaven Councils
- Uncle Stephen Russell and Auntie Joyce Donovan regularly invited to undertake Welcome to Country at a range of Council events
- Council employment of an Aboriginal Liaison Officer



**Local Museums, Historical and Family History Society's**  
Gathering, protecting and preserving Kiama's history

- Redesign of the Orry Kelly Story at Kiama Pilots Cottage Museum by UOW graphic design students.
- Refresh and renew the brand identity for the Pilots Cottage

**An Arts Honour Roll**

Honouring the past work and achievements of local artists

- Kiama Arts Honour Roll approved by Council
- Criteria and selection process established.
- Inductees to date:
  - Lloyd Rees
  - John Downton
  - Dennis Koks
  - Charmian Clift
  - Orry Kelly





*Building an exciting cultural arts environment through:*

#### Planning

Incorporation of cultural arts principles and practice in Council policy and development planning

- Busking Policy and Guide completed, 2015
- Public Art Policy and Guide completed, 2016

#### A Permanent Arts Facility

A permanent arts precinct or centre for; exhibition, workshops, performance, artists in residence, sales, connection and arts development

- 2014, Consultant engaged by Council to undertake a site assessment for a potential Art Centre.
- 2015, Site assessment completed and ratified by Council, two sites identified; Joyce Wheatley Community Centre and Old Fire Station
- Sites for pop up Maker Spaces explored including old Weston Printery and Mitre 10 spaces
- 2016, BHI Architects engaged to design plans for a new Art Centre on the Old Fire Station site and adapted use of the Joyce Wheatley Community Centre

#### Arts Places

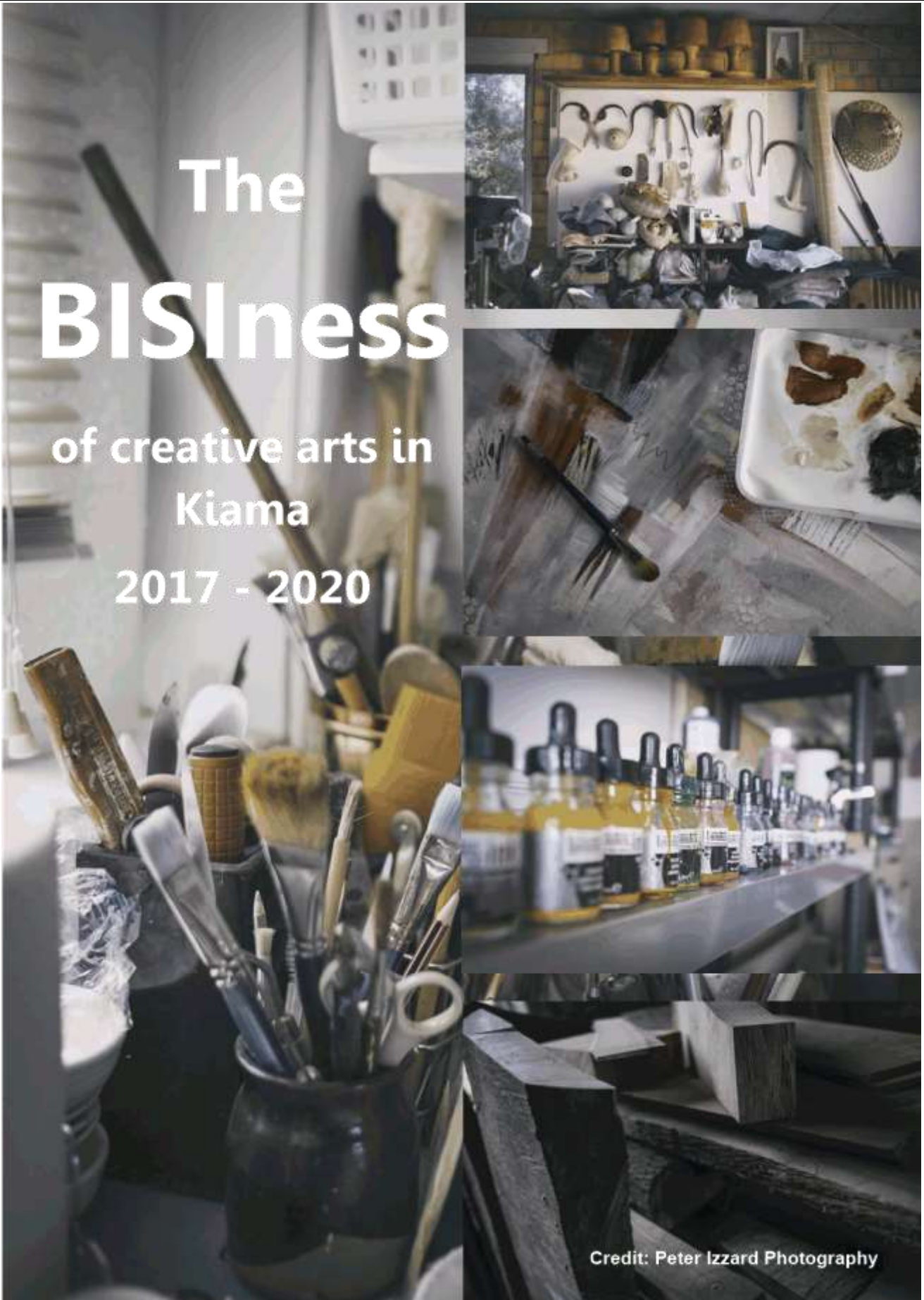
Accessing the Cultural Arts through a range of venues and spaces

- Kiama Library actively involved in the implementation of cultural arts such as; knitting classes and knit ins, displays, lego building competition, youth music events, regular posting of historical and heritage information on Facebook site, regular reposting of arts activities, projects and events on Facebook site.
- Kiama Library hosting of Shakespeare's first portfolio, 2016
- Art @ the Library exhibition Program established 2016
- Regular workshops held at the Coach House <http://kiamaartsociety.org.au/>



- Kiss Arts Festival 2013, 2014 and 2015 held in parks and caravan parks and variety of business venues such as Jamberoo Pub
- Live poetry Readings held at the OFS for World Poetry Day in March 2013
- Busking Policy established
- 2015 Busking Competition held along Terralong St, Kiama
- Old Fire Station Poetry and Prose workshops (March 2013), Week of arts based workshops (October 2014)
- Dreaming Poles Launch held at Gerringong Town Hall
- Permanent public art work displayed at Kiama Harbour, Storm Bay, Manning St, Kiama and Coast Walking Track, Loves Bay and Werri Beach
- Arts Trail exhibition held in Jamberoo 2015
- Pic's and Flicks at Gerringong Town Hall
- Jamberoo Art Group utilise Jamberoo Bowling Club
- Opera in the Valley held at the Jamberoo School of Arts





Item 13.1

Attachment 2

Credit: Peter Izzard Photography



## Acknowledgement to Country

Kiama Municipal Council and its Cultural Board acknowledge the traditional owners of this land, home of the Wodi Wodi people of the Dharawal Nation , and pay our respects to Elders past, present and future.

As we move into the future we acknowledge the bearers of our collective cultural past and honour their presence in our current and future endeavours.



*Welcome to Country by Uncle Stephen Russell, Sorry Day 2013*

## Welcome to BISI

*Build Invest Sustain Integrate*

These four powerful words carry Kiama Council's cultural planning document into the future.

They represent our goals and our vision for the way forward.

Kiama Council and its Cultural Board believe this document will support and encourage the creative role of all artists in the community.

*literature • music • theatre, musical theatre and opera • dance • poetry  
• performance poetry • performing arts such as circus, comedy and puppetry • arts  
festivals • visual arts and crafts • arts education and training • Aboriginal and  
Torres Strait Islander arts • community arts and cultural development • emerging  
and experimental arts.*

We believe in investing in the cultural arts as investment gives returns for our community; economically, socially and by improving health and wellbeing.

The Australian creative industries contribute economically to their communities and this means that the cultural arts are a valuable and indispensable part of any community.

*"Australia's copyright industries have arts and cultural activity at their core. They generate over \$93 billion in economic activity (6.6% of GDP) and employ 8 percent of the nation's workforce." Arts Nation 2015 The Australia Council for The Arts*

We believe community members and cultural groups are partners in the strategies set out in this document.

We hope **BISI** will encourage all those working in or supportive of the cultural arts to help build a creative community with strength and diversity, which in turn, is an investment in the health and wellbeing of all.

Kiama Council looks forward to the next four years of its commitment to the cultural arts and acknowledges the ongoing commitment and support provided by the volunteers of the Kiama Cultural Board in assisting us to achieve our goals.

Mayor Cr Brian Petschler  
Kiama Council

Deputy Chairperson Chrissie Paice  
Poet – Writer - Kiama Cultural Board

## Why BISI?

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**BISI** is a living breathing document. It contains thoughts, hopes and directions for the future of the cultural arts in Kiama.

It is a document with a range of purposes:

### *For Council*

A statement on the direction and work in regards to the cultural arts over the next four years.

### *For the Kiama Cultural Board and Council Cultural Arts Staff*

A working document informing cultural arts based work direction for the next four years.

### *For Artists*

A document to, support funding applications and provide information about Council's role in the cultural arts.

### *For Community*

A document to provide information about Council's role in the cultural arts and to support community interest and involvement in the Kiama cultural arts community.

As a document of Council, but also of our arts community, **BISI** strives to combine the bureaucratic requirements of Local Government with the dynamic, creative presence of the arts.

Kiama Council's commitment to the cultural arts is inherent in its Integrated Planning and as a document designed to provide direction for further work in the cultural arts, **BISI** sits comfortably under this planning framework.

## Integrated Planning and Reporting Framework



### BISI

A document in line with the **Community Strategic Plan** giving a vision for the niche industry of the arts

Like the **Development Plan** a four year document aligned with the four year Councillor term

Linked to the **Operational Plan** outlining key directional areas for activities, programs, projects and events in the arts

### Themes

Build

Invest

Sustain

Integrate

## BISI Kiama

The data following is taken from Remplan and based on data sourced from the Australia Bureau of Statistics (ABS). The software also incorporates a region-specific economic impact modelling first developed at La Trobe University, with continued development by Compelling Economics Pty Ltd.



Kiama is located approximately 2 hours drive (120kms) south from the centre of Sydney and lies between the Shellharbour and Shoalhaven local government areas, in the Illawarra region of New South Wales, Australia.

The Municipality spans approximately 256 square kilometres in area, encompassing an area of great natural beauty between the escarpment and the coast.







# Demographics



Item 13.1

Attachment 2



# Arts Economy

*The Kiama Heritage, Creative & Performing Arts Sector*



Item 13.1

Attachment 2

## Council's Cultural Arts Commitment

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Kiama Council has a long-standing commitment to cultural arts activity within the municipality and currently:

- supports the Old Fire Station Community Art Gallery as an exhibition space for local artists,
- provides premises to the Kiama Art Society,
- supports a variety of local cultural projects through its Cultural Grants program
- has an innovative new Library which provides a wide range of cultural activities. Kiama Library is now also a Digital Hub with NBN access to the rest of Australia and the world.
- employs a part time Cultural Development Officer and Special Events Officer
- undertakes a range of Council funded cultural programs and activities
- provides funding for biannual Cultural Grant funding rounds
- provides funding for annual community cultural events

Kiama Council also maintains consistent engagement with the local arts community through its Kiama Cultural Board.

This board includes Councillors and community representatives from a diverse range of arts practice.

## *BISI Values*

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**BISI** is underpinned by a set of values which are, that:

1. The cultural arts, as well as entertain, also challenge, disrupt, inform, resonate, question, explore and encourage participation and connection.
2. The cultural arts are a development and empowerment tool, in building social capital and economic and environmental sustainability.
3. Council decisions concerning cultural arts will be made in a responsive, positive and proactive manner, taking up existing opportunities and resources and building on them to grow our cultural arts industry.
4. Arts programs, events, projects and initiatives reflect our diversity, vision and dedication to the arts.
5. Sustainability will underpin all considerations of the cultural arts; programs, events, projects and initiatives from the planning stage through to completion. These areas will include:
  - ongoing financial viability,
  - minimisation of negative environmental health impacts
  - opportunities to make positive environmental health gains, and
  - staffing and/or volunteer resources.



# *Doing arts **BISIness***

## Themes

**Build Invest Sustain Integrate**

**BISI** sets out strategies under its four themes to:

- **BUILD** infrastructure and community
- **INVEST** in supporting artists and enterprises
- **SUSTAIN** arts practitioners, connections and creative spaces
- **INTEGRATE** a creative community with all facets of community life including tourism, health and business

These strategies provide a framework for Council, over the next four years, with regard to the cultural arts.

They also provide guidelines for individuals and organisations within the community.

## ***Build creative community infrastructure***

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1. Plan to build a multi-function arts centre in Kiama within the Hindmarsh Park precinct
2. Acquire funding to build a multi-function arts centre in Kiama within the Hindmarsh Park precinct
3. Build a self-supporting arts industry through strategies of the Kiama Cultural Arts Network (KCAN).

## *Invest in supporting artists & enterprises*

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1. Support professional creative people and their enterprises through a range of activities and programs.
2. Increase the pool of staff (paid and voluntary) to grow the arts in Kiama
3. Direct financial support for cultural arts practice through Council's cultural grants and promotion of other funding sources
4. Collaborate with Kiama tourism to promote and market cultural tourism opportunities, activities and events.
5. Develop strategies opportunities for successful outcomes from external funding sources.
6. Invest in a range of engaging public art for community spaces



## ***Sustain arts practitioners, connections and creative spaces***

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1. Continue to seek opportunities for cultural respect and acknowledgement for the traditional owners of this land, past, present and future.
2. Support and sustain independent artists, arts organisations and art event's organisers with information, resources, innovation and connection.
3. Sustain ongoing connections and relationships between artists through online platforms and social media, conferences and seminars, social gatherings for artists and arts organisations
4. Support and resource sustainable community creative spaces
5. Honour our exceptional Kiama artists both past and present through the Arts Honour Roll.

## ***Integrate a creative community with all facets of community life including tourism, health, and business***

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1. Encourage arts events that drive community participation and engagement
2. Encourage community events that employ the arts as a driver for participation and engagement
3. Develop and support strategies that integrate cultural arts with business, sports and tourism
4. Support connections for professional and emerging artists to engage with their communities.
5. Encourage communication between the culture arts, council and community via the Cultural Board
6. Integrate the cultural arts into strategies to increase social capital, health and well-being
7. Promote assets that preserve and promote heritage and history in the community

**13.2 Yes Campaign for Marriage Equality**

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.2 Promote and support a range of social, cultural and artistic activities, practices and programs for creating sustainable health and well being

Delivery Program: 1.2.8 Implement and support social and physical planning processes that recognise social justice and cultural diversity as integral components

**Summary**

This report seeks Council approval for supporting the Yes campaign should a plebiscite on marriage equality proceed.

**Finance**

Nil

**Policy**

Nil

**Attachments**

1 Yes campaign for marriage equality

**Enclosures**

Nil

**RECOMMENDATION**

That Council express its support for a Yes campaign for Marriage Equality.

**BACKGROUND**

Council recently received a written request (attached) from the newly formed Inner West Council, asking whether Kiama Council would be supportive of a Yes campaign, should a plebiscite on marriage equality proceed. They are also requesting to share the response with peak Lesbian Gay Bisexual Transgender Queer Intersexual (LGBTQI) advocacy organisations.

Councillors may be aware that at the National General Assembly of the Australian Local Government Association held in June 2016, the following motion, proposed by the City of Darwin, was carried:

*That this National General Assembly call on the Federal Government to treat with dignity and respect all members of the community regardless of gender or sexuality by supporting changes to the marriage Act to achieve marriage equality for same sex couples.*

The argument put forward for the motion was:

A key role of a council is to act and represent the interests of our local constituents in the wider community. We were all elected to represent the

## Report of the Director Community Services

## 13.2 Yes Campaign for Marriage Equality (cont)

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community no matter of age, sex religion and nationality. If members of our community are being discriminated against, then it's our role to stand up and say that we do not support this and we want equality for all. Clearly lobbying the Australian Government for equality within our community is just that. Any support the local government sector can give to this cause is a great thing and a major positive initiative. There are many local governments that have individually shown their support for marriage equality. It is proposed that this National General Assembly agree to call on the Federal Government to treat with dignity and respect all members of the community, regardless of gender or sexuality by supporting changes to the Marriage Act to achieve marriage equality for same sex couples.

In line with this motion, it is recommended that Council acknowledge its individual commitment to supporting marriage equality by indicating support for a Yes campaign, should one proceed.



1 July 2016

The Council of the Municipality of Kiama  
Clr Brian Petschler  
PO Box 75  
KIAMA NSW 2533

Council Ref: C187/16

Dear Clr Petschler,

I write to you on behalf of the recently formed Inner West Council, to gauge your interest in actively supporting a Yes campaign for marriage equality - should a plebiscite on marriage equality proceed.

The former Leichhardt, Ashfield and Marrickville Councils all resolved to support marriage equality.

In the near future there may be a plebiscite to guide the Federal Government on the views of the Australian public about marriage equality. Local governments can choose to actively support a Yes campaign for marriage equality, and/or to actively support the LGBTQI community to reduce harm experienced during this time.

I would like to share your response to the question of active support for a Yes campaign for marriage equality, with peak LGBTQI advocacy organisations, including Australians for Marriage Equality and the Gay and Lesbian Rights Lobby. If your Council actively supports a Yes campaign for marriage equality, it would be appreciated if you could advise Council who is the contact person for further communication.

If you have any questions, please contact Tara Day-Williams on 02 9367 9184 or at [tarad@lmc.nsw.gov.au](mailto:tarad@lmc.nsw.gov.au).

Yours sincerely,

Richard Pearson  
Administrator

**Customer Service Centres**

**Petersham** | P (02) 9335 2222 | E [council@marrickville.nsw.gov.au](mailto:council@marrickville.nsw.gov.au) | 2-14 Fisher Street, Petersham NSW 2049

**Leichhardt** | P (02) 9367 9222 | E [leichhardt@lmc.nsw.gov.au](mailto:leichhardt@lmc.nsw.gov.au) | 7-15 Wetherill Street Leichhardt NSW 2040

**Ashfield** | P (02) 9716 1800 | E [info@ashfield.nsw.gov.au](mailto:info@ashfield.nsw.gov.au) | 260 Liverpool Road Ashfield NSW 2131

**13.3 Health & Sustainability Advisory Committee - Revised Terms of Reference**

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.3 Develop and implement services and programs that promote health and active lifestyle for residents of all ages, abilities and interests

Delivery Program: 1.3.2 Develop, implement and review the Kiama Health Plan

**Summary**

This report provides council with the revised Terms of Reference (ToR) for the Kiama Health & Sustainability Committee for Council's endorsement.

**Finance**

N/A

**Policy**

Nil

**Attachments**

- 1 DRAFT Revised Terms of Reference - Health & Sustainability Advisory Committee

**Enclosures**

Nil

**RECOMMENDATION**

That Council:

- a) Council endorse the revised Terms of Reference for the Kiama Health & Sustainability Committee – August 2016
- b) endorse the advertising for new committee members under the revised ToR.

**BACKGROUND**

Kiama Health and Sustainability Advisory Committee was formed in 2008 (then called the Sustainable Kiama Communities Project) to provide a mechanism for community participation in council planning, project delivery and decision-making via a consultative process around Health and Sustainability issues in the Kiama LGA. The committee oversees the strategies in the Kiama Health Plan and provides advice and support on how to implement these strategies. The Committee consists of Council staff, Councillors, external organisation representatives and community representatives to ensure a coordinated, community based approach to the development, implementation and evaluation of initiatives.

The ToR for the committee have been revised after the committee was suspended last year due to not having enough community representatives. The revised ToR will



Report of the Director Community Services

13.3 Health & Sustainability Advisory Committee - Revised Terms of Reference  
(cont)

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provide better clarity around the purpose of the committee and provide a structure that should result in quorums for meetings being achieved more readily.



**Kiama Municipal Council  
Kiama Health & Sustainability Advisory Committee:  
Terms of Reference**

<b>Name of committee</b>	Kiama Health & Sustainability Advisory Committee
<b>Status</b>	Council committee <input checked="" type="checkbox"/> Statutory committee <input type="checkbox"/> Sunset committee (specify the end date ..... ) <input type="checkbox"/>
<b>Purpose</b>	To ensure a coordinated, community based approach to the development, implementation and evaluation of Kiama Council's various health and sustainability initiatives including the Kiama Health Plan.
<b>Definitions</b>	<p><b>Health</b> can be defined as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' (WHO, 1946)</p> <p><b>Sustainability</b> can be defined as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs" (Brundtland Commission, 1987).</p> <p><b>Kiama Health Plan</b> provides a framework to support the various departments of Council to work together on health and sustainability initiatives within our Municipality. Kiama Council recognises that the health of the community (both human and environmental health) is a shared interdependent responsibility. The plan aims to improve the health, wellbeing and quality of life for all residents and visitors to the Kiama Municipality. Secondly it aims to improve, protect and enhance the environment for the benefit of present and future generations. The four main pillars of the plan are: strengthening community, supportive social environments for health, healthy economy, and health of the environment. The Kiama Health Plan sits within Council's Community Strategic Plan for a liveable resilient community.</p>
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• To provide access for individuals/groups to have input into and participate in the preparation, review and implementation of Council's Health Plan, and other Council sustainability initiatives</li> <li>• To provide advice and support to council on the development of initiatives that meet the actions within the Kiama Health Plan</li> <li>• Provide information and recommendations to Council</li> <li>• Facilitate effective community input, collaboration and networking in relation to the Kiama Health Plan</li> <li>• To raise the profile of Council's health and sustainability initiatives in the wider Kiama community</li> <li>• Review any resources, surveys or information related to initiatives in the Kiama Health Plan that will be distributed to the community and provide input and feedback on its appropriateness.</li> </ul>

<b>Committee Meetings</b>	Meetings will be held every 2 months
<b>Venue</b>	Meetings will be held at the Kiama Council Chambers or other suitable venues on a needs basis.
<b>Membership</b>	<ul style="list-style-type: none"> <li>• Minimum of Two (2) nominated Councillors</li> <li>• up to five (5) community representatives</li> <li>• Minimum of one representative from the following Council departments: Community Services, Environmental Services, Engineering and Works</li> <li>• Other Council officers as required</li> <li>• Up to two (2) external organisational representatives</li> </ul>

<b>Meeting Quorum</b>	<p>A Quorum will be deemed to have been met under the following criteria:</p> <ul style="list-style-type: none"> <li>i. Minimum of 5 committee members present</li> <li>ii. Out of the 5 present, at least 2 are community representatives and one is a councillor.</li> </ul>
<b>Meeting administration</b>	<p>Meetings are to be chaired by a councillor or as elected by the committee and endorsed by Council.</p> <p>Minutes will be taken by a representative of council.</p> <p>Minutes are required to be submitted to the next Ordinary Meeting of Council immediately following the committee meeting.</p> <p>Minutes and agendas will be circulated no less than seven days prior to next scheduled meeting.</p>
<b>Selection of members</b>	<p>When positions become vacant the selection of new committee members will be undertaken:</p> <ul style="list-style-type: none"> <li>i. through a public invitation for EOI by applicants</li> <li>ii. by consideration of applications by council</li> <li>iii. by council approval of successful applicants</li> </ul> <p>The following factors will be taken into consideration when determining members:</p> <ul style="list-style-type: none"> <li>i. the persons relevant experience &amp; expertise</li> <li>ii. whether the person is a resident of the Kiama LGA</li> <li>iii. there is a gender balance</li> <li>iv. there is representation from across the full Kiama geographical area</li> <li>v. cultural and age diversity is represented</li> <li>vi. committee members are able to demonstrate that they are "connected and representative" of the community</li> </ul>
<b>Responsibility</b>	<p>Committee members will:</p> <ul style="list-style-type: none"> <li>i. Act in an advisory role to Council staff</li> <li>ii. Provide strategic guidance on implementation of health &amp; sustainability programs and initiatives</li> <li>iii. Provide important links to the communities they represent in promoting and delivering health &amp; sustainability initiatives</li> <li>iv. Participate in working parties as needed</li> <li>v. At all times comply with councils Code of Conduct</li> <li>vi. At all times contribute in a positive and respectful manner</li> <li>vii. Avoid disruption, contrary conduct or being wasteful of time and resources</li> </ul>

<b>Working Parties</b>	Working Parties will be established to assist in implementation of various health and sustainability programs as identified in the adopted Kiama Health Plan, and other Council Management Plans or as identified and resolved by Council from time to time.
<b>Terms of membership</b>	<p>Non councillor membership of the Kiama Health and Sustainability Committee will be until the end of the current council term.</p> <p>Non councillor member positions will be declared vacant/terminated when a member:</p> <ol style="list-style-type: none"> <li>i. completes their designated term and retires from the committee</li> <li>ii. completes their term and is not re appointed</li> <li>iii. resigns their membership, in writing, to the Chairperson</li> <li>iv. fails to attend more than 75% of scheduled meetings unless granted special leave of absence by the Chairperson</li> <li>v. acts in a way that is contrary to their responsibility as outlined (above)</li> </ol> <p>NOTE: Council on the recommendation of the committee chairperson reserves the right to terminate appointments in instances where behaviour is considered excessively disruptive and contrary, is a breach of the Code of Conduct, is deemed inappropriate or is regarded as failing to provide productive and valued input.</p>
<b>Addressing Unsatisfactory behaviour</b>	Where a (non Councillor or staff) committee member's behaviour is considered unsatisfactory and contrary to their responsibilities (identified above), the chairperson will draw this to the attention of the relevant committee member and reinforce the required level of conduct. The chairperson will make a written record of this and provide to a relevant council officer for recording. The committee member will be able to sight and sign the written record. Where there is re-occurrence of unsatisfactory behaviour the committee member will be warned formally in writing by the chairperson. Counselling (to be provided by the General Manager or Public Officer) will reinforce the standard of conduct expected as well as the implications of the behaviour on the committee members and Council. In addition counselling will reinforce the potential for termination from the committee should the behaviour continue. A written record shall be kept of the formal warning and counselling. If the committee members' behaviour does not improve after the formal warning and counselling, the committee member may, on the recommendation of the chairperson, be terminated by council resolution.

**Note:** The Kiama Municipal Council Code of Conduct governs the behaviour of Councillors and Council staff.

**13.4 Question for future meeting: Use of Kiama CCTV system to count tourist numbers**

CSP Objective: 1 A Healthy, Safe and Inclusive Community

CSP Strategy: 1.6 Recognise and promote community safety throughout the Municipality

Delivery Program: 1.6.7 Develop and implement a Community Safety Plan

**Summary**

This report responds to a question without notice from the May 2016 Council meeting which requested a report on the use of non-identifying information from CCTV to estimate the population serviced by Kiama at peak tourist times.

**Finance**

\$5720 (minimum) – not allocated in 16/17 financial year budget

**Policy**

Kiama Municipal Council CCTV Policy

**Attachments**

Nil

**Enclosures**

1 Server Video Analytics Datasheet June 25 2014(3)

**RECOMMENDATION**

That Council does not pursue using its CCTV system to estimate the population serviced by Kiama at peak tourist times

**BACKGROUND**

At the May 2016 Council meeting, Councillor Rice asked for a report on the use of non-identifying information from CCTV to estimate the population serviced by Kiama at peak tourist times; during questions without notice. This report provides the requested information.

GS Security, who have supplied and installed both of Council's system in Kiama and Gerringong, have provided Council with estimations of costs associated with purchasing software and licences and hardware to upgrade Council's current system in Kiama so that it could be used for this purpose.

To achieve this functionality, the following items would need to be purchased and installed:

- Analytics SDK module \$3,705.00 (ex GST)
- Camera Licence \$747.00 (ex GST) per analytic camera (it is assumed two of our current cameras could be used in the above identified finance). If additional cameras need to be purchased (because current cameras are not located and/or angled in a fashion that would support this type of function),

Report of the Director Community Services

13.4 Question for future meeting: Use of Kiama CCTV system to count tourist numbers (cont)

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then additional costs would be incurred, around \$3200 per camera (purchase only), plus installation costs.

In regards to Council's CCTV Policy, this type of use of the system is not consistent with the objectives of the policy. It is therefore recommended that Council does not pursue using the CCTV system for this purpose.



## 14 REPORTS FOR INFORMATION

### 14.1 Question for future meeting: Release of confidential reports

Responsible Director: Office of the General Manager

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At the Council meeting held on 19 July 2016 Councillor McClure requested a report be provided confirming if and when confidential reports and recordings of confidential meetings can become public information.

Section 11 of the *Local Government Act 1993* in relation to 'public access to correspondence or reports' states "that at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to the meeting". However this does not apply if the correspondence or reports relate to matters received, discussed, tabled or submitted when the meeting was closed to the public or if when in open council it is determined "that the correspondence or reports relate to a matter specified in section 10A (2) are to be treated as confidential". Section 10A is attached for information.

The *Government Information (Public Access) (GIPA) Regulation 2009 Schedule 1 Additional open access information for local authorities* section 1 (2) states in part that information contained in agendas and business papers of any meeting or committee meeting is prescribed as open access information except for matters considered when part of a meeting is closed to the public. Schedule 1 is attached for information.

As part of Council meeting procedure, at the close of Confidential Committee of the Whole Council resolves to revert to Open Council whereupon the General Manager reads out the recommendations of the Confidential Committee of the Whole and the Council resolves that these recommendations be confirmed and adopted. The recommendations will be published as part of the Minutes of the Ordinary Meeting of Council and are made available to the public in draft format as soon as practical.

The reports, attachments and meeting recordings associated with the recommendations are not made available to the public at any time unless they are the subject of a formal GIPA application and have been determined to be considered open access.

Applications once made are subject to an assessment as to whether the release of the information falls under open access or whether disclosure of the information does not serve the public interest.

It is suggested that a Council may subsequently resolve to publicly release a confidential report or part thereof where it is considered that the original reasons for confidentiality no longer stand or are relevant.

#### Attachments

- 1 GIPA Regulation 2009 Schedule 1
- 2 Local Government Act 1993 Section 10A

## Government Information (Public Access) Regulation 2009

Current version for 10 June 2016 to date (accessed 8 August 2016 at 11:18)

[Schedule 1](#)

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### Schedule 1 Additional open access information—local authorities

(Clause 3)

#### 1 Information about local authority

- (1) Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:
  - (a) the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
  - (b) code of meeting practice,
  - (c) annual report,
  - (d) annual financial reports,
  - (e) auditor's report,
  - (f) management plan,
  - (g) EEO management plan,
  - (h) policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
  - (i) annual reports of bodies exercising functions delegated by the local authority,
  - (j) any codes referred to in the LGA.
- (2) Information contained in the following records (whenever created) is prescribed as open access information:
  - (a) returns of the interests of councillors, designated persons and delegates,
  - (b) agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public),
  - (c) minutes of any meeting of the local authority or any committee of the local authority, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting,
  - (d) Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA.
- (3) Information contained in the current version of the following records is prescribed as open access information:
  - (a) land register,

- (b) register of investments,
- (c) register of delegations,
- (d) register of graffiti removal work kept in accordance with section 13 of the *Graffiti Control Act 2008*,
- (e) register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
- (f) the register of voting on planning matters kept in accordance with section 375A of the LGA.

## 2 Plans and policies

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- (a) local policies adopted by the local authority concerning approvals and orders,
- (b) plans of management for community land,
- (c) environmental planning instruments, development control plans and contributions plans made under the *Environmental Planning and Assessment Act 1979* applying to land within the local authority's area.

## 3 Information about development applications

- (1) Information contained in the following records (whenever created) is prescribed as open access information:
  - (a) development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and any associated documents received in relation to a proposed development including the following:
    - (i) home warranty insurance documents,
    - (ii) construction certificates,
    - (iii) occupation certificates,
    - (iv) structural certification documents,
    - (v) town planner reports,
    - (vi) submissions received on development applications,
    - (vii) heritage consultant reports,
    - (viii) tree inspection consultant reports,
    - (ix) acoustics consultant reports,
    - (x) land contamination consultant reports,
  - (b) records of decisions on development applications (including decisions made on appeal),
  - (c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).

- (2) This clause does not apply to so much of the information referred to in subclause (1) (a) as consists of:
  - (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
  - (b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.
- (3) A local authority must keep the record referred to in subclause (1) (c).

#### 4 Approvals, orders and other documents

Information contained in the following records (whenever created) is prescribed as open access information:

- (a) applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- (b) applications for approvals under any other Act and any associated documents received in relation to such an application,
- (c) records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- (d) orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- (e) orders given under the authority of any other Act,
- (f) records of building certificates under the *Environmental Planning and Assessment Act 1979*,
- (g) plans of land proposed to be compulsorily acquired by the local authority,
- (h) compulsory acquisition notices,
- (i) leases and licences for use of public land classified as community land.
- (j) performance improvement orders issued to a council under Part 6 of Chapter 13 of the LGA.



## New South Wales Consolidated Acts

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### LOCAL GOVERNMENT ACT 1993 - SECT 10A

#### Which parts of a meeting can be closed to the public?

#### 10A Which parts of a meeting can be closed to the public?

(1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:

- (a) the discussion of any of the matters listed in subclause (2), or
- (b) the receipt or discussion of any of the information so listed.

(2) The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than councillors),
- (b) the personal hardship of any resident or ratepayer,
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law,
- (f) matters affecting the security of the council, councillors, council staff or council property,
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,



SECTION 10A - PART 10A - SECTION 10A - WHICH PARTS OF A MEETING CAN BE CLOSED Page 2 of 2

(i) alleged contraventions of any code of conduct requirements applicable under section 440.

(3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

(4) A council, or a committee of a 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.

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**14.2 Kiama Red Cross - Letter of Appreciation**

Responsible Director: Office of the General Manager

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A letter of appreciation was recently received from the Kiama Red Cross for Council's donation of \$2000 as well as Council staff professional assistance for the Red Cross Fun Run held on 12 June 2016.

**Attachments**

- 1 Letter of Appreciation - Kiama Red Cross



**Australian Red Cross**  
THE POWER OF HUMANITY

14 McBrien Drive  
Kiama Downs 2533

The General Manager  
Mr M. Forsyth  
Kiama Municipal Council  
PO Box 75  
Kiama 2533

25<sup>th</sup> June 2016

Dear Michael

Kiama Red Cross would like to thank Kiama Municipal Council for its support of the Kiama Fun Run held on 12<sup>th</sup> June 2016.

Kiama Council was very generous in sponsoring the Fun Run with \$2,000. We were very appreciative of this financial backing.

As well, we were very grateful for the great support given to us by Council employees helping with: cleaning of the route after the storms on the weekend of 4<sup>th</sup> and 5<sup>th</sup> June; organising and lending marquees and other equipment; assisting with administrative requirements; all of which were done very professionally.

We had an extremely successful Fun Run with more competitors than previous years and raising close to \$7,000.

These funds will be sent to Australian Red Cross to support the many programs that are being undertaken in Australia and around the world.

Another great aspect of the 2016 Kiama Fun Run was the coming together of the Kiama community. Many local businesses supported the Fun Run by way of donations with many participants supporting these businesses after the event.

Kiama Red Cross is very grateful for the successful relationship it has with Kiama Municipal Council.

Yours faithfully,

Judi O'Brien  
Kiama Fun Run Coordinator  
Kiama Red Cross

*Date Received*  
01 JUL 2016  
Kiama Municipal Council

Item 14.2

Attachment 1

**14.3 Letter of Thanks - Gerringong Men's Shed**

Responsible Director: Office of the General Manager

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Council recently received a letter from the Gerringong Men's Shed thanking Council for their support as well as the assistance provided by Council staff for the Men's Shed Project.

**Attachments**

- 1 Letter of Thanks - Gerringong Men's Shed



13<sup>th</sup> July, 2016

Mr Michael Forsyth  
General Manager  
Kiama Municipal Council  
11 Manning St  
Kiama . 2533

Dear Mr Forsyth

### Gerringong Men's Shed

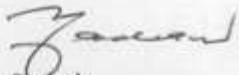
On behalf of the members of Gerringong Men's Shed I would like to take this opportunity to thank the Kiama Municipal Council for their generous response to our request for a refund of fees paid. I also acknowledge Council's additional support by providing valuable goods in-kind.

The help and cooperation of Mr Ken Adcock and staff is also acknowledged.

These donations go a long way to making our shed a reality.

I would also like you to know that the funding for updating the netball building is appreciated. The Men's Shed will continue to use this shared space on a weekly basis as a meeting room and lunch room. This will allow us to fully utilise the space in the new shed to undertake our projects.

The members would also like to thank Gareth Ward MP and Councillor Mark Way for their support and representations in this matter.

  
Regards  
Ken Cadogan  
Assistant Secretary  
Gerringong Men's Shed  
24 Elambra Pde  
Gerringong 2534

**14.4 Question for future meeting: Review of old State and Federal Government roadside signage**

Responsible Director: Engineering and Works

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At the 2 February 2016 Council meeting Councillor Sloan requested that a review be undertaken of all roadside signage installed by other levels of government to determine if they are still required to satisfy grant conditions, with a view of having unnecessary signs removed.

An audit has been completed and the attached table indicates which signs have recently been removed as part of this audit and those that can be removed in future months.

**Attachments**

- 1 Nation Building Program Sign Locations - project completion and sign removal

3/08/2016

Nation Building Program Sign Locations

Street Name	Locality	Program	Start Date	Project completion date	Sign Removal	Sign Removed
Barton Drive	Kiama Downs	Roads to Recovery	Dec-13	Dec-13	Jan-15	Yes
Tarrant Avenue	Kiama Downs	Roads to Recovery	Dec-13	Dec-13	Jan-15	Yes
Blowhole Point Road	Kiama	Roads to Recovery	Aug-14	Aug-14	Sep-15	Yes
Terralong Street	Kiama	Roads to Recovery	Aug-14	Aug-14	Sep-15	Yes
Bland Street Kiama	Kiama	Roads to Recovery	Sep-14	Sep-14	Oct-15	Yes
Shoalhaven Street	Kiama	Roads to Recovery	Sep-14	Sep-14	Oct-15	Yes
Belinda Street	Gerringong	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Blackwood Street	Gerringong	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Bong Bong Street	Kiama	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Golden Valley Road	Jamberoo	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Gwinganna Avenue	Kiama	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Havilah Place	Kiama	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Macquarie Street	Jamberoo	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Stewart Place	Kiama	Roads to Recovery	Jul-15	Jul-15	Aug-16	
Barney Street	Kiama	Roads to Recovery	Feb-16	Feb-16	Mar-17	
Belvedere Street	Kiama	Roads to Recovery	Feb-16	Feb-16	Mar-17	
Gibraltar Avenue	Kiama Downs	Roads to Recovery	Feb-16	Feb-16	Mar-17	
Kiarama Avenue	Kiama Downs	Roads to Recovery	Feb-16	Feb-16	Mar-17	
Austin Avenue	Minnamurra	Roads to Recovery	May-16	May-16	Jun-17	
Rangoon Road	Minnamurra	Roads to Recovery	May-16	May-16	Jun-17	
Jamberoo Mountain Road	Jamberoo	Black Spot	Planning			
Jamberoo Mountain Road	Jamberoo	Black Spot	Planning			
Princes Highway	Kiama Heights	Black Spot	Planning			
Princes Highway	Kiama	Black Spot	Planning			



**14.5 Question for future meeting: Kiama Harbour moorings**Responsible Director: Engineering and Works

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At the 26 April 2016 Council meeting Councillor McClure asked for a report on the current procedure for a member of the public to be able to obtain a mooring at Kiama Harbour.

Nicole Smithers, Secretary of the Kiama Harbour Boat Owners Association (the Association), confirmed the following:

- There are 28 moorings at the harbour; 26 are occupied permanent moorings and 2 are required to be maintained for visitor/government vessel moorings as stipulated in the Permissive Occupancy Agreement the Association has with Crown Lands.
- There is a waiting list for moorings with over 25 people listed.
- If a member of the public is interested in mooring at the Harbour they are invited to apply in writing to the Association at PO Box 219, Kiama and are placed on the waiting list.
- If a boat in an existing mooring is tendered for sale the purchaser of that boat has the existing mooring transferred into their name.
- When a boat is advertised for sale the Association advises all the people on the waiting list and they are given 2 weeks to decide whether to purchase the boat.
- It is very rare that a vacant mooring becomes available i.e. without a boat being sold with it.

## 14.6 Indian Myna Bird Control Program

Responsible Director: Environmental Services

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This information report has been prepared in response to a request from a resident for Council to support an Indian Myna control program, dealing with the euthanizing of the birds on behalf of residents who capture them.

Council receives enquiries about Myna bird control on an irregular basis. Indian Myna birds are not a declared pest, and there is no legislative obligation to control them. They are a visible pest and create a number of issues in the urban environment, making them an obvious target for community action. However there is scientific evidence which indicates that the native noisy minor has a greater impact on the small native bird species in modified woodland ecosystems, where the Indian Myna birds have more of an impact in urbanised environments. Studies in Canberra (Pell and Tidemann 1997) of two nature reserves found evidence of the Indian Myna affecting the breeding success of crimson and eastern rosellas in woodland areas, particularly close to urban centres. However Lowe et al. (2011) concluded that Indian Mynas have little competitive impact on resource use by native bird species in urban Sydney. Bird Life Australia in its Pest Bird Case Study of the Common (Indian) Myna, state that 'further research is required to look at the efficacy of habitat manipulation at reducing the impact of common Mynas, as Lowe et al. (2011) conclude, if the purpose of Myna control is to enhance urban bird diversity, resources currently directed towards culling could be better directed to improving the quality of natural habitat'.

The most comprehensive and successful program has been undertaken by the Canberra Indian Myna Action Group (CIMAG), a not for profit community organisation who have successfully trapped and euthanised over 53,478 Mynas and 8,152 Starlings between inception in 2006 and June 2015. CIMAG, have also successfully partnered with the RSPCA to provide a free euthanizing service for participants of the program.

Wollongong City Council have also implemented a program which was reported to Council in August 2014, when the men's shed in Kiama approached Council to support an Indian Myna control program based on the Wollongong City Council model. The report set out a number of options for the program based around the men's shed building and selling the traps.

At that time Council resolved that:

- "1) *Council advise the Men's Shed that while it endorses the principle of the Indian Myna Bird Control Program, Council unfortunately does not have the resources to assist at this time*".

A copy of this previous report is enclosed for information.

The surrounding local government areas of Shellharbour, Shoalhaven and Wingecarribee do not have Myna Bird Control Programs run by Council. They do however refer the community to men's sheds to purchase traps, and refer anyone wanting to participate to the 'Model code of practice and standard operating procedures for the humane capture, handling and destruction of feral animals in Australia' and the NSW Department of Primary Industries – 'Methods of Euthanasia'

Reports for Information

14.6 Indian Myna Bird Control Program (cont)

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and 'Trapping of Pest Birds'.

Councils who do not have official Indian Myna control programs state that trap operators must accept the responsibility of humane killing of trapped birds.

**Enclosures**

1 Council Report - 19 August 2014

**14.7 Reporting on Council's 2013- 2017 Delivery Program (Jan - June 2016)**Responsible Director: Office of the General Manager

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This report is prepared pursuant to s.404 (5) of the *Local Government Act 1993*. Council is required to provide regular (6 monthly) progress reports to the Council, reporting on progress with respect to the principal activities detailed in the Delivery Program. The Delivery Program is established to ensure Council actively works towards addressing the issues of most concern for our community, as they are identified in the Community Strategic Plan (CSP).

This 6 monthly report is for the period January to end of June 2016. This is the third year in the four year Delivery Program (DP) cycle. The Delivery Program is due for review from June 2017.

Theoretically the cycle of the Delivery Program is to enable a new Council (the new Council after an election) to operate within the final year of the previous DP. This gives Councillors an opportunity to become familiar with the Integrated Planning and Reporting process (which includes the review of the Community Strategic Plan and the Long Term Financial Plan and other resourcing strategies (the Asset Management and Workforce Management Plans)) and to be better prepared to set the organisational strategy for the next four years.

The DP report provided to Councillors will be placed on Council's website per Local Government Act requirements.

The period January to June was arguably the most significant period in Kiama Council's history. The State Government announcement in December 2015 of the proposed merger between Kiama and Shoalhaven Council's was unwelcome news that required significant Council and community resources to work on a comprehensive and sustained response, to oppose the Baird Government's proposal.

Highlights during the period include:

- The NSW Government decided against the proposed forced merger between Kiama and Shoalhaven Council and hence Kiama Council has maintained its autonomy and independence.
- Blue Haven care staff survey clients at the end of individual activities and programs and we have achieved a 99% satisfaction rating. (The annual Client Satisfaction Survey is scheduled for late July/early August).
- In May a screening of films from the Colourfest Short Film Festival was shown for Harmony Day 2016 showcasing a range of experiences in Australia by migrants and refugee communities.
- Due to the high demand for community transport services for the frail, aged, younger people with disabilities and their carer's, our service to funding targets were fully (100%) achieved.
- The Old Fire Station Community Art Centre continues to maintain a 100% booking rate with a waiting list of between 10 and 12 applications per booking round.

## Reports for Information

14.7 Reporting on Council's 2013- 2017 Delivery Program (Jan - June 2016)  
(cont)

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There has been an increase in the number of new and returning Kiama based artists bringing a greater focus and interest to Kiama's own arts industry.

- BHI Architects have been approved as the successful contractor to develop plans for the new Kiama Art Centre
- Council has maintained its financial commitment to cultural arts activities and programs by providing \$8000 in funding to various public art and cultural activities.
- Kiama Leisure Centre has increased its patronage during the year by including new programs and initiatives to allow more of the community to access programs and memberships at reasonable prices. The patronage has increased by 1.66% from the previous year.
- The Dementia Friendly Kiama Project continues to grow and engage more participants with growing interest from local organisations and individuals who want to contribute to the project. The project which won the National Award for Local Government in the Disability Access and Inclusion category has also received an additional \$20,000 in funding through the IRT Foundation.
- Working with young people through the Sentral program continues to achieve success. Barista Training held weekly at the Youth Centre with over 20 young people trained. Young people have reported that at least 12 of these trainees have since secured employment.
- Our commitment of public health and safety remains an important strategy of the organisation. Online Food Safety Training resulted in 65 food industry employees completing online food safety training during the past six months. Over the 12 months 150 people undertook the online course. Two Food Safety Newsletters were produced and distributed to 100% of food premises within the LGA.
- Gerringong CCTV was installed and is fully operational.
- The 2015/16 road renewal work is 100% complete.
- Our capital new program for roads and footpaths continued throughout the six months with Jamberoo CBD road improvement works, Union Creek bridge replacement and Kiama Harbour boat trailer parking and wash down bay projects all being completed in this period. Belinda Street, Kiama Harbour, Pheasant Point Road, Jamberoo Valley Cycleway and the Jamberoo CBD footpath work have also been completed.

**Enclosures**

- 1 Delivery Program - 1 January 2016 to 30 June 2016

**14.8 Parking Statistics - July 2016**Responsible Director: Environmental Services

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**CBD Parking**

Parking patrols conducted – 11 site specific – 31 general area

Infringements issued – 32

Vehicle spaces inspected – 942

Market Day – 17/7

Terralong Street 1P West – 1 patrol

Terralong Street 2P – 4 patrols

Terralong Street 1/2P – 3 patrols

Rosebank PI 2P – 1 patrol

Railway Street 2P – 1 patrol

Manning Street – 1 patrol

**School Parking**

St Peter and Paul's - 1 patrol resulting in 2 infringements

Gerringong Public - 1 patrol (to be issued)

Minnamurra Public - 1 patrol resulting in nil infringement

Kiama High - 1 patrol resulting in nil infringement

**Reactive Issues**

Park on Path/Strip – 7 infringements

No Parking – 1 infringement

No Stopping – 3 infringements

**Total amount of infringements = \$4101**

Specific patrols for August will be locations nominated above.



**14.9 The Local Government Amendment (Governance and Planning) Bill 2016**Responsible Director: Finance, Corporate and Commercial Services

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The *Local Government Amendment (Governance and Planning) Bill 2016 (Bill)* was introduced to the Legislative Assembly on 22 June 2016 by the Minister for Local Government, to amend the *Local Government Act 1993 (LG Act)* in a subtle but profound manner.

The introduction of the Bill follows recommendations made by the Independent Local Government Review Panel and the Local Government Act Taskforce for legislative change, the release by the Government of an explanatory paper in January this year, and an online survey regarding each of the proposed amendments – with more than 160 submissions received via the Office of Local Government’s website.

The Minister stated in the second reading speech that the Bill is ‘phase one of the Government’s broader reform of the *Local Government Act 1993*’ and ‘starts the journey away from process-focussed local governance towards principle-focused governance’ after the amalgamations of numerous councils around NSW in May.

A summary of some of the major changes proposed by the Bill are outlined below.

**Purposes of the Act and Principles for Councils**

Any change to the purposes or objects of an Act is significant. That is because the purposes or objects help to explain an Act’s intended scope and focus, and are an important interpretative tool for a Court seeking to interpret a provision of that Act – s 33 of the *Interpretation Act 1987 (NSW)* requires that the construction of a provision of an Act that would promote the purpose or object of the Act is to be preferred to a construction that would not. The specified purposes of the LG Act also provide guidance to councils in their decision-making

The Bill seeks to change the existing ‘purposes’ of the LG Act, by making two subtle but important changes regarding the interaction between councils and both the local community and the environment:

- **Community participation:** Under the Bill there is a shift in focus from a purpose of actively ‘encouraging and assisting’ community participation to more passively ‘facilitating’ community engagement and providing for a system of local government that is ‘accountable’ to the community.
- **Regard for the environment:** One of the current purposes of the LG Act is to require councils, councillors and council employees to have regard to the principles of ecological sustainable development in carrying out their responsibilities. Under the Bill there is no reference to ecologically sustainable development or the environment in the purposes of the LG Act.

The Bill also removes the current ‘council’s charter’ in Chapter 3 of the LG Act, replacing it with principles to provide guidance to councils in carrying out their functions. Principles of sound financial management and the development of the integrated planning and reporting framework by local government are included within these new provisions.

## Reports for Information

14.9 The Local Government Amendment (Governance and Planning) Bill 2016  
(cont)

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Unlike the current charter, which **must** be pursued by council (s8(2)), the new principles for local government are not mandatory and each principle is expressed in terms of what a council **should** do.

Rather than requiring a Council to exercise its functions in a manner that is consistent with and promotes principles such as ecologically sustainable development and social justice, under the Bill such principles are only required to be 'considered' by councils when making decisions.

**Council Governance, Wards, Councillors and Election Matters**

During consultation, the lack of clarity about the roles of mayors, general managers and councillors was identified as an area requiring change. The Bill establishes distinct roles and more prescriptive descriptions of the roles of councils, mayors and councillors, as well as the functions of general managers.

The recommendation by the Independent Local Government Review Panel, to increase the term of office of mayors elected by councillors from 1 to 2 years, has also been included in the Bill. The Minister has said that this change will 'enhance political leadership' and 'generate significant returns in good governance'.

Once the proposed Act commences, councils will be able to apply to reduce councillor numbers, mandated meetings or change wards before the next council elections in 2017. Councillors will be required to take an oath or affirmation of office at or before the first council meeting after being elected to reinforce the serious nature of their role. They will also be encouraged to obtain and maintain the skills necessary to do the job through a new regulation-making power for induction and ongoing professional development.

Provisions in the LG Act relating to the integrated planning and reporting framework will be streamlined. Continuing the theme of reduced environmental prescription, councils will no longer be required to prepare a state of the environmental report. The regulations may impose environmental reporting requirements to be integrated into strategic business planning.

**Delegation of Council Functions**

The Bill enables councils to delegate the function of accepting tenders (other than for services currently provided by council staff members) and granting financial assistance in specified circumstances. The Minister noted during the second reading speech that 'more routine tendering functions will be delegated to general managers, while ensuring that any major decision on outsourcing that might affect current council staff remains a decision for the councillors'. Presumably changes will follow to the requirement for a council resolution to accept or decline to accept all tenders under Part 7 of the *Local Government (General) Regulation 2005*.

One effect of this amendment will be to help facilitate the joint procurement of services by multiple councils. As acceptance of the tender cannot currently be delegated, each council must separately resolve to enter into a contract, resulting in a protracted process fraught with possible procedural errors. For example, if the price or other contractual term is dependent upon all of the councils in a group participating or a minimum number participating, it is not possible for any of the

## Reports for Information

14.9 The Local Government Amendment (Governance and Planning) Bill 2016  
(cont)

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councils to know what they are voting to accept until all other councils have made their resolution. Under the changes proposed by the Bill, the authority to accept a tender could be delegated to, for example, a committee of the general managers from each participating council.

**Finances and Auditing**

New measures to support the financial transparency of councils in the future are also proposed by the Bill. Councils will no longer have to show the Chief Executive of the Office of Local Government any new expenses policy or any change to a policy. Rather, councils will be required to establish an internal audit function as a driver for improved council performance, with 'Audit, Risk and Improvement Committees' to be established as a mandatory good governance practice.

Councils will also become subject to oversight by the Auditor-General for their general audits and those of their subsidiary entities. The Auditor-General will be free to engage accredited private sector auditors, to assist with these new responsibilities.

The Auditor-General is to communicate matters that are sufficiently significant to the Minister and is to report to Parliament annually on sector-wide issues arising from the exercise of the Auditor-General's functions.

Additionally, the Bill empowers the Minister to appoint a financial controller to councils at financial risk, but only in circumstances where a performance improvement order has been issued. A council may not make a payment from any funds of the council unless payment is authorised by the financial controller.

**Disciplinary Matters and Disclosure of Pecuniary Interests**

Misconduct by councillors relating to disclosures of pecuniary interests is to be dealt with in the same way as other misconduct, with the Bill including disclosure requirements in mandatory code of conduct provisions and applying the same disciplinary provisions that apply to breaches of the code. Model code provisions relating to disclosure of pecuniary interests are also to be applied to members of council committees and other advisors, and exclusive jurisdiction is to be conferred on the NSW Civil and Administrative Tribunal for contraventions of pecuniary interests duties by persons other than councillors.

The Bill clarifies that the functions of an administrator appointed to a council after a public inquiry or after the council has been suspended, are to include all the functions of a councillor and the mayor, as well as the functions of the council. In circumstances where more than one administrator is appointed to a council, one administrator is to be designated to exercise the functions of the mayor.

**Conclusion**

The Bill introduces a number of necessary and important amendments to the current legal framework for Local Government, including delegation of functions, finances, auditing and the clarification of governance structures. These changes will ensure a more accountable and efficient system of local government after the recent amalgamations. However, the repeal of the current Purposes and Charter reflects a

Reports for Information

14.9 The Local Government Amendment (Governance and Planning) Bill 2016  
(cont)

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subtle but significant paradigm shift that radically reduces the importance of environmental responsibilities and ecologically sustainable development in the functioning of local councils.

### 14.10 Weave Artist Directory

Responsible Director: Community Services

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Council is advised of the launch of the new Weave Artist Directory, on Thursday 11 August at the Shellharbour Village Exhibition Space.

The directory is a joint project between Shellharbour and Kiama Council, part funded by Regional Arts NSW through their Country Arts Support Project funding.

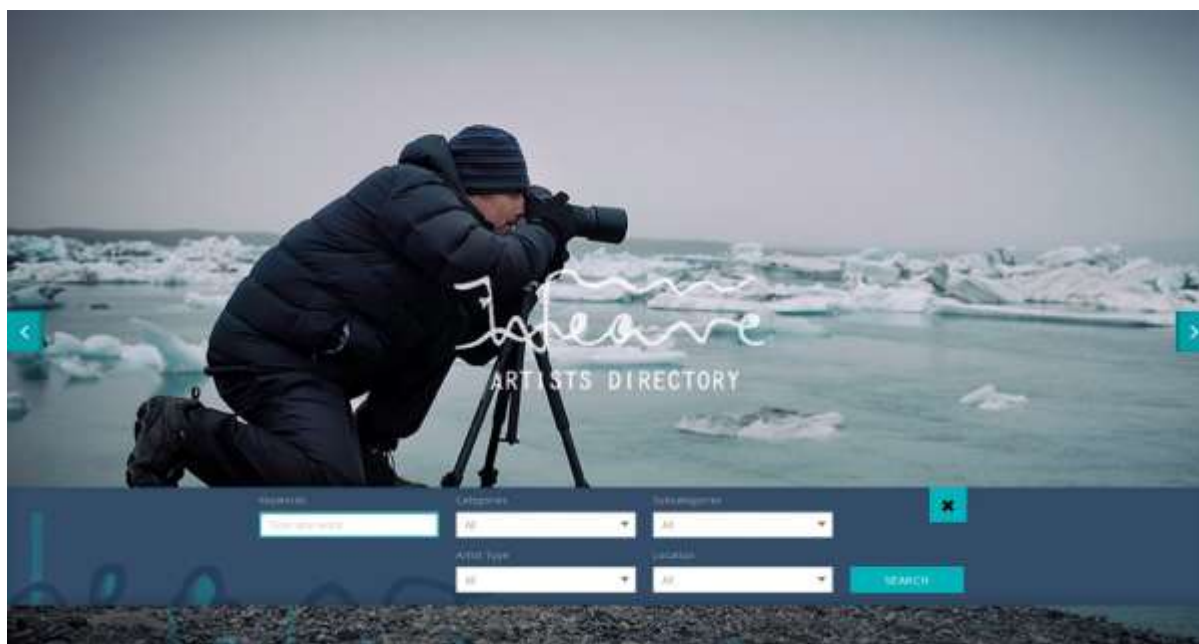
Weave is an online directory of visual, literary and performing artists and is designed to showcase, promote and connect local artists with audiences and investors as well as provide a space for our creative community to connect and collaborate.

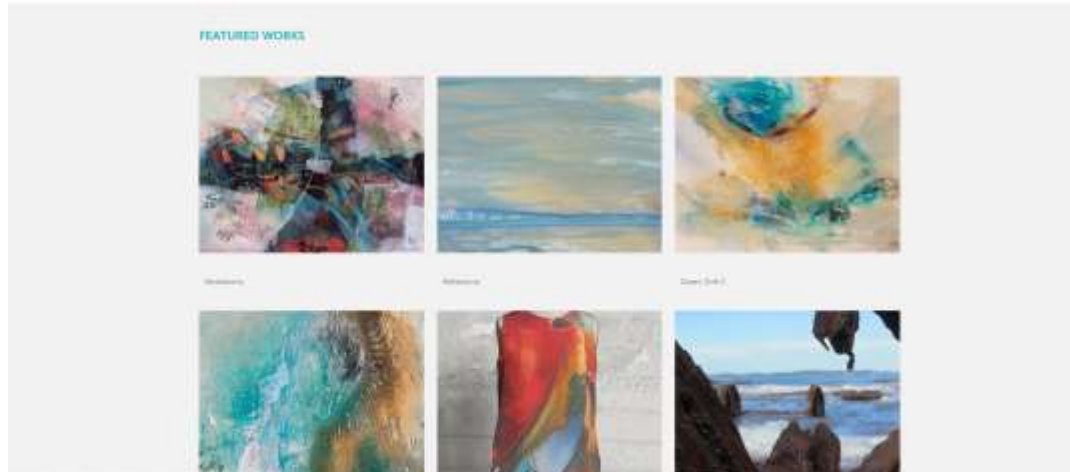
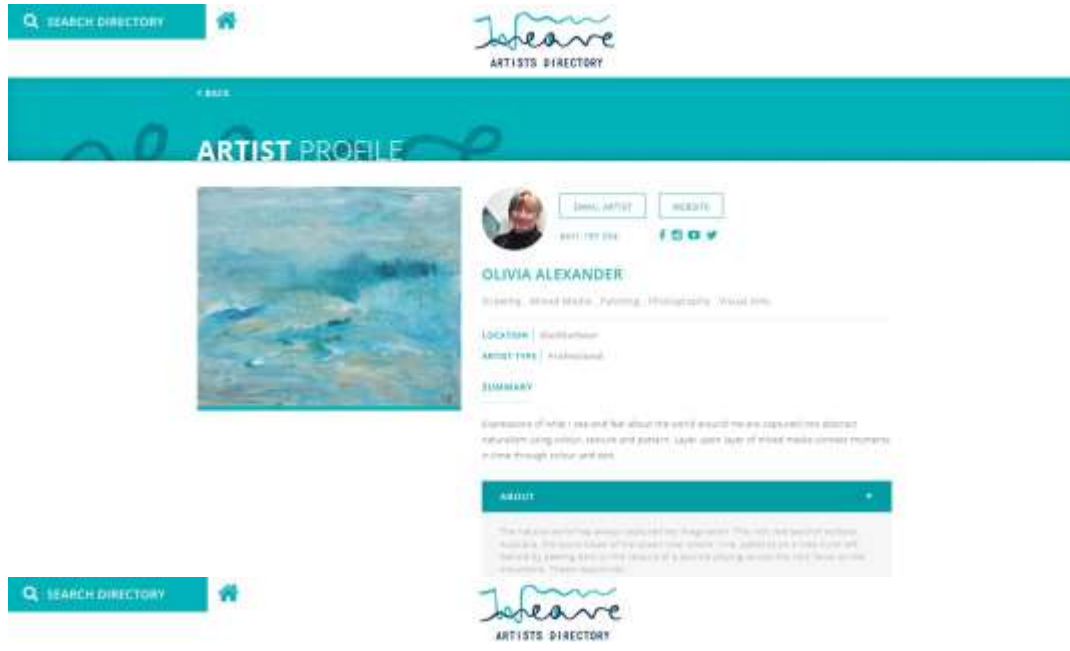
The search tool can be used to explore the directory and connect with local professional, semi professional and amateur artists in both Kiama and Shellharbour.

The site displays featured artists, providing an additional platform for promotion, with artists able to log into their listing at any time to make changes. Each listing allows space to provide:

- contact information, including Google maps to show studio sites and links to existing social media and web sites
- background information about the artist and their work
- awards and career highlights, and
- examples of the artist's work, including images, video and sound clips.

Weave will be accessed in Kiama through Kiama Council's website and the Kiama Cultural Arts Network blog site as well as, as a stand-alone site. It has also been designed so that other Council areas can be included and the directory expanded over time.





Item 14.10



**14.11 Dementia Strategy Summit**Responsible Director: Community Services

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This report informs Council that the Manager of Community & Cultural Development, Nick Guggisberg, has been invited to present on the Dementia Friendly Kiama Project at the 2<sup>nd</sup> Annual Dementia Strategy Summit to be held in Sydney from the 25 - 27 October of this year.

The invitation has been accepted with the agreement that the Chair of the projects Advisory Group, Dennis Frost, is also invited to participate in the presentation. The organisers have agreed to provide Summit registration and accommodation to both Dennis and Nick. A copy of the program is enclosed for Councillors information.

**Enclosures**

- 1 AGE08 2nd Annual Dementia Strategy Summit

### 14.12 Question for future meeting: 2011 Urban Strategy - Lots and dwellings released since commencement of Kiama Urban Strategy

Responsible Director: Environmental Services

At its meeting held on 28 June 2016, Councillor Rice requested a report on the number of lots/dwellings, greenfield or otherwise, that have been released since the 2011 Urban Strategy that indicates how this has met the expectations of the Strategy, Kiama Council and the Department of Planning and Environment.

The Kiama Urban Strategy was adopted by Council on 20 September 2011 following extensive consultation between Council, the Department of Planning (now Department of Planning and Environment), and affected landowners.

The two principal components of the plans cover:

- Rural and environmental planning aimed at maintaining and protecting agricultural land and the ecologically sensitive natural environment, and
- Urban infill/expansion of options to cater for future population and their housing needs.

The following tables contain the number of lots released across the Municipality since the commencement of the KUS (split into financial years).

<b><i>Lots Released (includes Torrens-title, Community title and Strata)</i></b>	
<b>Date Range</b>	<b>No. of Lots</b>
20/09/11 – 30/06/12	0
01/07/12 – 30/06/13	73
01/07/13 – 30/06/14	50
01/07/14 – 30/06/15	116
01/07/15 – 30/06/16	83
	<b>Total – 322 (Ave 64)</b>

<b><i>DA's and CDC's – New Dwellings</i></b>			
<b>Date Range</b>	<b>DA</b>	<b>CDC</b>	<b>Total</b>
20/09/11 – 30/06/12	92	6	98
01/07/12 – 30/06/13	82	8	90
01/07/13 – 30/06/14	79	11	90
01/07/14 – 30/06/15	48	9	57

## Reports for Information

## 14.12 Question for future meeting: 2011 Urban Strategy - Lots and dwellings released since commencement of Kiama Urban Strategy (cont)

01/07/15 – 30/06/16	50	12	62
<b>Total</b>	<b>351</b>	<b>46</b>	<b>397 (Ave 79)</b>

The Department of Planning informed Council in 2008 that the Illawarra Regional Strategy (now defunct) housing targets for dwellings in the Kiama LGA (for the period up until 2021) were:

Detached                812 dwellings (54 per year)

Medium Density    1040 dwellings

High Density        38 dwellings

**Total                1890 dwellings (126 per year)**

The number of dwellings approved is below the Department's predictions for the Municipality. The commencement of the urban expansion areas such as Calderwood (8,000 dwellings) and West Dapto (19,350 dwellings over 30-40 years) which have served to supply a large proportion of the demand for residential dwellings in the Illawarra region, may have had an impact on the outcome.

In terms of lots released since the commencement of the strategy, the majority have been around the fringes of Kiama and Jamberoo, with no lots released around Gerringong.

The commencement of the Illawarra-Shoalhaven Regional Plan (Regional Plan) has altered the projected housing needs for the Municipality. Based on the Department of Planning and Environment projections, Kiama will require 2,850 new dwellings from 2016-2036. Action 2.1.1 of the Regional Plan states that the NSW Government will:

*“Work with Kiama Municipal Council to monitor and review the potential of the area to accommodate housing demand.”*

The commencement of the Regional Plan is a catalyst for the review of the KUS, which will be undertaken in consultation with the Department of Planning and Environment. Council is a member of and participates in the Illawarra Urban Development Program meetings, with the next meeting scheduled for the 10 August 2016.

**14.13 Question for future meeting: Hours of operation for garage/newsagency in Manning Street, Kiama**Responsible Director: Environmental Services

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At Council's Meeting held on 19 July 2016 the following question without notice was asked by Councillor Reilly:

*"under what consent can the garage/newsagency at the top of Manning Street operate on a 24/7, 365 day basis given the recent renovations and extension"*

A thorough search of Council's records has been undertaken with respect to approvals issued for development on the existing garage site at 180 Manning Street, Kiama.

These approvals date back to 1956 and relate mainly to minor additions or alterations to the existing service station.

None of those approvals have incorporated conditions in relation to hours of operation for the service station. That being the case, the only method of control would be in legislation covering specific areas of concern, such as noise, pollution incidents or the like.

At this time, one written complaint has been received by Council staff in regard to the operation of the premises outside what might be considered standard operating hours. The basis of this complaint is being clarified with the resident concerned and the issues will be raised with the operator of the business.

If warranted, Council is able to issue orders/notices under the provisions of the Protection of the Environment Operations Act where undue impacts are detected in regard to amenity of local residents.

**14.14 The Pavilion Kiama Open Day**Responsible Director: Finance, Corporate and Commercial Services

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With effect from 1 July, 2016 Council has entered into a new contract for the use of The Pavilion Kiama for weddings with Culinarius by Monika Pty Ltd.

On 24 July, the new contractors held an Open Day at The Pavilion Kiama to showcase their services and food, and invited some preferred suppliers to also have a stall at the event. The venue was themed to highlight to potential wedding clients the many possibilities and potential of booking the venue for a wedding.

There were 23 stall holders at the event, and most of the participants were local businesses where possible. The decision as to who was able to have a stall was made by the contractor as this was their event, and they are responsible for the marketing and promotion of weddings at the venue.

Pavilion staff was in attendance on the day, to ensure from the venue perspective that the event ran smoothly and to also provide on the spot answers to potential brides regarding available dates for weddings. It was estimated that approximately 250 guests attended the event, with one tentative booking made on the day, which has since been confirmed.

Since being the successful tenderer for the contract, Culinarius have been proactive in their goal to increase wedding bookings and have also scheduled a wedding tasting event on 25 August at The Pavilion Kiama.

Culinarius where ever possible will be referring their wedding clients to local suppliers and in addition Council will also be producing a Kiama Weddings Directory which will be open, free of charge, to all local businesses who wish to provide goods and services to the wedding sector. This information will be available in hard copy or electronically to anyone who books a Council reserve or books at The Pavilion Kiama for a wedding, and will also be available at the Kiama Visitors Centre. To be included in this directory businesses will need to contact council's Economic Development Manager, Megan Hutchison.

**14.15 Economic Development Committee Meeting held 5 July 2016 - Minutes**

Responsible Director: Finance, Corporate and Commercial Services

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The minutes of the Kiama Economic Development Committee Meeting held on 5 July 2016 are attached for information.

**Attachments**

- 1 Economic Development Committee Minutes 5 July 2016



**Minutes of the Kiama Municipal Council Economic Development Committee meeting held  
on 5 July 2016 at The Pavilion Kiama**

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- 1 Present:** Councillor Neil Reilly, Councillor Mark Honey Councillor Kathy Rice,  
Councillor Gavin McClure, Steve Thomas, Geoff Pratt, Roy Schmidt, Tass  
Schmidt, Sandy Rendel, Andrew Waugh  
**Attending:** Kerry McMurray, Megan Hutchison,  
**Apologies:** Patrick Mahedy, Michael Hatfield  
**Guest:** Gino Belsito Director of Engineering

**Acceptance of Minutes 19 April 2016**

<b>Minutes moved:</b>	<b>Kathy Rice</b>
<b>Seconded:</b>	<b>Sandy Rendel</b>

**Note:** There was no meeting in May and the scheduled June meeting was postponed one week due to the Local Government Conference.

**2. Business Arising**

**2.1 Deep Winter Conference** – Councillor Honey has requested some more information about the event and expressed an interest in attending the event. Tass Schmidt agreed to send the conference details onto Councillor Honey and also advised that this event was oversubscribed and that the event was almost fully booked. It was agreed that we would seek feedback from the event, and to distribute any information and outcomes from the conference that may be of interest to the broader rural community.

*Action: Megan to contact the event coordinators to ensure that information from the event is available for distribution.*

**2.2 Brand Ambassadors** – The meeting was advised that Councillor Reilly has made contact with Terry Robson who is a journalist author and broadcaster with a regular segment on the ABC afternoon program on a Tuesday. Terry would be more than happy to work with council to promote events and also continue to promote all things Kiama through the ABC program and more broadly. Councillor Reilly agreed to provide contact details for Terry so that he can be updated on a regular basis on events and items of interest.

**2.3 Site Visit to Bombo Quarry**

The visit is still in the process of being arranged. An update on planning for the Bombo Quarry to be provided at the next meeting.

**3 Presentation by Director of Engineering Gino Belsito on The Liverpool Town Centre revitalisation and the Kiama Harbour Plan of Management**

Gino gave a very interesting and informative presentation on the revitalisation of the Liverpool town centre. Liverpool is one of Australia's fastest growing cities and as the home of the proposed second airport, Liverpool Council has undertaken an ambitious program of works designed to position Liverpool as "The Great River City" and to capitalise on the economic benefits and opportunities that

would ultimately flow from the airport. The private sector is investing millions of dollars in a variety of projects and transforming the city skyline. The city transformation involves five key projects:-

1. The City Nerve Centre – connecting people using or working in one of Australia’s largest health and medical precincts to the shops, transport and services within the city centre
2. City Eat Street- a lively café strip around the Southern end of the city centre with restaurants, cafes, and nightlife catering to all ages tastes and budgets
3. Macquarie Mall- revitalising the existing mall to create a vibrant hub that showcases and connects the diverse mix of shops in surrounding streets
4. Urban Breathing Spaces- establish new green linkages between the city centre and the Georges River and transform Bigge park into an integrated public space for time out, recreation and community celebrations
5. Gateways- new defined entry points to the city centre to create a sense of arrival and to redefine the identity of the city.

One of the key priorities of the project was to undertake the projects that were the easiest and most cost effective to achieve. This had the effect of generating more community support for the projects that were to come, and also paved the way for the more ambitious elements of the plan. Key also to the success of the project is that the Plan was to be delivered over a 5 year period. The short timeframe has ensured that the works will be completed without delay and also provides investors with more certainty and a more marketable product.

#### **Kiama Harbour and Blowhole Point Headland Master Plan**

The Masterplan identifies opportunities to provide tourism facilities, recreation facilities and hard and soft landscape improvements to meet the needs of a diverse range of users over the next 25 years. Although the vision of the plan is long term, there are a number of projects that can be achieved in the short term, and again Council could concentrate on elements of the plan that are easiest and most cost effective to achieve whilst continuing to plan on how to achieve the more complex components of the plan.

#### **7 General Business and New Ideas**

**Tourism** – Tourism After hours meetings continue to be well attended with over 50 attending the last event at the Little Blowhole Art Bar. Budget for 16/17 has been approved at last tourism board meeting.

**Kiama and District Business Chamber** – A review was given by Gavin McClure – see notes attached.

**Opportunities** – Blowhole Telescope – Neil to provide report to next meeting on possible project.

Meeting closed 7.30.

**Next meeting is 5.30pm on 26 July 2016 downstairs at The Pavilion Kiama.**



**KIAMA AND DISTRICT CHAMBER REPORT**

**JUNE 2016**

The Kiama and District Business Chamber has finished another very successful year. We are a not for profit organization where proceeds from our membership and monthly markets go directly into the local Business Community through donations, sponsorships, marketing and business enhancement with regular network meetings and events to benefit our members and additionally benefit our Community as well.

On reflection on the year just past, we have achieved considerably more than even we realized.

A summary list below: We have given over \$27,000 this financial year for a variety of projects.

- \$3000 for the Fairy Lights on Collins St
- \$2500 for the Dementia Friendly Project
- \$1000 donating Gift Vouchers to all graduates for the Barista Training Program
- \$2000 New Year's Eve Fireworks
- \$3000 Annual Mayoral Breakfast
- \$750 Gift Donations for the Mayoral Giving Tree
- \$1000 New Year's Eve Music in the Park
- \$2000 Heart Defibrillator for the Kiama CBD
- \$ 500 Kiama Art Show
- \$750 Food hamper Vouchers (for homeless at Christmas)
- \$500 Carols in the park
- \$200 Kiama High Business Awards
- \$5000 Kiama Business directory
- \$3000 Information newsletters

The Kiama and District Business Chamber is mostly the first port of call for many people that want to enter the Kiama LGA business market place and with our very strong alliance with the NSW Business Chamber we believe we provide a very stellar service traditionally to our business community, but now additionally as the donations list indicates, a wonderful service to our Community.

The Chamber is looking at ongoing training and business mentoring services for members and will soon be engaging the services of a part time employee that will grow our Business services sector. We are growing our membership numbers and are updating our website to allow for promotion of local business, business events and business relevant issues. The new employee will also be responsible for Membership and marketing and promotion of the Chamber and the Chamber activities.

The 2016/2017 year will be another big year for the Chamber and the Board look forward to continuing to assist with Business enhancement in the LGA.

Yours Faithfully,

Marie Beikmanis

Kiama and District Business Chamber

Email: [executive@kiamachamber.com.au](mailto:executive@kiamachamber.com.au) Website: [www.kiamachamber.com.au](http://www.kiamachamber.com.au)

Reports for Information

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**14.16 Minnamurra Progress Association - General & Annual General Meeting  
Minutes - Annual Report 2015/16**

Responsible Director: Office of the General Manager

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The Minutes & Annual Report of the Minnamurra Progress Association General and Annual General Meeting held on 5 July 2016 are enclosed for Councillors' information.

**Enclosures**

- 1 Minnamurra Progress Association - Minutes - 5 July 2016
- 2 Minnamurra Progress Association - Annual General Meeting - Minutes - 5 July 2016
- 3 Minnamurra Progress Association - Annual Report 2015/16

**Item 14.16**

**14.17 Illawarra Pilot Joint Organisation**Responsible Director: Office of the General Manager

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Kiama Municipal Council hosted the most recent meeting of the Illawarra Pilot Joint Organisation (IPJO) at the Kiama Pavilion on 22 July 2016.

The agenda items of the meeting included the following:

- Youth Employment Strategy
- Office of Local Government Joint Organisation Discussion Paper
- Age Friendly Illawarra Forum
- Local Land Services Boundary
- 360° Economic Outlook
- Transport
- Organics Grant
- Regional Tourism
- Commonwealth Tourism Infrastructure Program
- Greyhound Racing

The Youth Employment Strategy which was launched following the meeting engages key government agencies, non-government organisations (NGO), industry partners and the private sector to enable and connect young people with the right skills, experience and qualifications needed to secure jobs within identified industries across the region. The industries include construction, retail, aged and disability services, hospitality and contact centres. Job opportunities through State and Local Government procurement processes are also identified.

The Youth Employment Strategy is an initiative of the IPJO in conjunction with the NSW Department of Premier and Cabinet and the University of Technology Sydney.

The meeting was advised that the Local Land Services boundaries are no longer proposed to be changed.

The 360° Economic Outlook project involves the Department of Premier and Cabinet (DPC) partnering with the Department of Industry, Wollongong City Council, the University of Wollongong and the IPJO to develop an information prospectus on how the Illawarra's skills, assets and capabilities can connect with identified future youth opportunities and economic drivers with surrounding areas.

The meeting was advised of a forthcoming Age Friendly Illawarra Alliance (AFIA) Forum to be held at the Kiama Pavilion on 11 August 2016.

The meeting concluded with a forum involving presentations. The first presentation was from the Office of Environment and Heritage on a proposed regional climate adaptation project in the Illawarra focusing on government service delivery planning and implementation.

The second presentation was made by the Department of Primary Industries on the new NSW Shark Management Strategy which is to complement the existing Shark

Reports for Information

14.17 Illawarra Pilot Joint Organisation (cont)

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Meshing Bathing Protection Program. The key objective of the NSW Shark Management Strategy is to increase protection of bathers from shark interactions while minimizing harm to sharks and other animals.

**Item 14.17**



**14.18 Letter of Appreciation - ISWNE**Responsible Director: Office of the General Manager

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Council recently received a letter from Barry Wilson, 2015/16 President of the International Society of Weekly Newspaper Editors (ISWNE) thanking Council's Strategic Tourism & Marketing Manager, Carole Johnson, for her support and assistance for the 2016 ISWNE post conference tour Kiama component. He also extended the appreciation of the post conference tour members for the warm welcome of the Councillors and senior staff at the Mayoral Breakfast as well as the general support shown by Council for the post conference event.

Carole's efforts in helping to showcase Kiama and surrounds to international visitors are to be applauded.

**Attachments**

- 1 Letter of Appreciation ISWNE



Ms Carole Johnston,  
Strategic Tourism and Marketing Manager  
Kiama Municipal Council  
Manning St  
Kiama 2533

27<sup>th</sup> July 2016

Dear Carole,

For almost 50 years, the International Society of Weekly Newspaper Editors (ISWNE) has enjoyed a modestly small number of Australian members within their global ranks. Being established within the United States of America, their peak membership was within that country and within the northern hemisphere.

Seven years ago I was invited to address an ISWNE conference being held on Prince Edward Island and three years later was nominated to a board position. Now in the association's 61<sup>st</sup> year, and as the Society's president, editors have attended the first conference held in the southern hemisphere, at the University of Melbourne, Australia.

Today, I write to you as the Immediate Past President of ISWNE to sincerely thank you for sharing my vision, but most importantly, generously advising and linking this rooky conference coordinator to your contact framework two years ago, so laying the foundations of my 2015/2016 Melbourne/Bairnsdale Conference.

Little did I know then that much later during this last year, when my conference plans were well advanced, that a short casual chat with you would culminate in an amazing finale.

You may recall I spoke of the possibility of a post-conference tour from Bairnsdale to Sydney, providing the opportunity to expose small-town weekly newspaper publishers, editors and journalists to real 'small-town' Australia. You quickly grasped the concept and suggested for me to ease up a little while you considered some possible ideas; I was unaware at that time of your new position with Kiama Council.

Well the rest is history. A positive vision evolved and my earlier Canberra option dissolved into a grand finish in Kiama, using the exceptionally appropriate Holiday Cabins, assisting more closely with DNSW and providing an exciting conference/tour conclusion for our American visitors, prior to their long trip home.

On behalf of the International Society of Weekly Newspaper Editors, I extend to you a huge thank you. You paved the way and turned what was an ambitious dream for me, into a hugely successful and memorable event. Our members were in awe with the beauty, vibrancy and warmth afforded them. They were overwhelmed by the Surf Beach location, right on the ocean wall, of Gerroa, Kiama and its shopping, both blowholes showing off and not to forget the Jamberoo Pub and the majesty of the Minnamurra Rainforest – especially as it was lightly raining (your provision of ponchos made this especially memorable).

Of special mention was the Mayoral Breakfast. Many from our party were taken back by sincerity of the occasion and specifically, that there were so many councillors and the general manager in attendance. Please extend to all concerned our most sincere appreciation for such a significant and warm welcome.

To you, Mayor Petschler, Michael Forsyth and Councillors, thank you again for generously supporting and making the ISWNE post conference event exceptionally memorable.

Sincerely

**Barry Wilson**

*President 2015/16*

**International Society of Weekly Newspaper Editors** [www.iswne.org](http://www.iswne.org) [bj1420@me.com](mailto:bj1420@me.com)

*ISWNE is a 'not for profit' organisation registered in the State of Missouri, USA.*

PO Box 14, Kiama, NSW, 2533

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**14.19 Tourism**Responsible Director: Office of the General Manager

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At its meeting on 19 July 2016 Council resolved to re-visit our relationship with our local Board of Tourism by the setting up of an advisory committee (possibly out of the Economic Development Committee) to explore how the new Destination Network may improve our strategic position and in doing so review our tourism structure and that a report come back to Council on the structure and objectives of the committee.

As tourism is a major part of the local economy it seems logical that the Economic Development Committee also provides advice to Council and the Tourism Marketing Manager on tourism direction, marketing issues and priorities in the context of the Local Tourism Strategy and the new structure established by Destination NSW.

It is suggested that a sub-committee of the Economic Development Committee could be formed which comprises people who represent and reflect the different segments of the tourism industry (e.g. accommodation, caravan and camping, tour operators, events, attractions and cultural activities) and who have appropriate skills and knowledge. The sub-committee could include six people sought by expression of interest to Council and the Chairman of the Economic Development Committee.

The sub-committee could meet on a bi-monthly basis or as required.

It is proposed that this structure be further detailed for consideration by the new Council following the September Council meeting.

**15 ADDENDUM TO REPORTS****16 NOTICE OF MOTION**

Nil

**17 QUESTIONS FOR FUTURE MEETINGS****18 CONFIDENTIAL SUMMARY****CONFIDENTIAL COMMITTEE OF THE WHOLE**

Submitted to the Ordinary Meeting of Council held on 16 August 2016

**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.

**18.1 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.

**19.1 CARRINGTON FALLS BRIDGE REPLACEMENT TENDER EVALUATION**

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

**19 CONFIDENTIAL REPORTS****19.1 Carrington Falls Bridge Replacement Tender Evaluation**

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.13 Effectively manage other assets to cater for current and future generations (including car parks, community buildings, cemeteries and dams)

Delivery Program: 2.13.2 Manage other assets and infrastructure by the creation and implementation of the Other Assets and Infrastructure Asset Management Plan actions

**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 commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.*

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**20 CLOSURE**