

15.4 Question for future meeting: Development Application Processing Delegations

CSP Objective: Outcome 4.1 We love where we live; our housing reflects our values.

CSP Strategy: 4.1.2 Facilitate development that is respectful of the local characteristics of the Municipality.

Delivery Program: 4.1.2.1 Support and strengthen our diverse communities through regional collaborations and local connections.

Item 15.4

Summary

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

Council like many others are experiencing ongoing resource shortages and issues resourcing our planning department. Given the nationwide shortage of planners we are working to find efficiencies and improvements throughout the process, including considering delegations and decision-making options for the finalisation of Development Applications.

Ongoing concerns have been raised, including by the Independent Advisor about the role of Councillors in the DA process. This is not unique to Kiama as there have been a number of ICAC findings and interventions from the State Government about the role of Councillors in the DA process. It is for this reason that councils within Greater Sydney have all significant DAs determined by a Local Planning Panel rather than by Council, with the intent to depoliticise the process and reduce risk.

This report provides an overview of the delegations and arrangements in place for our surrounding neighbouring Councils. It also provides an overview of our current draft development assessment policy based on best practice guidelines. The report also seeks to provide background to information as requested by Councillors and the Mayor through last month's Mayoral Minute.

Financial implication

Consideration of the ongoing resource requirements for the team is being undertaken including consideration of the need for ongoing allocation of resources to support the reform program.

Any budget implications will be considered as part of the annual budget process, to support ongoing implementation of future recommendations and priorities.

Risk implication

The processing of development applications is an essential service and legislative requirement of Local Government. The Environmental Planning and Assessment Act requires that DAs are processed in accordance with the provisions of the Act and the

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

timeframes contained within these provisions. Failure to meet the requirements of the Act can have implications for appeal rights for applicants and for objectors.

Currently Councillors are determining a number of DAs per year, when compared to other councils. There is a significant risk in this involvement of Councillors, which includes, lack of formal qualifications and planning experience, issues with process of assessment (for example level of detail, site inspections), the influence of lobbying on the decision-making process, potential conflicts of interest and other probity concerns.

A significant risk to Council is also those DAs that are processed over 180 days. The new provisions adopted by the Minister allow for the Minister to assume any councils planning delegations if they are consistently determining applications over the 180 gross days' time frame. Staff have therefore been making a significant and focused effort to reduce our overall timeframes and to especially focus on aged DAs in the system.

Policy

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

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

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

Consultation (internal)

Ongoing consultation has occurred and will continue to occur with the Planning team and other key stakeholders.

Communication/Community engagement

Formal community consultation regarding the draft Development Assessment Policy is proposed to occur, including ongoing communication with stakeholders.

Attachments

- 1 Draft Development Assessment Policy

Enclosures

Nil

RECOMMENDATION

That Council:

- 1) Place the draft Development Assessment Policy on exhibition for 28 days and actively seek feedback from the development industry and community.

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

- 2) Establish an Industry Reference Group modelled from Cairns City Council.
- 3) Provide support and mentorship to the newly formed Planning and Economic Development Team to improve customer experience and online self-service.
- 4) Delegate to the CEO the authority to determine development applications and modification applications up to a value of \$15,000,000, except for developments:
 - a) Where developments are for subdivisions of over fifty (50) allotments; and
 - b) Where there are 30 or more objections.

Item 15.4

Background - Councillor Requests

At Council's meeting of 16 May 2023, Councillor Croxford requested a report on:

"Improving Council's decision-making process for development applications Councillor Croxford requested a report which provides valuable insights and recommendations to improve the council's decision-making process for development applications covering:

1. *Comparative Performance Analysis of Kiama Municipal Council and councils within our category, including the Illawarra and beyond;*
2. *Evaluation of Refusal Decisions;*
3. *Financial Implications and Delegation Limits"*

At the June 2023 Council meeting the Mayor proposed a Mayoral Minute. At this meeting the Mayoral report was withdrawn to enable further work to occur by Staff on the matter before presenting it back to Council. This report contains this further work and includes components of the Mayoral Report for consideration.

Comments from the Independent Advisor

As part of the Performance Improvement Order, an independent advisor, Peter Tegar was in place for a number of months, at Council. During this time, the advisor made a number of presentations and included actions for Council's consideration. A number of these actions suggested the need to review staff delegations for DAs and to reduce the number of reports regarding development applications. This was suggested to ensure that there was probity within the DA process and to enable Council meetings to be focused on strategic and important decisions, rather than individual development applications, which should be processed operationally.

As part of SIP2 the role Council is playing within the development assessment process has been requested to be reconsidered. Noting that Kiama Councillors determine a large number of applications in comparison to other councils.

Role of Delegations

In response to feedback and legislative requirements, Council staff have been developing and implementing a Planning Reform Program for our Local Government Area. Significant work has been occurring to improve our DA assessment timeframes, systems, strategic framework, customer experience, responsiveness, and

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

communication to applicants. This work has been based on the NSW Government Planning Reform Action Plan and Development Assessment Best Practice Guide.

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

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

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

The delegation powers of development applications (DAs) play a crucial role in the efficient processing and determination of development proposals within New South Wales councils.

In light of the challenges posed by continual appeals to the Land and Environment Court, it is advisable for NSW councils to consider amending their delegation powers. This report presents a case for amending delegation powers so that when less than thirty unique objections are received during the exhibition period of a DA, the application is determined by Council staff. This amendment aims to improve efficiency, leverage the expertise of professionally qualified staff, and alleviate the burden of appeals to the court.

Currently the staff delegations for the determination of development applications as established on 15 December 2020 and are as follows:

20/388OC

Committee recommendation that support Council achieving the targets set by the Public Spaces Legacy program, Council reinstate delegated authority to the General Manager to:

1. *Determine all Development Applications -*
 - a) *with a value of up to \$5 million and that have received no more than five objections during any notification period.*
2. *Determine Modification of Development Applications where -*
 - a) *there is no significant change to the external configuration of the building and,*
 - b) *where the value of the modifications themselves do not exceed the \$5 million threshold and that have received no more than five objections during any notification period.*

Ultimately there are only three options available for the determination of DAs. These include:

- Development consent - granted, with conditions;

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

- DA refusal - with reasons;
- Deferred commencement consent - a consent not operating until one or more important matters are resolved. This is not a common outcome.

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

By empowering Council staff to determine DAs when thirty or more unique objections are received during the exhibition period, council can streamline the decision-making process. Currently, the review and assessment of objections often lead to delays and protracted timelines, affecting both applicants and the community. By leveraging the knowledge and experience of professionally qualified staff, councils can expedite the determination process while ensuring thorough consideration of objections. This amendment would enable Council to address objections promptly, minimise lengthy reporting, and provide applicants with timely decisions.

Development Applications are already reported to the SRPP defined by their regional significance of a value of \$30M and over for private developments and \$5M for Government or Council developments.

Amending delegation powers would enable professionally qualified staff to make informed decisions based on their expertise and knowledge of local planning policies and regulations. This approach ensures that decisions are made by individuals with a deep understanding of the relevant factors and considerations. Also, by entrusting Council staff to determine DAs, the burden of continual appeals to the Land and Environment Court can be reduced. By providing the opportunity for objections to be addressed by qualified professionals within the Council, the need for external appeals may decrease, leading to greater efficiency and saving both time and resources.

This change enhances efficiency by streamlining processes, allowing for prompt consideration of objections and timely decisions. It also leverages the expertise of professionally qualified staff, ensuring informed and knowledgeable decision-making based on local planning policies. Lastly, reducing the burden of continual appeals to the Land and Environment Court helps save time, resources, and minimises delays for both applicants and the community. By implementing this amendment, Council can improve their development application processes and foster a more effective and responsive planning system.

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

Statistics and Data

Following is a snip from the 2020/2021 data set in relation to DA numbers (columns W and X), Councillor numbers (columns DJ and DK), and Council area & population (columns D and E) filtered for Group 4 Councils:

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

Council The councils listed are those that continued operations and reported for the financial year 1 July 2020 to 30 June 2021	OLG Group	Council Area (km2)	Population	Number Development Applications Determined by Councillors 2019-20	Number of Development Applications Determined 2019-20	Number of Councillors - Election Return**	Population/ Number of Councillors**
Kempsey	4	3,375.7	29,921	3	366	9	3,305
Richmond Valley	4	3,047.4	23,490	1	249	7	3,352
Broken Hill	4	170.1	17,269	0	179	10	1,748
Cessnock	4	1,965.2	61,256	4	723	13	4,614
Clarence Valley	4	10,428.7	51,730	26	720	9	5,740
Lithgow	4	4,512.3	21,516	12	193	9	2,401
Eurobodalla	4	3,428.2	38,952	4	577	9	4,275
Mid-Western Regional	4	8,752.3	25,367	7	266	9	2,806
Lismore	4	1,287.7	43,667	3	435	11	3,972
Griffith	4	1,639.2	27,155	16	296	12	2,252
Goulburn Mulwaree	4	3,220.1	31,554	5	364	9	3,459
Tamworth Regional	4	9,884.4	62,545	4	391	9	6,949
Bega Valley	4	6,278.9	34,727	3	449	9	3,831
Dubbo Regional	4	7,534.5	54,044	2	583	10	5,372
Albury	4	305.9	55,055	18	666	9	6,039
Orange	4	284.2	42,503	27	435	12	3,538
Bathurst Regional	4	3,817.9	43,996	11	382	9	4,846
Singleton	4	4,892.7	23,380	3	238	10	2,346
Armidale Regional	4	8,620.7	29,704	0	170	11	2,798
Wagga Wagga	4	4,824.5	65,770	10	569	9	7,251
Snowy Monaro Regional	4	15,163.5	20,997	1	335	11	1,890
Ballina	4	484.9	45,217	11	775	10	4,463
Byron	4	565.8	35,773	18	616	9	3,898
Wingecarribee	4	2,689.3	51,760	16	753	9	5,682
Kiama	4	257.7	23,685	21	211	9	2,598
Queanbeyan-Palerang Regional	4	5,318.9	62,239	10	505	11	5,555

As can be seen from this data Kiama has a high portion of applications that are determined by Councillors rather than staff, particularly in proportion to our current population. Whilst some improvements on these statistics have been observed through the change made to delegations in 2021. There still remains a back log of DAs, our timeframes remain slow and developments which are reported to Council have continued. Council also currently has nine active Land and Environment Court cases on hand.

Surrounding Council Delegations

Wollongong	Local Planning Panel
Wingecarribee	Local Planning Panel
Shellharbour	<p>P3(a)</p> <p>Determine development applications, applications to modify a development consent and applications for a complying development certificate except in the following circumstances:</p> <p>(i) where a submission by way of an objection to the application has been submitted to Council during the public notification period, unless in the Chief Executive Officer's opinion, the objection:</p>

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

Item 15.4

	<p>(A) is unreasonable; or</p> <p>(B) can be satisfied by the imposition of a condition of consent,</p> <p>(ii) the development involves designated development as defined in the Environmental Planning & Assessment Act 1979,</p> <p>(iii) the development involves the erection of, or alteration to, residential flat buildings containing more than 20 dwellings,</p> <p>(iv) the development does not comply with any adopted Council policy (including a development control plan) unless, in the Chief Executive Officer’s opinion compliance with the policy is unreasonable and unnecessary in the circumstances,</p> <p>(v) the development does not comply with a development standard unless in the case of non-compliance with a development standard in the Shellharbour Local Environmental Plan 2013 the Chief Executive Officer is satisfied of the matters prescribed by clause 4.6(4)(a) and the concurrence of the Director-General has been obtained and is less than 10% as a numerical variation of a development standard;</p> <p>(vi) the development involves the subdivision of land into more than 100 lots, or</p> <p>(vii) the development has an estimated value exceeding \$20 million.</p> <p>(viii) developments defined as Regionally Significant Development as described in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.</p>
Shoalhaven	Call in of applications only

Support for the Development Assessment Process

It is clear that the reason for Councillors desire to be involved in the assessment process is because DAs are an important part of a council’s legislative role.

The community often become involved within the DA process as it provides a very real example of the outcome of strategies and policies that are set for the LGA. Unfortunately becoming involved at this stage in the process, does not necessarily achieve the outcome that the community desires and focus should instead be on the

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

strategic level as this sets the direction and supports the decisions made in an assessment process. The improvement of both the LEP document and the DCP is essential in our decision-making processes.

Enabling focus to be placed on these documents and ensuring they are contemporary and reflect current community expectations enables staff to both process applications more efficiently and it also sets clear expectations for both the community and applicants to achieve. Our Council's current DCP is aged, confusing and often tries to prohibit or prevent development which is permissible under the higher order LEP. It needs review and refinement.

It is this component of the assessment process that requires Councillor attention and could be further supported through improved engagement process with both the industry and the community.

To enable this a number of councils, utilise external industry reference groups to review and refine strategic documents and to enable engagement with the community. One example of this, which is recommended to be implemented for our Council, is Cairns City Council.

The proposal that they use is for an Industry Reference Group to be formed to support technical studies and strategy document development and a Local Professional Reference Group.

These groups provide an opportunity for Council to engage with the industry and to seek their input into the development of controls, strategies and policies.

This does not replace or remove community input, rather it adds to the many stakeholders that Council will continue to engage with in all planning decisions, including community groups, Committees and the general public.

Draft Kiama Development Assessment Policy

Council staff have prepared a draft Development Assessment Policy which can be put in place (following exhibition and further consideration by Council) to also support the development assessment process and decision making for staff.

This policy enables expectations for customers, approaches to be taken by staff and advice and guidance to support processing in accordance with policy and strategy.

The draft document is intended to assist in the communication to applications about what to expect through the process and how staff will work through each required step. The draft Kiama Development Assessment Policy outlines how Council will conduct the following steps in the Assessment Process:

A. Pre-lodgement advice

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

B. Lodgement and allocation

The draft Policy outlines that a pre-lodgement review of all applications will be undertaken to determine their completeness. Applications where the necessary information, as required by the NSW Planning Portal, Council's DA Checklists or NSW

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

'Application Requirements', is not provided will be returned. Council will no longer request additional information as part of the pre- lodgement review, instead any incomplete application will be returned to the applicant and removed from the system.

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

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

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

Council's PAU is comprised of the following staff:

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

C. Assessment

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

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

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

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

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

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

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

Process for identifying and managing potential conflicts of interest

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

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

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

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

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

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

Item 15.4

Category of Council-related DA	Controls
and complies with zoning, landuse provisions and Council policies, with no substantial or numerous submissions	2) Assessment by external independent town planning consultant (in accordance with Council’s Procurement Policy) may be required, if determined by the Director, Environmental Services, 3) Management statement to be prepared and exhibited with DA, and 4) Determination under delegated authority (Other than for development on community land under section 47E of the Local Government Act 1993.)
<p>Major DA</p> <p>Major DAs refer to development that is large-scale, significant and/ or controversial.</p>	1) Engage external independent town planning consultant (in accordance with Council's Procurement Policy), 2) Management Statement to be prepared and exhibited with DA, and 3) For applications that do not trigger referral to the Regional Planning Panel, a referral may be required to the Audit, Risk & Improvement Committee. <p style="text-align: center;">Or</p> 4) Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is >\$5million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021.

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

Modifications

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

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

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

Complying Development Certificates

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

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

Alternative Option for Assessment - Local Planning Panels

Local Planning Panels (LPP), formerly known as Independent Hearing and Assessment Panels or IHAPS, are panels of independent experts that determine development applications on behalf of Council and provide advice on other planning matters, including planning proposals.

Under the Environmental Planning and Assessment Act 1979, Local Planning Panels are currently mandatory for all Sydney councils, Wollongong City Council and Central Coast Council. Other NSW Regional and Rural Councils such as Wingecarribee Shire Council are not mandated through legislation to have a LPP in place. Notwithstanding, Councils which are not mandated may seek to constitute a Local Planning Panel its Local Government Area under the Environmental Planning and Assessment Act.

Panels are put in place so the process of assessment and determination of development applications (DAs) with a high corruption risk, sensitivity or strategic importance is transparent and accountable and to provide an independent forum for stakeholders (applicants, the community and objectors) to present and discuss issues relating to development applications, planning proposals and other planning related matters such as development control plans.

The LPPs ensure increased probity and accountability in the planning system, safeguard against corruption and lead to better planning outcomes. LPPs make decisions on sensitive, complex and high-value DAs that come before councils thereby replacing the Council in determining developments that exceed the staff delegation, review planning proposals and other planning related policies. Council staff, under delegation, will still determine the more straight forward DAs being the vast majority of DAs received by Council.

The Panel meetings consist of 4 members comprising a chair appointed by the Minister, two independent experts appointed by council from a Minister endorsed pool of independent, qualified people, plus a community representative.

Panel chairs are required to have expertise in law or government and public administration and are selected from the endorsed list approved by the Minister for Planning and Public Spaces. The Minister approves the appointment of the Chair and Alternate Chair. Independent expert members are required to have expertise in one or more of the following fields: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. Like Panel Chairs, independent expert members are also selected from the listing endorsed by the Minister for Planning and Public Spaces. Community representatives appointed to a LPP are not required to have planning

Report of the Director Planning, Environment and Communities

15.4 Question for future meeting: Development Application Processing Delegations (cont)

expertise. The role of the community representative is to ensure that local insights and knowledge are considered as part of the panel's decision-making. Councillors, property developers and real estate agents are ineligible to be panel members as this undermines the objective of having DAs determined by independent experts, depoliticising the assessment process.

In Greater Sydney, local planning panels (LPPs) determine development applications on behalf of councils where:

- there is concern that a development assessment may be compromised – such projects usually have a capital investment of up to \$30 million;
- proposed projects receive a high number of complaints;
- proposed projects are sensitive; for example, they involve the demolition of heritage buildings or destruction of other community assets;
- projects have strategic importance to the state.

Conclusion

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

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



Draft Development Assessment Policy

Policy Owner/Responsible Officer	XX
Department	XX
Date adopted/endorsed	XX
Resolution number (if applicable)	XX
Next review date	XX
TRIM reference	XX

Content

1.	Policy Statement/Objectives	3
2.	Scope	3
3.	References	3
4.	Consultations	4
5.	Definitions	4
6.	Variation and review	6
7.	Policy	6
7.1.	Pre-lodgement Advice	6
7.2.	Lodgement & Allocation	7
7.2.1.	Pre-lodgement Review	7
7.2.2.	Preliminary Assessment Unit	7
7.3.	Assessment	8
7.3.1.	Preliminary assessment	8
7.3.2.	Final assessment	9
7.4.	Determinations	9
7.4.1.	Delegated Authority	10
7.4.2.	Executive Assessment Unit	10
7.4.3.	Southern Regional Planning Panel	10
7.5.	Process for identifying and managing potential conflicts of interest	10
7.5.1.	Management controls and strategies	10
7.5.2.	Identifying whether a potential conflict of interest exists	10
7.5.3.	Staff and Councillors potential conflict of interest	11
7.5.4.	Declarations of Conflicts of Interest	11
7.6.	Modifications	11
7.7.	Complying Development Certificates	12
8.	Related Forms/Documents	12
9.	Attachments	12
10.	Authorisation	12

Attachment 1 – Assessment & Determination Criteria 13
Attachment 2 – Example Management Statement..... 15

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1. Policy Statement/Objectives

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

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

The objectives of the policy are to:

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

2. Scope

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

3. References

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

4. Consultations

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

5. Definitions

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

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

6. Variation and review

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

Review History

Date reviewed	Date adopted/endorsed	Brief detail of amendments

7. Policy

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

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

7.1. Pre-lodgement Advice

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

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

Checklists

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

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

Counter and Phone Enquiries

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

Pre-DA Informal Advice

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

Written Advice

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

Formal Pre-lodgement Meeting

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

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

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

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

7.2. Lodgement & Allocation

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

7.2.1. Pre-lodgement Review

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

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

This will ensure that only complete applications are lodged.

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

7.2.2. Preliminary Assessment Unit

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

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

Council's PAU determines:

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

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

If the RFI is not adequately responded to the PAU will request that the application be **withdrawn**.

If Council's PAU are of the opinion that the additional information cannot be provided within 28 days it will request that the application be **withdrawn**. If applications are withdrawn at this stage all DA Fees paid by the applicant will be refunded, upon request. When applicants choose not to withdraw an application the PAU will determine the application based on the information it has, likely resulting in a refusal of the application.

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

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

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

Applications will be identified as one of the following categories:

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

Council's PAU is comprised of the following staff:

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

7.3. Assessment

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

7.3.1. Preliminary assessment

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

If non-compliances are identified or issues are raised, the assessing officer will issue a RFI letter requesting the additional information be submitted within 28 days.

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

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

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

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

7.3.2. Final assessment

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

7.4. Determinations

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

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

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

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

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

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

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

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

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

7.4.1. Delegated Authority

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

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

7.4.2. Executive Assessment Unit

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

7.4.3. Southern Regional Planning Panel

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

7.5. Process for identifying and managing potential conflicts of interest

7.5.1. Management controls and strategies

The following management controls apply to:

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

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

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

7.5.2. Identifying whether a potential conflict of interest exists

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

The Chief Executive Officer or their delegate is to:

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

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

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

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

7.5.3. Staff and Councillors potential conflict of interest

The following principles must be adhered to:

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

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

7.5.4. Declarations of Conflicts of Interest

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

7.6. Modifications

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

Generally, Council will not permit the lodgement of modification applications for developments which have received a final occupation certificate. In these cases, it is more appropriate to submit new applications for additions and alterations.

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

7.7. Complying Development Certificates

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

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

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

8. Related Forms/Documents

- Nil

9. Attachments

Attachment 1	Assessment & Determination Criteria
Attachment 2	Example management statement

10. Authorisation

Name: Council Resolution No: ****

Date: Date adopted by Council xx/xx/xxxx

Draft Development Assessment Policy

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Attachment 1 – Assessment & Determination Criteria

Category of Council DA	Assessment Controls	Determination Controls
<p>Minor DA</p> <p>Minor DAs refers to development that is small-scale, routine operational and/ or non-controversial. The determination of “minor” shall be made after consideration of the following criteria, at the discretion of the Director:</p> <ul style="list-style-type: none"> • The estimated value of the works to be undertaken; • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will lead to any financial benefit for Council. <p>Examples include replacement amenities block, internal refurbishment of a building. Less than 5 lot subdivision.</p>	<ol style="list-style-type: none"> 1) Assessment must be by Council staff not involved in the application and peer reviewed by immediate supervisor, and 2) A management statement (refer to Attachment 2) to be prepared and exhibited with DA 	<ul style="list-style-type: none"> • Determination under delegated authority. <p>(Other than for development on community land under section 47E of the Local Government Act 1993.)</p>
<p>Routine DA</p> <p>Routine DA (not minor) or other form of DA that takes place within Council's industrial estates or on Council reserves and complies with zoning, landuse provisions and Council policies, with no substantial or numerous submissions</p> <p>Examples include, a 5 lot subdivision, a new amenities block, alterations and addition to existing buildings. A new fire station.</p>	<ol style="list-style-type: none"> 1) Assessment by Council staff not involved in the application and peer reviewed by senior member of staff, 2) Assessment by external independent town planning consultant (in accordance with Council's Procurement Policy) may be 	<ul style="list-style-type: none"> • Determination under delegated authority.

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<p>Major DA Major DAs refer to development that is large-scale, significant and/ or controversial. The determination of 'major' shall be made after consideration of the following criteria, at the discretion of the Chief Executive Officer / Director. The estimated value of the works to be undertaken;</p> <ul style="list-style-type: none"> • If the DA is Regional Development (under the State Environmental Planning Policy (Planning Systems) 2021. • The potential impact on surrounding residential amenity associated with the proposed development; • The consistency of the proposed works with an existing Council Management Plan or strategy; • Whether the proposal involves any substantial variations from existing Council policy; and • Whether the proposal will lead to any financial benefit for Council. <p>Examples include: Coastal protection works, new industrial estates, new community facilities and libraries.</p>	<p>required, if determined by the Director</p> <p>3) Management statement to be prepared and exhibited with DA, and</p> <ul style="list-style-type: none"> • Engage external independent town planning consultant (in accordance with Council's Procurement Policy), • Management Statement to be prepared and exhibited with DA, and <p>For applications that do not trigger referral to the Regional Planning Panel, a referral may be required to the Audit, Risk & Improvement Committee.</p>	<p>(Other than for development on community land under section 47E of the Local Government Act 1993.)</p> <ul style="list-style-type: none"> • Report to council for determination or • Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is >\$5million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021. <p>Regional applications must be independently assessed.</p>
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Draft Development Assessment Policy

Attachment 2 – Example Management Statement

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