

15.2 Post exhibition endorsement: Development Assessment Policy

CSP Objective: Outcome 4.2: We are well connected within our local community, and to our region.

CSP Strategy: 4.2.2 Manage landuse planning to retain distinct towns and villages.

Delivery Program: 4.2.2.1 Ensure Council's planning systems and processes are contemporary and transparent

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Summary

The purpose of this report is to seek Council endorsement to adopt the Development Assessment Policy (attached).

The Draft Development Assessment Policy (Draft DA Policy) has been prepared by council staff in response to industry feedback and legislative changes. The Policy will guide council on improving our development application (DA) and complying development certificates (CDC) assessment timeframes, systems, strategic framework, customer experience, responsiveness, and communication to applicants. It also outlines the process for how council will identify and manage conflicts of interest in relation to council related development applications.

The Draft DA Policy was exhibited for 28 days, and two submissions were received. Minor changes have been made as a result of the submissions and internal feedback, and it is recommended that council adopt the policy (attached).

A section has also been provided within this report on correspondence that has been received from the Planning Minister (on 3 July 2024). This correspondence outlines a Statement of Expectations Order that has been sent to all councils relating to planning decisions and processes.

Financial implication

The Policy was prepared internally and there are no costs associated with adopting the policy.

Council has a statutory role to assess and determine development applications that are lodged on land within the Kiama LGA. The assessment of these applications is carried out in accordance with the *Environmental Planning and Assessment Act 1979* (Act) and the *Environmental Planning and Assessment Regulation 2021* (Regulation). This Policy will help to guide good practice in development assessment which will have an indirect financial benefit to council through good planning outcomes.

Risk implication

The processing of development applications is an essential service and legislative requirement of local governments. The Act requires that DAs are processed in accordance with the provisions of the Act. Failure to meet the requirements of the Act can have implications for appeal rights for applicants and for objectors.

Policy

The Development Assessment Policy has been prepared in accordance with:

- 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
- Council related development application conflict of interest guidelines (NSW Department of Planning, 2022)

Consultation (internal)

The Policy has been reviewed by planning and development staff and some minor suggestions were made to improve the document. These suggested changes are considered minor and have been incorporated to improve and clarify the Policy.

Communication/Community engagement

The Draft Development Assessment Policy was publicly exhibited on Council’s website for 28 days. A targeted email was also sent to relevant stakeholders who attended the Growth and Housing Strategy Industry Forum.

During the public exhibition two submissions were received. A summary of the comments received, and Council staff consideration of these comments is provided below:

Submission comments	Staff response
<p>There are often long delays in assessment and feedback that focuses more on documentation content rather than the adequacy of information for application acceptance.</p> <p>The merit assessment issues should be addressed after a preliminary assessment and not be a reason for returning applications before lodgement.</p>	<p>The requirements for pre-lodgement documentation are taken from the ‘Application requirements’ document produced by the NSW Government and can be found on their website - https://www.planning.nsw.gov.au/sites/default/files/2023-02/application-requirements.pdf</p> <p>In some instances, these requirements are considered too onerous and are not required at the pre-lodgement stage. This is reflected in Council’s current ‘checklists’.</p> <p>At pre-lodgement stage the content of documentation is checked only for adequacy, assessment of the information does not occur until the application is considered by the Preliminary Assessment Unit.</p> <p>Outcome: A process review and review of the prelodgement and lodgement requirements is being undertaken. The comments have been noted and are being included for consideration in this process review. No changes to the policy are required at this</p>

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Submission comments	Staff response
	stage but could be included in future reviews once process review is complete.
<p>Clause 7.2.1 of the draft policy is critiqued, noting it is too open-ended and should align with Clause 24 of the Regulation, which specifies DA requirements. This alignment would ensure consistency and certainty for applicants.</p>	<p>Clause 24 of the Regulation requires a development application to be submitted in the approved form. The NSW Planning's <i>Application Requirements</i> (March 2022) lists the mandatory requirements (ie the 'approved form') that applications should be accompanied by. Clause 3.1 in the attached Policy (previously clause 7.2.1) outlines that the Application Requirements, along with any other Planning Portal and the DA checklist will be used.</p> <p>Outcome: The wording within the Policy be retained. Further consideration for improved detail and clarity can occur through future reviews of the policy and process.</p>
<p>Kiama Council's checklists should be reviewed, and a Development Application (DA) matrix checklist adopted, which could be a more suitable lodgement assessment tool for applicants.</p>	<p>A range of process improvements are being considered and implemented, including a review of the pre-lodgement process and associated webpages. Council's pre-lodgement officers are preparing a document to assist applicants and advise of documentation that is commonly not provided or not provided in the right format. Once complete, this will be published on the website.</p> <p>Outcome: This comment is noted and will be considered as part of future process enhancements. No change to the Draft Policy is required for this to be implemented.</p>
<p>This submission emphasises the importance of well-designed built environments in promoting health and wellbeing, while poorly designed environments can harm community health.</p> <p>The organisation would welcome the opportunity to enhance healthy outcomes, suggestions include:</p> <p>a) Integrate Healthy Built Environment Principles into DA</p>	<p>The importance of community's health and well being, and the role that well designed built environments play is acknowledged and agreed.</p> <p>Council will consider the comments raised, including:</p> <p>a) As part of the next DCP review consider inclusion of healthy built environment principles.</p>

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Submission comments	Staff response
<p>processes to prioritise healthy food and environments in urban planning.</p> <p>b) Establish an external referral process for referring major or impactful minor developments to the organisation, such as large subdivisions, take away food premises near schools, licensed premises, community health services, recreation facilities and major infrastructure.</p> <p>c) Collaborate with Council's social planners and community workers during pre-lodgements.</p> <p>d) Develop healthy urban planning targets for DAs and planning proposals.</p>	<p>b) Update the external referral checklist to include the local health district.</p> <p>c) Opportunities for collaboration will be further considered and explored.</p> <p>d) The use of healthy urban planning targets will be further explored.</p> <p>Outcome: The comments are noted and acknowledged and will be further considered where appropriate.</p>

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Attachments

- 1 Development Assessment Policy [↓](#)
- 2 Ministerial Statement of Expectations Order [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

- 1. Adopt the Development Assessment Policy subject to a change being made to section 4.3 of the policy to include the new Ministerial Orders and Expectations that were issued to all councils on 4 July 2024.
- 2. Notify people who made a submission of Council’s decision.

Background

The draft Development Assessment Policy has been created to support and guide both community and staff and set expectations required in the process. The draft Kiama Development Assessment Policy outlines how Council will conduct the following steps in the Assessment Process:

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- Pre-lodgement advice.
- Lodgement and allocation.
- Assessment.
- Determination.
- Process for identifying and managing potential conflict of interest.

The Policy applies to the assessment of Development Applications, Complying Development Certificates, and Modifications.

Endorsement of draft policy – Council resolutions

At the Ordinary Council meeting of 19 September 2023, it was resolved that Council:

1. *Place the draft Development Assessment Policy on exhibition for 28 days and actively seek feedback from the development industry and community.*
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 \$10,000,000, except for developments:*
 - a) *Where developments are for subdivisions of over fifty (50) allotments; and*
 - b) *Where there are greater than 12 individual objections.*

These recommendations have been actioned as follows:

1. Exhibition of draft DA Policy

The Draft DA Policy was exhibited for 28 days and two submissions were received, along with internal feedback. A summary of the submissions and council staff responses are provided in the table above.

The Draft DA Policy has been updated as a result of the submissions and internal feedback. This includes formatting updates, minor changes to clarify process and full web site address. The updates made are considered minor in nature.

It is recommended that the Development Assessment Policy (attached) be endorsed by Council for adoption.

2. Industry Reference Group

The Planning and Economic Development team has commenced a series of Development Industry forums in accordance with this resolution. The inaugural forum was well received and was attended by a wide range of industry representatives.

3. Planning and Economic Team support and mentorship

The Planning and Economic Development team have been provided with ongoing support and mentorship, and additional opportunities for both internal and external improvements will continue to be explored and implemented.

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4. Delegations

Revised delegations have been adopted and implemented.

State of Expectations Order

On 4 July 2024 an email was sent to the mayors of all NSW councils advising them of a new Statement of Expectations Order 2024 that had been issued by the Planning Minister. The letter provided to Council is attached to this report.

As outlined by the Department and outlined on their website

<https://www.planning.nsw.gov.au/policy-and-legislation/housing/faster-assessments-program/statement-of-expectations-order>:

“The Ministerial Order sets new benchmarks for council performance on development assessment, planning proposals and strategic planning. The benchmarks are based on past performance and reasonable timeframes for each area. The expectations set out in the updated order include:

- *updated minimum performance standards for determining development applications*
- *a new standard for lodgement times*
- *a requirement for councils to complete the different stages of planning proposals within benchmark time frames set out in the [Local Environmental Plan-Making Guideline](#)*
- *a requirement for councils to complete and carry out local strategic planning statements and local planning strategies, with a focus on delivering housing targets within time frames that the department specifies*
- *two new heads of consideration that guide how the minister considers council performance against the expectations. These are that the minister considers council's individual circumstances and considers whether a council is meeting the expectations in regard to housing.”*

The Development Assessment Policy will need to be updated to include the new provisions that have now come into effect. Given these are legislative expectations a re- exhibition of the policy is not required. This change and the reason for it has been identified in this report to enable a formal record to be made and endorsed by the Council prior to a further change being made to a policy that has been on exhibition. The Ministerial Order was also been issued without the prior knowledge of Council and after the policy document had been finalised for inclusion in this report.

Conclusion

The Draft Development Assessment Policy has been prepared by council staff in response to industry feedback and legislative changes. The Policy will guide Council on improving our assessment timeframes, systems, strategic framework, customer experience, responsiveness, and communication to applicants.

It is recommended that Council adopt this policy.



Development Assessment Policy

Policy Owner/Responsible Officer	Manager Planning and Economic Development
Department	Planning and Economic Development
Date endorsed	[INSERT DATE]
Next review date	June 2026
TRIM reference	24/68390

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Policy Statement/Objectives

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

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

The objectives of the policy are to:

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

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*.

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.

Consultations

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

Definitions

Term	Definition
Act	Means the Environmental Planning and Assessment Act 1979.
Applicant	Person/s authorised to lodge applications on the NSW Planning Portal and act as the primary contact for dealings with application.
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 see 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.

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 the building has been constructed in accordance with the Building Code of Australia and structural engineering requirements.
Owner	Person, peoples, corporation who registered as owners of properties on Council's database.
Preliminary Assessment Unit (PAU)	Team of staff who review applications to determine their adequacy and determine the appropriate assessment pathway.
Regulation	Means the <i>Environmental Planning and Assessment Regulation 2021</i> .
Request for additional information (RFI)	Requests, made via the NSW Planning Portal, for additional information required to determine compliance/consistency with LEP and DCP.
Stop the Clock	Assessment timeframe stopped when RFI is issued within 25 days of the date of lodgement.
Subdivision Certificate (SC)	Certificate with authorities for the registration of a subdivision.
Subdivision Works Certificate (SWC)	Certificate which confirms if the proposed subdivision works comply with the civil engineering requirements.

Variation and review

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

Review History

Date endorsed by Council	Date effective	Brief detail of amendments
19 September 2023	[INSERT DATE]	Original Policy

POLICY

1. Introduction

1.1 Name and commencement of this Policy

This Policy is the Kiama Municipal Council Development Assessment Policy (the Policy). This Policy commenced on [INSERT DATE].

1.2 Purpose of this 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.

2. Planning and Development Advice

2.1 General advice

Council staff can provide general planning and development 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 (see below).

Note: Once an application 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.

2.2 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.

www.kiama.nsw.gov.au/Plan-and-build/Development-Process/Checklists-Forms-Guides

2.3 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.

2.4 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.

2.5 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.

www.kiama.nsw.gov.au/Plan-and-build/Development-Process/Development-Advice-Services

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.

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.
- Advice on likely assessment timeframes.

3. Lodgement & Allocation

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

3.1 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.

3.2 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, it will be requested 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.
- Other specialist staff as required.

4. Assessment

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

4.1 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. 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 a proportion of DA Fees paid by the applicant may 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.

4.2 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.

4.3 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.

4.4 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 determine local Development Applications within their delegated authority.

Council's Manager Planning and Economic Development can determine applications with a variation to planning controls.

4.5 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.

4.6 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.

5. Process for identifying and managing potential conflicts of interest

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 facade.
- 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.

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.

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.

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.

5.5 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.

5.6 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.

Related Forms/Documents

Nil

Attachments

Attachment 1	Assessment & Determination Criteria
Attachment 2	Example management statement

Authorisation

Name: Council Resolution No *****

Date: Date adopted by Council ****



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. Whether the proposal will lead to any financial benefit for Council. <p>Examples include replacement of amenities block, internal refurbishment of a building and less than 5 lot subdivision.</p>	<ol style="list-style-type: none"> Assessment must be by Council staff not involved in the application and peer reviewed by immediate supervisor; and A management statement (refer to Attachment 2) to be prepared and exhibited with the 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</p>	<ol style="list-style-type: none"> Assessment by Council staff not involved in the application and peer reviewed by a senior member of staff. 	<ul style="list-style-type: none"> Determination under delegated authority.

Category of Council DA	Assessment Controls	Determination Controls
<p>zoning, landuse provisions and Council policies, with no substantial or numerous sub</p>	<p>2. Assessment by external independent town planning consultant (in accordance with Council's Procurement Policy) may be required, if determined by the Director.</p> <p>3. Management statement to be prepared and exhibited with DA.</p>	
<p>Major DA</p> <p>Major DAs refer to development that is large-scale, significant and/or controversial. The determination of "major" shall be made after consideration of the following criteria, at the discretion of the Chief Executive Officer/Director.</p> <p>The estimated value of the works to be undertaken:</p> <ul style="list-style-type: none"> • If the DA is Regional Development (under 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. • Whether the proposal will lead to any financial benefit for Council. <p>Examples include – Coastal protection works, new industrial estates, new community facilities and libraries.</p>	<ul style="list-style-type: none"> • Engage external independent town planning consultant (in accordance with Council's Procurement Policy). • Management Statement to be prepared and exhibited with the DA. <p>For applications that do not trigger referral to the Regional Planning Panel, a referral may be required to the Audit, Risk and Improvement Committee.</p>	<ul style="list-style-type: none"> • Report to Council for determination <p>Or</p> <ul style="list-style-type: none"> • Determination by the Regional Planning Panel if the Capital Investment Value (CIV) of the application is >\$5million in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021. <p>Regional applications must be independently assessed.</p>



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	<p>Anyone with concerns about Council fulfilling its obligations should report their concerns to the Council.</p>

The Hon Paul Scully MP

Minister for Planning and Public Spaces



Ref: IRF24/1443

Cr Neil Reilly
Mayor
The Council of the Municipality of Kiama
11 Manning St
Kiama NSW 2533
neil.reilly@kiama.nsw.gov.au

Dear Mayor

As you are aware, the NSW Government is taking immediate action to meet our commitment under the National Housing Accord to build 377,000 new well-located homes by June 2029 to help address the housing crisis.

Local government are a critical enabler of housing, assessing about 85 per cent of housing development applications (DA) in NSW. However, over the past two years, average council DA timeframes have increased by 37 per cent, from 83 in FY21/22 to 114 days in FY23/24, which is contributing to the delays in housing completions and costing the NSW economy at least \$89 million each year.

In line with the beginning of the National Housing Accord, and our shared commitment to addressing the housing crisis, I am providing an updated Ministerial Statement of Expectations Order planning.nsw.gov.au/statement-of-expectations-order.

This new Statement of Expectations sets out expectations for council performance in the areas of development assessment, planning proposals and strategic planning. The performance of councils in meeting this Statement of Expectations will be monitored and reported publicly, as will the Department of Planning, Housing and Infrastructure's timeframes for approval of planning proposals and state significant development.

Addressing the housing crisis is a shared responsibility, and all levels of government must do more.

The Government is also developing a program to support councils achieve local housing targets, reduce average DA timeframes and deliver more homes. We have started this through initiatives funding cadetships for planners in councils and opening a new TAFE course for para-planning. We've completed substantial work on the NSW Planning Portal and are introducing artificial intelligence to support further efficiencies in the local DA process and timely decision-making.

The attached document outlines the key performance metrics within the Statement of Expectations and the associated infrastructure grant funding program. Additional initiatives to support councils achieve faster assessments will be announced in the coming months to help local and State government deliver approvals and particularly homes more effectively.

With these measures, I am confident that councils in NSW can achieve a significant reduction in average DA timeframes and meet our Housing Accord commitments.

I appreciate your leadership and support for this critical work in the spirit of shared responsibility that underpins the National Housing Accord and I look forward to working with you and all councils across New South Wales to deliver more housing for our communities.

Yours sincerely



Paul Scully MP

Minister for Planning and Public Spaces

03/07/2024

Attachment A

This Attachment provides an overview of the initial programs the NSW Government is proposing to support councils in determining more housing-related planning matters during the period of the National Housing Accord. More details of these programs and initiatives will be released in the coming months.

Updated Statement of Ministerial Expectations

- The Ministerial Statement of Expectations establishes the planning-related expectations of the Minister for Planning and Public Spaces in terms of planning assessment performance. The updated Statement includes the expectation for councils to:
 - lodge DAs as soon as practical and within an average of:
 - 14 days from submission, from 1 July 2024 to 30 June 2025
 - 7 days from submission, from 1 July 2025 onwards
 - determine DAs as soon as practical and whichever is the lesser of council's previous financial year average, or an average of:
 - 115 days from lodgement, from 1 July 2024 to 30 June 2025
 - 105 days from lodgement, from 1 July 2025 to 30 June 2026
 - 95 days from lodgement, from 1 July 2026 to 30 June 2027
 - 85 days from lodgement, from 1 July 2027 onwards
 - assess Regionally Significant DAs and refer them to the relevant planning panel for determination as soon as practical and within an average of 250 days from lodgement.

Department of Planning, Housing and Infrastructure Performance

- To assist with delivering major housing projects, the Department will be required to determine State Significant DAs for infill affordable housing and housing in transport-oriented development precincts within an average of 275 days from lodgement.
- As per the LEP Making Guidelines (August 2023) the Department must collaborate with councils to finalise planning proposals in 140 business days for basic proposals, 225 business days for standard proposals, 300 business days for complex proposals, and 380 business days for principal proposals.

Resourcing and financial incentives

- The Department will establish a new \$200 million grant program that provides milestone payments to councils based on their performance in meeting the Statement of Expectations. These grants will be for use in improving critical local infrastructure.

- The Department has made \$5.6 million worth of funding for grants to councils to integrate AI and other digital solutions into the development assessment process.
- The Department is working with industry, local government and the private sector to support a skilled planning workforce through the Strong Start mentoring program as well as a new TAFE pathway into the planning profession.