

## 20 NOTICE OF MOTION

### 20.1 Notice of motion: Amendment to clause 4.2c of the Kiama Local Environmental Plan

Clr Mike Cains has submitted the following Notice of Motion for Council's consideration:

#### **MOTION**

That Council:

1. Requests a report from Chief executive officer regarding a proposal to seek amendment to Clause 4.2c of the Kiama Local Environmental Plan (LEP), through the relevant State Government authority, to include C2 zoning, aligning it with other NSW regional councils.
2. Provides a further report to a future meeting of Council outlining a suggested pathway forward contingent upon the council's acceptance of the proposed amendments to Clause 4.2c.

Signed Councillor Mike Cains

#### **What is the purpose of the motion?**

Currently, Kiama's planning framework (in this case clause 4.2c of the Kiama LEP) presents unique challenges that hinder effective land management, particularly for conservation and primary production lands.

A clause that is more consistent with the standard clause allows landholders the flexibility to better meet the conservation and agricultural objectives of the LEP. Secondly, the aim of this motion is to enhance the clarity and equity of our planning instruments, thereby improving decision-making efficiency and reducing conflicts between the council and the community.

#### **Background**

Clause 4.2c allows for exceptions to the minimum subdivision lot size for boundary adjustments, currently applicable only to RU1, RU2, and C3 zones. This essential provision provides necessary flexibility for landowners with sub-minimum lot sizes to adjust boundaries, facilitating better land management for both agricultural and conservation purposes without creating any net increase in new undersized lots or dwelling entitlements.

However, the exclusion of C2 zoning from clause 4.2(c) creates a significant gap in Kiama's planning framework. C2 zone is included in the standard, corresponding, clause adopted by all regional councils examples are Wingecarribee, Shoalhaven,

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Central Coast, Bellingen Shire, Uralla, Nambucca, Port Macquarie, Eurobodalla etc etc.

By adopting the proposed amendment, Kiama can ensure that landowners, including farmers and conservationists, are not hindered in their ability to make beneficial adjustments to their properties when seeking to meet the objective of the zones that specifically seek to protect out natural environment and maintain viable agricultural land.

The inclusion of C2 zone in this clause has been tested widely over decades across NSW with no evidence of affects inconsistent with the LEP objectives. The proposed amendments to Clause 4.2c include robust safeguards to ensure that:

- (a) The objectives of the provision are clearly defined.
- (b) The applicable zones are explicitly stated.
- (c) No new undersized lots or additional dwellings will be created as a result of boundary adjustments.
- (d) Potential land conflicts are minimised, specifically ensuring that adjustments do not negatively impact C3 and C2 zoned lands.

Please consider two real life examples below, due to privacy concerns owners are not explicitly identified:

Example 1: Consider two neighboring landowners: Landowner 1, a primary producer a chicken and beef farmer and Landowner 2, a conservation-focused landholder with a biodiversity covenant. Under the current framework, these neighbors face barriers to negotiating boundary adjustments that would enhance both agricultural viability for Landowner 1 and the conservation efforts of Landowner 2 by aligning their boundaries consistent with their land use. The proposed inclusion of C2 zoning would allow for such beneficial negotiations, leading to improved outcomes for both parties and the overall community not least of all conservation and primary production objectives.

Example 2: In Knights Hill a Ratepayer (Darren) has a 1 acre lot with a house, directly behind him is his parents lot on 80 acres. For estate planning purposes, the option of creating two 40acre lots to be divided between him and his brother upon his parent's death is an option not currently available. The current clause hinder routine land management for succession planning purposes.

Kiama's current exclusion of C2 zoning from Clause 4.2c is an anomaly that has no clear justification. By aligning with the practices of other regional councils, Kiama can foster more efficient land management and promote sustainable development.

### Chief Executive Officer response

As noted above, while clause 4.2C of the *Kiama Local Environmental Plan (LEP) 2011* (or a version of it) does appear in other LEPs across the State it is not a Standard Instrument clause and therefore can be flexibly applied/implemented by Council.

Under the Kiama LEP 2011 the permissible land uses in the C2 Environmental Conservation zone are limited to Environmental facilities; Oyster aquaculture; Recreation areas; and Roads. While, in the regional council's listed above permit a

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greater range of land uses in their C2 zoned land, including forms of residential development. The exclusion of the C2 zoning from clause 4.2C is therefore not considered to be an anomaly as Kiama has deliberately taken a more conservative and conservationist approach to its C2 zoned land.

The submitted Notice of Motion seeks a report to be presented to Council's Ordinary February 2025 meeting providing instruction for how clause 4.2C can be amended to be included C2 zoned land.

It is recommended that the Council consider resolving to finalising the Vegetation Study in the current 24/25 Financial Year and include the preparation and finalisation of a Rural Lands Strategy in the 25/26 Financial Year for the following reasons:

1. 24/25 Work Plan

The process for this amendment is the preparation of a Planning Proposal and then the NSW Government's Gateway Process. Gateway processes can take between 6-12 months depending on the complexity of the proposed amendment.

The preparation of the necessary Planning Proposal and managing the subsequent Gateway process is not in the Strategic Planning team's current work plan as directed by the adopted 24/25 budget and Operational Plan.

2. Strategic Merit

As per the NSW Government's LEP Making Guidelines, Planning Proposals need to demonstrate Strategic Merit, specifically alignment with both the Illawarra-Shoalhaven Regional Plan 2041 and any relevant local strategy such as the Kiama Local Strategic Planning Statement (LSPS) 2020. The Kiama LSPS 2020 includes actions to undertake both a Vegetation Study and Rural Lands Strategy to identify existing barriers to protecting environmental lands and appropriately supporting rural land owners.

The preparation and finalisation of these Studies/Strategies would provide Strategic justification for this proposed amendment. This work is already in the DPOP adopted by the prior Council and any new work needs to be factored into existing staff workloads and priorities. Noting here the constrained resources of the planning department and the need to prioritise development assessment and finalisation of the gro

It is noted that a draft Vegetation Study was prepared in 2022 and publicly exhibited. Following the public exhibition period the Vegetation Study was paused to consider the feedback from the community, specifically in regards to vegetation mapping around 7 Mile Beach.

**20.2 Notice of motion: Memorial planting, benches and plaques in parks and open spaces policy**

Clr Imogen Draisma has submitted the following Notice of Motion for Council's consideration:

**MOTION**

That Council:

1. Develop a Memorial Planting, Benches and Plaques in Parks and Open Spaces Policy (the Policy), subject to available funding in the 2025-26 budget.
2. Require that requests under such a policy uphold the requirement for tree species and consideration of impact under the Public Tree Management Policy 2022, including that preferred species will be trees native to the region, although other native and non-native species may be used depending on the character of the park or open space.
3. Consider in the development of the Policy the utilisation of a beneficiary pays model where there is a budgetary implication for Council in the memorial installation and/or planting.
4. Note that the request for a plaque for the late Edith Clarke at the Kiama Rockpool site is proceeding and Council will continue to liaise with the family regarding their request.

Signed Councillor Imogen Draisma

**Background:**

The Council currently does not provide a policy or process in order for members of the community to request memorial plaques, benches and/or trees in open spaces and parks managed by Kiama Municipal Council.

Many councils have such a policy in place so that such requests for memorial trees and plaques can be effectively managed.

The implementation of a Memorial Planting and Plaques in Parks and Open Spaces Policy will enable transparency of processes for the community, minimise the need for these requests to come before Council and limit the time taken for staff to consider such requests.

**Chief Executive Officer response**

Previously Kiama Municipal Council did have a Policy on Memorial Seats, however this was abolished about 10 years ago due to the number of requests for seating, ad hoc nature of seat being installed and the ongoing maintenance costs associated. It is to be noted that whilst most community members may be supportive of plaques and

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20.2 Notice of motion: Memorial planting, benches and plaques in parks and open spaces policy (cont)

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memorials, there is likely to be some who do not support public infrastructure being used for this purpose.

Council staff can provide a policy on memorial plaques, benches and/or trees for the Council's consideration as workload and time permit. Certainly having a consistent practice and procedure would assist with adhoc request of this nature. The policy will outline guidelines for the planting of trees and the placement of plaques, the locations which allow such trees, benches and plaques and the operation and period for such plaques and benches.

This policy will drafted and presented to Council at a future meeting for consideration.

**Item 20.2**

**20.3 Notice of motion: Support for Jamberoo Community Preschool**

Clr Mike Cains has submitted the following Notice of Motion for Council's consideration:

**MOTION**

That Council:

1. Assures the Jamberoo Community Preschool they will not be required to vacate their current council-owned premises until a viable and functional alternative location is found.
2. Shall provide, if necessary, an extension to the current lease, to allow the preschool the required time to establish operations in a new location.
3. Will partner with Jamberoo Community Preschool to establish a shovel-ready project plan for the construction of a new preschool, which can be incorporated into a future grant advocacy plan of the council.

Signed Councillor Mike Cains

**What is the purpose of the motion?**

The Jamberoo Community Preschool plays a vital role in our community. There are 67 local families that rely on this vital service providing essential, quality early childhood education services in a natural organic setting. Providing them with the assurance of continued operation irrespective of the current lease maturity sends a reassuring message to the community.

**Background**

Notwithstanding the current flood prone affectation of the site, it is not a suitable long term option to remain in the current location and the current lease is due to expire in July 2028. Ensuring their continued operation and facilitating their transition to a new facility will support the needs of local families and contribute to the educational landscape of our area.

**Chief Executive Officer response**

Council leases many property and building assets to various third parties who all play an important part in the community. Most of Council's buildings are currently in use with leases to community groups and commercial entities, resulting in a mixture of income being received by Council depending on lease arrangements.

Council staff recommend the most suitable tenants for the community use at the time of a lease renewal becoming available. Often the same community group remains at

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20.3 Notice of motion: Support for Jamberoo Community Preschool (cont)

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the facility throughout many lease terms as they become established in the community.

It is not usual practice that Council would commit to providing resources towards a shovel ready project for a new facility for any lessee, which they would potentially own or rent from another entity. If it were a council building, then Council would get involved. Council must be careful to ensure there is no perception of favoring one pre-school (or lessee) over others within the municipality as we do lease out spaces to other kindergarten operators who commercially compete.

Should Council wish to support the group to undertake any planning or design, The NoM would require a budget to be allocated and identified, resources committed in the forward budget estimate register and staff time dedicated in a future DPOP. This year's DPOP is set as adopted and staff time cannot accommodate further additional work load, priority must be given to completion of existing workload and committed capital projects.

It is the advice of the CEO that resolution three (3) be deleted as no budget exists or the wording changed to state what work can be achieved within existing resources and without the need for additional budget or time delays in future DPOP's etc.

***That Council:***

***Include the need for alternative suitable sites for the Jamberoo Kindergarten in the development of the future advocacy plan.***

Council staff and the previous Elected Representatives are highly aware and supportive of the situation at Jamberoo Kindergarten. The previous Council resolved to establish a working group, The group met several times to support the Kindergarten in meetings and with concepts / letters / advocacy to State and Federal Government etc. Council's CEO has met personally with the Director on several occasions to reassure that Council has no plans to change lease terms and is supportive of the work and service the center and its staff provide.

Council continues to work with the State government and consultants on options for flood proofing the Jamberoo School of Arts building which houses the Jamberoo Community Pre-school. Updates on this will be provided to Council in the future as they become available.

Item 20.3