

15 REPORT OF THE DIRECTOR STRATEGIES AND COMMUNITIES**15.1 Approval of Conservation Management Plan - Kendalls Cemetery and the Walls of Barroul (South Kiama Urban Release Area)**

CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.

CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.

Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

Item 15.1

Summary

The purpose of this report is to seek Council approval of the Heritage Conservation Management Plan for the historic Kendalls Cemetery and the Walls of Barroul located within the South Kiama Urban Release Area.

The Conservation Management Plan (CMP) (Enclosure 1) has been prepared to guide the conservation and future management of the Kendalls Historic Cemetery and the Walls of Barroul (dry stone walls) located within the South Kiama Urban Release Area.

It is recommended that the Conservation Management Plan (Enclosure 1) be approved to enable all applications within the South Kiama Urban Release Area to be assessed against this document.

Financial implication

The CMP has been prepared by heritage consultants who were engaged by the Developer. There has been no cost to the Council in preparing the CMP.

The CMP has been reviewed by staff and updated to ensure there is no unintended or substantial future cost to Council, noting that Council is and/or will be the asset owner for most of these heritage items. In this regard, the CMP will provide guidance to the Council on the appropriate management and maintenance of these heritage items.

The Kendalls Cemetery is already contained in Council's Assets register, but, as they are on private property, the dry stone walls are not included in Council's Assets register.

Once the subdivision has been completed & the developer starts their five (5) years of maintenance, Council will get details as part of the asset transfers on the extent of the new walls we inherit (along with everything else). Council has recently completed the Asset Management Plan - Other Assets, but towards the end of the maintenance period the walls will be valued which will align with our revaluation process which occurs every 4-5 years.

Risk implication

The recently adopted Chapter 12.11 (South Kiama Urban Release Area) of the Kiama Development Control Plan 2020 includes the requirement for a CMP to be developed

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and submitted for approval with the first Development Application (DA) for the subdivision of land.

Clause 5.10(6) of the Kiama Local Environmental Plan 2011 (LEP) also provides for the preparation of a CMP where there are significant heritage values or items.

The Historic Kendalls Cemetery is owned by Council and, although accessible by pedestrians, is currently surrounded by rural lands. There are likely risks to the cemetery during construction and once the surrounding land is developed into a residential area. The CMP includes measures to mitigate these risks.

If Council does not approve the CMP, there will be no management plan for these heritage items and values to be appropriately protected as the development occurs.

Policy

The CMP has been prepared and assessed in accordance with:

- The Burra Charter.
- The Conservation Plan: A guide to the preparation of conservation plans for places of European cultural significance (Kerr, 2013).
- Guidance on Developing a Heritage Conservation Management Plan and Statement of best practice for conservation management plans (Heritage Council of NSW, 2021).
- Assessing Heritage Significance: Guidelines for assessing places and objects against the Heritage Council of NSW criteria (DPE, 2023).
- Assessing Significance for Historical Archaeological Sites and "Relics" (NSW Heritage Branch, Department of Planning, 2009).
- Guideline: Relics of local heritage significance (Heritage NSW, 2022).
- Kiama Development Control Plan 2020.

Consultation (internal)

The CMP was reviewed by the Property and Recreation team (including Property Coordinator and Cemeteries Administration Officer), Senior Assets Engineer and the Strategic Planning team.

The CMP was updated twice in response to staff comments, including the addition of a maintenance plan to guide future asset maintenance and inclusion of an unexpected finds protocol.

Communication/Community engagement

The CMP was exhibited with the Stage 1 Development Application 10.2025.68.1 between 11 June and 9 July 2025. No submissions were received in relation to the CMP. The external referral from Heritage NSW raised no concern with the CMP.

Attachments

Nil

Enclosures

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15.1 Approval of Conservation Management Plan - Kendalls Cemetery and the Walls of Barroul (South Kiama Urban Release Area) (cont)

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- 1 Conservation Management Plan - Kendalls Cemetery and the Walls of Barroul [↗](#)

RECOMMENDATION

That Council

1. Approve the Conservation Management Plan – Kendalls Cemetery and the Walls of Barroul – South Kiama Urban Release Area (Enclosure 1).
2. Note that the adopted Topic 12.11 of the Kiama Development Control Plan requires that all Development Applications for development within the South Kiama Urban Release Area to be assessed in accordance with the approved Conservation Management Plan.

Background

The South Kiama Urban Release Area is located to the west of the M1 Princes Highway and borders Saddleback Mountain Road to the north and Weir Street to the south. The site is approximately 40 hectares in land area and will accommodate approx. 380 residential lots, open space, environmental conservation areas, stormwater management and associated infrastructure, and will be carried out over stages.

The Kendalls Historic Cemetery and numerous dry stone walls are located within the site (see Figure 1). The site specific DCP (Chapter 12.11) identifies the need for a Heritage Conservation Management Plan to guide the conservation and future management of these heritage items.

A Conservation Management Plan (CMP) is a detailed document that outlines how a heritage place, natural environment, or cultural site should be cared for, maintained, and protected over time.

Clause 5.10(6) of the Kiama Local Environmental Plan 2011 (LEP) also provides for the preparation of a CMP where there are significant heritage values or items.

The CMP was lodged with the Stage 1 Development Application 10.2025.68.1 and publicly exhibited with the application. The CMP was reviewed by the Property and Recreation team (including Property Coordinator and Cemeteries Administration Officer), and the Strategic Planning team. The CMP was updated twice in response to staff comments, including the addition of a maintenance plan to guide future asset maintenance and inclusion of an unexpected finds protocol.

The CMP contains 93 Policy actions. A significant portion of these will be actioned through the development process. All other actions are associated with ongoing maintenance and will be the responsibility of Council. The executed Planning Agreement, endorsed by Council at their November meeting, does provide Council with some funds to contribute towards this maintenance. It should be noted that maintenance of the Cemetery has always been Council's responsibility and is not something triggered by the associated development.

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15.1 Approval of Conservation Management Plan - Kendalls Cemetery and the Walls of Barroul (South Kiama Urban Release Area) (cont)

Conclusion

This Conservation Management Plan (CMP) (Enclosure 1) has been prepared to guide the conservation and future management of the Kendalls Historic Cemetery and the Walls of Barroul (dry stone walls) located within the South Kiama Urban Release Area.

It is recommended that the Conservation Management Plan (Enclosure 1) be approved to enable all applications for developments within the South Kiama Urban Release Area to be assessed against this document and the heritage items to be appropriately managed.

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Figure 1 Location of Heritage Items

15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision

CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.

CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.

Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

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Summary

The purpose of this report is to seek Council's determination of Development Application No 10.2025.68.1 for Torrens Title subdivision - subdivision of the site, including site preparation works, servicing, construction of roads, and rehabilitation of a riparian corridor.

The proposal includes provision for the subdivision of 81 x residential allotments, 1 x drainage reserve allotment, 1 x public reserve allotment for the purposes of a local park and 1 x residue allotment containing the remainder of the South Kiama URA. The proposal comprises the first stage (Stage 1) of development in relation to the South Kiama Urban Release Area (URA).

It is recommended that Council determine the proposed development by way of approval.

Financial implication

The development application fee has been paid in accordance with the Environmental Planning and Assessment Regulation 2021 and Council's adopted Fees and Charges.

The developer has entered into a Planning Agreement under Section 7.4 of the Environmental Planning Act 1979. Although the Section 7.12 Contribution Plan applies to this site, as the developer has offered to enter into a Planning Agreement, the application of section 7.12 contributions is excluded from this development.

If the application is refused, the application may be challenged in the NSW Land and Environment Court (LEC) and there would be costs associated with defending the refusal.

Risk implication

If the DA is refused, the determination may be challenged in the NSW Land and Environment Court (LEC).

Policy

The statutory instruments relevant to the development include the following:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- Kiama Local Environmental Plan 2011.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

- Kiama Development Control Plan 2020.
- Kiama Community Participation Plan 2019.

Consultation (internal)

Internal Referrals	
Referral	Comments
Contribution Planner	No objection subject to recommended conditions..
Strategic Planning	The following issues were raised in the referral: • Shared Use Pathway • Employment Lands • Easements over lots for temporary access way • LEP Part 7 Compliance • Road Typologies • Civil. • Zero Lot Line Lots • Conservation Management Plan. • Local Park <u>Assessing Officer Commentary</u> The issues identified in the referral have been addressed in the application. Detailed commentary is included in the s4.15 assessment report included as Enclosure 1 to this report.
Landscaping Officer	No objection subject to recommended conditions.
Property Section	No objection subject to recommended conditions.
Waste Services	No objection subject to recommended conditions.
GIS	The following issues were raised in the referral: • Road Names. • Proposed signage. <u>Assessing Officer Commentary</u> The issues identified in the referral have been addressed in the application. Detailed commentary is included in the s4.15 assessment report included as Enclosure 1 to this report.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

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Environmental Health Officer	No objection subject to recommended conditions.
Heritage Officer	No objection.
Development Engineer	No objection subject to recommended conditions.
Risk Management	No objection.
Aboriginal Liaison Officer	No response received.
Communications	No objection.
External Referrals	
Referral	Comments
Department of Climate Change, Environment, Energy and Water (DCCEE) – Conservation Programs, Heritage & Regulation	No objection.
Sydney Water	No objection subject to recommended conditions and detailed designs for water servicing. The Applicant has provided confirmation of suitable water servicing from Sydney Water.
Endeavour Energy (EE)	No objection subject to recommended conditions.
Transport for NSW (TfNSW)	Objection. The following issues were raised in the referral: • Road Priority • Driveways to Saddleback Mountain Road • Noise <u>Assessing Officer Commentary</u> The issues identified in the referral have been addressed in the application. Detailed commentary is included in the s4.15 assessment report included as Enclosure 1 to this report.
Integrated Development and Concurrences	
Concurrence Authority	Recommendation

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Rural Fire Service (RFS) s100B Rural Fires Act 1997	General Terms of Approval / Concurrence issued..
Department of Climate Change, Environment, Energy and Water (DCCEEW) - Water S91 Water Management Act 2000	General Terms of Approval / Concurrence issued.

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Communication/Community engagement

Consultation has occurred in accordance with Section 8 of the Kiama Community Participation Plan 2019; namely by:

- Directly notifying adjoining property owners of the exhibition period,
- Notifying relevant community groups,
- Erecting a temporary sign on site to advise of the application and exhibition period,
- Making all information publicly available on Council's DA Tracker between 11 June 2025 and 9 July 2025.

Council also issued a media release on 12 June 2025 advising that the development application had been received and was on public exhibition until 9 July 2025.

Submissions	Number	Key Issues
Submissions - For	3	• Provision of housing
Submissions - Against	40	• Urban expansion and overdevelopment • Lack of infrastructure and services • Traffic impacts • Parking • Roads • Pedestrian access • Public transport • Stormwater and flooding impacts • Noise and vibration impacts • Construction impacts • Scenic and visual impact

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

		• Environmental impact • Socio-economic and cultural impacts • Heritage impacts • Concerns relating to design, setbacks and build quality of future dwellings • Need for affordable housing, social housing and varied housing typology • Need for parkland, public open space and other amenities
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Attachments

Nil

Enclosures

- 1 10.2025.68.1 - Section 4.15 Assessment Report [⇒](#)
- 2 10.2025.68.1 - Plans [⇒](#)
- 3 10.2025.68.1 - Draft Notice of Determination [⇒](#)

RECOMMENDATION

That Council:

1. Approve, subject to conditions of consent set out in enclosure 3, Development Application No 10.2025.68.1 (PAN-533320) for Torrens title subdivision - subdivision of the site, including site preparation works, servicing, construction of roads, and rehabilitation of a riparian corridor. The proposal includes provision for the subdivision of 81 residential allotments comprising the first stage of development in relation to the South Kiama Urban Release Area (URA).
2. Advise persons who made a submission on Development Application No 10.2025.68.1 of Council's decision.

Background

APPLICATION DETAILS	
Application Type:	Development Application.
Application Number:	10.2025.68.1.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

NSW ePlanning Portal Reference:	PAN-533320.
Proposed Development:	Torrens title subdivision - subdivision of the site, including site preparation works, servicing, construction of roads, and rehabilitation of a riparian corridor. The proposal includes provision for the subdivision of 81 residential allotments comprising the first stage of development in relation to the South Kiama Urban Release Area (URA).
Applicant:	White Constructions & Developments Pty Ltd.
Property title:	Lot 1 DP 707300.
Property address:	40 Saddleback Mountain Road, Kiama.

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The Site

The subject site is described as Lot 1 DP 707300 - 40 Saddleback Mountain Road, Kiama. The subject site is identified within the South Kiama Urban Release Area (URA) and the current application is for Stage 1 of the URA development (see figure 2).

The South Kiama URA is situated approximately 2.5-3km south-west of the Kiama CBD (see Figure 1)

The URA sits in between Saddleback Mountain Road and Weir Street along the south-western edge of the Kiama township. The URA is bound by Saddleback Mountain Road to the north, Princes Highway to the east, and Weir Street to the south.

Access to the property is gained to Stage 1 of the URA via Saddleback Mountain Road.

The proposed development will be connected to essential services, public utilities and reticulated water and sewer infrastructure. Water and sewer mains to the URA will be extended pursuant to a separate Part 5 approval through Sydney Water.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)



Figure 1 - Imagery of the South Kiama URA site

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)



Figure 2 - Aerial Imagery of the subject site (Stage 1 of South Kiama URA)

The Proposed Development

The proposal includes:

- Torrens Title subdivision comprising:
 - 81 x residential allotments.
 - 1 x drainage reserve allotment.
 - 1 x public reserve allotment for the purposes of a local park.
 - 1 x residue allotment containing the remainder of the South Kiama URA.
- Site preparation and bulk earthworks.
- Provision of pedestrian, cycling and road infrastructure including.
- Tree and vegetation clearing, tree planting and revegetation works including:
- Development of drainage reserve allotment including retaining walls, rock batters and bank stabilisation, and stormwater drainage infrastructure.
- Provision of a local park including playground equipment, a basketball half-court and public open space.
- Provision of entrance signage, educational signage and public park signage.
- Provision of utilities and infrastructure to support the development.

The subdivision layout plans are included as enclosure 2 to this report.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Key Issues

The following key issues are relevant to the assessment of this application having considered the relevant planning controls, issues raised in the submissions, referral comments and the proposal in detail.

1. Compliance with planning controls and DCP specific Chapter 12.11 of Kiama DCP 2020 for the South Kiama Urban Release Area.
2. Traffic and Road Network.
3. Suitability for Future Residential Development.
4. Voluntary Planning Agreement.
5. Public Submissions.

Compliance with planning controls and DCP specific Chapter 12.11 of Kiama DCP 2020 for the South Kiama Urban Release Area

A detailed assessment of the proposal and compliance with relevant planning controls is included as Enclosure 1 to this report.

The application has been supported by appropriate subdivision plans and technical reports. The subdivision plans and technical reports demonstrate how the proposal responds to environmental constraints and satisfies relevant planning requirements.

The proposal is compliant with applicable planning controls in environmental planning instruments including relevant State Environmental Planning Policies (SEPPs) and the Kiama LEP 2011.

Chapter 12.11 of Kiama DCP 2020 sets out the specific controls and concept plan for the South Kiama URA. The proposed development and subdivision layout is consistent with the vision statement, place principles, Concept Plan, Staging Plan, and Character Area principles set out in Chapter 12.11.

Traffic and Road Network

The subdivision establishes Road 1 which will act as the north-south collector road through the South Kiama URA.

The original proposal to realign Saddleback Mountain Road to the south to give priority leading into Road 1 and the URA. However, in response to this, referral advice from Transport for NSW (TfNSW) identified that Council should consider safeguarding the existing alignment of Saddleback Mountain Road to preserve its function as an east-west collector road. Following this advice, the proposal was amended to provide a T-Intersection at the Road 1 – Saddleback Mountain Road intersection to maintain the road priority of Saddleback Mountain Road to preserve its function as an east-west collector road, to ensure compatibility with any future western collector road and the long-term vision for the broader transport network. This amendment is consistent with the recommendations of TfNSW.

The road network and street typology is consistent with Chapter 12.11 of Kiama DCP 2020 and the concept plan for the URA and is considered suitable.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Suitability for Future Residential Development

The South Kiama URA is identified in the Kiama Local Housing Strategy as a Tier 1b Short term zoned land supply.



The application has demonstrated that all residential lots contained within Stage 1 have sufficient building area available and are considered capable of providing future residential development in line with relevant development controls and building controls set out in Chapter 12.11 of Kiama DCP 2020.

Planning Agreement

The application is supported by a Planning Agreement (PA) letter of offer from White Constructions and Developments Pty Ltd.

The PA has been agreed to and entered into by Kiama Municipal Council and White Constructions and Developments Pty Ltd. The proposed subdivision is consistent with the PA.

As per the PA, s7.12 contributions are excluded from the proposed development and are not levied.

Public Submissions

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications. 40 submissions objecting to the proposal and 3 submissions of support were received by Council.

The concerns raised are outlined below:

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Summary of Public Submissions	
Summary of objections raised	Commentary
Urban expansion and overdevelopment - Inappropriate density - Inappropriate lot sizes - Urban expansion should be located in other areas which have capacity for higher density development - Development is not consistent with the existing character of Kiama	The development area is identified as an Urban Release Area in Kiama LEP 2011 and in the adopted Local Housing Strategy. Contrary to staff recommendations, Council refused the request to rezone the site for residential purposes. Following the lodgement of a Rezoning Review by the applicant, the NSW Government rezoned the site on 12 July 2022. The proposed subdivision is for Stage 1 of the identified South Kiama Urban Release Area and complies with the applicable development standards including minimum lot size requirements. The proposal is consistent with Chapter 12.11 South Kiama Urban Release Area of Kiama DCP 2020 which identifies the area and outlines the objectives and detailed controls for development within the South Kiama Urban Release Area. The proposal is consistent with the vision, principles and concept plan set out in Chapter 12.11 of Kiama DCP 2011.
Lack of infrastructure and services - Road network - Waste servicing - Water and Sewerage - Electricity - Public transport - Commercial - Schooling - Healthcare - Policing	The development area is identified as an Urban Release Area in Kiama LEP 2011. The proposal will have access to all essential services and public utility infrastructure as required by Part 7 of Kiama LEP 2011.
Traffic impacts - Increased traffic	The application has been supported by a Traffic Impact Assessment for the South Kiama Urban Release Area which considered traffic impacts

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Summary of Public Submissions	
Summary of objections raised	Commentary
- Increased wear on road infrastructure - Increased traffic in proximity to Kiama High School and safety concerns - No traffic impact assessment provided / Traffic Impact Assessment is inadequate - Heavy vehicles during construction - Traffic safety	and vehicle safety. The proposal has been reviewed by Transport for NSW and Council's Engineering Department and traffic impacts are considered acceptable. The proposed development is consistent with identified urban release area and applicable development controls. The proposal is considered suitable with regard to traffic impacts.
Parking - Lack of on-street parking within South Kiama URA - Lack of parking within Kiama CBD	Appropriate on-street parking lanes/bays are provided within the subdivision and all residential lots have appropriate area to cater for off-street parking for the future residential development. The proposal is considered suitable with regard to parking considerations.
Roads - Lack of on and off ramps to Princes Highway - Narrow road widths within South Kiama URA	The proposed road design and street network is consistent with the concept plan for the South Kiama Urban Release Area as outlined in Chapter 12.11 of Kiama DCP 2020. Transport for NSW have previously advised that additional on and off ramps to Princes Highway are not warranted for this URA in isolation. Road widths are consistent with development controls set out in Chapter 12.11 of Kiama DCP 2020 and relevant engineering standards.
Pedestrian access - Insufficient pedestrian routes	The application has been supported by a pedestrian and bicycle network plan which provides appropriate pedestrian infrastructure and linkages through the urban release area and to public open space areas.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Summary of Public Submissions	
Summary of objections raised	Commentary
- South Kiama URA is not walkable to Kiama CBD	
Public transport - Lack of public transport opportunities	Stage 1 of the urban release area provides for a bus stop along Saddleback Mountain Road. Further public transport opportunities will be provided in later stages of the development.
Stormwater and flooding impacts - Need for adequate on-site detention - Inadequate stormwater infrastructure - Downstream flooding impacts	The application has been supported by detailed stormwater drainage plans which provide appropriate stormwater infrastructure for the development. Stage 1 of the urban release area provides a bioretention basin for water management. Chapter 12.11 of Kiama DCP 2020 also requires additional on-site detention be provided for future residential development.
Noise and vibration impacts - Construction impacts - Ongoing traffic impacts - Provision of acoustic fencing will redirect highway noise impacts back towards properties on the eastern side of the highway	Noise and vibration impacts for the development are considered acceptable. A 2.1m lapped and capped fence will be provided along eastern boundary of lots adjoining the Princes Highway and no further acoustic fencing is proposed. Noise impacts from the highway to future residences will be managed by way of requiring future construction of dwellings to certain acoustic treatments in line with the requirements of Chapter 12.11 of Kiama DCP 2020. Acoustical requirements will be reflected on the title of land.
Construction impacts - Noise and vibration - Traffic and heavy vehicles - Dust, erosion and sedimentation - Proximity to Kiama High School and hours	The application has been supported by a Construction Management Plan with appropriate measures. The development of the land and associated construction impacts is not incompatible with adjoining land uses.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Summary of Public Submissions	
Summary of objections raised	Commentary
of construction not compatible with school hours	
Scenic and visual impact	The application has been supported by a Visual Impact Assessment and visual and scenic impacts are considered acceptable.
Removal of agricultural land	The site has been identified as an urban release area and primarily zoned R2 Low Density Residential.
Environmental impact - Riparian corridors - Erosion and sedimentation - Impact on littoral rainforest	The proposed development incorporates appropriate measures to protect and revegetate riparian corridors and protect the natural environment. The application has been supported by a Biodiversity Diversity Assessment Report and conditions of consent will require biodiversity offsets as required.
Socio-economic and cultural impacts - Gentrification and displacement of long-term residents - Lack of employment opportunities in Kiama - (Un)Affordability of future lots - Devaluation of existing properties - Oversupply of housing - Increased short term rental accommodation	The proposed development is consistent with the identified urban release area and the vision, principles and concept plan set out in Chapter 12.11 of Kiama DCP 2011. The development of the urban release area will contribute to housing supply within the local government area. Council's adopted Local Housing Strategy confirms that this URA is required to satisfy the National Accord Housing Targets. In this regard this proposal does not represent an oversupply of housing. If anything, the current average value of homes in the Kiama LGA indicates a significant undersupply of housing over the past years. Council's draft Employment Lands Strategy (ELS) acknowledges the lack of employment opportunities in Kiama and identifies a number of new employment sites across the LGA. A future employment site has been identified within this URA and, subject to the endorsement of the ELS,

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Summary of Public Submissions	
Summary of objections raised	Commentary
	Council will undertake a rezoning exercise to ensure the URA contains employment lands.
Heritage impacts	The proposal is considered appropriate with regard to heritage considerations and is consistent with the Conservation Management Plan required under Chapter 12.11 of Kiama DCP 2020.
Concerns relating to design, setbacks and build quality of future dwellings	The proposed development is for Stage 1 of the South Kiama Urban Release Area and does not propose any residential buildings. The application has demonstrated that there is suitable building area on each residential allotment to allow for dwellings. Chapter 12.11 of Kiama DCP 2020 establishes development controls for future residential development within the urban release area.
Need for affordable housing, social housing and varied housing typology	The proposal provides a variety of lot sizes including zero lot line lots which will facilitate varied housing typology.
Need for parkland, public open space and other amenities	The proposal is for Stage 1 of the South Kiama Urban Release Area and provides a public park and natural riparian corridor. The subdivision and open space layout is consistent with the concept plan set out in Chapter 12.11 of Kiama DCP 2020.
Need for environmentally sustainable housing	The proposed subdivision layout and lot orientation responds to the natural topography of the land and provides for sustainable housing opportunities. Future dwellings will be required to comply with relevant sustainability requirements including BASIX provisions.
Potentially Regionally Significant Development due to cost of works and work on Council owned land (water and sewer extension)	The proposed subdivision does not include any works on Council owned land and the water and sewer extension works are being undertaken via separate Part 5 approval. The application is not considered Regionally Significant Development.

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15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Summary of Public Submissions	
Summary of objections raised	Commentary
Community consultation - Insufficient community consultation - Insufficient consultation with Department of Education - Unable to open documents on DA tracker	The application was notified in accordance with Council's Community Consultation Policy and submissions have been considered under s4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Upgrading sporting complexes and removal of skate park <i>Note: submission does not appear to relate to the South Kiama URA</i>	Submission does not appear to relate to this development application but rather appears to be a submission to the draft Kiama Sports Precinct Masterplan.
Summary of submission received in favour	Commentary
Urban release area and additional housing opportunities are needed	Noted.
Appropriate location within the Kiama LGA	Noted.

Options

1. Adopt the recommendation and approve to the application, subject to conditions in enclosure 3.
2. Refuse the application and as per Section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.
3. Adopt an alternative recommendation and as per Section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.

Report of the Director Strategies and Communities

15.2 Determination of Development Application No 10.2025.68.1 - 40 Saddleback Mountain Road, Kiama - Torrens Title subdivision (cont)

Conclusion

A comprehensive assessment of the Development Application has been undertaken under section 4.15 of the *Environmental Planning and Assessment Act 1979* in accordance with all statutory requirements.

It is recommended that the application be approved subject to conditions of consent.

Next Steps

If Council adopts the recommendation, a formal notice of determination approving the development subject to conditions of consent will be issued. A formal notice of determination is valid for five years and the applicant can act on the development consent at any time within that period, subject to meeting relevant conditions of the consent.

If Council seeks to refuse the application, it must identify the reasons for refusal and a formal notice of determination refusing the application will be issued accordingly.

Notification of the determination decision will be sent to all submitters in accordance with section 4.18 of the *Environmental Planning and Assessment Act 1979*.

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15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street Gerringong - Proposed alterations and additions to motel

CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.

CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.

Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

Summary

The purpose of this report is to seek Council's determination of Development Application No 10.2025.71.1 for proposed alterations and additions to motel accommodation including demolition of the reception and construction 12 x new accommodation rooms, conversion of the day spa to 11 x accommodation rooms, new building with car park and reception and spa/gym, new pool, new restaurant, upgrade the existing car park and landscape gardens (Staged).

The development is proposed to be staged in four (4) stages, as follows:

Stage 1	Pool replacement, pickle ball court, drop off driveway and landscaping works.
Stage 2	Convert function room in Building D/E to 11 additional accommodation units (Unit 01 - 11)
Stage 3	Construct new reception/office/spa and demolish the existing reception/office/spa. Construct new restaurant and bar and associated bathrooms (Building 02) and basement car park. Existing restaurant/bar becomes the new function room.
Stage 4	Construct Building 03 - 12 additional accommodation units (Unit 01 - 12)

Development Application No 10.2025.71.1 is being reported to Council because it proposes a clause 4.6 variation to clause 4.3 – building height limit in Kiama LEP 2011 of 38.5%. Determination of applications where clause 4.6 variations exceed 10% are not within staff delegations for determination and must be determined by the elected Council.

It is recommended that Council support the clause 4.6 variation to clause 4.3 (building height limit) and determine the proposed development by way of approval.

Financial implication

The development application fee has been paid in accordance with the Environmental Planning and Assessment Regulation 2021 and Council's adopted Fees and Charges.

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

Council's Section 7.12 Contribution Plan applies to this site, and to this development application. Contributions are levied based on the proposed cost of carrying out the development. If approved, conditions of consent requiring the payment of s7.12 contributions will be imposed.

The Housing and Productivity Contribution (HPC) applies to this application. If approved, conditions of consent requiring the payment of HPCs will be imposed.

If the application is refused, the application may be challenged in the NSW Land and Environment Court (LEC) and there would be costs associated with defending the refusal.

Risk implication

If the DA is refused, the determination may be challenged in the NSW Land and Environment Court (LEC).

Policy

The statutory instruments relevant to the development include the following:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- Kiama Local Environmental Plan 2011.
- Kiama Development Control Plan 2020.
- Kiama Community Participation Plan 2019.

Consultation (internal)

Internal Referrals	
Referral	Comments
Subdivision and Development Engineer	No objection subject to recommended conditions
Environmental Health Officer	No objection subject to recommended conditions
Landscape Design Officer	No objection subject to recommended conditions
Building Assessment Officer	No objection subject to recommended conditions
Waste Officer	No objection subject to recommended conditions
Contributions Officer	No objection subject to recommended conditions
Property Officer	No objection subject to recommended conditions
Heritage officer	No objection

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

External Referrals	
Referral	Comments
Sydney Water	No objection subject to recommended conditions.
Integrated Development and Concurrences	
Concurrence Authority	Recommendation
WaterNSW <i>Water Management Act, 2000</i>	General Terms of Approval / Concurrence issued.

Item 15.3

Communication/Community engagement

Consultation has occurred in accordance with Section 8 of the Kiama Community Participation Plan 2019; namely by:

- Directly notifying adjoining property owners of the exhibition period,
- Erecting a temporary sign on site to advise of the application and exhibition period,
- Making all information publicly available on Council's DA Tracker between 17 June 2025 and 1 July 2025.

At the conclusion of the notification period, seven (7) submissions were received.

Submissions	Number	Key Issues
Submissions - For	0	
Submissions - Against	7	• Noise impact • Privacy loss • Amenity impacts • Tree removal • Visual impact

Attachments

Nil

Enclosures

- 1 10.2025.71.1 - Section 4.15 Assessment Report [⇒](#)
- 2 10.1025.71.1 - Plans [⇒](#)

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street Gerringong - Proposed alterations and additions to motel (cont)

- 3 10.2025.71.1 - Draft Notice of Determination - Approval⇒

RECOMMENDATION

That Council:

1. Support the clause 4.6 variation to the clause 4.3 Building Height Limit development standard.
2. Approve, subject to conditions of consent set out in enclosure 3, Development Application No 10.2025.71.1 (PAN-533951) for alterations and additions to motel accommodation - Convert day spa to 11 x accommodation rooms, construction 12 x new accommodation rooms, new building with car park and reception and spa/gym, new pool, new restaurant, upgrade existing car park and gardens (Staged).
3. Advise persons who made a submission on Development Application No 10.2025.71.1 of Council's decision.

Background

APPLICATION DETAILS	
Application Type:	Development Application.
Application Number:	10.2025.71.1.
NSW ePlanning Portal Reference:	PAN-533951.
Proposed Development:	Alterations and additions to motel accommodation - Convert day spa to 11 x accommodation rooms, construction 12 x new accommodation rooms, new building with car park and reception and spa/gym, new pool, new restaurant, upgrade existing car park and gardens (Staged).
Applicant:	Mr S Bartlet.
Property title:	Lot 900 DP 616677.
Property address:	1 Fern Street, Gerringong.

The Site

The subject site is described as Lot 900 DP 616677 - 1 Fern Street, Gerringong (see Figure 1)

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

The subject site has a frontage to Fern Street. The site contains the Mercure Hotel with ancillary uses/facilities including restaurant, pools, tennis court, car parking and is zoned R2 Low Density Residential under Kiama LEP 2011. The subject site is known as the Mercure Resort Gerringong and the on-site restaurant is named Bella Char (see figure 2).

The surrounding area is predominantly residential in character and the site is adjoined by residential dwellings to the north, west and south.

The site falls toward the street and drains overland to the public road.

Access to the property is obtained via Fern Street.

The site is serviced by utilities including water, sewer, electricity and telecommunications.

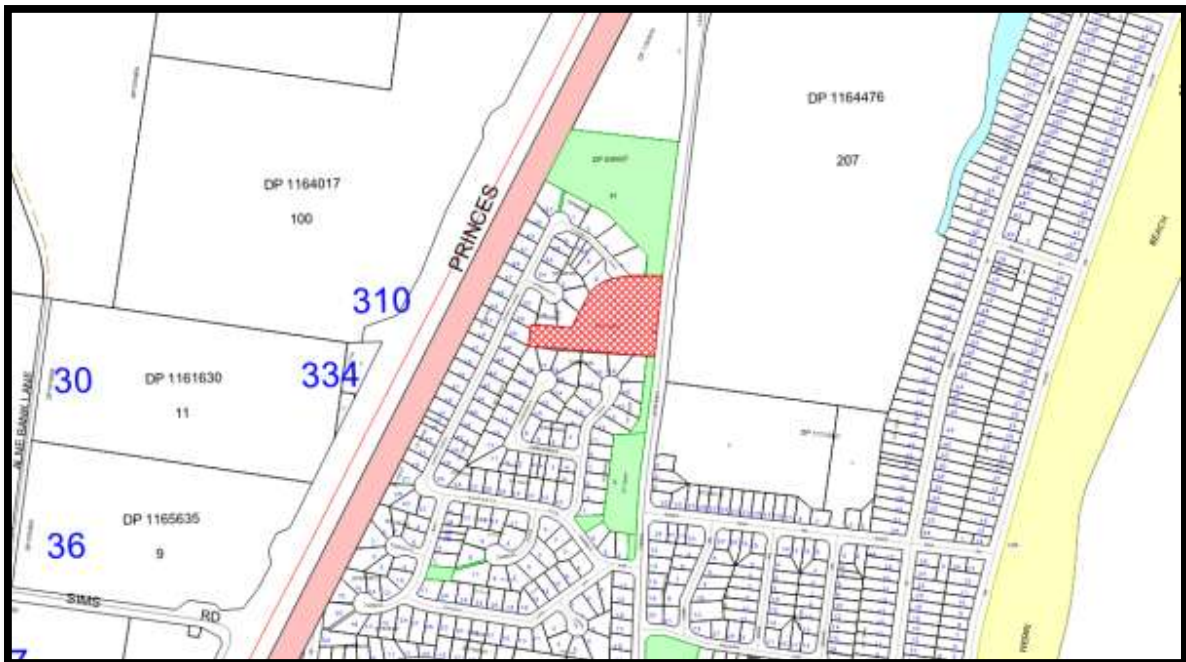


Figure 1 – Locality plan

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street Gerringong - Proposed alterations and additions to motel (cont)



Figure 2 - Aerial image

The Proposed Development

The proposed development is described as follows:

1. Demolition of certain buildings / structures including:
 - a. Existing reception / function building.
 - b. Tennis court
 - c. Swimming pool
 - d. Various sheds and outbuildings
 - e. Various walkways, associated shelters, stairs and landscaping structures.
2. Removal of selected shrubs / trees
3. Construction of:
 - a. A basement parking area with 39 spaces, store rooms and a passenger lift providing access to the upper levels of the property.
 - b. To the ground floor:
 - i. A new reception and day spa building.
 - ii. A 172m² restaurant with associated amenities and a passenger lift providing access to the upper levels of the property.
 - iii. A 8x5m swimming pool
 - iv. Revised concierge area for hotel check-in (temp parking area with access to hotel reception)
 - v. Landscaping structures and recreation areas.
 - c. To level 01
 - i. Re-configuration of at-grade car parking and service vehicle area;

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street Gerringong - Proposed alterations and additions to motel (cont)

-
- ii. Establishment of a new garbage storage area;
 - d. To level 02
 - i. Construction of 6 additional accommodation rooms
 - ii. Re-configuration of existing car parking area;
 - iii. Construction of new walkways and landscaping
 - iv. Construction of storeroom additions to existing restaurant / function room.
 - v. Construction of a new deck with roof to the frontage of the existing restaurant / function room.
 - vi. Construction of a new passenger lift to provide access to upper-level accommodation rooms
 - e. To level 03
 - i. Construction of 6 accommodation rooms above those 6 accommodation rooms construction on level 02 referenced above.
 - ii. Conversion of existing day spa area into 11 additional accommodation rooms.

Upon completion of the above, the tourist hotel will feature:

1. 75 guest rooms
2. 1 managers accommodation room
3. 101 car parking spaces
4. 2 swimming pools
5. A restaurant
6. Separate function room
7. Reception building with day spa facilities.

The proposed development is generally depicted by the buildings/works illustrated in 'white' in Figure 3:

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

Figure 3 - Perspective view

The proposed hours of operation of the restaurant are:

- Monday - Sunday – 7:00am to – 11:30pm

The proposed hours of operation of the function centre are:

- Monday - Sunday – 8:00am to – 11:30pm

The development is proposed to be staged in four (4) stages.

The plans for the proposed development are included as enclosure 2 to this report.

Key issues

The following key issues are relevant to the assessment of this application having considered the relevant planning controls, issues raised in the submissions, referral comments and the proposal in detail:

1. Compliance with the 'existing use' provisions of the *Environmental Planning and Assessment Act, 1979* and *Environmental Planning and Assessment Regulation, 2021*.
2. Exception to the building height development standard of clause 4.3 of *Kiama Local Environmental Plan 2011*, pursuant to clause 4.6 of the Plan.
3. Likely impacts of the proposed development.
4. Public submissions.

Compliance with the 'existing use' provisions of the *Environmental Planning and Assessment Act, 1979* and *Environmental Planning and Assessment Regulation, 2021*.

Kiama Local Environmental Plan (LEP) 2011 was published on 16 December 2011 and had the effect of zoning the subject site R2 Low Density Residential.

Under the LEP Land Use Table the proposed development, inclusive of the 'hotel accommodation' (a type of 'tourist and visitor accommodation'), 'restaurant' (a type of

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

‘food and drink premises’), ‘function centre’ and day spa (‘recreation facility – indoor’) are each prohibited land uses in the R2 zone.

The development proposed by way of this development application constitutes a non-conforming use as it involves alterations, additions and enlargement of an existing use that is prohibited in the R2 zone. The permissibility of the proposed development depends upon existing use rights for the non-conforming uses. This is discussed in detail in the sect 4.15 Assessment Report under ‘Permissibility of proposed development’ (see Enclosure 1). It is accepted that the proposed alterations, additions and enlargement to the hotel accommodation and restaurant and ancillary uses are permissible under the terms of the *Environmental Planning and Assessment Act, 1979* and *Environmental Planning and Assessment Regulation, 2021*, which prevail over Kiama LEP 2011 and its Land Use Table.

Having regard to the development consent history of the property and to a signed Statutory Declaration submitted by the applicant, it is accepted that the site enjoys existing use rights and that the proposed development is permissible with consent.

A detailed discussion of the permissibility of the proposed development is included within Enclosure 1 to this report.

Exception to the building height development standard of clause 4.3 of *Kiama Local Environmental Plan 2011*, pursuant to clause 4.6 of the Plan.

The proposed development seeks exception to the building height development standard of clause 4.3 of Kiama Local Environmental Plan 2011, pursuant to clause 4.6 of the Plan.

Clause 4.3 of the LEP permits a maximum building height of 8.5m. The proposed lift tower involves a finish height of 11.775m, representing a departure to the development standard of 38.5%.

As illustrated in the building height plane diagram (Figure 4) below, parts of the existing buildings at the site, which are not being altered by the proposed development, currently exceed the 8.5m building height limit. These existing building height encroachments are shown in ‘dark grey’ and are not the subject of this exception request.

Of the proposed development, and the subject of this exception request, only the lift tower and roof of the adjoining stairwell, shown in ‘light grey’, exceed the building height limit.

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street Gerringong - Proposed alterations and additions to motel (cont)

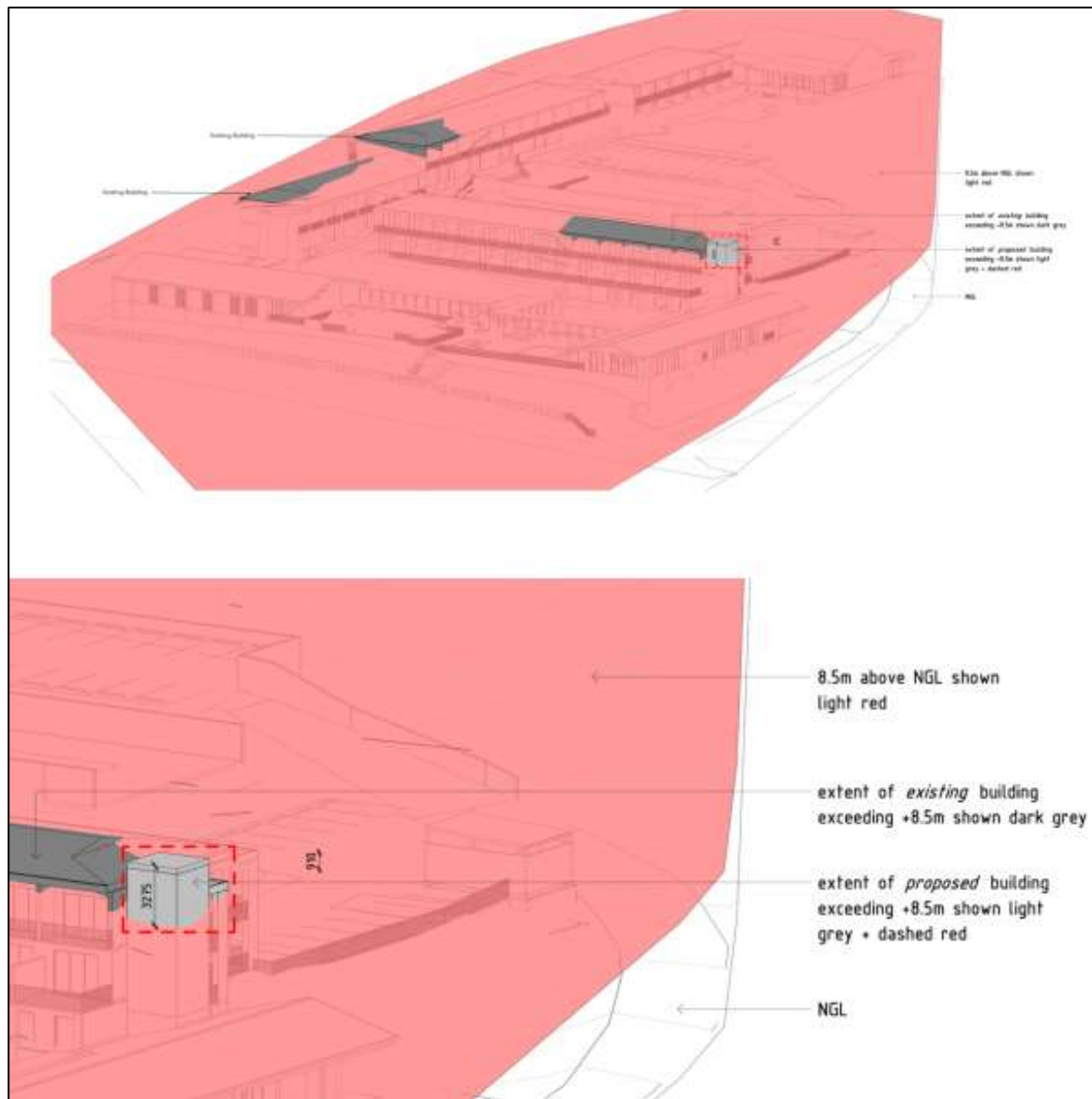


Figure 4 – 8.5m building height plane showing proposed building height breach of lift tower

Under the circumstances of the case, it is accepted that strict compliance with the building height development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify the exceedance of the building height development standard in this instance.

The proposed exception to the building height limit development standard of clause 4.3 of Kiama LEP 2011 is supported in this instance.

A detailed discussion of the building height limit exception request is included within Enclosure 1 to this report.

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

Likely impacts of the proposed development

Key matters associated with the likely impacts of the proposed development include noise impact and visual impact of the proposed development in the context of the streetscape and amenity.

The application is supported by a Noise Impact Assessment that has been reviewed by Council's Environmental Health Officers. No objection has been raised to the Report or to the proposed development by Council's Environmental Health Officers in terms of construction and ongoing operational noise, subject to the imposition of conditions should development consent be granted.

In particular, it is highlighted that the existing restaurant is proposed to be changed to the function centre, with the restaurant relocated to proposed Building 02 at the front of the site facing Fern Street.

The Noise Impact Assessment accompanying the application states that the *"proposed function centre will not have any significant changes to its layout or occupancy and therefore will not be considered in this assessment."*

The proposed hours of operation of the function centre are:

- Monday - Sunday – 8:00am to – 11:30pm.

Council is mindful that the proposed function centre is immediately adjacent to surrounding neighbouring residential dwellings. While the Noise Impact Assessment accompanying the development application recommends noise limitations of music from speakers in the restaurant and bar area specifically, it makes no such recommendation specific to the function centre.

For function centre uses outside of commercial areas Council has generally imposed a limitation on hours of operation to no later than 10:00p.m, primarily on account of noise impact. Such a condition was applied to the Greyleigh Function Centre, situated in a rural area. The proposed function centre in a residential area is potentially more sensitive, having residential neighbours in closer proximity. It is therefore recommended that the hours of operation of the function centre be restricted to:

- Monday - Saturday – 8:00am to – 10:00pm.
- Sunday – 8:00 – 9:00pm.

In terms of visual impact, the overall design of the proposed development is considered to be reasonable when considered in relation to the existing motel development on the site and the context of the site in terms of the compatibility of the proposed development with existing built form within the site. In broader terms the bulk, scale and design of the proposal is consistent with relevant planning instruments (notwithstanding the numeric building height breach) and is not inconsistent with the prevailing townscape/streetscape.

A detailed discussion of the likely impact of the proposed development is included within Enclosure 1 to this report.

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)**Public Submissions**

The development application was notified in accordance with Council's Community Consultation Policy for Development Applications. Seven (7) submissions objecting to the proposal were received by Council.

The concerns raised are outlined below:

Summary of objections raised	Commentary
<u>Noise impact</u> - External southern walkway of building D/E - Restaurant (proposed Building 02) – noise from the restaurant (patrons, service areas, potential late night operations) and noise outside to amenities - Noise from lift - Noise generally (not specific)	The development application is accompanied by a Noise Impact Assessment, which has been reviewed by Council's Environmental Health Officers and who have raised no concern with the proposed development in relation to noise, subject to the imposition of appropriate conditions should consent be granted. In specific reference to the southern walkway of Building D/E and to the opening between the restaurant of the amenities building, the applicant has advised that the walkway will have outdoor carpet applied as the floor finish, which will absorb and reduce noise impact such that it will not be considered to be unreasonable. In terms of noise from the lifts, modern electric lifts within insulated lift shafts are quiet in their operation and are unlikely to result in unreasonable noise impact for neighbours. Noise impact is also addressed under 'The Likely impacts of the proposed development' – Noise, above.
<u>Privacy loss</u> - External southern walkway of building D/E - External southern walkway of Building 03 - Between the restaurant and amenities	The outer edge of these walkways will be fitted with a 'Λ' shaped louvre along the entire southern edge, of the type illustrated below:

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15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street Gerringong - Proposed alterations and additions to motel (cont)

Summary of objections raised	Commentary
	 This louvre treatment allows for air to circulate while blocking both outward and inward view, therefore there will be no unacceptable impact on privacy of the neighbouring dwellings and their backyards.
<u>Lighting</u> Concern was raised about light spill from the proposed development, in particular from the southern walkway of Building D/E and Building 03	The applicant has advised that wall lights will be installed beside each accommodation unit entry door, with the following specifications: - Diameter 20cm - 6 watts - Light output of 550 Lumen

Item 15.3

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15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

Summary of objections raised	Commentary
	 The applicant contends that a usual outdoor light has a light level of 1000 – 1500 Lumens and a security light is 1600 Lumens. The applicant also highlights that the ‘Λ’ shaped louvre ensures that there will be “<i>no direct light emitted from the walkway and certainly indirect light emission will be less than the normal night time emission from an urban environment.</i>”
<u>Tree removal</u> Concern was expressed about the removal of trees, noting that they provide privacy (screening) and habitat for birds.	While it is unfortunate that the existing established vegetation is largely being removed, compensatory planting will occur in accordance with the Landscape Plan that has been reviewed and accepted by Council’s Landscape Officer.
<u>Smokers</u> Concern was expressed about smokers on the walkways.	This is a matter that will need to be managed internally by the site operator/manager. It would be expected that smoking would not be permitted on the walkways providing access to the motel rooms.
<u>Antagonise neighbours dogs</u> Concern was expressed that the intensified use will stimulate the barking of domestic dogs.	It is the responsibility of the dog owners to ensure that their dogs are under control, including their barking.
<u>Fire safety and evacuation access</u>	The application is accompanied by a BCA Compliance Report and the application has been reviewed by Council’s Building

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

Summary of objections raised	Commentary
Concern is expressed about the external southern walkway building D/E fire safety and evacuation access.	Assessment Officer, with no concerns being raised. This matter will be further considered in the Construction Certificate phase of the development should development consent be granted.
<u>Visual impact</u> Concern is expressed about the size (bulk and scale) of the development within the residential area, and that it is out of character.	The Hotel is an established use and existing use right provisions of the EP&A Act permit expansion. In terms of bulk and scale the proposed development satisfies the floor space ratio (0.45:1) development standard of Kiama LEP 2011 applying to the land. In the context of the site area, the size of the building is not excessive. While the buildings are clearly larger than the neighbouring dwellings, they are appropriate for the established land use.
<u>Overshadowing</u> Concern was expressed about loss of sunlight to the objector's backyard	Shadow diagrams of the proposed development demonstrate that overshadowing is within acceptable thresholds prescribed in DCP 2020. Council cannot require or impose more onerous performance controls than those contained within the DCP.
<u>View loss</u> Concern is expressed about the loss of view to the north and north west from the objectors back yard	The northern view from the objectors property is distant, filtered by vegetation, impeded by existing buildings and the view subject is not of an iconic nature. The view is furthermore across the side of the development site, making protection of the view line more difficult and unreasonably constrictive of development of the site. The concern raised is understood; however, on balance the view loss impact of the proposed development is not considered to warrant refusal of the proposal.
<u>Property value</u> Concern is expressed about property devaluation as a consequence of the development.	This is not a matter for consideration under s.4.15 of the Act.

Item 15.3

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

Summary of objections raised	Commentary
<u>Landscaping</u> The suitability of Landscape Plan in relation to screening (privacy) for southern neighbours is queried	The proposed restaurant building (Building 02) and the adjacent proposed amenities buildings have no openings facing south. The height and width of these buildings is residential in scale when viewed from the south. The opening between the buildings will be closed with the incorporation of a 'Λ' shaped louvre along the southern edge, as shown in Item 2 above. The proposed development in this area will not cause privacy loss to the residential neighbours. While it is unfortunate that the existing screening vegetation is largely being removed, compensatory planting will occur in accordance with the Landscape Plan that has been reviewed and accepted by Council's Landscape Officer.
<u>Interruption to services during construction</u> Concern was expressed about potential interruption to services e.g. power, water during construction.	Some interruptions may be experienced during construction; however it is up to developer and service providers to advise if interruptions will occur. This cannot be used as a reason to prevent development.
<u>Restaurant operating hours</u> It is contended that no details are provided	The proposed operating hours of the restaurant are identified in the noise impact assessment, and are Monday - Sunday – 7:00am to – 11:30pm.
<u>Build time</u> It was queried how long the construction will take.	This is up to the developer/builders/contractors. For business functionality and continuity, the developer will likely be eager for a quick build/avoid delays. It is noted, however, that the development is proposed to occur in stages.

Item 15.3

Options

1. Adopt the recommendation and approve to the application, subject to conditions as set out in enclosure 3.
2. Refuse the application and as per Section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation
3. Adopt an alternative recommendation and as per Section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation

Report of the Director Strategies and Communities

15.3 Determination of Development Application No 10.2025.71.1 - 1 Fern Street
Gerringong - Proposed alterations and additions to motel (cont)

Conclusion

A comprehensive assessment of the Development Application has been undertaken under section 4.15 of the Environmental Planning and Assessment Act 1979 in accordance with all statutory requirements.

It is recommended that the clause 4.6 variation to the clause 4.3 (building height limit) development standard be supported and the application be approved subject to conditions of consent.

Next Steps

If Council adopts the recommendation, a formal notice of determination approving the development subject to conditions of consent will be issued. A formal notice of determination is valid for five years and the applicant can act on the development consent at any time within that period, subject to meeting relevant conditions of the consent.

If Council seeks to refuse the application, it must identify the reasons for refusal and a formal notice of determination refusing the application will be issued accordingly.

Item 15.3

15.4 Determination of Development Application No 10.2025.131.1 - Part 4 DP 744186, Lot 5 DP 240784 - 85 Wyalla Road, Jamberoo - New dwelling house and new swimming pool

CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.

CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.

Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

Item 15.4

Summary

The purpose of this report is to seek Council's determination of Development Application No 10.2025.131.1 for a new dwelling house and new swimming pool – formally described as: NEW DWELLING HOUSE, SWIMMING POOL AND SHED - PROPOSED DWELLING HOUSE, SWIMMING POOL, FARM BUILDING (MACHINERY SHED) AND ANCILLARY ACCESS at Part 4 DP 744186, Lot 5 DP 240784 - 85 Wyalla Road, Jamberoo.

The Development Application is reported to Council for determination because it proposes a Clause 4.6 variation to Clause 4.2A - erection of dwelling houses on land in certain rural and conservation zones development standard in *Kiama Local Environmental Plan (LEP) 2011* of 24.82%. Determination of applications where Clause 4.6 variations exceed 10% are not within staff delegations for determination and must be determined by the elected Council.

It is recommended that Council not support the variation to Clause 4.2A and determine the proposed development by way of refusal for the reasons outlined in this report.

Financial implication

The Development Application fee has been paid in accordance with the Environmental Planning and Assessment Regulation 2021 and Council's adopted Fees and Charges.

Any approval of the Development Application would include 7.12 contributions to be conditioned to be paid to Council.

If the Development Application is refused, the application may be challenged in the NSW Land and Environment Court (LEC) and there would be costs associated with defending the refusal.

Risk implication

If the development application is refused, the determination may be challenged in the NSW Land and Environment Court (LEC).

Policy

The statutory instruments relevant to the development include the following:

- State Environmental Planning Policy (Resilience and Hazards) 2021.

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15.4 Determination of Development Application No 10.2025.131.1 - Part 4 DP 744186, Lot 5 DP 240784 - 85 Wyalla Road, Jamberoo - New dwelling house and new swimming pool (cont)

- State Environmental Planning Policy (Sustainable Buildings) 2022.
- Kiama Local Environmental Plan 2011.
- Kiama Local Environmental Plan 2020.
- Kiama Community Participation Plan 2019.

Consultation (internal)

The application was referred to the following internal subject matter experts.

Internal Referrals	
Referral	Comments
Contribution Planner	No objection subject to recommended conditions
GIS Officer	No objection subject to recommended conditions
Environmental Health Officer	Unsatisfactory. Council's Environmental Health Officer raised serious concerns regarding the conflict between the location of the on-site effluent management and stormwater.

Communication/Community engagement

Consultation has occurred in accordance with Section 8 of the Kiama Community Participation Plan 2019; namely by:

- Directly notifying adjoining property owners of the exhibition period,
- Making all information publicly available on Council's DA Tracker between 22 August and 5 September 2025.

Submissions	Number	Key Issues
Submissions - For	0	Nil
Submissions - Against	0	Nil

Submissions received to original application

No submissions were received to the original application.

Attachments

Nil

Enclosures

- 1 10.2025.131.1 - Section 4.15 Assessment Report [↗](#)

Report of the Director Strategies and Communities

- 15.4 Determination of Development Application No 10.2025.131.1 - Part 4 DP 744186, Lot 5 DP 240784 - 85 Wyalla Road, Jamberoo - New dwelling house and new swimming pool (cont)

-
- 2 10.2025.131.1 - Plans⇒
 - 3 10.2025.131.1 - Clause 4.2A "sunset clause" media release and advice to landowners⇒
 - 4 10.2025.131.1 - Draft Notice of Determination - Refusal⇒
 - 5 10.2025.131.1 - Draft Notice of Determination - Approval⇒

Item 15.4

RECOMMENDATION

That Council:

1. Not support the Clause 4.6 variation to Clause 4.2A of the development standard, associated with DA No 10.2025.131.1 (PAN-561371).
2. Refuse Development Application No 10.2025.131.1 (PAN-561371) for the construction of a new two storey dwelling with attached garage and outdoor swimming pool by way for the reasons set out in enclosure 4.
3. Advise persons who made a submission on Development Application No 10.2025.131.1 of Council's decision.

Background

APPLICATION DETAILS	
Application Type:	Development Application.
Application Number:	10.2025.131.1.
NSW ePlanning Portal Reference:	PAN-561371.
Proposed Development:	New dwelling house, swimming pool & shed - proposed dwelling house, swimming pool, farm building (machinery shed) and ancillary access
Applicant:	Allen Price Pty Ltd
Property title:	Part 4 DP 744186, Lot 5 DP 240784
Property address:	85 Wyalla Road, Jamberoo

The Site

The subject site is described as Part 4 DP 744186, Lot 5 DP 240784 - 85 Wyalla Road, Jamberoo (see Figure 1)

Report of the Director Strategies and Communities

15.4 Determination of Development Application No 10.2025.131.1 - Part 4 DP
744186, Lot 5 DP 240784 - 85 Wyalla Road, Jamberoo - New dwelling
house and new swimming pool (cont)

The subject site has a frontage to Wyalla Road and Wallaby Hill Road, Jamberoo. The site is currently vacant and is zoned Part RU2 Rural Landscape / Part C2 Environmental Conservation / Part C3 Environmental Management under Kiama LEP 2011 (see Figure 2).

The surrounding area is rural in character and the site is adjoined by rural land uses and development.

The site undulates and drains overland to the public road.

Access to the property is gained via Wyalla Road and Wallaby Hill Road.

The site is currently unserviced and is proposed to be serviced by on-site utilities.

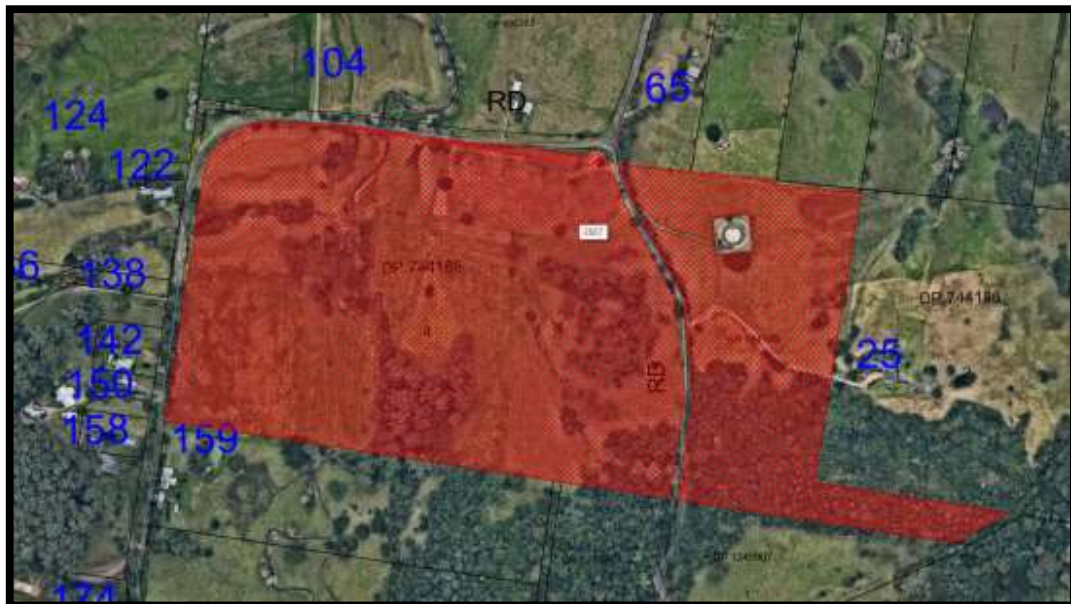


Figure 1 - Aerial Imagery of the subject site

The Proposed Development

Proposed dwelling house, swimming pool, farm building (machinery shed) and ancillary access.

The architectural plans are included as Enclosure 2 to this report.

Key Issues

The following key issues are relevant to the assessment of this application having considered the relevant planning controls, issues raised in the submissions, referral comments and the proposal in detail.

1. RU2 Rural Landscape zone objectives.
2. Clause 4.2A of the Kiama LEP 2011.
3. Non-compliances with planning controls.
4. Stormwater and On-Site Sewage Management (OSSM) conflicts.

Report of the Director Strategies and Communities

15.4 Determination of Development Application No 10.2025.131.1 - Part 4 DP
744186, Lot 5 DP 240784 - 85 Wyalla Road, Jamberoo - New dwelling
house and new swimming pool (cont)

5. Setbacks and agricultural buffer distances.

RU2 Rural Landscape Zone Objectives

The subject land is zoned part RU2 Rural Landscape, with two patches of C3 Environmental Management zoning on the south-western area of the site and Part C2 Environmental Conservation in the south-eastern area of the site under Kiama LEP 2011. The proposed development is wholly contained within the RU2 Rural Landscape zoned land.



Figure 2: GIS imagery showing land zoning

RU2 (brown), C2 (orange), C3 (light orange) and subject site highlighted in red

The proposal is defined as a dwelling house under the provisions of the Kiama LEP 2011, which are permitted with consent in the RU2 Rural Landscape zone.

In accordance with clause 2.3 of Kiama LEP 2011, the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The proposed development is **not** consistent with the objectives of the RU2 Rural Landscape zone, as detailed below:

RU2 zone objectives	Comments
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposed dwelling house and associated structures, driveway and vehicle maneuvering areas and effluent management areas occupy a significant portion of the site. The proposal seeks to

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RU2 zone objectives	Comments
	utilise the land for residential purposes and limits the opportunity to use the land for agriculture or primary industry production. The proposed development does not encourage sustainable primary industry production and instead erodes the natural resource base and available agricultural land. Furthermore, the proposed development introduces residential elements into the rural environment in an area where adjoining lands are and can be used for agricultural purposes. This would create a land use conflict with adjoining agricultural land uses which is demonstrated by non-compliances with agricultural buffer distances required under Kiama DCP 2020. The proposed development is not consistent with this zone objective.
To maintain the rural landscape character of the land.	The proposed development does not maintain the rural character of the land. The rural character of the land is characterised by natural rolling hills interspersed with trees, bushland, agricultural land and rural dwellings. Additionally, subclause 4.2A (4) provides a dwelling entitlement “sunset clause” for undersized existing allotments/holdings. The adoption of this clause sought to plan for and achieve the desired future rural landscape vision for the region by restricting residential development on undersized allotments and encouraging a rural outcome. The cumulative effect and impact from not enforcing clause 4.2A should be understood. The Land and Environment Court has established the Wehbe tests and identifies that where a Council has “virtually abandoned or destroyed” a

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RU2 zone objectives	Comments
	development standard, compliance with the development standard in other instances is unnecessary. If the clause 4.2A development standard is destroyed or abandoned, this would further compromise the rural landscape character of the land. As previously advised, there are a total of 165 vacant rural zoned lots less than the clause 4.2A 40ha development standard. Abandoning this clause on a DA by DA basis is not advised. The proposed development is not consistent with this zone objective.
To provide for a range of compatible land uses, including extensive agriculture.	The proposed development introduces residential elements into the rural environment in an area where adjoining lands are and can be used for agricultural purposes. This would create a land use conflict with adjoining agricultural land uses which is demonstrated by non-compliances with agricultural buffer distances required under Kiama DCP 2020. Although a range of land uses are permissible within the RU2 zone, these fundamentally are rural or agricultural land uses. Although dwellings are also permissible, this is in the rural context. The construction of a dwelling on an undersized lot with reduced agricultural buffer setbacks is not considered compatible with adjoining agricultural land uses. The proposed development is not consistent with this zone objective.
To protect agricultural land for long term agricultural production.	The proposed development represents a permanent shift away from agricultural use. The proposed development effectively utilises the whole site for residential purposes and does not provide

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RU2 zone objectives	Comments
	suitable opportunities for agricultural production. The proposed residential use of the land introduces residential elements on an undersized allotment with reduced buffer distances to adjoining agricultural land and creates a potential land use conflict. The proposed development does not protect agricultural land for long term agricultural production. The proposed development is not consistent with this zone objective.
To provide opportunities for employment-generating development that adds value to local agricultural production through food and beverage processing and integrates with tourism.	The proposed residential development does not facilitate agritourism or local agricultural production The development is purely residential and does not contribute to the economic objectives of the RU2 zone. The proposed development is not consistent with this zone objective.

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The proposed development is not consistent with the RU2 Rural Landscape zone objectives.

Variation to Clause 4.2A of Kiama LEP 2011

The application seeks to vary the Clause 4.2A development standard for erection of dwelling houses on land in certain rural and conservation zones pursuant to Clause 4.6 of Kiama LEP 2011. The proposal represents a 24.82% variation to the Clause 4.2A development standard.

The Clause 4.6 variation has been considered and Council staff are not satisfied that the proposal has demonstrated that compliance with the development standard is unreasonable or unnecessary, nor that there are sufficient environmental planning grounds to justify contravention of the development standard.

The Clause 4.6 variation request is discussed below:

Development standard being varied
4.2A Erection of dwelling houses on land in certain rural and conservation zones 1. <i>The objectives of this clause are as follows:</i>

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Development standard being varied
<i>a. to minimise unplanned rural residential development,</i> <i>b. to enable the replacement of lawfully erected dwelling houses in rural and conservation zones.</i> 2. <i>This clause applies to land in the following zones:</i> <i>a. Zone RU1 Primary Production,</i> <i>b. Zone RU2 Rural Landscape,</i> <i>c. Zone C3 Environmental Management.</i> 3. <i>Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is:</i> <i>a. a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or</i> <i>b. a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or</i> <i>c. a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or</i> <i>d. an existing holding.</i> Note. <i>A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.</i> 4. <i>Subclause (3)(b), (c) and (d) ceases to apply if:</i> <i>a. an application for development consent referred to in that subclause is not made in relation to that land within 5 years after the day this Plan commences, or</i> <i>b. an application for development consent referred to in that subclause is made in relation to that land within 5 years after the day this Plan commences, but the application is refused.</i> 5. <i>Despite subclause (3), development consent may be granted for the erection of a dwelling house on land to which this clause applies if:</i> <i>a. there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house, or</i> <i>b. the land would have been a lot or a holding referred to in subclause (3) had it not been affected by:</i>

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Development standard being varied	
	i. a minor realignment of its boundaries that did not create an additional lot, or ii. a subdivision creating or widening a public road or public reserve or for another public purpose.
6.	In this clause:
	existing holding means land that:
a.	was a holding on 4 July 1977, and
b.	is a holding at the time the application for development consent referred to in subclause (3) is lodged,
	whether or not there has been a change in the ownership of the holding since 4 July 1977 and includes any other land adjoining that land acquired by the owner since 4 July 1977.
	holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.
	Note. The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.
	<u>Assessing Officer Comments</u>
	As per subclause (4), no application for development consent was made in relation to that land within 5 years after the day this Plan commences (i.e. no application was made by 16 December 2016). Accordingly, the subject site does not benefit from a dwelling entitlement under clause 4.2A.

Extent of proposed departure from development standard				
LEP Clause	Numerical Standard	Proposed Solution	Numerical Departure	% Departure
Clause 4.2A	Minimum lot size = 40ha	Subject site lot size = 30.07ha	9.93ha	24.82%

Assessing Officer's Comments
<u>Unreasonable or Unnecessary</u> The Applicant contends that compliance with the Clause 4.2A development standard is unnecessary in the circumstances of the case as the proposal is compatible with the objectives of the clause 4.2A Development Standard. This is

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Assessing Officer's Comments
disagreed by Council staff and it is considered that the proposed development does not achieve the objectives of the development standard. The objectives of clause 4.2A are considered below: a) <u>to minimise unplanned rural residential development.</u> The Applicant opinion is that the development is not unplanned rural residential development as the lot was approved through a subdivision under a previous planning instrument. This opinion is not agreed with. Although the allotment exists, there is a clear planning vision set out by clause 4.2A (4) which acknowledges the presence of existing holdings and smaller lots in rural areas but then sets clear and specific requirements for lodgement of applications within 5 years of the commencement of the Plan, otherwise such allotments will not benefit from a dwelling entitlement. This represents the clear strategic planning of minimising unplanned rural residential development. No application for erection of a dwelling house was made within 5 years of the commencement of the Plan (i.e. 16 December 2016) and therefore the land does not benefit from a dwelling entitlement. The extinguishment of any dwelling entitlement under subclause (4) is the planned development outcome. The application of subclause (4) and resultant extinguishment of any dwelling entitlement has been clearly communicated by Council to stakeholders. At the Ordinary Council meeting on 16/08/2016, Council resolved (MIN16/270) that a media release advising the community of the expiration provisions within Clause 4.2A of Kiama LEP 2011 and that all affected rural rate payers be directly advised of the "sunset clause". The Manager of Strategic Planning wrote to affected landowners on 21/09/2016 to advise that as of 16/12/2016, subclause (4) would come into effect (TRIM 16/82773). Kiama Municipal Council also provided a media release advising of the "sunset clause" (TRIM 17/21167).(see enclosure 3) It is also noted that Council staff have provided clear and consistent advise to customers (including prospective buyers) about the application of Clause 4.2A and that certain lots in RU1, RU2 and C3 zones would not benefit from a dwelling entitlement unless they comply with the minimum lot size set under the Lot Size Map or if it is for replacement of a lawfully erected dwelling house. Council through the application of Clause 4.2A (4) has provided a clear planning direction in order to minimise unplanned rural residential development. Clause 4.2A (4) represents the planned development outcome for erection of dwellings in RU1, RU2 and C3 zoned land which includes the extinguishment of any dwelling entitlements in accordance with subclause (4). The Clause 4.2A "sunset clause" is adopted in the Kiama LEP 2011 and the implications of the clause have been clearly and consistently communicated to landowners, relevant stakeholders and the community.

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Assessing Officer's Comments

The Applicant also states that the subject land is "suitable for viable agricultural activities" and that clauses 4.2 and 4.2A are "blunt instruments" to achieve the desired objectives of these clauses. The applicant also asserts that the proposed dwelling will enable the sustainable agricultural undertakings to be undertaken on the land. Council disagrees that the dwelling is required to facilitate development or an undertaking on the land which achieves the relevant objectives, including rural and agricultural uses.

b) to enable the replacement of lawfully erected dwelling houses in rural and conservation zones.

The proposed development does not replace a lawfully erected dwelling and there are no existing approvals for establishment of a dwelling house on the land.

Sufficient Environmental Planning Grounds

The applicant contends that there are sufficient environmental planning to justify contravention of the development standard because the development aligns with the objects of the Environmental Planning and Assessment Act 1979, for which the applicant has provided a list. The applicant has provided no specific commentary connecting the development to any particular object of the act and relies simply on the statement that "there are environmental planning grounds to justify the contravention of these development standards."

In the absence of any specific commentary on this matter, it is considered that no sufficient environmental planning grounds have been identified to justify the proposed variation.

The land and surrounding area is zoned RU2 – Rural Landscape and C2 – Environmental Conservation and is rural in character. The RU2 zone objectives are to encourage sustainable primary industry production and protect agricultural land for long term agricultural production, as well as to provide for a range of compatible land uses whilst maintaining the rural landscape character. The RU2 zone and controls set out under Clause 4.2A allow for dwelling houses in this rural context so long as they are on land which meets the minimum lot sizes or replace an existing approved dwelling. Accordingly, the proposed development does not promote the orderly and economic use and development of land as it is not consistent with the objectives of the rural zone and rather it erodes the land's ability to be utilised for appropriate rural and agricultural land uses. The proposed development does not enhance or maintain the natural resource base, rather it reduces the availability of rural land and introduces additional residential development in a way that is not compatible with adjoining agricultural and rural land.

It is also noted that the proposed dwelling does not achieve buffer distances to adjoining rural/agricultural land as per control 6.1.28 of Chapter 6 of Kiama DCP 2020. Control 6.1.28 requires a buffer distance of 150m between residential development and any adjoining land in separate ownership that is used or capable of being used for agricultural purposes. The purpose of this agricultural buffer

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Assessing Officer's Comments
distance is to mitigate the impact of agricultural activities including noise, odour and spray drift on adjoining land affecting the amenity and health of residents of a new dwelling erected on adjacent land. In this regard, the proposed development has a 45m setback from the land to the south which is currently used for agricultural purposes and land that is capable of being used for agricultural purposes. As such, Council staff are not satisfied that the development has been suitably sited or designed to achieve good amenity outcomes and does not result in a development that is compatible with surrounding rural land uses.

The proposed development does not comply with Clause 4.2A of Kiama LEP 2011 and the application has not demonstrated that compliance with the development standard is unnecessary or unreasonable, nor that there are sufficient environmental planning grounds to justify contravening the development standard.

Non-compliances with planning controls

The proposed development has been considered in accordance with Section 4.15 of the EP&A Act 1979 and the proposal is not compliant with the Clauses 4.2A, 4.6, 5.16 and 6.12 of Kiama LEP 2011, or development controls set out in Kiama DCP relating to earthworks and agricultural buffer distances.

Part 4 Principal development standards	
Comments	Complies/Consistent
4.2A: Erection of dwelling houses on land in certain rural and conservation zones	
The proposed development includes the erection of a dwelling house on land zoned RU2 Rural Landscape with a lot size of 30.75ha. The minimum lot size for the subject site is AB - 40Ha, therefore the proposed development does not comply with Clause 4.2A.	Does not comply - See commentary below The applicant has provided a written variation statement pursuant to Kiama LEP Clause 4.6.
4.6: Exceptions to development standards	
The application requests a 24.82% variation to the Clause 4.2A development standard. The applicant has provided a written statement pursuant to Clause 4.6 below requesting this development standard to be varied. Council staff have considered the Clause 4.6 variation and are not satisfied that the application demonstrates that compliance with the Clause 4.2A development	Does not comply

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standard is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify contravening the development standard.	
Part 5 Miscellaneous provisions	
5.16: Subdivision of, or dwellings on, land in certain rural, residential or conservation zones	
The proposed development involves the erection of a dwelling on land zoned RU2 Rural Landscape. Council has considered existing and approved uses on adjoining land and the proposed development has not adequately demonstrated compatibility with these adjoining land uses.	Does not comply
5.21: Flood planning	
The subject site is mapped as below the flood planning level and Council has considered the development's impact on flood behaviour and the design and use of the development in its current situation, and also with regard to projected and potential climate change and coastal erosion processes. Council is not satisfied that the proposed development is compatible with the flood hazard of the land and will not significantly adversely affect flood behaviour. The proposal has not adequately demonstrated that the development would not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourse. The proposal has not adequately demonstrated that the development will not affect the safe occupation or evacuation of the land. The proposal has not adequately demonstrated that the development would not be likely to result in unsustainable social and economic costs to the community as a consequence of flooding. The proposed development is viewed as unsatisfactory with regard to the considerations set out in Clause 5.21.	Does not comply. The flood impact assessment report provided is out of date and cannot be utilised for assessment purposes.
Part 6 Additional local provisions	
6.12: Essential services	

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Reticulated electricity is available to the site. Potable water will be provided to the development via rainwater tanks. Recommended conditions of consent will be imposed accordingly. Effluent is proposed to be managed on site. The proposal has not demonstrated that there are suitable areas on site for the required effluent management areas, with conflicts existing between the effluent disposal areas and stormwater management. The application has been reviewed by Council's Environmental Health Officer who raised objections – citing the conflict between stormwater and effluent management areas as matters of significant concern. It is considered that the proposal has not demonstrated that there is suitable area on site for the required effluent management areas.	Does not comply The on-site wastewater management report provided is out of date and has not adequately considered the appropriate location of OSSM and stormwater management, creating an unsupportable conflict.
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The proposed development does not comply with development controls and development standards set out in Kiama LEP 2011 and Kiama DCP 2020.

Stormwater and Onsite Sewage Management (OSSM) conflicts

The application has been reviewed by Council's Environmental Health Officer who has raised concerns relating potential conflicts between proposed stormwater disposal and effluent management areas.

The proposed development locates stormwater disposal within the area for the proposed effluent management areas. Concerns are raised with this, and stormwater overflow from the level spreader running-on to the effluent management areas potentially leading to water quality issues downstream.

The application has not adequately resolved potential stormwater and OSSM conflicts.

Setbacks and agricultural buffer distances

Control 6.1.28 in Chapters 6 of Kiama DCP 2020 identifies that a 150m agricultural buffer distance should be provided between a rural dwelling house, secondary dwelling or ancillary development (used for habitable purposes) and any adjoining land in separate ownership that is used or capable of being used for agricultural purposes. The purpose of the agricultural buffer area is to mitigate the impact of agricultural activities including noise, odour and spray drift on adjoining land affecting the amenity and health of residents of a new dwelling erected on adjacent land.

The proposed development does not comply with control 6.1.28 with the dwelling being setback 60m from adjoining RU2 Rural Landscape zoned land to the north. Agricultural land uses are permitted within the RU2 zone and extensive agriculture is permitted within the zone without consent.

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The inability of the site to provide a suitable dwelling envelope which can achieve this buffer distance (without creating further land use conflicts) and that fact that the subject allotment does not benefit from a dwelling entitlement under Clause 4.2A indicates that the subject site is not suitable for residential development.

The proposed development does not provide suitable buffer distances between residential, rural and agricultural land uses as required by Kiama DCP 2020.

Options

1. Adopt the recommendation and refuse the development application for the reasons set out in enclosure 4.
2. Approve the development application, subject to conditions set out in enclosure 5 and as per section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.
3. Adopt an alternative recommendation and as per section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.

Conclusion

A comprehensive assessment of the Development Application has been undertaken in accordance with all statutory requirements.

It is recommended that the application be refused for the reasons set out in the Draft Notice of Determination (enclosure 4):

Next steps

If Council adopts the recommendation, a formal notice of determination refusing the application will be issued.

If Council recommends approval of the application, a formal notice of determination approving the development subject to conditions of consent set out in enclosure 5 will be issued. A formal notice of determination is valid for five years and the applicant can act on the development consent at any time within that period, subject to meeting any relevant conditions of the consent.

15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house

CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.

CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.

Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

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Summary

The purpose of this report is to seek Council's determination of Development Application No 10.2025.135.1 for a new dwelling house – formally described as: construction of a single storey 3 bedroom dwelling house at Lot 33 DP 605608 - Jamberoo Road Jamberoo.

The Development Application is reported to Council for determination because it proposes a Clause 4.6 variation to Clause 4.2A - erection of dwelling houses on land in certain rural and conservation zones development standard of the *Kiama Local Environmental Plan (LEP) 2011* of 33.5%. Determination of applications where Clause 4.6 variations exceed 10% are not within staff delegations for determination and must be determined by the elected Council.

It is recommended that Council not support the variation to Clause 4.2A and determine the proposed development by way of refusal for the reasons outlined in this report.

Financial implication

The Development Application fee has been paid in accordance with the Environmental Planning and Assessment Regulation 2021 and Council's adopted Fees and Charges.

Any approval of the Development Application would include 7.12 contributions to be conditioned to be paid to Council.

If the Development Application is refused, the application may be challenged in the NSW Land and Environment Court (LEC) and there would be costs associated with defending the refusal.

Risk implication

If the development application is refused, the determination may be challenged in the NSW Land and Environment Court (LEC).

Policy

The statutory instruments relevant to the development include the following:

- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Sustainable Buildings) 2022.
- Kiama Local Environmental Plan 2011.

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

- Kiama Local Environmental Plan 2020.
- Kiama Community Participation Plan 2019.

Consultation (internal)

The application was referred to the following internal subject matter experts.

Internal Referrals	
Referral	Comments
Property Manager	Referral sent to Property for purposes of exhibition to adjoining property owners. No objection raised during the public exhibition period.
Environmental Health Officer	No objection raised to the proposed development. Conditions of development consent advised.
GIS	No objection raised to the proposed development. Conditions of development consent advised.
Contribution Planner	Section 7.12 Contributions applicable.

Communication/Community engagement

Consultation has occurred in accordance with Section 8 of the Kiama Community Participation Plan 2019; namely by:

- Directly notifying adjoining property owners of the exhibition period,
- Making all information publicly available on Council's DA Tracker between 3 September and 17 September 2025.

Submissions	Number	Key Issues
Submissions - For	0	Nil
Submissions - Against	0	Nil

Attachments

Nil

Enclosures

- 1 10.2025.135.1 - Section 4.15 Assessment Report [⇒](#)
- 2 10.2025.135.1 - Plans [⇒](#)
- 3 10.2025.135.1 - Clause 4.2A "sunset clause" media release and advice to landowners [⇒](#)
- 4 10.2025.135.1 - Draft Notice of Determination - Refusal [⇒](#)

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

5 10.2025.135.1 - Draft Notice of Determination - Approval⇒

RECOMMENDATION

That Council:

1. Not support the Clause 4.6 variation to Clause 4.2A of the development standard, associated with Development Application No 10.2024.135.1 (PAN-562104).
2. Refuse Development Application No 10.2024.135.1 (PAN-562104) for the construction of a single storey 3 bedroom dwelling house for the reasons set out in enclosure 4.
3. Advise persons who made a submission on Development Application No 10.2024.135.1 of Council’s decision.
4. Note that staff are willing to meet with the applicant to discuss options to rezone a portion of this site and the adjoining small rural lots to R5 Large Lot Residential or the like to facilitate a dwelling in this semi-urban context.

Background

APPLICATION DETAILS	
Application Type:	Development Application.
Application Number:	10.2025.135.1.
NSW ePlanning Portal Reference:	PAN-562104.
Proposed Development:	New dwelling house - construction of a single-storey 3 bedroom dwelling house.
Applicant:	Allen Price Pty Ltd.
Property title:	Lot 33 DP 605608.
Property address:	Jamberoo Road, Jamberoo.

The Site

The subject site is described as Lot 33 DP 605608, Jamberoo Road, Jamberoo.

The subject site has a frontage to Jamberoo Road, Jamberoo Mountain Road and Drualla Road. The site is currently vacant and is zoned Part RU2 Rural Landscape / Part C3 Environmental Management under Kiama LEP 2011 (see Figure 1).

The surrounding area is mixed in character comprising both large lot residential, rural and low density residential development. The site is adjoined by rural land to the north and west, residential development to the south and east.

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The site undulates and drains overland to the adjoining land and the natural watercourse.

Access to the property is gained via Drualla Road.

The site is not currently serviced and is proposed to rely on on-site utilities.



Figure 1 Aerial Imagery of the subject site

The Proposed Development

The proposal is for the construction of a single-storey 3 bedroom dwelling house. The architectural plans are included as Enclosure 2 to this report.

Key Issues

The following key issues are relevant to the assessment of this application having considered the relevant planning controls, issues raised in the submissions, referral comments and the proposal in detail.

1. RU2 Rural Landscape zone objectives.
2. Clause 4.2A of the Kiama Local Environmental Plan (Kiama LEP) 2011.
3. Non-compliances with planning controls.
4. Setbacks and agricultural buffer distances.

RU2 Rural Landscape Zone Objectives

The subject land is zoned part RU2 Rural Landscape, with a small portion in the south-west corner of the site zoned part C3 Environmental Management under Kiama LEP 2011. The proposed development is wholly contained within the RU2 Rural Landscape zoned land (see Figure 2)

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Figure 2: GIS imagery showing land zoning

RU2 (brown) C3 (orange)

The proposal is defined as a dwelling house under the provisions of the Kiama LEP 2011, which are permitted with consent in the RU2 Rural Landscape zone.

In accordance with Clause 2.3 of Kiama LEP 2011, the consent authority must have regard to the objectives of the zone when determining a development application in respect of land within the zone.

The proposed development is **not** consistent with the objectives of the RU2 Rural Landscape zone, as detailed below:

RU2 zone objectives	Comments
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal seeks to utilise the land for residential purposes and limits the opportunity to use the land for agriculture or primary industry production. The proposed development does not encourage sustainable primary industry production and instead erodes the natural resource base and available agricultural land.

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RU2 zone objectives	Comments
	The proposed development is not consistent with this zone objective.
To maintain the rural landscape character of the land.	The proposed development does not maintain the rural character of the land. The rural character of the land is characterised by natural rolling hills interspersed with trees, bushland, agricultural land and rural dwellings. Additionally, subclause 4.2A (4) provides a dwelling entitlement “sunset clause” for undersized existing allotments/holdings. The adoption of this clause sought to plan for and achieve the desired future rural landscape vision for the region by restricting residential development on undersized allotments and encouraging a rural outcome. The cumulative effect and impact from not enforcing clause 4.2A should be understood. The Land and Environment Court has established the Wehbe tests and identifies that where a Council has “virtually abandoned or destroyed” a development standard, compliance with the development standard in other instances is unnecessary. If the clause 4.2A development standard is destroyed or abandoned, this would further compromise the rural landscape character of the land. As previously advised, there are a total of 165 vacant rural zoned lots less than the clause 4.2A 40ha development standard. Abandoning this clause on a DA by DA basis is not advised. The proposed development is not consistent with this zone objective.
To provide for a range of compatible land uses, including extensive agriculture.	Although a range of land uses are permissible within the RU2 zone, these fundamentally are rural or agricultural land uses. Although dwellings are also permissible, this is in the rural context.

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

RU2 zone objectives	Comments
	The construction of a dwelling on an undersized lot with reduced agricultural and amenity buffer setbacks is not considered compatible with adjoining land uses. The proposed development is not consistent with this zone objective.
To protect agricultural land for long term agricultural production.	The proposed development represents a permanent shift away from agricultural use. The proposed development effectively utilizes the site for residential purposes and limits suitable opportunities for agricultural production. The proposed residential use of the land introduces residential elements on an undersized allotment with reduced buffer distances to adjoining land. The proposed development does not protect agricultural land for long term agricultural production. The proposed development is not consistent with this zone objective.
To provide opportunities for employment-generating development that adds value to local agricultural production through food and beverage processing and integrates with tourism.	The proposed residential development does not facilitate agritourism or local agricultural production The development is purely residential and does not contribute to the economic objectives of the RU2 zone. The proposed development is not consistent with this zone objective.

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The proposed development is not consistent with the RU2 Rural Landscape zone objectives.

Variation to Clause 4.2A of Kiama LEP 2011

The application seeks to vary the clause 4.2A development standard for erection of dwelling houses on land in certain rural and conservation zones pursuant to clause 4.6 of Kiama LEP 2011. The proposal represents a 33.5% variation to the clause 4.2A development standard.

The clause 4.6 variation has been considered and Council staff are not satisfied that the proposal has demonstrated that compliance with the development standard is

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

unreasonable or unnecessary, nor that there are sufficient environmental planning grounds to justify contravention of the development standard.

The clause 4.6 variation request is discussed below:

Development standard being varied
4.2A Erection of dwelling houses on land in certain rural and conservation zones 1. <i>The objectives of this clause are as follows:</i> a. <i>to minimise unplanned rural residential development,</i> b. <i>to enable the replacement of lawfully erected dwelling houses in rural and conservation zones.</i> 2. <i>This clause applies to land in the following zones:</i> a. <i>Zone RU1 Primary Production,</i> b. <i>Zone RU2 Rural Landscape,</i> c. <i>Zone C3 Environmental Management.</i> 3. <i>Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is:</i> a. <i>a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or</i> b. <i>a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or</i> c. <i>a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or</i> d. <i>an existing holding.</i> Note. <i>A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.</i> 4. <i>Subclause (3)(b), (c) and (d) ceases to apply if:</i> a. <i>an application for development consent referred to in that subclause is not made in relation to that land within 5 years after the day this Plan commences, or</i> b. <i>an application for development consent referred to in that subclause is made in relation to that land within 5 years after the day this Plan commences, but the application is refused.</i> 5. <i>Despite subclause (3), development consent may be granted for the erection of a dwelling house on land to which this clause applies if:</i>

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

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Development standard being varied	
a. <i>there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house, or</i> b. <i>the land would have been a lot or a holding referred to in subclause (3) had it not been affected by:</i> i. <i>a minor realignment of its boundaries that did not create an additional lot, or</i> ii. <i>a subdivision creating or widening a public road or public reserve or for another public purpose.</i>	6. <i>In this clause:</i> existing holding means land that: a. <i>was a holding on 4 July 1977, and</i> b. <i>is a holding at the time the application for development consent referred to in subclause (3) is lodged,</i> <i>whether or not there has been a change in the ownership of the holding since 4 July 1977 and includes any other land adjoining that land acquired by the owner since 4 July 1977.</i> holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.
Note. <i>The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.</i>	
<u>Assessing Officer Commentary</u>	
As per subclause (4), no application for development consent was made in relation to that land within 5 years after the day this Plan commences (i.e. no application was made by 16 December 2016). Accordingly, the subject site does not benefit from a dwelling entitlement under clause 4.2A.	

Extent of proposed departure from development standard				
LEP clause	Numerical Standard	Proposed Solution	Numerical Departure	% Departure
Clause 4.2A	Minimum lot size = 40ha	Subject site lot size = 26.6ha	13.4ha	33.5%
Assessing Officer Commentary				
<u>Unreasonable or Unnecessary</u>				

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

Assessing Officer Commentary

The Applicant contends that compliance with the clause 4.2A development standard is unnecessary in the circumstances of the case as the proposal is compatible with the objectives of the clause 4.2A Development Standard. This is disagreed by Council staff and it is considered that the proposed development does not achieve the objectives of the development standard.

The objectives of clause 4.2A are considered below:

a) to minimise unplanned rural residential development.

The Applicant's opinion is that the development is not unplanned rural residential development as the lot was approved through a subdivision under a previous planning instrument.

This opinion is not agreed with. Although the allotment exists, there is a clear planning vision set out by Clause 4.2A (4) which acknowledges the presence of existing holdings and smaller lots in rural areas, but then sets clear and specific requirements for lodgement of applications within 5 years of the commencement of the Plan, otherwise such allotments will not benefit from dwelling entitlement. This represents the clear strategic planning of minimising unplanned rural residential development.

No application for erection of a dwelling house was made within 5 years of the commencement of the Plan (i.e. 16 December 2016) and therefore the land does not benefit from a dwelling entitlement. The extinguishment of any dwelling entitlement under subclause (4) is the planned development outcome.

The application of subclause (4) and resultant extinguishment of any dwelling entitlement has been clearly communicated by Council to stakeholders.

At the Ordinary Council meeting on 16/8/2016, Council resolved (MIN16/270) that a media release advising the community of the expiration provisions within clause 4.2A of Kiama LEP 2011 and that all affected rural rate payers be directly advised of the "sunset clause". The Manager of Strategic Planning wrote to affected landowners on 21 September 2016 to advise that as of 16 December 2016, subclause (4) will come into effect (TRIM 16/82773). Kiama Municipal Council also provided a media release advising of the "sunset clause" (TRIM 17/21167) (see enclosure 3).

It is also noted that Council staff have provided clear and consistent advice to customers (including prospective buyers) about the application of Clause 4.2A and that certain lots in RU1, RU2 and C3 zones would not benefit from a dwelling entitlement unless they comply with the minimum lot size set under the Lot Size Map or if it is for replacement of a lawfully erected dwelling house.

Council through the application of Clause 4.2A (4) has provided a clear planning direction in order to minimise unplanned rural residential development. Clause 4.2A (4) represents the planned development outcome for erection of dwellings in RU1, RU2 and C3 zoned land which includes the extinguishment of any dwelling entitlements in accordance with subclause (4).

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

Assessing Officer Commentary

The Clause 4.2A “sunset clause” is adopted in the Kiama LEP 2011 and the implications of the clause have been clearly and consistently communicated to landowners, relevant stakeholders and the community.

The Applicant is also of the opinion that the subject land is “suitable for viable agricultural activities” and that Clauses 4.2 and 4.2A are “blunt instruments” to achieve the desired objectives of these clauses. The applicant also asserts that the proposed dwelling will enable the sustainable agricultural undertakings to be undertaken on the land. Council disagrees that the dwelling is required to facilitate development or an undertaking on the land which achieves the relevant objectives, including rural and agricultural uses.

b) to enable the replacement of lawfully erected dwelling houses in rural and conservation zones.

The proposed development does not replace a lawfully erected dwelling and there are no existing approvals for establishment of a dwelling house on the land.

Sufficient Environmental Planning Grounds

The Applicant contends that there are sufficient environmental planning grounds to justify contravention of the development standard because the development aligns with the objects of the *Environmental Planning and Assessment Act 1979*, for which the applicant has provided a list. However, the applicant has provided no specific commentary connecting the development to any particular object of the Act and relies simply on the statement that “there are environmental planning grounds to justify the contravention of these development standards.”

In the absence of any specific commentary on this matter, it is considered that no sufficient environmental planning grounds have been identified to justify the proposed variation.

The land and surrounding area to the north, east and west is zoned RU2 – Rural Landscape and C3 – Environmental Management and is rural in character. Land immediately to the south of the site is zoned R2 – Low Density Residential.

The RU2 zone objectives are to encourage sustainable primary industry production and protect agricultural land for long term agricultural production, as well as to provide for a range of compatible land uses whilst maintaining the rural landscape character. The RU2 zone and controls set out under clause 4.2A allow for dwelling houses in this rural context so long as they are on land which meets the minimum lot sizes or replace an existing approved dwelling. Accordingly, the proposed development does not promote the orderly and economic use and development of land as it is not consistent with the objectives of the rural zone and rather it erodes the lands ability to be utilised for appropriate rural and agricultural land uses. The proposed development does not enhance or maintain the natural resource base, rather it reduces the availability of rural land and introduces additional residential development in a way that is not compatible with adjoining agricultural and rural land.

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

The proposed development does not comply with Clause 4.2A of Kiama LEP 201 and the application has not demonstrated that compliance with the development standard is unnecessary or unreasonable, nor that there are sufficient environmental planning grounds to justify contravening the development standard.

Non-compliances with planning controls

The proposed development has been considered in accordance with Section 4.15 of the EP&A Act 1979 and the proposal is not compliant with the Clauses 4.2A, 4.6 and 5.16 of Kiama LEP 2011, as well as development controls set out in Kiama DCP relating to earthworks and agricultural buffer distances.

Part 4 Principal development standards	
Comments	Complies/Consistent
4.2A: Erection of dwelling houses on land in certain rural and conservation zones	
The proposed development includes the erection of a dwelling house on land zoned PART RU2 Rural Landscape / PART C3 Environmental Management with a lot size of 26.6Ha. The minimum lot size for the subject site is AB - 40Ha, therefore the proposed development does not comply with Clause 4.2A.	Does not comply
4.6: Exceptions to development standards	
The application requests a 33.5% variation to the clause 4.2A development standard. The applicant has provided a written statement pursuant to Clause 4.6 below requesting this development standard to be varied. Council staff have considered the Clause 4.6 variation and are not satisfied that the application demonstrates that compliance with the Clause 4.2A development standard is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify contravening the development standard.	Does not comply
Part 5 Miscellaneous provisions	
5.16: Subdivision of, or dwellings on, land in certain rural, residential or conservation zones	
The proposed development involves the erection of a dwelling on land zoned RU2 Rural Landscape. Council	Does not comply

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

has considered existing and approved uses on adjoining land and the proposed development is incompatible with these adjoining land uses.	
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The proposed development does not comply with development controls and development standards set out in Kiama LEP 2011 and Kiama DCP 2020.

Non Compliance with Kiama DCP 2020**Setbacks and rural dwelling buffer distances**

Control 6.1.31 in Chapter 6 of Kiama DCP 2020 identifies that a rural amenity buffer area at least 100m wide must be provided between a rural dwelling house, secondary dwelling or ancillary development (used for habitable purposes) and any dwellings on adjoining land. The purpose of the rural dwelling buffer area is to provide appropriate amenity and separation between dwellings in a rural context.

The proposed development does not comply with control 6.1.31 with the dwelling being setback as follows:

- >100m from western property boundary.
- 15m from southern property boundary.
- >100m from northern property boundary.
- 10m from the eastern property boundary.

The reduced setbacks proposed for the dwelling are symptomatic of the undersized allotment providing insufficient land area to establish a suitable building envelope without unnecessarily reducing the available agriculturally viable land on the site, or creating an undesirable conflict with the environmental constraints of the site.

The proposed development does not provide suitable rural dwelling amenity buffer distances as required by Kiama DCP 2020.

Options

1. Adopt the recommendation and refuse the development application for the reasons set out in enclosure 4.
2. Approve the development application, subject to conditions contained in enclosure 5 and as per section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.
3. Adopt an alternative recommendation and as per section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.

Conclusion

A comprehensive assessment of the Development Application has been undertaken in accordance with all statutory requirements.

It is recommended that the application be refused for the reasons set out in the Draft Notice of Determination (enclosure 4):

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15.5 Determination of Development Application No 10.2025.135.1 - Lot 33 DP 605608 - Jamberoo Road, Jamberoo - New dwelling house (cont)

It is noted that this site adjoins existing residential land and small rural lots containing dwellings. A preferred approach to this ad hoc attempt to amend the Kiama LEP via individual DAs would have been a Planning Proposal to rezone a portion of this site and the adjoining small rural lots to R5 Large Lot Residential or the like. Unfortunately, no advice was sought from Council via to the lodgement of this DA.

Next steps

If Council adopts the recommendation, a formal notice of determination refusing the application will be issued.

If Council recommends approval of the application, a formal notice of determination approving the development subject to conditions of consent set out in Enclosure 5 will be issued. A formal notice of determination is valid for five years and the applicant can act on the development consent at any time within that period, subject to meeting any relevant conditions of the consent.

15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation

CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.

CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.

Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

Item 15.6

Summary

The purpose of this report is to seek Council's determination of Development Application No 10.2025.147.1 for alteration to tourist and visitor accommodation - alterations to three (3) accommodation rooms within an existing hotel at Lot 8 DP 1085635 - 2 Minnamurra Street, Kiama.

Development Application No 10.2025.147.1 is being reported to Council because it proposes a clause 4.6 variation to clause 4.4 – floor space ratio in Kiama LEP 2011 of 29.5%. Determination of applications where clause 4.6 variations exceed 10% are not within staff delegations for determination and must be determined by the elected Council.

Lot 8 is a stratum lot within DP 1085635 and comprises the upper level of an existing sandstone building (former Kiama Infants School) and associated parking at the lower basement and ground levels and is a part of the broader Sebel Harbourside complex. Lot 8 has a total site area of 274.30m².

Kiama LEP 2011 sets a floor space ratio (FSR) control of 0.5:1 for the subject site.

The existing building on site has a gross floor area of 153.11m² which represents a FSR of 0.558:1 (11.6% departure from clause 4.4 FSR control).

The proposal seeks an additional 65.12m² of floor area resulting in total gross floor area of 218.23m² which represents a FSR of 0.785:1 (29.5% departure from clause 4.4 FSR control).

It is recommended that Council support the clause 4.6 variation to clause 4.4 (Floor Space Ratio) and determine the proposed development by way of approval.

Financial implication

Development Application fees have been paid in accordance with the Environmental Planning and Assessment Regulation 2021 and Council's adopted Fees and Charges.

Council's Section 7.12 Contribution Plan applies to this site, and to this development application. Contributions are levied based on the proposed cost of carrying out the development. If approved, conditions of consent requiring the payment of s7.12 contributions will be imposed.

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15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation (cont)

The Housing and Productivity Contribution (HPC) applies to this application. If approved, conditions of consent requiring the payment of HPCs will be imposed.

If the application is refused, the application may be challenged in the NSW Land and Environment Court (LEC) and there would be costs associated with defending the refusal.

Risk implication

If the development application is refused the application may be challenged in the NSW Land and Environment Court (LEC).

Policy

The statutory instruments relevant to the development include the following:

- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- Kiama Local Environmental Plan 2011.
- Kiama Development Control Plan 2020.
- Kiama Community Participation Plan 2019.

Consultation (internal)

The application was referred to the following internal subject matter experts.	
Internal referral	Comments
Contribution Planner	Section 7.12 Contributions and Housing and Productivity Contribution (HPC) applicable
Heritage Officer	No objection subject to recommended conditions

Communication/Community engagement

Consultation has occurred in accordance with Section 8 of the Kiama Community Participation Plan 2019; namely by:

- Directly notifying adjoining property owners of the exhibition period,
- Directly notifying submitters to the original DA of the application and exhibition period;
- Making all information publicly available on Council's DA Tracker between 18 September 2025 and 2 October 2025.

Council received the following submissions made during this period:

Submissions	Number	Key Issues
Submissions - For	0	Nil

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15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation (cont)

Submissions	Number	Key Issues
Submissions - Against	0	Nil

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Attachments

Nil

Enclosures

- 1 10.2025.147.1 - Section 4.15 Assessment Report [⇒](#)
- 2 10.2025.147.1 - Plans [⇒](#)
- 3 10.2025.147.1 - Draft Notice of Determination [⇒](#)

RECOMMENDATION

That Council

1. Support the clause 4.6 variation to the clause 4.4 Floor Space Ratio development standard.
2. Approve, subject to conditions of consent as set out in the draft Notice of Determination in enclosure 3, Development Application No 10.2025.147.1 for an Alteration to tourist and visitor accommodation - Alterations to three (3) accommodation rooms within an existing.
3. Advise persons who made a submission on Development Application No 10.2025.147.1 of Council's decision.

Background

APPLICATION DETAILS	
Application Type:	Development Application
Application Number:	10.2025.147.1
NSW ePlanning Portal Reference:	PAN-568232
Proposed Development:	Alteration to tourist and visitor accommodation - Alterations to three (3) accommodation rooms within an existing hotel.
Applicant:	Allen Price Pty Ltd
Property title:	Lot 8 DP 1085635

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15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation (cont)

Property address:	2 Minnamurra Street KIAMA NSW 2533
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The Site

The subject site is described as Lot 8 DP 1085635 - 2 Minnamurra Street, Kiama.

Lot 8 is a stratum lot within DP 1085635 and comprises the upper level of an existing sandstone building (former Kiama Infants School) and associated parking at the lower basement and ground levels and is a part of the broader Sebel Harbourside complex.

The site is zoned E1 Local Centre under Kiama LEP 2011.

The surrounding area is mixed in character and the site is adjoined by other commercial and residential land uses (see figure 1).

Access to the property is gained via Minnamurra Street through the Sebel Harbourside complex.

The site is serviced by utilities including water, sewer, electricity and telecommunications.

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15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation (cont)



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Figure 1 - Aerial imagery of subject site

The Development

The proposal is for internal alterations to three accommodation rooms within the existing Sebel Harbourside Hotel, Kiama, including construction of mezzanine loft spaces within suites A, B and C. All works associated with this development proposal are internal and will not be visible from outside the building.

The proposed works include:

- Addition of mezzanine lofts and stairs within each accommodation suite. The proposed loft areas comprise a bedroom and bath/wet area;
- Restoration of an existing timber staircase to access the accommodation suites; and
- Installation of stairs within each suite to access the mezzanine lofts.

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15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation (cont)

The full set of architectural plans are included as enclosure 2 to this report. The below images demonstrate what is being proposed.

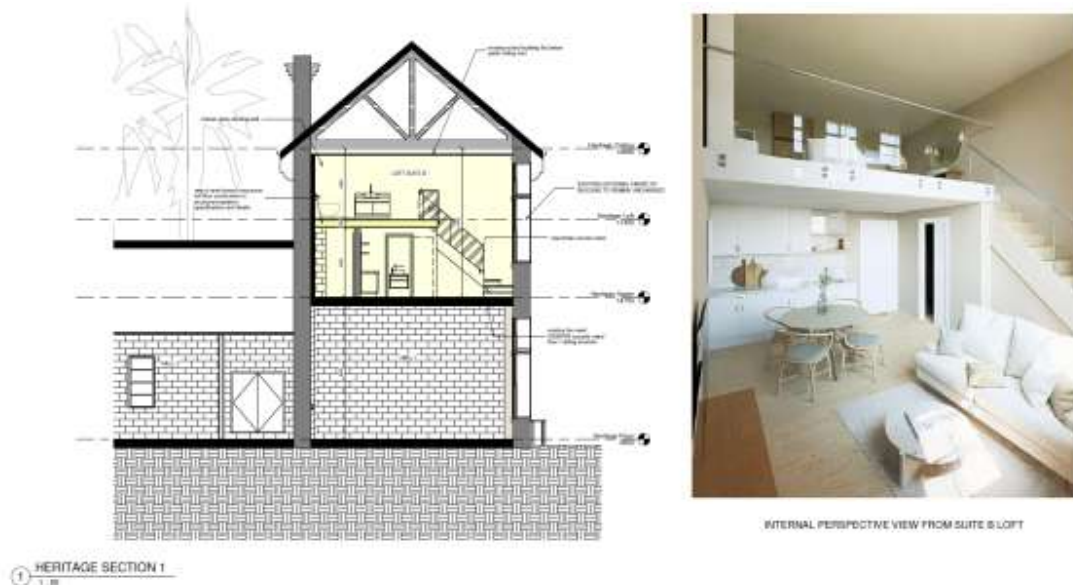


Figure 2 – Section Plan and Internal Perspective

Key Issues

The following key issues are relevant to the assessment of this application having considered the relevant planning controls, issues raised in the submissions, referral comments and the proposal in detail.

1. Clause 4.4 (Floor Space Ratio) of the Kiama Local Environmental Plan (Kiama LEP) 2011.
2. Clause 5.10 (Heritage Conservation) of the Kiama LEP 2011

Clause 4.4 (Floor Space Ratio) of Kiama LEP 2011.

The subject site is a stratum lot within DP1085635 and has a total site area of 274.30m².

Kiama LEP 2011 sets a floor space ratio (FSR) control of 0.5:1 for the subject site.

The existing building on site has a gross floor area of 153.11m² which represents a FSR of 0.558:1 (11.6% departure from clause 4.4 FSR control) and the proposal seeks an additional 65.12m² of floor area resulting in total gross floor area of 218.23m² and an FSR of 0.785:1 (29.5% departure from clause 4.4 FSR control).

The application has been supported by a clause 4.6 variation request that demonstrates that compliance with the development standard is unnecessary or unreasonable as the proposal is consistent with the objectives of the clause 4.4 (Floor Space Ratio) development standard noting that the proposed development remains in keeping with the optimum capacity of the site and local area as:

- The proposed works are internal and fully contained within the existing building and will not be externally visible. The proposal does not alter the building bulk or external appearance of the existing building.

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15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation (cont)

- The proposal maintains the same number of accommodation units and does not increase capacity of the hotel,
- The proposal does not give rise for additional car parking as per the requirements of Kiama DCP 2020

The clause 4.6 variation request has also demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard in the circumstances of the case as it promotes the objects of the *Environmental Planning and Assessment Act 1979*, specifically, in promoting the orderly and economic use and development of the land and good design and amenity of the built environment, by improving the amenity of the tourist accommodation units whilst maintaining the use and function of the building. The proposed development is considered to be consistent with the zone objectives of the E1 Local Centre zone.

It is recommended that Council support the clause 4.6 variation to clause 4.4 (Floor Space Ratio).

Clause 5.10 (Heritage Conservation) of Kiama LEP 2011

The proposed works are located within Heritage Item I36 – Kiama Infants School (former) listed in Schedule 5 of Kiama LEP 2014.

The proposed works are internal and wholly contained within the building and will not be visible from the building exterior.

Further to this the proposed mezzanine lofts terminate 2.575 m from the eastern wall of the building, and 0.99 m from the southern wall (for Unit C) and therefore are setback from wall openings, ensuring the preservation of the existing clerestory windows which contribute to the heritage significance of the building. The mezzanine lofts are open plan and edged with a glass balustrade.

The application has been supported by a Heritage Impact Assessment and the application has been reviewed by Council's Heritage Planner with no objection being raised, subject to recommended conditions of consent.

The proposed development is not considered to have an adverse impact on the heritage significance of the heritage item and is considered suitable in this regard.

Options

1. Adopt the recommendation and approve to the application, subject to conditions in enclosure 3.
2. Refuse the application with appropriate reasons for refusal and as per section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.
3. Adopt an alternative recommendation and as per section 11.13 of the new Model Code of Meeting Practice provide reasons for why it did not adopt the staff recommendation.

Conclusion

Report of the Director Strategies and Communities

15.6 Determination of Development Application No 10.2025.147.1 - 2 Minnamurra Street, Kiama - Alteration to tourist and visitor accommodation (cont)

A comprehensive assessment of the Development Application has been undertaken under section 4.15 of the Environmental Planning and Assessment Act 1979 in accordance with all statutory requirements.

It is recommended that the clause 4.6 variation to the clause 4.4 (floor space ratio) development standard be supported and the application be approved subject to conditions of consent.

Next Steps

If Council adopts the recommendation, a formal notice of determination approving the development subject to conditions of consent will be issued. A formal notice of determination is valid for five years and the applicant can act on the development consent at any time within that period, subject to meeting relevant conditions of the consent.

If Council seeks to refuse the application, it must identify the reasons for refusal and a formal notice of determination refusing the application will be issued accordingly.

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15.7 Destination Event Funding Round 2 – Early application assessment

CSP Objective: Outcome 3.2: We have an economy that balances tourism opportunities with resident needs and ensuring we don't lose our community feel.

CSP Strategy: 3.2.2 Support sustainable local business development, visitations and events including showcasing iconic attractions and hosting events that attract visitors to the region.

Delivery Program: 3.2.2.1 Major events delivery, including implementing the key actions of the Major Events Strategy.

Summary

This report seeks Council's consideration of two Destination Event Funding Program applications prior to the Round 2 closing date of Sunday 11 January 2026.

Early assessment and approval are required for the following reasons:

- Both events require confirmation of financial and in-kind support prior to February 2026 to secure artists, lock in tour routing, commence marketing campaigns and ensure operational feasibility. The February 2026 Ordinary Council meeting date is too late to meet industry contracting timelines.
- Recent major event cancellations have impacted the future event calendar. Early support for viable events contributes to strategic recovery and guards against further loss of economic and community benefits.

Round 1 funding allocated \$53,740 to 14 events; four events subsequently cancelled or declined funding, releasing \$27,480 back to the pool.

ROUND 1 funding cancellations		
Kiama Jazz & Blues - <i>declined funding</i>	6-8 March 2026	\$ 5,240.00
Changing Tides Music Festival	Sat 22 Nov 2025	\$ 8,000.00
Burnetts Garden Sounds Festival	Sat 6 Dec 4-8pm	\$ 4,240.00
YOHKA Royale	28-29 Mar 26	\$ 10,000.00
	TOTAL	\$ 27,480.00

The applications requiring early consideration are:

1. Sounds of Rock Music Festival – Saturday 10 October 2026. - \$15,000
2. SurfLife Music Festival – Friday 27 to Saturday 28 March 2026 - \$9,000

Both events meet Destination Event Funding criteria and demonstrate economic, branding, and community benefit for the Kiama LGA.

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15.7 Destination Event Funding Round 2 – Early application assessment (cont)

Financial implication

Annual allocation for Destination Event Funding Program (2025/26): \$130,000.

- 2025/26 Destination Event Funding allocation: \$130,000.
- Round 1 allocations: \$53,740.
- Remaining for Round 2: \$76,260.
- Round 2 early approval requested: \$24,000.
- Remaining for Round 2 (Feb 2026): \$52,260.

The remaining funds will be presented to Council with the full Round 2 assessment in February.

Risk implication

While risks are low and manageable, the following considerations apply:

- Operational risk: addressed through existing Temporary Event Licence processes.
- Reputational risk: mitigated by selecting experienced promoters with proven delivery history.
- Financial risk: limited due to modest funding amounts and requirement for promoter insurance and compliance.
- Community impact risk: mitigated through noise management, traffic planning, and community notification requirements.

No extraordinary risks have been identified.

Policy

- Kiama Council Sponsorship and Donations Policy 2024
- Kiama Tourism and Events Strategic Plan 2022-2026
- Council Grants Funding Program Guidelines 2025

Early approval is consistent with policy intent, provided total allocations remain within the approved annual program budget.

Consultation (internal)

- Manager Property & Recreation (Temporary Event Licensing).
- Finance (budget confirmation).
- Communications (event promotion and notification frameworks).

Further operational teams will be engaged through standard event licensing processes.

Council has sought preliminary feedback from Kiama District Sports Organisation to ensure availability of the Kiama Showground precinct and a temporary hold has been made for the necessary dates.

In the absence of any scheduled Tourism & Economic Advisory Committee meetings, staff engaged directly with the endorsed Councillor representatives of the Committee

Report of the Director Strategies and Communities

15.7 Destination Event Funding Round 2 – Early application assessment (cont)

on these funding requests. Councillor representatives confirmed acceptance of this proposal.

Communication/Community engagement

Destination Kiama provides concierge support for all destination and major events on public land. Community consultation and notification will occur through:

- Event Licensing requirements (traffic, noise, waste, safety).
- Local signage and stakeholder briefings.
- Destination Kiama digital promotion.
- Direct communication from event organisers to nearby residents and businesses.

Both events are expected to contribute positively to social capital, place activation, and community vibrancy.

Attachments

Nil

Enclosures

- 1 Assessment Panel Summary [↗](#)

RECOMMENDATION

That Council:

1. Note the Internal Assessment Panel summary for the two Destination Event Program applications.
2. Approve early financial and in-kind support for the following events to enable viability and contract finalisation:

Event Title	Proposed Date	Recommended Support (Financial + in-kind combined)
Sounds of Rock Music Festival, Kiama – NUI Events	Sat 10 Oct 2026	\$15,000
SurfLife Music Festival, Gerringong – Ad-Lib Events	Fri 27 – Sat 28 Mar 2026	\$9,000
Total		\$24,000

3. Approve Sounds of Rock Music Festival for three-year support (2025/26–2027/28) at \$15,000/year, subject to budget allocation and post-event review.

Background

Two Destination Event Funding applications have been received that meet Destination Event Funding criteria and demonstrate economic, branding, and community benefit for the Kiama LGA, however require early consideration to ensure event viability.

1. Sounds of Rock Music Festival – Saturday 10 October 2026

Applicant: NUI Events (Queensland-based promoter).

Event Classification: Destination Event.

Proposed Location: Kiama Showground (preferred).

Overview: NUI Events is an established promoter delivering successful regional concerts in Townsville, Hervey Bay, and multiple NSW locations. For 2026, they have committed to a three-stop NSW regional tour with Bathurst and Hawkesbury already confirmed and seeks Kiama as the final host location.

The promoter has expressed interest in a three-year partnership with Council to establish Kiama as a recurring tour destination. This aligns with industry norms and supports long-term regional event attraction.

For the first year, the applicant requests:

- Venue hire waiver (consistent with standard regional event development practice).
- Financial support to secure artists and production at scale across multiple tour locations.

Due to the requirement to finalise artist contracts and cross-venue budgeting efficiencies, confirmation is required prior to February 2026, otherwise the promoter will move to an alternative host location.

Economic Impact

Independent Remplan modelling indicates a direct economic injection of approximately \$652,000 into the Kiama economy through visitor spending, local procurement, and accommodation.

Projected Attendance

Approx. 3,000 - 4,000 people.

Strategic Value

- Attracts a new demographic of visitors.
- Supports shoulder-season economic activity.
- Expands Council's portfolio of contemporary music events.
- Strengthens Kiama's identity as a regional events host location.

The applicant has selected the multi-year funding option within the program, which allows support for up to three years in alignment with the current Council term. Based on the event's projected economic impact, strategic value, and strong alignment with the Tourism and Events Strategic Plan, officers recommend funding for three years at the value of \$15,000 per year (2025/26, 2026/27 and 2027/28), subject to future annual budget allocation and satisfactory post-event reporting.

Report of the Director Strategies and Communities

15.7 Destination Event Funding Round 2 – Early application assessment (cont)

Application 1 Estimated event economic impact, REMPLAN forecast modelling:

Tourism Impact Scenario

Name Sounds of Rock
Duration 1 days

Direct Impact	Domestic Day	Domestic Overnight	International	Total
Number of Visitors	4,000	1,000	0	5,000
Number of Nights	n/a	2.00	0.00	
Estimated Expenditure per Visitor per Day (\$)	\$87	\$152	\$61	
Total Estimated Expenditure (\$)	\$348,000	\$304,000	\$0	\$652,000

Estimated Expenditure per Visitor per Day data sourced from:
TRA 2019 Kiama (A) Local Government Area Tourism Profile

Under Council's Grants and Donations Guidelines for Applicants, major events are eligible for up to \$20,000. The Guidelines also allow for multi-year funding, subject to future budget allocation and satisfactory post-event reporting.

2. SurfLife Music Festival – Friday 27 to Saturday 28 March 2026

Applicant: Ad-Lib Events

Event Classification: Major Event

Proposed Location: Gerringong, multiple locations including Town Hall and the Werri Beach Reserve.

Overview: SurfLife Music Festival is a two-day family-friendly coastal event celebrating live music, surf culture, and wellness activities. The event supports shoulder-season visitation, leverages Gerringong's coastal identity, and involves local creative and retail partners.

Early approval will allow the promoter to:

- Lock in headline artists and marketing schedules.
- Coordinate tourism accommodation partnerships.
- Commence community engagement processes.
- Finalise operational planning and ticketing timelines.

Projected Attendance

1,500 - 2,000 across two days.

Strategic Value

- Strong alignment with coastal tourism branding.
- Supports local musicians and businesses.
- Boosts overnight visitation during a traditionally softer period.
- Creates pathways for local suppliers and community groups.

Application 2 Estimated event economic impact, REMPLAN forecast modelling:

Report of the Director Strategies and Communities

15.7 Destination Event Funding Round 2 – Early application assessment (cont)

Tourism Impact Scenario

Name SurfLife Music Festival

Duration 2 days

Direct Impact	Domestic Day	Domestic Overnight	International	Total
Number of Visitors	3,100	400	0	3,500
Number of Nights	n/a	2.00	0.00	
Estimated Expenditure per Visitor per Day (\$)	\$87	\$152	\$61	
Total Estimated Expenditure (\$)	\$269,700	\$121,600	\$0	\$391,300

Estimated Expenditure per Visitor per Day data sourced from:
TRA 2019 Kiama (A) Local Government Area Tourism Profile

Item 15.7

15.8 Fire and Rescue Joint Inspection Report - Stage 5 Blue Haven

CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.

CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.

Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

Summary

On 23 July 2025 Council's Building Assessment Coordinator received a request for a Fire Safety Order from Council's Infrastructure and Operations Directorate for the building known as Blue Haven Stage 5 (2 Havilah Place, Kiama).

This report fulfils Council's obligation under Schedule 5, Part 8, Section 17(2) of the *Environmental Planning and Assessment Act 1979* (the Act) to table any report of any inspection carried out by the Commissioner of Fire and Rescue NSW under Section 9.32 of the Act and determine whether it will exercise its powers to give a fire safety order.

This report seeks to have Council resolve to issue a Fire Safety Order in accordance with Enclosure 1 and advise Fire and Rescue NSW of the determination.

Financial implication

The previously tabled report (item 15.1 of Ordinary Meeting 18 November 2025) outlines recommendations from the Commissioner required to be implemented at Blue Haven Stage 5, these recommendations along with comments provided by the Commissioner in response to a request for comment on an occupied building (see Enclosure 2) have been integrated into the enclosed draft Fire Safety Order (see Enclosure 1).

Some of these recommendations will have financial implications for Council.

Risk implication

The risks associated with Blue Haven Stage 5 are well known and have been made public. The Commissioner's report and subsequent draft Fire Order seeks to resolve these risks.

Policy

This report and the draft Fire Order have been prepared in accordance with the *Environmental Planning and Assessment Act 1979*.

Consultation (internal)

N/A

Communication/Community engagement

Fire & Rescue NSW has been consulted and has provided an inspection report and comment on an occupied building (see Enclosures 2 & 3).

Attachments

Nil

Enclosures

- 1 Notice of Intention to Give a Fire Safety Order - Blue Haven Stage 5 [⇒](#)
- 2 Fire and Rescue NSW - Letter to Council - Blue Haven Stage 5 [⇒](#)
- 3 Fire and Rescue NSW - Inspection Report - Blue Haven Stage 5 [⇒](#)

RECOMMENDATION

That Council:

1. Delegate authority, under Schedule 5 and Part 9, Division 9.3 of the *Environmental Planning and Assessment Act 1979*, to the Chief Executive Officer or their delegate to serve a Notice of Intention to Give a Fire Safety Order (Enclosure 1) and any subsequent Fire Safety Order to the owner of the building known as Blue Haven Stage 5, on Lot 71 DP 831089.
2. Give notice to the Commissioner of Fire and Rescue NSW of its determination as to whether it will exercise its powers to give a Fire Safety Order under Schedule 5 and Part 9 Division 9.3 of the *Environmental Planning and Assessment Act 1979* for the building known as Blue Haven Stage 5, on Lot 71 DP 831089, as required by Schedule 5, Part 8, Section 17(4) of the *Environmental Planning and Assessment Act 1979*.

Background

On 23 July 2025 Council's Building Assessment Coordinator received a request for a Fire Safety Order from Council's Infrastructure and Operations Directorate for the building known as Blue Haven Stage 5 (2 Havilah Place Kiama).

During routine maintenance and works at the site it was identified that significant fire safety deficiencies were present in the building fabric and fire safety systems. The operators of Blue Haven Stage 5 had engaged external consultants to prepare detailed reports of the identified deficiencies and proposed methods of achieving adequate fire safety for the building occupants.

Upon review of the order request and supporting reports prepared by AE&D Pty Ltd (Accredited Fire Safety Engineers and Unrestricted Building Surveyors) Council sent a request for a 'Comment on an occupied building' to Fire and Rescue NSW on 30 July 2025.

Following further investigation Council sent a further request to Fire and Rescue NSW on 1 September 2025 to request a Joint Inspection.

On 30 September 2025 Fire and Rescue NSW Officers attended Blue Haven Stage 5 (2 Havilah Place Kiama) accompanied by Council's Building Assessment Coordinator and Development Officer to perform the requested Joint Inspection.

Report of the Director Strategies and Communities

15.8 Fire and Rescue Joint Inspection Report - Stage 5 Blue Haven (cont)

As a result of this inspection carried out pursuant to Section 9.32(1) of the *Environmental Planning and Assessment Act 1979* (the Act) an inspection report has been furnished by Fire and Rescue NSW on 4 November 2025 pursuant to Section 9.32(4) and Schedule 5, Part 8, Section 17(1) of the Act

This report is required to be tabled pursuant to Schedule 5, Part 8, Section 17(2) of the Act and advice regarding Council's determination of whether it will exercise its powers to give a fire safety order provided to the Commissioner of Fire and Rescue NSW under Schedule 5, Part 8, Section 17 (4) of the Act.

On 2 December 2025 Council received the requested comment on an occupied building from Fire and Rescue NSW. The comment and joint inspection report requirements have been combined with the AE&D Fire reports. A draft Notice of Intention to Serve an Order has been prepared and enclosed as Enclosure 1 for the endorsement of Council.

It is recommended that Council advise the Commissioner of Fire and Rescue NSW that it will issue a Fire Safety Order to the owner of the building know as Blue Haven Stage 5, on Lot 71 DP 831089 consistent with Enclosure 1.

Item 15.8

15.9 Grant opportunity: Multicultural NSW - Stronger Together Major Festivals Fund

CSP Objective: Outcome 3.2: We have an economy that balances tourism opportunities with resident needs and ensuring we don't lose our community feel.

CSP Strategy: 3.2.2 Support sustainable local business development, visitations and events including showcasing iconic attractions and hosting events that attract visitors to the region.

Delivery Program: 3.2.2.1 Major events delivery, including implementing the key actions of the Major Events Strategy.

Summary

This report presents an opportunity for Council to deliver a new multi-cultural festival in Kiama through the [Multicultural NSW Stronger Together Fund](#). The grant provides up to \$250,000 for a single major event between February 2026 and February 2027, with a 25% Council co-contribution required.

Financial implication

Item	Amount
Grant request	\$150,000
Council co-contribution (25%)	\$37,500 (mix of in-kind support and balance from unallocated grant funds; otherwise, FY26/27 budget)
Total project budget	\$187,500
Estimated economic impact	\$936,000

Risk implication

No extraordinary risks have been identified.

Policy

- Kiama Visitor Economy Strategy (draft) 2026-2030:
- Creative Kiama Culture Plan 2025
- Community Strategic Plan

Consultation (internal)

- Tourism and Events team
- Community Development Coordinator
- Cultural Officer
- Library & Youth Services will be engaged through the application process and event execution.

Report of the Director Strategies and Communities

15.9 Grant opportunity: Multicultural NSW - Stronger Together Major Festivals Fund (cont)

Preliminary yarns with Council's Aboriginal Advisory Group and local Traditional Elders has also occurred.

In the absence of any scheduled Tourism & Economic Advisory Committee meetings, staff engaged directly with the endorsed Councillor representatives of the Committee on these funding requests. Councillor representatives confirmed acceptance of this proposal.

Communication/Community engagement

Community consultation and stakeholder engagement will be high with this project given its context. Many local business owners in proximity to the proposed event site have multicultural backgrounds and therefore will be engaged with heavily.

The event is expected to contribute positively to social capital, place activation, and community vibrancy.

Attachments

Nil

Enclosures

Nil

RECOMMENDATION

That Council:

1. Support an application for \$150,000 under the Multicultural NSW Stronger Together Fund.
2. Authorise use of unallocated funds from the Destination Event Funding and Community Grant budgets to cover the Council co-contribution, if insufficient include the amount within the 2026-27 Council budget, or reduce the scope of the proposed project to fit within available budget.

Background

Multicultural NSW provides funding of up to \$250,000 for councils to deliver major multicultural festivals that celebrate cultural diversity, strengthen social cohesion, and showcase NSW's multicultural identity. The program requires a minimum 25% co-contribution, partnerships with multicultural organisations, evidence-based outcomes measurement, accessible programming, and a minimum attendance of 10,000 people.

Council's Creative Kiama Culture Plan 2025 seeks to foster multicultural partnerships between artists, venues, and the broader community, promotes cultural safety, highlights First Nations culture, addresses concerns about limited financial support for the arts and are undervalued compared to other sectors.

It is proposed that Council apply for this funding to hold a 'Kiama Culture Fest' (either in May or August 2026) which aligns with the requirements of the grant program,

Report of the Director Strategies and Communities

15.9 Grant opportunity: Multicultural NSW - Stronger Together Major Festivals Fund (cont)

Creative Kiama Culture Plan 2025 and the broader Community Strategic Plan objective to encourage social cohesion, community vibrancy, and inclusive participation.

Proposed Event – Kiama Culture Fest

It is proposed that the event will be held in May or August 2026 (weekend program) and will primarily be located in Hindmarsh Park, Old Fire Station, Joyce Wheatley Centre, and surrounding venues.

The program will include live performances on the Orry Kelly Stage, hands-on workshops at the Joyce Wheatley Centre, culinary experiences highlighting diverse cultural cuisines, and interactive activities across Hindmarsh Park and surrounding venues, including alley activations and after-hours programs at local businesses.

The grant requires attendance of over 10,000 people over the duration of the event.

The requirements of the grant include meaningful engagement with multi-cultural and First Nations groups to deliver a high-quality festival. Over the years, Council's events team has developed strong relationships with local cultural organisations, however many are not-for-profit and rely on external support to participate.

Delivering authentic performances, workshops and cultural displays often involves significant costs for costumes, equipment and artist fees. A sufficient budget is therefore essential to ensure the inaugural Kiama Culture Fest is a success, meets the grant's KPIs and effectively introduces and celebrates diverse cultures within the Kiama community.

The event will showcase local Aboriginal culture, celebrate underrepresented multicultural communities, and provide family-friendly, accessible experiences.

The event aims to boost low-season accommodation, enrich the regional events calendar, and deliver Strategic Plan outcomes across Tourism, Culture, Community & Libraries. It is envisaged that the event will be held over a weekend and will be similar in nature to the Wollongong Culture Mix. To ensure uniqueness of the Kiama Culture Fest, the event will be located in Hindmarsh Park, Terralong Street and surrounds and will include activities across multiple Kiama hub locations such as the Old Fire Station, Joyce Wheatley and the Kiama Library.

The event will look to celebrate Kiama's growing cultural diversity with free performances, workshops, live music, food, art, handicrafts and language activities.

Funding Sources

Based on the cost of holding the Kiama Winter Festival, it is proposed that Council apply for \$150,000, minimising the total Council co-contribution to \$37,500. It is suggested that these funds be either appropriated from any unallocated Destination Event funding, or be included in the 2026/27 Budget, or the overall scope of the project reduced to fit the available budget. This will determine if the event will be held in May or August 2026.

Independent REMPLAN modelling estimates a direct economic impact of approximately \$936,000, generated through visitor spending, local procurement, accommodation, and increased foot traffic to surrounding businesses.

Report of the Director Strategies and Communities

15.9 Grant opportunity: Multicultural NSW - Stronger Together Major Festivals Fund (cont)

Estimated event economic impact, REMPLAN forecast modelling:

Tourism Impact Summary Report for Kiama LGA (Tourism Activity: 2 days)

Tourism Impact Scenario

Name	Kiama Culture Fest
Duration	2 days

Direct Impact	Domestic Day	Domestic Overnight	International	Total
Number of Visitors	9,000	1,000	10	10,010
Number of Nights	n/a	1.00	3.00	
Estimated Expenditure per Visitor per Day (\$)	\$87	\$152	\$61	
Total Estimated Expenditure (\$)	\$783,000	\$152,000	\$1,830	\$936,830

Conclusion

It is recommended that Council apply for this grant as an opportunity to showcase local Aboriginal culture, celebrate underrepresented multicultural communities, and to celebrate Kiama's growing cultural.

15.10 Submission - Rezoning Proposal - Kiama Depot

- CSP Objective: Outcome 3.3: We love where we live and are strongly connected within our region. Growth and development will be managed sustainably, thoughtfully and equitably, while preserving our built and natural heritage.
- CSP Strategy: 3.3.2 Manage development and growth sustainably and thoughtfully.
- Delivery Program: 3.3.2.1 Council meets the legislative requirements for Planning and Assessment.

Item 15.10

Summary

This report recommends that Council endorse a submission prepared by Council's Planning staff to the NSW Department of Planning, Housing and Infrastructure (DPHI) on the Rezoning Proposal for the Kiama Depot (Shoalhaven Street Precinct) site.

The Rezoning Proposal seeks to amend the *Kiama Local Environmental Plan 2011* (LEP) and rezone the site from E4 General Industry to R3 Medium Density Residential which would support new housing opportunities.

Council's strategic planning team have reviewed the proposal and have prepared a draft submission to the DPHI (see Enclosure 1). An extension to the 3 December 2025 deadline was agreed by DPHI to enable this submission to be tabled at this Council meeting for endorsement by Council.

Financial implication

There are no direct financial implications associated with lodging the submission.

The outcome of the rezoning proposal will have financial implications to Council as Council is the landowner of the site subject to the rezoning proposal.

Risk implication

It is important to recognise that this rezoning proposal is a joint project between Council's commercial and property team (with input from nominated Planning Staff) and DPHI. From a probity perspective it is also important that Council's Planning Staff undertake a robust planning assessment, and that any relevant issues and comments are made and forwarded to the determining authority for their consideration.

It is noted that Council is not the determining authority for this rezoning proposal. All feedback from the community and Council will be assessed by DPHI and determined by the NSW Minister for Planning and Public Spaces.

Policy

The following were considered when preparing the submission:

- *Environmental Planning and Assessment Act 1979.*
- Council's Local Housing Strategy 2025.
- Council's Draft Employment Lands Strategy.
- DPHI Rezoning Guideline.

Consultation (internal)

The draft submission was prepared by Council's Strategic Planning team.

Advice was sought from Council's Heritage Advisor in relation to the heritage matters.

Communication/Community engagement

The public exhibition of the Rezoning Planning Proposal was carried out by DPHI. This included a number of community information sessions. The exhibition period ended on 3 December 2025. An extension of time was granted to Council from DPHI to enable this submission to be put to Council for endorsement prior to lodgement.

Attachments

Nil

Enclosures

- 1 Draft submission on Kiama Depot rezoning proposal [🔗](#)

RECOMMENDATION

That Council:

1. Endorse the submission to the Department of Planning, Housing and Infrastructure in response to the Rezoning Proposal – Kiama Depot (Enclosure 1) and forward it to Department of Planning, Housing and Infrastructure.
2. Note that the CEO and delegated staff will continue to engage with Department of Planning, Housing and Infrastructure in relation to the proposal and will advise Council once any rezoning decision is made.
3. After any decision on the rezoning made by the NSW State Government, the CEO will provide a report to a future Council meeting that will outline the process and next steps, alongside the proposed Council led community engagement process to arrive at suitable site-specific development controls for the site.

Background

The Department of Planning, Housing and Infrastructure (DPHI) is proposing an amendment to the *Kiama Local Environmental Plan 2011* (LEP) to rezone an area of land which includes the Kiama Depot site for residential development. The application is seeking to enable this change as it would support new housing opportunities in Kiama

The site, comprising three (3) lots at 5 Belvedere Street and 105-109 and 113 Shoalhaven Street, Kiama (Lots 101, 102, 103 DP 775450 Lot 2 DP 594528), is located approximately 350m from Kiama Railway Station and 500m from Kiama Town Centre.



Figure 1: Site location

The proposal seeks to enable the delivery of approximately 450 new homes to address the housing demand and need in Kiama through the rezoning of the site to R3 Medium Density Residential, the increase in maximum height of buildings from 11m to between 22 and 30m and increase the permissible floor space ratio (FSR) from 0.9:1 to 2.1:1.

It is acknowledged that materials shared by DPHI as part of the various community pop-ups caused concerns and confusion within the community. Images shown on the DPHI materials are indicative only and should not be viewed as final designs for the site.

Council and the community also recently worked on reviewing the height controls for the Kiama Town Centre and six storey buildings are now permissible in key areas of the town centre. It is noted that there are existing five and six-storey buildings at both Blue Haven Bonaira and Blue Haven Terralong.

Additionally, the proposed development standards are generally consistent with what is now permissible under the NSW Government's Low- & Mid-Rise Reforms. These reforms apply to residential areas within 800m of the Kiama Town Centre and Train Station. These reforms make six-storey developments permissible on any R3 Medium Density zoned land within 400m of the Town Centre or Train Station and four-storey developments permissible on any R3 zoned land within 800m. Much of the existing R3 zoned lands within Kiama (i.e. Barney, Brown, Bourrool, Farmer, Manning, Mears, Thomson, Terralong, and Shoalhaven Streets) are located within 800m of the Town Centre or Train Station. These reforms now establish the new density controls for Kiama. Acknowledging this, Council's adopted Local Housing Strategy contains an action to review R3 zoned areas within Kiama and Gerringong to consider further appropriate application of these reforms.

Following an assessment of the exhibition material available, Council staff have prepared a draft submission (Enclosure 1). Key items raised in the submission include:

- The proposal has Strategic Merit as the site has been identified in the recently endorsed Kiama Housing Strategy as a catalyst site that may be a suitable location for future housing. Its proximity to the Town centre and Train Station is

Report of the Director Strategies and Communities

15.10 Submission - Rezoning Proposal - Kiama Depot (cont)

attributes that will benefit future residents and provide the opportunity to create liveable, walkable and diverse housing within Kiama

- More detailed assessment of matters such as Flooding, Contamination and Heritage which are normally required for a rezoning (when assessed in accordance with the Local Planning Ministerial Directions by Council) should be undertaken to ensure certainty of suitability of the site for future development as proposed by the rezoning.
- A Heritage Impact Assessment is required to determine the suitability of the removal of the heritage Items as well as the removal of the site from the Heritage Conservation Area (HCA). The proposed removal of the site from the HCA is of particular concern to Council.
- The mechanism proposed to ensure the provision of the nominated percentage of affordable dwellings has not been included in the proposal. This should be specified and any proposed changes to the LEP included.
- Opportunities to facilitate local employment and services on the site.
- That a site-specific DCP be prepared which reduces building heights at site boundaries to better integrate future development into the HCA.
- A robust assessment of all non-negotiables listed in the adopted Local Housing Strategy as well as the constraints of the site ought to be undertaken prior to the designation of Planning Controls such as Zone, Height and Floor Space Ratio.

Conclusion

It is recommended that the draft staff submission be endorsed by Council and forwarded to DPHI for their consideration.

Item 15.10