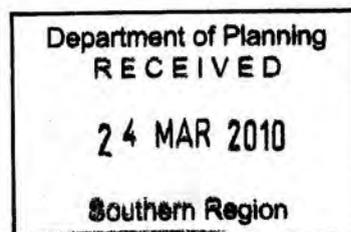




23 March 2010

The Director General  
Department of Planning  
C/- Southern Region Office  
P O Box 5475  
WOLLONGONG NSW 2520



Dear Sir

### Planning proposal for a s.73A zone map amendment

At its meeting of 16 February 2010, Council resolved to request the Minister for Planning to make a minor zone map amendment for land in Churchill Street and Tate Place Jamberoo under s.73A of the EP&A Act.

The zone map error occurred as a result of the gazettal of Kiama LEP 1996 (Amendment 61) on 19 December 2008. Amendment 61 introduced a new set of coloured zone maps (generated from Council's GIS) and these maps replaced outdated hard copy zone maps. In the new zone maps for this area, the position of a 2(a) Residential A zone boundary does not co-incide exactly with the zone boundary on the previous hard copy zone maps.

While the zone map error is very minor in extent it has resulted in 5 new residential lots being zoned partly 2(a) Residential A and partly 7(d) Rural Environmental Protection (Scenic). This has caused some legal difficulties in the transfer of affected lots and some uncertainties for new buyers. The split zoning of the 5 lots also prevents the erection of dwelling houses as complying development.

Council has consulted with the Southern Regional Office on this matter. Council was advised to formalise a request to the Director General in accordance with guidelines in Section 4.9 of the *Guide to Preparing Local Environmental Plans*.

A short report, covering matters referred to in Section 4.1 of the Guide is attached and explains the reasons why Council considers the matter can be dealt with under s.73A.

Council's report recommends that the Minister give consideration to the matter and advise which parts of the Part 3 process can be dispensed with in making the requested minor amendment to the Kiama LEP 1996 zone maps.

A recommended *Section 73A Zone Map Amendment* is included in Council's attached report. This map shows the subject land and the extent to which Map Sheet 1 and Map Sheet 3 of the Kiama LEP 1996 zone maps require amendment.

ALL CORRESPONDENCE

GENERAL MANAGER

PO BOX 75

KIAMA NSW 2533

ADMINISTRATION

CENTRE

1 MANNING STREET

KIAMA NSW 2533

CONTACTS

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www: [www.kiama.nsw.gov.au](http://www.kiama.nsw.gov.au)

ABN: 22 379 679 108

S.73A of the Act provides that an amending environmental planning instrument may be made under Part 3 without compliance with the provisions of this Part.

S.73A (1)(c) indicates that s.73A may apply to matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.

S.73A (2) indicates that an amendment of an instrument includes a reference to the amendment or replacement of a map adopted by an instrument.

For the reasons explained in the attached report, Council requests that the Minister support the requested amendment of the Kiama LEP 1996 zone maps in the manner shown in the map titled *Section 73A – Zone Map Amendment* included in the attached Council report titled *Planning Proposal under S.73A – Zone Map Amendment*.

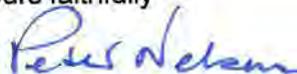
An alternative option is raised in the report but it does not appear to be within the powers of the Act as no provision is made for routine LEP planning map maintenance. However, if the Director General considers the power does exist to amend zoning maps under routine GIS map maintenance procedures, then this option would overcome the need for the s.73A amendment. In these circumstances, the proposed zone map amendments could be justified on the basis that it constitutes a routine GIS map maintenance procedure to ensure cadastral and planning maps remained aligned in accordance with the general zoning intent of the LEP. Council would then amend the maps as proposed and post the revised zone maps on its website.

A separate report is in preparation and will be submitted soon to the Department drawing attention this Council's recent experience with zoning anomalies arising from GIS cadastral revision by the LPMA and how this can cause zoning anomalies. It is considered that other Councils who rely on GIS mapping systems to zone land will be experiencing similar anomalies. What is uncertain is the extent to which Councils modify their zone maps to align with revised cadastral. The issues raised in that report will have State wide implications for all LEPs and in particular the new Standard LEPs that are fixed in time as static pdf maps on the Legislation website.

The Director General is requested to advise how remedying the identified zoning anomaly can best be carried out under Part 3 of the Act. Council seeks a speedy process to minimise the impact on affected landowners.

One option would appear to be the gazettal of an appropriate Notice in the NSW Government Gazette to incorporate the minor zone map amendments shown in the map titled *Section 73A – Zone Map Amendment* to effect amendment of Kiama LEP 1996 Map Sheets 1 and 3. The second option, if available, would be for Council to be advised it can simply amend the Kiama LEP zone maps and post them on the website.

Yours faithfully



Peter Nelson  
**Manager Strategic Planning**

# **Kiama Local Environmental Plan 1996**

## **Planning proposal under s.73A**

**Zone map amendment - Jamberoo**

## Objective

The objective of this planning proposal is to rectify an unintended zone map error detected since the gazettal of Kiama LEP 1996 (Amendment No. 61).

## Explanation of Provisions

An amendment of the Kiama LEP 1996 zone map under section 73A of the *Environmental Planning and Assessment Act* is requested to overcome a minor zone boundary error arising from the introduction of new zone maps by Kiama LEP 1996 (Amendment 61).

The subject land comprises parts of Lots 102, 103, 104 (Nos 94, 96, 98) DP 1142495 Churchill Street and parts of Lots 105 and 109 (Nos 9 & 9A) DP 1142495 Tate Place Jamberoo. The zoning of a small wedge shaped part of adjoining and much larger rural lot - Lot 2 DP1120419 - that is zoned 2(a) Residential A zoning is also proposed to be amended to 7(d) Rural Environmental Protection (Scenic) for reasons explained later in the report.

An amending zone map titled *Section 73A – Zone Map Amendment* is attached for the purposes of identifying the subject land affected by this planning proposal and the recommended 2(a) Residential A and 7(d) Rural Environmental Protection (Scenic) zoning proposed to be applied to the subject land.

Kiama LEP 1996 zone Map Sheets 1 and 3 will both need to be amended as the subject land is shown on both Map Sheets.

## Justification

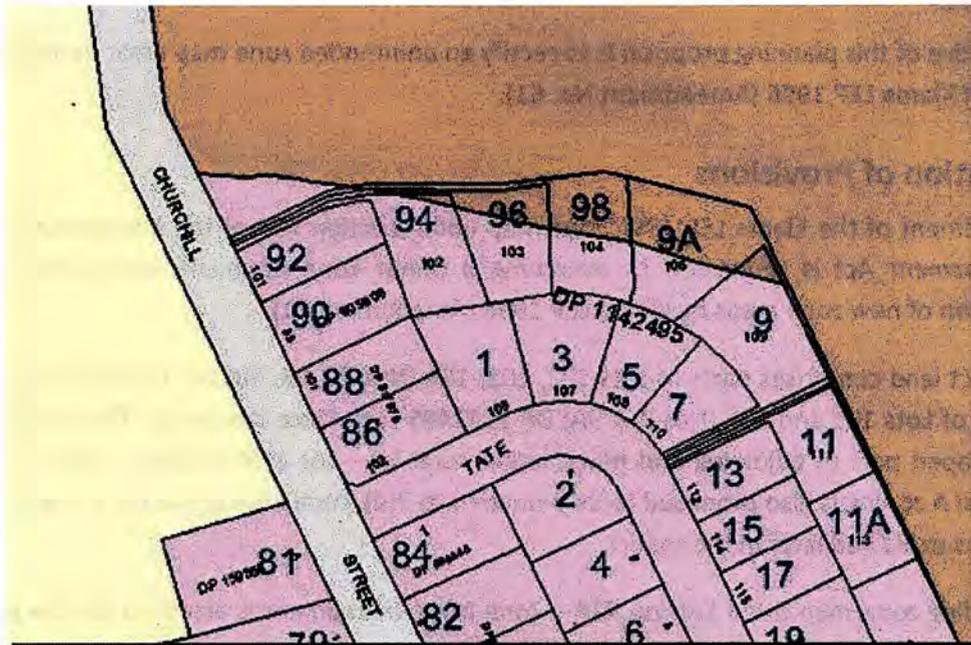
### NEED FOR THE PLANNING PROPOSAL

The zone map error occurred in replacing the original black and white series of hard copy Kiama LEP 1996 zone maps with new GIS generated colour zone maps introduced by the gazettal of Kiama LEP 1996 (Amendment No 61) on 19 December 2008.

The zoning error was discovered as a result of a Section 149 planning certificate application. The zoning error affects 5 new residential lots in a recently registered residential subdivision on the northern boundary of the town of Jamberoo.

The 5 affected residential lots are partly zoned 2(a) Residential A and 7(d) Rural Environmental Protection (Scenic) as shown in Figure 1 whereas they should have been zoned wholly 2(a) Residential A.

The 5 residential lots were created by a residential subdivision [DA 10.2006.312] comprising 15 lots granted consent by Council on 5 April 2007. At the time consent was granted, the Kiama LEP 1996 zone maps comprised a series of black and white hard copy (fixed scale) maps. The hard copy zone map applying to Jamberoo clearly indicated that the land south of an un-named creek just north of the town boundaries was zoned 2(a) Residential A.



**FIGURE 1 – AFFECTED LOTS IN CHURCHILL STREET AND TATE PLACE JAMBEROO**

Attached to this report are copies of:

- a zone map extract from the original black and white Kiama LEP 1996 zone map showing the location of the 2(a) Residential A zone boundary in context with the unnamed creek,
- the current zoning of the subject land viewed in context with surrounding nearby land,
- the registered plan of subdivision DP 1142495 which also shows the location of the unnamed creek, and
- an aerial photo showing the new lot boundaries in relation to the unnamed creek as reproduced by Council's GIS.

Between the granting of consent for the subdivision on 5 April 2007 and the registration of DP 1142495 on 3 September 2009, the Minister gazetted Kiama LEP 1996 (Amendment No. 61) on 19 December 2008. Amendment 61 included a new coloured set of zone maps to replace the outdated black and white hard copy zone maps covering the whole of the Kiama local area. Map Sheet 1 covers the whole of the Kiama local area while Map Sheet 3 covers urban areas including the town of Jamberoo at a larger scale.

The new electronically produced zone maps were prepared using GIS technology. This is more precise than former hand drafting methodology used to prepare the original hard copy zone maps. GIS maps use geographic co-ordinates to more accurately plot both cadastral maps (including revised cadastral updates) and LEP zone overlays. Furthermore, they enable new registered subdivisions to be directly incorporated electronically from cadastral mapping supplied to Councils by the Land and Property Management Authority (LPMA).

Because the new zone maps adopted by Amendment No 61 did not show the subdivision pattern of DP1142495, the misalignment of the zone boundary went undetected until after the registration and

incorporation of the subdivision DP1142495 into the Council's GIS. The error became problematic as a result of a s.149 planning certificate application lodged for one of the 5 subject residential lots in January 2010. It then became apparent to planning staff that the rear portions of the 5 northernmost residential lots were partly within the 7(d) Rural Environmental Protection (Scenic) zone as shown in Figure 1.

It is possible that the zone map error has been caused by changes in the base map cadastre arising from the registration of DP 1142495. Under the new GIS technology now employed to electronically produce LEP maps, it has been found on a number of occasions recently that the LPMA has periodically revised cadastral base maps and updates. These are imported electronically into Council's GIS and then adjustments made in Council's local cadastral mapping to achieve a best fit for new subdivision into the Council's GIS cadastre. At this stage, Council has not adopted the State cadastre offered by the LPMA because to do so would require significant work to realign all other GIS map data (overlays) to align with the new State cadastre. These LPMA map revisions can result from a single subdivision and may affect the cadastral boundaries of other land beyond the subdivision site. If this occurs, then it becomes necessary to consider also revising the alignment of any zoning and other LEP mapping overlays to coincide with the revised cadastre for the locality. There is no provision in the Act for doing this.

However, there is no uncertainty about the zoning of the subject land at the time consent was granted to the subdivision subsequently registered as DP1142495. Therefore it is considered reasonable in the circumstances that a planning proposal under Section 73A of the Act is the best means of remedying this unintended and minor zone map error in the absence of other legal remedies.

Alternatively, and subject to powers existing under the Act enabling LEP planning maps to be amended for routine GIS map maintenance purposes, a simpler remedy would be for Council to simply amend the zone maps in the manner proposed in this report. This could be justified by routine map maintenance procedures aimed at maintaining the alignment of GIS cadastral and planning map layers in general accordance with the intent of Kiama LEP 1996 as made in 1996.

While the zoning error does not preclude the sale of the subject residential lots or the erection of houses on them (provided that buildings are located within the residential zoned portion of a lot), it nonetheless has created some legal complications and uncertainties for the principal land owner (ie, the subdivider) and prospective purchasers. From Figure 1, it can be seen that Lot 102 and Lot 109 are affected in a very minor way while Lots 103, 104 and 105 are more significantly affected.

Though dwelling houses can still be erected on all lots with development consent it may be necessary in some cases for applicants to rely on SEPP No 1 *Development Standards* if buildings are required to encroach with that portion of a lot zoned 7(d) Rural Environmental Protection (Scenic). This is not desirable and may place unnecessary burdens and restrictions on the future owners of the subject lots. The split zoning of the 5 subject residential lots also prevents dwelling houses being approved as complying development under SEPP (Exempt and Complying Development) 2008 and the NSW Housing Code.

Council considered a report on this matter at its meeting held on 16 February 2010. Council resolved to request that the Minister for Planning approve an amendment to the Kiama LEP 1996 zone maps applying to the subject land under Section 73 A of the Act to overcome the minor and unintended zone boundary error. A copy of Council's report and minute are attached to this report.

#### **RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK**

The proposal is consistent with the Kiama LEP 1996 aims and objectives and 2(a) Residential A zoning, as originally applied to the subject land under the Plan when gazetted in 1996.

The proposal will also enable dwelling houses to be constructed on the affected lots as complying development under SEPP (Exempt and Complying Development) 2008 and the NSW Housing Code.

The proposal is consistent with the Ministerial Directions set out in section 117 of the *Environmental Planning and Assessment Act*, including those under Environmental Protection Zones and Residential Zones because the subject land was originally zoned 2(a) Residential A prior to Amendment 61.

#### **ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT**

The proposal will restore the 2(a) Residential A zoning wholly over the 5 affected subject residential lots and therefore restore the previously held economic development rights and opportunities conferred by the 2(a) Residential A zone and unhindered by the partial 7(d) Rural Environmental Protection (Scenic) zoning. The proposal will therefore overcome any economic hardship and uncertainty being experienced by the affected residential land owners and avoid future uncertainties in the transfer of the lots, and the conveyancing and development approval processes generally.

The proposal will not have any adverse social impacts as it merely seeks to restore the residential zoning of the subject land.

The proposal will have no adverse environmental impacts because the 7(d) Rural Environmental Protection (Scenic) zone boundary will be shifted a short distance to re-align with the intent of the new DP 1142495 subdivision cadastral boundaries and in general accord with the original zoning under Kiama LEP 1996 as adopted on 19 July 1996.

The natural environment of adjoining land to the immediate north continues to be protected by the 7(d) Rural Environmental Protection (Scenic) zone and associated provisions in KLEP 1996.

This proposal recommends that the northern lot boundaries of the 5 subject residential lots should now define the residential zone boundary for the subject land rather than the creek. This will prevent a narrow flood prone wedge-shaped portion of Lot 2 DP 1120419, located between the creek and the 5 subject residential lots in DP 1142495, being left zoned 2(a) Residential A. This land was excluded from subdivision due to constraints affecting it. Lot 2 is in the same ownership as the unsold residential Lots in DP 1142495 and is:

- affected by easements created by the registration of DP 1142495, and
- affected by embankments for the access handle of Lots 102, 103 and 104 which encroach within Lot 2,

- significantly affected by riparian corridor restoration along the southern side of the unnamed creek (former zone boundary) that is a requirement of conditions of consent for subdivision DP1142495, and
- as a result of subdivision DP1142495 and associated subdivision works, that part zoned 2(a) Residential A now lies wholly within the 1% flood line making this land unsuitable for residential development.

This would mean that south western extremity of Lot 2 should be zoned 7(d) Rural Environmental Protection (Scenic) consistent with the zoning of the remainder of that Lot on the northern side of the creek as shown in the attached map titled – *Section 73A – Zone Map Amendment*. This would create a more clearly definable, stable and conventionally acceptable town and zone boundary given the meandering alignment of the creek whose course is prone to change over time.

#### **STATE AND COMMONWEALTH INTERESTS**

There are no known State or Commonwealth interests affected by the proposal.

Public infrastructure for the planning proposal is considered adequate and was addressed in the development application that granted consent to the subdivision now registered as DP 1142495.

#### **Community Consultation**

Further community consultation is not considered necessary in connection with this proposal due to the minor nature of the proposal and the circumstances of the case.

Council has kept the principal landowner's Solicitors fully informed as indicated in Council's report (attached). The Solicitors have acknowledged that Council has taken prompt action to seek a resolution of the zoning and informed their clients of Council's proposed remedy by use of s.73A. Both the Solicitors and their client support the proposed use of s73A of the Act as a remedy and aligning the zone boundary along the northern boundary of residential lots 102, 103, 104 and 106 in DP 1142495.

#### **Recommendation**

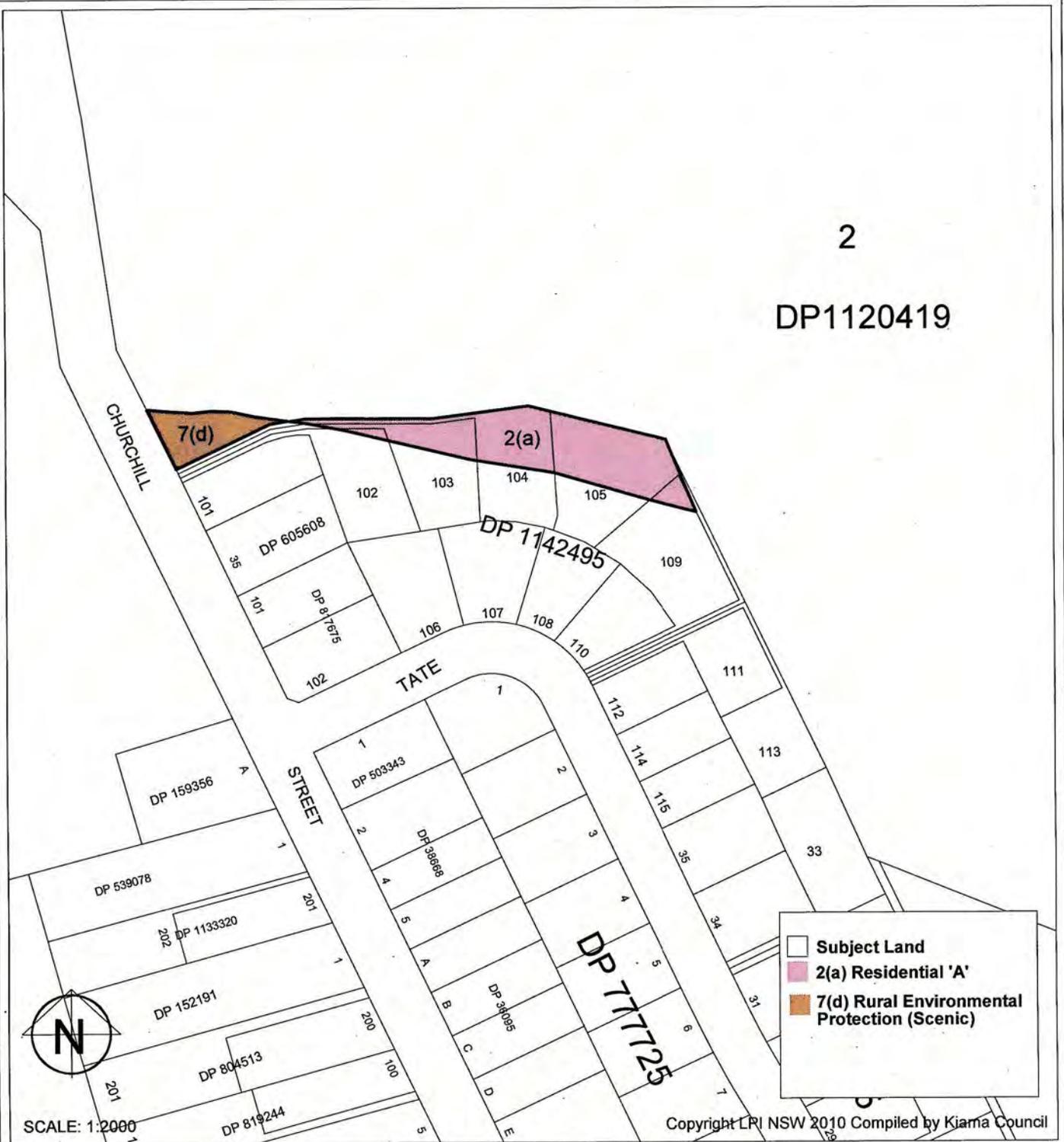
This planning proposal deals with an unintentional minor zoning error arising from the gazettal of Kiama LEP 1996 (Amendment No 61) that introduced new local area wide zone maps prepared using GIS technology.

In Council's opinion, the planning proposal to rectify the zoning error will not have a significant adverse impact on the environment or on adjoining land. The proposed amendment will result in a more appropriate zone boundary aligned with the northern boundaries of lots within the residential subdivision registered as DP 1142495.

Council recommends that the Minister approve this planning proposal under the provisions of s73A of the Act for reasons explained in the report unless he, or the Director General, consider that Council could more easily overcome the zoning anomaly by simple GIS zone map maintenance procedures and replacing the affected Map Sheets 1 and 3 on Council's website.

The attached map titled: *Section 73A – Kiama LEP 1996 - Zone Map Amendment* shows the land within the 5 residential lots that is proposed to be rezoned from 7(d) Rural Environmental Protection (Scenic) to 2(a) Residential A and a small part of Lot 2 DP 1120419 that is proposed to be rezoned from 2(a) Residential A to 7(d) Rural Environmental Protection (Scenic).

If the Minister is supportive of the proposal, and to minimise hardship on the affected land owners, Council requests that an efficient administrative process be employed to amend the zoning of the subject land in the manner shown in the map titled: *Section 73A – Kiama LEP 1996 - Zone Map Amendment*.



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

# KIAMA LOCAL ENVIRONMENTAL PLAN 1996 Section 73A - Zone Map Amendment

DRAWN BY: V Armstrong      DATE: 18/03/10

PLANNING OFFICER: P Nelson

COUNCIL FILE No.    LEP.025.061

DEPT. FILE No.

GOVERNMENT GAZETTE DATE:

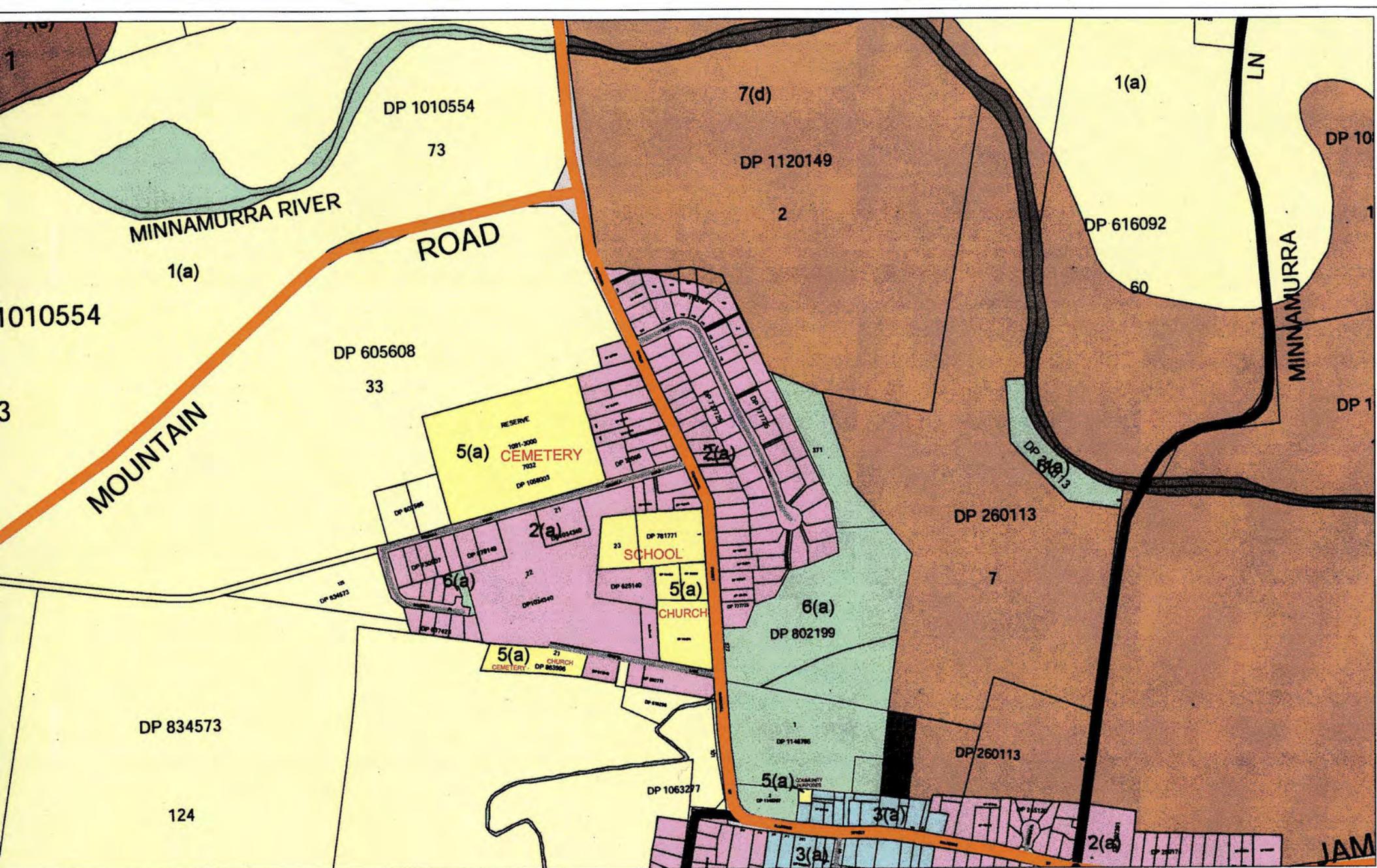
STATEMENT OF RELATIONSHIP WITH OTHER PLANS

AMENDS KIAMA LOCAL ENVIRONMENTAL PLAN 1996

CERTIFIED IN ACCORDANCE  
WITH THE ENVIRONMENTAL  
PLANNING & ASSESSMENT ACT  
1979, AND REGULATIONS

per: GENERAL MANAGER      DATE





# KLEP 1996 Current Zoning

Copyright LPI NSW 2007 Compiled by Kiama Council

Date: 23/03/10

Scale: 1:7800

This map is supplied by Council on condition that Council will not be responsible for any loss or damage which may result from any use made of the map as a result of any errors or omissions contained in the map. To establish title boundaries and ownership advice should be obtained from a surveyor, legal advisor or LPI New South Wales.

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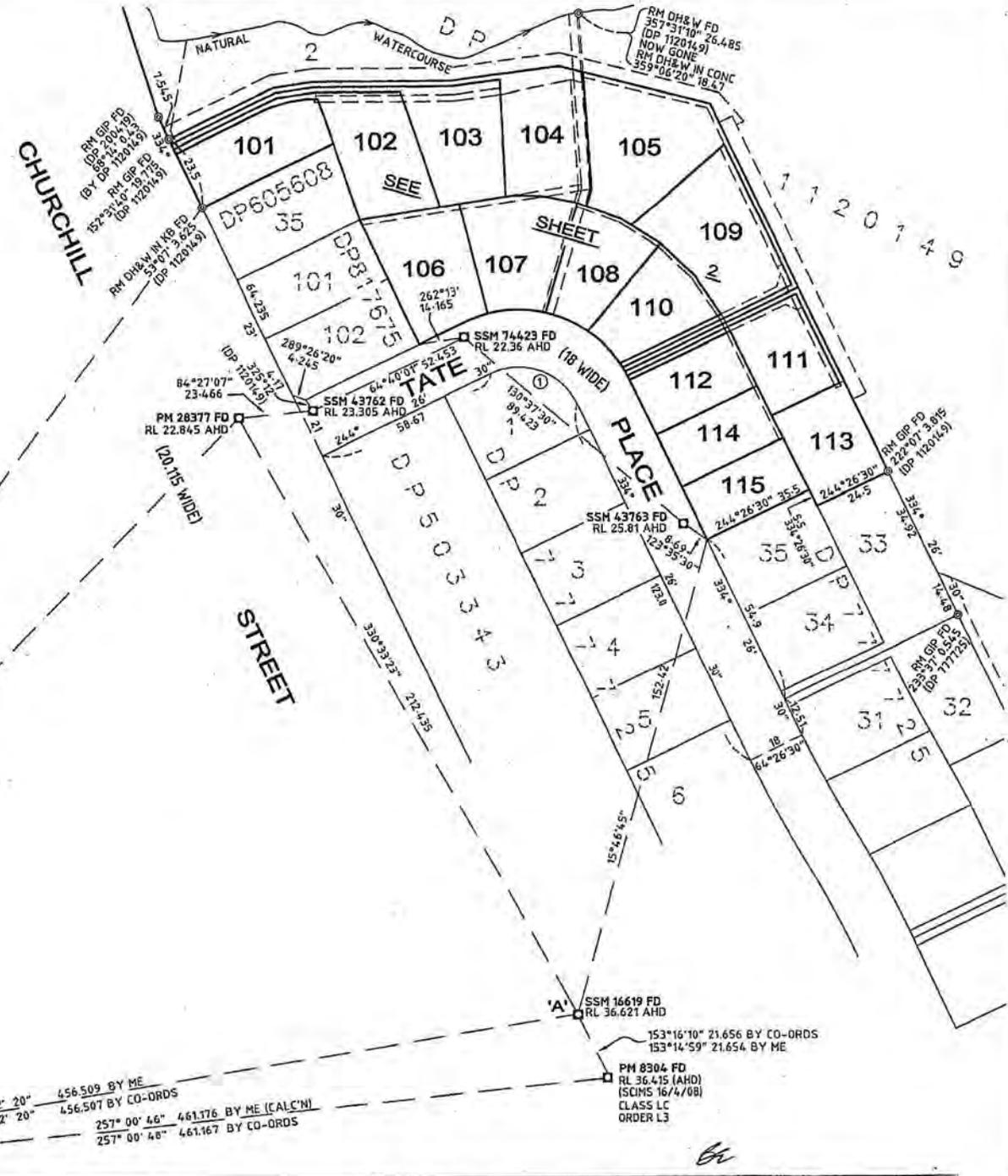
SURVEYING REGULATION 2006 : CLAUSE 35(1)(b) AND CLAUSE 61(2)

MARK	M.G.A. CO-ORDINATES		ZONE	ACCURACY		METHOD	ORIGIN
	EASTING	NORTHING		CLASS	ORDER		
TS 5898 (JAMBEROO) (P)	289 724.348	6162 951.857	56	A	1	N/A	SCIMS
PM 8304	295 965.311	6164 236.136	56	B	2	N/A	SCIMS
SSM 16619	295 955.569	6164 255.480	56	B	2	N/A	SCIMS
SSM 74447	295 515.890	6164 132.489	56	A	1	N/A	SCIMS
PM 28377	295 851.131	6164 440.497	56	C	N/A	CADASTRAL TRAVERSE	DP 1120149
SSM 43762	295 874.490	6164 442.766	56	C	N/A	CADASTRAL TRAVERSE	DP 1120149
SSM 43763	295 989.782	6164 406.981	56	C	N/A	CADASTRAL TRAVERSE	DP 1120149
SSM 74423	295 921.903	6164 465.212	56	C	N/A	CADASTRAL TRAVERSE	DP 1120149

SOURCE: M.G.A. CO-ORDINATES ADOPTED FROM DEPARTMENT OF LANDS (S.C.I.M.S.) AS AT 15/4/2008  
COMBINED SEA LEVEL/SCALE CORRECTION 1.000110

SCHEDULE OF CURVED BOUNDARIES			
No.	CHORD	ARC	RADIUS
1	289°26'30" 28-285	31-415	20'

M.G.A. GRID NORTH



TO TS 5898  
258°28'41"  
GRID BEARING BY CO-ORDS  
& BY ME  
SSM 74447 FD

254° 22' 20" 456.509 BY ME  
254° 22' 20" 456.507 BY CO-ORDS  
257° 00' 46" 461.176 BY ME (CALC'N)  
257° 00' 46" 461.167 BY CO-ORDS

'A'  
SSM 16619 FD  
RL 36.621 AHD  
PM 8304 FD  
RL 36.415 (AHD)  
(SCIMS 16/4/08)  
CLASS LC  
ORDER L3

Surveyor : Stephen Leslie Thomas  
Date of Survey : 9/5/08  
Surveyor's Ref : 24640/245/21

PLAN OF  
SUBDIVISION OF LOT 1 DP 1120149  
& EASEMENTS WITHIN LOT 2 DP 1120149

LGA : KIAMA  
Locality : JAMBEROO  
Subdivision No : 14/2009

Registered  
3-9-2009

DP1142495 P



Copyright LPI NSW 2007 Compiled by Kiama Council

Date: 19/01/10

Scale: 1:4600

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# EXTRACT REPORT OF THE DIRECTOR OF ENVIRONMENTAL SERVICES

Submitted to the Ordinary Meeting  
of Council held on 16 February 2010

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## 6. Kiama LEP Amendment No 61 (LEP.025.061 & PR.121123) Zone Map Error

### Summary

This report recommends that a minor zone mapping error which affects a new residential subdivision in Tate Place Jamberoo be overcome by seeking the approval of the Minister for Planning to use new powers under section 73A of the Environmental Planning and Assessment Act.

### Finance

Nil

### Policy

Nil

### Reason for the Report

To rectify an unintended zone map error detected since the gazettal of Kiama LEP 1996 (Amendment No. 61)

### Council's Vision and Goals

The proposal is generally consistent with Council's goals of achieving a sustainable environment and to control and plan development of our built environment for the well being of the community.

### Report Attachments and Councillor Enclosures

- Attachments – 1 map
- Enclosures - 3 maps

### **RECOMMENDATION**

That the Minister for Planning be requested to approve an amendment to the Kiama LEP 1996 zone map under Section 73 A of the Environmental Planning and Assessment Act to overcome a minor zone boundary error that occurred in replacing the repealed black and white series of hard copy zone maps with new electronic colour zone maps enabled by the gazettal of Kiama LEP 1996 Amendment No 61.

### **REPORT**

As a result of a recent Section 149 Planning Certificate application, it has been discovered that 5 new lots in a residential subdivision in Jamberoo have inadvertently been partly zoned 2(a) Residential A and 7(d) Rural Environmental Protection (Scenic).

The five lots affected are Lots 102, 103, 104 (Nos 94, 96, 98) DP 1142495 Churchill Street and Lots 105 and 109 (Nos 9 & 9A) DP1142495 Tate Place Jamberoo and these lots are shown in the attached map.

**Item 6 Contd.**

The lots were created by a subdivision granted consent by Council at a time when the former black and white hard copy (fixed scale) zone maps were in force. Under the previous zone B&W map the whole of the unsubdivided land containing the 5 subject lots was zoned 2(a) Residential A zone. Such zoning that extended to a creek to the immediate north of the affected lots. Copies of the former B&W zone map (extract) and an aerial photo showing the new lot boundaries in relation to the creek are enclosed in Councillors' envelopes.

During the time between the granting of consent and the registration of the subdivision creating DP 1142495, the Minister gazetted Kiama LEP Amendment No. 61 which substituted a new electronic set of coloured zoning maps for the black and white series. The new zone maps are prepared using GIS technology which uses geographic co-ordinates to plot cadastral detail and zone boundaries. In the absence of a geographically registered subdivision and the boundaries of the new lots the zone boundary line separating the 2(a) zoned land from the 7(d) zoned land was inadvertently placed in the wrong location. This has resulted in the rear of 5 residential lots being incorrectly zoned 7(d) rather than 2(a). This can be observed in the attached map (a coloured copy also provided in Councillors envelopes) which shows the recently registered subdivision property boundaries overlaid over the new coloured zone layer.

The error was promptly advised to the Solicitors (RMB Lawyers) who prepared the sale contracts for the landowner. The matter was also discussed with Council's Solicitor.

It has since been brought to Council's attention by RMB that one lot has already been sold and others are at various stages of the conveyancing with offers made and settlement action pending in some cases quite soon. However, the Solicitors involved have acknowledged Council's speedy alert to the dual zoning and potential implications and that Council staff have taken initiative and swift action to attempt to rectify the problem as soon as possible. It is understood RMB has given advice to relevant clients and that this information will be passed on to purchasers and other interested parties. The Solicitors and the principal client landowner also support the action proposed in this report to remedy the situation.

While the zone map error is an unfortunate outcome it is a minor error. Fortunately it does not preclude the sale of lots or the erection of houses on them especially if houses are located on the part zoned Res 2(a). While two lots (Lot 102 and Lot 109) are affected in a very minor way, the remaining Lots 103, 104 and 105 (the lot sold) are more significantly affected.

Despite the error, houses can still be erected on all lots with development consent but if house structures require siting on the 7(d) zoned portion then the applicant would need to seek a SEPP No 1 development standard variation. In the circumstances of the case, such action by an applicant would be justifiable and reasonable and it would not be unreasonable for a consent authority (acting reasonably) to support such an application relying on a SEPP No 1 variation. The split zoning of all lots though will prevent houses being constructed as complying development under the State Housing Code as a result of part of the land being zoned 7(d).

**Item 6 Contd.**

To remedy the situation, it is proposed that Council request the Minister for Planning to exercise his powers under a new section of the Environmental Planning and Assessment Act. Section 73A was recently inserted as part of planning reforms affecting plan making provisions of Part 3 of the Act. Section 73A enables the Minister to approve minor amendments to LEPs to overcome minor errors including map errors. Section 73A is reproduced below:

**73A Expedited amendments of environmental planning instruments**

- (1) An amending environmental planning instrument may be made under this Part without compliance with the provisions of this Part relating to the conditions precedent to the making of the instrument if the instrument, if made, would amend or repeal a provision of a principal instrument in order to do any one or more of the following:
  - (a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,
  - (b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature,
  - (c) deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.
- (2) A reference in this section to an amendment of an instrument includes a reference to the amendment or replacement of a map adopted by an instrument.

It is considered that Section 73A could be reasonably applied in the given circumstances because the land was all zoned 2(a) when consent was granted and because the dual 2(a) and 7(d) zoning has been applied as a result of an incorrect interpolation of the zone boundary in new replacement zone maps. Consequently, the error was unintentional but has planning consequences for the affected landowners that should be rectified as soon as possible.

The Department of Planning has been alerted to the situation and because the Section appears not to have yet been applied yet, the regional office has sought advice from the head office about the matter and the process required to obtain a Ministerial determination under Section 73A. This report has been prepared in advance of feedback from the Department to ensure the matter can be dealt with as expeditiously as possible.

**Item 6 Contd.**

Therefore it is proposed to refer this matter and the circumstances leading to the dual zoning of the affected land to the Department with a request that the Minister give favourable consideration to authorising an amended zone map that shows the 2(a) Residential A zone boundary on the northern boundary of the 5 affected lots. It is understood from an email received from RMB Lawyers that the landowner supports this remedy.



**COUNCIL MINUTE**

**6 Kiama LEP Amendment No 61 (LEP.025.061 & PR.121123)  
Zone Map Error**

**CR014**

**Committee recommendation** that the Minister for Planning be requested to approve an amendment to the Kiama LEP 1996 zone map under Section 73 A of the Environmental Planning and Assessment Act to overcome a minor zone boundary error that occurred in replacing the repealed black and white series of hard copy zone maps with new electronic colour zone maps enabled by the gazettal of Kiama LEP 1996 Amendment No 61.

(Councillors Steel & van der Wijngaart)