

**12.4 Planning Proposal: Reclassifying 85 Attunga Avenue, Kiama Heights and 18A Hughes Crescent, Kiama Downs**

CSP Objective: 2.0 Well planned and managed spaces, places and environment

CSP Strategy: 2.1 Maintain the separation and distinct nature of local towns, villages and agricultural land

Delivery Program: 2.1.1 Develop and implement appropriate land use plans

**Summary**

A Planning Proposal (PP) has been submitted on behalf of Council's Property Team. The purpose of the PP is to reclassify the land at 85 Attunga Avenue, Kiama Heights and 18A Hughes Crescent, Kiama Downs from community to operational.

This proposal does not include any changes to the zoning, height, floor space ratio controls etc. of Kiama LEP 2011.

It is recommended that the PP proceed to the Department of Planning and Environment for Gateway Determination.

**Finance**

Council has adopted a fee structure for the submission and review of planning proposals. The relevant fees have been paid as required by Council's fees and charges schedule.

**Policy**

The assessment of requests for the rezoning of land require the consideration of a number of Act, Government Policies, Environmental Planning Instruments and planning documents.

**Consultation (Internal)**

Initial consultation with Council's Property Team has been undertaken. Further consultation will continue as needed through the planning proposal process.

**Communication/Community Engagement**

Should Council support the concept PP, the Gateway Determination issued by the NSW Department of Planning, Industry and Environment will outline the minimum requirements for consultation to be undertaken with government agencies and the community. All other community engagement will occur in accordance with the Kiama Community Participation Plan 2019. A public hearing will be required for this proposal.

Correspondence has been sent to the Kiama Downs Community Preschool notifying them of the proposal to reclassify 18A Hughes Crescent, Kiama Downs from community to operational land. The correspondence has explained that the proposal will not impact on the existing lease of the preschool and is intended to provide greater certainty for the ongoing use of the site for the current purposes of a preschool.

**Attachments**

## Report of the Director Environmental Services

**12.4 Planning Proposal: Reclassifying 85 Attunga Avenue, Kiama Heights and 18A Hughes Crescent, Kiama Downs (cont)**

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- 1 Concept Planning Proposal - Relclassification - 85 Attunga Avenue, Kiama Heights & 18A Hughes Crescent, Kiama Downs

**Enclosures**

Nil

**RECOMMENDATION**

That Council support the reclassification of No 85 Attunga Avenue, Kiama Heights and No 18A Hughes Crescent, Kiama Downs from community to operational and that the attached Planning Proposal be submitted to the Department of Planning, Industry and Environment for a Gateway Determination.

**BACKGROUND**

Martin Morris & Jones Pty Limited (MMJ Wollongong) has been engaged by Council to coordinate the preparation and lodgement of the PP. The purpose of the PP is to reclassify land at 85 Attunga Avenue, Kiama Heights and 18A Hughes Crescent, Kiama Downs from community to operational.

**Mayoral Minute**

At the Ordinary meeting of 17 October 2017 Council endorsed the Mayoral Minute to not support any planning proposals that involve new residential land outside of the identified town boundaries, referred to in the adopted urban strategy areas.

The subject proposal does not seek to introduce any new residential land. Both sites are within the identified town boundaries of the adopted Kiama Urban Strategy (KUS).

**Site Details**

The Planning Proposal covers two individual sites in the Kiama Local Government Area. These sites include:

- 85 Attunga Avenue, Kiama Heights

The subject site is located on Attunga Avenue, Kiama Heights (see *Figure 1*). Known as 85 Attunga Avenue. This land incorporates one allotment title described as Lot 69A DP 30126 and is approximately 770m<sup>2</sup> in size. The site is zoned R2 Low Density Residential, under Kiama LEP 2011.

The site is currently vacant and comprises of a grassed site with some very small shrubs at the rear of the property. The site adjoins East's Beach caravan park. It does not provide public access to East's Beach or the Kiama Coastal Walk.

This proposal does not include any changes to the zoning, height, floor space ratio layers of the LEP 2011.

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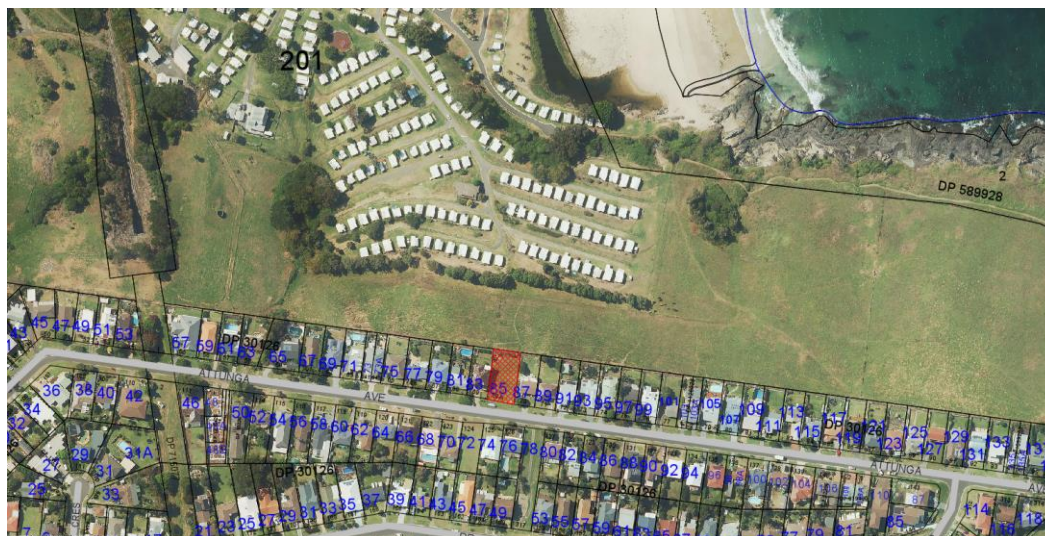


Figure 1 - 85 Attunga Avenue, Kiama Heights

- 18A Hughes Crescent, Kiama Downs

The subject site is located on Hughes Crescent, Kiama Downs (see *Figure 2*). Known as 18A Hughes Crescent, this land incorporates one allotment title described as Lot 601 DP 878369 and is approximately 1850m<sup>2</sup> in size.

The site is zoned RE1 Public Recreation, under Kiama LEP 2011. The subject property contains a Council owned building currently leased by the Kiama Downs Community Preschool. A registered easement connects the subject land to Hughes Crescent and provides a legal right of access and parking for the preschool.

Council's Gainsborough Oval Reserve Plan of Management was adopted in March 2007 and includes the subject property, as well as the adjoining Lot 602 DP 878369 (i.e. Gainsborough Oval). The Gainsborough Oval Reserve includes a sportsground, buffer area, a Neighbourhood Centre and the Council building currently occupied as a Community Preschool.

This proposal does not include any changes to the zoning, height, floor space ratio layers of the LEP 2011.

The reclassification of this site will not affect the current 10 year lease agreement that the Kiama Downs Community Preschool have for the site.



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Figure 2 - 18A Hughes Crescent, Kiama Downs

**Intent of Planning Proposal**

The objective of the submitted Planning Proposal is to reclassify the subject sites known as:

- Lot 69A DP 30126, 85 Attunga Avenue, Kiama Heights and
- Lot 601 in DP 878369, 18A Hughes Crescent, Kiama Downs.

This Planning Proposal seeks to amend the Kiama LEP 2011 by:

- reclassifying two Council owned sites from community land to operational land;
- removing public reserve status from Lot 601 DP 878369 - 18A Hughes Crescent, Kiama Downs and removing any interest or trust relating to the land being public reserve; and
- removing any interest or trust for community purpose relating to a site (if any).

**Assessment of Planning Proposal**

The Department of Planning, Industry and Environment's (DPIE) 'A guide to preparing local environmental plans' outlines that an assessment to determine whether the proposal has strategic merit and, having met the strategic merit test, whether the site has site-specific merit. An assessment of the proposal's strategic merit has been carried out below.

**Strategic Merit**

When assessing the proposal's strategic merit, the following questions need to be answered:

- Does the proposal give effect to the Illawarra-Shoalhaven Regional Plan?

*Illawarra-Shoalhaven Regional Plan 2015*

The Illawarra-Shoalhaven Regional Plan is the NSW Government's strategy for guiding land use planning decisions for the region over the 20 years to 2036.

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The proposal does not seek to amend the current zoning of the sites.

*85 Attunga Ave, Kiama Heights*

Reclassifying 85 Attunga Avenue to operational land will enable facilitate a residential development. The provision of additional dwellings gives effect to Direction 2.1 of the Regional Plan as it provides sufficient housing to suit the changing demands of the region.

*18A Hughes Crescent, Kiama Downs*

Reclassifying 18A Hughes Crescent to operational land will ensure the ongoing viability of the existing preschool. This is considered to effect to Goal 3 of the Regional Plan as it ensures the community is strong, healthy and well-connected.

In this regards it is considered that the proposal gives effect to the Illawarra-Shoalhaven Regional Plan.

- Does the proposal give effect to a local strategy that has been endorsed by the Department Planning, Industry and Environment?

*Draft Local Strategic Planning Statement*

At the February 2020 meeting, Council adopted the draft Kiama Local Strategic Planning Statement (LSPS) for public exhibition. It is noted that the draft Kiama LSPS is yet to be endorsed by the DPIE. However, it is important to ensure that this proposal is consistent with the draft LSPS. The proposal gives effect to the Planning Priorities of the draft Kiama LSPS as it facilitates housing supply within the boundaries of our existing towns and villages, supports the education sector and provides appropriate cultural facilities within our towns and villages.

*Kiama Urban Strategy*

The KUS came into effect on 20 September 2011. The KUS considered both urban infill and urban expansion opportunities within the Kiama Municipality and made recommendations on an appropriate approach to address housing demand in the LGA in response to the requirements of the Illawarra Regional Strategy which was the overarching strategic document in force at the time.

The KUS is not applicable to this proposal as it does not propose to amend the zoning and therefore the current permissibility of each site.

- Does the proposal respond to a change in circumstances, such as an investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?

The proposal has been prepared in response to the recommendation of Council's Long-Term Financial Planning Committee to reclassify 85 Attunga Avenue, Kiama Heights and to provide more flexibility for leasing arrangements at 18A Hughes Crescent, Kiama Downs.

In light of the above, it is considered that the proposal does meet the strategic merit test. The site-specific merit can now be assessed.

**Site-Specific Merit**

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Having met the strategic merit test, regards to the following matters must be given when assessing the site-specific merit:

- The natural environment (including know significant environmental values, resources or hazards)

*85 Attunga Ave, Kiama Heights*

Number 85 Attunga Avenue does not contain any significant environmental values or resources and is not affected by any hazards.

The *State Environmental Planning Policy (Coastal Management) 2016* does map the site as being within the Coastal Environmental Area. This policy does not contain any requirements for planning proposals. It should however be stressed that as this site directly adjoins private property (i.e. Easts Beach caravan park) it does not provide public access to Easts Beach or the Kiama Coastal Walk.

It is noted that a dry stone wall is present along the northern boundary of the site. Schedule 5 of the LEP 2011 lists certain dry stone walls as local heritage items. While this does not effect this proposal it will need to be considered as part of any future development consent process.

*18A Hughes Crescent, Kiama Downs*

Number 18A Hughes Crescent is identified as being within the buffer zone of bushfire prone land. The proposal does not seek to alter the existing permissibility of the site. Given the site is already developed the impact of Bush Fire Prone zoned land is expected to be minimal at the Planning Proposal stage.

It is considered that the proposal is consistent with the natural environment of both sites.

- The existing uses, approved uses and likely future uses of land in the vicinity of the land subject to the proposal

*85 Attunga Ave, Kiama Heights*

The *State Environmental Planning Policy No 55 – Remediation of Land* requires the planning authority (i.e. Council) to considered whether the land is contaminated, and if the land is contaminated, is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used.

MMJ Wollongong has not addressed this requirement in their submission. However, Council records do not indicate that either sites are contaminated. Additionally, the proposal does not seek to change the permitted land uses on either sites.

There are no approved uses on the site. The approved uses on land in the vicinity of the site are of a low density residential nature.

*18A Hughes Crescent, Kiama Downs*

The *State Environmental Planning Policy No 55 – Remediation of Land* requires the planning authority (i.e. Council) to considered whether the land is contaminated, and if the land is contaminated, is satisfied that the land is suitable in its contaminated state

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(or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used.

As outlined above, the approved use of the site is as a *centre-based child care facility* (i.e. preschool). The predominant uses in the vicinity of the site are of a low density residential or public recreation nature

It is considered that the proposed reclassification will not impact the existing uses, approved uses and likely future uses of land in the vicinity of both the sites.

- The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Both properties 85 Attunga Ave, Kiama Heights and 18A Hughes Cres, Kiama Downs are within existing urban areas with existing access to water, sewer, power, telecommunications and the like.

In addition, access to the subject sites are gained via the public roads, which services the immediate residential area. The traffic generation characteristics will not be altered by this Planning Proposal, and there is ample capacity within the existing/proposed public road network to accommodate existing traffic levels.

It is considered that the adequate services and infrastructure are available to meet the demands arising from the proposal.

On balance, it is considered that the proposal has site-specific merit.

**Planning Secretary Requirements**

In the case of proposed LEPs which are being prepared solely to classify or reclassify public land, the Planning Secretary has issued the following requirements as to the specific matters that must be addressed in the justification for the planning proposal (EP&A Act s. 3.33(3)) in the NSW DPIE's *"Guide to Preparing Local Environmental Plans"*:

- a) Is the planning proposal the result of a strategic study or report?

No - This PP is not the result of a strategy study or report. This has been addressed above, as part of the strategic merit assessment.

- b) Is the planning proposal consistent with the local council's community plan, or other local strategic plan?

The Planning Proposal is consistent with the Kiama Council Community Strategic Plan (CSP) 2017-2027. Council's Long-Term Financial Planning Committee has recommended reclassifying 85 Attunga Avenue, Kiama Heights to ensure that Council is financially sustainable (strategy 4.1 of the CSP). Development of this site for residential purposes will also be consistent with strategy 2.1 as development will be occurring within the existing boundaries of Kiama Heights.

The reclassification of 18A Hughes Crescent, Kiama Downs is also considered to be consistent with strategy 4.1 of the CSP and strategy 3.1 as it will facilitate the longevity of the existing preschool business.

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- c) If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided

The intent of this Planning Proposal is to reclassify two Council owned properties from Community Land to Operational Land. The NSW DPIE Practice Note PN 16-001 "Classification and reclassification of public land through a local environmental plan" states that the:

*"Interests in land refers to property ownership as well as rights and privileges affecting land, such as leasehold, easements, covenants and mortgages. For the purpose of reclassification through an LEP, 'interests' means trusts, estates, dedications, conditions, restrictions and covenants affecting the land."*

With the exception of the existing Sydney Water easement, there are no trusts, estates, dedications, conditions, restrictions and covenants affecting 85 Attunga Avenue, Kiama Heights. This proposal does not seek to extinguish the existing Sydney Water easement.

Number 18A Hughes Crescent, Kiama Downs is listed as a public reserve in DP878369. There are no proposed changes to interests or easements on this land. This is an interest that will be extinguished as part of this proposal. The reclassification will provide increased flexibility and opportunity for Council as the landowner and the current leaseholder to enter into future negotiations regarding the ongoing use of the site.

- d) The concurrence of the landowner, where the land is not owned by the planning proposal authority

Both properties are owned by Kiama Municipal Council who is also the planning proposal authority. Concurrence is therefore not required.

### Reclassification of Land Checklist

In addition to the Planning Secretary's requirements above, the NSW Department of Planning, Industry and Environment has published an 'LEP Practice Note PN 16-001' dated 5th October 2016, relating to the *Classification and reclassification of public land through a local environmental plan*. This practice note contains an information checklist for proposals to classify or reclassify public land through an LEP. MMJ Wollongong have provided an assessment against this checklist for both sites. This assessment has been reviewed by staff and its conclusion is agreed with. All relevant information has been provided for this reclassification public land through an LEP.

### Section 9.1 Ministerial Directions

Under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the Minister for Planning is able to issue directions that apply to the preparation of PP.

MMJ Wollongong has provided an assessment against all directions issued by the Minister and has concluded that this proposal is consistent with all relevant directions. This assessment has been reviewed by staff and its conclusion is agreed with.

### Plan Making Delegation



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Council is unable to assume plan making delegation, under Section 3.36 of the Environmental Planning and Assessment Act 1979, for this proposal as the Governor's approval is required when a reclassification proposal seeks to remove any public reserve status and/or discharge any interests affecting public land (section 30 *Local Government Act 1993*).

**Conclusion**

The submitted planning proposal and supporting documents have not raised any significant issues that would preclude the reclassification of the sites to operational land.

It is therefore recommended that the proposal be endorsed to be forwarded to the Department of Planning and Environment for a Gateway Determination.

PREVIEW