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# Planning Proposal

***Proposed Amendment to Kiama Local Environmental Plan  
2011 to reclassify certain land in Kiama Heights as  
Operational Land***

Lot 69A DP 30126  
No. 85 Attunga Avenue, KIAMA HEIGHTS

**Version 2: Pre-Gateway – July 2020**



<b>Subject</b>		Planning Proposal – Amendment to <i>Kiama Local Environmental Plan 2011 to reclassify certain land in Kiama Heights and Kiama Downs as Operational Land</i>
<b>In respect of</b>		Proposed Reclassification as Operational Land
<b>Property</b>		Lot 69A DP 30126 No. 85 Attunga Avenue, Kiama Heights
<b>Prepared for</b>		Property Services Division Kiama Municipal Council
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<b>Dated</b>		July 2020

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# 1.0 Introduction

Martin Morris & Jones Pty Limited (MMJ Wollongong) has been engaged by the Property Division at Kiama Municipal Council (Council) to co-ordinate the preparation and lodgement of a Planning Proposal. The purpose of the planning proposal is to reclassify the land 85 Attunga Avenue, Kiama Heights from community to operational.

Council resolved at its Long-Term Financial Planning Committee and Revenue Sub-Committee Meeting held 12 March 2018 to investigate the sale of Council owned land, 85 Attunga Avenue, Kiama Heights and to:

1. *Proceed with the reclassification of 85 Attunga Avenue, Kiama Heights (Lot 69A DP 30126) and,*
2. *Subject to East's approval investigate the incorporation of a footpath down one side of the property to provide access to the beach.*

Further to this, Council resolved to endorse the Planning Proposal for submission to the Department of Planning, Industry and Environment at its Ordinary Meeting dated 17<sup>th</sup> March 2020 to:

*20/0700C*

*Committee recommendation that Council support the reclassification of No 85 Attunga Avenue, Kiama Heights from community to operational land and that the amended Planning Proposal be submitted to the Department of Planning, Industry and Environment for a Gateway Determination.*

Council Delegation for local plan making functions will not be requested in this instance, 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).

## 1.1 Conceptual Framework

This report provides a description of the subject site and surrounds, a summary of the existing and relevant legislative framework applying to the site, an identification of the future land use outcome sought by this Planning Proposal and a preliminary environmental review of those relevant matters generally considered for development. In addition to this, this report suggests the proposed amendment criteria required to *Kiama LEP 2011* in order to allow the implementation of this future desired reclassification outcome.

This Planning Proposal has been prepared for Council in consideration of those requirements under Section 3.33(3) of the *Environmental Planning and Assessment Act 1979 (the Act)*, together with the NSW Department of Planning and Environment's "*A guide to preparing planning proposals*" (October 2012). In general, this Planning Proposal comprises the following considerations as required:-

- Part 1 A statement of the objectives or intended outcomes of the proposed instrument.
- Part 2 An explanation of the provisions that are to be included in the proposed instrument.
- Part 3 The justification for those objectives, outcomes and the process for their implementation based on technical studies.
- Part 4 The existing controls that apply to the site based on the Council's LEP Maps.
- Part 5 Details of the community consultation to be undertaken on the planning proposal.
- Part 6 A project timeline.

## 1.2 Subject Land

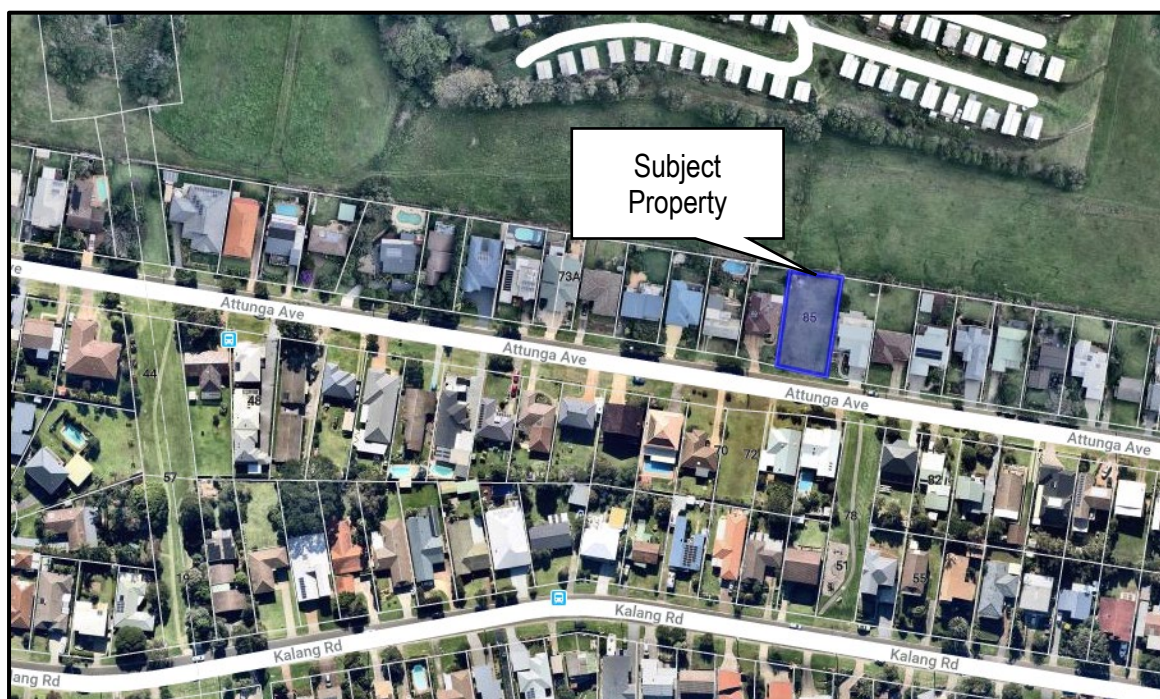
The subject site is located on Attunga Avenue in Kiama Heights (see *Figure 1*). Known as 85 Attunga Avenue, this land incorporates one allotment title described as Lot 69A in DP 30126 and is approximately 770m<sup>2</sup> in size.

The property is in a residential street and adjoins East's Beach caravan park to the north. The south coast train line tunnels under part of Attunga Avenue to the west. As detailed in figure 1 and figure 2 there is public reserve 20 m to the south east of the subject land which includes a foot path to Kalang Road and a small park. At the end of Attunga Avenue, there is a large area of open space on the headland which forms part of the Kiama Coastal walk and provides pedestrian access to Easts Beach.





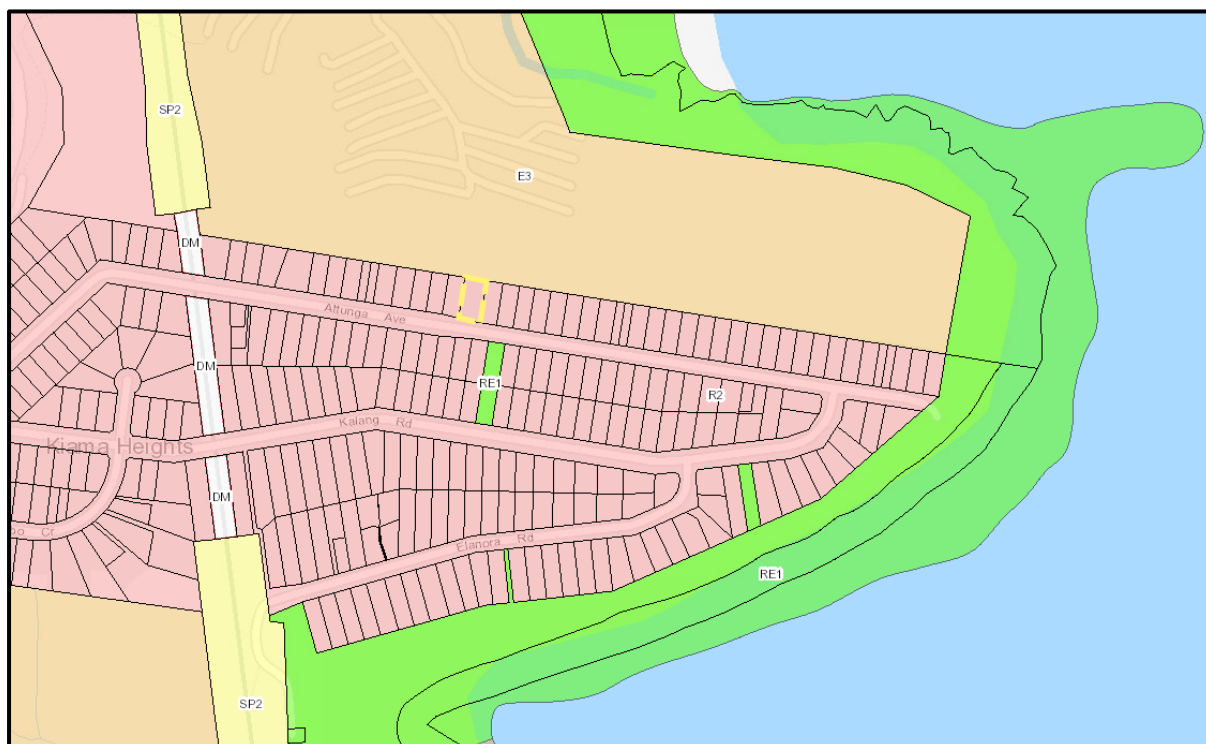
**Figure 1:** 85 Attunga Avenue, Kiama Heights - Aerial Photo identifying Public Land (\*Source: Kiama Municipal Council)



**Figure 2:** 85 Attunga Avenue, Kiama Heights - Site Plan (\*Source: NearMap)

The following KLEP 2011 are relevant to the property and this Planning Proposal. It is noted that no changes to the map layers in KLEP 2011 are proposed, however future development on the land will be subject to all relevant controls in KLEP 2011.

- Zone R2 Low Density Residential (Figure 3)
- Minimum Lot Size 450m<sup>2</sup>
- Floor Space Ratio 0.45:1
- Height of Building 8.5m



**Figure 3:** 85 Attunga Avenue, Kiama Heights - Extract of the Kiama LEP 2011 Land Zoning Map (\*Source: NSW Planning Portal)

The site photos below illustrate the site and surrounding conditions.



**Plate 1:** Subject Site – 85 Attunga Avenue, Kiama Heights (\*Source: MMJ Planning)



**Plate 2:** Council Footpath/Reserve located at 78 Attunga Avenue and 51 Kalang Road (\*Source: MMJ Planning)





**Plate 3:** Attunga Avenue looking East (\*Source: MMJ Planning)



**Plate 4:** Attunga Avenue looking West (\*Source: MMJ Planning)



**Plate 5:** Stone wall located at the northern boundary. (\*Source: MMJ Planning)



**Plate 6:** Rear of the site looking south (\*Source: MMJ Planning)

## 2.0 Part 1 – Statement of Objectives or Intended Outcomes

The objective of this Planning Proposal is to reclassify the subject sites known as Lot 69A DP 30126, 85 Attunga Avenue, Kiama Heights.

This Planning Proposal seeks to initiate this assessment and determination process in accordance with the provisions of the *Environmental Planning & Assessment Act, 1979*, and recommends amendment criteria to *Kiama LEP 2011* to achieve the preferred long-term land use strategy for the subject land. This Planning Proposal seeks to amend the Kiama LEP 2011 by reclassifying Council owned land from Community Land to Operational Land.

The concise statement setting out the objective or intended outcome of this Planning Proposal is as follows:-

*“Proposed reclassification of 85 Attunga Avenue, Kiama Heights from Community Land to Operational Land”*

## 3.0 Part 2 – Explanation of Provisions

The PP proposes to amend Kiama LEP 2011 to list the property, Lot 69A DP 30126, 85 Attunga Avenue Kiama Heights under Part 2 of Schedule 4 “Land classified or reclassified as operational land – interests changed”. As per the Practice Note PN 0001 (Appendix 2), Schedule 4 should not refer to any land already classified or reclassified and the required change to Schedule 4, Part 1 is outlined in the table below:

Column 1 Locality	Column 2 Description	Column 3 Any trusts etc not discharged
85 Attunga Avenue, Kiama Heights	Lot 69A DP 30126	Easement for water supply affecting the part of lot 69a above described shown so burdened in DP 451312

This change will give effect to Clause 5.2(2) of Kiama LEP 2011 so that the subject land will no longer have community land status. The existing trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land will remain as per the current Title of the Property (see Appendix 1). This will enable Council to explore the sale of the subject land at 85 Attunga Ave, Kiama Heights.

Clause 5.2 of Kiama LEP 2011 is provided below:

### 5.2 Classification and reclassification of public land

- (1) *The objective of this clause is to enable the Council to classify or reclassify public land as “operational land” or “community land” in accordance with Part 2 of Chapter 6 of the [Local Government Act 1993](#).*

**Note.**

*Under the [Local Government Act 1993](#), “public land” is generally land vested in or under the control of a council (other than roads, Crown reserves and commons). The classification or reclassification of public land may also be made by a resolution of the Council under section 31, 32 or 33 of the [Local Government Act 1993](#). Section 30 of that Act enables this Plan to discharge trusts on which public reserves are held if the land is reclassified under this Plan as operational land.*

- (2) *The public land described in Part 1 or Part 2 of Schedule 4 is classified, or reclassified, as operational land for the purposes of the [Local Government Act 1993](#).*
- (3) *The public land described in Part 3 of Schedule 4 is classified, or reclassified, as community land for the purposes of the [Local Government Act 1993](#).*
- (4) *The public land described in Part 1 of Schedule 4:*
- (a) *does not cease to be a public reserve to the extent (if any) that it is a public reserve, and*

- (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land before its classification, or reclassification, as operational land.*
- (5) The public land described in Part 2 of Schedule 4, to the extent (if any) that it is a public reserve, ceases to be a public reserve when the description of the land is inserted into that Part and is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except:*
  - (a) those (if any) specified for the land in Column 3 of Part 2 of Schedule 4, and*
  - (b) any reservations that except land out of the Crown grant relating to the land, and*
  - (c) reservations of minerals (within the meaning of the [Crown Lands Act 1989](#)).*

**Note.**

*In accordance with section 30 (2) of the [Local Government Act 1993](#), the approval of the Governor to subclause (5) applying to the public land concerned is required before the description of the land is inserted in Part 2 of Schedule 4.*

## 4.0 Part 3 – Justification

This PP does not propose any new planning controls relating to the site in terms of land zoning, height of buildings, floor space ratio, or standard minimum lot size, or amends the existing *Kiama LEP 2011* maps. As outlined above, an amendment to Schedule 4 is required to reclassify community land to operational status. In accordance with Clause 3.33 of the *EP&A Act*, this Planning Proposal has been prepared on behalf of Kiama Municipal Council – Property Section for consideration by the planning proposal authority. This section of the Planning Proposal explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument in accordance with Clause 3.33(2) and (3) of the *EP&A Act*.

### 4.1 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. See Section 4.4 for further details on the Strategic Framework.

**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 2017-2027. See Section 4.4.2 for further details.

**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 Council owned 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.”*

Apart from the current ownership of the land, Kiama Municipal Council has no further interests in the land (see *Appendix 1 – Historic Title Information*). The existing Sydney Water easement and other interests in the land will remain and therefore no interests are proposed to be discharged.

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

The property is owned by Kiama Municipal Council who is also the planning proposal authority. Concurrence is therefore not required.

## 4.2 Reclassification of Land Checklist

In addition to the Planning Secretary’s requirements above, the NSW Department of Planning, Industry and Environment (DPIE) has published an ‘*LEP Practice Note PN 16-001*’ dated 5<sup>th</sup> October 2016, relating to the *Classification and reclassification of public land through a local environmental plan* (refer attached as *Appendix 2*). This practice note provides guidance on the process to classify or reclassify public land through a local environmental plan, including the level of information Council must provide in this Planning Proposal. In this regard, the following Tables provide a summary of those relevant matters for consideration in relation to the property:-

Lot 69A DP 30126, 85 Attunga Avenue, Kiama Heights	
Matter:	Response:
<b>The current and proposed classification of the land.</b>	Currently community land and proposed operational land.
<b>Whether the land is a ‘public reserve’ (defined in the LG Act)</b>	As understood, the land is not defined as a public reserve. The property came into Council’s ownership on 15 <sup>th</sup> August 1960 (Vol 7966 Fol 42) – see <i>Appendix 1</i> .
<b>The strategic and site-specific merits of the reclassification and evidence to support this.</b>	The land has been identified as surplus to Council’s requirements. As there is no evidence of operational classification via Council resolution, the land automatically defaulted to community land and in order for Council to explore the sale of the land, it must go through the necessary reclassification process.

<b>Whether the planning proposal is the result of a strategic study or report.</b>	The Planning Proposal was outlined in the Long-Term Financial Planning and Revenue Committee (FPRC) meeting which was held 12 March 2018. The minutes of the FPRC were subsequently endorsed at the 17 April 2018, Council meeting and are attached to the Planning Proposal.
<b>Whether the planning proposal is consistent with council's community plan or other local strategic plan.</b>	<p>The Planning Proposal is consistent with the recently adopted Illawarra Shoalhaven Regional Plan (ISRP), which identifies increased demands/targets for housing within the region. The proposed reclassification will allow the intention of the R2 Low Density Residential zoned land to be sold and developed low density residential in accordance with the objectives of the zone.</p> <p>Additionally, given the minor reclassification nature of this Planning Proposal, the operational land outcome is consistent with the intent of the Kiama Urban Strategy to maximise urban infill in Kiama Local Government Area.</p>
<b>A summary of council's interests in the land, including:</b> <ul style="list-style-type: none"> <li>- how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution)</li> <li>- if council does not own the land, the land owner's consent;</li> <li>- the nature of any trusts, dedications etc.</li> </ul>	<p>The land came into Council's ownership on 15 August 1960 where Council was appointed the owner when the original title was issued (Vol 7966 Fol 42). Lot 69A was part of a larger area transferred in fee simple from Shoalhaven Finance.</p> <p>There are no known trusts, dedications, interests or that exist on the land, however existing reservations and conditions in the Crown Grant apply to the property (see Certificate of Title attached). It is indicated on the title search there is a registered easement for water supply which is to remain unchanged.</p>
<b>Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why.</b>	In this regard, it is understood that existing reservations, interests, restrictions, covenants, dedications and easements as listed on the Certificate of Title will not change as a result of this proposal.
<b>The effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged).</b>	Following reclassification, the land will cease to be vacant community land, and this will then enable Council to sell the land. The property is surplus to Council's requirements and is zoned R2 Low Density Residential.
<b>Evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents).</b>	An electronic title search was undertaken on 27/06/2019. No reference to Government Gazette or trust documents were located.

<p><b>Current use(s) of the land, and whether uses are authorised or unauthorised.</b></p>	<p>The land is currently vacant, however it appears that pedestrians use the land as a pathway from Easts Beach to Attunga Ave and this has partially damaged the historic stone wall in this location.</p> <p>Whilst pedestrians may have used the land for a pathway to Easts Beach the land adjoins private property therefore any use of the land to traverse to the beach is undertaken through private property.</p> <p>The land also includes an easement for water supply that will remain unchanged.</p>
<p><b>Current or proposed lease or agreements applying to the land, together with their duration, terms and controls.</b></p>	<p>There are currently no lease or agreements applying to the land. Council intends to sell the land once the land is reclassified.</p>
<p><b>Current or proposed business dealings (e.g. agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time).</b></p>	<p>Council intends to sell the land once it is reclassified.</p>
<p><b>Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy).</b></p>	<p>No changes are proposed to Kiama LEP 2011 maps.</p>
<p><b>How council may or will benefit financially, and how these funds will be used.</b></p>	<p>Council will benefit financially from a future sale if the land is sold and the funds will be allocated to Council's Land Development Reserve The purpose of Council's Land Development Reserve is as follows:</p> <ul style="list-style-type: none"> <li>• Revenue generating investments/activities that provide a commercial rate of return whether in short, medium or long term.</li> <li>• All profits/returns generated from investment activities can be returned to the reserve.</li> </ul> <p>Therefore, the money derived from the sale of the subject property will go to the Land Development Reserve for the above purposes.</p>

<b>How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal.</b>	Council does not currently have a policy/strategy in place for the retention and acquisition of additional open space sites however the subject land referenced for reclassification was not dedicated as a public reserve at the time or subsequently. Therefore, it is considered that the reclassification of this land will not affect the open space within the area. The funds will be allocated to the Council Land Development Reserve which will be used for future revenue generating investment/activities.
<b>A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot.</b>	Not applicable as the whole lot is proposed to be reclassified.
<b>Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.</b>	No preliminary comments have been sought by relevant government agencies. The land was not dedicated by an agency.

**Table 1:** Assessment of 85 Attunga Ave, Kiama Heights in accordance with LEP Practice Note PN16-001

## 4.3 Section A – Need for the Planning Proposal

### 4.3.1 Is the Planning Proposal a result of an endorsed local strategic planning statement, strategic study or report?

No, this PP is not directly the result of a strategic study or report. The PP was initiated following a resolution of Council and an internal review of Council Property.

Council resolved to endorse the Planning Proposal for submission to the Department of Planning, Industry and Environment at its Ordinary Meeting dated 17<sup>th</sup> March 2020, as follows:

*20/0700C - Committee recommendation that Council support the reclassification of No 85 Attunga Avenue, Kiama Heights from community to operational land and that the amended Planning Proposal be submitted to the Department of Planning, Industry and Environment for a Gateway Determination.*

### 4.3.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The Planning Proposal is the only means of legally achieving the objectives or intended outcomes to reclassify community land to operational by amended the LEP through the operation of *Clause 5.2 Classification and reclassification of public land* in Kiama LEP 2011 by inserting the property descriptions in Schedule 4 of Kiama LEP 2011.

## 4.4 Section B – Relationship to Strategic Planning framework

### 4.4.1 Is the planning proposal within the objectives and of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposal is consistent with the *Illawarra Shoalhaven Regional Plan* (ISRP), which identifies increased demands/targets for housing within the region. In this regard, the Plan is very focussed on a collective vision “...for a sustainable future and a resilient community, capable of adapting to changing economic, social and environmental circumstances...” To achieve this, five main goals have been set down, being:-

- 1) a prosperous Illawarra-Shoalhaven;
- 2) a region with a variety of housing choices, with homes that meet needs and lifestyles;
- 3) a region with communities that are strong, healthy and well-connected;
- 4) a region that makes appropriate use of agricultural and resource lands; and



5) *a region that protects and enhances the natural environment.*

In terms of the above goals, the most relevant in this instance is “Goal 2 – a variety of housing choices, with homes that meet needs and lifestyles”, given the existing residential development and site’s context. For Kiama, one State Government direction is to collaborate Council to review housing opportunities within the LGA so it can best respond to changing housing needs. To achieve this, the NSW Government will work with Council to monitor and review the potential of the area to accommodate housing demand. The Planning Proposal is consistent with the following Directions:

- Direction 2.1 - ‘Provide sufficient housing to suit the changing demands of the region’ by reviewing housing opportunities;
- Direction 5.1 - ‘Protect the region’s environmental value by focusing development in locations with the capacity to absorb development’.

It is clear that the proposed reclassification of land at 85 Attunga Ave for operational purposes is within an already defined residential urban area will not contradict with the objectives and actions of this Plan.

**4.4.2 Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plans?**

**Kiama Urban Strategy**

The Kiama Urban Strategy (KUS) was adopted by Council in 2011, and provides the strategic planning direction for development within the LGA until the year 2021. From a residential perspective, the KUS provides considerations for urban expansion (both in terms of infill and greenfield development) to satisfy housing demands within the area.

Section 5.1 – Unsubdivided Land Currently Zoned Residential identifies a strip of land to the north of 85 Attunga Avenue as a site considered in the Kiama South area, however this land is currently zoned E3 Environmental Management with a minimum lot size of 40 ha and therefore opportunities for urban expansion are no longer available.

Given the minor reclassification nature of this Planning Proposal, the operational land outcome will not contradict the intent of the KUS.

**Kiama Regional Economic Development Strategy 2018-2022**

The Kiama Regional Economic Development Strategy (2018-2022) provides a broad vision for the area “to be a strong vibrant economy outside of current holiday peaks with carefully managed growth and employment opportunities in tourism, agribusiness and other emerging industries and to capitalise on the region’s unique opportunities in digital connectivity”. The proposed reclassification of 85 Attunga Ave, Kiama Heights are not directly affected by this Strategy, however the proposal is not inconsistent with the strategy.

### **Kiama Council Community Strategic Plan 2017- 2027**

The Community Strategic Plan (CSP) sets Council’s vision, mission values and principles to reflect the community vision for Kiama. The strategies and objectives in the CSP that are relevant to this planning proposal include:

- **Objective 1.3 – We live in a safe community**

Both properties are located within an existing residential area. The council land at 85 Attunga Ave, Kiama Heights is vacant with no formal infrastructure. By reclassifying the property and allowing the sale of land for the intended use of the residential zone, this will restrict the informal use of the property for pedestrian access and will encourage pedestrians to use the formalised footpaths and access points. In resolving to reclassify the land, Council also resolved to investigate the possibility of creating a pedestrian access point. This investigation will occur separately to this Planning Proposal and can occur prior to any proposed sale of land.

- **Objective 2.1 - Maintain the separation and distinct nature of local towns, villages and agricultural land**

The property 85 Attunga Ave, Kiama Heights is within an existing residential zone and will allow the property to be developed for the intended use of low-density residential development. The Planning Proposal does not propose to reclassify land outside the existing boundaries of Kiama Heights.

- **Objective 2.3 – Heritage Conservation**

The subject site is not mapped as containing a heritage item or Heritage Conservation Areas, however the property does contain a dry stone wall on the northern boundary of the lot which is identified as Heritage Item 64 “Dry Stone Walls” in Kiama LEP 2011.

This Planning Proposal does not intend to affect this existing heritage listing and the dry stone wall will be continued to be protected under Clause 5.10 in Kiama LEP 2011.

In light of this, it must be recognised that the proposed reclassification will not contradict the heritage conservation aims, nor affect the integrity of these local heritage items or places themselves. The Planning Proposal is considered to be consistent with Direction 2.3.

- **Objective 4.1 – Council is financially sustainable**

The proposed reclassification of 85 Attunga Ave, Kiama Heights will allow Council to sell the property. The property is surplus to Council's needs and the funds from the sale will be placed in Council's property portfolio to assist with future purchase of suitable community land in the Kiama Local Government Area.

### **Community Land Plan of Management Parks (Neighbourhood)**

The property 85 Attunga Ave, Kiama Heights is one of fifty-four (54) neighbourhood parks in the Kiama LGA identified in the Community Land POM for Parks (Neighbourhood) (*Appendix 5*). Under Section 36(4) of the Local Government Act, the POM categorises the neighbourhood parks as “park”. Council has identified that this property is surplus to the community land required in Kiama Heights and the LGA. Following the reclassification, the subject site can be removed through a future amendment to the POM.

#### **4.4.3 Is the planning proposal consistent with applicable state environmental planning policies?**

Yes. A review and assessment against the proposal's consistency with the applicable SEPPs is attached as *Appendix 3* of this report.

Whilst a number of the SEPPs are applicable, most are not relevant to the proposed reclassification and this Planning Proposal. The following SEPPs are relevant to this Planning Proposal:

- **SEPP (Coastal Management) 2018**

Both properties are mapped as “Coastal Environment Area” and “Coastal Use Area” in the SEPP (Coastal Management) 2018. The Planning Proposal is not inconsistent with the SEPP and any future development will be subject to the provisions of the SEPP.

#### **4.4.4 Is the planning proposal consistent with applicable Ministerial Directions (Section 9.1 Directions)?**

Yes. A review and assessment against the proposal's consistency with the applicable Section 117 Directions is attached as *Appendix 4* of this report. This Planning Proposal is consistent with the relevant current strategic State-based planning initiatives applying to the site with the following applicable Section 9.1 Directions addressed below:

- **2.2 Coastal Protection**

85 Attunga Ave, Kiama Heights is in the Coastal Use and Coastal Environment Area mapping in the SEPP (Coastal Management) 2018. The proposed reclassification will not contradict the aims of the NSW Coastal Policy. Existing access to Coastal Areas is available through existing Public Reserves and footpaths. The adjoining property to the north is privately owned and therefore direct access to Easts Beach is not available from the property boundary.

The property is separated from the ocean foreshore area with no current direct access to coastal areas. The proposal will not contradict the aims of the NSW Coastal Policy and is therefore consistent with this Direction.

## - **2.2 Heritage Conservation**

The land features “dry stone walls” on the northern boundary of the property. The “dry stone walls” is identified as Heritage Item 64 in Kiama LEP 2011. This Planning Proposal does not intend to affect this existing heritage listing and the dry stone wall will be continued to be protected under Clause 5.10 in Kiama LEP 2011.

In light of this, it must be recognised that the proposed reclassification will not contradict the heritage conservation aims, nor affect the integrity of these local heritage items or places themselves.

## - **2.6 Remediation of Contaminated Land**

Not inconsistent.

The land is not identified as being contamination or potentially contaminated. There is no prior use that would suggest potential for contamination.

This Planning Proposal does not intend to change the land use zone and is considered to be not inconsistent with this Direction.

## - **5.10 Implementation of Regional Plans**

The Planning Proposal is consistent with the following Directions of the Illawarra- Shoalhaven Regional Plan:

- Direction 2.1 - ‘Provide sufficient housing to suit the changing demands of the region’ by reviewing housing opportunities;
- Direction 5.1 - ‘Protect the region’s environmental value by focusing development in locations with the capacity to absorb development’.

The proposed reclassification of land at 85 Attunga Ave for operational purposes is within an already defined residential urban area will not contradict with the objectives and actions of this Plan. The PP is therefore consistent with this Direction.

Given the minor nature of the proposed reclassification, this Planning Proposal is deemed to be not inconsistent with the applicable Section 117 Directions.

## **4.5 Section C – Environmental, Social and Economic Impact**

**4.5.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

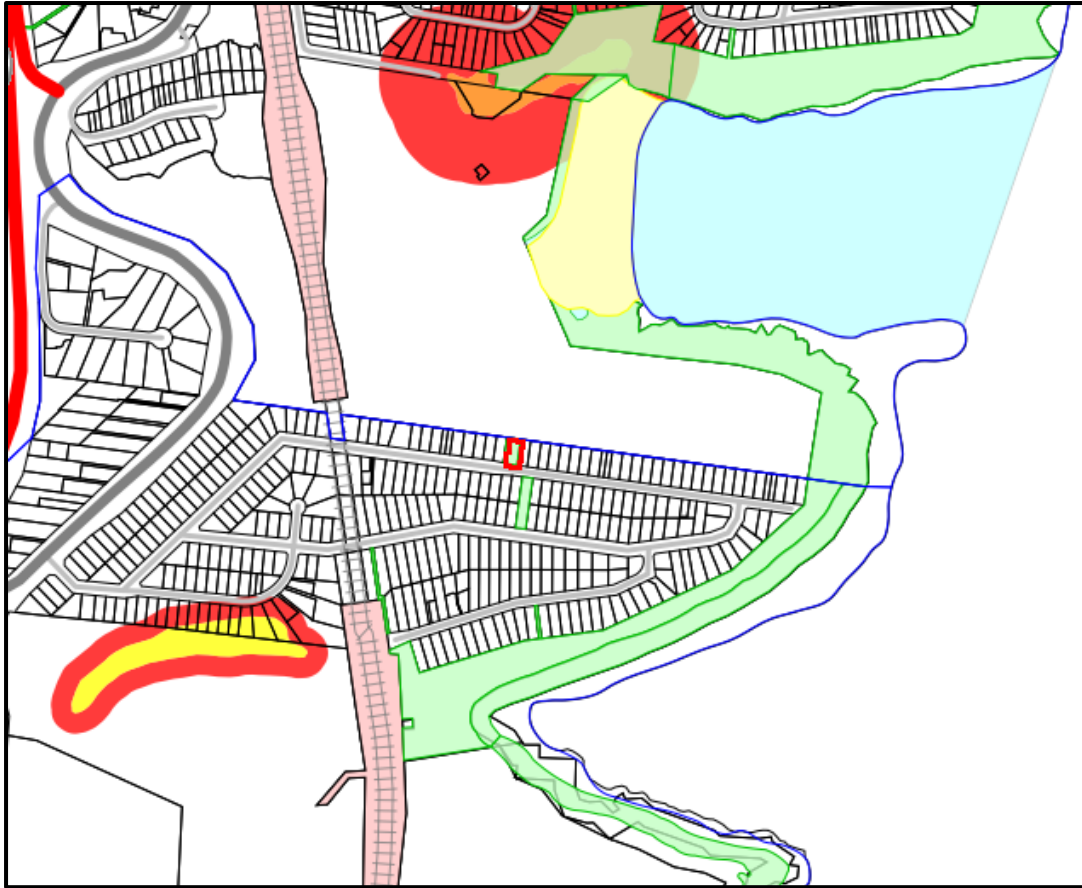
No. The subject site is currently zoned residential in an existing urban setting. The Planning Proposal is to reclassify the property from community land to operational land and there is unlikely to be any environmental impact directly caused by the reclassification. Future Development Applications will be subject to further environmental assessment through the Section 4.15 Assessment process.

**4.5.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

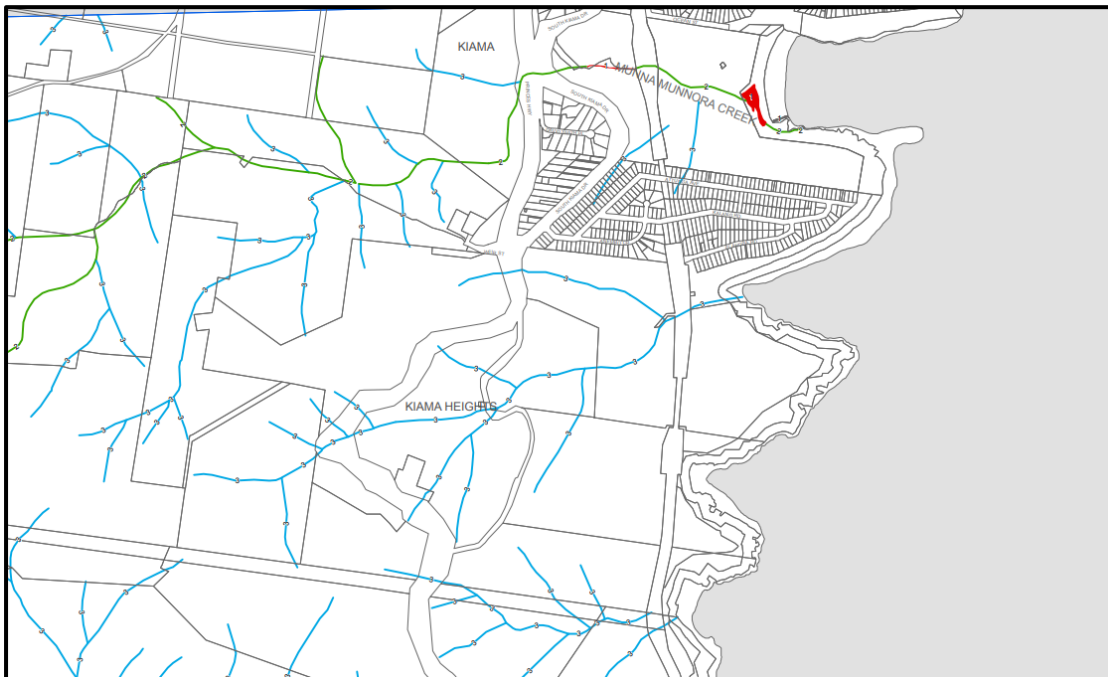
No. The property is not directly affected by any natural hazards such as bushfire hazard, flooding, landslip or the like. Additionally, the land subject to this Planning Proposal is not known to contain any items of aboriginal significance, nor European heritage. Notwithstanding, should the site be redeveloped in the future, any other potential impacts as a result of a proposed new development on site by an applicant would be dealt with at the development application/assessment stage.

85 Attunga Ave, Kiama Heights is not directly affected, however is in the vicinity of Category 1, 2 and 3 watercourses (Figure 8) in the Kiama LEP 2011 Riparian Land and Watercourse Map and is not directly affected by bushfire hazard in Council's mapping (see Figure 9 below).





**Figure 4:** Council GIS with Bushfire Layer (\*Source: Kiama Municipal Council)



**Figure 5:** Extract of the Kiama LEP 2011 Riparian Land and Watercourse Map (\*Source: Kiama Municipal Council Mapping LEP 2011)

#### **4.5.3 How has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal involves the reclassification of land in Kiama Municipal Council from Community Land to Operational Land. In this regard, it is understood that existing reservations, interests, restrictions, covenants, dedications and easements as listed on the Certificate of Titles for the property will not change as a result of this proposal. The reclassification will improve the social and economic effect of the land by allowing the land to be developed as intended by the residential zone.

Given the nature and minor scale of the proposal, it is not anticipated that any further significant social or economic effects will emerge.

### **4.6 Section D – State and Commonwealth Interests**

#### **4.6.1 Is there adequate public infrastructure for the planning proposal?**

Yes. The site is within an existing urban area with existing access to water, sewer, power, telecommunications and the like.

In addition, access to the subject site is gained via the public roads, which service 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.

#### **4.6.2 What are the views of State and Commonwealth Public authorities?**

No consultation has occurred State and Commonwealth Public authorities prior to the lodgement of this Planning Proposal. Consultation with the relevant State and Commonwealth authorities will be undertaken as required by the gateway determination during public exhibition.

## 5.0 Part 4 Mapping

There is no mapping required for this Planning Proposal. Maps and figures included in this Planning Proposal are for information only. The proposed reclassification applies to the whole lot and therefore only requires an instrument change to Kiama LEP 2011.

## 6.0 Part 5 Community Consultation

Any Gateway Determination will confirm community consultation requirements. If the Planning Proposal is supported, community consultation will involve an exhibition period for a minimum of 28 days. The community are likely to be notified of the commencement of the exhibition period via a notice in a local newspaper and through publication on Council's website. Additionally, notification letters will be distributed to surrounding and nearby property owners.

The written notice will likely:

- Give a brief description of the objectives or intended outcomes of the Planning Proposal;
- Indicate the land affected by the Planning Proposal;
- State where and when the Planning Proposal can be viewed/inspected;
- Give the name and address of the relevant planning authority (Council) for the receipt of submissions; and
- Indicate the last date for submissions.

During the exhibition period, the following material will likely be made available for inspection:

- The Planning Proposal (as amended following Gateway Determination requirements);
- The Gateway Determination;
- A copy of the NSW Department of Planning and Environment's (DPE) LEP Practice Note *PN16-001 Classification and reclassification of public land through a local environmental plan*;
- Responses to Attachment 1 Checklist included in the LEP Practice Note 16-001 (refer to Section 4 – Part 3 Justification in this PP);
- Historic Title Information relating to the properties; and
- Any studies relied upon by the Planning Proposal.

Following public exhibition, a public hearing is required to be held in accordance with Section 57 of the *Environmental Planning & Assessment Act 1979* and Section 29 of the *Local Government Act 1993*. After the exhibition period has ended, at least 21 days public notice will be given before the hearing. The specific requirements for public hearings outlined in Section 47G of the *Local Government Act 1993* will be followed.

## 7.0 Part 6 Project Timeline

Task	Time Period	Anticipated Timeframe
Planning Proposal Submitted to NSW DPIE requesting Gateway Determination	2 Weeks	July 2020
Date of Gateway Determination	1 Month	August 2020
Completion of Gateway Determination Requirements	2 Months	October 2020
Public Exhibition	28 Days	November 2020
Public Hearing	1 Day	December 2020
Consideration of Submissions and Public Hearing Report	1 Month	December 2020
Post exhibition consideration of PP – report to Council and submission of Final PP to NSW DPIE/Parliamentary Counsel requesting finalisation of Plan and drafting of the LEP Amendment.	2 Months	January-February 2021
Finalisation and notification of Plan by Parliamentary Counsel and NSW DPIE	2 Months	April 2021

Given the indicative timeline provided, a Gateway Determination period of 12-18 Months is requested for completion of any Gateway Determination requirements, Public Exhibition, the Public Hearing, Council Reporting, submission of the final Planning Proposal, Governor's Approval and finalisation of the LEP Amendment.



## 8.0 Conclusion

This Planning Proposal seeks to reclassify land the Council owned land 85 Attunga Avenue, Kiama Heights from community to operational.

As such, this Planning Proposal report has been prepared for Council in consideration of the requirements under Section 3.33 of the EP&A Act, together with the NSW DPI's "A guide to preparing planning proposals" (October 2012), the Planning Secretary Requirements and the LEP Practice Note PN16-001.

A review of the relevant planning matters for consideration in this instance has been undertaken, and it is considered that the subject reclassification to operational land has strategic merit and should proceed. This existing land use will be in keeping with current community expectations for the appropriate use of available land and will provide an improved land use outcome for the area through the retention of available residential stock for social housing purposes.

It is concluded that the Planning Proposal can be justified relative to environmental, social and economic effects and will be in the public interest. Accordingly, the Planning Proposal should be forwarded to the Department of Planning, Industry and Environment for gateway determination in accordance with Section 3.34 of the EP&A Act, 1979.