

## 10.2 Planning Proposal PP\_2023\_2105 (PP2300005) - KLEP 2013 Housekeeping Amendment - South West Rocks Building Heights

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**Officer** Marnie Jeffery, Strategic Planning Officer

**File Number** PP2300005

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### PURPOSE

Consider the following planning proposal for progression to the next stage of the local plan making process.

**Proposal:** To amend the KLEP 2013 Height of Building map to align with the adopted South West Rocks Structure Plan

**Location:** Various identified lots within the South West Rocks Structure Plan study area

**Proponent:** Kempsey Shire Council

**Status:** Community and agency consultation undertaken

Council is to consider the matters raised in the community and agency submissions and decide whether to progress the making of the amendment to the Kempsey Local Environmental Plan (KLEP) 2013. The Department of Planning, Housing and Infrastructure (formerly the Department of Planning and Environment) has not authorised Council to be the local plan-making authority in this matter, therefore the Department of Planning, Housing and Infrastructure will undertake a final review of the proposal before determining whether to make the proposed KLEP 2013 amendment.

### RECOMMENDATION

**That Council:**

1. **endorses the progression of this planning proposal, which applies to various lots within South West Rocks, to the making of the amendment to the Kempsey Local Environmental Plan 2013;**
2. **requests that the Minister's delegate of the Department of Planning, Housing and Infrastructure finalise and make the plan; and**
3. **requests the Department of Planning, Housing and Infrastructure notify the plan on the NSW Legislation webpage upon the making of the Kempsey Local Environmental Plan 2013 amendment.**

### BACKGROUND

A delegate for the Minister of Planning, Housing and Infrastructure has determined not to authorise Council to be the plan-making authority in this matter so that a final, impartial review of the proposal and submissions made during consultation prior to finalisation can be made by the Department of Planning, Housing and Infrastructure. This is due to the Department becoming aware of concerns raised by some landowners affected by the planning proposal.

Council must still instruct the Department to undertake the following:

- making the amending LEP; and
- Request the amending LEP be notified on the NSW Legislation website.

The plan comes into effect the day that it is published on the NSW Legislation website.

**Subject land**

The land subject to the Planning Proposal is located within the South West Rocks Structure Plan study area (Figure 1) and consists of various land use zones and minimum lot sizes. However, all the land subject to this Planning Proposal are parcels which do not currently have, but are identified as requiring, a regulated building height applied under the provisions of the Kempsey Local Environmental Plan 2013.



Figure 1 - SWR Structure Plan study area.

recommended to apply to the land parcels identified in the following table and as shown in Figure 2. These height restrictions align with the recommendations of the South West Rocks Structure Plan.

Table 1 - Land subject to building height amendments.

Lot and DP	Street Address	Building Height Change	
		Current	Proposed
Lot 2 DP 1091323	Phillip Drive	-	8.5m
Lot 364 DP754396	2 Sportsmans Way	-	8.5m
Lot 367 DP754396		-	8.5m
Lot 4 DP 1032643		-	8.5m
Lot 5 DP 1032643		-	8.5m
Lot 6 DP 1032643		-	8.5m
Lot 7 DP 1032643		-	8.5m
Lot 7001 DP 1073214	Buchanan Drive	-	8.5m
Lot 7002 DP 1073215	Ocean Drive / O’Keefe Road	-	8.5m
Lot 7041 DP 1120754	2A Livingstone Street	-	8.5m
Lot 7042 DP 1120754	Ocean Drive	-	8.5m
Lot 7308 DP 1138202	Buchanan Drive	-	8.5m



Lot 372 DP 704869	Buchanan Drive	-	8.5m
Lot 1 DP 778105	Livingstone Street	-	8.5m
Lot 337 DP 754396	Livingstone Street	-	8.5m
Lot 7305 DP 1127502	Livingstone Street	-	8.5m
SP62275	1 Ocean Drive	-	8.5m
Lot 375 DP 822657	3 Ocean Drive	-	8.5m
Lot 374 DP 822657	9 Ocean Drive	-	8.5m
Lot 373 DP 822657	Ocean Drive	-	8.5m
Lot 286 DP 754396	Gregory Street	-	8.5m
Lot 235 DP 754396	1 Gregory Street	-	8.5m
Lot 269 DP 754396	1 Gregory Street	-	8.5m
Lot 341 DP 754396	Gregory Street	-	8.5m
Lot 2331 DP 1196964	19A Gregory Street	-	8.5m
SP 100324	19 Gregory Street	-	8.5m
Lot 377 DP 823789	Gordon Young Drive	-	8.5m
Lot 376 DP 823789	39-89 Gordon Young Drive	-	8.5m
Lot 379 DP 823785	91 Gordon Young Drive	-	8.5m
Lot 3 DP 20188	98 Gregory Street	-	11m
Lot 2031 DP 579067	102 Gregory Street	-	11m
Lot 231 DP 754396	255-279 Gregory Street	-	11m

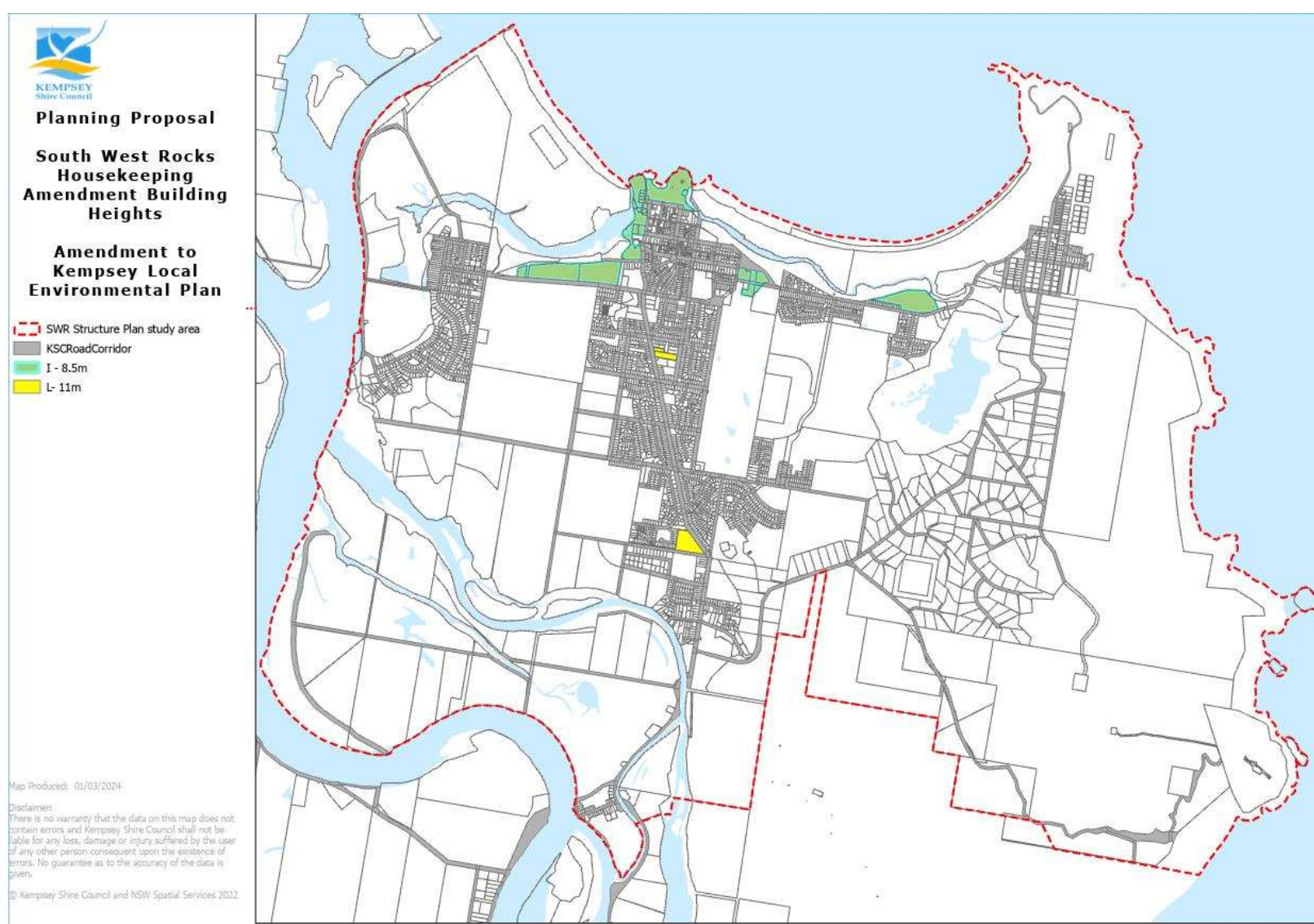


Figure 2 - Land subject to building height amendments.

The South West Rocks area contains a large portion of underutilised R3 Medium Density Residential zoned land and R1 General Residential land yet to be delivered. The development of this R3 and R1 zoned land can deliver the dwelling targets projected for South West Rocks and the introduction of the building height limits subject to this Planning Proposal will not result in losses in potential housing in the area. The Kempsey Local Growth Management Strategy (2023) indicates that across the Kempsey Shire there appears to be adequate areas zoned and/or approved for residential development, which can meet the projected housing demand.

It is important to note that on advice from the Department of Planning, Housing and Infrastructure, the properties in Keith Andrews Avenue that were included in the proposal presented to Council at the 17 October Ordinary Council meeting were removed from this proposal, prior to public exhibition, due to a land zoning change also being required on some of the subject sites. It is proposed to include this land in a future planning proposal to ensure amendments to the land zoning and building heights occur concurrently.

At the 17 October 2023 Ordinary Meeting, Council resolved the following:

1. *submits the planning proposal which seeks to amend the Height of Buildings Map for various lots within South West Rocks, to the Minister for Planning and Public Spaces for gateway consideration pursuant to section 3.34 of the Environmental Planning and Assessment Act 1979;*
2. *requests that the Secretary of the Department of Planning and Environment issue Council with written authorisation to exercise plan making delegations in relation to this proposal; and*
3. *undertakes, subject to the gateway determination, community consultation for the planning proposal as required.*

On 13 November 2023 a delegate for the Minister of Planning and Public Spaces issued a Gateway Determination (attached) to proceed with the planning proposal, with conditions, and notified Council that the Department of Planning, Housing and Infrastructure will be the local plan-making authority for this matter and written authorisation was not issued to Council to exercise plan making delegations in relation to this proposal. The timeframe for completing the LEP amendment is 6 months from the date Gateway Determination is issued (by 13 May 2024).

## **KEY CONSIDERATIONS**

### **Policy and Legislation**

The planning proposal plan-making authority is authorised to exercise the functions under section 3.36(2) of the Environmental Planning & Assessment Act 1979 to make the plan, subject to the following:

- a. the planning proposal authority has satisfied all the conditions of the Gateway Determination;
- b. the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Environmental Planning & Assessment Act 1979 or the Secretary has agreed that any inconsistencies are justified; and
- c. there are no outstanding written objections from public authorities.

Council has assessed the planning proposal and is satisfied that it meets all the requirements of section 3.36(2), as stated above and have addressed them accordingly in this report.

As Council has not been authorised to be the local plan-making authority in this matter, the Department of Planning, Infrastructure and Housing will therefore exercise its function as the local-plan making authority.

**Strategic Alignment**

The amendment of the building height for the subject sites ensures that the important characteristics that make this area distinctive are maintained, enhanced and protected, which is consistent with the strategic intent expressed in Council’s South West Rocks Structure Plan.

**Impact on Financial Sustainability**

The proposal will not result in extra demand for infrastructure or impose additional costs on Council services.

**Stakeholder Engagement**

The Gateway Determination for this planning proposal states that public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Environmental Planning & Assessment Act 1979 as follows:

- (a) the planning proposal is categorised as “standard” as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
- (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).

Exhibition must commence as soon as possible following the date of the Gateway Determination.

Community consultation

The planning proposal was placed on public exhibition from Thursday 16 November 2023 to Friday 15 December 2023 (21 working days). Council directly notified all affected landowners of the public exhibition period via email and Council’s website and social media channels were utilised to inform the broader community of the exhibition period.

A total of 120 public submissions were received (attached) – 113 in support and 7 objections. A summary of matters raised in the objections are provided below with comments/responses provided.

With regard to the objections received, Council did not receive correspondence from some of these objectors during the extensive community consultation process undertaken in the preparation of the SWR Structure Plan. Therefore, a number of the matters now raised were not identified with Council and consideration was unable to be given to address these matters in the SWR Structure Plan. This Planning Proposal is merely implementing the recommendations identified in the adopted SWR Structure Plan.

Submission	Comment/Response
Subject land is zoned C3 Environmental Conservation and contains registered middens on site.	Subject land does not currently contain a building height limit. The introduction of a height limit is not to promote development of a

<p>A further height increase in an area subject to a tree management plan is not warranted.</p> <p>Huge impact on value for some units adjoining subject land.</p>	<p>site, it is to ensure any future development, if any, is sympathetic to the site and its surrounds.</p> <p>Any future development must obtain the necessary approvals through the State government and Council and must comply with the provisions of:</p> <ul style="list-style-type: none"> <li>• any relevant State legislation, i.e. Heritage, Biodiversity, etcetera;</li> <li>• objectives of the land zone, permissibility and any other relevant clauses of the KLEP 2013;</li> <li>• the Kempsey Development Control Plan; and</li> <li>• any other relevant Council plans and policies.</li> </ul>
<p>Existing building no longer sustainable and requires urgent upgrade. Investigations have been undertaken to construct building which would provide broad community benefits exceeding proposed 8.5m height limit.</p> <p>11m height limit generally applied to business and commercial areas.</p>	<p>Any proposal to redevelop the site would be assessed on its merits and compliance with the relevant provisions.</p> <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p> <p>Alternatively, a separate Planning Proposal could be submitted for consideration, to amend the building height standard.</p>
<p>Proposed future development of site to deliver tourist and visitor accommodation cannot be delivered within 8.5m height limit.</p> <p>Current housing choice &amp; affordability in South West Rocks adversely impacted by use of existing dwelling stock as short term holiday rentals.</p> <p>Proposed future development aligns with State government and Council plans.</p> <p>Building height standard is not consistent with the strategic intentions of the landowner.</p>	<p>Any proposal to redevelop the site would be assessed on its merits and compliance with the relevant provisions.</p> <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p>

Recommend subject site be amended to 13.5m height of building standard.	Alternatively, a separate Planning Proposal could be submitted to amend the building height standard.
Proposed building height limit not consistent with the objectives of the land zoning for the site, being R3 Medium Density Residential.	The objectives of the R3 Medium Density Residential zone can still be achieved within the 8.5m building height limit, e.g. provide housing needs for the community, provide a variety of housing types and enables other uses that provide facilities or services that meet the day to day needs of residents.
Planning Proposal is not considered a basic amendment, due to considerable implications it could have on housing supply and impacts on existing land holdings.	The Department of Planning, Housing and Infrastructure categorises the planning proposal as a 'standard', not basic, planning proposal in accordance with the <i>Local Environmental Plan Making Guideline, August 2023</i> .
<p>Planning proposal fails to:</p> <ul style="list-style-type: none"> <li>consider the site-specific merit of any of the sites impacted by the Planning Proposal.</li> </ul> <p>consider existing development approvals over land parcels and the height of existing development.</p> <ul style="list-style-type: none"> <li>Provide any economic, environmental or social impact assessments that detail the potential implications of the Planning proposal.</li> </ul>	<ul style="list-style-type: none"> <li>Any proposal to redevelop sites subject to this Planning Proposal would be assessed on their merits and compliance with the relevant provisions.</li> </ul> <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p> <p>Alternatively, a separate Planning Proposal could be submitted to amend the building height standard.</p> <ul style="list-style-type: none"> <li>Social, environmental and economic impacts on South West Rocks have been considered in the preparation of Council's strategic plans, including the SWR Structure Plan, which supports revitalisation to existing commercial centres and gives greater certainty to the community and for future development of the area.</li> <li>Large portions of R3 Medium Density Residential zoned land are underutilised,</li> </ul>

<ul style="list-style-type: none"><li>• Provide sufficient evidence that there is available land supply to cater to the growing housing demand.</li><li>• Provide any justification based on visual analysis as to why the building heights were selected for each site.</li><li>• Provide sufficient justification as to the Planning Proposal meets the strategic intentions of the State Government and Councils own Strategic Planning documents.</li></ul>	<p>and some R1 General Residential land is yet to be delivered. The development of this R3 and R1 zoned land can deliver the dwelling targets projected for South West Rocks and the introduction of the building height limits subject to this Planning Proposal, will not result in losses in potential housing in the area. The Kempsey Local Growth Management Strategy (2023) indicates that across the Kempsey Shire there is adequate areas zoned and/or approved for residential development, which can meet the projected housing demand.</p> <ul style="list-style-type: none"><li>• All the land subject to the Planning Proposal does not currently contain a regulated building height. The heights selected for the sites are sympathetic to the surrounding land and aim to ensure that future development is not inconsistent with the desired future character of the area, as identified in collaboration with the community, in the SWR Structure Plan.</li><li>• The Planning Proposal aligns with the regional focused goals of the North Coast Regional Plan 2041:<ul style="list-style-type: none"><li>○ <i>Goal 1: liveable, sustainable and resilient</i></li><li>○ <i>Goal 3: growth change and opportunity</i></li></ul></li></ul> <p>The proposal also aligns with Council’s strategic plans, the Local Strategic Planning Statements (LSPS), Kempsey Local Growth Management Strategy (2023) and the South West Rocks Structure Plan (2023).</p> <p>The land subject to this submission, is within the Coastal Use Environment Area, Coastal Environment Area, partly within the Coastal Wetland Proximity Area and adjacent to Coastal Wetlands. The proposed building height amendment assists in ensuring any development on the site aligns with the following objectives of the North Coast Regional Plan 2041 goals:</p> <ul style="list-style-type: none"><li>○ protect regional biodiversity and areas of high environmental value;</li></ul>
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<ul style="list-style-type: none"><li>• Provide sufficient justification that would allow the contradiction of several ministerial directions.</li></ul>	<ul style="list-style-type: none"><li>○ manage and improve resilience to shocks and stresses, natural hazards and climate change; and</li><li>○ celebrate local character.</li><li>• The delegate for the Department of Planning, Housing and Infrastructure justified inconsistencies with the applicable Ministerial Directions under section 9.1 of the Environmental Planning &amp; Assessment Act 1979, being 6.1 Residential Zones and 7.1 Employment Zones. Council may still need to obtain the agreement of the Secretary to comply with 4.3 Planning for Bushfire Protection prior to the LEP being made. As Department of Planning, Housing and Infrastructure are the plan-making authority in this instance, the Secretary's agreement can be provided at the finalisation stage. The Planning Proposal was referred to the NSW Rural Fire Service and no objection was received.</li></ul>
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State Agency Consultation

As required by condition 3 of the Gateway Determination, consultation was undertaken with the identified State Agency, the NSW Rural Fire Service. Whilst not required, Council chose to consult with a number of other State Agencies. A summary of their responses is provided below with comments/responses provided.

Council did not receive a response from Crown Lands, NSW Police or the Aboriginal Land Council within the recommended 'Response to Submission' timeframe of 5-25 working days identified in the *Local Environmental Plan Making Guidelines*, August 2023. (note that 41 working days had lapsed as of 1 March 2024).

Agency	Submission	Comment/Response
NSW Rural Fire Service	Raise no objection to the proposal. Future development applications are to address bushfire threat and it recommend measures to minimise bushfire risk	N/A
Biodiversity, Conservation and Science (BCD) – Department of	Supports introduction of building height limits. Future development of land zoned C2 Environmental Conservation	Future development on C2 and/or C3 land must comply with the provisions of:

Climate Change, Energy, the Environment and Water	and/or Environmental Management to be undertaken in a sustainable manner that ensures the existing environmental values are retained and enhanced.  No further issues raised.	<ul style="list-style-type: none"> <li>any relevant State legislation, i.e. Heritage, Biodiversity;</li> <li>objectives of the land zone, permissibility and any other relevant clauses of KLEP 2013;</li> <li>Kempsey Development Control Plan; and</li> <li>any other relevant Council plans and policies.</li> </ul>
Heritage NSW – Department of Climate Change, Energy, the Environment and Water	Lower height limit advisable surrounding the Pilot Station, equivalent to single storey, but note the proposal is intended to protect the character of South West Rocks and the heritage significance of the Pilot Station.	N/A

### Other Matters

Nil

### CONCLUSION

The building height amendments proposed are consistent with Council's *South West Rocks Structure Plan 2023* in that the desired outcome aligns with the community's expectations and enhances the identified vision for this area.

### ATTACHMENTS

1. Planning Proposal SWR Housekeeping Amendment Building Heights [10.2.1 - 32 pages]
2. Land subject to building height amendments map [10.2.2 - 13 pages]
3. SWR Structure Plan June 2023 [10.2.3 - 52 pages]
4. Gateway Determination [10.2.4 - 3 pages]
5. State Agency responses [10.2.5 - 4 pages]
6. Council Submissions REDACTED [10.2.6 - 285 pages]
7. Planning Portal Submissions REDACTED opt [10.2.7 - 39 pages]

This report is submitted on a confidential basis as it involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. (*Local Government Act 1993*, section 10A(2)(c))

On balance, the public interest in preserving the confidentiality of the commercial information supplied, outweighs the public interest in openness and transparency in Council decision-making by discussing the matter in an open meeting.

**2024.46 RESOLVED (Cr Saul/Cr Bain):**

**That Council note:**

- 1. draft meeting minutes from the Audit, Risk & Improvement Committee, 7 February 2024;**
- 2. Annual Audit, Risk & Improvement Committee and Internal Audit Report for 2023; and**
- 3. productivity improvements from internal auditing – 2019-2023**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Ring, Cr Saul and Cr Wyatt

**AGAINST:** Nil

**8 MAYORAL MINUTES**

There is a Confidential Mayoral Minute included as item 12.4.

**9 REPORTS OF COMMITTEES**

**9.1 Local Traffic Committee Meeting Minutes**

<b>Officer</b>	Michael Jackson, Director Operations & Planning
<b>File Number</b>	F21/1958

**2024.47 RESOLVED (Cr Patterson/Cr Fergusson):**

**That Council notes the minutes and adopts the recommendations of the Local Traffic Committee meeting held 27 February 2024.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Ring, Cr Saul and Cr Wyatt

**AGAINST:** Nil

**10 REPORTS TO COUNCIL**

**10.2 Planning Proposal PP\_2023\_2105 (PP2300005) - KLEP 2013 Housekeeping Amendment - South West Rocks Building Heights**

<b>Officer</b>	Marnie Jeffery, Strategic Planning Officer
<b>File Number</b>	PP2300005

**2024.48 RESOLVED (Cr Wyatt/Cr Bain):**

**That Council:**

- 1. endorses the progression of this planning proposal, which applies to various lots within South West Rocks, to the making of the amendment to the Kempsey Local Environmental Plan 2013;
- 2. requests that the Minister’s delegate of the Department of Planning, Housing and Infrastructure finalise and make the plan; and
- 3. requests the Department of Planning, Housing and Infrastructure notify the plan on the NSW Legislation webpage upon the making of the Kempsey Local Environmental Plan 2013 amendment.

**CARRIED (5 / 3)**

**FOR:** Cr Bain, Cr Fergusson, Cr Hauville, Cr Ring and Cr Wyatt

**AGAINST:** Cr Butterfield, Cr Patterson and Cr Saul

**10.3 Crescent Head Foreshore Community Advisory Group Terms of Reference and EOI**

<b>Officer</b>	Grant Dennis, Design and Investigation Manager
<b>File Number</b>	F19/1812

**MOVED (Cr Patterson/Cr Ring):**

**That Council:**

- 1. notes the strong community support for the 21-year renewal of the Crescent Head Country Club (CHCC) Golf Course lease on fair and reasonable terms, with over 1200 submissions of support received through the exhibition of the draft Council managed Crown Land Plan of Management;
- 2. enters into direct negotiation with Crescent Head Country Club on a 21-year lease, in accordance with the terms of the Crown Land lease guidance and lease template, at an independently valued market rent;
- 3. removes the CHCC Golf Club lease from the TOR from the Community Advisory Group (CAG);
- 4. notes that the operation of the Crescent Head Holiday Park is outside of the TOR for the Community Advisory Group (CAG) and that the revised Concept Plans will be publicly exhibited in March to April 2024 prior to being reported back to a future Council meeting for adoption; and
- 5. endorse the Crescent Head Foreshore Advisory Group TOR and Expression of Interest for Public Exhibition.

**AMENDMENT (Cr Patterson/Cr Ring):**

**That Council:**