



PLANNING PROPOSAL

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Subject site:

Lot 2 DP 12158276
14A Bonaira Street, Kiama
Planning Proposal - Reclassification of Land

Document Properties	
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Job Number	J203
Version	Public Exhibition
Date	March 2023

Acknowledgment of Country

MMJ acknowledges the traditional custodians of the land to which this Statement of Environmental Effects applies. We pay our respect to all Aboriginal people of this land and to Elders past, present, and emerging.

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Introduction

This Planning Proposal report has been prepared by MMJ Wollongong on behalf of Kiama Municipal Council (Council) to accompany a Planning Proposal application to reclassify land from Community Land to Operation Land at Lot 2 DP 1215276, 14A Bonaira Street Kiama.

Council has identified the need to reclassify the public land of the Blue Haven Bonaira site from Community Land to Operation Land to ensure it is being operated in accordance with the Local Government Act 1993. Following Council's acquisition of the subject land, it should have been classified as operational land within three months, however given this was not done due to an oversight at the time, the land was given Community Land status by default. The status of this site as Community Land is not appropriate for the current use of the land for Seniors Housing. The construction of Blue Haven Bonaira was completed in late 2019 and is a contemporary seniors housing development with 134 beds.

Following consideration of Council's urgent need to improve cash flow to demonstrate "going concern" status and improve the long-term financial position of Council, Council resolve the following at its 13 October 2022 Extraordinary Meeting:

Resolved that Council rescind motion 22/283OC from the September 2022 ordinary meeting and replace with the following:

That Council

- 1. Retain Blue Haven Terralong (Lot 71 DP 831089) in Council ownership and ensures comprehensive engagement with the community and residents, giving consideration to future use of the decommissioned aged care facility.*
- 2. Undertake to sell Blue Haven Bonaria (Lot 2 DP1215276) subject to the completion of the required notice in accordance with Section 34 of the Local Government Act (public notice to classify or reclassify public land) and the associated planning proposal process, which council has previously resolved to allocate funding towards at its June ordinary meeting.*
- 3. Continue to inform and engage with the community, including those who are cared for by Blue Haven, to reassure all parties that the quality of care and standard of service of the Independent Living Units and Residential Aged Care Facility will be maintained, regardless of ownership.*
- 4. Continue the work on the urgent need to improve cash flow to demonstrate 'going concern' status and improve the long-term financial position of Council, including, but not limited to:*
 - a. paid parking and resident permits*
 - b. ensuring a proportion of revenue generated from any sale or divestment of any assets be invested in strategies for the generation of income and continuous revenue streams.*
- 5. Rescind its previous resolution on the sale through open tender for Barney Street lot and refer to the separate confidential report on this subject matter.*

This Planning Proposal report is a direct result of the Planning Proposal and Council's intention to sell Blue Haven Bonaira.



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 Local Environmental Plan 2011 (KLEP 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 "Local Environmental Plan Making Guideline" (September 2022). 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. |

Subject Land

The subject site is located on Bonaira Street, Kiama. Known as 14A Bonaira Street and this land incorporates one allotment title described as Lot 2 DP 1215276 and is approximately 3.095HA in size.

The property is in a residential street east of the Illawarra rail line, west of Kendalls Beach and north of Bonaira Native Garden. The site is otherwise surrounded by detached residential development and adjoins Kiama Integrated Primary and Community Health Centre at 14B Bonaira Street. The site currently contains the Blue Haven Bonaira Retirement Village and home care consisting of a residential aged care facility, independent living units, home care packages and sites including the heritage item "Barroul House". The Retirement village was completed in late 2019 and contains 134 beds across eight purpose built care houses.



FIGURE 1 AERIAL IMAGE (SOURCE: NEARMAP)



IMAGE 1: VIEW OF BLUE HAVEN ENTRY



IMAGE 2: BARROUL HOUSE HERITAGE ITEM



IMAGE 3: EXISTING BLUE HAVEN AGED CARE FACILITY



IMAGE 4: EXISTING BLUE HAVEN AGED CARE FACILITY



IMAGE 5: NSW HEALTH KIAMA INTEGRATED HEALTH CENTRE



IMAGE 6: EXISTING BLUE HAVEN AGED CARE FACILITY REAR CAR PARK

The following Kiama Local Environmental Plan 2011 (KLEP 2011) controls and maps 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.

Zoned:	R2: Low Density Residential
Floor Space Ratio:	0.45:1
Height of Buildings Map:	8.5m
Bushfire Prone Land:	Vegetation Buffer
Minimum Lot Size:	450m ²
Heritage:	Barroul House Significance: Local

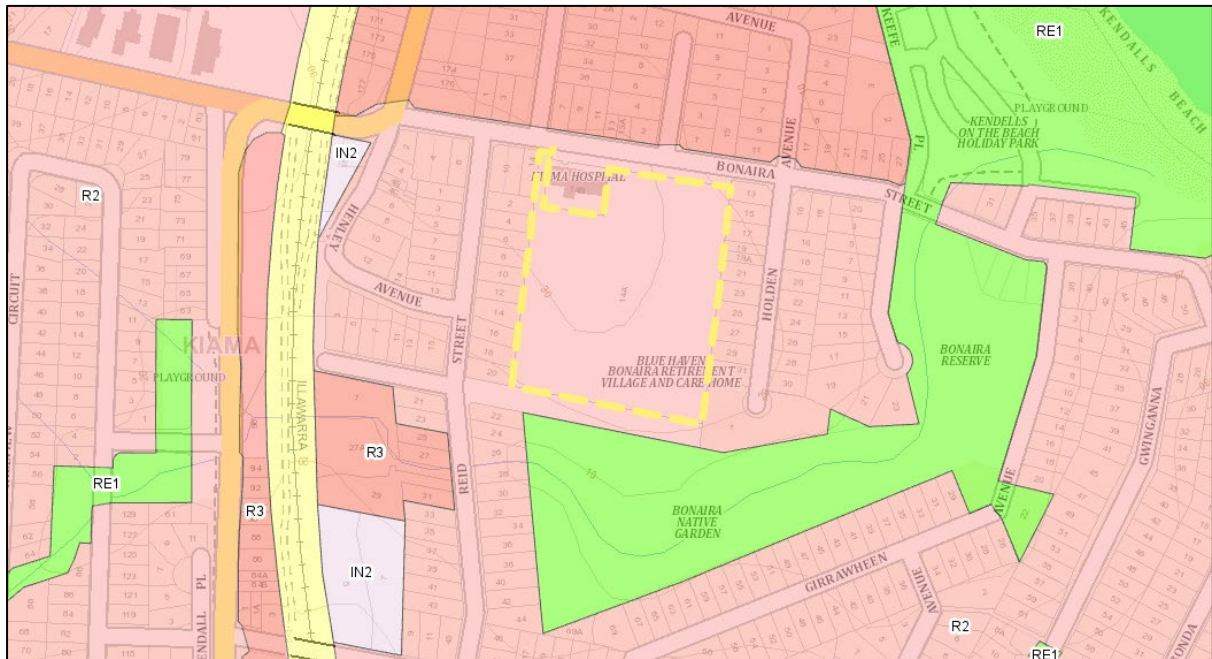


FIGURE 2 LAND ZONING MAP (SOURCE: EPLANNING SPATIAL VIEWER)

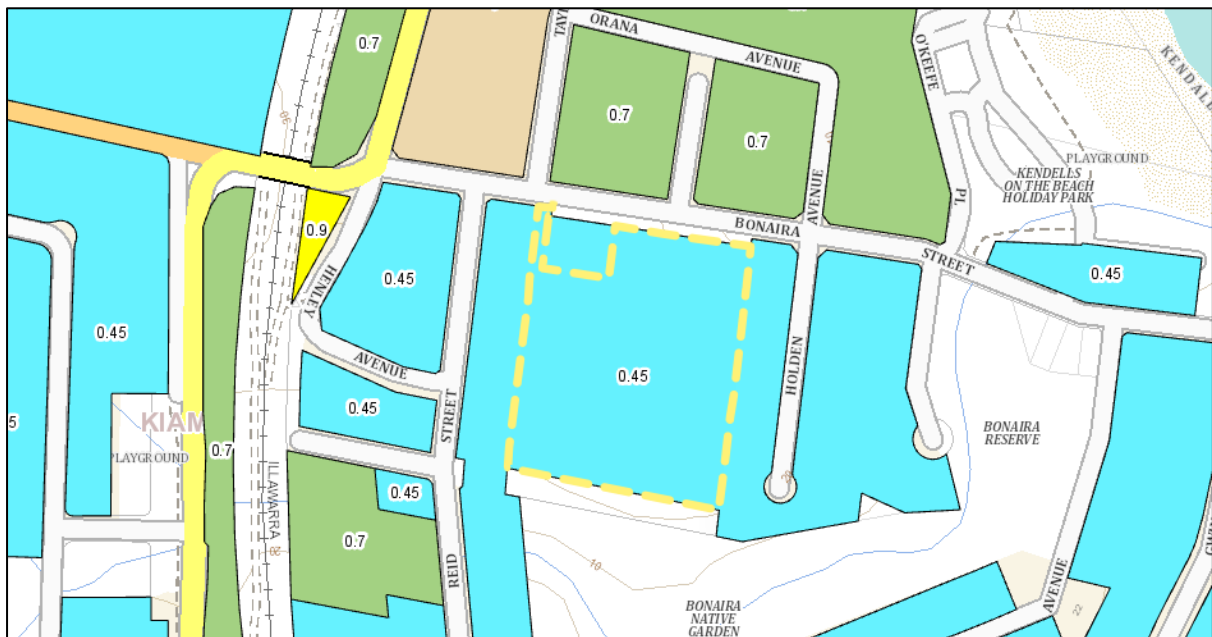


FIGURE 3 FLOOR SPACE RATIO MAP (SOURCE: EPLANNING SPATIAL VIEWER)



FIGURE 4 HEIGHT OF BUILDINGS MAP (SOURCE: EPLANNING SPATIAL VIEWER)

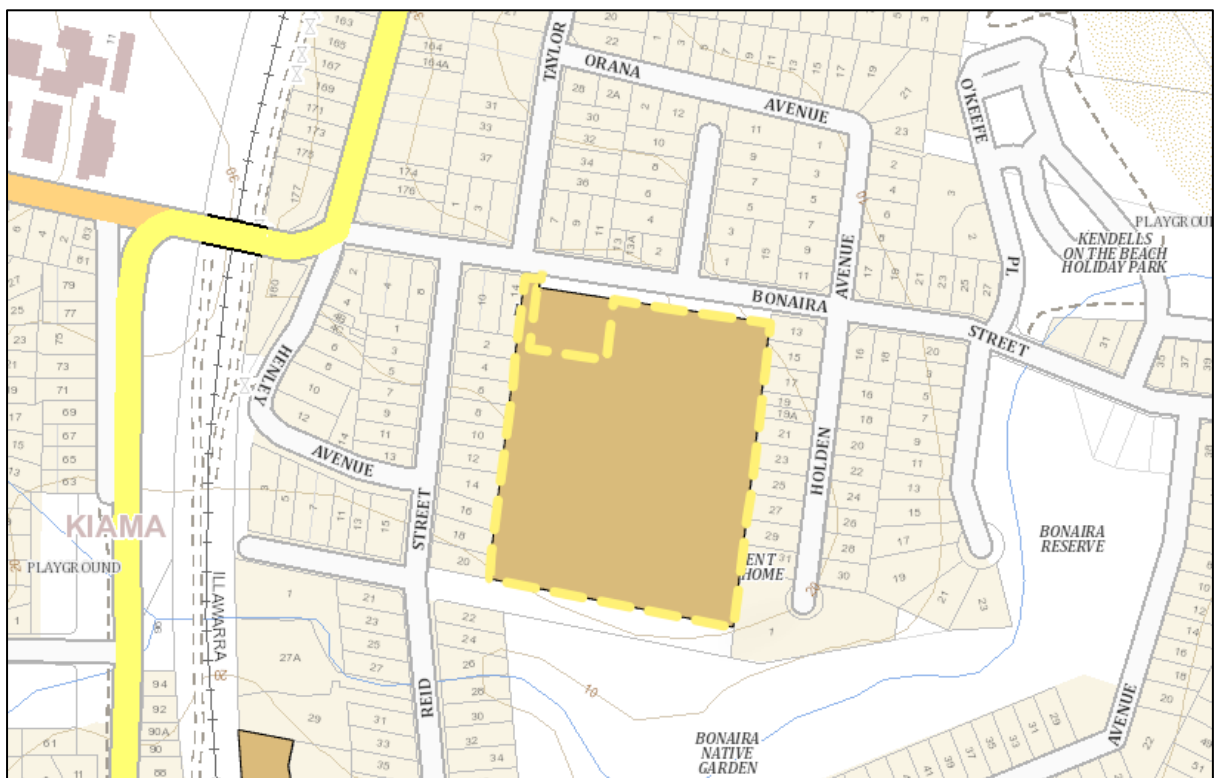


FIGURE 5 HERITAGE MAP (SOURCE: EPLANNING SPATIAL VIEWER)

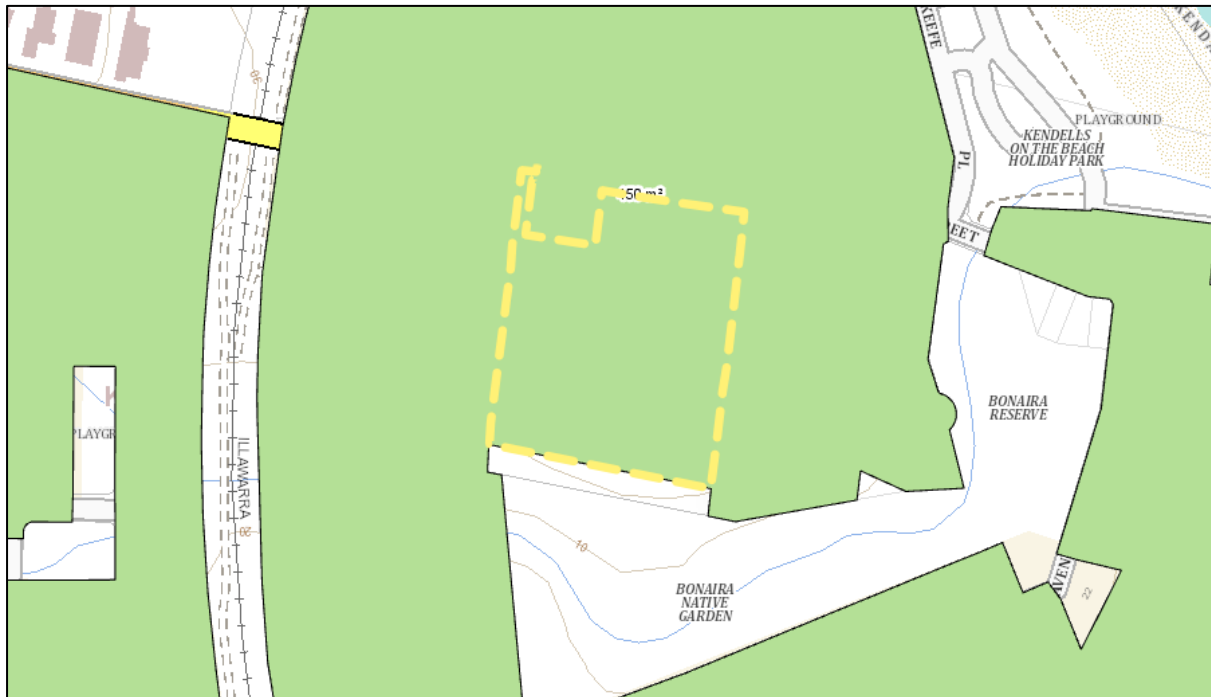


FIGURE 6 LOT SIZE MAP (SOURCE: EPLANNING SPATIAL VIEWER)

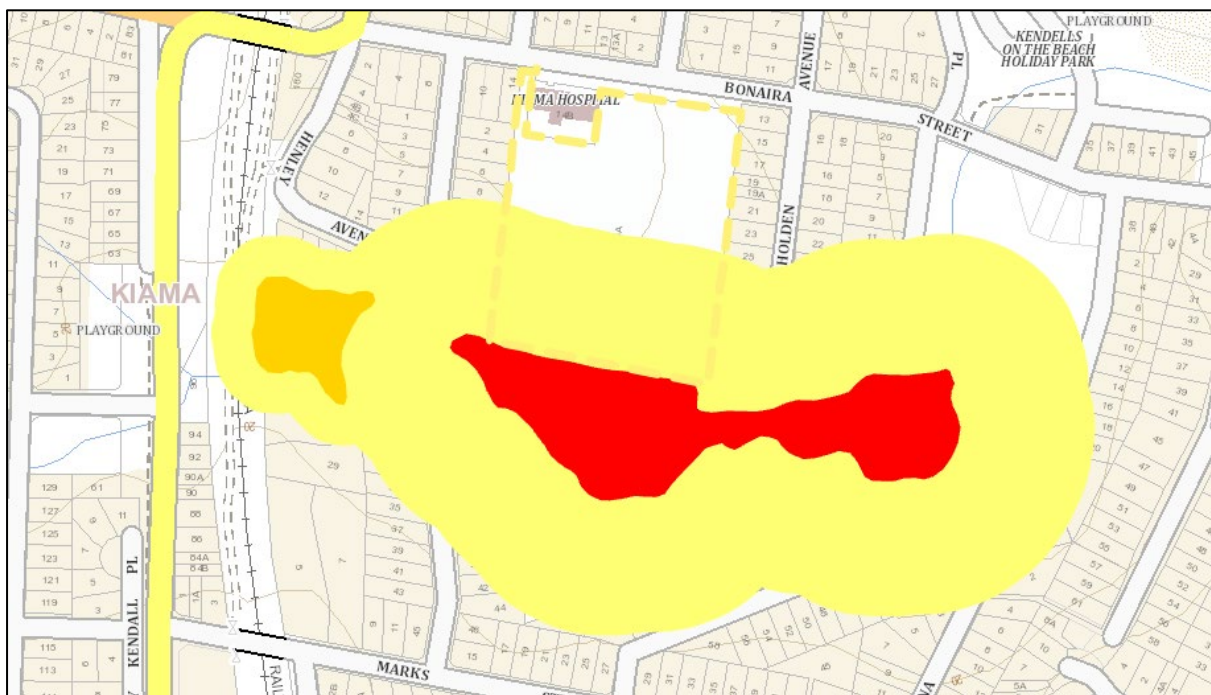


FIGURE 7 BUSHFIRE PRONE MAP (SOURCE: EPLANNING SPATIAL VIEWER)

The Deposited Plan (DP) 1215276 is extracted below (Fig. 8) and included in [Appendix 1](#). The Certificate of Title is included in Appendix 2 and the easements/restrictions affecting the land are detailed below:

1. Reservations and conditions in the crown grant(s)



2. AP684104 Part of the land above described is used as a Retirement village under the Retirement Villages Act 1999 known as Blue Haven Bonaira shown hatched in plan with AP684104.
3. DP1215276 Right of Access variable width affecting the part(s) shown so burdened in the title diagram
4. DP1215276 easement for services variable width affecting the part(s) shown so burdened in the title diagram
5. AM102955 restriction(s) on the use of land
6. DP1263846 easement for padmount substation 5.5 metre(s) wide Affecting the part(s) shown so burdened in dp1263846
7. DP1263846 restriction(s) on the use of land

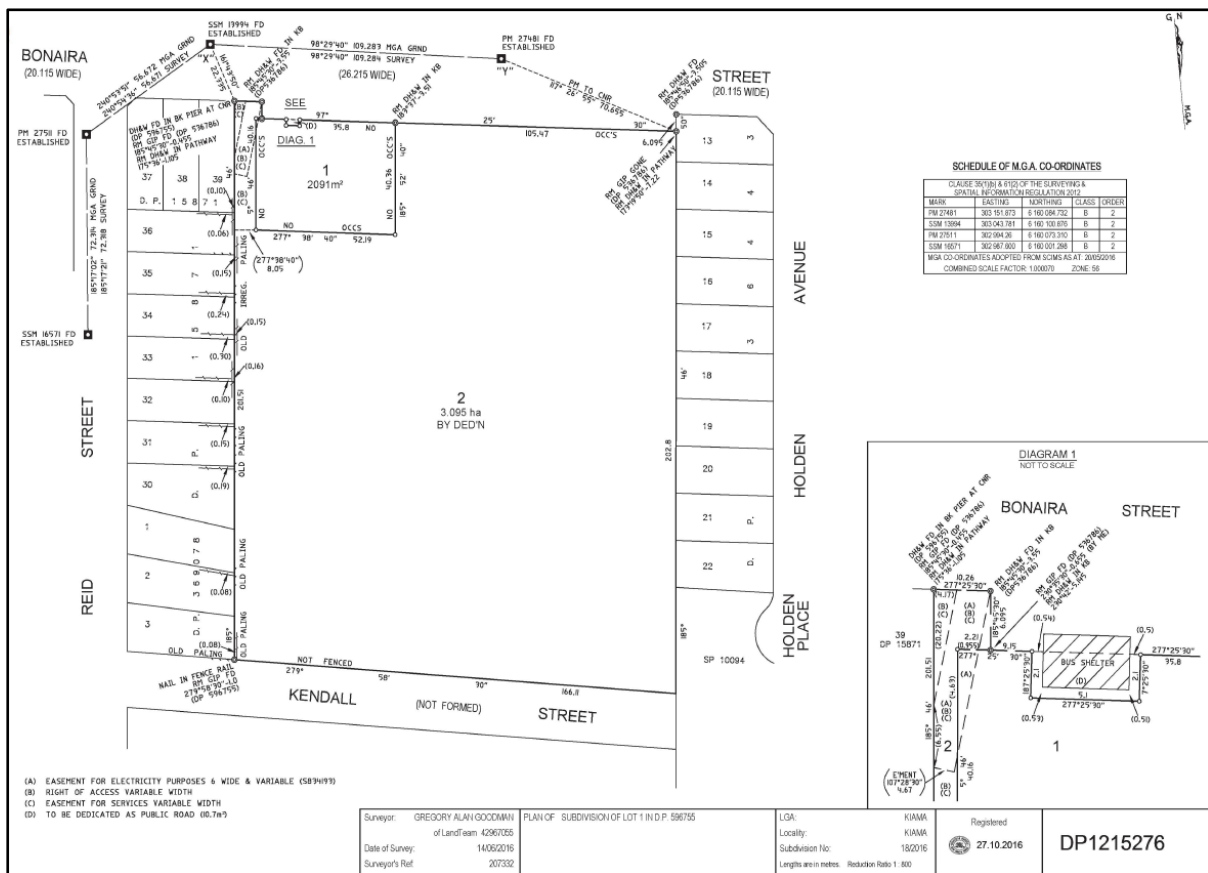


FIGURE 8 DEPOSITED PLAN (SOURCE: INFOTRACK)



Part 1 – Statement of Objectives or Intended Outcomes

The objective of this Planning Proposal is to reclassify the subject site known as Lot 2 DP 1215276, 14A Bonaira Street, Kiama.

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 Local Environmental Plan 2011* (KLEP 2011) to achieve the preferred long-term land use strategy for the subject land. This Planning Proposal seeks to amend the KLEP 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 14A Bonaira Street, Kiama from Community Land to Operational Land”

Part 2 – Explanation of Provisions

The Planning Proposal proposes to amend Kiama Local Environmental Plan 2011 (KLEP 2011) to list the property, Lot 2 DP 1215276, 14A Bonaira Street, Kiama under Part 1 of Schedule 4 “Land classified or reclassified as operational land – interests changed or interests changed”. As per the Practice Note PN 0001, 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	Column 2
Locality	Description
14A Bonaira Street, Kiama	Lot 2 DP 1215276

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 2). This will enable Council to explore the sale of the subject land at 14A Bonaira Street, Kiama.

Clause 5.2 of KLEP 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.

Part 3 – Justification

This Planning Proposal 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 Local Environmental Plan 2011 maps. As outlined above, an amendment to Schedule 4, Part 1 is required to reclassify community land to operational status with no interests proposed to be changed. 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.



Planning Secretary Requirements

In the case of proposed Local Environmental Plans 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 Planning Proposal 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 2022-2032. 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 proposed to be changed (see Appendix 1 & 2 – DP and Certificate of Title). The existing Right of Access, Easement for Services and Padmount Station and associated Restrictions on the Use of the land will remain and therefore no interests are proposed to be discharged or changed.

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.

Reclassification of Land Checklist

In addition to the Planning Secretary's requirements above, the NSW Department of Planning and Environment (DPE) 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 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:-

TABLE 1 ASSESSMENT OF 14A BONAIRA STREET, KIAMA

14A Bonaira Street, Kiama	
Matter:	Response:
The current and proposed classification of the land.	Currently community land and proposed operational land.
Whether the land is a 'public reserve' (defined in the LG Act)	As understood, the land is not defined as a public reserve. The property came into Council's ownership on 28 th February 2017 following Council's purchase of this land from Health Administration Corporation (Dealing AM229547). A request to classify the land as operational should have occurred within three months of the land being transferred to Council, however this did not take place and the land was classified as Community Land by default.
The strategic and site-specific merits of the reclassification and evidence to support this.	Council has resolved to sell Blue Haven Bonaira (Lot 2 DP 1215276) given Council's financial position and the increasing costs required to continue to operate Blue Haven Bonaira and other Residential Aged care facilities. The current community land classification is not an appropriate classification given the existing Residential Care Facility which does not provide public access to the community. Without evidence of the land being considered by Council and an operational classification via Council resolution, the land automatically defaults to community land and in order for Council to explore the sale of the land, it must go through the necessary reclassification process.
Whether the planning proposal is the result of a strategic study or report.	The Planning Proposal was outlined in the Ordinary Meeting which was held 20 September 2022. The minutes of the meeting were subsequently rescinded and replaced at the 13 October 2022, Extraordinary Council meeting and are attached to the Planning Proposal. 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 continue to operate as seniors housing to provide care and housing seniors or people with a disability consistent with the objectives of the zone.



<p>Whether the planning proposal is consistent with council's community plan or other local strategic plan.</p>	<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 continue to operate as seniors housing to provide care and housing seniors or people with a disability consistent 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>
<p>A summary of council's interests in the land, including:</p> <ul style="list-style-type: none"> - 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) - if council does not own the land, the land owner's consent; - the nature of any trusts, dedications etc. 	<p>The land came into Council's ownership on 27 February 2017 where Council was appointed the owner following the purchase of land from Health Administration Corporation.</p> <p>There are no known trusts, dedications or interests or that exist on the land, however existing reservations and conditions in the Crown Grant apply to the property (see Appendix 2 - Certificate of Title). It is indicated on the title search there is a Right of Access, Easement for Services and Padmount Station and associated Restrictions on the Use of the land which are to remain unchanged.</p>
<p>Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why.</p>	<p>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.</p>
<p>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).</p>	<p>Following reclassification, the land will cease to be community land, and this will then enable Council to sell the land. Council is unable to financially sustain the continued operation of the Blue Haven Bonaira aged care facility with increasing costs. The land and the existing facility will be sold.</p>
<p>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).</p>	<p>An electronic title search was undertaken on 9/11/2022. No reference to Government Gazette or trust documents were located.</p> <p>Council to confirm any other relevant interests.</p>
<p>Current use(s) of the land, and whether uses are authorised or unauthorised.</p>	<p>The land currently contains the Blue Haven Bonaira Retirement Village and home care consisting of a residential aged care facility, independent living units, home care packages and sites.</p>



	The land also includes a Right of Access, Easement for Services and Padmount Station and associated Restrictions on the Use of the land that will remain unchanged.
Current or proposed lease or agreements applying to the land, together with their duration, terms and controls.	There are currently no lease or agreements applying to the land. Council intends to sell the land and existing facility once the land is reclassified.
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).	Council intends to sell the land once it is reclassified.
Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy).	No changes are proposed to Kiama Local Environmental Plan 2011 maps.
How council may or will benefit financially, and how these funds will be used.	<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"> • Revenue generating investments/activities that provide a commercial rate of return whether in short, medium or long term. • All profits/returns generated from investment activities can be returned to the reserve. <p>Therefore, the money derived from the sale of the subject property will go to the Land Development Reserve for the above purposes.</p> <p>Council will benefit financially by removing the ongoing cost burden of operating the Aged Care Facility at a lost. Council is currently spending more than it earns and the long term financial plan shows a returned and sustained deficit position which is not viable to continue as an organisation.</p>
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.	Council does not currently have a policy/strategy in place for the retention and acquisition of 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 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.
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.	Not applicable as the whole lot is proposed to be reclassified.
Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.	No preliminary comments have been sought by relevant government agencies. The land was not dedicated by an agency.

Section A – Need for the Planning Proposal

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

No, this Planning Proposal is not directly the result of a strategic study or report. The Planning Proposal was initiated following resolutions of Council relating to the long-term financial planning of the Blue Haven Bonaira site and concerns by Audit Office, Aged Care Quality and Safety Commission and the Minister of Local Government regarding Council's continued financial capacity to continue to own and operate Blue Haven Bonaira.

Council resolved to endorse the Planning Proposal for submission to the Department of Planning and Environment at its Ordinary Meeting dated 13th October 2022, as follows:

Undertake to sell Blue Haven Bonaira (Lot 2 DP1215276) inclusive of the process for converting the land to operational through delegated authority of the Chief Executive Officer, to ensure compliance with Council Policy and the Local Government Act 1993.

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 amending the Local Environmental Plan through the operation of *Clause 5.2 Classification and reclassification of public land* in Kiama Local Environmental Plan 2011 (KLEP 2011) by inserting the property descriptions in Schedule 4 of KLEP 2011.



Section B – Relationship to Strategic Planning Framework

Will the planning proposal give effect to the objectives and actions 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) 2041, which identifies increased demands/targets for housing within the region. In this regard, the Plan is very focussed on a collective vision “*An innovative, sustainable, resilient, connected, diverse and creative region*” To achieve this, four themes have been set down, being:-

- 1) *A productive and innovative region;*
- 2) *A sustainable and resilient region;*
- 3) *A region that values its people and places;*
- 4) *A smart and connected region*

In terms of the above goals, the most relevant in this instance is “*A region that values its people and places*”, given the existing aged care facility and the 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. The existing facility provides 134 beds in a contemporary aged care facility that provides a range of services and accommodation options. The existing facility is a valuable asset to the Kiama LGA, provides housing, care, services and employment. The Planning Proposal is consistent with the following Objectives:

- Objective 18: Provide housing supply in the right locations;
- Objective 19: Deliver housing that is more diverse and affordable;
- Objective 21: Respond to the changing needs of local neighbourhoods;
- Objective 23: Celebrate, conserve and reuse cultural heritage

The proposed reclassification of land at 14A Bonaira Street, Kiama for operational purposes is within an already defined residential urban area will not contradict with the objectives and actions of this Plan.

Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The potential sale of the land following the reclassification will allow the continued operation of the Aged Care Facility by a new owner/manager. The continuation of an aged care industry in Kiama is consistent with the Kiama Municipal Council Local Strategic Planning Statement 2020, Theme 2: Develop a Diverse and Resilient Economy. The LSPS under Theme 2 states the following:



Health, Disability and Aged Care With around an additional 3,750 residents aged 60+ over the next 20 years, employment and demand for space in the allied health and other aged care/seniors services will increase. Council's own Blue Haven Care is a major local player in this sector and offers a true continuum of aged care services and a wide range of disability services for people in the Illawarra region.

Is the planning proposal consistent with any other applicable State and regional studies or strategies?

The proposed reclassification of land is a minor application that is required following the oversight of the land being unintentionally classified as community land. The proposed is considered to be not inconsistent with any other State and regional studies or strategies.

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

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 14A Bonaira Street, Kiama is not directly affected by this Strategy, however the proposal is not inconsistent with the strategy. The reclassification and eventual sale of Blue Haven Bonaira will allow the continued operation of the aged care facility and ensure Council can continue to contribute to the regionally significant aged care industry.

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 – We live in a safe community**

The site is located within an existing residential area. The council land at 14A Bonaira Street, Kiama currently contains the Blue Haven Bonaira Retirement Village and home care consisting of a residential aged care facility, independent living units, home care packages and sites. By reclassifying the property and allowing the sale of land for the continued use of Blue Haven Bonaira as an asset to the community, future owners and managers can provide a highly functioning, profitable and quality caring entity.

- **Objective – Heritage Conservation**

The subject site is mapped as containing the heritage item "Barroul House" (Local: I81) in Kiama Local Environmental Plan 2011 (KLEP 2011).



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

- **Objective – Council is financially sustainable**

The proposed reclassification of 14A Bonaira Street, Kiama will allow Council to sell the property and existing facility to improve Council's current and future financial position which demonstrated a sustained deficit position. Based on long term financial modelling, Council has little option but to sell the facility to maintain its going concern status. Council does not have sufficient funds to run two businesses including aged care and local government services. Continuing with current service levels and existing business models, with no changes, is not a viable option for Kiama Municipal Council.

[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 several 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 \(Resilience and Hazards\) 2021](#)

The site is mapped as "Coastal Use Area" in Chapter 2 of the SEPP (Resilience and Hazards) 2021. The Planning Proposal is not inconsistent with the SEPP and any future development will be subject to the provisions of the SEPP.

The land is also identified as contaminated, and any future development will need to have regard to Chapter 4 of SEPP (Resilience and Hazards) 2021. Remediation of the site occurred through the development in accordance with the Site Remediation Plan and the Site Audit Statement.

[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 9.1 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:



1.2 Implementation of Regional Plans

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

- Objective 18: Provide housing supply in the right locations;
- Objective 19: Deliver housing that is more diverse and affordable;
- Objective 21: Respond to the changing needs of local neighbourhoods;
- Objective 23: Celebrate, conserve and reuse cultural heritage

4.2 Coastal Management

14A Bonaira Street, Kiama is in the Coastal Use 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 footpaths and public reserves.

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.

3.2 Heritage Conservation

The subject site is mapped as containing the heritage item “Barroul House” (Local: I81) in Kiama Local Environmental Plan 2011 (KLEP 2011).

The proposed reclassification will not contradict the heritage conservation aims, nor affect the integrity of these local heritage items or places themselves.

4.4 Remediation of Contaminated Land

Not inconsistent.

The land is identified as contaminated, and any future development will need to have regard to Chapter 4 of SEPP (Resilience and Hazards) 2021. Remediation of the site occurred through the seniors housing development in accordance with the Site Remediation Plan and the Site Audit Statement.

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

4.3 Planning for Bushfire Protection

Not inconsistent. The site is mapped as bushfire prone land in the southern section of the land. Bushfire considerations were considered through the development application of the seniors housing development.



5.2 Reserving Land for Public Purposes

Not inconsistent.

The objective of this direction is to:

- (a) facilitate the provision of public services and facilities by reserving land for public purposes, and
- b) facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

The land is not currently zoned for public purpose; however the land is currently Council owned land classified as Community Land. The purpose of the Planning Proposal is to reclassify the site from Community Land to Operational Land. Any inconsistency with Direction 5.2 is considered minor as the proposed reclassification corrects a historical land status anomaly. The proposed classification of the land as Operational more accurately reflects the existing operation use of the site as a seniors housing facility known as Blue Haven Bonaira Retirement Village.

6.1 Residential Zones

Not inconsistent. The land is zoned R2 Low Density Residential, and the direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed residential zone.

The site contains an existing approved seniors housing development that provides suitable housing for seniors and people with a disability. The purpose of the planning proposal is to reclassify the land to allow the ongoing use of the site for seniors housing and the ability for Council to sell the land to allow the continued use of seniors housing by a future landowner. There are no changes proposed to the land zoning or permitted uses on the site.

The proposed reclassification of land at 14A Bonaira Street, Kiama for operational purposes is within an already defined residential urban area will not contradict with the objectives and actions of this Plan. The Planning Proposal 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 9.1 Directions.



Section C – Environmental, Social and Economic Impact

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.

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 affected by bushfire hazard (vegetation) and contains the heritage item “Barroul House” (Local: I81). Notwithstanding, should the site be further developed 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 under existing development controls.



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. 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 because 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.

Section D – State and Commonwealth Interests

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.

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.

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 Local Environmental Plan 2011.



Part 5 – Community Consultation

In accordance with the Gateway Determination dated 10 February 2023, the Planning Proposal will be made publicly available for a minimum of 20 days. The community will 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, nearby property owners and to residents of the Blue Haven Bonaira Facility.

The written notice will:

- 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 be made available for inspection:

- This Planning Proposal;
- 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.

In accordance with LEP Practice Note PN 16-001, a Public Hearing will be held after the exhibition period has ended. Public notice will be given at least 21 days prior to the Public Hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised. There are specific requirements for the independence of the person chairing the hearing, their preparation of a public hearing report and council making the report publicly available (LG Act s.47G).



Part 6 – Project Timeline

Task	Time Period	Anticipated Timeframe
Planning Proposal Submitted to NSW DPIE requesting Gateway Determination	2 Weeks	February 2023
Date of Gateway Determination	2 Weeks	10 th February 2023
Completion of Gateway Determination Requirements	1 month	13 th March 2023
Public Exhibition	20 Days	13 th March 2023-4 th April 2023
Public Hearing (held at least 21 days after the close of the public exhibition)	21 days	27 th April 2023
Consideration of Submissions	1 Month	May 2023
Post exhibition consideration of PP – report to Council and submission of final endorsed PP to Parliamentary Counsel requesting drafting of the LEP Amendment.	2 Months	July 2023
Finalisation of the Plan by the Department of Planning & Environment as the delegated plan making authority and notification of Plan by Parliamentary Counsel.	1-2 Months	September 2023

Given the indicative timeline provided and the Gateway Determination timeframe of 9 Months for completion of the Gateway Determination requirements including Public Exhibition, Public Hearing, Council Reporting, finalisation of the Planning Proposal, draft of the LEP Amendment by Parliamentary Counsel and finalisation of the LEP Amendment.



Conclusion

This Planning Proposal seeks to reclassify land the Council owned land at 14A Bonaira Street, Kiama 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 DPE's "LEP Making Guidelines" (September 2022), the Planning Secretary Requirements and the LEP Practice Note PN16-001.

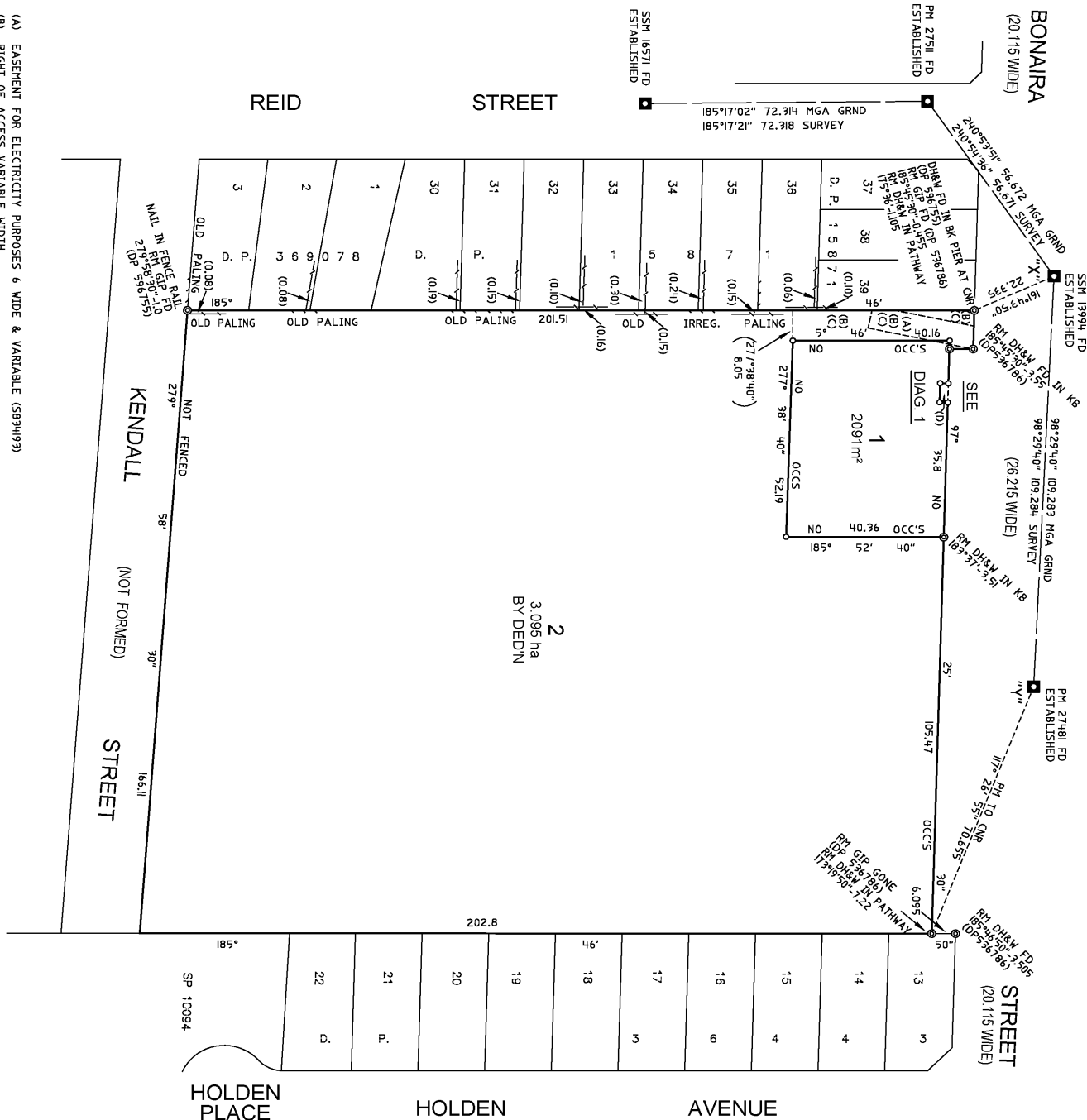
A review of the relevant planning matters for consideration in this instance has been undertaken, and it is considered that the subject reclassification to operational land has strategic merit and should proceed.

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 an aged care facility to provide care

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 and Environment for gateway determination in accordance with Section 3.34 of the EP&A Act, 1979.



APPENDIX 1: DEPOSITED PLANS



PLAN FORM 6 (2013)

WARNING: Creasing or folding will lead to rejection

ePlan

DEPOSITED PLAN ADMINISTRATION SHEET

Sheet 1 of 2 sheet(s)

Registered:  27.10.2016

Office Use Only

Office Use Only

Title System: TORRENS

DP1215276

Purpose: SUBDIVISION

PLAN OF SUBDIVISION OF LOT 1 DP 596755

LGA: KIAMA

Locality: KIAMA

Parish: KIAMA

County: CAMDEN

~~Crown Lands NSW/Western Lands Office Approval~~

~~I, (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.~~

~~Signature:~~

~~Date:~~

~~File Number:~~

~~Office:~~

Survey Certificate

I, GREGORY ALAN GOODMAN

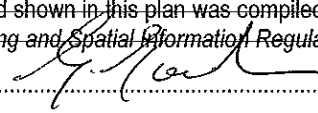
of LandTeam Aust. Pty Ltd 5/97 Shellharbour Road, Warilla 2528

a surveyor registered under the *Surveying and Spatial Information Act 2002*, certify that:

~~*(a) The land shown in the plan was surveyed in accordance with the *Surveying and Spatial Information Regulation 2012*, is accurate and the survey was completed on~~

*(b) The part of the land shown in the plan (*being/*excluding LOT 1) was surveyed in accordance with the *Surveying and Spatial Information Regulation 2012*, is accurate and the survey was completed on, 14/06/2016 the part not surveyed was compiled in accordance with that Regulation.

~~*(c) The land shown in this plan was compiled in accordance with the *Surveying and Spatial Information Regulation 2012*.~~

Signature:  Dated: 14/06/2016

Surveyor ID: 1126

Datum Line: 'X' - 'Y'

Type: *Urban/*Rural

The terrain is *Level-Undulating / *Steep-Mountainous.

*Strike through if inapplicable.

*Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.

Subdivision Certificate

I, MARK BIONDICH

*Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the *Environmental Planning and Assessment Act 1979* have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.

Signature: 

Accreditation number:

Consent Authority: KIAMA MUNICIPAL COUNCIL

Date of endorsement: 09/08/2016

Subdivision Certificate number: 18/2016

File number: 10.2015.145.1

*Strike through if inapplicable.

Statements of intention to dedicate public roads create public reserves and drainage reserves, acquire/resume land.

It is intended to dedicate the land shown as (D) on the plan to the public as public road

Plans used in the preparation of survey/compilation.

DP 15871

Plan Attached to S 834193

DP 36443

DP 369078

DP 596755

DP 1044315

DP 1076060

If space is insufficient continue on PLAN FORM 6A

Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A

Surveyor's Reference: 207332

PLAN FORM 6A (2012)

WARNING: Creasing or folding will lead to rejection

ePlan

DEPOSITED PLAN ADMINISTRATION SHEET

Sheet 2 of 2 sheet(s)

Registered:



27.10.2016

Office Use Only

Office Use Only

PLAN OF SUBDIVISION OF LOT 1 DP 596755

DP1215276

This sheet is for the provision of the following information as required:

- A schedule of lots and addresses - See 60(c) *SSI Regulation 2012*
- Statements of intention to create and release affecting interests in accordance with section 88B *Conveyancing Act 1919*
- Signatures and seals- see 195D *Conveyancing Act 1919*
- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Subdivision Certificate number: 18/2016

Date of Endorsement: 01/08/2016

PURSUANT TO SEC 88B OF THE CONVEYANCING ACT 1919 IT IS INTENDED TO CREATE-

1. Right of Access Variable Width Indicated (B) in the Plan
2. Easement for Services Variable Width Indicated (C) in the Plan
3. Restriction on the Use of Land
4. Restriction on the Use of Land
5. Positive Covenant

LOT NUMBER	STREET NUMBER	STREET NAME	STREET TYPE	LOCALITY
1	14B	BONAIRA	STREET	KIAMA
2	14A	BONAIRA	STREET	KIAMA

EXECUTED ON BEHALF OF
HEALTH ADMINISTRATION CORPORATION

B.W.A

Signed by me Bryson Wilson
as delegate of the HEALTH ADMINISTRATION
CORPORATION, pursuant to Section 21 (1) Health
Administration Act, 1982 and I hereby certify
that I have no notice of the revocation of such
delegation.

Signature of Witness: S. Redpath

Name of Witness: Sharon Redpath

Address of Witness: 73 Miller St, North Sydney.

If space is insufficient use additional annexure sheet

Surveyor's Reference: 207332



APPENDIX 2: CERTIFICATE OF TITLES



FOLIO: 2/1215276

SEARCH DATE	TIME	EDITION NO	DATE
9/11/2022	4:18 PM	5	23/3/2022

LAND

LOT 2 IN DEPOSITED PLAN 1215276
AT KIAMA
LOCAL GOVERNMENT AREA KIAMA
PARISH OF KIAMA COUNTY OF CAMDEN
TITLE DIAGRAM DP1215276

FIRST SCHEDULE

THE COUNCIL OF THE MUNICIPALITY OF KIAMA (T AM229547)

SECOND SCHEDULE (7 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AP684104 PART OF THE LAND ABOVE DESCRIBED IS USED AS A
RETIREMENT VILLAGE UNDER THE RETIREMENT VILLAGES ACT
1999 KNOWN AS BLUE HAVEN BONAIRA SHOWN HATCHED IN PLAN
WITH AP684104
- 3 DP1215276 RIGHT OF ACCESS VARIABLE WIDTH AFFECTING THE PART(S)
SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 4 DP1215276 EASEMENT FOR SERVICES VARIABLE WIDTH AFFECTING THE
PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 5 AM102955 RESTRICTION(S) ON THE USE OF LAND
- 6 DP1263846 EASEMENT FOR PADMOUNT SUBSTATION 5.5 METRE(S) WIDE
AFFECTING THE PART(S) SHOWN SO BURDENED IN DP1263846
- 7 DP1263846 RESTRICTION(S) ON THE USE OF LAND

NOTATIONS

REFER ALL DEALINGS TO SD2

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

LT-TP

PRINTED ON 9/11/2022



LAND
REGISTRY
SERVICES

Historical Search



NEW SOUTH WALES LAND REGISTRY SERVICES - HISTORICAL SEARCH

SEARCH DATE

17/1/2023 4:13PM

FOLIO: 2/1215276

First Title(s): OLD SYSTEM

Prior Title(s): 1/596755

Recorded	Number	Type of Instrument	C.T. Issue
27/10/2016	DP1215276	DEPOSITED PLAN	FOLIO CREATED EDITION 1
27/1/2017	AM102955	RESTRICTION ON USE OF LAND BY/VESTED IN PRESCRIBED AUTHORITY	EDITION 2
14/3/2017	AM229547	TRANSFER	EDITION 3
14/2/2020	AP684104	REQUEST TO NOTE RETIREMENT VILLAGE	
21/9/2020	AQ398107	CANCELLATION OR EXTINGUISHMENT OF AN EASEMENT	
23/9/2020	DP1263846	DEPOSITED PLAN	EDITION 4
23/3/2022	AR984758	DEPARTMENTAL DEALING	EDITION 5

*** END OF SEARCH ***

LT-TP

PRINTED ON 17/1/2023



APPENDIX 3: CHECKLIST OF SEPPs

SEPP	Applicable	Relevant	Not Inconsistent
<u>SEPP (Biodiversity and Conservation) 2021</u>	Yes	No	-
<u>SEPP (BASIX) 2004</u>	Yes	No	-
<u>SEPP (Exempt and Complying Development Codes) 2008</u>	Yes	No	-
<u>SEPP (Housing) 2021</u>	Yes	Yes	Yes
<u>SEPP (Industry and Employment) 2021</u>	Yes	No	-
<u>SEPP No. 65 - Design Quality of Residential Apartment Development</u>	Yes	No	-
<u>SEPP (Planning Systems) 2021</u>	Yes	No	-
<u>SEPP (Precincts - Central River City) 2021</u>	No	No	-
<u>SEPP (Precincts - Eastern Harbour City) 2021</u>	No	No	-
<u>SEPP (Precincts - Regional) 2021</u>	No	No	-
<u>SEPP (Precincts - Western Parkland City) 2021</u>	No	No	-
<u>SEPP (Primary Production) 2021</u>	Yes	No	-
<u>SEPP (Resilience and Hazards) 2021</u>	Yes	Yes	Yes
<u>SEPP (Resources and Energy) 2021</u>	Yes	No	-
<u>SEPP (Transport and Infrastructure) 2021</u>	Yes	No	-



APPENDIX 4: SECTION 9.1 LOCAL PLANNING DIRECTIONS CHECKLIST REVIEW

Local Planning Direction	Applicable	Relevant	Not Inconsistent
<i>Focus Area 1: Planning Systems</i>			
<i>1.1 Implementation of the Minister's Planning Principles (Revoked)</i>	-	-	-
<i>1.2 Implementation of Regional Plans</i>	Yes	Yes	Yes
<i>1.3 Development of Aboriginal Land Council Land</i>	Yes	No	-
<i>1.4 Approval and Referral requirements</i>	Yes	Yes	Yes
<i>1.5 Site Specific Provisions</i>	Yes	Yes	Yes
<i>Focus Area 1: Planning Systems – Place-based</i>			
<i>1.6 Parramatta Road Corridor Urban Transformation Strategy</i>	No	No	-
<i>1.7 Implementation of North West Priority Growth Area Interim Land Use and Infrastructure Implementation Plan</i>	No	No	-
<i>1.8 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan</i>	No	No	-
<i>1.9 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan</i>	No	No	-
<i>1.10 Implementation of Glenfield to Macarthur Urban Renewal Corridor</i>	No	No	-
<i>1.11 Implementation of Western Sydney Aerotropolis Plan</i>	No	No	-
<i>1.12 Implementation of Bayside West Precincts 2036 Plan</i>	No	No	-
<i>1.13 Implementation of Planning Principles for the Cooks Cove Precinct</i>	No	No	-
<i>1.14 Implementation of St Leonards and Crows Nest 2036 Plan</i>	No	No	-
<i>1.15 Implementation of Greater Macarthur 2040</i>	No	No	-



1.16 Implementation of Pyrmont Peninsula Place Strategy	No	No	-
1.17 North West Rail Link Corridor Strategy	No	No	-
<i>Focus Area 2: Design and Place</i>			
<i>Focus Area 3: Biodiversity and Conservation</i>			
3.1 Conservation Zones	Yes	No	Yes
3.2 Heritage Conservation	Yes	Yes	Yes
3.3 Sydney Drinking Water Catchments	Yes	Yes	Yes
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	No	No	-
3.5 Recreation Vehicle Areas	No	No	-
<i>Focus Area 4: Resilience and Hazards</i>			
4.1 Flooding	Yes	No	-
4.2 Coastal Management	Yes	Yes	Yes
4.3 Planning for Bushfire Protection	Yes	Yes	Yes
4.4 Remediation of Contaminated Land	Yes	Yes	Yes
4.5 Acid Sulfate Soils	No	No	-
4.6 Mine Subsidence and Unstable Land	No	No	-
<i>Focus Area 5: Transport and Infrastructure</i>			
5.1 Integrating Land Use and Transport	Yes	Yes	Yes
5.2 Reserving Land for Public Purposes	Yes	Yes	Yes
5.3 Development Near regulated Airports and Defence Airfields	No	No	-
5.4 Shooting Ranges	No	No	-
<i>Focus Area 6: Housing</i>			
6.1 Residential Zones	Yes	Yes	Yes
6.2 Caravan Parks and Manufactured Home Estates	Yes	No	-
<i>Focus Area 7: Industry and Employment</i>			
7.1 Business and Industrial Zones	No	No	-



<i>7.2 Reduction in non-hosted short-term rental accommodation period</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>7.3 Commercial and retail Development along the Pacific Highway, North Coast</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>Focus Area 8: Resources and Energy</i>			
<i>8.1 Mining, Petroleum Production and Extractive Industries</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>Focus Area 9: Primary Production</i>			
<i>9.1 Rural Zones</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>9.2 Rural Lands</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>9.3 Oyster Aquaculture</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>9.4 Farmland of State and Regional Significance on the NSW Far North Coast</i>	<i>No</i>	<i>No</i>	<i>-</i>



APPENDIX 5: PN16-001 CLASSIFICATION AND RECLASSIFICATION OF PUBLIC LAND

Ref No.	PN 16-001
Issued	5 October 2016
Related	Supersedes PN 09-003

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update guidance on classifying and reclassifying public land through a local environmental plan (LEP). This practice note emphasises the need for councils to demonstrate strategic and site specific merit, includes a comprehensive information checklist and clarifies issues arising for public reserves and interests in land. It should be read in conjunction with *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Classification of public land

Public land is managed under the *Local Government Act 1993* (LG Act) based on its classification. All public land must be classified as either community land or operational land (LG Act ss.25, 26).

- **Community land** – is land council makes available for use by the general public, for example, parks, reserves or sports grounds.
- **Operational land** – is land which facilitates the functions of council, and may not be open to the general public, for example, a works depot or council garage.

What is public land?

Public land is defined in the LG Act as any land (including a *public reserve*) vested in, or under council control. Exceptions include a public road, land to which the *Crown Lands Act 1989* applies, a common, land subject to the *Trustees of Schools of Arts Enabling Act 1902* or a regional park under the *National Parks and Wildlife Act 1974*.

Why classify public land?

The purpose of classification is to identify clearly that land made available for use by the general public (community) and that land which need not (operational). How public land is classified determines the ease or difficulty a council can have dealings in public land, including its sale, leasing or licensing. It also provides for transparency in council's strategic asset management or disposal of public land.

Community land must not be sold, exchanged or otherwise disposed of by a council. It can be leased,

but there are restrictions on the grant of leases and licences, and also on the way community land can be used. A plan of management (PoM), adopted by council, is required for all community land, and details the specific uses and management of the land.

There are no special restrictions on council powers to manage, develop, dispose, or change the nature and use of operational land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- council resolution under ss.31, 32, or 33 (through LG Act s.27(2)), or
- an LEP under the *Environmental Planning and Assessment Act* (through LG Act s.27(1)).

Councils are encouraged to classify or reclassify land by council resolution where suitable.

Classification of public land occurs when it is first acquired by a council and classified as either community or operational.

Reclassification of public land occurs when its classification is changed from community to operational, or from operational to community.

Reclassification through an LEP

Classification and reclassification of public land through an LEP is subject to both the local plan-making process in the EP&A Act and the public land management requirements of the LG Act.

A planning proposal to classify or reclassify public land, will need to be prepared in accordance with this practice note and the additional matters specified in Attachment 1 to this practice note.

Reclassification through an LEP is the mechanism with which council can remove any public reserve status applying to land, as well as any interests affecting all or part of public land (LG Act s.30).

It is critical that all interests are identified upfront as part of any planning proposal. If public land is reclassified from community to operational, without relevant interests being identified and discharged, then the land will need to be reclassified back to community (usually by council resolution under LG Act s.33¹) before being reclassified in a new planning proposal to operational, to explicitly discharge any interests.

While a reclassification proposal to remove the public reserve status of land and/or discharge interests may not necessarily result in the immediate sale or disposal of the land, the community should be aware the public land in question is no longer protected under the LG Act from potential future sale once it has been reclassified to operational.

Councils should obtain their own advice when proposing to discharge any interests and be aware that this may attract a claim for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Where land has been dedicated to council by a State agency for a particular purpose and a trust exists, it is advisable for council to seek the views of that agency prior to council commencing any planning proposal affecting the land.

Public reserve is defined in the LG Act and includes a public park and land declared or dedicated as a public reserve.

Land can be dedicated as a public reserve by either:

- registering a deposited plan with a statement creating a lot(s) as 'public reserve', or
- publishing a notification in the Government Gazette for an existing parcel.

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.

A legal owner of land may not be the only person with an interest in the land. For example, one person may have the benefit of an easement for services, such as water, electricity or sewerage over someone else's land.

Certain interests are registered on title to ensure they are on record and cannot be disregarded if sold to a new owner. An electronic title search is generally conducted to determine the land owner, correct land description and the type of interests which may affect the land.

Standard Instrument LEP requirements

Clause 5.2—Classification and reclassification of public land in Standard Instrument LEPs enables councils to classify or reclassify public land as operational land or community land in accordance with the LG Act. The land to be reclassified or classified is described in Schedule 4 of the LEP.

Schedule 4 is not to refer to any land already classified or reclassified.

Where there is no public land to be classified, or reclassified, through a principal LEP (i.e. the LEP applies to the whole of a local government area), Schedule 4 will appear blank.

Note: At a later stage council may lodge a planning proposal to remove previous listings in Schedule 4. This will not affect the classification status of these parcels of land.

Department assessment

A proposal to classify or reclassify public land through an LEP must have planning merit. The Department will undertake an assessment to determine whether the proposal demonstrates strategic and site specific merit.

Community consultation

Planning proposals to reclassify public land are to be publicly exhibited for at least 28 days.

A copy of this practice note is to be included in the public exhibition materials.

¹ Note: Council is required to give public notice of the proposed resolution and provide a period of at least 28 days during which submissions may be made (LG Act s.34).

Public hearings

Councils must hold a public hearing when reclassifying public land from community to operational (EP&A Act s.57 & LG Act s.29). This gives the community an opportunity to expand on written submissions and discuss issues with an independent person in a public forum.

After the exhibition period has ended, at least 21 days public notice is to be given before the hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised.

There are specific requirements for the independence of the person chairing the hearing, their preparation of a public hearing report and council making the report publicly available (LG Act s.47G).

Governor's approval

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 (s.30).

When a council reports back to the Department on the community consultation undertaken and requests the Department make the LEP, the Department will arrange legal drafting of the LEP, including recommending the Governor approve the provisions before the LEP can be legally made.

Where the Governor's approval is required, the council's report accompanying the final planning proposal must address:

- council's interests in the land;
- whether the land is a 'public reserve';
- the effect of the reclassification, including loss of open space, any discharge of interests, and/or removal of public reserve status;
- the strategic and site specific merits of the reclassification and evidence to support this;
- any current use of the land, and whether uses are authorised or unauthorised;
- how funds obtained from any future sale of the land will be used;
- the dates the planning proposal was publicly exhibited and when the public hearing was held;
- issues raised in any relevant submissions made by public authorities and the community;
- an explanation of how written and verbal submissions were addressed or resolved; and
- the public hearing report and council resolution.

Authorisation of delegation

Local plan making functions are now largely delegated to councils.

A Written Authorisation to Exercise Delegation is issued to a council as part of the Gateway determination. However, where an LEP requires the Governor's approval, this council delegation cannot be issued. In this instance, the council must request the Department make the LEP.

A decision to classify or reclassify public land cannot be sub-delegated by council to the general manager or any other person or body (LG Act s.377(1)(l)).

Background

On July 1, 1993 when the LG Act commenced, the following land under council ownership or control, was automatically classified as *community* land:

- land comprising a public reserve,
- land subject to a trust for a public purpose,
- land dedicated as a condition of consent under s.94 of the EP&A Act,
- land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space,
- land controlled by council and vested in Corporation Sole - Minister administering the EP&A Act.

Councils must keep a register of land under their ownership or control (LG Act s.53) and anybody can apply to a council to obtain a certificate of classification (LG Act s.54).

Further information

A copy of this practice note, *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* is available at:

<http://www.planning.nsw.gov.au>

For further information, please contact the Department of Planning and Environment's Information Centre by one of the following:

Post: GPO Box 39, Sydney NSW 2001.

Tel: 1300 305 695

Email: information@planning.nsw.gov.au

Authorised by:
Carolyn McNally
Secretary

Important note: This practice note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this practice note.

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ATTACHMENT 1 – INFORMATION CHECKLIST FOR PROPOSALS TO CLASSIFY OR RECLASSIFY PUBLIC LAND THROUGH AN LEP

The process for plan-making under the EP&A Act is detailed in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*.

Importantly, *A guide to preparing local environmental plans* contains the Secretary's requirements for matters that must be addressed in the justification of all planning proposals to reclassify public land. Councils must ensure the Secretary's requirements are addressed.

Councils must also comply with any obligations under the LG Act when classifying or reclassifying public land. More information on this can be found in *Practice Note No. 1 - Public Land Management* (Department of Local Government, 2000).

All planning proposals classifying or reclassifying public land must address the following matters for Gateway consideration. These are in addition to the requirements for all planning proposals under section 55(a) – (e) of the EP&A Act (and further explained in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*).

- ☐ the current and proposed classification of the land;
- ☐ whether the land is a 'public reserve' (defined in the LG Act);
- ☐ the strategic and site specific merits of the reclassification and evidence to support this;
- ☐ whether the planning proposal is the result of a strategic study or report;
- ☐ whether the planning proposal is consistent with council's community plan or other local strategic plan;
- ☐ a summary of council's interests in the land, including:
 - 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)
 - if council does not own the land, the land owner's consent;
 - the nature of any trusts, dedications etc;
- ☐ whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;
- ☐ 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);
- ☐ 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);
- ☐ current use(s) of the land, and whether uses are authorised or unauthorised;
- ☐ current or proposed lease or agreements applying to the land, together with their duration, terms and controls;
- ☐ 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);
- ☐ any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy);
- ☐ how council may or will benefit financially, and how these funds will be used;
- ☐ 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;
- ☐ 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; and
- ☐ preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.



APPENDIX 6: GATEWAY DETERMINATION

Gateway Determination

Planning proposal (Department Ref: PP-2023-244): to amend the Kiama Local Environmental Plan 2011 to reclassify land at 14A Bonaira Street, Kiama (Lot 2 DP 1215276) from Community Land to Operational Land.

I, Daniel Thompson the Director, Southern Region, at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Kiama Local Environmental Plan 2011 as described above should proceed subject to the following conditions:

1. Prior to public exhibition, Section B of the planning proposal is to be updated to provide a more detailed assessment of the proposal against Section 9.1 Direction 5.2 – Reserving Land for Public Purposes.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as basic as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 20 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 Guidelines* (Department of Planning and Environment, 2021).
3. Consultation is required with the NSW Rural Fire Service under section 3.34(2)(d) of the EP&A Act. NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act 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 EP&A Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.

6. The LEP should be completed on or before 10th December 2023.

Dated 10th day of February 2023.

A handwritten signature in blue ink, appearing to read 'D Thompson', is shown on a light background.

Daniel Thompson
Direction, Southern Region
Local and Regional Planning
Department of Planning and Environment

Delegate of the Minister for Planning