

## Chapter A1: Introduction

### 1.0 Introduction

#### 1.1 Name of this Plan

This Plan is called the *Kempsey Development Control Plan 2013* (KDCP2013).

It has been prepared pursuant to the provisions of Section 74C of the *Environmental Planning and Assessment Act 1979* (the EPAA1979) and Clauses 16-24 of the *Environmental Planning and Assessment Regulation 2000* (the EPAR2000).

Council and any other relevant consent authority is required, under Section 79C of the Act, to take into consideration the relevant provisions of the KDCP2013 in determining development applications on land to which the Plan applies.

#### 1.2 Scope of this DCP

DCP2013 applies to the whole of the Kempsey Local Government Area, with the exception of land identified in Appendix H1.

DCP2013 applies to all development that requires the submission of a development application under Part 4 of the EPAA1979.

DCP2013 does not apply to Exempt and Complying Development. Provisions relating to exempt and complying development are contained primarily in the SEPP (Exempt and Complying Development Codes) 2008, with some additional provisions in KLEP 2013. All SEPPs and REPs should be reviewed to determine whether they contain provisions relating to exempt and complying development.

#### 1.3 Commencement

This Development Control Plan is effective upon making of the Kempsey Local Environmental Plan 2013.

This DCP repeals any other DCP made before this DCP, with the exception of those listed in Appendix H1.

#### 1.4 The Consent Authority

Kempsey Shire Council is the Consent Authority for the purposes of this DCP, subject to the exceptions authorised under the *Environmental Planning and Assessment Act 1979*. Such exceptions include:

- (i) The Minister is the Consent Authority for projects identified under Part 3A of the *Environmental Planning and Assessment Act 1979*.
- (ii) The Joint Regional Planning Panel (JRPP) may be the consent authority role under the *State Environmental Planning Policy (Major Developments) 2005*.

Council will use this DCP in the assessment of development applications.

## 1.5 Dictionary

This plan adopts the terms and definitions of the *Kempsey Local Environment Plan 2013*, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and the *Environmental Planning and Assessment Act 1979*.

Additional terms used in this DCP are defined in the Glossary located towards the end of this DCP. Where there is an inconsistency, the higher order instrument/legislation prevails.

## 2.0 How this DCP Works

### 2.1 About this DCP

*Kempsey Local Environmental Plan 2013* (KLEP2013) provides the statutory framework for land use management in the Kempsey Shire local government area, subject to overriding planning controls in State Environmental Planning Policies and other State legislation.

This DCP:

- Supports and expands upon the aims, objectives and other provisions of the KLEP2013;
- Provides a clear and concise set of development objectives; and
- Provides detailed development provisions for development in the Kempsey Local Government Area.

### 2.2 How this DCP works

#### 2.2.1 Structure of this DCP

This DCP is divided into the following parts:

- Part A – Administration and Introduction;
- Part B – General Controls;
- Part C – Use Specific Controls;
- Part D – Precinct/Area Controls: Urban Areas;
- Part E – Precinct/Area Controls: Rural and Environmental Areas;
- Part F – Precinct/Area Controls: Villages;
- Part G – Glossary; and
- Part H – Appendices.

Part A of this DCP contains the preliminary information associated with this DCP, including an explanation of how it should be used.

Part B includes development requirements of a general nature that may apply to all development. These development requirements relate to issues such as subdivision, parking and access, landscaping, advertising signs and waste minimisation. This part also includes general provisions for items that may not apply in all instances such as development in heritage areas.

Part C contains development specific requirements for specific uses. This part includes provisions for residential development, caravan parks, bed and breakfast accommodation and tourist facilities.

Part D comprises development requirements that apply to urban areas only. It is divided into chapters that will each focus on a particular area. For example, the South West Rocks Town Centre.

Part E comprises development requirements that apply to rural and environmental areas only. For example, Dulconghi Heights.

Part F comprises development requirements for villages only. For example, Stuarts Point.

Part G comprises the glossary for most terms used throughout the DCP.

Part H includes the appendices. The appendices include supporting material that is referred to throughout the DCP.

Each part is divided into chapters that address a particular issue, use or area.

Development applications must address all the relevant chapters applicable to the proposed development.

When addressing the development requirements of each relevant chapter, it may not be necessary for an application to address all development provisions within the chapter. Only those provisions that apply need to be addressed.

In general, where an area based provision is inconsistent with a general provision or a development specific provision, the area based provision shall prevail to the extent of any inconsistency.

### **2.2.2 Structure of the Chapters**

The chapters of the DCP, in Parts B to F, are generally structured as follows:

- 1.0 – Introduction;
- 2.0 – Objectives of this Chapter;
- 3.0 – Guidelines; and
- 4.0 – Controls.

Section 1.0 includes a sub-section “1.1 – Scope of this Chapter”, which specifies what development and where in the local government area the chapter will apply. Section 1.0 may also include a sub-section specifying how the provisions of the chapter will prevail over the provisions of other chapters.

Section 2.0 defines the objectives of the chapter.

Section 3.0 may provide guidelines for development, by reference to previously prepared Master Plans or general principles for development.

Section 4.0 and later sections generally refer to the development requirements.

### **2.2.3 Desired Outcomes and Development Requirements**

Desired Outcomes express the purpose or objective the relevant Development Requirements are seeking to achieve.

Development Requirements are specified to ensure that various aspects of a development will not result in any unacceptable adverse impacts on neighbouring properties or the environment or costs to the community.

## **2.3 Variation to DCP Development Requirements**

Where a proposed development does not comply with a Development Requirement, the development application must be supported by a written justification demonstrating how the alternative solution will achieve the Desired Outcome.

Development Requirements will be deemed to have been met where the applicant has demonstrated, in Council's opinion, that the Desired Outcome will be achieved.

This provision enables the development of innovative solutions that meet the particular characteristics of an individual site.

## **2.4 Relationship of this DCP to State Planning Policies, Local Environmental Plans and Council Policies.**

### **2.4.1 Acts and Regulations**

Planning and development is carried out under the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*, the objectives and provisions of which prevail over any inconsistency with any subordinate State Environmental Planning Policies, Regional Environmental Plans, Local Environmental Plans, Development Control Plans and development related Council policies.

### **2.4.2 State Environmental Planning Policies (SEPP)**

A number of State Environmental Planning Policies (SEPPs) are applicable to the Kempsey Shire local government area. The provisions of SEPPs override the provisions of this DCP and Kempsey LEP 2013, to the extent of any inconsistency.

A list of SEPPs can be found on the [Planning NSW website](http://www.planning.nsw.gov.au) (www.planning.nsw.gov.au).

Applicants are advised to review the provisions of any relevant SEPPs when preparing their development applications.

### **2.4.3 Regional Environmental Plans**

North Coast Regional Environmental Plan 1998 (deemed SEPP) contains provisions relating to plan making and development control which prevail to the extent of any inconsistency with Kempsey Local Environmental Plan 2013 and this DCP.

#### 2.4.4 Local Environmental Plans

DCP2013 shall be read in conjunction with *Kempsey Local Environment Plan 2013*.

*Kempsey Local Environmental Plan 2013* (KLEP2013) applies to the whole of the Kempsey Local Government Area. KLEP2013 was prepared in response to the State Government requirements for all NSW Councils to prepare a consolidated LEP, which conforms to the *Standard Instrument (Local Environmental Plans) Order 2006*, known as the 'standard LEP template'. KLEP2013 shall prevail to the extent of any inconsistency with this DCP.

#### 2.4.5 Development Control Plans

*Kempsey Development Control Plan 2013* supersedes and revokes all previously made DCPs applying to the Kempsey local government area, with the exception of those listed in Schedule 1 of Appendix H1.

#### 2.4.6 Council Policies

*Kempsey Development Control Plan 2013* is to be considered in conjunction with all current Council Policies and associated Procedures. This DCP shall prevail to the extent of any inconsistency with any Council policy or procedure adopted before this DCP came into effect.

Any related Council policy or procedure adopted after this DCP came into effect shall prevail to the extent of any inconsistency with this DCP.

A list of current Council Policies may be found on Council's website ([www.kempsey.nsw.gov.au](http://www.kempsey.nsw.gov.au)).

### 2.5 Developer Contributions

Development Contributions are levied as a means of to fund local infrastructure and services that are required as a result of new development. The contributions are levied under the provisions of Development Contributions Plans prepared pursuant to the *Environmental Planning and Assessment Act 1979* and under Development Servicing Plans prepared pursuant to the *Water Management Act 2000*.

Council has adopted Development Contributions Plans to seek contributions for:

- Road Works;
- Open Space;
- Community Services;
- Stormwater;
- Public Domain improvements;
- Car Parking; and
- Footpaths.

The contribution required to the above items is dependent on the location of the development and the type/scale of development proposed. Council's [Development Contributions Plans](#) are available on Council's website.

Council has also adopted [Development Servicing Plans](#) for Water Supply and Sewerage Services. These documents are available on Council's website.

Contributions are determined in conjunction with a Development Application or Complying Development Application and are imposed by a condition of development consent in accordance with the development contributions plans in force at that time.

Contribution rates are adjusted quarterly in line with the CPI.

Generally development applications for subdivision, dual occupancy, residential flat buildings, rural dwellings and commercial or industrial development will be subject development contributions.

Contributions are normally satisfied by payment of monetary contributions. However, subject to Council approval, contributions can also be satisfied by dedication of land, and material public benefit (works in kind) or a combination of these.

The EPAA1979 also provides for negotiation of development contributions via Voluntary Planning Agreements between Council and a developer.

## **2.6 Reference to External Standards and Documents**

Throughout this DCP there are references to external documents and standards. These include, but are not limited to Australian and New Zealand Standards, AUSPEC specifications and standard drawings. In all circumstances, the reference is taken to mean the current version of that standard or specification.

## **3.0 Objectives of this DCP**

### **3.1 LEP Objectives**

This DCP has been compiled to provide further support to the aims of the *Kempsey Local Environmental Plan 2013* (KLEP2013). The general aims of the KLEP2013 are reproduced as follows:

- (a) *To promote and co-ordinate the orderly and economic use and development of land, and to minimise conflict between adjacent land uses,*
- (b) *To provide for development within the local government area on an ecological sustainable manner,*
- (c) *To protect agricultural activities of the area and to promote the agricultural potential of the local government area of Kempsey,*
- (d) *To provide opportunities for a range of housing types to accommodate the needs of the community,*
- (e) *To protect and enhance areas of environmental and/or cultural value,*
- (f) *To ensure that development does not detract from Kempsey's high landscape or scenic values and*

- (g) *To conserve and enhance the built and cultural heritage of the local government area of Kempsey.*

KLEP2013 provides Objectives for each zone.

### **3.2 Objectives of this DCP**

The objectives of this Development Control Plan are:

#### *General*

- To provide a common set of development controls to ensure consistency, transparency and fairness in the assessment of development applications.
- To provide a degree of certainty to developers and the residents as to the density, type and character of development.
- To encourage development that minimises the impacts on the existing natural and man-made environment.
- To ensure that development responds appropriately to environmental constraints such as flooding, bushfire risk and coastal hazards.

#### *Strategic*

- To ensure that lands identified for higher density development are not unnecessarily developed for low density development.
- To optimise dwelling yields within the capacity of the land, while achieving the character desired for the precinct/village/urban centre/local area (ie sub-areas).
- To accommodate a wide range of residential choices, appropriate to the individual site constraints and desired character of the neighbourhood.
- To encourage the economic development of a hierarchy of commercial centres, thereby contributing to the orderly economic growth of Kempsey Shire.
- To foster development that meets the needs of the expanding population that also protects and enhances existing activities and facilities.
- To ensure all future development is undertaken in an environmentally, socially and economically responsive manner.

#### *Infrastructure*

- To ensure development does not exceed the capacity of existing and proposed infrastructure.
- To ensure public utilities are provided in a timely, cost-efficient, equitable and effective manner.
- To ensure that the existing community is not burdened by the provision of public utilities and facilities required as a result of future development.

- To ensure key environmental resources are protected.
- To limit development in the Kempsey local government area to development that complies with the provisions of Council's *Flood Plain Management Strategy Policy*.
- To ensure that the traffic and transport needs of the community are catered for safely and effectively now and into the future.
- To ensure the provision of safe, attractive and direct pedestrian and bicycle connections and facilities throughout various areas, as appropriate to the particular local area.
- To provide an improved and connected public domain network.
- To ensure that development incorporates best practice urban water management practices and techniques for controlling stormwater quality and quantity (above and below ground), water conservation and reuse and ecosystem health.

#### *Urban Form and Design*

- To encourage a higher quality of urban design.
- To encourage innovative building design and site usage, by providing flexibility in development controls.
- To maintain and improve the streetscape.
- To preserve and enhance the positive aspects of individual areas.
- To ensure that development does not have an adverse impact on the amenity of its neighbourhood.
- To encourage the design of energy efficient buildings.
- To promote the implementation of Crime Prevention Through Environmental Design (CPTED) principles into master plan and built form design.

#### *Heritage*

- To ensure Aboriginal and European Heritage is identified and appropriately considered.

#### *The Natural Environment*

- To maintain the natural setting of the Kempsey Shire local government area.
- To ensure that development protects and maintains high value vegetation, natural bushland and native habitats.

### **3.3 Specific DCP Chapter Objectives**

Further specific Objectives for each matter/sub-area included in this plan are provided in the chapter relating to that matter/sub-area.



## **4.0 Development Applications**

### **4.1 When is a Development Application not required?**

A development application is not required for any development specified in any SEPP, REP or KLEP2013 as being permissible without development consent.

### **4.2 When is a Development Application required?**

A development application is required for all development specified in any SEPP, REP or KLEP2013 as being permissible with development consent.

### **4.3 When is an Environmental Impact Statement (EIS) required?**

The *Environmental Planning and Assessment Regulation 2000* classifies certain developments which have the potential to cause significant environmental impact, as *Designated Development*.

Designated development requires the preparation and assessment of an Environmental Impact Statement (EIS) as part of a Development Application. Proponents of designated development are required to consult with the Department of Planning for guidelines for the preparation of the EIS.

An EIS may also be required for activities regulated by Part 5 of the *Environmental Planning and Assessment Act 1979*, as determined in accordance with clauses 112-115.

### **4.4 Public Notification of Development Applications**

Development will be notified in accordance with Council's *Public Notification Policy* (CPOL-57, or any superseding policy, a copy of which may be obtained from Council's website ([www.kempsey.nsw.gov.au](http://www.kempsey.nsw.gov.au))).

### **4.5 Consideration of Public Submissions**

Where proposals are required to be notified in accordance with Council's adopted procedure, Council will have regard to any public submissions to the extent that the matters raised relate to relevant planning issues.

Applications that vary from the Development Requirements of this DCP, which demonstrate compliance with the specified Desired Outcomes, will be deemed to comply with the Development Requirements of this DCP.

In accordance with Council's adopted delegations, applications that comply with KLEP 2013, this DCP and any relevant policies or procedures may be approved under delegated authority, whether or not objections are received.

### **4.6 How does Council consider a Development Application?**

In assessing development proposals, Council must have regard to Section 79C of the *Environmental Planning and Assessment Act 1979*, which, amongst a range of considerations, requires the consent authority to have regard to the requirements of any relevant SEPPs, REPs, KLEP 2013 and this DCP.

#### **4.5 What information is required to be submitted with a Development Application?**

See the *Environmental Planning and Assessment Regulation 2000* – Schedule 1.