



KEMPSEY
Shire Council

PLANNING VOTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL

Held at the Community Hall, Stuarts Point

Tuesday 3rd February 2009 commencing at 9.00am

DSDS4	PROPOSED LOCAL ENVIRONMENTAL PLAN AMENDMENT NO 55 TO REZONE LAND KNOWN AS "SALTWATER" AT SOUTH WEST ROCKS
	FILE: T5-55 KH {Folio No. 390309}

SUMMARY:

Reporting that submissions have been received in response to the public exhibition of the "Saltwater" rezoning that Council is required to consider in determining whether to proceed with the rezoning

SECTION 375A OF LOCAL GOVERNMENT ACT REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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Director Sustainable Services Department Recommendation:

- 1. That Council adopt draft LEP Amendment No.55 as indicated in boldfaced italics attached to this report and forward it to the Department of Planning for Gazettal (Appendix E – Page G18).**
- 2. That the Department of Planning be advised that Council's endorsement of the draft LEP is contingent upon the requirement to prepare a DCP prior to any development consent being issued being retained in the approved LEP.**
- 3. That all persons directly affected by this amendment, agencies and submission makers be advised of Council's decision.**

2009. 9

RESOLVED:

*Moved: Cl. Bowell
Seconded: Cl. Green*

- 1. That Council adopt draft LEP Amendment No.55 (as amended in boldfaced italics) attached to this report, except for the area of land that is within 400 metres of the South West Rocks STP Boundary and to be known as the Deferred Area Pursuant to S.68(5) of the EP&A Act, and forward it to the Department of Planning for Gazettal.**

2. That the Department of Planning be advised that Council's endorsement of the draft LEP is contingent upon the requirement to prepare a DCP prior to any development consent being issued being retained in the approved LEP.
3. That all persons directly affected by this amendment, agencies and submission makers be advised of Council's decision.
4. That a further report be submitted to Council no later than the April 2009 Meeting.

The forgoing resolution was carried on the casting vote of the Mayor.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

Bowell	F	Campbell	A	Green	F	Gribbin	A	Hayes	F	Saul	A
Sproule	A	Snowsill	F								

Councillor Gribbin lodged a Notice of Rescission in regard to the forgoing resolution.

DSDS3 PROPOSED AMENDMENT TO KEMPSEY LOCAL ENVIRONMENTAL PLAN 1987 (AMENDMENT NO.81) TO REZONE LAND AT 511 PACIFIC HIGHWAY, SOUTH KEMPSEY FILE: T5-81 PJC {Folio No. 390308}

SUMMARY:

Reporting that submissions have been received in response to the public exhibition of Amendment No. 81 to Kempsey Local Environmental Plan 1987 to rezone land at 511 Pacific Highway South Kempsey to part 4(a) Industrial (General), part 4(e) Industrial (Extractive) and part 7(b) Environmental Protection (Habitat).

SECTION 375A OF LOCAL GOVERNMENT ACT REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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2009. 38 **RESOLVED:** *Moved: Cl. Green
Seconded: Cl. Campbell*

That Council resolve to exercise its delegation granted by the Director General under Section 69 of Environmental Planning and Assessment Act 1979 to forward Kempsey Local Environmental Plan 1987 (Amendment No. 81) to the Minister to make the plan.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

Bowell	F	Campbell	F	Green	F	Gribbin	F	Hayes	F	Saul	F
Snowsill	F	Sproule	F								

**DSDS5 PROPOSED AMENDMENT TO KEMPSEY LOCAL ENVIRONMENTAL PLAN - REZONING OF LAND AT 37 BELLE O'CONNOR STREET SOUTH WEST ROCKS
FILE: T5-111 PK {Folio No. 390310}**

SUMMARY:

Reporting that Council has received an application to rezone land to enable the erection of dwellings on land that has a development approval issued by the Department of Planning for a residential subdivision (DA-07-320 for 108 lots)

SECTION 375A OF LOCAL GOVERNMENT ACT REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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2009. 39 **RESOLVED:** *Moved: Cl. Green
Seconded: Cl. Hayes*

- A. That Council resolve in the first instance to forward the application to the Department of Planning under the provisions of Section 73A of the Environmental Planning and Assessment Act 1979.
- B. Should the Department direct that the provisions of section 73A do not apply:
 - 1. That in accordance with Section 54 of the Environmental Planning and Assessment Act 1979, Council prepare a draft Local Environmental Plan to rezone Lot 124 DP 1097510, 37 Belle O'Connor Street, South West Rocks, from 1(d) (Rural (Investigation) "D" Zone), 1(c) (Rural (Small Holdings) "C" Zone) and 6(a) (Open Space "A" Zone), to 2(a) (Residential "A" Zone)).
 - 2. That the Department of Planning and the Local Environmental Plan Review Panel be notified of Council's decision.
 - 3. That the Department of Planning be requested to waive the requirement for a Local Environmental Study.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

Bowell	F	Campbell	F	Green	F	Gribbin	A	Hayes	F	Saul	F
Snowsill	F	Sproule	F								

SUMMARY:

Reporting that Council has received an application to subdivide 2 lots into 3 lots at Dulconghi Heights for which objections have been received.

SECTION 375A OF LOCAL GOVERNMENT ACT REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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Director Sustainable Services Department Recommendation:

A. That the consent be granted subject to the following conditions:-

1. Development is to be in accordance with approved plans
The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No. / Supporting Document	Version	Prepared by	Dated
Site plan 0433/06 S01 & 02	2	Robert Dennis Associates	23 rd Oct 2007
Hydrological Assessment Plan D01	1	Robert Dennis Associates	16 th Sept 2008

In the event of any inconsistency between conditions of this development consent and the plans / supporting documents referred to above, the conditions of this development consent prevail.

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

2. This consent does not permit commencement of any works
This consent does not permit commencement of any works. Works are not to commence until such time as a Construction Certificate has been obtained and the appointment of a Principal Certifying Authority.

Required work	Specification of work
Driveways <i>Rural – unsealed roads</i>	All-weather driveways, in accordance with Council's rural driveway standards, from the edge of the road to 3 metres within the property boundary for each of the proposed new allotments.
Driveway <i>Internal – where 2wd access not available to building</i>	A three (3) metre wide all-weather driveway to the building site for proposed Lot(s) 1 & 2. The plans will include certification that the access construction will not have detrimental effects on the stormwater flow patterns or local flooding in the area.
Service Conduits	Service conduits to each of the proposed new allotments laid in strict accordance with the service authorities' requirements.
Culverts required across drainage channels or streams	Culvert to be designed to ensure that peak flow rates for the 1 in 20 year storm event are not affected. The applicant is to obtain any necessary approvals from the Department of Natural Resources and / or the Department of Primary Industries, Fisheries, and plans.

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE FOR SUBDIVISION WORKS

3. Engineering Construction Plans

Three (3) copies of engineering construction plans and specifications must accompany the construction certificate application. Such plans are to provide for the works in the following table in accordance with Council's current Design and Construction Manuals and Specifications.

4. Erosion and Sedimentation Control Plan

The plans and specifications to accompany the construction certificate application are to include a sediment and erosion control plan to indicate the measures to be employed to control erosion and loss of sediment from the site. The sediment and erosion control plan is to be designed in accordance with the requirements of the Landcom Blue Book, *Soils and Construction -Managing Urban Stormwater*.

The sediment and erosion control plan must be prepared by a suitably experienced person such as a person certified by:

- The Institution of Engineers, Australia, for engineering and hydrology matters.
- The International Erosion Control Association for soil conservation matters.
- The Australian Society of Soil Science for collection or analysis of soil data.

The plan must incorporate (without being limited to) information on general site management, material handling practices, soil

stabilisation, water control, sediment control, wind erosion control and access measures.

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO COMMENCEMENT OF SUBDIVISION WORKS

5. **Written Notification**
Written notification of intention to commence works must be forwarded to the Council seven (7) days prior to work commencing. Notification is to include contact details of the supervising engineer and site contractor.
6. **Public Liability Insurance**
The developer and / or contractor must produce evidence to the Principal Certifying Authority of public liability insurance cover for a minimum of \$10 million. Council is to be nominated as an interested party on the policy. The public liability insurance cover is to be maintained for the duration of the period of the works and during any maintenance period.
7. **Erosion & sediment measures in accordance with the approved Erosion and Sediment Control Plan**
Erosion and sedimentation controls are to be in place in accordance with the approved Erosion and Sediment Control Plan.

Note: Council may impose on-the-spot fines of up to \$600 for non-compliance with this condition.

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH DURING CONSTRUCTION OF SUBDIVISION WORKS

8. **Construction times**
Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on residential premises, can only occur:
 - a) Monday to Friday, 7 am to 6 pm.
 - b) Saturday, 8 am to 1 pm.
 - c) No construction work to take place on Sundays or Public Holidays.
9. **Construction noise**
Construction noise is to be limited as follows:
 - a) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
 - b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation

must not exceed the background level by more than 10 dB(A).

10. **Construction vibration**
Construction vibration is to be limited in accordance with:
 - (a) The NSW Roads and Traffic Authority Environmental Noise and Management Manual;
 - (b) EPA Environmental Noise Control Manual, Chapter 174, *Vibration in Buildings*; and
 - (c) Australian Standard AS 2670, *Evaluation of Human Exposure to Whole Body Vibration, Part 2: Continuous and Shock-Induced Vibration in Buildings (1 to 80 Hz)*.

11. **Fencing to protect trees**
Trees to be retained are to be protected by a fence so as to minimise disturbance to existing ground conditions within the drip line of the trees. The fence is to be constructed:
 - a) with a minimum height of 1.2 metres,
 - b) outside the drip line of the tree,
 - c) of steel star pickets at a maximum distance of 2 metres between pickets,
 - d) using a minimum of 3 strands of steel wire,
 - e) to enclose the tree, and
 - f) with orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter.

The fence is to be maintained for the duration of the site clearing, preparation and construction works.

12. **Care to be taken when placing services near trees**
All care is to be taken to manually excavate around or under any lateral structural support roots of any tree so as to minimise root disturbance where services are to be laid within the drip-line of a tree.

13. **No filling around trees**
No soil or fill material is to be placed within the drip line of a tree so as to cause changes in surface level by more than 50mm from the existing level and such soil is not to be compacted. Such soil / fill must be finer than that being covered in situ, *e.g. clay must not be placed over loam soil*.

14. **Inspection of Public Works**
Development works on public property are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection. You must quote your construction certificate number and property description to book your inspection.
 - a) prior to commencement of site clearing and installation of erosion control facilities;
 - b) at completion of installation of erosion control measures

- c) prior to installing traffic management works
- d) at completion of installation of traffic management works
- e) at the commencement of earthworks;
- f) before commencement of any filling works;
- g) when the sub-grade is exposed and prior to placing of pavement materials;
- h) when trenches are open, stormwater / water / sewer pipes and conduits jointed and prior to backfilling;
- i) at the completion of each pavement (sub base / base) layer;
- j) before pouring of concrete for kerb and guttering;
- k) prior to the pouring of concrete for sewerage works;
- l) prior to the pouring of concrete or paved foot paving works;
- m) on completion of road gravelling or pavement;
- n) during construction of sewer infrastructure;
- o) during construction of water infrastructure;
- p) prior to sealing and laying of pavement surface course.

All works at each hold point are to be certified as compliant, in accordance with Council's current Design and Construction Manuals and Specifications, prior to proceeding to the next hold point. Council will undertake random audit of work sites to verify compliance of public works as required.

15. Responsibilities under the National Parks and Wildlife Act 1974

All earthmoving contractors and operators must be instructed that, in the event of any bone, or stone artefacts, or discrete distributions of shell, being unearthed during earthmoving, work must cease immediately in the affected area, and the Local Aboriginal Land Council and officers of the National Parks and Wildlife Service, informed of the discovery. Work must not recommence until the material has been inspected by those officials and permission has been given to proceed. Those failing to report a discovery and those responsible for the damage or destruction occasioned by unauthorised removal or alteration to a site or to archaeological material may be prosecuted under the National Parks and Wildlife Act 1974.

16. Maintenance of sediment and erosion control measures
Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

17. Public safety requirements
All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. Council is not held responsible for any negligence caused by the undertaking of the works.

18. Council Specification

All works to be constructed to at least the minimum requirements of Council's Adopted Engineering Standard.

19. **Approved Plans to remain on site**
A copy of the approved Construction Certificate including plans, details and specifications must remain at the site at all times during the construction of the subdivision.

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO ISSUE OF A SUBDIVISION CERTIFICATE

20. **Plan of Subdivision**
An application for a Subdivision Certificate must be made on the approved form. The Subdivision Certificate fees, in accordance with Council's adopted schedule of fees and charges, must accompany such application. Seven (7) copies of the plan of subdivision are to be submitted with the application for a subdivision certificate. The location of all buildings and / or other permanent improvements including fences and internal access driveways / roads must be indicated on 1 of the copies.
21. **Plan of Subdivision and Section 88B Instrument requirements**
A Section 88B Instrument and 1 copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for the items listed in the following table:

Item for inclusion in Plan of Subdivision and / or Section 88B Instrument	Details of Item
Dwelling Envelope	Restrictions to limit the erection of dwellings to the nominated dwelling envelope.

22. **Completion of All Works**
All roads, drainage and civil works, required by this development consent and associated Construction Certificate, are to be completed. Works are to include restoration, replacement and / or reconstruction of any damage caused to surrounding public infrastructure, including damage to road pavements along any haulage routes used for the construction of the subdivision.
23. **Electricity Supply Certificate**
Written evidence from an electricity supply authority is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made for the provision of underground electricity supply throughout the subdivision.
24. **Telephone Supply Certificate**
Written evidence from Telstra is to be submitted with the application for a subdivision certificate stating that

satisfactory arrangements have been made for the provision of underground telephone supply throughout the subdivision.

25. Contributions for Water and Sewer Services prior to this issue of a Subdivision Certificate.

Contributions set out in the following table are to be paid to Council prior to the issue of a Construction Certificate. Contributions are levied in accordance with Council's Kempsey Shire Council Macleay Water DSP for Water & DSP Sewage Services dated July 2006. The Plans may be viewed during office hours at Council's Offices.

The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. Payments will only be accepted by cash or bank cheque

The Certificate of Compliance under Section 306 of the Water Management Act 2000, identifying payment of the contributions, is to be provided to the Principal Certifying Authority.

Public service	No. of Equivalent Tenements	Contribution Rate (Amount per ET)	Contribution Levied	Date until which Contribution rate is applicable
Water	1 ET	\$7,947	\$7,947	30 th June 2008 / 09
TOTAL			\$7,947	

26. Contribution to be paid towards provision or improvement of amenities or services prior to the issue of a Subdivision Certificate.

The particulars of the contributions levied pursuant to Section 94 of the Act are set out in the following table:

The specific public amenity or service in respect of which the condition is imposed.	The contributions plan under which the condition is imposed	Date of contributions plan
Outdoor Recreation	Outdoor recreation -2001	September 2000
Rural Roads	Rural Roads Developer	May 2000
Section 94 – Project Administration	Project Administration	10 th August 2007

The above plans may be viewed during office hours at the Council Customer First Centre located at 22 Tozer Street West Kempsey.

Contributions set out in the following Schedule are to be paid to Council prior to the issue of a Construction Certificate. The following contributions are current at the date of this consent. The contributions payable will be

Public amenity or service	Unit type	No. of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable
Outdoor Recreation	ET	1	\$449.00	\$449.00	30 th June 2008 / 09
Arterials Road	ET	1	\$1,074.00	\$1,074.00	30 th June 2008 / 09
Subtotal				\$1,523.00	
S94 Administration	6% of total Section 94 charge applicable			\$91.40	30 th June 2008 / 09
TOTAL				\$1,614.40	

adjusted in accordance with the relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. The contribution rates for specific dates are available from Council offices during office hours. Payments will only be accepted by cash or bank cheque

Schedule of Contributions pursuant to Section 94 of the Environmental Planning and Assessment Act 1979

27. **Integrated Rural Bushfire Service**
The development proposal is to comply with the subdivision layout identified on the drawing prepared by Robert Dennis and Associates Pty Ltd, project number 0433/06 dated 28/8/2007.
28. The plan of subdivision is to indicate that the boundaries traversing the SEPP14 wetland have been set by following the existing fence-lines.
29. The plans for the required construction certificate are to include detailed engineering plans for the required internal access road to the approved dwelling envelope to 2WD all weather standard. Such plans shall indicate that the road has been designed so as not to impede the flow of stormwater during a 1 in 20 year storm event in accordance with "Australian Rainfall and Runoff".

B. That the objectors be advised of Council's decision.

2009. 40 RESOLVED:

*Moved: Cl. Green
Seconded: Cl. Gribbin*

That this item be listed for a Works Inspection.

A Division on this decision resulted in the following votes.

F = Voted For

A = Voted Against

Bowell	F	Campbell	F	Green	F	Gribbin	F	Hayes	F	Saul	F
Snowsill	F	Sproule	F								