



KEMPSEY
Shire Council

PLANNING VOTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL

Held at the Community Hall, Bellbrook

9th June 2009 commencing at 9.06a.m

**DSDS3 LOCAL ENVIRONMENTAL STUDY (LES) - OLD SCHOOL SITE,
GREGORY STREET, SOUTH WEST ROCKS
FILE: T5-100 KJH / RBP {Folio No. 400750}**

SUMMARY:

Reporting that a Local Environmental Study (LES) and draft Local Environmental Plan (LEP) for the Old School House, South West Rocks, has been prepared for which Council's endorsement is sought to place the LES and draft Local Environmental Plan (LEP) on public exhibition.

SECTION 375A OF LOCAL GOVERNMENT ACT, 1993 REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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2009. 390 RESOLVED:

*Moved: Cl. Walker
Seconded: Cl. Green*

- A. That the draft LEP Amendment No 100 be forwarded to the Director General under s64 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) together with a covering report on S62 consultations.
- B. That the Director General be requested to issue a S65 Certificate allowing the draft plan to be exhibited in accordance with s66 of the (EP&A Act).
- C. That upon receipt of the S65 Certificate, the LES and draft LEP Amendment No 100 Instrument and Plan together with supporting documentation as required under S66 of the (EP&A Act) be placed on public exhibition for a period of no less than 60 days.
- D. That Council prepare a draft Development Control Plan for the site incorporating the recommendations made in the LES, including the provisions of the draft LEP,
- E. That the Draft LEP, accompanying LES and draft DCP be exhibited concurrently.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

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

DSDS5	SECTION 82A REVIEW OF DETERMINATION
	FILE: T6-07-76 PJC {Folio No. 400762}

SUMMARY:

Reporting that additional information has been lodged for a section 82A Review of determination for the continued use of a dwelling at 154 Hughes Access, Collombatti.

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

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Director Sustainable Development Services recommendation:

- A. That the application to review Development Consent No. T6-07-76 to delete condition no. 8 be declined.**
- B. That condition of consent no. 8 of Development Consent No. T6-07-76 be varied to read as follows:**

Contribution to be paid towards provision or improvement of amenities or services within three (3) months from the date of this determination

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
Rural Roads	Rural Roads Developer	May 2000
Open Space	Section 94 Contribution for Outdoor Recreation	Sep 2001

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

The following contributions are current at the date of this consent. The contributions payable will be 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

Public amenity or service	Unit type	No. of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable
Arterial Road (Collombatti Road)	ET	1	\$9,836	\$9,836.00	30.6.09
Catchment Access Road (Hughes Access)	ET	1	\$2542	\$2,542.00	20.6.09
Outdoor Recreation	ET	1	\$441	\$441.00	20.6.09
TOTAL				\$12,819.00	

C. That the applicant be advised that Council is prepared to consider further representations in respect a mutually agreeable schedule of payments to reduce the financial burden.

MOVED:

*Moved: Cl. Green
Seconded: Cl. Walker*

That the Director Sustainable Development Services recommendation be adopted.

An AMENDMENT was MOVED:

*Moved: Cl. Saul
Seconded: Cl. Sproule*

That this item be listed for a works inspection.

2009. 391

The AMENDMENT was PUT to the MEETING and was CARRIED, became the MOTION and was CARRIED.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

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

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

DSDS1	DRAFT LOCAL ENVIRONMENTAL PLAN (LEP) AMENDMENT - NO 98
FILE: T5-98 GLR	{Folio No. 400747}

SUMMARY:

Reporting on the progress of a Draft Local Environmental Plan (LEP) at South Kempsey

SECTION 375A OF LOCAL GOVERNMENT ACT, 1993 REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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2009. 409 RESOLVED: *Moved: Cl. Green
Seconded: Cl. Walker*

That Council resolve to cease the preparation of Draft LEP 98 to rezone Lot 3 DP337328 at 5 Nicholson Street, South Kempsey.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

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

**DSDS2 AGE CARE FACILITY – SOUTH WEST ROCKS
FILE: T6-07-318 KJA {Folio No. 400748}**

SUMMARY:

Reporting that a request to modify the conditions of consent has been received (T6-07-318) for an Aged Care Facility at South West Rocks.

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

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2009. 410 RESOLVED: *Moved: Cl. Walker
Seconded: Cl. Campbell*

- A. That the application to delete condition number 54 from Development Approval No. T6-07-318 be approved.
- B. That the applicant be advised that a Certificate of Compliance pursuant to Division 5 of the *Water Management Act 2000* will be issued by Council, subject to the following matters being complied with:-
 - 1. Payment of a Sewerage developer charge in accordance with the Development Servicing Plan adopted by Council at the rate of \$6,451 per equivalent tenement, i.e. \$6,451 x 20.2 E.T = \$135,400.00 total for 2008 / 2009 (Indexed).
 - 2. Payment of a Water Supply developer charge in accordance with the Development Servicing Plan adopted by Council at the rate of \$7,647 per equivalent tenement, i.e. \$7,647 x 16.8 E.T = \$133,492.00 total for 2008 / 2009 (Indexed).

3. Either:

a) Lodgement of Bank Guarantee in favour of Kempsey Shire Council for the amount of \$246,588 prior to occupation of the premises in lieu of an additional upfront cash contribution towards the provision of water and sewage. Upon receipt of a written request Council will consider relinquishing the Bank Guarantee, provided it can be demonstrated that actual flow rates do not exceed those on which the ET rate specified in Advices 1 and 2 above having regard to Water Directorate Guidelines.

Or,

b) The applicant shall enter into a suitable Deed of Agreement with Council in lieu of payment of \$246,588 (Indexed 2008 / 09) prior to release of the Occupation Certificate. Such agreement shall provide:-
i. That the owner agrees to install a suitable meter to monitor outflows from the onsite water reservoir connected to sanitary facilities prior to discharge into Council's sewerage system.
ii. That in the event monitoring of water usage indicates flows are greater than referred to in Advices 1 and 2 above, the owner agrees to pay Council the amount applicable under Council's Developer Servicing Plans on a pro rata ET basis up to \$246,588 (Indexed 2008 / 09).
iii. That in the event monitoring of water usage and sewer outflows indicates flows are less than referred to in Advices 1 and 2 above, Council agrees to provide a credit towards any water and sewerage contributions applying to any future application made for further development within the Shire. Such credit shall be based on Council's Developer Servicing Plans and shall be expressed on an ET basis.
iv. That the agreement be registered in the form of a Caveat on the title of the subject land in a form that binds successive owners.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

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

DSDS6	REVIEW OF CONTRIBUTIONS
FILE: T6-06-313	RBP {Folio No. 400763}

SUMMARY:

Reporting that Council has received a request to enter into an agreement in respect to contributions required for an aged care facility at Frederickton.

SECTION 375A OF LOCAL GOVERNMENT ACT, 1993 REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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2009. 412 RESOLVED:

*Moved: Cl. Saul
Seconded: Cl. Green*

A. That the applicant be advised that Council is prepared to consider an application to modify the consent to:-

- Amend condition 105 to require the issuing of a Certificate of Compliance (Section 305 of the Water Management Act) prior to occupation of the premises;
- Delete Condition 106 to be replaced by an advice;
- Staging of the occupation of nursing home beds.

B. That the applicant be advised that Council will agree to issue a Certificate of Compliance pursuant to the Water Management Act 2000, subject to the following preconditions:-

1. Payment of a Sewerage developer charge in accordance with the Development Servicing Plan adopted by Council at the rate of \$6,704 per equivalent tenement, i.e. \$6,704 x 41.1 E.T = \$275,534 total for 2008 / 2009 (Indexed annually) prior to release of the Occupation Certificate.

NOTE: This advice will be revised upon receipt of the application to stage the occupation of the premises to include an additional payment being the difference between the CPI and cash rate at the time of payment.

2. Payment of a Water Supply developer charge in accordance with the Development Servicing Plan adopted by Council at the rate of \$7,947 per equivalent tenement, i.e. \$7,947 x 40.1 E.T = \$318,675 total for 2008 / 2009 (Indexed annually) prior to release of the Occupation Certificate.

NOTE: This advice will be revised upon receipt of the application to stage the occupation of the premises to include an additional payment being the difference between the CPI and cash rate at the time of payment.

3. The applicant shall enter into a suitable Deed of Agreement with Council in lieu of payment of \$658,687 (Indexed 2008 / 09) prior to release of the Occupation Certificate. Such agreement shall provide:-

- a) That the owner agrees to install a suitable meter to monitor discharge into Council's sewerage system.
- b) That in the event monitoring of water usage and sewer outflows indicates flows are greater than referred to in Advices 1 and 2 above, the owner agrees to pay Council

the amount applicable under Council's Developer Servicing Plans on a pro rata ET basis up to \$658,687 (Indexed 2008 / 09).

- c) That in the event monitoring of water usage and sewer outflows indicates flows are less than referred to in Advices 1 and 2 above, Council agrees to provide a credit towards any water and sewerage contributions applying to any future application made for further development of the land. Such credit shall be based on Council's Developer Servicing Plans and shall be expressed on an ET basis.
- d) That the agreement be registered in the form of a Caveat on the title of the subject land in a form that binds successive owners.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

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

DSDS7 NOMINATIONS FOR JOINT REGIONAL PLANNING PANEL
FILE: 579 RBP {Folio No. 400764}

SUMMARY:

Reporting that Council has been requested to nominate representatives to serve on the Northern Region Joint Regional Planning Panel (JRPP)

SECTION 375A OF LOCAL GOVERNMENT ACT, 1993 REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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2009. 413 RESOLVED:

Moved: Cl. Hayes
Seconded: Cl. Sproule

- A. That if forthcoming Council accept the nomination of the Mayor and Director Environment and Planning of Nambucca Shire Council to represent Kempsey Shire Council on the JRPP for matters applicable to Kempsey Shire with the Deputy Mayor of Nambucca Shire being the alternative representative on a provisional basis only.
- B. That Council nominate the Mayor and Director Sustainable Development Services on the JRPP for matters applicable to Nambucca Shire with the Deputy Mayor being the alternative representative on a provisional basis only.
- C. That Council delegate its authority to the General Manager to ratify Council's nomination in the event concerns relating to

conflicts of interest are not addressed by the Department of Planning.

- D. That in the event Nambucca Shire Council does not formally agree to the proposed resource sharing arrangement, that Council continue to defer nominating any members for the JRPP until satisfactory clarification of the matters raised in Council's submission to the Department of Planning has been provided.

A Division on this decision resulted in the following votes.

F = Voted For

A = Voted Against

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

Councillor Hayes declared an interest in the following item for the reason that she is administrator of the Kempsey Showground and retired from the Chamber.

**DSDS11 BUILDING AND DEVELOPMENT
FILE: 329 RBP**

SUMMARY:

Reporting that the following applications have been approved:

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2009. 417 RESOLVED:

*Moved: Cl. Green
Seconded: Cl. Campbell*

That the information be noted.

A Division on this decision resulted in the following votes.

F = Voted For

A = Voted Against

Bowell	F	Campbell	F	Green	F	Saul	F	Snowsill	F
Sproule	F	Walker	F						

Councillor Hayes returned to the Chambers.

**DSDS2 MODIFIED CONSENT - SOUTH WEST ROCKS
CONF FILE: T6-07-318 KJA {Folio No. 400808}**

Section 10A(2)(g) – Legal Proceedings

This report is submitted on a confidential basis as it involves advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (Local Government Act 1993, section 10A(2)(g))

On balance, the public interest in preserving the confidentiality of the advice, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

SUMMARY:

Reporting that Council has received an application to modify a development consent.

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

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2009. 456 **RECOMMENDED:**

*Moved: Cl. Hayes
Seconded: Cl. Walker*

That the information be noted.

A Division on this decision resulted in the following votes.

**F = Voted For
A = Voted Against**

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

DSDS3	UNAUTHORISED USE
CONF	FILE: LA957 SRR {Folio No. 400811}

REASON: SECTION 10A(2)(G) – LEGAL PROCEEDINGS

This report is submitted on a confidential basis as it involves advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (Local Government Act 1993, Section 10A(2)(g))

On balance, the public interest in preserving the confidentiality of the advice outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

SUMMARY:

Reporting on the status of compliance actions for unauthorised land uses at West Kempsey

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

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2009. 457 **RECOMMENDED:**

*Moved: Cl. Green
Seconded: Cl. Hayes*

That the owners be advised that unless all unauthorised uses of the land cease within 14 days of notice being given, that Council will commence

action in the Land and Environment Court seeking orders requiring cessation of the uses and an order as to Council's costs.

A Division on this decision resulted in the following votes.

F = Voted For

A = Voted Against

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

Councillor Campbell declared an interest in the following item for the reason that she was the under bidder at the auction of land referred to in the report and retired from the Chamber.

The following items DCCS1 Confidential and NOM 1 were dealt with in conjunction.

DCCS1	AUCTION SALE OF SURPLUS COUNCIL LANDS
CONF	FILE: 1287 SJR (NRN) {Folio No. 400816}

Section 10A(2)(c) – Commercial Advantage in Business Dealing

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

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

SUMMARY:

Reporting on the outcomes of the Auction of Surplus Council Lands held on 14th May 2009

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NOM1	AUCTION SALE OF SURPLUS COUNCIL LANDS
	FILE: 1287 SJR {Folio No. 400740}

Section 10A(2)(c) – Commercial Advantage in Business Dealing

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

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

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MOVED:

*Moved: Cl. Hayes
Seconded: Cl. Green*

1. That Council accept the after auction offer of \$50,000 for 73 – 77 Tabrett Street, West Kempsey.
2. That Council accept the after auction offer \$18,000 for the sale of 33 Main Street, Bellbrook.
3. That Council accept the offer of \$72,500 for 70 Cyrus Saul Circuit, Frederickton.
4. That Council consent to the affixing of the common seal of Council to documents relating to all sales where required.

An AMENDMENT was MOVED:

*Moved: Cl. Saul
Seconded: Cl. **

1. That Council accept the after auction offer of \$50,000 for 73 – 77 Tabrett Street, West Kempsey.
2. That Council accept the after auction offer \$18,000 for the sale of 33 Main Street, Bellbrook.
3. That Council call for expressions of interest for 70 Cyrus Saul Circuit, Frederickton.
4. That Council consent to the affixing of the common seal of Council to documents relating to all sales where required.

The AMENDMENT LAPSED for want of a SECONDER

2009. 458 The MOTION was PUT to the MEETING and was CARRIED.

A Division on this decision resulted in the following votes.

**F = Voted For
A = Voted Against**

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

Councillor Campbell returned to the Chamber.