



PLANNING VOTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL

21 June 2011 commencing at 9.05am.

**1.2 Legal Opinion - State Environmental Planning Policy
Affordable Rental Housing 2009
File: T6-10-242 {Folio No. 453048}**

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.

2011. 245 RESOLVED:

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

That the information be noted.

A Division resulted in the following votes.

F = Voted For

A = Voted Against

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

**1.7.3 Change the use and alterations of the existing dwelling in
Crescent Head**

File: T6-10-242 {Folio No. 452922}

SUMMARY

Reporting that Council has received a development application for the purpose of a change of use and alterations of the existing dwelling for which objections have been received.

PROPOSAL

Applicant: Ms R Harvey
 Subject Land: Lot A DP303130 28 Main Street
 Crescent Head
 Zone: 2 (a) (Residential 'A' Zone)

MOVED:

***Moved: Cl. Green
 Seconded: Cl. Sproule***

- A That the applicant be invited to submit amended plans that reduce the impact on the views on the dwellings immediately to the south (No 4 Beranghi Street and No 14 Hodgson Street) including, but not limited to, lowering and moving the building to the north. Such amended plans to be accompanied by a photo montage prepared by a suitably qualified person demonstrating that there will be no unacceptable loss of views.**
- B That upon receipt of acceptable amended plans, that Development Application T6-10-242 be approved 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
Drainage, Open Space Plan, Secondary Dwelling Alterations	3 Rev D	Bayline Developments	12/5/11
Floor Plans and Sections	1 Rev C	Bayline Developments	14/1/11
Elevations	2 Rev C	Bayline Developments	14/1/11
Driveway Section Details	1	McGlashan & Crisp PTY LTD	Nov 2010

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 Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989

- a) All building work must be carried out in accordance with the requirements of the Building Code of Australia as in force on the date the application for the relevant construction certificate or complying development certificate was made.
- b) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building

work authorised to be carried out by the consent commences.

3 Commencement of Works

This consent does not permit commencement of any works.

4 Future subdivision

In accordance with the State Environmental Planning Policy (Affordable Rental Housing) 2009, the land parcel to which this development application applies is not to be subdivided.

THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE FOR BUILDING WORKS

5 Demolition of Existing Structures

The existing shed and part of the existing dwelling shall be demolished in a safe and systematic manner in accordance with the requirements of Australian Standard AS 2601-2001 "The Demolition of Structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc., being handled, conveyed and disposed of in accordance with guidelines and requirements of the NSW WorkCover Authority. Disposal of asbestos material at Council's Waste Depot requires prior arrangement.

6 Removal of asbestos

All asbestos wastes associated with demolition/renovation works are to be disposed of in accordance with the requirements of the WorkCover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Council requires 48 hours notice prior to disposal at Council's waste depot.

7 Roads Act Activity Approval

Provide Council with the completed form "Request for Consent to Carry Out a S138 Roads Act Activity" for the proposed vehicular access from the road formation to the property boundary of the above development; payment of the necessary fees and engineering details of the proposed driveway crossing to the above development.

8 Long Service Levy to be paid

A Long Service Levy must be paid to the Long Service Payments Corporation prior to the issue of a Construction Certificate. This amount payable is currently based on 0.35% of the cost of the work. This is a State Government Levy and is subject to change.

These payments may be made at Council's Administration Office. Cheques are to be made payable Council.

9 Water and Sewerage Section 68 approval required

An approval under Section 68 of the Local Government Act 1993 to carry out water supply work and sewerage work must be obtained.

10 Compliance with BASIX Certificate.

The Principal Certifying Authority (PCA) is to ensure that the proposed development is constructed in accordance with the

requirements of BASIX Certificate No. 3229335-04, dated 19 January 2011. The Plans submitted for approval with the Construction Certificate must include all of the BASIX Certificate commitments indicated in this certificate.

Where changes to the development are proposed that may affect the water, thermal comfort or energy commitments, a new BASIX Certificate may be required.

11 Structural Engineer's Details required

Structural engineering details, prepared and certified by a practicing structural engineer, of all reinforced concrete and structural members shall be submitted to the Principal Certifying Authority for approval.

12 Stormwater details required

The application for a Construction Certificate is to include plans and specification for the construction of stormwater disposal from the site in accordance with the plans approved by this consent. The drainage system is to be designed for 1 in 20 year storm event and must discharge to the existing system. The stormwater system must be designed to comply with the requirements of AS/NZS 3500.3:2003 - *Plumbing and drainage*, Part 3: Stormwater drainage.

Such plans and specifications must be approved as part of the Construction Certificate.

Engineering plans and specifications must include details in accordance with Appendix C of AS/NZS 3500.3:2003 - *Plumbing and drainage*, Part 3: Stormwater drainage.

The plans must be in compliance with Council's Adopted Engineering Standard.

13 Application for a Certificate of Compliance

Prior to the release of a Construction Certificate a Certificate of Compliance, pursuant to Section 305 of the *Water Management Act 2000* shall be submitted to Council.

Please refer to the Advice section of the consent for additional information on water and sewer works and contributions.

14 Support for neighbouring buildings

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- a) must preserve and protect the adjoining building from damage;
- b) if necessary, must underpin and support the building in an approved manner; and
- c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish

particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land, public road or any other public place is not to be held liable for any part of the cost of work carried out, whether carried out on the allotment of land being excavated or on the public road, any other public place or the adjoining allotment of land.

Geotechnical Report required – Engineering Works

15 A certificate from a professional Geotechnical Engineer is to be provided to the Principal Certifying authority, certifying that:

- a) The design of the civil engineering works, including retaining walls and/ or cut and fill batters, has been assessed as structurally adequate in accordance with the relevant Australian Standards
- b) The civil engineering works will not be affected by landslip or subsidence either above or below the works;
- c) Adequate drainage has been provided with appropriate consideration given to groundwater constraints.

Plans of retaining walls and drainage

16 The application for a Construction Certificate is to include plans and specification that indicate retaining walls or other approved methods of preventing movement of the soil, where any excavation or filled area has been approved via this development consent to exceed 600mm in height. Adequate provision must be made for drainage in the design of the structures.

Such plans and specification must be approved as part of the Construction Certificate.

17 Contribution to be paid towards provision or improvement of amenities or services prior to the issue of a Construction 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 2001
Public Domain	Kempsey Town Centre Public Domain Section 94 Development Contribution Plan	August 2010
Roads and Traffic Infrastructure	Local Roads and Traffic Infrastructure	January 2010

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
	Contribution Plan 2009	
Section 94 – Project Administration	Project Administration	10 August 2007

The above plans may be viewed during office hours at the Council Offices 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 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
Open Space	ET	0.66	\$474.00	\$312.84	30 June 2011
Public Domain	EP	1.9	\$393.00	\$746.70	30 June 2011
Roads and Traffic Infrastructure within Catchment Four (4)	EP	1.9	\$1,466.00	\$2,785.40	30 June 2011
Sub total				\$3,844.94	
S94 Administration	6% of total Section 94 charge applicable			\$230.70	30 June 2011
TOTAL				\$4,075.64	

THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH DURING CONSTRUCTION

18 Plumbing Standards and requirements

All Plumbing, Water Supply and Sewerage Works are to be installed and operated in accordance with the Local Government Act 1993, the NSW Code of Practice for Plumbing and Drainage and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications.

19 Construction times

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on adjoining residential premises, can only occur:

- a) **Monday to Friday, from 7 am to 6 pm.**
- b) **Saturday, from 8 am to 1 pm.**

No construction work is to take place on Sundays or Public Holidays.

20 Site construction sign required

A sign or signs must be erected before the commencement of the work in a prominent position at the frontage to the site:

- a) **showing the name, address and telephone number of the principal certifying authority for the work;**
- b) **showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and**
- c) **stating that unauthorised entry to the work site is prohibited.**

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed. No sign is to have an area in excess of one (1) m².

21 Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Building materials are to be delivered directly onto the property. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

22 Maintenance of sediment and erosion control measures

Erosion and sedimentation controls are to be in place in accordance with the DCP 36 – Engineering Guidelines for Subdivision and Development. Particular attention is to be given to the provision of the following sediment and erosion control measures:

- a) **Temporary driveway from the edge of road to the building site;**
- b) **Temporary downpipes immediately that the roof has been erected; and**
- c) **Silt fence or sediment barrier.**

Additionally the enclosed sign, to promote the awareness of the importance of maintenance of sediment and erosion controls, is to be clearly displayed on the most prominent sediment fence or erosion control device for the duration of the project.

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

23 Glazing requirements

Glazing materials used in the building are to be selected in accordance with the provisions of Australian Standard AS 1288 *SAA Glass Installation Code* and must comply with the requirements of Australian Standard AS 2208 "Safety Glazing Materials for Use in Buildings (Human Impact Considerations)" as required by the Building Code of Australia.

THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

24 Works to be completed

All of the works shown on the plans and granted by this consent, including any other consents that are necessary for the completion of this development, are to be completed and approved by the relevant consent authority/s prior to the issue of an Occupation Certificate.

25 Fire detection and alarm system required

A fire detection and alarm system must be installed and maintained within the building. Such system must comply with the Building Code of Australia (BCA) Part 3.7 requirements for a Class 1a building.

26 Sealed driveway in accordance with the Roads Act

A sealed driveway is to be constructed from the edge of the road formation to property boundary in accordance with the Roads Act consent.

27 Sewer and water to be connected

Sewer and water supply is to be connected to the premises in accordance with an approval granted under Section 68 of the Local Government Act 1993.

28 Restriction

Prior to the Occupation Certificate being issued evidence that a restriction has been registered on the title of the land is to be supplied to Council. The restriction will be to prohibit the future subdivision of the land whilst 2 dwelling exist which are approved under the SEPP (Affordable Rental Housing) 2009 under this consent.

ADVICE

Contributions for Water Services prior to this issue of a Certificate of Compliance

Contributions set out in the following table are to be paid to Council prior to the issue of a Certificate of Compliance. 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	Office Use Only Receipting Codes
Water	0.6	\$8,390.00	\$5,034.00	30 June 2011	AW
Sewer	0.75	\$7,078.00	\$5,308.50	30 June 2011	AS
TOTAL			\$10,342.50		

C That in the event acceptable amended plans are not provided within 28 days of notice being given, that the application be refused for the following reasons:-

- 1 The proposal does not comply with DCP Crescent Head having regard to an unacceptable and avoidable loss of views to adjoining residences.
- 2 The proposal is likely to create an undesirable precedent for similar proposals in the locality and throughout the Shire
- 3 The proposal is not considered to be in the public interest.

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

An Amendment was MOVED:

*Moved: Cl. Walker
Seconded: Cl. Gribbin*

That this matter be listed for a works inspection.

2011. 247 The AMENDMENT was PUT to the MEETING and was CARRIED, became the MOTION and was CARRIED.

A Division resulted in the following votes.

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

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

11 RESCISSION MOTIONS

RM1	Proposed Multiple Dwellings at South West Rocks File: T6-10-399 {Folio No. 452913}
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MOVED:

Moved: Cl. Walker

Seconded: Cl. Campbell

That resolution 2011.WI190 from the Works Committee Inspection meeting held Monday 9 May 2011 as printed below:

“That the proposer be requested to amend the application so that it is more in line with the surrounding developments.”

be rescinded.

The MOTION was PUT to the Meeting and was LOST.

A Division resulted in the following votes.

F = Voted For

A = Voted Against

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

RM2 Proposed Multiple Dwellings at South West Rocks
File: T6-10-398 {Folio No. 453098}

MOVED:

Moved: Cl. Walker
Seconded: Cl. Campbell

That resolution number 2011.WI191 from the Works Committee Inspection meeting held Monday 9 May 2011 as printed below:

“That the proposer be requested to amend the application so that it is more in line with the surrounding developments.”

be rescinded.

The MOTION was PUT to the Meeting and was LOST.

A Division resulted in the following votes.

F = Voted For

A = Voted Against

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

1.3.1 Development Control Plan for Saltwater South West Rocks
File: T5-55 {Folio No. 452919}

SUMMARY

Reporting that the Draft Saltwater Development Control Plan is submitted for Councils endorsement.

2011. 264 RESOLVED:

Moved: Cl. Green

Seconded: Cl. Hayes

1. That the Draft Development Control Plan - Saltwater South West Rocks with proposed changes referred to in the appended report be adopted.
2. That Council review the Development Control Plan upon completion of modelling of the Barrier Dune system (incorporating the sand berm at Saltwater Creek) under 2100 Sea Level Rise conditions.

A Division resulted in the following votes.

F = Voted For

A = Voted Against

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

1.7 Development Approvals & Regulatory Planning Functions

1.7.1 Proposed Boundary Adjustment

File: T6-09-382 {Folio No. 452920}

SUMMARY

Reporting that Council has received a Development Application to undertake a boundary adjustment which requires a variation to Kempsey Local Environmental Plan 1987 for which a SEPP 1 objection has been received.

2011. 265 RESOLVED:

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

That the Development Application and SEPP 1 objection be approved 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
Proposed Subdivision Ref: 6289		Hopkins Consultants	4 November 2009
Koala Plan of Management		Hopkins Consultants	March 2011

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.

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

2. 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.

3. 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
Rights of Carriageway	The creation of suitable right of carriageway over the access to proposed Lot 2, benefiting Lot 1.
Restriction	No development will be approved on Lot 2 unless an onsite sewerage management assessment is prepared demonstrating that effluent can be treated and disposed of within the lot in accordance with AS 1547:2000 and the Environment and Health Protection Guidelines 1998
Restriction	Prohibiting access from proposed Lot 1 onto the Pacific Highway at any point other than the existing access point.
Restriction	Any future boundary fencing for either lot must not impede the free movement of Koalas and comply with the requirements of the approved Koala Plan of Management.
Restriction	If dogs are to be kept on the premises then dog runs and pens are to be provided to house the dogs and be constructed to the satisfaction of Council
Easement for Electricity	The creation of any necessary easements for electricity purposes as required by the electricity supply authority.
Easement for Services	The creation of suitable easements for services to either proposed Lot if required

4. Certificate for Pipes, Access Driveways, etc. Within Easements

A certificate from a registered surveyor is to be submitted to Council certifying that all pipelines, structures, access driveways and/or services are located wholly within the relevant easements.

A Division resulted in the following votes.

F = Voted For

A = Voted Against

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

1.7.2 Proposed Boundary Adjustment

File: T6-11-141 {Folio No. 452921}

SUMMARY

Reporting that Council has received a Development Application to undertake a boundary adjustment which requires a variation to Kempsey Local Environmental Plan 1987.

PROPOSAL

Applicant: Bracourt Pty Ltd
 Subject Property: Lot 21 DP 788635 No 1314 Pacific Highway and
 Lot 1 DP 1049660 No 1304 Pacific Highway,
 Bellimbopinni
 Zone: 1(a3) Agricultural Protection

2011. 266 RESOLVED:

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

A That Development Application T6-11-141 be approved 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
Map 3			15 May 2011

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.

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

- 2. 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.

3. **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
Restriction	Prohibiting access from either proposed lot onto the Pacific Highway at any point other than the existing access points.
Easement for Electricity	The creation of any necessary easements for electricity purposes as required by the electricity supply authority.
Easement for Services	The creation of suitable easements for services to either proposed Lot if required

4. **Certificate for Pipes, Access Driveways, etc. Within Easements**
A certificate from a registered surveyor is to be submitted to Council certifying that all pipelines, structures, access driveways and/or services are located wholly within the relevant easements.

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

A Division resulted in the following votes.

F = Voted For

A = Voted Against

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