ITEM 13.1  KEMPSEY CINEMA – VOLUNTARY PLANNING AGREEMENT

Contact Person: Craig Milburn – General Manager  File: F18/1377

PURPOSE

To provide details of submissions received during the public notification of the draft Kempsey Cinema Voluntary Planning Agreement (VPA).

General Manager Recommendation:

1  That Council notes the submissions received during the public notification of the draft Kempsey Cinema Voluntary Planning Agreement and the subsequent analysis of these submissions.

2  That, having considered the submissions, Council agrees to enter into the publicly notified version of the draft Kempsey Cinema Voluntary Planning Agreement subject to the following amendments:

   a. the definition of ‘Development Consent’ in the VPA be amended as follows:
      Development Consent means consent under the Act to Development Application DA T6-16-293 granted by the Council on 23 December 2016 as modified from time to time, and any other related development consent for the construction of the Cinema.

   b. the reference to clause 19.11 in clause 19.1.1(c) and 19.1.1(d) should be corrected to a reference to clause 19.12.

3  That Council delegates authority to the General Manager to execute the Kempsey Cinema Voluntary Planning Agreement as amended in accordance with this resolution.

MOVED

Moved: Cl. McGinn
Seconded: Cl. Patterson

1  That Council notes the submissions received during the public notification of the draft Kempsey Cinema Voluntary Planning Agreement and the subsequent analysis of these submissions.

2  That, having considered the submissions, Council agrees to enter into the publicly notified version of the draft Kempsey Cinema Voluntary Planning Agreement subject to the following amendments:
a. the definition of ‘Development Consent’ in the VPA be amended as follows: Development Consent means consent under the Act to Development Application DA T6-16-293 granted by the Council on 23 December 2016 as modified from time to time, and any other related development consent for the construction of the Cinema.

b. the reference to clause 19.11 in clause 19.1.1(c) and 19.1.1(d) should be corrected to a reference to clause 19.12.

3 That Council delegates authority to the General Manager to execute the Kempsey Cinema Voluntary Planning Agreement as amended in accordance with this resolution.

At this stage 11.44am the meeting adjourned for a short recess and upon resumption at all present at the adjournment were in attendance.

CONFIDENTIAL SESSION

2018.81 RESOLVED: Moved: Cl. McGinn

Moved: Cl. McGinn
Seconded: Cl. Saul

That Council move into Confidential Session for discussions related to item 13.1 for the following reason; 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)).

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2018.82 RESOLVED: Moved: Cl. Morris

Moved: Cl. Morris
Seconded: Cl. Baxter

That the Council Meeting be resumed.

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An Amendment was MOVED: Moved: Cl. Hauville

Moved: Cl. Hauville
Seconded: Cl. Saul

1 That Council notes the submissions received during the public notification of the draft Kempsey Cinema Voluntary Planning Agreement and the subsequent analysis of these submissions.

2 That, having considered the submissions, Council agrees to vary the draft Kempsey Cinema Voluntary Planning Agreement as follows;

a the definition of ‘Development Consent’ in the VPA be amended as follows: Development Consent means consent under the Act to Development Application DA T6-16-280 granted by the Council on 19th September and DA T6-16-293 granted by
the Council on 23 December 2016 as modified from time to time, and any other related development consent for the construction of the Cinema.

b the reference to clause 19.11 in clause 19.1.1(c) and 19.1.1(d) should be corrected to a reference to clause 19.12.

3 That Council notify the amendments to the VPA by way of Public Exhibition for a period of no less than 28 days.

4 That a further report be presented to Council to genuinely consider any submissions received on the amended VPA during the notification period.

WORKSHOP

2018.83 RESOLVED:  
Moved: Cl. McGinn  
Seconded: Cl. Patterson

That Council move into workshop to allow discussion in open Council on item 13.1

Baxter F Campbell F Hauville F McGinn F Morris F Patterson F Saul F Shields F Williams F

MOTION TO RESUME COUNCIL MEETING

2018.84 RESOLVED:  
Moved: Cl. Patterson  
Seconded: Cl. McGinn

That the formal Council meeting be resumed.

Baxter F Campbell F Hauville F McGinn F Morris F Patterson F Saul F Shields F Williams F

The AMENDMENT was PUT to the Meeting and was LOST.

Baxter A Campbell A Hauville F McGinn A Morris F Patterson A Saul F Shields A Williams A

An Amendment was MOVED:  
Moved: Cl. Morris  
Seconded: Cl. Hauville

1 That Council notes the submissions received during the public notification of the draft Kempsey Cinema Voluntary Planning Agreement and the subsequent analysis of these submissions.

2 That, having considered the submissions, Council agrees to vary the draft Kempsey Cinema Voluntary Planning Agreement as follows

a the definition of 'Development Consent' in the VPA be amended as follows: Development Consent means consent under the Act to Development Application DA T6-16-293 granted by the Council on 23 December 2016 as modified from time to time, and any other related development consent for the construction of the Cinema.
b the reference to clause 19.11 in clause 19.1.1(c) and 19.1.1(d) should be corrected to a reference to clause 19.12.

3 That Council further amends the VPA to include a definition of what constitutes an operating Cinema to strengthen the Enduring Public Benefit. This amendment being as follows: The Cinema is deemed to provide the enduring benefits to serve the recreational needs of the local community of Kempsey if the Cinema complex is operated at a minimum of 65% of the possible screenings during the peak hours as defined in the VPA, after consideration of any Force Majeure Events.

4 That Council notify the amendments to the VPA by way of Public Exhibition for a period of no less than 28 days.

5 That a further report be presented to Council to genuinely consider any submissions received on the amended VPA during the notification period.

The AMENDMENT was PUT to the Meeting and was LOST.

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An Amendment was MOVED:

Moved: Cl. Haubille
Seconded: Cl. Morris

1 That Council notes the submissions received during the public notification of the draft Kempsey Cinema Voluntary Planning Agreement (VPA) and the subsequent analysis of these submissions.

2 That Council undertake a workshop to implement the necessary changes to the VPA as advised by the Kempsey Shire Community.

3 The revised VPA be forwarded to the Crown Solicitor of New South Wales for independent legal advice.

4 Upon receipt of the advice from the Crown Solicitor Council may decide to terminate the VPA for a Cinema or adopt changes to create a strengthened VPA.

5 That Council notify the amendments to the strengthened VPA by way of Public Exhibition for a period of no less than 28 days, with the Explanatory Note being a separate available document to advise the Community in plain English the contents and intent of the VPA.

6 That a further report be presented to Council to genuinely consider any submissions received on the amended VPA during the notification period.

The AMENDMENT was PUT to the Meeting and was LOST.

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Councillor Morris foreshadowed MOTION

1. That Council not proceed with the proposed voluntary planning agreement known as Belgrave Street Kempsey Cinema Planning Agreement between Kempsey Shire Council and Gowing Bros Ltd

2. That Council investigates alternative options for the provision of a cinema for the Kempsey community

3. That Council initiates an independent investigation concerning compliance with legislative requirements in regard to the cinema proposal from its inception to and including the VPA

2018.85 The MOTION was PUT to the MEETING and was CARRIED.

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At this stage 1.02pm the meeting adjourned for luncheon and upon resumption at 2.31pm all present at the adjournment were in attendance with the exception of Councillor Saul.

ITEM 13.2 DETACHED DUAL OCCUPANCY AT STUARTS POINT

Contact Person: Erin Fuller – Manager Development Assessment  File: T6-17-470

PURPOSE

To report for determination development application T6-17-470 which seeks consent for an additional dwelling house to create a detached dual occupancy development at 873 Stuarts Point Road, Stuarts Point. A variation greater than 10% to the minimum separation distance development standard under Kempsey Local Environmental Plan (KLEP) 2013 is sought [Appendix C].

2018.86 RESOLVED

Moved: Cl. McGinn
Seconded: Cl. Patterson

That development consent be granted to development application T6-17-470 for a detached dual occupancy at 873 Stuarts Point Road, Stuarts Point, subject to the conditions contained in [Appendix D].

A Division resulted in the following votes.

F = Voted For
A = Voted Against

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ITEM 13.4 PLANNING PROPOSAL AND PLANNING AGREEMENT AT GILBERT CORY STREET, SOUTH WEST ROCKS

Contact Person: Bill Larkin – Environmental Strategies Officer  File: KLEP2013-AM-3

PURPOSE

To progress the planning proposal to amend the Kempsey Local Environmental Plan (KLEP) 2013 to rezone a portion of land at Gilbert Cory Street, South West Rocks. A revised planning proposal and a proposed planning agreement have been prepared.

Interim Director Operations Recommendation:

1. That the revised planning proposal to rezone part of Lot 10 DP 754396 Gilbert Cory Street, South West Rocks be placed on public exhibition for a period of 28 days.

2. That public notice of the draft Planning Agreement for Lot 10 DP 754396 Gilbert Cory Street, South West Rocks be given for a period of 28 days as part of and contemporaneously with, and in the same manner as, public exhibition of the relevant planning proposal.

MOVED

Moved: Cl. Hauville  Seconded: Cl. Morris

1. That the revised planning proposal to rezone part of Lot 10 DP 754396 Gilbert Cory Street, South West Rocks be placed on public exhibition for a period of 28 days.

2. That public notice of the draft Planning Agreement for Lot 10 DP 754396 Gilbert Cory Street, South West Rocks be given for a period of 28 days as part of and contemporaneously with, and in the same manner as, public exhibition of the relevant planning proposal.

3. That the explanatory note be published as a separate accessible document as part of the Public Exhibition.

An Amendment was MOVED:

Moved: Cl. Patterson  Seconded: Cl. McGinn

1. That the revised planning proposal to rezone part of Lot 10 DP 754396 Gilbert Cory Street, South West Rocks be placed on public exhibition for a period of 28 days.

2. That public notice of the draft Planning Agreement for Lot 10 DP 754396 Gilbert Cory Street, South West Rocks be given for a period of 28 days as part of and contemporaneously with, and in the same manner as, public exhibition of the relevant planning proposal.

The AMENDMENT was PUT to the Meeting and was LOST.

A Division resulted in the following votes.

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2018.88 The MOTION was PUT to the MEETING and was CARRIED.

A Division resulted in the following votes.
**ITEM 13.5** TWO STOREY DWELLING AND DETACHED STUDIO

Contact Person: Steven Beasley – Interim Director Operations

File: T6-18-100

**PURPOSE**

To report for determination development application T6-18-100 which seeks development consent for a dwelling house (including ancillary studio) at 3 Roy Kemp Close, Crescent Head [Appendix J].

2018.89 RESOLVED

Moved: Cl. Morris
Seconded: Cl. Shields

That development consent be granted to development application T6-18-100 for a two-storey dwelling and detached studio at 3 Roy Kemp Close, Crescent Head, subject to the conditions contained in [Appendix K].

A Division resulted in the following votes.

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Reason for varying staff recommendation: To ensure that the explanatory note is clearly identified on exhibition separately from the planning proposal.