



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

10th May 2005

**DSDS2 POINT PLOMER ROAD LEP
FILE: T5-89 APB**

SUMMARY:

Reporting that the exhibition of a draft Local Environmental Plan for the Point Plomer area has concluded, and recommending Council proceed with the Draft LEP to gazettal, subject to some minor changes.



Background

In August 2003, Council resolved to investigate preparation of a draft LEP to protect the special values of the Plomer Road area. In November 2003, a community representative committee was appointed to make recommendations on the draft LEP. Consultants (All About Planning) were commissioned to facilitate and report the findings and recommendations of the Committee. Council considered this report in April 2004, and subsequently resolved to prepare a draft LEP for the area. Following consultation with government departments, a draft LEP was finalised in February 2005, and exhibited from 8th March 2005 to 22nd April 2005.

DIPNR waived the need for a Local Environmental Study as it was considered unnecessary, given the intention to restrict development potential.

The draft LEP was placed on public exhibition for the required 28 day period with 24 public submissions being received.

No further response has been received from the following departments during the public exhibition period: -

- Department of Infrastructure Planning and Natural Resources
NSW Heritage Office
- Department of Environment and Conservation

- Aboriginal Affairs

The Department of Primary Industries has advised that they have no issues with the draft LEP.

The public submissions are attached and can be summarised as follows: - [\(Appendix X, Part 1, Part 2, Part 3, Part 4, Part 5, Part 6, Part 7, Part 8, Part 9, Part 10, Part 11, Part 12, Part 13\)](#)

Submission	Comment
<p>1 Need to extend the study area to include the Southern face of Big Knobby and west to Maria River to due to the presence of threatened species and habitat corridors.</p>	<p>1 The study area was specifically for the properties with access from and adjoining Point Plomer Road and which comprise the unique character of the area. It is acknowledged that there are other sensitive areas within the Shire that may require greater legislative protection. However, the purpose of this LEP is only for the Point Plomer Road area.</p>
<p>2 Need a statement describing the important values that the LEP seeks to protect.</p> <p>Recommended that it be widened to include the principles of sustainable development, and the significance of the area to the aboriginal people.</p>	<p>2 The objectives and standards proposed in the draft LEP are considered adequate to provide guidance on the important values to be protected. The LEP does provide provisions for the protection, conservation and enhancement of Aboriginal Heritage. Clause 64(2)(i) does require development to satisfy the principles of ESD. Additional words have been added to the Clause to more fully describe ESD.</p>
<p>3 What consideration has been given to assessing cumulative impacts of development within the area?</p>	<p>3 The purpose of the LEP is to restrict development so that cumulative impacts are reduced.</p>

4 Need to identify critical habitat and threatened species within the study area.

The Endangered Ecological Community at Racecourse Headland (littoral rainforest) has not been mentioned

5 Development Standards alluded to in the LEP need to be included.

Limit houses to 3 bedrooms, floor areas of 250m² with a maximum overall height of 5m

6 Light Industry and Refreshment Rooms should

4 Clause 64(6) requires that development applications also include a flora and fauna report which addresses the requirements of the Threatened Species Conservation Act 1995; the EP&A Act, SEPP 44, SEPP 71 and SEPP 26. These studies will identify any critical habitat or threatened species on site and protection will be afforded accordingly.

The Littoral Rainforest at Racecourse Headland is protected by SEPP 26, which provides further restriction on development, and override the LEP.

5 Clause 64(7) provides development standards and criteria. These are not numerical standards, but will have the effect of limiting the number and design details of housing. Numerical standards would be difficult to justify unless supported by data. The LEP places the onus on the developer to provide the scientific data which will determine appropriate limits. Council could consider providing numerical standards in a DCP for the area. Council resolved to investigate preparation of a DCP, however no resources have been allocated at this time.

6 Light industries are already prohibited. The committee considered refreshment

	be prohibited.		rooms were an acceptable land use and there appears to be justification to allow this use.
7	<p>All scenic areas should be protected regardless of the zoning of the land.</p> <p>There should be no beach front development, and no development should be visible from any location on any of the beaches within the study area.</p>	7	<p>The objectives of the LEP is to reinforce the requirement for development to be low key scale. The scenic, cultural and environmental values of the area have been identified and in order to conserve these values any development needs to have minimal impacts.</p> <p>The majority of land fronting the ocean is zoned 7(f1) or 7(f2). Clause 64 (4) (b) and (c) proposes to prohibit dwelling houses in these zones. Tourist facilities are currently prohibited in zone 7(f2). Clause 64(4)(b) will prohibit tourist facilities in zone 7(f1) in this area.</p> <p>It is recommended that the draft LEP be amended to require that no development is visible from the beach.</p>
8	Thought needs to be given to the water table and aquifer levels within the area	8	Clause 64(7)(f) requires this to be considered.
9	Seniors Living SEPP could be used as a means with which to push through inappropriate development eg 140 units, golf course, function centre etc.	9	Seniors Living SEPP requires that the development be located next to land zoned primarily for urban purposes, and not within an environmental protection zone. This prohibits Seniors Living Development in the Study Area without the need to specifically include it in the

<p>10</p> <p>Vegetation clearing should only be able to be done with DA consent.</p> <p>No native vegetation to be cleared beyond 20 metres from a building envelope.</p>	<p>LEP.</p> <p>10 Clearing of vegetation greater than 3 metres in height will require consent in the 7(f1) and the 7(f2) zones.</p> <p>Any vegetation clearing to be done in conjunction with a development application for lands within all four zones within the study area will require development consent which will require the appropriate studies be undertaken.</p> <p>The Native Vegetation Conservation Act applies to all land within the 1(a1) zoned land. This legislation prevails over any environmental planning instrument.</p> <p>The Rural Fires Act would override any LEP provision if clearing is approved under a bushfire permit.</p>
<p>11</p> <p>Urge Council to support a significant reduction in the list of permissible uses</p>	<p>11</p> <p>The draft LEP proposes significant reduction in permissible uses. It is considered impractical to limit development further.</p>
<p>12</p> <p>DCP should include site specific building controls to look after details.</p>	<p>12</p> <p>Noted. No DCP proposed at this stage, but is to be investigated when resources are available.</p>
<p>13</p> <p>There should be a moratorium on accepting DA's while this is in process.</p>	<p>13</p> <p>Having been exhibited, the draft LEP is a matter for consideration for any DA, and a moratorium is not</p>

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In 2(c) the term "rustic undeveloped character" should be used as "enhancing the areas natural beauty" may mean different things to different people.

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2(g) – enhance the character and identity of the area could mean promote and publicize. Feel that the area should not be promoted as a tourist destination.

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2(i) – Need to elaborate on what the principles of Ecologically Sustainable Development.

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2(j) – What makes a tourist development ecologically sustainable

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The community should not be responsible for business success. This clause could be used as a lever to obtain ratepayers money for the survival of inappropriate tourist development.

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considered necessary.

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The term "rustic undeveloped character" was an underlying theme in the majority of the submissions.

However, it is considered Council should encourage quality development, and "rustic" might imply poor quality, second hand materials or relocated dwellings and buildings, which is not considered desirable.

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The study area is located on the main access road into National Parks and Nature Reserves. The public are actively encouraged to visit these areas through a range of means. Tourism is regarded as a primary economic activity for the area and should be encouraged.

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It is considered the LEP provides requirements that will require development to be sustainable having regard to social and ecological impacts.

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See Point 16

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Successful, and thus economic sustainable tourist development allows these uses to adequately manage environmental values. The LEP has no power to direct rate funds.

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<p>20</p> <p>2(k) – Maintaining a gravel road is vital to limiting visitor numbers</p>	<p>20</p> <p>Council has already approved sealing of the road. The LEP will provide controls on the extent of future tourist accommodation.</p>
<p>21</p> <p>Section 4 – Need to clearly define all these developments and the nature and impacts of these developments.</p>	<p>21</p> <p>All meanings are clearly defined within the LEP Model Provisions 1980. These uses are considered suitable for the area provided impacts are managed, as required by the LEP.</p>
<p>21</p> <p>Need to include definitions of terms such as: -</p> <ul style="list-style-type: none"> - deleterious effect - low impact facility - minimizing environmental harm 	<p>21</p> <p>It is considered “deleterious effect” would have its normal dictionary meaning and does not need separate definition.</p> <p>“Low impact facility” is defined by the provisions of Clause 64 (5) ie. not have a deleterious effect on ecology, character, amenity or scenic value which is determined having regard to the other requirements of Clause 64.</p>
<p>22</p>	<p>22</p>
<p>23</p> <p>Need to adequately control additions to existing tourist facilities.</p>	<p>23</p> <p>Additions to existing development will be subject to the LEP provisions.</p>
<p>24</p> <p>There is a general need to use more definitive language within the LEP.</p>	<p>24</p> <p>It is recommended that a number of changes be made to the LEP to provide more specific requirements.</p>
<p>Section 5 is too subjective,</p>	<p>See points 20 and 21.</p>

<p>25 definitions are required.</p> <p>Rustic camping only should be allowed.</p>	<p>25</p> <p>Provided development complies with the LEP provisions, then a range of camping experiences could be considered to be acceptable.</p>
<p>26</p> <p>No cabins to be constructed in camping grounds.</p>	<p>26</p> <p>See point 25</p>
<p>27</p> <p>Utility installations should be included as prohibited development in items 4(b) and 4(c).</p>	<p>27</p> <p>It is generally accepted that utility installation by public authorities need to be permissible in most locations, subject to environmental assessment.</p>
<p>28</p> <p>For buildings to be truly sustainable, the embodied energy of the building materials need to be considered.</p>	<p>28</p> <p>The assessment of embodied energy of building materials is considered to be an issue that requires a state government standard to guide local assessment, which does not yet exist.</p>
<p>29</p> <p>All buildings to be developed will need to incorporate sustainable design principles.</p>	<p>29</p> <p>From July 1 2005, all applications for new residential buildings will need to comply with the requirements of BASIX. This requires buildings to meet state wide energy targets.</p>
<p>30</p> <p>Consultation with the Aboriginal Community and the National Parks and Wildlife Services needs to be undertaken.</p>	<p>30</p> <p>Consultation occurred with these agencies in accordance with s62 of the Act prior to public exhibition of the draft LEP. They were again notified of exhibition of the LEP, and have made no further submissions.</p>
<p>30</p> <p>A community workshop facilitated by an independent person to discuss issues needs to be</p>	<p>30</p> <p>A committee was appointed by Council. This comprised of Councillors, residents and</p>

	undertaken.		members of the local aboriginal community. The group met on several occasions and was facilitated by an independent person
31	Key stakeholders have not been included in the community consultation process.	31	See Point 30
32	Council must provide a masterplan before further development takes place.	32	It is not reasonable or practical to prohibit development until such time as Council is able to devote resources to the preparation of a Masterplan.
33	Surf bus activity needs to be stopped.	33	The LEP cannot control currently licensed operators from running surf schools within the area, even if this was considered necessary. Licensing of operators to use Council's managed land is done in accordance with Council's Events Management Policy which was modelled on the policies of other Councils on the North Coast.
34	Maintain holding sizes at 40 hectares or more and maintain smaller holdings, disallowing further subdivision.	34	The draft LEP does not propose to change any of the subdivision regulations.
35	An LEP clause is "overkill" and a DCP could achieve the same objectives without preventing suitable development proposals.	35	The LEP provides more certainty and legal weight as it requires Ministerial approval and is binding, whether or not the consent authority is Council or a State agency.
36	Landowners and ratepayers will be detrimentally affected by the proposed	36	The LEP seeks to protect the

37	"down zoning" of their land.	37	character and qualities of the area. This is considered to be beneficial to landowners and ratepayers.
38	Clause 64(4) is onerous and unnecessary given the effect of the wording in Clauses 64(2) and 64(7).	38	This clause seeks to prohibit development that is considered detrimental to the objectives outlined within subclause 2.
39	In Clause 64(4) Despite should be changed to further to.	39	It is recommended that the wording be made clearer – see changes.
40	No further tarsealing of the road.	40	This is a matter for future consideration by Council, not a matter for this LEP.
41	A cap on the number of tourist facilities should be put in place through consultation with the community.	41	This is not proposed at this stage, but could be considered for inclusion in a future DCP for the area.
42	A density requirement of 2 cabins per hectare should apply, with existing development to be included. No concessions to be made where land is not able to be developed (eg SEPP land or floodprone).	42	The impacts of tourist development will be reasonably controlled through implementation of the LEP.
43	The wording of Clause 64(7) should be given tighter wording to reduce the discretionary responsibility of Council.	43	There is no method to substantiate an appropriate density. The suggested cabins per hectare seems too high a density. Density should be determined by addressing all requirements of the clause including effluent disposal, clearing, visual impacts etc.
	Realign boundaries in zone 7(f1) and 7(f2) to designate where productive use is appropriate.		LEP change recommended. The LEP is considered adequate.

	appropriate.		A more detailed assessment may enable a range of rezonings, however, this is not proposed at this stage and would require detailed environmental assessments.
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	Realign boundary of zone 1(a1) to maintain		See Point 43
45	consistent proximity to coastline.	45	
	Need to amend 64(2) (h) to not allow removal of items of heritage significance.		LEP change recommended, to require proper management.
46	Landowners should have been notified of exhibition.	46	Notification to individual owners is not required by legislation or Council Policy. Landowner has made a submission, and so was aware of the exhibition.
47	Community reference committee was biased.	47	Council sought to appoint a representative and balanced committee.
48	Proposed prohibited uses may be developed in a manner acceptable to locality, through controls in the LEP.	48	Council has relied on the recommendations of the committee in compiling the list of appropriate land uses.
49	Rural zone should allow agricultural uses of aquaculture, plant nurseries, sawmills and stock and sale yards.	49	Aquaculture, sawmills and stock and sale yards are intensive agricultural uses that are considered inappropriate in the sensitive coastal area to which the LEP applies. Plant nurseries may be an appropriate land use, but not retail plant nurseries.
50	Clause 64(6) requiring studies is unnecessary, as Council could require these anyway.	50	A proposed amendment to the clause makes it mandatory for these studies and removes doubt concerning their necessity.

51 Will unreasonably restrict use of the land.	51 Council has supported the need for further restrictions on the use of the land as a means to protect the character of the area.
<p>52 Following uses may be developed in an ecologically responsible manner: -</p> <ul style="list-style-type: none"> ▪ churches ▪ caravan parks ▪ child care centres ▪ clubs ▪ community buildings ▪ equestrian centres ▪ forestry ▪ miscellaneous forestry ▪ places of assembly ▪ places of worship ▪ public buildings ▪ retail plant nurseries ▪ roadside stalls 	<p>52 These uses would have a range of impacts, which independently and cumulatively will affect the character of the locality: -</p> <ul style="list-style-type: none"> ▪ traffic, clearing for bushfire, carparking. ▪ traffic, clearing for bushfire, effluent disposal. ▪ traffic, clearing for bushfire, effluent disposal. ▪ traffic, clearing, carparking, effluent disposal. ▪ traffic, clearing, carparking. ▪ traffic, water quality, vegetation impacts. ▪ tree removal, flora and fauna impacts. ▪ tree removal, flora and fauna impacts. ▪ traffic, clearing, carparking, effluent disposal. ▪ traffic, clearing, carparking. ▪ traffic, clearing, carparking, effluent disposal. ▪ traffic, water quality impacts. ▪ traffic.
53 DCP is more appropriate mechanism.	53 LEP was Council's preferred method, and provides more certainty and greater legal weight. A DCP cannot prohibit land uses that are permissible under the LEP.

<p>54 Council should manage public camp grounds more environmentally responsibly, and lead by example.</p>	<p>54 Agreed.</p>
<p>55 Would prohibit bush regeneration and weed management works.</p>	<p>55 These do not require consent unless it involves clearing or filling of SEPP 14 Wetlands, landform disturbance on ASS, or filling of floodprone land more than 200mm. The LEP will not prohibit these activities.</p>
<p>56 Landowners should have been involved in the preparation of the All About Planning Report.</p>	<p>56 The appointed committee provided a representative view and included land holders.</p>
<p>57 The detailed controls of the LEP should be contained within a comprehensive DCP for the area.</p>	<p>57 Preparation of a detailed DCP is not a current priority. The need to introduce the LEP protection is considered a priority.</p>
<p>58 Objectives in LEP are excessive, repetitive and unnecessary, and should be reworded to simplify the provisions.</p>	<p>58 Councils intent was to give effect to the Committee's recommendations. While rewording of the LEP as suggested would simplify it, it may lose some essential ingredient considered important to the Committee.</p>
<p>59 Council needs an adopted statement of what the desired future character is, in conjunction with a detailed DCP.</p>	<p>59 The LEP provides a range of objectives, that impose controls to achieve a future character of low impact, low key, natural setting etc.</p>
<p>60 Economic sustainability of existing businesses cannot be controlled by the LEP, as proposed in Clause 64(2) (j).</p>	<p>60 Existing tourist businesses have been assumed to rely on the low key character of the area. Major tourist development in the area</p>

<p>61 Clause 64(2) (k) proposes to restrict new employment and economic generating development , and is contrary to the Act, and there should be a more strategic approach.</p>	<p>could change that character, and so the LEP proposes to protect the character and existing tourist businesses.</p> <p>61 The LEP recognises the sensitivity of the area, and imposes controls to limit potential cumulative impacts that are not addressed through the assessment of individual applications. This is considered to be a more strategic approach.</p>
<p>62 Clause 64(2)(m) refers to development standards that should be a DCP.</p>	<p>62 Clause (7) provides development standards, but are not numerical standards. More detail could be included in a DCP, however, this is not current priority.</p>
<p>63 Definition of low impact facility should include:</p> <ul style="list-style-type: none"> ▪ single storey only and 3 metre height limit to eaves ▪ 5 metre height limit to roof ridge ▪ maximum of 2 dwellings per allotment ▪ maximum of 3 bedrooms per dwelling ▪ maximum of 1 additional living area ▪ passive solar design ▪ natural ventilation ▪ thermal insulation ▪ solar hot water systems ▪ envirocycle biowaste 	<p>63</p> <ul style="list-style-type: none"> ▪ could be considered but possibly over restrictive. Two storey limit may be reasonable. ▪ a height limit maximum of 6.2 metres would align with Council's low density residential ▪ currently limited to attached dual occupancy ▪ considered unreasonable (see point 5) ▪ considered unreasonable (see point 5) ▪ currently required by DCP 31 ▪ currently required by DCP 31 ▪ currently required by DCP 31 ▪ DCP 31 requires 3 star minimum rating ▪ acceptable alternatives

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| <ul style="list-style-type: none"> management ▪ water tanks
 ▪ fire resisting design
 ▪ flooding and emergency management ▪ external colours to be dark and natural tones
 ▪ minimum 50 metre setback from road
 ▪ roads/access to relate to natural contours; minimise cut/fill, site filling to be minimised. | <ul style="list-style-type: none"> exist ▪ BASIX will require this from 1 July 2005 ▪ Bushfire Report will determine need ▪ Council policy requires this
 ▪ LEP provisions for scenic amenity considerations would ensure appropriate use of colours ▪ may be undesirable if existing cleared at front of lot and SEPP 14 wetlands extensively affect some allotments to within 50 metres of Point Plomer Road. ▪ clause 7(g) requires consideration of topography and setting of the site which is considered adequate |
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Need for Local Environmental Study

A number of the submissions called for extensive flora and fauna surveys to be undertaken in order to identify areas of significance and enable the LEP to afford them specific protection. The Department of Infrastructure Planning and Natural Resources (DIPNR) has waived the need for a Local Environmental Study. In a letter dated 21st March 2005 [\(Appendix D\)](#) the department states: -

“Such studies are not normally required except for major urban land release areas or LGA-wide planning exercises and are unlikely where the outcome is likely to be beneficial from an environmental viewpoint”.

Section 6 of the clause will require that comprehensive flora and fauna studies be undertaken prior to development in accordance with the clause.

Recommended Changes to be made

The changes proposed to be made are as follows: -

- Clause 64 (2) (h) to read: “to allow for the protection and appropriate management of trees or places which have

identified heritage significance, including potential archaeological sites and aboriginal sites.

Reason: This lessens ambiguity within the objective and allows for appropriate management of heritage and archaeological items to be implemented.

- Clause 64(2)(i) add: "development satisfies the principles of ecologically sustainable development having regard to environmental, social and economic impacts, intergenerational equity and the precautionary principle".

Reason: To more fully describe ESD principles.

- Clause 64 (2) (o) to be deleted. (Home occupations with consent)

Reason: The clause is considered unnecessary. The provisions within Council's exempt and complying development DCP allows, without consent, home occupations where they do not cause adverse environmental or social impacts. In all other cases they require consent.

- Change all occurrences of "Council" to "the consent authority".

Reason: Council may not be the consent authority.

- Clause 64(4) to read: "Despite the provisions of clause 9, the following development is also prohibited on land to which this clause applies."

Reason: Eliminates any confusion between this clause and the prohibited uses contained within Clause 9.

- Clause 64(4)(a) delete "plant nurseries" from prohibited list.

Reasons: Wholesale plant nurseries are considered a suitable land use. Retail plant nurseries will remain prohibited.

- Clause 64 (6) to read: "The consent authority shall require any application for development listed in subclause (5) and may require for any other development the consent authority considers necessary, to be accompanied by studies and management plans for the locality to address specific issues".

Reason: These studies will be mandatory for specific development, and Council may also require them in any other case.

- Clause 64(6) add: "the identification of locally significant koala feed tree species"

Reason: There are locally specific koala feed tree species which are not included in the provisions of SEPP 44.

- Clause 64 (7) to read: "In considering an application the consent authority shall be satisfied that:" with each paragraph amended accordingly.

Reason: This will require compliance with the objectives and measures outlined within the LEP, rather than being only a matter to be considered.

- Clause 7(f): add "stormwater" disposal.

Reason: To include consideration of stormwater disposal.

It is considered that the changes made to the exhibited LEP achieve the following: -

- Reduces ambiguity within interpretation of the document
- Identifies the needs of the local koala community and their habitat.
- Allows for appropriate management of identified heritage and architectural items identified during the development assessment process.
- Provides stricter control over development within the area in order to meet the objectives outlined within subclause 2.

REPORT IMPLICATIONS:

- ***Environmental***

The draft LEP will provide greater protection of the environmental values of the area.

- ***Social***

The draft LEP will provide protection of the character, visual amenity and landscape values of the area. Cumulative impacts of development will be reduced by the LEP.

- *Economic (Financial)*

The Plomer Road area provides a unique tourist experience. It is considered that the area should maintain its appeal to a niche tourism market as this is a preferred economic strategy, particularly given the sensitive nature of the area.

- *Policy or Statutory*

The LEP was exhibited in accordance with the Environmental Planning and Assessment Act and Council Policy. Council does not have delegation to report to the Minister under Section 69 of the Act.

RECOMMENDATION:

- 1 That pursuant to Section 68(3) of the Act, Council amend the exhibited draft LEP as recommended in the report.
- 2 That pursuant to Section 68(4) of the Act Council submit Kempsey Local Environmental Plan (Amendment No 89) [\(Appendix E\)](#) to the Department of Infrastructure, Planning and Natural Resources for gazettal.
- 3 That all persons who made submissions be advised of Council's decision.

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R B Pitt

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES