

**DIRECTOR SUSTAINABLE DEVELOPMENT
SERVICES REPORT**

14 June 2005

DSDS6	REVIEW OF DCP30 EXEMPT AND COMPLYING DEVELOPMENT, KEMPSEY LEP 1989 (AMENDMENT NO 97) FILE: T5-97 DRH
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SUMMARY:

Reporting that draft amendments to DCP 30 Exempt and Complying Development within the Kempsey Shire and the associated amendment to Kempsey Local Environmental Plan (LEP) 1987 (Amendment No 97) have been exhibited with three submissions received.

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Background

At its meeting of 12th April 2005 Council resolved to place draft DCP 30 Exempt and Complying Development and Kempsey LEP 1987 (Amendment 97) on public exhibition for a period of 28 days, incorporating a number of amendments.

To provide information to the public and consider matters of concern, an information night was held on Monday 9th May 2005. The information evening was attended by Councillors Green and Hunt. No members of the public attended.

The bold-faced writing indicates exhibited draft amendments to DCP 30 with recommended changes to the draft indicated in a separate distinctive font.

The previous report may be summarised as follows:-

- Complying Development relates to only minor developments with minimal environmental impacts which may be undertaken provided it complies with a set of predetermined development standards.
- Due to minimal likely impacts, Complying Development does not require neighbour notification.
- Complying Development Certificates must be issued within seven (7) days of receipt of an application.

Proposed amendments are seeking to increase the utilisation of Complying Development in order to achieve considerable efficiency gains without sacrificing proper assessment of more complex proposals.

DCP 30 – Exempt and Complying Development

The main changes proposed are as follows: -

- Allowing Complying Development on Bushfire Prone Land subject to compliance with a Bushfire Threat Assessment prepared in accordance with “Planning for Bushfire Protection 2001”. This will not reduce the requirements which currently apply to developments submitted as Local Development. (Bushfire areas cover large sections of village areas ([Appendix R](#))).
- Allowing Complying Development on land serviced by an approved onsite waste system.
- Allowing sheds of less than 100 square metres to be erected up to 10 metres from an adjoining property in rural areas as Complying Development.
- Restricting the size of sheds in residential areas to be less than 40 square metres in area if submitted as Complying Development.
- Removing the reference to Council’s Notification Policy from DCP 30 as section 101 of the Environmental Planning and Assessment Act 1979 and Clause 77B of the Environmental Planning and Assessment Act Regulation provide that Exempt and Complying Development do not require notification prior to determination. It is intended to create a separate policy for Public Notification of development applications.

Minor changes proposed are as follows: -

- Removal of fences in floodways as Exempt Development in rural and residential areas – allows greater consideration of these structures within crucial floodpaths.
- Removal of restrictive clause not allowing Complying Development on flood prone land, subject to compliance with Council’s Flood Risk Management Policy – should have been done as part of the previous amendment to DCP 30.
- Incorporating the DCP 22 development standards as the reference standard in DCP 30.
- Prohibiting re-siting of dwellings as Complying Development to allow any adverse impact arising from such proposals such as visual impacts to be considered.

- Requiring that associated works in a road reserve receive appropriate consent under Section 138 of Roads Act.
- Adopting the new state standard for sustainability BASIX to be implemented on July 1 in regional areas.
- Removal of the requirement for construction progress survey reports under the Complying Development standards.
- Requiring that smoke alarms be installed in all dwellings in standard conditions.
- Requiring Resuscitation charts be installed with all swimming pools in standard conditions.
- Requiring that pool pump equipment create less than 5dB(A) where audible from adjoining property in standard conditions.
- Requiring the installation of lighting to bed and breakfast buildings/hostels (Class 1b) in standard conditions.

Kempsey LEP 1987 (Amendment 97)

The draft LEP simply amends the reference in Kempsey LEP 1987 to the version of DCP 30 recommended for adoption by this report.

Public Exhibition

The draft DCP and LEP (Amendment 97) was exhibited in accordance with the requirements of the Environmental Planning and Assessment Regulation with submissions having been received which may be summarised as follows: - [\(Appendix S\)](#)

Objection	Planning Comment
<p>1 South West Rocks Ratepayers and Citizens Association Inc</p> <p>Objection to any amendment which would reduce existing requirement to notify affected landowners of development applications</p>	<p>1 Noted. The intention is to allow low impact development to be processed quickly. Such development is assessed as having no significant effect on adjoining landowners, so that notification is not necessary.</p> <p>It should be noted that Council's current delegations to staff allow for applications which currently require notification to be approved even where objections are received provided all relevant controls have been met.</p>

<p>2 Karen Gribbin</p> <p>Concerned that key fauna habitat and corridors identified in the South West Rocks Structure Plan Review by Parsons Brickerhoff dated January 2003 can be interpreted as being land identified as critical habitat (under the Threatened Species Conservation Act 1995).</p>	<p>DCP 30 forces proposals to comply with all relevant controls.</p> <p>2 The key fauna habitat and corridors are based on regional computer modelling undertaken by NPWS and is not prescribed critical habitat under the Threatened Species Conservation Act. The model is used for undertaking broad strategic planning for a range of issues and is not relevant to the consideration of individual buildings.</p>
<p>3 Friends of South West Rocks</p> <p>Reference was made to the amendment of DCP 30 in correspondence received dated 17th May 2005.</p>	<p>3 Noted. No specific matter concerning the amendment of DCP 30 was raised.</p> <p>The objection relates to changes to the Public Notification Policy which will be reported separately.</p> <p>Reference was made objecting to caravans being placed in caravan parks as Exempt Development which is allowed under the Local Government Act Regulation which overrides local controls.</p>

REPORT IMPLICATIONS:

- ***Environmental***

Complying and Exempt development cannot be carried out in environmental sensitive areas.

- ***Social***

Allow applications to be considered as Complying Development.

- ***Economic (Financial)***

The proposal to extend the use of Complying Development which will provide an economic benefit only for the period of construction.

- *Policy or Statutory*

Environmental Planning and Assessment Act 1979 details the process to amend DCPs.

The Exempt and Complying DCP is given effect through Clause 57 of Kempsey LEP 1987. It is necessary to amend the LEP to refer to the date of adoption of the amendments to the DCP.

In respect to the draft LEP 1987 (Am 97) Council has delegation to report to the Minister under Section 69 of the Act recommending that he make the plan.

- *Director's Comment*

As part of a reorganisation of the Building Section within Council's Sustainable Development Services Department, Council undertook a review of DCP 30 and appointed a designated Complying Development Officer to achieve up to 30% of applications being approved as Complying Development.

For the first five months of 2005 Council has approved 36 Complying Developments which included three dwellings, 15 additions to dwellings and 18 detached garages and swimming pools with a value of \$857,962.

As Complying Development places the onus on the applicants to provide greater detail and only relates to more straight forward proposals, considerable efficiencies have been achieved by freeing up resources previously dedicated to assessing proposals as Local Development.

In adopting the current plan, Council sought to ensure that fears expressed by some submissions relating to a perceived lack of control over development would not be realised.

Since adopting the plan in June 2004 there have been no complaints concerning developments approved as Complying Development, either relating to impacts of buildings or to non-notification.

The original plan approved in 1999 was quite conservative due to the ability for Complying Development Certificates to be issued by private certifiers and the potential loss of control by Council.

Experience has shown that the private sector does not wish to provide this service in Kempsey Shire with no Complying Development Certificates having been issued by private certifiers since 1999.

Council must ensure that the level of assessment of development is appropriate to the scale of development and potential environmental impacts. The efficiencies gained through Complying Development allows resources to be reallocated to properly assessing more complex proposals and providing other environmental services the community is increasingly demanding. As advised, Complying Development has been increased from approximately 3% per annum to 15% per annum (commonly in excess of 30% per month) with no complaints being received. The recommended changes are considered to be conservative and should be reviewed again within 12 months to gauge community response.

RECOMMENDATION

- A That Council submit Kempsey Local Environmental Plan (Amendment No 97) for gazettal, and exercise its delegation under Section 69 of the Environmental Planning and Assessment Act 1979 to prepare a report to the Minister for Infrastructure Planning and Natural Resources requesting that the Plan be made. [\(Appendix T\)](#)
- B That Council resolve to adopt the Draft Development Control Plan No 30 – Exempt and Complying Development, the subject of this report, effective from the date of public notification.
- C That DCP 30 be reviewed after 12 months of the date of adoption.
- D That the people who made submissions be thanked for their input.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES