

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

13 June 2006

DSDS11	PROPOSED REZONING – NICHOLSON STREET, SOUTH KEMPSEY DRAFT KEMPSEY LOCAL ENVIRONMENTAL PLAN 1987 (AMENDMENT NO 98) FILE: T5-95 GGL
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SUMMARY:

Reporting that the Minister of Planning has decided not to make the Kempsey LEP 1987 (Amendment 98) to rezone land from 2(a) (Residential 'A' Zone) to 3 (a) (Business (General 'A') in Nicholson Street, South Kempsey.

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Applicant: Leith Ducat Hat Head Enterprises
Subject Property: Lot 3 DP 337328 No 5 Nicholson Street,
South Kempsey
Zone: Residential 2A

Background:

At its meeting of 12th July 2005, Council resolved to support a rezoning application to allow a minor extension to the South Kempsey General Business zone, to enable redevelopment of Southside Cellars, the former motorbike sales yard.

The draft plan was exhibited for public comment from 4th October 2005 to 1st November 2005. The purpose of the plan is to allow land to be rezoned from Zone No.2 (a) (Residential 'A' Zone) to Zone No. 3(a) (Business 'A'). No submissions from the public were received.

On the 13th December 2005 Council resolved to submit the plan to the Minister for Planning requesting that the plan be made. The LEP was submitted by letter dated 10 January 2006.

Decision by Minister for Planning

By letter dated 17 May 2006 ([Appendix K](#)) the department advised that the Minister for Planning resolved not to approve the draft plan.

The reasons specified by the Minister were:

Council has not conducted a thorough strategic assessment of the area. In focusing on a single parcel of land, the proposed Amendment does not take into account the future commercial needs of the area. There also does not appear to be any indication Council assessed the impact of the extension of the business zone into the existing residential area.

"The proposal should be considered as a part of an Urban Development Strategy in the context of developing the new principal LEP due in three (3) years".

Comment on Minister Reasons

The proposed rezoning was for a single parcel of land of about 550m² immediately adjoining the existing General Business Zone in South Kempsey. The proposed rezoning is consistent with Clause 47 of the North Coast REP and there are no state environmental planning policies applying to the rezoning.

The Minister issued new directions under 117 of the Act, which govern the content of draft LEPs. These commenced on 30 September 2005, but were subject to a transitional arrangement, where draft LEPs are submitted for gazettal prior to 31 January 2006. The subject Plan was submitted on the 10 January 2006.

In any case, the new 117 Direction No. 3 – Business Zones provides that a draft LEP shall not alter the location or area of existing business zonings.

However, a draft LEP may be inconsistent with this direction only if council can satisfy the Director-General that any particular provision or area should be varied or excluded having regard to the provisions of section 5 of the Environmental Planning and Assessment Act; and the rezoning is, in the opinion of the Director-General, of a minor significance.

A written request for a review of the Minister's decision has been made (having regard to the transitional provisions for the new 117 directions), together with a request for guidance on when the rezoning would be considered "of minor significance."

Report Implications:

- ***Environmental***

The existing residential zoning of the allotment will remain which provides for low density residential development.

- ***Social***

The refused rezoning application may result in lost full time and causal employment.

- *Economic (Financial)*

The refused rezoning application may result in lost economic activity.

- *Policy or Statutory*

Section 69 of the Environmental Planning and Assessment Act 1979 considerations.

RECOMMENDATION:

That the information be noted.

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**R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES**