

Kempsey LEP 2013 - Rezone land from zone RU1 Primary Production and RU2 Rural Landscape to R5 Large Lot Residential for the purpose of a 14 lot subdivision at Gowings Hill Road, Dondingalong

Proposal Title :	Kempsey LEP 2013 - Rezone land from zone RU1 Primary Production and RU2 Rural Landscape to R5 Large Lot Residential for the purpose of a 14 lot subdivision at Gowings Hill Road, Dondingalong		
Proposal Summary :	The planning proposal seeks to amend the Kempsey Local Environmental Plan (LEP) 2013 by rezoning land at Gowings Hill Road, Dondingalong, from zone RU1 Primary Production and RU2 Rural Landscape to zone R5 Large Lot Residential and to amend the Lot Size Map from 40ha to 1 hectare to facilitate a future 14 lot rural residential subdivision.		
PP Number :	PP_2017_KEMPS_004_00	Dop File No :	17/06409

Proposal Details

Date Planning Proposal Received :	04-May-2017	LGA covered :	Kempsey
Region :	Northern	RPA :	Kempsey Shire Council
State Electorate :	OXLEY	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Gowings Hill Road		
Suburb :	City :	Dondingalong	Postcode : 2440
Land Parcel :	Part of Lot 6 DP 818216 and Lot 1 DP 1111175		

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	North Coast Regional Plan 2036	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	24.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	14
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **The Northern Region has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officer's within the agency and lobbyists concerning this proposal.**

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to rezone the subject land and reduce the minimum lot size to facilitate rural residential development.**

The proposal will implement Council's Rural Residential Land Release Strategy for the Dondingalong area (part of Stage 1) which will enable the potential for 14 new large lot residential allotments.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions adequately addresses the intended changes to Kempsey LEP 2013.**

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The planning proposal seeks to rezone part of Lot 6 DP 818216 currently zoned RU1 Primary Production and rezone all of Lot 1 DP 1111175 currently zoned RU2 Rural Landscape to R5 Large Lot Residential to facilitate a potential future 14 lot subdivision.

The proposed R5 zone over Lot 6 will be restricted to the southern flood free portion of the site. The northern extent of Lot 6 will retain its RU1 zoning.

The planning proposal will also seek a change to the Minimum Lot Size for the rezoned area from 40 hectares to 1 hectare to allow for the future subdivision.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? Yes

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

Is the Director General's agreement required? Yes

c) Consistent with Standard Instrument (LEPs) Order 2006 : Yes

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

SEPP (Infrastructure) 2007

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

It should be noted that part of the subject land is identified in Council 'Rural Residential Land Release Strategy 2014'. However the area for rezoning does include an additional section of land not included in the Strategy.

Additional studies have been completed for the Dondingalong area which identified land immediately north of the Strategy boundary line on Lot 6 DP 818216 and Lot 1 DP 1111175 that are flood free and considered suitable for rural residential development.

Although Lot 1 is not mapped in the strategy, it has been included in the proposal as this lot would be utilised to provide access to the future subdivision, off Gowings Hill Road.

Have inconsistencies with items a), b) and d) being adequately justified? Yes

If No, explain :

Please refer to the Assessment section for consideration of applicable s117 Directions, SEPP's and the North Coast Regional Plan 2036.

Mapping Provided - s55(2)(d)

Is mapping provided? Yes

Comment :

The planning proposal includes current and proposed Land Zoning and Minimum Lot Size mapping which adequately reflect the proposed amendments. These maps are suitable for exhibition purposes.

Amendments to the Land Zoning and Minimum Lot Size maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

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Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : The planning proposal indicates that community consultation will be undertaken however it does not nominate the timeframe for this consultation period.

As the proposal is consistent with the intent of the Kempsey Local Growth management Strategy - Rural Residential component and the North Coast Regional Plan 2036 a 14 day community consultation period is recommended.

As the land has been identified as partly bushfire prone and to satisfy s117 directions regarding bushfire, referral to the NSW Rural Fire Service will be required as part of the consultation process.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : The planning proposal is considered to satisfy the adequacy criteria by:

- 1) Providing appropriate objectives and intended outcomes;
- 2) Providing a suitable explanation of the provision proposed by the LEP to achieve the outcomes;
- 3) Providing an adequate justification for the proposal;
- 4) Proposing a community consultation process.

Delegation

Council has completed an evaluation for the issuing of an authorisation to exercise delegation. As the proposal deals with only matters of local significance, it is recommended that an authorisation to exercise plan making delegation be issued to Council in regard to this matter.

Project Timeline

To ensure an adequate period to finalise the proposal a 12 month time frame is recommended. Council will be required to update the planning proposal with a completed Project Timeline prior to community consultation.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Kempsey Local Environmental Plan 2013 commenced on the 3 February 2014. This planning proposal seeks to make amendments to the Kempsey LEP 2013.

Assessment Criteria

Need for planning proposal : The planning proposal is a direct result of the outcomes of the Kempsey Local Growth Management Strategy (LGMS) Rural Residential component and the North Coast Regional Plan 2036.

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The Kempsey Shire Rural Residential Land Release Strategy identifies the subject land as part of Stage 1 of a 3 stage land release program. Although the subject site is not entirely consistent with the mapped areas of the strategy, further survey has re-evaluated the flood free land suitable for rural residential use and such land has been included for rezoning. This additional land is immediately adjacent and contiguous with the mapped strategy areas.

The proposal seeks to rezone the subject land from RU1 Primary Production and RU2 Rural Landscape to R5 Large Lot Residential to be consistent with the adjoining rural subdivision located directly to the east towards Euroka. The minimum lot size is also proposed to be reduced from 40 hectares to 1 hectare. This amendment is in keeping with the adjoining subdivision pattern.

The amendment to the zoning and minimum lot size standard is the most appropriate mechanism to achieve the objective of the proposal to enable the potential future subdivision of the site.

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Consistency with strategic planning framework :

KEMPSEY SHIRE RURAL RESIDENTIAL LAND RELEASE STRATEGY 2014

The proposal is generally consistent with the outcomes of the Kempsey Rural Residential Land Release Strategy. The Strategy identifies the subject land as the Dondingalong (partial) Stage 1 Land Release Area. The Rural Residential Land Release Strategy raises locally specific issues to be considered for the Dondingalong Land Release Area, which are considered below:

Bates Quarry:

The subject land is approximately 450m from the closest working face of the Quarry. The quarry consent includes conditions to protect the amenity of existing residences near the quarry, specifically conditions on Dust, Noise & Blasting. The proposed subdivision concept plan suggests that the residential sites will be greater than 500m away from the quarry which is an adequate buffer distance so as not to significantly impact on the amenity of the area. A noise assessment report indicates dwellings at this distance will not be significantly impacted.

Land use conflict adjoining agricultural areas:

Whilst adjoining zone RU1 Primary Production land the subdivision pattern of the area is fragmented. The nature of the site allows for building envelopes to be set back a minimum of 50m to provide a buffer from the western boundary, which is currently used for cattle grazing. As the site is elevated, dwelling envelopes will be located well above the adjoining land to the west. Any potential land use conflicts will be required to be considered by Council at the development application stage. A Land Use Conflict Risk Assessment has been undertaken as part of the planning proposal.

Means of access to facilitate efficient pattern of subdivision:

A single access point from Gowings Hill Road has been proposed in the indicative subdivision pattern through Lot 1 DP 1111175.

1 in 100 Year Flood Extent:

The southern extent of the site in which incorporates this rezoning proposal has been identified as being generally flood free. The internal road proposed for Lot 1 DP 1111175 is totally flood free. The area of the site to be developed can provide for a minimum building envelope of 1,000m² for each proposed lot which is located above the 100 year ARI flood area (15.2m AHD).

Koala Habitat:

Vegetation present on the site has been identified as Koala Food Trees by Council's Koala Plan of Management (KPoM). The proposed subdivision concept plan allows lot configuration to be achieved without the need to remove any identified Koala Food trees. With this retention of food trees Council considers the proposal to comply with the provision in the KPoM.

Class 5 Acid Sulfate Soils:

The Kempsey LEP 2011 Acid Sulfate Soils map sheets identify the subject land as being substantially comprised of Class 5 Acid Sulfate Soils (ASS). The acid sulfate soil risk is low (being Class 5) and Council has adequate controls to manage how future development is managed in ASS affected areas. This LEP requires this issue be addressed during the DA process for any potential future subdivision. The issue is of minor significance.

Bushfire Prone Land:

A Bushfire Threat Assessment report has been provided which identifies that the subject land can meet the requirements of Planning for Bushfire Protection 2006. A referral to the NSW Rural Fire Service is also required.

The additional land not identified in the strategy has been assessed against Council's 'Sustainability Criteria for Land not in the Strategy'. The proposal is considered to be consistent with the variation criteria. This criteria is generally consistent with the North

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Coast Regional Plan 2036 Urban Growth Area Variation Principles.

The proposed rezoning of the site is a sound planning outcome that implements the intent of the Rural Residential Land Release Strategy. The proposal will provide flexibility for housing provision in Dondingalong and ensure a sufficient supply is maintained.

NORTH COAST REGIONAL PLAN 2036

The proposal is consistent with Goal 4 of the Plan as it supports 'great housing choice and lifestyle options' and is generally consistent with Direction 24 of the plan delivering 'well planned rural residential housing'.

The proposal is not inconsistent with any other provisions of this plan.

The proposal is also consistent with the Kempsey Local Government Narratives.

SEPPS

The proposal is consistent with all applicable SEPP's except in relation to:

SEPP (Rural Lands) 2008

SEPP Rural Lands (the RSEPP) contains Rural and Subdivision Planning Principles to guide development on rural land. The proposal is consistent with the majority of the principles by providing additional opportunities for rural lifestyle, settlement and housing in the Dondingalong area, but is unable to satisfy all the principles. This is considered to be of minor significance as the proposal is in accordance with the intent of a Department approved local strategy.

The proposal is consistent with all other relevant SEPPs.

S117 DIRECTIONS

The proposal is consistent with all relevant s117 Directions except in relation to the following:

Direction 1.2 Rural Zones

The proposal is inconsistent with this direction as it proposes to rezone land from a rural zone to a residential zone, and increase the permissible density of the site. This inconsistency is of minor significance as the subject site is generally identified in the Kempsey Shire Rural Residential Land Release Strategy, and is an extension of the existing zone R5 Large Lot Residential area.

Direction 1.5 Rural Land

The proposal is inconsistent with this direction as it proposes to rezone rural land and reduce the minimum lot size. The inconsistency is of minor significance as the subject site is generally identified in the Kempsey Shire Rural Residential Land Release Strategy and is an extension of the existing zone R5 Large Lot Residential area.

Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this direction as it contains Class 5 Acid Sulfate Soils and is not supported by an acid sulfate soils study. This inconsistency is of minor significance as further consideration regarding this issue can also be adequately addressed at the development application stage as required by the acid sulfate provisions of Kempsey LEP 2013.

Direction 4.3 Flood Prone Land

The proposal is inconsistent with this direction as it seeks to rezone land in a flood prone area to residential. The preferred entrance road through Lot 1 DP 1111175 is entirely flood free.

The concept subdivision identifies building envelopes located above the 100 year ARI flood area. That part of the land affected by the 1% flood is not subject to flood flows but

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rather is impacted as flood fringe on the eastern and western edges of the proposal and associated with gullies draining off the ridge. The inconsistency with this direction is therefore considered to be of minor significance as each proposed lot will have sufficient land above the flood planning level for a building envelope and as future development can be further considered by council at the development application stage in accordance with the flood planning provisions in Kempsey LEP 2013. A referral to Office of Environment and Heritage (OEH) is recommended to gain their advice on this issue.

Direction 4.4 Planning for Bushfire Protection

This direction is applicable to the proposal as part of the land has been mapped as bushfire prone. A Bushfire Hazard Assessment has been prepared as part of the site identified as being bushfire prone. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

The proposal is otherwise consistent with s117 Directions.

Environmental social
economic impacts :

The rezoning of the land from RU1 Primary Production and RU2 Rural Landscape to R5 Large Lot Residential is not expected to pose any environmental impacts.

A section of the site is mapped as bush fire prone land and thus, the proposal is to be referred to the NSW Rural Fire Service prior to community consultation, to satisfy section 117 Direction 4.4 Planning for Bushfire Protection.

The proposal indicates that the land is subject to the Kempsey Comprehensive Koala Plan of Management (CKPoM). The site is unlikely to support viable koala population, due to the highly disturbed nature and isolation of the site. However, the subdivision access road and building envelope location have been located to ensure koala food trees are not required to be cleared as part of this proposal.

The proposal does not identify the land as being used for any purpose listed in the guidelines which may have resulted in contamination of the land.

Land use conflict has been considered as part of the proposal through a Land Use Conflict Risk Assessment (LUCRA), considering the proximity of the subject site to grazing land. The indicative subdivision plan proposes a 50m buffer between the indicative building envelopes and the adjoining primary production land, which is consistent with the Living and Working in Rural Areas Handbook.

Positive social and economic impacts can be expected from the proposal, providing additional large lot residential housing within the Dondingalong locality, which is consistent with Council's rural residential land release strategy.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage NSW Rural Fire Service		

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Is Public Hearing by the PAC required? No

(2)(a) Should the matter proceed? Yes

If no, provide reasons: Referral is also recommended to the Local Aboriginal Land Council.

Resubmission - s56(2)(b): No

If Yes, reasons:

Identify any additional studies, if required.:

If Other, provide reasons:

Identify any internal consultations, if required:

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? No

If Yes, reasons:

Documents

Document File Name	DocumentType Name	Is Public
Dondingalong PP.pdf	Proposal	Yes
Kempsey Shire Council Request for Gateway determination Gowings Hill Rd Dondingalong.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage: **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Additional Information: It is recommended that the Acting Director Regions, Northern, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Kempsey LEP 2013 to rezone part of Lot 6 DP18216 and Lot 1 DP 1111175, Gowings Hill Road, Dondingalong from RU1 Primary Production and RU2 Rural Landscape to R5 Large Lot Residential and reduce the minimum lot size from 40ha to 1ha, should proceed subject to the following conditions:

1) The planning proposal is required to be updated prior to community consultation to complete the Project Time-line.

2) Community consultation is required under section 56(2) and 57 of the Environmental Planning and Assessment Act 1979(EP&A Act) as follows:

a) the planning proposal must be publicly available for 14 days; and

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b) the relevant planning authority must comply with the notice for public exhibition of planning proposals and the specifications for material that must be made available along with the planning proposal as identified in section 5.5.2 of A guide to preparing a local environmental plans (Planning and Environment 2016).

3) Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- NSW Rural Fire Service
- Office of Environment and Heritage
- Local Aboriginal Land Council

4) A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission), and

5) The time frame for completing the LEP is to be 12 months from the week following the date of Gateway determination.

It is also recommended the Acting Director Regions, Northern as delegate of the Secretary agrees:

1) That the planning proposal's inconsistencies with s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land being justified as of minor significance, and notes the inconsistency with 4.4 Planning for Bushfire Protection is still outstanding pending consultation; and

2) Delegation to finalise the planning proposal be issued to Kempsey Shire Council as the proposal is of local planning significance.

Supporting Reasons :

The proposed rezoning of the site is a sound planning outcome rezoning land identified as suitable for rural residential purposes generally within Council's approved local strategy.

The proposal will provide flexibility for housing provision in Dondingalong and ensure a sufficient supply of rural residential land is maintained within the locality.

Signature:



Printed Name:

Craig Diss

Date:

19/5/17