



Rural Residential rezoning at Blairs Lane, Kempsey

Proposal Title : **Rural Residential rezoning at Blairs Lane, Kempsey**

Proposal Summary : **The planning proposal seeks to amend Kempsey LEP 2013 by rezoning land at Blairs Lane, South Kempsey from RU2 Rural Landscape to R5 Large Lot Residential and applying a 1 hectare minimum lot size.**

PP Number : **PP_2016_KEMPS_002_00** Dop File No : **16/09541**

Proposal Details

Date Planning Proposal Received : **30-Jun-2016** 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 : **Blairs Lane**

Suburb : **Kempsey** City : Postcode :

Land Parcel : **Lots 120 and 121 DP 754400 and Lot 1 DP 1159592 and the adjoining Wedlock Close and Blairs Lane road reserves**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Tamara Prentice**

Contact Number : **0266416610**

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Land Release Data

Growth Centre : Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Mid North Coast Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	11.58	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	9
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 communications and meetings with lobbyists has been complied with to the best of the Region's knowledge. The Northern Region has not met with any lobbyists in relation to this proposal, nor has the Northern Region been advised of any meeting between other Departmental Officers and lobbyists concerning the proposal.**

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

If Yes, comment :

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 intends to amend Kempsey LEP 2012 to permit rural residential development over the land.**

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

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

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal intends to amend the Land Zoning Map and Lot Size Map to apply appropriate zones and other planning controls to the land.**

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**

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 (Rural Lands) 2008**

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

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain : **Refer to discussions below.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The planning proposal contains maps which adequately show the subject land, the current and proposed zone and minimum lot size. These maps are adequate for exhibition purposes. Maps which comply with the Standard Technical Requirements for SI LEP Maps will need to be prepared before the LEP is made.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Planning Proposal has not indicated a set timeframe for community consultation. In accordance with "A Guide to Preparing Local Environmental Plans" (the 'Guide'), it is considered that the planning proposal is a low impact planning proposal as it is consistent with the pattern of surrounding land use zones and inconsistencies with the strategic planning framework are of minor significance. The proposal does not reclassify land or present infrastructure servicing issues. It is therefore considered that a community consultation period of 14 days is adequate.**

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 satisfies the adequacy criteria by;**
1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line
6. Completing the evaluation criteria for the delegation of plan making functions.

Time Line

The planning proposal includes a project timeline which estimates the completion of the planning proposal in six (6) months concluding in January 2017. To ensure the RPA has adequate time to complete the additional site investigations, exhibition, reporting, and legal drafting, a 12 month time frame is recommended.

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Delegation.

The RPA has requested an Authorisation to exercise delegation for this proposal. An Evaluation Criteria For the Delegation of Plan Making Functions has been provided. The proposal is considered to be of local planning significance since it applies to a parcel of land identified for rural residential purposes by the strategic planning framework, particularly the Mid North Coast Regional Strategy and Council's Rural Residential Land Release Strategy which has been approved by the Department. It is recommended that an Authorisation for the execution of delegation be issued to the RPA in this instance.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Kempsey LEP 2013 commenced on 3 February 2014.**

Assessment Criteria

Need for planning proposal :

The proposal is the result of Council's Rural Residential Land Release Strategy (December 2014). This Strategy identified a shortfall in the supply of rural residential land in the next 25 years. This 11.58ha of land at South Kempsey is identified as suitable for the first stage release to address this shortage.

The Rural Land Release Strategy was adopted by the Department on 17 December 2014. In the letter supporting the Strategy, Council was advised that each of the candidate areas would need to be investigated further through the Planning Proposal process to confirm the suitability of the land for intensification and rezoning.

The Strategy identifies specific issues which need to be addressed for each release precinct which will be discussed below.

The planning proposal seeks to rezone the land from RU2 to R5 and amend the minimum lot size from 40ha to 1ha. The amendment of this zoning and minimum lot size will mean the road reserves adjoining the development (Wedlock Close and Blairs Lane) will remain RU2 with a 40ha MLS but surrounded by R5 and a 1ha MLS. The planning proposal should be amended to provide consistent planning controls for both the land and the adjoining road reserves.

The proposal to rezone the land is the best means of achieving the intent of the proposal which is to enable the land to be developed for rural residential purposes.

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Consistency with strategic planning framework :

Mid North Coast Regional Strategy (MNCRS).

The Mid North Coast Regional Strategy (MNCRS) in actions related to 'Rural Residential Development' requires that "land will only be zoned for release if it is in accordance with a local growth management strategy agreed to between Council and the Department of Planning". The proposal is consistent with Council's Rural Residential Land Release Strategy that has been endorsed by the Department. It is consistent with the Rural Residential Land release requirements of the MNCRS.

Draft North Coast Regional Plan

The proposal is consistent with the Draft North Coast Regional Plan (the 'Draft RP'). The Draft RP provides that new rural residential development in the coastal area must be in accordance with an approved local strategy. The proposal is consistent with this requirement as it is within Council's Secretary approved local rural residential strategy.

This land is identified in the Regional Plan as in a transitional area due to its proximity to Church Hill Quarry. Church Hill Quarry has been identified in the Mineral Resources Audit by Trade and Investment as a resource of State or regional significance. The Department's assessment of the rural residential strategy identified this matter and concluded that development is permitted within the transition area subject to consideration of the potential impact on the resource operations and consultation with NSW Trade and Investment. Due to the minor nature of the extension to the existing R5 Zone, it was not considered likely that any impact to the quarry's operations would result, subject to consultation with NSW Trade and Investment at rezoning and development application stages. It is therefore considered appropriate that Council consult further with NSW Trade and Investment at this stage.

Kempsey Shire Rural Residential Land Release Strategy 2014

Kempsey Shire Council undertook a rural residential land supply analysis which concluded that at a high growth scenario there was likely to be a shortfall in rural residential land supply of around 7 lots per year. This scenario may be made worse as environmental restrictions increased over time further reducing supply. To address this issue Kempsey Shire Council undertook the Rural Residential Land Release Strategy 2014 which guides rural residential land release for the next 25 years. The land subject to this proposal is included as part of the South Kempsey A land release stage. This land is identified for immediate release provided the following issues were considered as part of the planning proposal preparation:

- The extent of the 1 in 100 year flood
- Impacts of noise from the Pacific Highway
- The means of rationalising access to facilitate an efficient pattern of subdivision
- Means for protecting the riparian corridor
- Unknown Koala habitat
- Part Bushfire prone land
- Class 5 Acid Sulfate Soil

These issues have all be addressed in the planning proposal and will be discussed in the Environmental, Social, Economic impacts section below.

Consideration of the impact on the Church Hill quarry as discussed above was also identified as necessary.

SEPPs

The proposal lists the State environmental planning policies (SEPPs) applicable to the land. Comments are provided below regarding key relevant SEPP's for the proposed rezoning:

SEPP 44 Koala Habitat Protection

The proposal states that this land is identified as having vegetation significance 'unknown' in the adopted Comprehensive Koala Plan of Management for Kempsey. The Flora and Fauna report supporting the application is outdated having been completed in 2007. The report determines the vegetation remaining on the site, being in the riparian strip, to be

potential Koala habitat, and possibly Core Koala habitat. It concludes that this vegetation should be permanently protected as part of any rezoning. While the proposal advises that building envelopes will be sited outside of the vegetation and no clearing should be required, it is considered appropriate that Council prior to exhibition consider this matter further and identify whether an alternate zone or other alternate mechanism would be appropriate to provide the permanent protection recommended by the Flora and Fauna report.

SEPP 55 Remediation of Land

The proposal states that a preliminary contaminated land assessment has been undertaken and found that no contamination activity has been undertaken on the land.

SEPP (Rural Lands) 2008

SEPP Rural Lands (the RLSEPP) contains Rural Planning Principles to guide development on rural land. It is considered the proposal is consistent with the Rural Planning Principles. The use of the site for rural residential purposes is not considered to have the potential to significantly increase land use conflict with nearby agricultural land uses. The use of the land for rural residential purposes is also consistent with an approved growth management strategy.

This land is not mapped as State or regionally significant farmland.

The proposal is otherwise consistent with State environmental planning policies.

S117 Directions.

The following S117 directions are applicable to the proposal, 1.2 Rural Zones, 1.3 Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies.

The proposal is considered to be consistent with all applicable S117 Directions except in regard to the following:

Direction 1.2 Rural Zones is relevant to the proposal. The direction provides that a planning proposal must not rezone land from a rural to a residential zone. The planning proposal seeks to rezone the subject land from RU2 Rural Landscape to R5 Large Lot Residential. The inconsistency is justified as the land is included in the endorsed Kempsey Shire Rural Residential Land Release Strategy.

Direction 1.3 Petroleum Production and Extractive Industries may be applicable to this proposal. This land is identified as a transitional or buffer area to a regionally significant resource. Consistency and impacts of this resource have not been addressed. A condition should be included on any gateway determination that the proposal is referred to NSW Trade and Investment and that the impacts of the proposal on the Church Hill Quarry resource are addressed. Any potential inconsistency with this direction cannot therefore be resolved until after this consultation has been completed.

Direction 1.5 Rural Lands is relevant to the proposal. The proposal is justifiably inconsistent with direction 1.5 as it is consistent with the Far North Coast Regional Strategy and Kempsey's Rural Residential Land Release Strategy, both of which consider the objectives of the direction, identify the land the subject of the proposal and are endorsed by the Secretary of the Department of Planning and Environment.

Direction 4.3 Flood Prone Land is relevant. The proposal is inconsistent with this direction as it proposes to rezone flood prone land for residential purposes. The inconsistency is considered to be of minor significance as sufficient area exists to locate all the proposed residential building envelopes above the flood planning area.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Part of the subject land is identified as being bush fire prone. The proposal is supported by a bushfire

Environmental social
economic impacts :

hazard report. 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.

This 11.58ha site is relatively flat ranging from 20m AHD on the western boundary to 5m AHD at the eastern boundary, with a flood level of 6.72m there is sufficient flood free area to accommodate dwelling sites on each concept allotment. The land does not display any evidence of landslip or geotechnical instability. It is mapped as Class 5 ASS however no works are proposed which are likely to result in disturbance of 1 tonne or more of soil or the lowering of the water table.

The site is 2.5km from the Kempsey CBD, it is fully serviced with a reticulated water supply, power, telecommunications and a sealed road access. A report has been submitted indicating the lands capacity to accommodate on site wastewater disposal.

The land is partly bushfire prone however the proposal is supported by a bushfire report indicating a future subdivision could comply with current bushfire standards.

The majority of the land is cleared of native vegetation and consists of exotic pasture land as a result of its past use for grazing. The eastern edge of the site contains vegetation which is potential Koala Habitat under SEPP 44. The Flora and Fauna report in support of the proposal is outdated but suggests permanent protection of the remaining vegetation. The proposal addresses this by proposing a restriction as to user protecting the vegetation and requiring it remain fenced from the remainder of the land. As discussed previously, while the proposal advises that building envelopes will be sited outside of the vegetation and no clearing should be required, it is considered appropriate that Council prior to exhibition consider this matter further and identify whether an alternate zone or other alternate mechanism would be appropriate to provide the permanent protection recommended by the Flora and Fauna report.

This land is within the transitional area of the Kempsey Resource Audit Map due to the potential impact of the Churchill Quarry upon future development. Development is permitted in the transitional zone subject to consideration of the potential impact on the resource operations and consultation with NSW Trade and Investment.

The land to the west and south west of the site is predominantly rural residential, while land to the east and north is grazing and vegetated land. The surrounding rural land is low lying and contains a number of creeks and swamp land.

The proposal has been informed by a number of site investigations and studies. The planning proposal has been designed to comply with the recommendations of these studies. The studies included are

- Bushfire
- Onsite waste water
- AHIMS
- Bypass noise report
- Flora and Fauna report

These studies indicate that the land is suitable for rural residential development.

The concept plan indicates a potential 9 lot subdivision supported by a new cul-de-sac of approximately 150m. This proposal will have a positive economic and social impact through the release of land for residential development. Consistent with other land identified in the Kempsey Shire Rural Residential Strategy the land is located close to an existing rural residential area and services to ensure residents can connect to existing social and community services.

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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
Department of Trade and Investment
NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

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

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

Consideration of the potential impacts of the proposed rezoning on the resource extraction potential of Church Hill Quarry.

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
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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**

Additional Information : **It is recommended that the planning proposal should proceed subject to the following;**
1. Prior to community consultation Council is to:

a. amend the planning proposal maps to include Wedlock Close and Blairs Lane within

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- the planning proposal and apply zoning and minimum lot sizes consistent with the adjoining land,
- b. include consideration of the proposed rezoning on the resource extraction potential of Church Hill Quarry,
 - c. include Council's timeline for completing the LEP amendment into the planning proposal, and
 - d. consider the vegetated land adjoining Pola Creek further and identify whether an alternate zone or other mechanism would be appropriate to provide the permanent protection recommended by the associated Flora and Fauna report and include the outcomes of these considerations into the planning proposal.
2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
- a. the Planning Proposal must be made publicly available for 14 days;
 - b. the relevant planning authority must comply with the notice requirements for public exhibition of Planning proposals and the specifications for material that must be made publicly available along with Planning proposals as identified in section 5.5.2 of 'A guide to preparing local environmental plans (Planning and Infrastructure, 2013)'.
3. The time frame for completing the LEP is to be 12 months from the week following the date of the Gateway determination.
4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the relevant S117 directions:
- a. Rural Fire Service;
 - b. NSW Trade and Investment, and
 - c. Office of Environment and Heritage
5. A written authorisation to exercise delegation be issued to Kempsey Shire Council
6. It is recommended that:
- a. Consultation is required in relation to s117 Direction 1.3 with NSW Trade and Investment, and Direction 4.4 with the NSW Rural Fire Service, and
 - b. The Secretary's delegate determine that the inconsistencies with s117 Directions 1.2 Rural Zones, 1.5 Rural Lands and 4.3 Flood Prone Land are justified as they are consistent with the Mid North Coast Regional Strategy or are of minor significance.

Supporting Reasons :

- The reasons for the recommendation are as follows;
- 1. Release of the land for rural residential purposes will provide housing opportunity in line with the RPA's Rural Land Release Strategy.
 - 2. The land is relatively unconstrained and has been identified as generally suitable for rural residential development through the strategic planning process.
 - 3. There remain unresolved inconsistencies with s117 direction 4.4 Planning for Bushfire Protection and
 - 4. The land is identified in a buffer area to a regionally significant mineral resource and any potential impacts should be explored prior to the proposal proceeding.

Signature:



Printed Name:

Craig Diss

Date:

14 July 2016