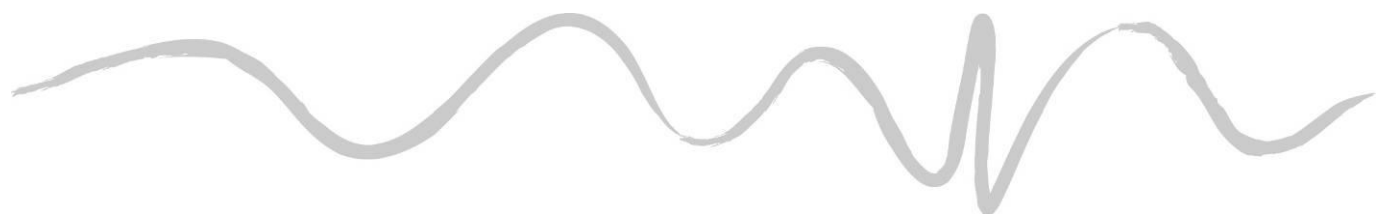


Planning Proposal

North Street, West Kempsey



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Planning Proposal

North Street, West Kempsey

Prepared for: Voyee Pty Ltd and Supa East Pty Ltd
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Introduction

GeoLINK has been engaged by Voyee Pty Ltd and Supa East Pty Ltd to prepare this Planning Proposal for a residential development at North Street, West Kempsey. The site is known as Lot 4 DP 1124599, North Street, West Kempsey. The Proposal is for subdivision of the site into low density residential allotments with one larger residue lot containing flood prone land.

The development site is located within the Kempsey Local Government Area and therefore the Kempsey Local Environmental Plan 1987 (KLEP) applies. According to the KLEP the site is zoned 1(d) Rural Investigation. Clause 16(1)(a) states that any new lots created must have a minimum lot size of 40 ha. The proposed includes subdivision of lots less than 40 ha and therefore to enable the proposed residential subdivision to occur an amendment to KLEP 1987 is required to change the zoning of the land.

Plates 1.1 to 1.3 provide views of the site. **Illustration 1.1** shows a site locality plan identifying the subject land.



Plate 1.1 The site viewed from North Street, facing south-east

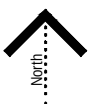


Plate 1.2 The site from North Street facing South



Plate 1.3 Low-lying land in the south of the site

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environmental management and design

Proposal: North Street, West Kempsey
1601048

The Site

Illustration 1.1

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Part 1 Proposal Objective

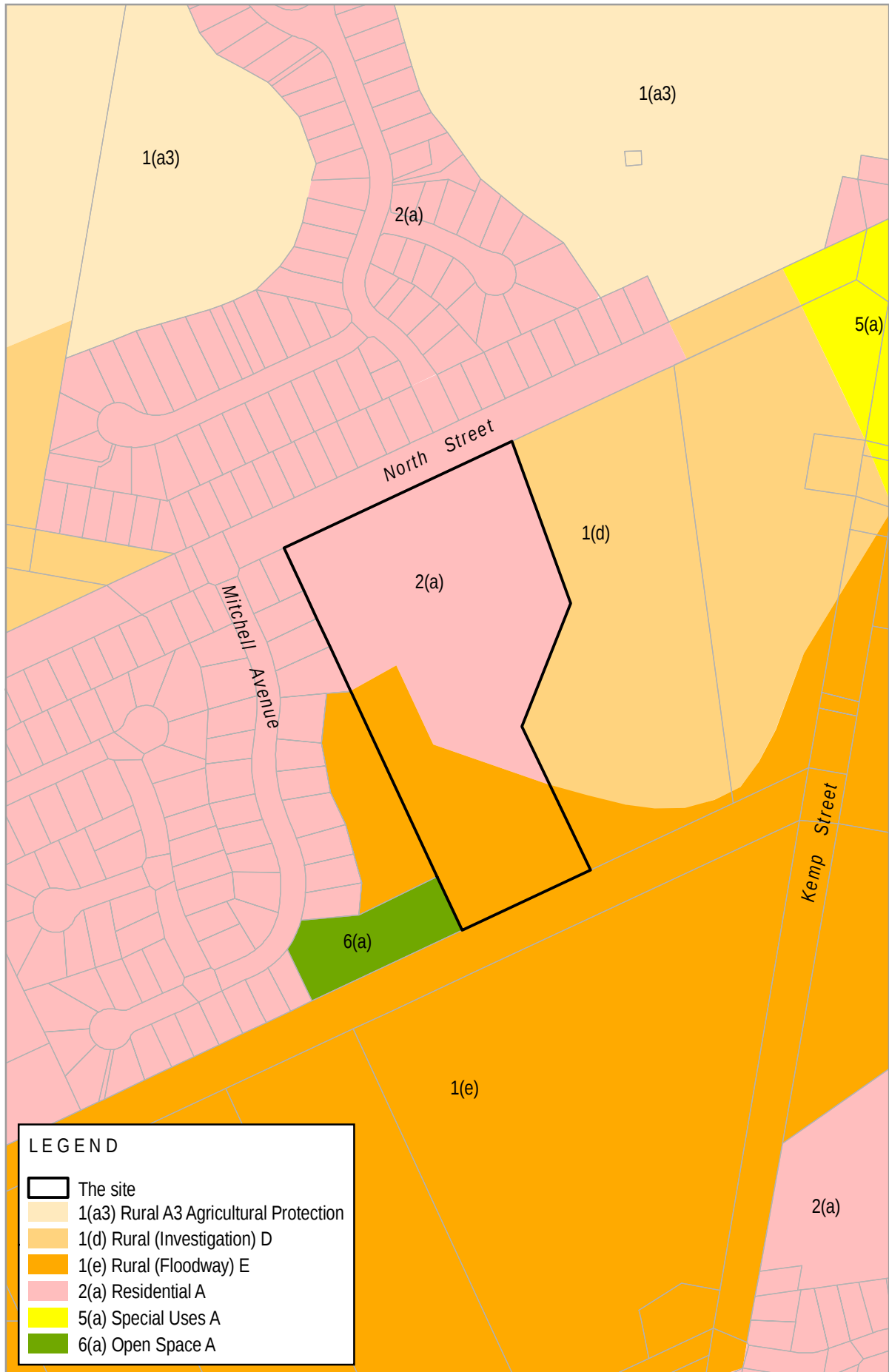
The objective of this Planning Proposal is to enable the subdivision of Lot 4 DP 1124599, North Street, West Kempsey into low density residential allotments with one larger residue lot containing flood prone land.

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Part 2 Explanation of Provisions

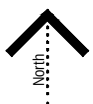
Amendment of the Kempsey Local Environmental Plan 1987 Land Zoning Map in accordance with the proposed zoning map shown as **Illustration 3.1**.

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LEGEND

-  The site
-  1(a3) Rural A3 Agricultural Protection
-  1(d) Rural (Investigation) D
-  1(e) Rural (Floodway) E
-  2(a) Residential A
-  5(a) Special Uses A
-  6(a) Open Space A



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Proposal: North Street, West Kempsey
1601049

Proposed Zoning

Illustration 3.1

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Part 3 Justification

4.1 Section A – Need for a Planning Proposal

4.1.1 Is the planning proposal a result of any strategic study or report?

4.1.1.1 *Draft Kempsey Shire Council Local Growth Management Strategy Residential Component 2009*

The *Draft Kempsey Shire Council Local Growth Management Strategy* (Draft KLGMS) was prepared by Kempsey Shire Council to satisfy the requirements for a Local Growth Management Strategy prepared in accordance with the Department of Planning Settlement Planning Guidelines, and the Mid and Far North Coast Regional Strategies.

The Draft KLGMS provides a framework for the integration of residential, rural residential, business and industrial growth strategies for the Kempsey Shire.

The *Residential Component* of the Draft KLGMS:

- provides a framework for sustainable urban development to the year 2031;
- aims to integrate principles of ESD into key planning documents; and
- guide the development of sustainable residential communities which contribute to delivering the vision for the Shire.

The Draft KLGMS Residential Component identifies areas within the Local Government Area for future residential settlement as being Kempsey, South West Rocks, Crescent Head, Frederickton, and Stuarts Point. Kempsey is expected to cater for approximately 12% of the total of new dwellings in the LGA required between 2006 and 2031. Short term growth is identified in existing zoned areas and smaller releases in close proximity to the existing urban areas at West Kempsey and East Kempsey.

Lot 4 DP 1124599, North Street, West Kempsey is located within a new release area (KU1A1) identified in the mapping provided in the Draft KLGMS Residential Component. Additionally, it is identified for 'short term' release, between 2009 and 2012.

4.1.1.2 *Kempsey Residential Release Strategy 1997*

The Kempsey Shire Council Residential Release Strategy 1997 was prepared to meet with the requirements of the North Coast Regional Environmental Plan.

This strategy aims to:

- guide and direct future land use decisions in an integrated and orderly manner;
- ensure that future growth is accommodated within environmentally suitable lands which are able to be economically serviced;
- satisfy the requirements of the North Coast Regional Environmental Plan 1988; and
- be consistent with the provisions of the North Coast Urban Planning Strategy.

The objectives are to:

- establish a sound foundation for estimating demand for urban residential lands;
- determine the existing supply of appropriate lands for urban residential activities;
- determine the amount and type of land required for future urban residential demands;

- identify the location and amount of suitable land available for expansion, taking into account physical and servicing constraints; and
- determine strategic development options for available lands within relevant time frames.

The Strategy identified areas within the LGA suitable for urban development and growth. The Strategy identifies South West Rocks as the fastest growing urban area within Kempsey Shire, followed by Kempsey itself. Population growth in Kempsey itself is predicted to increase from 9,923 persons in 2006 to 10,389 persons in 2011 and 10875 persons in 2016.

The Strategy concludes that there is sufficient residentially zoned land within Kempsey to accommodate urban expansion up until the year 2011. However, between the 1991 and 1996, Kempsey's population declined and therefore further monitoring was considered necessary to determine a land release program.

The site that is subject of this rezoning report is zoned 1(d) Rural Investigation, and therefore is well placed to accommodate future demand for residential land.

Land located adjacent to the eastern boundary of Lot 4 DP 1124599, identified as Lot 2 and 3 of DP 1124599, also zoned 1(d) Rural Investigation Zone, is additionally identified for future residential land. The current land owners have advised that they do not wish to be included in this land rezoning proposal. Correspondence from the current landowners to that effect is attached at **Appendix A**. Therefore Lot 2 and 3 of DP 1124599 is not included within this Planning Proposal.

4.1.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The subject site is located on North Street, West Kempsey, described as Lot 4 DP 1124599. It is currently a 4.17 ha semi-rural property which is used for small scale cattle grazing purposes. Under KLEP 1987 the site is zoned 1(d) Rural Investigation and Zone No 1 (e) (Rural Floodway). Subdivision within these zones for low density residential allotments is prohibited. The site is located adjacent to existing residential land and is identified in the Draft KLGMS to be rezoned for residential development in the short term. It is also considered that the rezoning of the subject land for residential purposes is a logical progression of the existing urban foot print in West Kempsey.

This Planning Proposal seeks to have KLEP 1097 amended to allow for the subdivision of site into low density residential allotments. It is considered that rezoning part of the land (refer **Illustration 3.1**) from zoned 1(d) Rural Investigation to 2(a) Residential is the best means of achieving this.

4.1.3 Is there a community benefit?

The Draft KLGMS was prepared to balance overall community benefit outcomes with the need to provide for sustainable expansion of urban areas within the Kempsey LGA. The community benefit associated with the development lies in the provision of additional housing options / diversity in a manner that minimises environment, social and economic impacts.

Further, rezoning of the site would provide a net community benefit as the rezoning will contribute to Council's housing targets as set by the Mid North Coast Regional Strategy, in which this site is mapped as Proposed Future Urban Release.

4.2 Section B – Relationship to Strategic Planning Framework

4.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Mid North Coast Regional Strategy

The Mid North Coast area has increased in popularity as a place to live and work. As a result, the region has seen a 70% increase in population over the past 25 years.

The overall aims of the Mid North Coast Regional Strategy (MNCRS) are to:

- *protect high value environments, including significant coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors by ensuring that new urban development avoids these important areas and their catchments;*
- *cater for a housing demand of up to 59 600 new dwellings by 2031 to accommodate the forecast population increase of 94 000 and any anticipated growth beyond this figure arising from increased development pressures in the southern part of the Region;*
- *ensure that new housing meets the needs of smaller households and an ageing population by encouraging a shift in dwelling mix and type so that 60 percent of new housing will be in greenfield locations and 40 percent in existing urban areas;*
- *ensure an adequate supply of land exists to support economic growth and the capacity for an additional 48 500 jobs in the Region by protecting existing commercial and employment areas and securing sufficient land to support new employment opportunities;*
- *encourage the growth and redevelopment of the Region's four major regional centres and six major towns through urban design and renewal strategies as a means of protecting sensitive coastal and natural environments and strengthening the economic and administrative functions of these centres as well as meeting increased housing density targets;*
- *protect the coast and the character of coastal villages by limiting growth to the agreed growth areas of towns and villages leaving greenbelts between settlements;*
- *direct new rural residential development to areas close to existing settlements away from the coast;*
- *only consider additional development sites outside of agreed local strategies if they can satisfy the Sustainability Criteria (Appendix 1);*
- *designate a Coastal Area east of the proposed final alignment of the Pacific Highway from which application of the Sustainability Criteria will be excluded (noting that approximately 70 per cent of the future dwelling capacity identified within growth areas is already within the Coastal Area);*
- *limit development in places constrained by coastal processes, flooding, wetlands, important farmland and landscapes of high scenic and conservation value;*
- *protect the cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages and surrounding landscapes; and*
- *where development or rezoning increases the need for State infrastructure, the Minister for Planning may require a contribution to the infrastructure having regard to the NSW Government State Infrastructure Strategy and equity considerations.*

The town of Kempsey is located in the Hastings–Macleay Valley subregion, as defined by the MNCRS. Growth in this subregion is expected to occur in a number of new release areas in Port Macquarie Hastings Shire and Kempsey Shire Local Government Areas, including the major town of Kempsey.

As part of the strategy, the Department of Planning has prepared Growth Areas Maps for each of the subregions, to clearly identify where growth will occur. The site is identified as being a "Proposed Future Urban Release Area" in the Growth Areas Map No. 6 – Kempsey.

The strategy outlines a number of considerations for the release of land for development. This report has considered the aims and principles and other requirements outlined in the MNCRS and it is considered that the future development of the site is consistent with the MNCRS.

4.2.2 Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

4.2.2.1 Draft Kempsey Shire Council Local Growth Management Strategy Residential Component 2009

As discussed in **Section 4.1** of this Planning Proposal the proposal is consistent with the Draft Kempsey Shire Council Local Growth Management Strategy Residential Component 2009.

4.2.2.2 Kempsey Community Delivery Program 2010-2015

The Kempsey Shire Council Community Delivery Program was formed after the introduction of the *Local Government (General) Amendment (Community and Social Plans) Regulation 1998*. This requires all councils in NSW to develop a social stage community plan.

Broadly, the Community Delivery Program identifies and addresses the needs of the community through describing the demographic make-up of the area, reviewing and analysing trends locally and compared with other areas, identifying current and key future priority issues and recommending actions to address these issues.

The study targeted young people, women, men, people from linguistically and culturally diverse backgrounds, older people, people with disabilities (including those with HIV/ AIDS) and Aboriginal Torres Strait Islander people. The Community Delivery Program provides an action plan to provide the identified needs and requirements of the target populations within Kempsey Shire Council.

The development of the study area provides an opportunity for Council to obtain additional residential lots for Kempsey, whereby potentially improving affordability, the economic base of Kempsey and the potential to draw in additional community and other services. It is considered that the rezoning of the proposed development is generally consistent with the identified actions outlined in the Kempsey Shire Council's Social Plan.

4.2.2.3 Kempsey Shire Council Ecologically Sustainable Development (ESD) Strategy

This strategy was prepared by Council in 2007. The ESD Strategy aims to set a vision for the Shire as well as establish an action plan that sets major goals or targets with a number of measurable objectives and actions for achieving those goals and, ultimately, the vision of sustainable future for the Shire. It aims to build upon Council's existing strategies and policies. The strategy sets a number of environmental sustainability goals relating to:

- water;
- atmosphere;
- biodiversity;
- social sustainability goals:
 - health, safety and wellbeing;
 - culture and heritage;
 - built up open space;
 - recreation and sport; and
 - social infrastructure.
- economic sustainability goals:
 - business and industry;
 - employment, income and training; and
 - ecologically sustainable development.

The proposal is consistent with the Draft KLGMS and is an anticipated and logical expansion of the existing urban footprint in West Kempsey. In addition to this, land that has significant constraints (wetland and flood prone) will be excluded from development. It is considered that the proposal is consistent with the principles of ESD and therefore Councils ESD Strategy.

4.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The following provides an outline of the State Environmental Planning Policies potentially applicable to future development on the site and highlights issues to be considered by this Planning Proposal.

4.2.3.1 State Environmental Planning Policy (North Coast Regional Environmental Plan)

The following summary identifies the matters within the NCREP applicable to the proposed rezoning and subdivision of the site.

Part 3 Conservation and the Environment

Division 1 The Natural Environment

Clause 29 Plan preparation – natural areas and water catchments

A draft local environmental plan should:

- a) *retain existing provisions allowing the making of tree preservation order;*

The Planning Proposal for the study area will not impact on any existing provisions within the KLEP (1987) relating to tree preservation.

- b) *not alter or remove existing environmental protection, scenic protection or escarpment preservation zonings or controls within them, without undertaking a detailed analysis to determine whether there will be adverse environmental effects resulting from such action;*

The proposed rezoning of the site does not impact on existing environmental protection, scenic protection or escarpment protection zonings.

- c) *include significant areas of natural vegetation including rainforest and littoral rainforest, riparian vegetation, wetlands, wildlife habitat, scenic areas and potential wildlife corridors in environmental protection zone;*

The ecological value of the site is addressed in **Section 4.3.1**. An ecological assessment was carried out for the site and is attached in full at **Appendix B**. The assessment found that:

- a freshwater wetland community in the southern portion of the site constitutes the TSC Act listed endangered ecological community (EEC) *Freshwater Wetlands on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregion*;
- three threatened fauna species were recorded during the survey: the Grey-headed Flying-fox (*Pteropus poliocephalus*), Little Bent-wing bat (*Miniopterus australis*) and Eastern Bentwing-bat (*Miniopterus schreibersii oceanensis*);
- ten other highly mobile threatened fauna were variably considered potential occurrences.

This Planning Proposal provides for parts of the study area to be included within a zone that does not allow for residential development. This area will include the freshwater wetland community, which is additionally constrained by acid sulfate soil and flooding.

- d) *contain provisions which require that development in domestic water catchment areas or on land overlying important groundwater resources does not adversely affect water quality; and*

The Planning Proposal will not impact on domestic water catchment areas or on land overlying important groundwater resources, nor will it adversely affect water quality.

- e) *require consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones.*

The recommendations in the Planning Proposal do not impact on existing environmental protection, scenic protection or escarpment preservation zones.

Clause 31 Plan preparation—coastal hazard areas

This clause states that a draft LEP for land that is not currently developed should identify any coastal hazard area. The site does not contain any coastal hazard areas.

Part 4 Urban Development

Division 1 Strategic Planning

Clause 38 Plan preparation – urban land release strategy

This clause states that 'the council should not prepare a draft local environmental plan which permits development that, in the opinion of the Council (subject to the directions given by the Director), constitutes significant urban growth unless it has adopted an urban land release strategy for the whole of its local government area.

The site is identified in the Mid-North Coast Regional Strategy Growth Areas Map as a Proposed Future Urban Release Area and is zoned 1(d) Rural Investigation under the Kempsey Local Environmental Plan 1987 and is identified as a future urban area in the Draft KLGMS. The proposal is therefore consistent with this clause.

Clause 40 Plan preparation – principles for urban zones

This clause requires that a draft LEP applying to urban areas should adopt the following principles:

- a) *zoning should be simple and flexible;*
- b) *provisions for flexible zone boundaries may apply to any zones except environmental protection zones;*
- c) *detailed guidelines within the broad zone parameters should be identified in a development control plan; and*
- d) *the principle of minimising energy use, in particular in the design of buildings and effective transport systems.*

This planning proposal seeks to rezone land for urban purposes. The proposed zones under the KLEP 1987 recommended are discussed in **Section 3**.

It is not proposed to have flexible zone boundaries in this instance, as the extent of the proposed 2(a) zone is set by the 1 in 100 year flood inundation level. As this application is to amend the local planning instrument and attain consent for subdivision, a development control plan is not required. Energy usage of the dwellings will be governed by the Building Code of Australia and BASIX. The site is located within cycling distance of the Kempsey CBD.

Division 2 Urban housing

Clause 42 Plan preparation – principles for housing

The objectives of this clause are to promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the region's population. The proposed rezoning and subdivision of the site will result in approximately 33 lots. It is envisaged that, subject to Council approval, some lots will contain dual occupancy dwellings, whereby providing a more affordable option and an alternative to the low density residential housing that predominantly exists in the area.

Division 3 Environmental Hazards

Clause 45 Plan preparation—hazards

The clause provides that a draft LEP should not permit development for tourism, rural housing or urban purposes on land subject to the following hazards, namely:

- a) *coastal processes;*
- b) *flooding or poor drainage;*
- c) *dangers arising from potential or actual acid sulphate soils;*

- c1) dangers arising from contaminated land;
- c2) geological or soil instability;
- d) bushfire;
- e) aircraft noise at levels of more than 25 (measured according to the Australian Noise Exposure Forecast);
- f) air or water pollution, or airborne pollution, within 400 metres of sewage treatment works,
- g) disposal of septic effluent;
- h) existing offensive or hazardous industries; and
- i) high tension electrical power lines.

unless the council has made an assessment of the extent of the hazard and included provisions in the plan to minimise adverse impact.

Part of the study area is affected by the 1 in 100 year flood inundation extent. Refer to **Section 4.3** for further discussion on flooding.

Section 4.3 additionally provides further information in relation to ASS.

Kempsey Shire Council's mapping of bushfire prone land indicates that the site is not affected by bushfire.

There will be no disposal of septic effluent on the site. Sewage from the site will be discharged to Council's reticulated wastewater system.

Clause 45A Plan preparation – flood liable land

This clause applies to flood liable land within the meaning of the Floodplain Development Manual and requires that:

a draft local environmental plan should:

- a) zone land identified in accordance with the principles contained in the Floodplain Development Manual as high hazard flood liable or as floodway so as to reflect its potential for flooding, and
- b) provide that the erection of new buildings on any such land be restricted.

The study area is partly affected by the 1 in 100 year flood event and the Probable Maximum Flood event (PMF). The Floodplain Development Manual defines flood liable land as "land susceptible to flooding by the PMF event". The subject site is therefore defined as flood liable land within the meaning of the Flood Plain Development Manual. The boundary of the area proposed to be zoned 2(a) Residential "A" has been set based on the inundation extent of the 1 in 100 year flood event.

Flooding of the site is addressed in detail in **Section 4.3** of this report.

Clause 50 Plan preparation – height controls

This clause requires that, before preparing a draft local environmental plan applying to an urban area, the Council should consider the necessity for height controls on buildings and include such controls as it considers appropriate. It is considered that Council's existing policy on the height of dwellings in the 2(a) zone, contained within DCP 22, are sufficient.

Part 5 Regional Infrastructure

Division 2 Utility Services

Clause 58 Plan preparation – servicing urban areas

A draft local environmental plan should not permit development for urban purposes unless the council is satisfied that:

- a) the proposed development will make the most economic use of existing services,

The proposed development will connect to existing utility services as detailed in **Section 4.11**.

- b) *where the proposed development is adjacent to an existing urban area and that urban area will be substantially increased, the provision of a reticulated water and sewer system will be provided at reasonable cost to each lot,*

The proposed development is adjacent to an existing urban area. The new lots will be provided with a reticulated water and sewer system.

- c) *the proposed development is located in an area which is consistent with the findings of any urban land release strategy prepared for the local government area or, where no such strategy has been prepared, the proposed development is located in the area to which services can be provided most readily,*

The site is shown on the Mid-North Coast Regional Strategy Growth Areas Map as a Future Urban Release Area and is zoned 1(d) Rural Investigation under the Kempsey Local Environmental Plan 1987. The proposal is therefore consistent with this clause.

- d) *consideration has been given to the identification of effluent disposal and discharge points,*

Section 4.11 provides details on connection of the site with Council's reticulated sewerage system.

- d) *domestic water catchment areas and water storage areas are not likely to be polluted as a result of the proposed development, and*

Section 4.10 provides details on stormwater management.

- e) *consideration has been given to the provision of public transport facilities, pedestrian and cycleways.*

Section 4.8 provides details on traffic and access.

Division 3 Health and education

Clause 61 Plan preparation - health and education facilities

Clause 61 requires Council to consider the availability of health and education facilities in the vicinity of a site when considering the zoning of land for residential purposes. The proposed rezoning and subdivision of this land is unlikely to significantly impact on health and education facilities available in the area.

Division 4 Community Services

Clause 65 Plan preparation – provision of community, welfare and child care services

Clause 65 of the REP requires that a draft LEP should not zone land for residential purposes unless Council has made an assessment of the need for additional community and welfare services. The proposed rezoning and subdivision of this land is unlikely to significantly impact on the demand for additional community and welfare services in the area.

4.2.3.2 State Environmental Planning Policy No. 44 – Koala Habitat Protection

The ecological assessment (attached at **Appendix B**) assessed the site as SEPP 44 Potential Koala Habitat. However, no Koalas or evidence of their occurrence was recorded during the site survey and the local records on the northern side of the Macleay River are scarce. The survey results and literature review suggest that the site does not qualify as SEPP 44 Core Koala Habitat;

Section 4.3 contains further detail on the flora and fauna of the site and an ecological assessment for the site is attached at **Appendix B** and provides an assessment of the environmental impact of the development on flora and fauna, including Koalas and their habitat.

4.2.3.3 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

The general aim of the SEPP is to improve the design quality of residential flat development in New South Wales.

In improving the design quality of residential flat development, the SEPP aims:

- a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - i. *by providing sustainable housing in social and environmental terms, and*
 - ii. *by being a long-term asset to its neighbourhood, and*
 - iii. *by achieving the urban planning policies for its regional and local contexts, and*
- b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The SEPP applies to development being “*the erection of a new residential flat building*”. A residential flat building is defined by the SEPP as a building that comprises or includes:

- a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- b) *4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),*
but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.

It is possible that subject to attaining Council's consent, some of the proposed 33 lots will contain dual occupancy dwellings. At this stage, it is not proposed to seek approval for any residential flat buildings on any of the new lots.

If the SEPP applies to future development of the site, the development will need to meet the design quality principles and requirements as specified in the SEPP.

4.2.3.4 *State Environmental Planning Policy No. 71 – Coastal Protection*

The object of this policy is to provide for the protection and management of sensitive and significant areas within the coastal zone. The study area is not within the coastal zone and therefore this SEPP does not apply.

4.2.3.5 *State Environmental Planning Policy (Major Development) 2005*

This policy defines certain developments that are major projects under Part 3A of the *Environmental Planning and Assessment Act 1979* and determined by the Minister for Planning. The SEPP also lists State significant sites and specified sites, within which development is considered Major Development.

The subject site is not listed in Schedules 2 or 3 and therefore the development is not a Major Project by way of its location.

Therefore, in order for the proposed subdivision to be considered Major Project, it must be listed in Schedule 1 of the SEPP. Schedule 1 prescribes that residential development with a capital investment value of more than \$100 million is a Major Project. The proposed development of the site will not have a capital investment value of more than \$100 million. It is unlikely that State Environmental Planning Policy (Major Development) 2005 will apply to the site.

4.2.3.6 *State Environmental Planning (Infrastructure) 2007*

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:

- a) *improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- b) *providing greater flexibility in the location of infrastructure and service facilities, and*

- c) *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- d) *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.*

The provisions of this SEPP pertaining to traffic generating development are not relevant to this rezoning and subdivision application as the future development of the land is unlikely to trigger any type of referral to the RTA.

The proposal and traffic and access in general are discussed further in **Section 4.8**.

4.2.4 Is the planning proposal consistent with applicable Ministerial Directions (s. 117 directions)?

A number of directions under Section 117 of the EP&A Act 1979 apply to the study area. The following directions are relevant to this planning proposal.

4.2.4.1 Direction No. 2.1 – Environment Protection Zones

This Direction applies to all councils when preparing a draft LEP. The objective of this direction is to protect and conserve environmentally sensitive areas. The direction requires that a draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas. As part of this rezoning application, GeoLINK has undertaken a flora and fauna assessment of the site. These investigations have found that the site has visual amenity and ecological value. **Section 3** provides recommendations on the future zoning of the site. It is considered that the findings of this Planning Proposal are consistent with this direction.

4.2.4.2 Direction No. 2.3 – Heritage Conservation

This Direction applies to all councils when they prepare a draft LEP. The objective of the direction is to conserve items, areas, objects in places of environmental heritage significance and indigenous heritage. The Direction states that a draft LEP shall contain provisions that facilitate the conservation of items that have heritage significance.

A search of the Aboriginal Heritage Information Management System (AHIMS) indicated that there are no Aboriginal objects or places registered with the Department of Environment, Climate Change and Water, NSW.

The site is not on any list of National, State or local heritage places.

4.2.4.3 Direction No. 3.1 – Residential Zones

This Direction applies to all councils when preparing a draft LEP that affects land within an existing or proposed residential zone or any other zone in which significant residential development is permitted or proposed to be permitted. The objectives of the direction are:

- *to encourage a variety and choice of housing types to provide for existing and future housing needs; and*
- *to make efficient use of existing infrastructure and services and to ensure that new housing has appropriate access to infrastructure and services and to minimise the impact of residential development on the environment and resource lands.*

The draft LEP shall contain provisions that encourage the provision of housing that will:

- *broaden the choice of building types and locations available in the housing market;*
- *make more efficient use of existing infrastructure and services;*
- *reduce the consumption of land for housing and associated urban development on the urban fringe; and*

- *be of good design.*

This Planning Proposal contains a proposed subdivision layout, which allows for a variety of dwelling types and sizes. The proposed lot sizes vary from 510 m² to 1200 m², providing for a mixture of detached dwellings and duplexes.

The proposed subdivision adjoins an existing residential area to the west, which is fully serviced. As such, connection of this development to the required infrastructure will not be onerous. Detail of the proposed infrastructure connections is provided in **Section 4.4.1** of this report.

The subdivision site is at the northern extent of the town of Kempsey. It is approximately 3 km from the primary retail centre of Kempsey and approximately 2 km from the retail precinct on Elbow Street. The subdivision site is within the growth area set out for Kempsey under the Mid North Coast Regional Strategy and the Draft KLGMS LEP.

The subdivision has been designed to respect the natural values of the site, including significant vegetation and flood inundation extents. The layout is simple and legible, and allows for house sites that have north-facing outdoor and living spaces. It is therefore considered that the rezoning is consistent with this Direction.

4.2.4.4 *Direction No. 3.4 – Integrating Land Use and Transport*

This Direction applies to all councils when preparing a draft LEP that creates, alters or removes a zone, or provision relating to urban land including land zoned for residential, business, industrial, village or tourist purposes. The objective is to ensure that urban development achieves the following planning objectives:

- *improving access to housing, jobs and servicing by walking, cycling and public transport;*
- *increasing the choice of available transport and reducing dependence on cars;*
- *reducing travel demand, including the number of trips generated by development and the distance travelled, especially by car;*
- *supporting the efficient and viable operation of public transport services; and*
- *provide for efficient movement of freight.*

A draft LEP shall locate zones for urban purposes and include provisions that give effect to and are consistent with the aims and objectives of principles of:

- *improving transport choice – guidelines for planning and development (DUAP, 2001); and*
- *the right place for business and services – planning policy (DUAP, 2001).*

The Planning Proposal includes a zoning structure that provides for conservation of the ecologically sensitive areas of the site as well as for residential use. The site is located within cycling distance of the Kempsey town centre, therefore minimising dependence on private transport.

4.2.4.5 *Direction 4.1 – Acid Sulfate Soils*

This Direction applies when a council prepares a draft LEP that will apply to land having a probability of containing acid sulfate soils. Pursuant to this direction, Council is required to consider the Acid Sulfate Soils Planning Guidelines (EPA 1998).

The provisions of the Acid Sulfate Soils Planning Guidelines have been considered as part of this rezoning and subdivision application. A detailed discussion of acid sulfate soils as they relate to the site is contained in **Section 4.3**.

4.2.4.6 *Direction No. 4.3 – Flood Prone Land*

This Direction requires council to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 when preparing a draft LEP.

Part of the site is subject to flooding. This section is not proposed to be rezoned for urban development. Please refer to **Section 4.3** of this report for further discussion on flooding.

4.2.4.7 *Direction No. 4.4 – Planning for Bushfire Protection*

This Direction applies when preparing a draft LEP for land that is identified as bushfire prone on a bushfire prone land map. The site is identified on Kempsey Shire Council's fire zone mapping as not affected.

4.2.4.8 *Direction No. 5.1 – Implementation of Regional Strategies*

The objective of this Direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies. This Direction applied when the Mid-North Coast Regional Strategy was adopted.

The Direction requires that the draft LEP be consistent with the MNCRS. The subject site is identified as being within the future urban release area of Kempsey.

Further discussion on how the proposed rezoning of the subject site is consistent with the objectives of the MNCRS is contained in **Section 4.2.1**.

4.2.4.9 *Direction No. 6.3 – Site Specific Provisions*

This Direction applies when a council prepares a draft LEP to allow a particular development proposal to be carried out. Where this direction applies, the relevant planning authority must either:

- (a) *allow that land use to be carried out in the zone the land is situated on, or*
- (b) *rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
- (c) *allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.*

This application is to rezone part of Lot 4 DP 1124599 to 2(a) Residential "A" in order for it to be subdivided into approximately 33 residential lots, under Division 4B of the *Environmental Planning and Assessment Act 1979*. In accordance with (b) above, it is proposed to rezone the site to an existing zone already applying in the Kempsey LEP, without imposing any additional development standards.

Section 3 of this report recommends appropriate zones.

4.3 Section C – Environmental, social and economic impact

4.3.1 **Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

An ecological assessment was carried out for the site and is attached in full at **Appendix B**. The assessment found:

- a total of three vegetation types were recorded on the site: pastoral grassland, pastoral woodland and freshwater wetland;
- no threatened fauna species were recorded or considered likely occurrences;
- the freshwater wetland community in the southern portion of the site constitutes the TSC Act listed endangered ecological community (EEC) *Freshwater Wetlands on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregion*;
- no other TSC Act or EPBC Act listed EECs occur on or directly adjacent to the site;

- three threatened fauna species were recorded during the survey: the Grey-headed Flying-fox (*Pteropus poliocephalus*), Little Bent-wing bat (*Miniopterus australis*) and Eastern Bentwing-bat (*Miniopterus schreibersii oceanensis*);
- ten other highly mobile threatened fauna were variably considered potential occurrences;
- SEPP 44 Koala Habitat Assessment identified the site as SEPP 44 Potential Koala Habitat. However, no Koalas or evidence of their occurrence were recorded during the survey, and the local records on the northern side of the Macleay River locally are scarce. The survey results and literature review suggest that the site does not qualify as SEPP 44 Core Koala Habitat;
- the site and general areas has experienced an extensive disturbance history due to agricultural and urban development. Consequently the site now supports highly modified habitats that are poorly connected to any significant forested areas locally. Despite an extensive disturbance history, the site still retained some ecological values for mobile and somewhat habitat generalist threatened fauna, with key habitat/habitat components provided by the freshwater wetlands and the pastoral woodland which supports mature hollow-bearing trees (28 actual hollow-bearing trees and 11 potential hollow-bearing trees);
- the main ecological impacts of the proposal are generally associated with almost complete removal of the pastoral woodland trees (i.e. 36 of 39 trees on the site), which included 25 actual hollow-bearing trees; and hence contributing to key threatening processes responsible for the decline of the known/potentially occurring threatened species;
- the other main potential impacts of the proposal are generally minor in nature or would be easily mitigated against (e.g. erosion and sedimentation, and water quality impacts). A range of mitigated measures were provided to minimise the impacts of the proposal on local biodiversity;
- the proposal is considered unlikely to have a significant impact on any Matters of National Environmental Significance listed under the EPBC Act. Consequently referral to the Minister is not required in relation to these protected matters;
- an impact assessment and seven-part tests of significance undertaken in accordance with Section 5A of the *Environmental Planning and Assessment Act 1979* have been prepared for the 12 threatened fauna species known or potential occurrences on the site and freshwater wetland EEC;
- These assessments concluded that while the proposed subdivision would impose some negative incremental and cumulative effects and contribute to key threatening processes, with effective implementation of the primary mitigation measures of this report, the proposal is not considered likely to place the subject threatened species, EEC and endangered population at significant risk of local extinction; and
- a Species Impact Statement (SIS) is not considered necessary for the proposal.

4.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Flooding

The Macleay River is located approximately 1.7 km south-west of from the site. The southern area of the site is subject to flooding from this River. Elevation of the site ranges from 2 m to 14 m AHD.

Approximately 30% of Lot 4 DP 125499 is located on land below the 1 in 100 year flood level (7.9 m RL), of which the majority is low lying land in the south of the site. It is anticipated that approximately 8 proposed lots may contain land below the 1 in 100 year flood level. However each lot will have at least 500 m² above the 1 in 100 year flood level in which buildings will be erected.

The site is immediately adjacent to existing urban areas of West Kempsey and is not identified as being within a floodway as shown in Annexure 4 of Council's Flood Risk Management Policy.

Archaeology

A search of the Aboriginal Heritage Information Management System (AHIMS) database indicated that no sites are located within the vicinity of the proposal. The site has been significantly modified since European Settlement with agricultural practices. It is considered unlikely that the rezoning and development of the site would impact on Aboriginal Cultural Heritage.

Searches were conducted of the Australian Heritage Council database (including the World Heritage List, the National Heritage List, the Commonwealth Heritage list and the Register of the National Estate), the State Heritage Register, and the State Heritage Inventory (refer to **Appendix C**).

No items of heritage were identified within the site. It is unlikely that the proposed development will have a significant impact on any items of European heritage

Noise

Nuisance from noise is potentially an issue at this site due to the North Coast Railway Line situated approximately 300 m from the north-eastern corner of the site and the Kempsey saleyards situated approximately 500 m north of the site.

Noise transmission and subsequently impacts from noise are affected by atmospheric conditions, topography, and noise barriers and separation distance. The separation distances achieved will significantly reduce impacts from noise. There are numerous rural dwellings and urban areas located much closer to both noise sources, at distances of between 20 m and 300 m.

There are numerous rural residences located less than 100 m from the sale yards. A developed urban area is situated on the northern side of North Street between the site and the sale yards, which would act as a significant noise barrier from the sale yards. Noise impacts on the site from the sale yards are expected to be minor and infrequent given the separation and existing barriers.

Contamination

A search of the NSW Department of Primary Industries Cattle Dip Locator database indicated that the nearest cattle dip site is located at the Kempsey Saleyards, approximately 500 m from the northern boundary of the site. A search of the DECCW Contaminated Land database indicates that there have been no written notices issued by DECCW under the CLM Act, including preliminary investigation orders for land within the Kempsey LGA.

The subject land has historically been used for cattle grazing. Based on an analysis of historical photographs and previous use, it appears unlikely that any source of contamination would have impacted on the site.

Acid Sulfate Soil

The subject land is classified as containing Class 2 and Class 5 Acid Sulfate Soil according to the Acid Sulfate Soil Planning Map for Kempsey, 9435N1. Class 2 Acid Sulfate Soil (ASS) is located within an area of approximately 0.39 ha in the low lying southern area of the site. This area of the site not proposed to be developed as it is also constrained by flooding.

The remainder of the site is classified as Class 5 ASS, which is mapped as any lands within 500 m of Class 1 to 4 ASS. The elevation within the area mapped as Class 5 is greater than 10 m AHD, and it is therefore highly unlikely that any excavation works relating to construction of infrastructure for roads, trenching for laying of services and construction of dwellings would impact on ASS.

Services

The site is adjacent to the urban area of West Kempsey. Sewer, reticulated water, optic fibre cable and electricity infrastructure currently exist on North Street adjacent to the site.

Council has indicated that the water main located in North Street has the capacity to service the site. However should the land immediately to the east of the site be developed, augmentation works would be required. It is also understood the existing reticulated sewage system has the capacity to cater for the proposed rezoning.

A preliminary site layout is attached at **Appendix D** and shows the location of the existing and proposed services.

4.3.3 How has the planning proposal adequately addressed any social and economic effects?

The rezoning will facilitate residential development of 35 lots in West Kempsey. Potential social and economic impacts of the rezoning may occur due to:

- Increase in supply of residential lots within the town of Kempsey;
- increased investment;
- location of the proposed development adjacent to existing urban areas in order to reduce fragmentation and land use conflict;
- increased employment during construction of infrastructure and dwellings.

An increase of approximately 33 lots does not constitute significant change in terms of a social impact on the town of Kempsey. It represents between a 0.8 and 1 percent increase in population (based on the population figure for Kempsey of 11,000 people (Kempsey Shire Council), and based on 2 people per household (based on the ABS). The population increase could contribute to the economic strengthening of the town of Kempsey, increased usage of the public transport network, and a more coherent and physically complete neighbourhood. The increase in population, and associated increase in demand for current services and amenities may be a catalyst for change with regard to improving the public service network of schools, hospitals, and community facilities in the longer term. The rezoning of the site is unlikely to impact on European or Aboriginal cultural heritage.

4.4 Section D – State and Commonwealth Interests

4.4.1 Is there adequate public infrastructure for the planning proposal?

There is sufficient capacity in the existing local services (water, sewer, telecommunications and electricity) to cater for the development. Therefore the proposal will not result in a significant increase in demand for infrastructure.

4.4.2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

This section of the planning proposal will be completed following consultation with the State and Commonwealth Public Authorities identified in the gateway determination. This section will summarise any issues raised by public authorities not already dealt with in the planning proposal, and will address issues as required.

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Part 4 Community Consultation

In accordance with *A Guide to Preparing Local Environmental Plans* (Department of Planning, 2009) the gateway determination will specify the community consultation that must be undertaken on the planning proposal. Consultation will occur in accordance with the determination.

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Conclusion and Recommendations

This proposal to rezone part Lot 4 DP 1124599 from 1(d) Rural Investigation to 2(a) Residential zone, to enable subdivision of the site into 35 residential lots. The site is located within the Kempsey Urban Investigation Area 1 (KUIA1) in the draft KLGMS Residential Component. It is identified for 'short term' release, within 2009-2012.

An analysis of potential environmental constraints to rezoning include an ecological assessment. The results of this analysis indicate the site is suitable for rezoning and development. The Planning Proposal is also consistent with strategic and statutory planning framework that applies to the site.

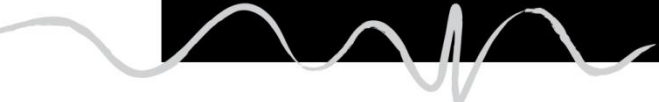
The objective of the Planning Proposal is to rezone Lot 4 DP 1124599 to 2(a) Residential under the KLEP (1987). Rezoning is considered the most appropriate way for the proposal to proceed.



Simon Waterworth

Senior Planner / Principal

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Project Team

The project team members included:

Simon Waterworth

Senior Planner / Principal

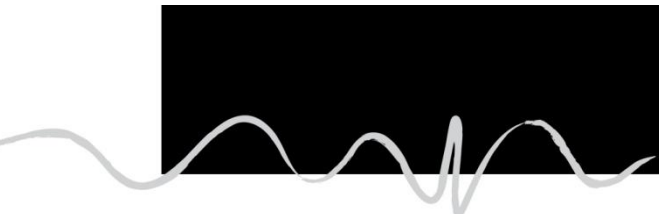
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